**MR. JOEL ETIPETIP UKWUYOK & ORS**

**V.**

**HRH. FESTUS SILAS OGBULU & ORS**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 12TH DAY OF JULY, 2019

SC.319/2010

**LEX (2020) - SC.319/2010**

**OTHER CITATIONS**

3PLR/2020/34 (SC)

(2019) LPELR-48741 (SC)

**BEFORE THEIR LORDSHIPS**

IBRAHIM TANKO MUHAMMAD, JSC

OLUKAYODE ARIWOOLA, JSC

JOHN INYANG OKORO, JSC

PAUL ADAMU GALUMJE, JSC

UWANI MUSA ABBA AJI, JSC

**BETWEEN**

1. MR. JOEL ETIPETIP UKWUYOK

2. MR. ROBINSON KARIBI UKWUYOK

3. MR. JOSHUA ETIPETIP UKWUYOK

4. MR. DAVID ETIPETIP UKWUYOK

5. MR. ROBINSON DIKE

6. MR. FRANK DAVID ETIPETIP

7. MR. KARIBI ETIPETIP UKWUYOK

(For themselves and as representing Etiyetip family of Ibotirem)Appellant(s)

AND

1. HRH. FESTUS SILAS OGBULU (THE OKAN-AMA OF IBOTIREM TOWN)

2. ELDER AJEBULA W.D. OGBULU

3. MR. JOHN S. ENEYOK

4. MR. JONAH OKWA

5. ELDER JOSEPH JOSHUA - Respondent(s)

**ORIGINATING COURT(S)**

1. COURT OF APPEAL

2. HIGH COURT OF JUSTICE, RIVERS STATE [Holden at Port Harcourt (Coram) W. A. Chechey, J]

**REPRESENTATION**

E.K. Saidu, Esq. - For Appellant

AND

D.I. Iboroma with him, B. Iboroma - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CONSTITUTIONAL LAW - RIGHT TO FAIR HEARING:- Principles of fair hearing – A party who had an opportunity of being heard but did not utilize it - whether can bring an action for breach of fair hearing under Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999

CONSTITUTIONAL LAW - RIGHT TO FAIR HEARING:- Meaning of under Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 – Elements of – Whether fair hearing must involve a fair trial throughout an entire hearing

CONSTITUTIONAL LAW - RIGHT TO FAIR HEARING: Principles of fair hearing - A party who had an opportunity of being heard but did not utilize it - Whether can bring an action for breach of fair hearing

**PRACTICE AND PROEDURE ISSUES**

COURT - JUDGMENT AND PRDER:- Record of proceedings of trial court – Where it does not buttress grounds of appeal – Effect thereto

APPEAL - ISSUE(S) FOR DETERMINATION:- Issue(s) for determination not distilled from/related to ground(s) of appeal – Competency/Validity of – Proper order for court to make

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

In the High Court of Justice, Rivers State, holden at Port Harcourt (Coram) W. A. Chechey, J, this suit consisting of a claim and counter-claim and predicated mainly on the chieftaincy stool known as Okan-Ama of Ibotirem Town in Andoni Local Government Area of Rivers State was instituted. The principal issue in the dispute as between 1st Plaintiff/Respondent and 2nd Defendant/Appellant was the question of who between the two parties was the lawful Okan-Ama (traditional head) of Ibotirem. The case proceeded to hearing. The Respondents as plaintiffs called two witnesses and tendered several Exhibits, numbered Exhibit 1 - 33. As can be gleaned from the printed record, repeated adjournments were sought and granted in favour of the Appellants. Subsequently the Appellants, alleging bias on the part of the trial Judge failed to appear in Court in spite of the issuance and service of hearing notice on them.

Pursuant to an application made by the learned counsel for the Plaintiffs/Respondents, both the Appellants’ further cross-examination of the Respondents’ witnesses and the defence of the Appellants was foreclosed by the trial Court, because of Respondents’ absence in Court. On the 2nd day of June, 2004, the learned trial Judge delivered his judgment wherein he held thus:-

“But I must say that in all my years, I have hardly ever seen a case more thoroughly and uncompromisingly proved. There was nothing unreasonable in the evidence of the Plaintiffs before me; rather there was much persuasion in them.”

Consistent with the above holding of the learned trial Judge, judgment was entered in favour of the Plaintiffs/Respondents and all the five reliefs claimed by them were granted.

DECISION(S) APPEALED AGAINST

The Court of Appeal, after hearing the appeal, dismissed same for lacking in merit.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the learned Justices of the Court below were right in limiting themselves to the record of proceedings and judgment of the trial High Court rather than the entirety of the record of appeal in determining whether the Appellants were given fair hearing at the High Court.

2. Whether or not the learned Justices of the Court below adequately considered the issue of denial of fair hearing to the Defendants/Appellants at the trial High Court given the peculiar nature of the circumstances that arose during the trial.

3. Whether or not the Defendants/Appellants were entitled to be called upon to prove their counter - claim even after their defence was foreclosed at the trial of the suit.

*BY RESPONDENTS*

1. Whether the Court of Appeal was right when it held that from the records, the appellants were not denied fair hearing but they rather spurned the opportunity given them to present their case.

2. Whether issue 3 of the appellants’ brief of argument is competent.

*AS ADOPTED BY COURT*

1. Issue 3 in the appellants’ brief is incompetent, not having been distilled from any of the two grounds of appeal donated in the Notice of appeal. Accordingly, issue three in appellants’ brief is hereby struck out. All arguments in support of both appellants’ issue 3 and Respondents’ issue 2 (challenging same are also struck out.

2. Appeal resolved on remaining issues distilled by Appellant.

DECISION OF SUPREME COURT

1. Where a party indulges in dilatory tactics, as the appellants were doing at the trial Court, it cannot be said that such a party is aiming at a fair hearing, rather, that party is using that process to defeat justice being done to the opposing party. In such a case, a Judge or Court should have enough courage not to lend weight to such act of filibustering and should be firm and in refusing unnecessary application for adjournments.

2. There is no merit in this appeal. Decision of Court below affirmed. Appeal dismissed.

**JOHN INYANG OKORO, J.S.C. (Delivering the Leading Judgment):**

In the High Court of Justice, Rivers State, holden at Port Harcourt (Coram) W. A. Chechey, J, the Plaintiffs who are the Respondents in this appeal, on 12th of November, 2003 by a motion ex-parte dated and filed on the 30th day of September, 2003, sought and obtained leave of the said Court to maintain the suit, the subject matter of this appeal in a representative capacity for themselves and as representing the members of Ibotirem Town, Andoni, excluding the Defendants who are the Appellants. Pursuant to the said leave they filed a statement of claim containing 35 paragraphs and claimed thus:-

“Wherefore the Plaintiffs claim against the defendants jointly and severally as follows:-

(a) A declaration that the 1st plaintiff is the Okan-Ama of Ibotirem Town, Andoni, having been properly selected, presented and installed the Okan-Ama of Ibotirem Town by the Ibotirem Town.

(b) A declaration that the 2nd Defendant is not the Okan-Ama of Ibotirem Town by reason of the fact that he is not a member of any of the ruling families of Ibotirem town and having not been properly selected, presented and installed the Okan-Ama of Ibotirem town.

(c) A declaration that the Etipetip Ukwuyok family of Ibotirem town is not the Royal Family of Ibotirem Town.

(d) An Order of perpetual injunction restraining the Defendants, their agents, servants or privies from parading the 2nd Defendant as the Okan-Ama of Ibotirem town by whatsoever means possible.

(e) An Order of perpetual injunction restraining the 2nd Defendant from parading himself as the Okan-Ama of Ibotirem town either by hoisting any flag with the inscription of “Okan-Ama of Ibotirem town” at any place, gathering or meetings or by whatsoever means possible.”

The Defendants/Appellants on the other hand filed a statement of defence containing 32 paragraphs and filed a counter-claim to wit:-

“By reason of the foregoing, the Defendants have suffered deprivation of their rights and claim against the plaintiffs jointly and severally the following reliefs:-

(a) A declaration that under and by virtue of the customary law and tradition of Ibotirem Andoni, the Ukwuyok ruling family is the only family from which the Okan-Ama of Ibotirem can be selected and installed.

(b) A declaration that under and by virtue of the said customary law the 2nd Defendant is the Okan-Ama of Ibotirem.

(c) A declaration that the 1st plaintiff could not be and was not validly selected as the Okan-Ama Elect of Ibotirem.

(d) A declaration that as the Okan-Ama of Ibotirem, the 2nd Defendant is the lawful person entitled to all the rights, privileges and perquisites of the office of Okan-Ama including, flying the Okan-Ama flag, allocation of land in the community, supervising the activities of all other organs and committees in the community and use of the community bell.

(e) An Order of perpetual injunction restraining the 1st Plaintiff from parading, functioning and/or representing himself howsoever as the Okan-Ama of Ibotirem.

(f) An Order of injunction restraining the plaintiffs by themselves, agents, servants, or privies from interfering with the rights, privileges, functions and duties of the 2nd Defendant as the Okan-Ama of Ibotirem.”

The facts of the case that gave rise to this appeal under consideration as can be gathered from the record of proceedings and the submissions of the learned counsel on both sides are briefly that: upon the filing of this suit in 2003 pleadings were duly filed and exchanged by both parties. The suit is predicated mainly on the chieftaincy stool known as Okan-Ama of Ibotirem Town in Andoni Local Government Area of Rivers State. The principal issue in the dispute being as between 1st Plaintiff/Respondent and 2nd Defendant/Appellant who is the lawful Okan-Ama of Ibotirem.

The case proceeded to hearing. The Respondents as plaintiffs called two witnesses and tendered several Exhibits, numbered Exhibit 1 - 33. As can be gleaned from the printed record, repeated adjournments were sought and granted in favour of the Appellants. Subsequently the Appellants, alleging bias on the part of the trial Judge failed to appear in Court in spite of the issuance and service of hearing notice on them.

The trial Court, pursuant to the application made by the learned counsel for the Plaintiffs/Respondents, the Appellants’ further cross-examination of the Respondents’ witnesses was foreclosed. Also the defence of the Appellants was foreclosed because of their absence in Court.

On the 2nd day of June, 2004, the learned trial Judge delivered his judgment wherein he held thus:-

“But I must say that in all my years, I have hardly ever seen a case more thoroughly and uncompromisingly proved. There was nothing unreasonable in the evidence of the Plaintiffs before me; rather there was much persuasion in them.”

Consistent with the above holding of the learned trial Judge, judgment was entered in favour of the Plaintiffs/Respondents and all the five reliefs claimed by them were granted.

Dissatisfied with the judgment of the learned trial Judge, the defendants/appellants filed an appeal at the Court of Appeal which after hearing the appeal, dismissed same for lacking in merit. Being further aggrieved with the judgment of the lower Court, the appellants have appealed to this Court via a notice of appeal filed on 18th May, 2009, the judgment having been delivered on 23rd April, 2009. The Notice of Appeal is found on pages 257 - 260 of the record contrary to pages 246 - 249 of the record as stated by the learned counsel for the appellants on page 2 of their brief of argument.

Although the Appellants filed two grounds of appeal as can be seen in the notice of appeal alluded to above, they have notwithstanding distilled three issues for the determination of this appeal. I shall return to this anon. The three issues are:-

1. Whether the learned Justices of the Court below were right in limiting themselves to the record of proceedings and judgment of the trial High Court rather than the entirety of the record of appeal in determining whether the Appellants were given fair hearing at the High Court.

2. Whether or not the learned Justices of the Court below adequately considered the issue of denial of fair hearing to the Defendants/Appellants at the trial High Court given the peculiar nature of the circumstances that arose during the trial.

3. Whether or not the Defendants/Appellants were entitled to be called upon to prove their counter - claim even after their defence was foreclosed at the trial of the suit.

The learned counsel for the respondents Dagogo Israel Iboroma, Esq however formulated two issues for determination. May I also reproduce the two issues thus:-

1. Whether the Court of Appeal was right when it held that from the records, the appellants were not denied fair hearing but they rather spurned the opportunity given them to present their case.

2. Whether issue 3 of the appellants’ brief of argument is competent.

A cursory look at the Notice of Appeal filed by the Appellants on 18th April, 2009, makes it crystal clear that only two grounds of appeal were filed. Appellants in their brief of argument have however distilled three issues from the two grounds of appeal. In the said brief, the appellants indicate that issue one is distilled from grounds 1 and 2 in the notice of appeal. They also show that issue 2 is also distilled from the same grounds 1 and 2. They did not however indicate which ground of appeal was issue 3 distilled from. The learned counsel for the Respondents has also made this observation in their brief of argument. The position as it is clearly seen is that issue 3 is distilled from no ground of appeal. There is no ground of appeal which challenges the refusal of the learned trial Judge to invite the appellants to come to Court to prove their counter claim.

It is now well settled that issues for determination must be formulated from competent grounds of appeal. No issue can be formulated outside the grounds of appeal filed. Put differently, every issue for determination must be formulated from and related to or distilled from any ground or grounds of appeal. A party may formulate an issue from one or more grounds of appeal but one ground of appeal cannot produce more than one issue. The law is trite that an issue not distilled from any of the grounds of appeal, is incompetent and must be discountenanced and/or struck out together with the arguments made in respect of the said issue. See Okpala & Anor v Ibeme & Ors (1989) 2 NWLR (pt 102), 208, Din v African Newspapers of Nigeria Ltd (1990) 3 NWLR (pt 139) 392, Odeh v FRN (2008) 13 NWLR (pt 1103) 1, James Afolabi v The State (2016) LPELR - 40300 (SC), Ibator & Ors vs Barakuro & Ors (2007) 9 NWLR (pt 1040) 475, Capt. Amadi v NNPC (2000) 10 NWLR (pt 674) 76 and others too numerous to cite here.

The consequence of all I have said above is that issue 3 in the appellants’ brief is incompetent, not having been distilled from any of the two grounds of appeal donated in the Notice of appeal. Accordingly, issue three in appellants’ brief is hereby struck out. All arguments in support of both appellants’ issue 3 and Respondents’ issue 2 are also struck out.

The learned counsel for the Respondents formulated issue 2 which questions the authenticity of appellants’ issue 3. Having struck out appellants’ issue 3, the respondents’ issue 2 becomes lame and inconsequential. The said issue is also struck out.

I am now left with 1st and 2nd issues in the appellants’ brief, both of which are formulated from grounds 1 and 2 in the notice of appeal. The two issues interrogate the issue of fair hearing at the trial Court. Respondents’ remaining issue 1 also relates to issue of fair hearing. I shall treat appellants’ two issues as one as that of the respondents since all have to do with issue of fair hearing.

ISSUES 1 AND 2

Learned counsel for the appellants submitted in the main that the appellants were denied fair hearing because they were forced to stop appearing and participating in the trial because of the atmosphere of animosity and hostility that characterized every interaction between their counsel and the learned trial Judge.

That the appellants and their counsel stayed away from the trial despite the service of hearing notice on them as the atmosphere had become very heated and charged. That under such condition, the appellants decided to wait for the decision of the Chief Judge of Rivers State who was seised of the application to transfer the case to another Judge of the High Court.

Learned counsel further submitted on page 4 of the record thus:

“In as much as we have no hesitation in conceding that there is a presumption of regularity of the record of proceedings, we also submit that once a document forms part of the record of appeal, thus constituting a part of the events that took place at the lower Court, an Appeal Court has a right to look at such a document as part and parcel of what transpired in the case. All documents found in the case file and included in the record transmitted to the Appeal Court constitute a vital record of events at the trial, especially considering that the trial Judge may not record every incident at the trial. We place reliance on the case of Ogunbunjo v State (1996) 6 NWLR (pt 452) at page 86. See also the case of Chevron Ltd v Onwu Egebelu (1996) 3 NWLR (pt 437) at 417.”

Learned counsel concluded on issue one that the learned Justices of the Court below misdirected themselves when they looked at record of proceedings of the trial Court and the judgment of the learned trial Judge and thus arrived at the erroneous conclusion that there was no record of the animosity, hostility, ill feeling and alterations that took place between the learned trial Judge and counsel to the Defendants/Appellants during the trial. He urged this Court to hold that the written complaint of the appellants to the trial Court and to the Chief Judge which form part of the record of appeal should be critically considered in order to determine what really happened at the trial of this case which constituted likelihood of bias and explained why the appellants were forced out of the trial.

On their issue 2, learned counsel repeated his argument in issue 1 and added that bias or likelihood of bias covers a wide range to circumstances, that it may arise by way of expressing hostile opinion or hostility to any of the dramatis personae in the matter before the Court including the parties and counsel, relying on Alake v Abalaka (2002) FWLR (pt 88) 934. He urged this Court to hold that the appellants were not given fair hearing at the trial Court.

In response, the learned counsel for the respondents submitted that fair hearing does not mean that a party must be heard but that a party must be given opportunity to be heard, referring to and relying on the case of Ogunsanya v The State (2011) 12 NWLR (pt 1261) 401 at 429. He submitted further that a party who had the opportunity of being heard but failed to utilize same, cannot complain of breach of fair hearing, citing S. & D Construction Co. Ltd v Ayoku (2011) 13 NWLR (pt 1265) 487 at 509 paragraphs E.

Learned counsel made a summary of the proceedings before the Court below showing how the appellants deliberately stayed away from Court and submitted that the appellants were afforded the opportunity to conduct their defence but they spurned it. He contended that the appellants were not denied fair hearing. He submitted further that the Court below was right to hold that the appellants were not denied fair hearing.

On the allegation of bias against the learned trial Judge, learned counsel submitted that since such wild allegations are not contained in the record of appeal, the Court below was then right to hold that the record of appeal, having not been challenged by the appellants, remain sacrosanct.

In respect of the letter of the appellants on pages 60 and 61 of the record, learned counsel submitted that this letter does not give any vent to the appellants’ allegation of denial of fair hearing because there was no proceedings on 18/4/2004 as referred to in the said letter and that the said letter is not unequivocal evidence and denial of fair hearing to the appellants. He then urged the Court to resolve this issue of denial of fair hearing against the appellants.

Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that:-

“36 (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”

This Court has in quite a number of decisions held that fair hearing in essence, means giving equal opportunity to the parties to be heard in the litigation before the Court. Where parties are given equal opportunity to be heard, they cannot complain of breach of the fair hearing principles. Fair hearing also means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties in the litigation. Speaking of fair hearing, Obaseki, JSC in Otapo v Sunmonu & ors (1987) 2 NWLR (pt 58) 587 at 608, made the following observations:-

“A hearing can only be fair when all parties to the dispute are given a hearing or an opportunity of a hearing. If one of the parties is refused a hearing, or not given an opportunity to be heard, the hearing cannot qualify as fair hearing.”

It follows that where both parties in the litigation have been given equal opportunity to be heard, a complaint of denial of fair hearing becomes inconsequential. See Mohammed v Kano N. A. (1968) 1 All NLR, 424, Ariori & ors v Elemo & ors (1983) 1 S.C. 13, (1983) 5 LPELR - 552 (SC), Ntukidem v Oko (1986) 5 NWLR (pt 45) 909, Shyllon v Asein (1994) 6 NWLR (pt 353) 670.

In Isiyaku Mohammed v Kano N. A. (supra) at 42, Ademola, CJN explained fair hearing when he said -

“It has been suggested that a fair hearing does not mean a fair trial. We think a fair hearing must involve a fair trial and a fair trial of a case consists of the whole hearing. We therefore see no difference between the two. The true test of a fair hearing is the impression of a reasonable person who was present at the trial whether from his observation justice has been done in the case.”

See Darma v Ecobank Nig. Ltd (2017) LPELR - 41663 (SC), FCSC v Laoye (1989) 2 NWLR (pt 106) 652, Akande v State (1988) 3 NWLR (pt 85) 681.

Now, applying the above principles to the facts of this case, can it be said that the appellants were denied fair hearing at the trial Court? The appellants are not serious when they complain that they were not given opportunity to ventilate their case before the trial Court for even in their brief of argument, page 4 thereof, learned counsel for the appellants stated clearly that the appellants and their counsel stayed away from the trial “despite the service of hearing notice on them”. What this means is that they were given ample opportunity to be heard but they stayed away from Court on the reason that they had written a complaint to the Chief Judge and were awaiting his response. Did the Chief Judge direct them to stay away from Court? There is no such directive. It is very clear that the appellants denied themselves a hearing by staying away from Court.

The learned counsel gives the reason for staying away from Court as the bias of the learned trial Judge. The appellants relied on the letter found on pages 60 - 61 of the record of appeal. However, paragraphs 3 and 4 of the said letter cannot be traced to the record of appeal. The incident he describes took place on 18/4/2004 which constitutes bias and which made them to stay away from Court cannot be traced to the record as there was no sitting of the Court on that date. As was pointed out by the learned counsel for the Respondents, after the sitting of the trial Court on 2/4/2004 which proceedings span pages 101 - 105 of the record, the next sitting date of the Court was 19/4/2004 spanning pages 106 - 112 of the record. There is nothing in the record that the trial Court sat on 18/4/2004.

From all I have said in the preceding paragraph, the document of the appellants on pages 60 - 61 of the record does not save them. The appellants have not challenged the record of proceedings in view of the serious lacuna. What this means is that the story or incident which they anchor their allegation of bias cannot be found in the record. And even their document buttressing their claim tells lies against itself vis-a-vis the record. The Court below made the following observation on page 246 of the record:-

“It is trite that there is presumption of regularity of record of proceeding. It is pertinent at this juncture to pause and say that I have carefully and meticulously examined the record of proceeding and the judgment of the learned trial Judge, I cannot find anywhere where the learned trial Judge derided and castigated the appellants’ counsel. I cannot equally find where the learned trial Judge assisted the Respondents’ by reminding them of a document they were to tender in evidence.”

The appellants have failed woefully to show evidence of bias by the learned trial Judge against them as even the document in pages 60 - 61 of the record of appeal speaks of an incident which happened on 8/4/2004 whereas there is nothing in the record to show that the trial Court sat on that date. Had the trial Court sat on that date and it is not reflected in the record, the appellants ought to have challenged the record in the way and manner prescribed by the rules of Court. This failure leaves the record sacrosanct as it is presently constituted.

In this case, the learned trial Judge made several opportunities available to the appellants to come and prosecute their case but they stayed away by their own showing. The law is trite that a party, who had the opportunity of being heard but failed to utilize same, as herein, cannot complain of breach of fair hearing. See S & D Construction Co. Ltd. v Ayoku (2011) 13 NWLR (pt 1265) 487 at 509 paragraph E, Ogunsanya v The State (2011) 12 NWLR (pt 1261) 40 at 429.

As was noted by the Court of Appeal in Mirchandani v Pinheiro (2001) 3 NWLR (pt 701) 557 at 573, where a party indulges in dilatory tactics, as the appellants were doing at the trial Court, it cannot be said that such a party is aiming at a fair hearing, rather, that party is using that process to defeat justice being done to the opposing party. In such a case, a Judge or Court should have enough courage not to lend weight to such act of filibustering and should be firm and in refusing unnecessary application for adjournments.

All I have said above, come to an irresistible conclusion that this issue does not avail the appellants. Accordingly, I resolve this issue against the appellants.

In conclusion, it is my well-considered opinion that there is no merit in this appeal. The Court below was right in dismissing the Appellants’ appeal. This appeal is hereby dismissed. I affirm the decision of the Court below delivered on 23rd April, 2009. I award costs of N200,000 in favour of the Respondents.

Appeal Dismissed.

**IBRAHIM TANKO MUHAMMAD, J.S.C.:**

My learned brother, Okoro, JSC, has afforded me the opportunity of reading before now the Judgment just delivered by his Lordship. I agree with the reasoning and conclusion that the appeal is lacking in merit and ought to be dismissed; I, too, hereby dismiss the appeal. I abide by all orders made in the lead Judgment.

**OLUKAYODE ARIWOOLA, J.S.C.:**

I had the opportunity of reading in draft the lead judgment of my learned brother Okoro, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal is unmeritorious and should be dismissed. I too will dismiss the appeal.

Appeal dismissed.

**PAUL ADAMU GALUMJE, J.S.C.:**

I have had the privilege of reading in draft, the judgment just delivered by my Learned brother, John Inyang Okoro JSC and I agree that the appeal is devoid of any merit and should be dismissed. I accordingly dismiss it and endorse all the consequential orders made therein, including order as to costs.

**UWANI MUSA ABBA AJI , J.S.C.:**

I had a preview of the judgment just delivered by my learned brother, John Inyang Okoro, JSC and I agree with his reasoning and conclusion arrived thereat.

This suit is predicated on the chieftaincy stool of OKAN-AMA OF IBOTIREM Town in Andoni Local Government Area of Rivers State wherein the 1st Respondent and the 2nd Appellant contest on who is the lawful OKAN-AMA of Ibotirem.

There is no doubt that the issues that have survived the gale of non-proliferation of issues from a ground of appeal is that which borders on fair hearing as supposedly alleged that the Appellants were forced to stop appearing and participating in the trial because of the animosity between their learned Counsel and the learned trial Judge owing to the fact that the Appellants stayed away from the trial even after repeated hearing notices on them. There was also the embedded issue of perceived bias by the Appellants emanating from the trial Judge.

By the record before us, the Appellants were afforded several and ample opportunities to prosecute and present their case but chose not to under the presumptuous guise that the trial Judge was bias and denied them right to fair hearing. There is already a presumption of regularity of the record speaking and standing against the Appellants that their right to fair hearing was not breached. A party has a choice in the mode and manner of conducting its defence in a suit. What is paramount is that the trial Court must have afforded all parties equal opportunity to present or defend their cases.

Rights of fair-hearing are such that must be exercised within the confines of law, regulatory and procedural provisions as may be applicable to a particular case. The Court has over the years consistently maintained that the principle of fairness is sacrosanct in our judicial system and it must as a matter of constitutional obligation be observed by a judicial umpire. Fairness and natural justice require that a party to a cause, or a party who ought reasonably to be a party in the suit, must be given the opportunity to put forward his case or defence freely and fully. The question of fairness of proceedings is quite separate from the question of the merit of the trial Court decision. When a question of fairness of hearing arises in a case, the appellate Court has a duty to scrutinize the proceedings to see whether the result of the case would have been the same even if the breach of the principle of fair hearing had not occurred. It is immaterial if, speculatively, the same decision would have been arrived at had a hearing not been tainted by unfairness. This is because, by its application, a breach of fair-hearing leads to the inevitable conclusion that an unfair method cannot produce a fair result. Similarly, a judicial proceeding is liable to be set-aside or reversed on the slightest likelihood of bias. This Court has a firm and settled position for determining if there is likelihood of bias. In ABIOLA V. FEDERAL REPUBLIC OF NIGERIA (1995) LPELR- 41, this Court held that in considering whether there was a real likelihood of bias, the Court does not look at the mind of the Judge, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right minded persons would think that, in the circumstances, there was a real likelihood of bias, on his part, then he should not sit. And if he does sit, his decision cannot stand. There must be circumstances from which a reasonable man would think it likely or probable that the judge, would, or did favour one side unfairly at the expense of the other. The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking the Judge was bias. See Per BAGE, JSC in AHMED & ORS V. REGISTERED TRUSTEES OF ARCHDIOCESE OF KADUNA OF THE ROMAN CATHOLIC CHURCH (2019) LPELR-46414(SC).

With the record and all that transpired at the proceedings, I fully tend to agree with my learned brother, John Inyang Okoro, JSC, that when a party like the Appellants indulge in dilatory tactics, it cannot be said that such a party is aiming at a fair hearing but using the process to defeat justice being done to the opposing party. Thus, a judge must be bold to refuse unnecessary applications for adjournments, as did in the present case.

It is most interesting to note that the trial and lower Courts have come to the same conclusion that there was no iota of denial of this fair hearing to the Appellants. This I strongly affirm.

The appeal is hereby dismissed. I agree with the consequential order as to costs.