**OSAHON NATHANIEL OBAYUWANA & ORS**

**V.**

**CHIEF JOHN OSAMEDE ADUN**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 24TH DAY OF JANUARY, 2020

SC.831/2015

**LEX (2020) - SC.831/2015**

**OTHER CITATIONS**

3PLR/2020/40 (SC)

(2020) LPELR-49377(SC)

**BEFORE THEIR LORDSHIPS**

OLUKAYODE ARIWOOLA, JSC

JOHN INYANG OKORO, JSC

AMINA ADAMU AUGIE, JSC

PAUL ADAMU GALUMJE, JSC

UWANI MUSA ABBA AJI, JSC

**BETWEEN**

1. OSAHON NATHANIEL OBAYUWANA (Beneficiary under the Will of Late Pa. Samson Ewansiha Obayuwana)

2. MADAM OMOYEMWENSE SUBERU

3. FELIX LGBINOGHENE (Executrix and Executor Respectively of the Estate of Late Pa. Samson Obayuwana)Appellant(s)

AND

Chief John Osamede Adun - Respondent(s)

**ORIGINATING COURT(S)**

EDO STATE HIGH COURT

COURT OF APPEAL

**REPRESENTATION**

G. E. Ezomo, Esq. -for Appellants. - For Appellant

AND

Olayiwola Afolabi, Esq. with him, P. E. Uwadiae, Esq. Wura

KurangaAdun, Esq., A. O. Yusuf, Esq. and Anthony Osula, Esq. - for Respondent. - For Respondent

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

REAL ESTATE AND PROPERTY LAW – LAND: Claim for declaration for title to land under Bini Native Law and Custom – Claim for special damages – Use of asserted expert to prove value of property establishing special damages – Where status of expert rejected – probative value of testimony – Implications for claim for special damages

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - GROUND(S) OF APPEAL: Competency of – Categories - Law, facts or mixed law and facts – How determined - Where leave of court required to file ground of appeal - Effect of failure thereto

APPEAL - GROUND(S) OF APPEAL: Main ground of appeal and particulars of a ground of appeal – Purports of – Whether the law allows a Party to divorce the particulars of a ground from the main ground

APPEAL - GROUND(S) OF APPEAL:- An appeal based on grounds of mixed law and fact - Whether requires leave of court

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellants/Plaintiff claimed against the Respondent/Defendant, inter alia -

a. A DECLARATION that the 1st Plaintiff is the beneficial owner under Bini Native Law and Custom of all that property situate and lying at No. 16, Old Eguanogbe Street, Benin City having inherited same from his late father late Pa. Samson Ewansiha Obayuwana, who died testate vide his WILL dated 14/5/2002 and as such, 1st Plaintiff is the one entitled to Statutory Right of Occupancy in respect of that property.

b. An Order that the Defendant shall pay the sum of N22,000,000.00 (Twenty-Two Million Naira) as special and general damages for the illegal destruction and occupation of the 1st Plaintiff's property as follows:

SPECIAL DAMAGES

i. The open market property in dispute is N12,000,000.00 (Twelve-Two Million Naira) as per the valuation Report.

ii. Rent at the rate of N4,000.00 (Four Thousand Naira) per month from 10/4/2006, when the property of the 1st Plaintiff was destroyed by the Defendant until the determination of the case and until payment.

GENERAL DAMAGES

i. N10,000.000.00 (Ten Million Naira) for shock, inconvenience, emotional stress, and sentimental attachment to ancestral home of the 1st Plaintiff and loss of use of the said ancestral home and shrine.

The trial Court found for the plaintiff and awarded them the Special Damages pleaded but deemed it inappropriate to award general damages.

DECISION(S) APPEALED AGAINST

1. The Court of Appeal held that the burden was on the Plaintiff who called an expert witness to furnish the Court with the credentials – qualifications and experience – entitling the said expert to give his opinion as such to the Court, and the technical or scientific tests undertaken in reaching the opinion offered. Thereupon, the burden fell to the other side to question such credentials, failing which they become disentitled to query same on appeal. Therefore, the trial Judge acted in error when it accepted and relied on so-called expert opinion given by a person whose credentials were not furnished to the Court as required by law.

2. The Respondent’s claim for special damages has not been proved, since its proof were premised on the inadmissible of the so-called expert witness. That head of claim is therefore dismissed.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

Having regard to the oral and documentary evidence of the Appellants' witnesses, particularly that of the Estate surveyor and Valuer (PW4) as stated in his Report (Exhibit E) as to his qualification and technical procedure involved in arriving at his conclusion, whether the Court of Appeal was right to have held that the special damages of N12, 000, 000.00 (Twelve Million Naira) awarded by the trial Court was in error.

*BY RESPONDENTS*

The Respondent raised a preliminary objection in his own Brief, challenging the competency of the said two Grounds of Appeal, on the ground that they are either on facts and or mixed law and fact, which by decided authorities, require leave of the lower Court.

*AS ADOPTED BY COURT*

[The Court resolved the Appeal based on the Preliminary Objection]

DECISION OF SUPREME COURT

1. To determine the issue, this Court will have to re-examine facts that formed the basis of their complaints, and of the facts found at the trial, which formed the basis of the said Judgment. The two grounds of Appeal are not grounds of law simpliciter, they are, in my view, grounds of mixed law and fact. Besides, as this Court said in Maigoro V. Garba (1999) 10 NWLR (Pt. 624) 555, where the Court is being invited to investigate the existence or otherwise of facts upon which an award of damages was based, such a ground of appeal is a ground of mixed law and fact.

2. As it is, the two Grounds of Appeal raise questions of fact, which have been brought to this Court without leave, and the end result is that the Court lacks the jurisdiction to look into any of the questions raised. The Preliminary Objection is sustained, and the Appeal is struck out. Parties are to bear their own costs.”

**MAIN JUDGMENT**

AMINA ADAMU AUGIE, J.S.C.(Delivering the Leading Judgment):

The Appellants, who were Plaintiffs, filed an action against the Respondent at the Edo State High Court, wherein they claimed:

a. A DECLARATION that the 1st Plaintiff is the beneficial owner under Bini Native Law and Custom of all that property situate and lying at No. 16, Old Eguanogbe Street, Benin City having inherited same from his late father late Pa. Samson Ewansiha Obayuwana, who died testate vide his WILL dated 14/5/2002 and as such, 1st Plaintiff is the one entitled to Statutory Right of Occupancy in respect of that property.

b. An Order that the Defendant shall pay the sum of N22,000,000.00 (Twenty-Two Million Naira) as special and general damages for the illegal destruction and occupation of the 1st Plaintiff's property as follows:

SPECIAL DAMAGES

i. The open market property in dispute is N12,000,000.00 (Twelve-Two Million Naira) as per the valuation Report.

ii. Rent at the rate of N4,000.00 (Four Thousand Naira) per month from 10/4/2006, when the property of the 1st Plaintiff was destroyed by the Defendant until the determination of the case and until payment.

GENERAL DAMAGES

i. N10,000.000.00 (Ten Million Naira) for shock, inconvenience, emotional stress, and sentimental attachment to ancestral home of the 1st Plaintiff and loss of use of the said ancestral home and shrine.

ii. An order of possession of all that piece or parcel of land as shown in the litigation survey plan filed herewith.

iii. An order of perpetual injunction restraining the Defendant, whether by himself, his servants, agents, privies and or any person claiming through or under him or whosoever from entering or remaining upon the said piece or parcel of land in purported exercise of any right in relation to the possession, use and occupation of the land or any part thereof in derogation of the 1st plaintiffs right or interest

At the trial Court, the Appellants called five witnesses while two witnesses testified for the Respondent. The learned trial Judge, Okungbowa, J., delivered his Judgment on 28/9/2019, wherein he found that the Respondent has "not proved a better title to the land in dispute". He concluded as follows in the Judgment:

Since the value of the house is ascertainable and the loss of use is also ascertainable, it would not be appropriate to award general damages. On the whole, the plaintiffs are entitled to Judgment and Judgment is accordingly entered against the Defendants as follows;

1. The 1st plaintiff is the beneficial owner of the property in dispute by virtue of the WILL of late Samson Ewansiha Obayuwana of which the 2nd and 3rd Plaintiffs are the executrix and executor.

2. The Defendant shall pay to the Plaintiffs the sum of N12,000,000.00 (Twelve Million Naira) being the value of the property in dispute which was illegally destroyed by the Defendant.

3. The Defendant shall pay to the Plaintiffs the sum of N4,000.00 per month from April 2006, until the Judgment debt is liquidated.

4. The Defendant shall give up possession of the land in dispute more particularly shown in the Plaintiffs' Litigation Survey plan.

5. The Defendant, whether by himself, his agent privies, assigns, and any person claiming through him are hereby restrained perpetually from further trespassing on the land in dispute or any part thereof.

6. The Defendant shall pay cost of N10,000.00 the Plaintiffs.

Dissatisfied, the Respondent appealed to the Court of Appeal, and in its Judgment delivered on 2/7/2015, that Court held that:

The Records of the Court below show that on the penultimate date when PW5 gave evidence, his qualification was not elicited by the Plaintiff and thereby not challenged by the Respondent. The law is that in holding out a witness as an expert witness, he must first of all be led as to his qualification and experience in the field on which he is to give such expert opinion, and the technical or scientific tests undertaken in reaching the opinion offered --- Upon giving his qualification and opinion, and the Respondent-- failing to question the qualification being claimed and the Report rendered the law then is to the effect that same cannot be raised on appeal - - - PW5. having failed to state his qualification and to further state the technical and or scientific tests undertaken by him in arriving at the Report, Exhibit E the trial Judge acted in error when it accepted and relied on same to ground his finding on the issue. I, therefore, resolve this issue in favor of the Appellant.

After resolving the issues, the Court of Appeal concluded that:

It is apparent that what was not conclusively determined is the value of the Respondent's property destroyed by the Appellant, which has not been proved. It is my - - view that the claim under this heading, being in the nature of special damages, for which it is trite that same must be strictly proved - - The failure to prove the head of claim, as required by law leads to the inevitable conclusion that same was not proved and the claim is dismissed -- The other heads of claim have not been appealed against; therefore the Judgment of the lower Court on same is affirmed.

This time, the Appellants filed a Notice of Appeal containing two Grounds of Appeal in this Court, which are being challenged by the Respondent. The said Grounds of Appeal complain that -

Ground 1:

The learned Justices of the Court of Appeal erred in law in holding that PW5, the expert witness, failed to give his qualification and the basis for his valuation when PW5, the expert witness, tendered Exhibit E, which contains his qualifications, the value of the property and the basis for the valuation and which Exhibit was not considered or appreciated by the Court of Appeal in arriving at its decision thereby occasioning a very serious miscarriage of justice.

Ground 2:

The learned justice of the Court of Appeal erred in law when they held thus:

"...it is apparent that what was not conclusively determined is the value of the Respondents property destroyed by the Appellant, which has not been proved. It is my humble but firm view that the claim under that head being in the nature of special damages for which it is trite law that same must be strictly proved".

When the uncontroverted evidence of PW5, the expert witness, was not considered by the Court thereby occasioning a very serous miscarriage of justice.

They formulated one issue for Determination in their Brief, viz.

Having regard to the oral and documentary evidence of the Appellants' witnesses, particularly that of the Estate surveyor and Valuer (PW4) as stated in his Report (Exhibit E) as to his qualification and technical procedure involved in arriving at his conclusion, whether the Court of Appeal was right to have held that the special damages of N12, 000, 000.00 (Twelve Million Naira) awarded by the trial Court was in error.

The Respondent raised a preliminary objection in his own Brief, challenging the competency of the said two Grounds of Appeal, on the ground that they are either on facts and or mixed law and fact, which by decided authorities, require leave of the lower Court.

He cited the following authorities, Ekunola V. CBN & Anor (PT. 1377) 774 (sic), and Odofin V. Agu (1992) NWLR (PT.229) 350, Abubakar V. Dan Kwambo (2015) 18 NWLR (PT. 1491) 213 and Reg. Trustees of ARMORC V. Awoniyi (1994) 7 NWLR (PT. 355) 154, and submitted that the Notice of Appeal filed by the Appellants is, "grossly and incurably defective", as no leave of the lower Court nor this Court was sought and obtained before filing same.

He argued that Ground 2 of the Grounds of Appeal has no particulars, and it is trite that if Grounds of Appeal allege error in law, the nature of the error in law must be clearly stated, citing Fadco Ind. (Nig.) Ltd. v. IBWA (1998) 1 NWLR (Pt. 565) 309.

He also referred to Oge V. Ede (1995) 3 NWLR (PT. 385) 564, Somao Sonker Co. Ltd. V. Adzege (2001) 9 NWLR (PT. 718) 312, Esesie V. Ezele (2001) 8 NWLR (Pt. 716) 582, and argued that the particulars/nature of error expected in Ground 2 were missing, and deprived the Court the opportunity to discern the nature of the error; that a valid Notice of Appeal is a condition precedent for a valid appeal, therefore, the Appellants have no business before this Court, citing Anadi V. Okolie (1977)8 SC 57, and that:

It is interesting to note that the Appellants' issue for Determination emanated from the two Grounds of Appeal and we humbly urge my Lords to strike out all argument relating to Ground Two as regards the issue bothering on uncontroverted evidence of the expert in the Brief of Argument of the Appellants. The entire page 7 of the Brief, which purportedly dealt with arguments, emanated partly from Ground 2, on the purported uncontroverted evidence of the expert, should therefore be discountenanced.

The Appellants filed a Reply Brief wherein they countered that the said two Grounds of Appeal are grounds of law. They argued, citing Oraekwe V. Chukwuka (2012) 1 NWLR (PT. 1280) 169, Ononuju V. AG, Anambra State (2009) 10 NWLR (PT.1148) 182, Skymit Motors V. UBA (2012) 10 NWLR (PT. 1390) 49, Abalaka V. President FRN (2012) 5 NWLR (PT. 1292) 102, Ngige v. Obi (No. II) (2012) NWLR (PT. 1280) 40; that the two Grounds of Appeal are grounds of law as they assert that a Tribunal took into account some wrong criteria in reaching its conclusion, in that the Court of Appeal did not consider Exhibit E and the evidence of PW5 in reaching its conclusion; and the wrong criteria were that PW5 did not give his qualification, and his uncontroverted evidence did not meet the standard for awarding special damages, citing Ajuwa v. S.P.D.C. Ltd. (2011) 18 NWLR (PT. 1279) 797 at 822.

On the objection to Ground 2, they submitted that although an Appellant is required to give Particulars of Error(s) of Law, in a ground of appeal complaining of error in Law, it is not every failure to do so that will render the said Ground incompetent, particularly where sufficient particulars can be gleaned from the Ground of Appeal, and the Respondent and the Court are left in no doubt as to the particulars on which the Ground is based.

On this point, they cited Ukpong V. Commissioner for Finance (2006) 19 NWLR (PT. 1013) 187, which relied on another decision of this Court in Hambe V. Hueze (2001) 4 NWLR (PT. 703) 322.

The Parties have said their own, but what does the law say?

The Respondent's objection queries the competency of the two Grounds of Appeal in the Appellants' Notice of Appeal, and it is settled that a ground of appeal consists of error of law or fact, which an Appellant sees as a defect in a Judgment, and which he relies upon in asking an appellate Court to set it aside - see Metal Const. W. A. Ltd. V. Migliore (1990) 1 NWLR (Pt. 126) 299.

The Appellant must itemize the error or misdirection in the Particulars to the Ground(s) of Appeal. The Particulars of Error or Misdirection should not be independent complaints from the Ground(s) of Appeal but ancillary to it - see Globe Fishing Ind. Ltd. V. Coker (1990) 7 NWLR (PT. 162) 265 and Nyako V. Adamawa State House of Assembly & Ors. (2016) LPELR-41522(SC), wherein this Court per M. D. Muhammad, JSC, observed that -

The law does not allow a Party to divorce the particulars of a ground from the main ground. They are the specifications of errors or misdirection, which show what the complaint against a decision is. To determine whether or not a ground of appeal is relevant to the issue formulated in an Appeal, that ground must be read in conjunction with the particulars to make it a complete ground and must be based on the issue in controversy between the Parties.

Thus, in determining its category, the Ground of Appeal must be construed together with the Particulars of Error, because its classification as a ground of law, can only give competence to an appeal without leave, if the nature of the misdirection or the error clearly stated in the Particulars, bears out the category assigned to it - Garuba V. Omokhodion (2011) 6-7 SC (PT. V) 89.

So, where the Ground of Appeal involves questions of fact or of mixed law and fact, leave to Appeal must be obtained from the Court of Appeal or this Court. Failure to obtain the requisite leave renders the Appeal filed incompetent - see Garuba V. Omokhodion(supra), Irhabor V. Ogaiamien (1999) 8 NWLR (Pt. 616) 517, Uchendu V. Ogboni (1999) 5 NWLR (Pt. 603) 337 and Akpasubi V. Umweni (1982) 11 SC 113, where Eso, JSC, observed:

The appellate jurisdiction of this Court on question of fact only exists where there has been leave of the Court of Appeal or of this Court. No Appeal on questions of fact lies to this Court without such leave. In other words, where - - question of fact has been brought before this Court without leave, the Court has no jurisdiction.

Simply put, this Court has no jurisdiction to entertain an appeal on a ground of fact or mixed law and fact unless leave is sought and obtained - see Ukpong V. Comm., for Finance and Econ. Dev. (supra), wherein Onnoghen, JSC (as he then was) explained -

Where an appeal is to be with leave but none was obtained, the condition precedent to validity of such an appeal has not been fulfilled and as a result the appeal is, in law, said to be incompetent and the appellate Court is in consequence without jurisdiction to entertain same.

In this case, the question that rears its head is whether the two Grounds of Appeal raised in the Appellants Notice of Appeal are grounds of law, as they said, or grounds of fact or mixed law and fact, as contended by the Respondent? I must say that this is not an easy question to answer because there is a very thin line that runs between the said two categories, which makes it difficult to decipher a question of law from a question of fact.

However, this Court has laid down guidelines in numerous cases, which set out parameters, for finding answers to the said question - see Board of Custom & Excise V. Barau (1982) NSCC (Vol. 13) 358, wherein this Court per Eso, JSC, aptly observed -

The Court of Appeal has to decide first, as a matter of law that a trial Court failed to make use of the advantage it has of seeing the Witnesses - - before proceeding to substitute as a matter of fact, its own finding made on the printed evidence - - - it is only where there is a wrong application of such facts that a Court of Appeal interferes. Where, however the Court of Appeal finds as a matter of law that the facts have been correctly applied, it does not interfere. The Court does not proceed any further to deal with facts - - This fine distinction is very important for it goes into the jurisdiction, which a Court of Appeal, exercises under the Constitution. While appeal to the Court of Appeal on the issue of law is as of right, an appeal on the facts is with leave of the Court from where the appeal lies or the Court to which the appeals lies. - - - Where a trial Court fails to apply the facts, which it found, correctly to the circumstances of the case, and there is an appeal to a Court of Appeal, which alleges a misdirection in the exercise of the application by the trial Court, the ground of appeal alleging the misdirection is a ground of law and not of fact. When the Court of Appeal finds such application to be wrong and decides to make its findings, such findings made by Court of Appeal are issues of fact and not law. Where the Court of Appeal interferes - - and there is a further appeal to a higher Court of Appeal on the application of the facts, the ground of appeal alleging such misdirection by a lower Court of Appeal is a ground of law and not of fact. It is only where there is an appeal against the finding made by the Court of Appeal in this exercise that issues of fact arise and leave will be required.

See Dairo V. Union Bank (2007) 16 NWLR (Pt. 1059) 99, wherein this Court listed the following principles to serve as a guide:

- Where the Court is being invited to investigate the existence or otherwise of certain facts upon which the award of damages to the Respondent was based, such a ground of appeal is a ground of mixed law and fact - Maigoro V Garba (1999) 10 NWLR (Pt. 624) 555.

i. A ground of appeal, which challenges the findings of fact made by the trial Court or involves issues of law and fact is a ground of mixed law and fact - see Maigoro V. Garba (supra).

ii. Where the evaluation of facts established by the trial Court before the law in respect thereof is applied, is under attack or question, the ground of appeal is one of mixed law and fact. See Maigoro V Garba (supra).

iii. Where evaluation of evidence tendered at the trial is exclusivity questioned, it is a ground of fact simpliciter - Ogbechie V Onochie (1986) 2 NWLR (Pt 23) 484.

iv. Where it is alleged that the trial Court or an appellate Court misunderstood the law or misapplied the law to the admitted or proved facts, such a ground of appeal is one of law simpliciter. See Nwadike & Ors. V Ibekwe & Ors. (1987) 12 SC (Pt. 1)164.

v. It is a ground of law if the adjudicating Tribunal or Court took into account some wrong criteria in reaching its conclusion or applied some wrong standard of proof or, if although in applying the correct criteria, it gave wrong weight to one or more of the relevant factors.

See O'Kelly v. Trusthouse Forte P.L.C. (1983) 2 ALL ER 456 at 486; Nwadike & Ors. V. Ibekwe & Ors. (supra) pp. 491-492.

vi. Several issues that can be raised on legal interpretation of deeds, documents, term of all, words or phrases, and inferences drawn from therefrom are grounds of law - Ogbechie V Onochie (supra).

vii. It is a ground of law where the ground deals merely with a matter of inference even if it is limited to admitted or proved and accepted facts. See Nwadike & Ors. V Ibekwe & Ors. (supra).

viii. Where it is alleged that there was no evidence or no admissible evidence upon which a finding or decision was based, this is regarded as a ground of law. See Ogbechie V. Onochie (supra) where ESQ., JSC, citing an article by C.T Emery in Vol. 100 LQR held:

lf the Tribunal purports to find that a particular event occurred although it is seized of no admissible evidence that the event did in fact occur it is question of law.

See also Metal Const. W.A. Ltd. V. Migliore (supra), wherein this Court per Obaseki, JSC, expatiated on the principles, as follows:

Matters of fact have to be ascertained, failing admission, by competent and relevant evidence given by witnesses, experts or provided by deeds, records, reports, etc. Matters of law have to be ascertained, failing admission, by interpretation of statutes, cases and other authoritative sources of law aided by argument of counsel to parties in the litigation. An appeal on matters of fact allows investigation at the hearing of the appeal of the evidence and the proper inferences from it whereas an appeal on a point of law limits consideration of the appeal to such questions as to whether facts admitted or held proved, justify or permit by the rules of Court a particular decision or disposal of the case - - in a secondary sense, any matter to be decided on evidence and inference therefrom is a matter of fact and other matters are matters of law. A decision of a trial Judge is normally a mixed finding.

Applying the principles to this case, I will not hesitate to say that Ground 1 of the Grounds of Appeal is a ground of fact or of mixed law and fact. The Appellants' complaint in that Ground of Appeal (reproduced above) is that the Court of Appeal did not consider or appreciate the evidence of PW5, who was called as an expert, and his valuation Report [Exhibit E], before it concluded that the PW5 did not give his qualification, and the basis for his valuation.

Obviously, this complaint requires this Court to investigate or look into the evidence of PW5, and what he said in Exhibit E. It is a matter to be decided on evidence and inference therefrom, thus, the said Ground 2 is a ground of fact or mixed law and fact.

Both Grounds of Appeal in the Appellants' Notice of Appeal, do not have any Particulars of Error, however the Respondent only objected to the lack of any Particulars of Error in Ground 2. But the Appellants are right that the position of the law is that once the error complained of, is identified and properly oriented in the Ground of Appeal, the fact that it has no Particulars is not enough for an appellate Court to sidestep from doing justice - see Best (Nig.) Ltd. V. B.H. (Nig. Ltd. (2011) 5 NWLR (Pt. 1239) 95, Omisore V. Aregbesola (2015) 75 NWLR (Pt. 1482) 205, and Ukpong V. Comm. for Finance (supra), wherein this Court held -

It is settled law that though an Appellant is required to give particulars of error(s) of law in a ground of appeal complaining of error in law, it is not every failure to do so that will render the ground so couched incompetent particularly where sufficient particulars can be gleaned from the ground of appeal and the opponent and the Court are left in no doubt as to the particulars on which the grounds are founded.

In this case, the said Ground 2 of the Grounds of Appeal says -

The learned justice of the Court of Appeal erred in law when they held thus:

"---It is apparent that what was not conclusively determined is the value of the Respondent's property destroyed by the Appellant, which has not been proved. It is my humble but firm view that the claim under that head being in the nature of special damages for which it is trite law that same must be strictly proved", when the uncontroverted evidence of PW5 the expert witness, was not considered by the Court thereby occasioning a very serious miscarriage of justice.

That is how it is in the Notice of Appeal at page 199 of the Record, but read properly, the Appellants' complaint in Ground 2 is that the Court of Appeal did not consider the evidence of the PW5, before it concluded as it did on the issue of special damages.

In other words, it is clear from the Grounds of Appeal that their complaints are directed against the evaluation of evidence by the Court of Appeal of evidence tendered at the trial Court, which culminated in the setting aside of the special damages, awarded by the trial Court to the Appellants, and that certainly, raises a question of fact to be determined by this Court; not law.

To determine the issue, this Court will have to re-examine facts that formed the basis of their complaints, and of the facts found at the trial, which formed the basis of the said Judgment. The two grounds of Appeal are not grounds of law simpliciter, they are, in my view, grounds of mixed law and fact. Besides, as this Court said in Maigoro V. Garba (1999) 10 NWLR (Pt. 624) 555, where the Court is being invited to investigate the existence or otherwise of facts upon which an award of damages was based, such a ground of appeal is a ground of mixed law and fact.

As it is, the two Grounds of Appeal raise questions of fact, which have been brought to this Court without leave, and the end result is that the Court lacks the jurisdiction to look into any of the questions raised. The Preliminary Objection is sustained, and the Appeal is struck out. Parties are to bear their own costs.

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

I had the opportunity of reading in draft the lead judgment of my learned brother, Augie, JSC just delivered. I am in agreement with the reasoning therein and conclusion arrived thereat, that the Court lacks jurisdiction to look into any of the questions raised in the appeal having been brought without leave. The Preliminary objection is sustained and the appeal is also struck out by me.

Appeal struck out.

**JOHN INYANG OKORO, J.S.C.:**

I have before now read the lucid judgment delivered by my learned brother, Amina Adamu Augie, JSC. I have perused the reasons and conclusion adumbrated in the said judgment and I find them agreeable to my knowledge of the law. I adopt them, with respect, as mine.

It is clear from the myriad of authorities on the subject and in the light of the provision of Section 233(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), that where the grounds of appeal are of fact or mixed law and fact, leave of this Court or the Court below must be sought before an appeal is lodged on those grounds. Failure to obtain such leave robs this Court of jurisdiction to entertain those grounds. Those grounds are therefore incompetent and must be struck out. See Irabor & Anor v Ogaiamien (1999) LPELR - 1535 (SC); Akinyemi v Odu'a Investment Co. Ltd (2012) LPELR - 8270 (SC); Umanah v Nigeria Deposit Insurance Corporation (2016) LPELR 42556 (SC); Metal Construction (West Africa) Ltd v Migliore & Ors.

In this appeal, it is glaring that the Appellants' two grounds raise questions of facts which are well expatiated in the lead judgment. This Court lacks the jurisdiction to entertain incompetent grounds of appeal. They are accordingly struck out. I also make no order as to costs.

Appeal Struck Out.

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

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, AMINA ADAMU AUGIE, JSC and I agree with his reasoning leading to the conclusion that the Preliminary Objection is sustained, and the Appeal is struck out. I abide by the order made on costs.

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

His lordship Hon. Justice Amina Augie, JSC, obliged me with a copy of his lead Judgment in this appeal and I find that the reason and conclusion reached therein accord with mine that the appeal be struck out.

There is a preliminary objection raised by the Respondent to the competence of the grounds of appeal presented and filed by the Appellants which are of mixed facts and law, yet filed without the leave of this honourable Court.

Therefore, where there is need for the leave, the situation poses a condition precedent to the igniting of the jurisdiction of the Supreme Court to hear the matter. Stated differently, the requirement of leave where it must be obtained in line with Section 233 (3) CFRN, the Appellants must fulfill the condition precedent before the Court can be vested with the requisite jurisdiction to entertain the appeal.

Leave is a condition precedent to appealing under Section 233 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Therefore, as far as leave to appeal to the Court is concerned, the general power of the Court to entertain it is as per the constitutional provisions as contained in Section 233(3) of the Constitution. If or when a ground of appeal is based on facts alone or on mixed law and facts, it cannot be filed in the Supreme Court unless leave is sought and obtained. The above is very important in that the Supreme Court would have no jurisdiction to hear an appeal where the grounds of appeal are on facts or/and mixed law and facts and the Appellants never sought and obtained leave to file the grounds. See Per PETER-ODILI, JSC in NIKAGBATE V. OPAYE & ANOR (2018) LPELR-43704(SC). I am satisfied that this Preliminary Objection is meritorious and I uphold it. In line with the lead judgment, I too strike out the appeal as lacking in competence.