AT ABUJA, ON WEDNESDAY, 12TH JULY, 2017

CONTEMPT PROCEEDINGS -Contemnor-When he will not be heard-Consideration of.

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PRACTICE AND PROCEDURE- Forms 48 and 49 Judgment (Enforcement) Rules of the Sheriff and Civil Process Act-Whether the provision can compel attendance of a contemnor-Effect of.

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1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) APPELLANT
2. PROFESSOR MAHMOOD YAKUBU

AND

1. EJIKE OGUEBEGO
(CHAIRMAN, PDP ANAMBRA STATE)
2. HON. CHUKS OKOYE
(Legal Advicer, PDP, Anambra State Chapter Suing for Themselves
and on Behalf of the other Members of the State Executive Committee of the PDP in Anambra State) RESPONDENT
3. CHUKWUDI OKASIA

SC. 31/2013

SUPREME COURT OF NIGERIA

WALTER SAMUEL NKANU ONNOGHEN	JUSTICE, SUPREME COURT
CHIMA CENTUS NWEZE	JUSTICE, SUPREME COURT(Delivered Lead Judgment)
KUMAI BAYANG AKA'AHS	JUSTICE, SUPREME COURT
CLARA BATA OGUNBIYI	JUSTICE, SUPREME COURT
KUDIRAT MOTONMORI O. KEKERE-EKUN	JUSTICE, SUPREME COURT

AT ABUJA, ON WEDNESDAY, 12TH JULY, 2017

LEAD JUDGEMENT
As Delivered By CHIMA CENTUS NWEZE

My Lords, the events that prompted the proceedings culminating to the instant appeal trace their roots to injunctive orders of the Federal High Court: ex parte orders couched in these terms against the appellants herein:

"(a) That the first defendant (PDP), agents and privies are hereby restrained from forwarding, sending and submitting to the second defendant (INEC) any delegate list or nominated candidates that may emerge from the congress or primaries conducted by the Caretaker or Ad-hoc Committee set up by the defendant for the Peoples Democratic Party;

(b) That the first defendant, its agents, servants and privies are restrained from forwarding, sending or submitting to the second defendant, any delegates list or nominated candidates that may emerge from the congress for primaries conducted by the purported Caretaker committee set up by the first defendant for the Peoples Democratic Party, Anambra State Chapter, except those that emanate from the plaintiffs' Congress and primaries;

(c) That the second defendant, its agents, servants, privies, assigns, officials, whatsoever name they may be called, are restrained from accepting or receiving delegates list or nominated candidates that may emerge from the Congress or primaries conducted by the Caretaker Committee set up by the first defendant for the Peoples Democratic Party, Anambra State Chapter, except those that emerge from the plaintiff."

The Court of Appeal, upon an appeal against the above orders, favoured the appellants in the present appeal

with an order setting aside the trial Court's above orders; hence the appeal to this Court: an appeal that yielded this Court's order of January 29, 2016 framed thus:
"Having resolved all the issues in favour of the appellants, I hold that there is merit in this appeal which is allowed. The judgment of the Court of Appeal is hereby set aside. The order of the Federal High Court in Suit No.FHC/PH/CS/213/2013 (now, Suit No.FHC/AW/CS/247/2013) recognising the Ejike Oguebego-led Executive Committee of the Peoples Democratic Party, Anambra State Chapter, is still subsisting until it is set aside by an order of the Court"
This judgment triggered off a concatenation of efforts, on the part of the first and second respondents, that is, Ejike Oguebego and Hon Chuks Okoye, aimed at the actualisation of what they perceived as the import of the above orders of this Court. First, counsel, on their behalf, entreated the appellants to favour them with the certificates of Return of elections of April, 2015. That was not all. They demanded the retrieval of the Certificate of Return from PDP legislators elected from Anambra State, that is, State and National Assembly.
The appellants, in consequence, repaired to this Court for the clarification of its decision and the ambit of its above order. Although the Court disclaimed the invitation, it nonetheless illuminated its reasoning in these words:
"It is wrong for any party to import into the judgment issues which were not ventilated and decided. For instance, the applicant is seeking clarification whether to issue certificate of returns to persons in (sic) the list of Ejike Oguebego-led Executive Committee. That was not part of our judgment. Also INEC is seeking clarification whether to conduct fresh election into the National Assembly in respect of both Senate and House of Representatives seats affecting Anambra. This again was not part of the judgment. These are matters properly ventilated at the Election Tribunal and Court of Appeal. Where in this judgment did we state that (the) Oguebego-led Anambra State Executive Committee of the PDP should take over the functions of the National Executive committee of the PDP such that it can submit list of candidates for election to INEC (?)"
(pages 1320 - 1322 of the records;)
Notwithstanding this Court's rare and extra-ordinary indulgence, as demonstrated in its latter judgment, delimiting the Scope of its earlier judgment, the first and second respondents continued to importune the appellants to recognise their candidates and to strip the members currently in the legislative Houses of their positions: importunities the appellants, stoutly, rebuffed; hence, the resort to the issuance of Forms 48 and 49 of the Judgment (Enforcement) Rules - the proximate impulsion to the order of the Federal High Court compelling the attendance of the appellants in Court, an order affirmed by the Court of Appeal (hereinafter referred to as "the lower Court") an affirmation that yielded the present appeal.
CONTEMPT PROCEEDINGS
My Lords, as the actual proceedings, sequel to the issuance of Forms 48 and 49, are still pending at the trial Federal High Court, I shall endeavour, in this judgment, to resist the temptation of making voluble comments which may have the unintended effect of prejudicing the ultimate outcome of the said proceedings. After all, this Court has always, re-iterated the position that while dealing with interlocutory proceedings, efforts must be made not to dabble into the substantive matter, *Mortune v. Gambo and Anor (1979) 3-4 SC 54, 57; Omonuwa v. Attorney-General Bendel State (1983) 4 NCLR 237; Ojukwu v. Governor of Lagos State (1986) 3 NWLR (pt.26) 29, 45; Globe Fishing Industries Ltd. and Ors. v. Coker (1990) 7 NWLR (pt.162) 265; [1990] 11 SCNJ 56, 71, 85-86; A.C.B. Ltd and Anor v. Awogboro and Anor [1996] 3 NWLR (pt. 437) 383, 385; (1996) 2 SCNJ 233.*
Now, the appellants herein, swiftly responded to the said Forms 48 and 49. They [the appellants] objected to the competence of the issuance and service of the said Forms 48 and 49. In other words, what was before the trial Court on June 14th, 2016, was the objection to the competence of the issuance and service of the said Forms. Expectedly, the respondents joined issues with the appellants.
The learned trial Judge mistaking the date, June 14th, 2016, as the date for the respondents to show cause why they should not be committed for contempt, allowed Chief Chris Uche, SAN's oral application to compel the attendance of the respondents in Court.
The trial Court agreed that "the alleged contemnors by virtue of having been represented by counsel are presumed to have been served Forms 48 and 49 and ought to appear before the Court in response to the notice I hold that the alleged contemnors/respondents in this proceeding are under obligation to personally appear before this Court. Accordingly, it is hereby ordered that the two alleged contemnors in this proceeding shall personally appear before this Court on the next date of hearing on pain of arrest in default."
On appeal to the Court of Appeal, the Court agreed with the trial Court on the ground that the presence of the appellants at trial was the usual practice. According to Aboki, JCA,
"(i)t is my view that the alleged contemnors/respondents are under obligation to personally appear in the contempt proceedings against them before the lower Court" (page 1549 of the record, Vol. 2).
RESOLUTION
On July 14th, 2016, the application before the trial Court was the one in which the applicants objected to the competence of the issuance and service of Forms 48 and 49 of the Sheriffs and Civil Process. As shown

above, Chief Chris Uche, SAN, of senior counsel for the respondents, drew the trial Court's attention to the absence of the INEC and its chairman. He implored the Court to command their appearance in Court.
The trial Court obliged him; hence, it ordered the personal appearance of the "two alleged contemnors in this proceeding on the next date of hearing on pain of arrest in default." The Court of Appeal (lower Court) agreed with the said Court. That is the background to the present appeal.
In the exercise of this Court's undoubted prerogative to prune down and accentuate issues in the interest of clarity and brevity, I have taken the liberty to isolate only one question as truly determinative of twin formulations of the appellants in this appeal, *Okoro v. The State [1988] 12 SC 191; [1988] 12 SCNJ 191; Unity Bank Plc and Anor v. Bouari (2008) LPELR - 3411 (SC) 21-22; A-B; Musaconi Ltd v. Aspinall (2013) LPELR - 20745 (SC) 6-7; I. T. I. V. Ltd and Anor v. Onyesom Community Bank Ltd (2015) LPELR - 24819 (SC) 20; B-D.*
The issue for determination, in my humble view, is the simple question:
Whether, in an application of this nature, the applicants must be present in Court to take their application?
Asiwaju Awomolo, SAN, for the appellants, canvassed the view that since the appellants in their application, were challenging the competence of the originating process, they were not obliged to be in Court. Learned senior counsel cited some authorities in support of his contention.
Secondly, learned senior counsel, praying in aid certain statutory and judicial decisions, argued that the lower Court erred in law in failing to state the lawful and statutory authorities to be followed rather than the "normal practice."
Chief Chris Uche, SAN, who appeared for the respondents, argued per contra, see, pages 7 - 14 of his brief. In his reply, Asiwaju Awomolo, SAN, re-iterated his views, pages 4 - 15 of the Reply brief.
RESOLUTION OF THE ISSUE
As indicated above, the appellants herein, swiftly responded to the said Forms 48 and 49. They (the appellants) objected to the competence of the issuance and service of the said Forms 48 and 49. In other words, what was before the trial Court, on June 14, 2016, was the objection to the competence of the issuance and service of the said forms? Expectedly, the respondents joined issues with the appellants.
Now, the general common law rule is that a person in contempt cannot be heard in the cause unless he purges himself of the contempt, Group Danone and Anor v. Voltic (Nig) Ltd (2008) LPELR 1341 (SC) 21; B-D; [2008] 7 NWLR (pt. 1087) 637; (2008) 34 NSCQR (pt. 1) 40. However, that ancient prescription is now subject to certain exceptions.
Thus, it is now tolerably settled that where a defendant, in a cause, challenges the validity of an order directed against him, either by way of an appeal or other application, he cannot be proceeded against for contempt of that order unless and until the issue of its regality is settled one way or the other, Onwochei Odogwu v. Olemeoku Odogwu (1992) 2 NWLR (pt 225) 539, 554. Gordon v. Gordon (1904) All ER 163.
This re-statement has even become necessary now having regard to the distinctive attribute of contempt as sui generis, *Boyo v. The State (1970) All NLR 316; (1970) LPELR - 797 (SC) 4- 5; C-A;* Oswald on Contempt Committal and Attachment, 17; John C, Fox, The History of Contempt of Court (London: Professional Books Ltd. 1972) 44 et seq; *Ebhodaghe v. Okoye (2005) 4 WRN 1, 15; Ifekwe v. Mgbako [1990] 3 NWLR (pt. 140) 588, 593; Bonnie v. Gold (1996) 8 NWLR (pt. 465) 230, 238; Okeke v. A.G. Anambra State (1997) 9 NWLR (pt. 519) 123, 140.*
Here, I take liberty to restate that there are two broad classifications of contempt - that committed in facie curiae and that committed ex facie curiae. In the latter category, a charge and a plea are necessary and the accused is entitled to a fair hearing of the case against him. In both types of contempt, a trial is involved, Omoijahe v. Umoru and Ors (1999) LPELR - 2645 (SC) 10 - 11; Awosanya v. Board of Customs and Excise (1975) 3 SC 47. What separates one from the other is the procedure to be adopted.
For words or actions used in the face of the Court, or in the course of proceedings, to be contempt, they must be such as would interfere with the course of justice. A superior Court of record has the inherent jurisdiction to deal with contempt in facie curiae and punish for the offence summarily. It must once again be emphasised that the summary power of punishing for contempt should however, be used sparingly and only in serious cases, Parashuram Detaram Shamdasani v. King-Emperor (1945) AC 264, 270; Araka v. Attorney-General (1982) 1 SC 153; Oku v. State [1970] 1 NLR 60.
This must be for it is a power which a Court, must of necessity, possess. Its usefulness, surely depends on the wisdom and restraint with which it is exercised. In cases of contempt ex facie curiae, there may be cases where the offence should be dealt with summarily, but such hearing must be conducted in accordance with cardinal principles of fair process. Above all, the case must be one the facts surrounding the alleged contempt are so notorious as to be virtually incontestable, where the Judge would have to rely on evidence or testimony of witnesses to events occurring outside his view and outside of his presence in Court, he should not try the case himself.
The matter must be placed before another judge where the usual procedure for the arrest, charge and prosecution of the offender must be followed, Oku v. the State (supra) 68. In other words, in the trial of

criminal contempt ex facie curiae, an offender is entitled to the benefit of a full process of a criminal trial. The reason for this is obvious. Firstly, this is to ensure that the accused person receives a fair hearing of the case against him. In the second place, the Judge no doubt would have to rely on evidence or testimony of witnesses to events which did not occur in his presence, Boyo v. Attorney-General of Mid- West (1971) 1 All NLR 353.

It is even settled that contempt or committal proceeding no doubt is quasi-criminal proceeding which has the likelihood of affecting the liberty of a citizen. Against this background therefore, the person setting up contempt proceedings must therefore ensure that every step that is necessary is taken and the entire requirements are complied with strictly, Opobiyi v. Muniru [2008] All FWLR (pt. 408) 380; Nya v Edem [2005] All FWLR (pt. 242) 576; F.C.D.A. v. Koripamo - Agary (2010) 14 NWLR (pt.1213) 377, 391-392; Aina v. Jinadu (1992) 4 NWLR (pt.233) 90; Ogaji v. Igonikon - Digbani [2010] 10 NWLR (pt.1202) 298, 306; and Uhunwangbo v. Okojie [1989] 5 NWLR (pt.122) 471, 487.

Since contempt outside the precincts of the Court is quasi-criminal in nature, every procedural step (the vega modus prosequiandl must ex necessitate) be followed strictly and strictly complied with. Accordingly, the appellants ought to have been arrested, charged before the Court and full trial conducted and the offence proved beyond reasonable doubt and if found guilty, punished in accordance with the Law, Omoijahe v. Umoru (2000) FWLR (pt. 29) 2401, 2406; Ogboni v. Ojah (1989) 1 NWLR (pt.100) 725; Alesinloye v. Oyediran (1999) 12 NWLR (pt.63) 491; Ojeme & Ors. v. Momodu II (1995) Chief Tom Ikimi v. Godwin Omamuli (1995) 3 NWLR (pt.387) 335; Military Governor of Kwara State v. Rufus Afolabi (1991) 6 NWLR (pt.196) 212; Oyeyinka v. Osague [1994] 2 NWLR (pt.328) 612; Awobukun v. Adeyemi (1968) NWLR 299; Gloria Nya v. Madam Eme Bassey Edem (2005) 4 NWLR (pt.973) 345 at 367 -369; Deduwa and Ors v. The State (1975) 1 All NLR (pt. 1) 1; Boyo v. Attorney General Mid-West State (1971) 1 ALL NLR 342, 352.

Now, although the general rule in England has been stated in Halsbury's Laws of England (4th Edition) Vol, 9, para. 206 as follows: "the general rule is that a party in contempt, that is a party against whom an order for committal has been made, cannot be heard or take proceedings in the same cause until he has purged his contempt," the basic position of the law in Nigeria, on the fundamental nature of jurisdiction and fair hearing in the adjudicatory system/process had long been settled in long line of cases, Madukolu v. Nkemdilim [1962] 2 SCNLR 341; Okafor v. A- G Anambra State (1991) 6 NWLR (pt 200) 659, 678; Afro Continental v. Co-operative Association of Professionals Inc. [2003] 5 NWLR (pt.813) 303, 317 - 318; Group Danone v. Voltic Nig. Ltd [2008] 7 NWLR (pt. 1087) 668, 667.

Indeed, as this Court held in *Abeke v. Odunsi and Anor (2013) LPELR - 20640 (SC) 17; B - G:*

"However, generally, the common-law principle which precludes persons in disobedience of the order of the Court from being heard in respect of the matters in which they stand in disobedience has been settled."

In *Hadkinson v. Hadkinson (1952) 2 All ER 567, 573,* Denning, LJ, opined thus:

'I need hardly say that it is very rare for this Court to refuse to hear counsel for an appellant. No matter how badly a litigant has behaved, nevertheless, generally speaking, if he has a right of appeal, he has a right to be heard for the simple reason that, if he is not heard, his right of appeal is valueless the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to his being heard, but if his disobedience is such that so long as it continues, it impedes the cause of justice in the cause, by making it more difficult for the Court to ascertain the truth or to enforce the orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.'

There are however a few exceptions to the general rule. The principle does not apply to applications by an alleged contemnor challenging the order on the ground of lack of jurisdiction by the Court. There is a clear distinction between the right to be heard in defence of the order made and the right to enforce yet an order whilst in disobedience. The right to be heard is clearly different from the right to enforce a right whilst still in disobedience. See, *First African Trust Bank Limited and Anor v. Basil O. Ezegbu and Anor [1992] 9 NWLR (pt. 264) 132; (1993) 6 SCNJ 122"*

In *First African Trust Bank Limited and Anor v. Basil O. Ezegbu and Anor (supra)* at 151 Karibi - Whyte, JSC, spoke so incisively, about these exceptions thus:

"In my respectful opinion, the rule precluding hearing a contemnor before the Court is founded on principle. To every rule there are always exceptions. The exceptions to the general rule that a party in contempt may not be heard as distilled from the authorities referred to (supra) are:

(1) Where the party is seeking for leave to appeal against the order of which he is in contempt; (2) Where the opposition to the order is one on the ground of lack of jurisdiction; (3) Where the contemnor is seeking to be heard in defence of the Order and (4) Where it can be shown that there were certain procedural irregularities in making of the orders which irregularities make the order unsustainable."

In all therefore, the lower Court was wrong in endorsing the approach of the trial Court. As indicated above, *it is now tolerably settled that where a defendant, in a cause, challenges the validity of an order directed against him, either by way of an appeal or other application, he cannot be proceeded against for contempt of that order unless and until the issue of its legality is settled one way or the other, Onwochei Odogwu v. Olemeoku*

Odogwu (supra); Gordon v. Gordon (supra).
In the circumstance, I hereby enter an order setting aside the order of the lower Court which affirmed the order of the trial Court. The trial Court has to dispose of the pending applications first before returning to Form 49, Appeal allowed. Orders of the lower Courts are, hereby, set aside.
WALTER SAMUEL NKANU ONNOGHEN, CJN
I have had the benefit of reading in draft the lead Judgment of my learned brother, NWEZE JSC just delivered. I agree with his reasoning and conclusion that the appeal has merit and should be allowed.
I adopt the reasoning and conclusion of my learned brother as mine and order accordingly. I abide by the consequential orders made in the lead Judgment including the order as to costs.
Appeal allowed.
CLARA BATA OGUNBIYI, JSC
I was obliged in advance a copy of the judgment of my learned brother, Chima Centus Nweze, JSC, just delivered. I agree with the reasons therein advanced to arrive at the conclusion that this appeal has merit and should be allowed.
The appellants herein upon being served with the 1st and 2nd Respondents application for committal proceedings for disobeying the order of the Federal High Court delivered on 5th December, 2014, filed a notice of preliminary objection and application on Notice, challenging the compliance of the proceedings and the jurisdiction of the Court.
It is argued on behalf of the appellants that where there is pending before a Court, an interlocutory proceeding challenging the competence of a suit or originating process, the appellants have no obligation to be "Personally present" during the argument.
Consequently, that the order of the Court, directing personal attendance was wrongful.
I wish to restate briefly that in the case at hand, this Court is called upon to deal with an interlocutory proceeding while the substantive matter is pending at the trial Federal High Court. The law is trite and well settled by this Court that the merit of the substantive case is best preserved always by ensuring that it is not disposed off prematurely.
When regard is had to forms 48 & 49 of the Judgment (Enforcement) Rules of the Sheriffs and Civil Process Act, same in itself is not sufficient to compel attendance of the contemnors, especially where there is nothing on the face of the forms commanding personal attendance.
To compel attendance of the alleged contemnors from the beginning of the proceeding, when no offence of contempt has been proved, is inconsistent with the provision of the Constitution. For all intents and purposes, it is obvious that the learned trial Judge, also the Court below have failed to keep within the rules as it was held in the case of Dikibo v. Ibuluya (2007) All FWLR (Pt. 383) 1666 @ 168. Also in Fawehinmi V. State (1990) 3 NWLR (Pt. 148) 42 it was held that where a man's liberty is at stake every requirement of the law must be strictly complied with.
The order of the Court directing the personal attendance of the appellants is an interference with their liberty as provided under Section 35 of the Constitution 1999 (as amended) when there is no law or rules of Court expressly authorizing the infringement.
See the decision of this Court in *Omoijahe V. Umoru and Ors (1999) 8 NWLR (pt. 614) 178 @ 190.*
The appellants had before the Court for hearing, an application challenging the competence of the contempt proceeding. They, strictly speaking, were not obliged to be present as stated by the rules of Court in real criminal proceeding before plea is taken. In the case of *Fawehinmi V. A.G. Lagos State (1989) 3 NWLR (Pt. 112) 707* it was held that in any interlocutory proceeding, preceding the taking of the plea, an accused person need not be in the dock or Court. The trial does not commence until the plea is taken. Where the proceeding is defective and it is being challenged, as it is at hand, it was immaterial whether the (accused person) defendant was present in Court or not.
The case of *Ezeze V. The State (2004) 14 NWLR (Pt. 894) 491* is of persuasive decision wherein the Court held the view that an accused person needed not be present where there is a challenge to the competence of the proceedings.
The application of the appellants before the Court challenging the competence of the contempt proceedings can be argued without their being physically in Court. The decision compelling their presence, violates their right to liberty under the Constitution.
On the totality, it is obvious that the decision of the learned trial Judge which was wrongly affirmed by the lower Court, is not in accordance with either the rules in criminal trial or the Federal High Court (Civil Procedure) Rules 2009, also the Sheriffs and Civil Process Act and Judgment (Enforcement) Rules. None of the foregoing, I hold, compels personal attendance.
The powers to make law is statutory and the fact that contempt proceeding is sui generis does not permit the Court to create its own rules outside the Sheriffs and Civil Process Act, Laws of the Federation and Federal High Court (Civil Procedure) Rules.
The appellants being parties challenging the competence of the contempt proceedings have no obligation to

be present at the sitting of the Court. The order compelling their personal attendance was a complete violation of their constitutional rights.

With the few words of mine and particularly relying on the comprehensive judgment and reasonings of my brother in the lead judgment. I also allow this appeal and set aside the concurrent decisions by the two lower Courts. I further abide by the consequential orders made therein the lead judgment.

KUMAI BAYANG AKA'AHS, JSC

My learned brother, Nweze JSC, obliged me with the draft of his judgment just delivered. I am in total agreement that there is merit in the appeal. He outlined the procedure to be followed where the alleged contempt is ex facie curiae from the one committed in facie curiae, which can be dealt with summarily.

The contempt for which the appellants are being proceeded against was committed outside the precincts of the Court. The procedure laid out for dealing with that species of contempt is rather elaborate and allows the contemnor a right to challenge the proceedings for lack of jurisdiction See: *Odogwu v. Odogwu (1992) 2 NWLR (Pt. 225) 539.* This is what the appellants have done in this appeal.

It is for this and the comprehensive reasons contained in the leading judgment of my learned brother, Nweze JSC that I found the appeal meritorious.

The appeal is allowed. I too enter an order setting aside the order of the lower Court which affirmed the order of the trial Court.

KUDIRAT MOTONMORI O. KEKERE-EKUN, JSC

I have had the benefit of reading in draft the judgment of my learned brother, CHIMA CENTUS NWEZE, JSC just delivered. His Lordship has satisfactorily considered and ably resolved the narrow issue in contention in this appeal. I adopt the reasoning and conclusion as mine. I have nothing useful to add. *I agree with His Lordship that until the issue of the competence of the contempt proceedings is resolved, the appellants cannot be compelled to personally appear before the Court. A challenge to the proceedings on grounds of incompetence or lack of jurisdiction falls within the exceptions to the general rule that a contemnor will not be heard in subsequent proceedings until he purges himself of his contempt.* See: *First African Trust Bank Ltd & Anor. V. Ezegbu & Anor. (1992) 9 NWLR (Pt. 264) 132 @ 150 FG; G; Abeke Vs Odunsi (2013) LPELR-20640 (SC); Obeya V. First Bank of Nig. Plc (2010) LPELR-4666 (C/A).*

I also allow the appeal. The order of the Court below affirming the order of the trial Court is hereby set aside. I abide by the consequential order made in the lead judgment.

(APPEAL DISMISSED)