**CHIEF (SIR) ELEAZER IGBOZOR**

**V.**

**PRINCE NYONG INYANG EFFIONG & ORS**

 IN THE COURT OF APPEAL OF NIGERIA

ON WEDNESDAY, THE 27TH DAY OF JANUARY, 2016

CA/C/128/2012

**LEX (2016) - CA/C/128/2012**

**OTHER CITATIONS**

3PLR/2016/24 (CA)

(2016) LPELR-40100(CA)

**BEFORE THEIR LORDSHIPS**

ONYEKACHI AJA OTISI, J.C.A

PAUL OBI ELECHI, J.C.A

JOSEPH OLUBUNMI KAYODE OYEWOLE, J.C.A

**BETWEEN**

CHIEF (SIR) ELEAZER IGBOZOR -(MANAGING DIRECTOR, ORU BROS SEA TRANSPORT COMPANY) - Appellant(s)

AND

PRINCE NYONG INYANG EFFIONG

ETIM ABANG

ETIM ITA

EDET OKON

EDET FEAR

INYANG ATA

OKON BROTHER ETIM ITA

EKPENYONG

PETIF GUINNESS

ASUQUO

VICTOR

BABILO

IMABONG A.K.A. CHIEF WARRIOR

NYONG

TAKA - Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF AKWA IBOM STATE, ORON JUDICIAL DIVISION (Archibong J., Presiding)

**REPRESENTATION**

MR. E. S. O. EZE ESQ. - For Appellant

AND

MR. H. EDET HOLDING BRIEF FOR MR. E. UKOH ESQ. - For Respondent

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

ANTI-TRUST AND TRADE REGULATIONS:- Competition and Free Enterprise - Essence of – Constitutional basis in Section 40 - Need for competition to be encouraged in business activities – Justification of - Protection of consumers right to profit from the opportunity for choices which engenders competition – Attitude of courts to informal ‘trade’ associations imposing their stipulations on non-members – Whether an a business operator is free to determine rates and prices independent of stipulation of unions - Right of business operators to join or refrain from joining an association

TRANSPORTATION AND LOGISTICS LAW:- Boat Transport Business – Associations and unions associated therewith - Right of operators to conduct business, determine schedule and rates and join or refrain from joining any association/union – Constitutional basis – How enforced

COMPANY LAW – REGISTRATION:- Certificate of registration as a business name under Part B of the Companies and Allied Matters Act – Whether its bearer right to operate as an association/union without a certificate of registration of incorporated trustees which associations by their nature are supposed derive lives from under Part C of the Act – Whether a holder of business name certificate can operate as an association or union

CONSTITUTIONAL LAW - RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION: Statutory provision as regards right to freedom of association – Section 40 – Whether precludes forceful cohabitation, or compelled associations fettering the rights of a person to carry on business unimpeded by the stipulations of any such association he is not a member of

EMPLOYMENT AND LABOUR LAW:- – UNIONS/ASSOCIATIONS:- Registration - Whether an association or union can be registered as a Business under Part B of the Companies and Allied Matters Act instead of as incorporated trustees under Part C - Membership of a union – How proved – Relevance documents thereto

NONPROFIT LAW – UNIONS/ASSOCIATIONS:- Membership of a union – How proved – Relevance documents thereto

NONPROFIT LAW – UNIONS/ASSOCIATIONS:- Need for proper registration – Whether an association or union can be registered as a Business under Part B of the Companies and Allied Matters Act instead of as incorporated trustees under Part C – Legal effect

**PRACTICE AND PROCEDURE ISSUES**

ACTION – REPLY BRIEF: Essence of a reply brief in appellate proceedings

APPEAL - INTERFERENCE WITH EVALUATION OF EVIDENCE: Circumstance where an appellate Court will interfere with the evaluation of evidence made by a trial Court

APPEAL:- Findings of trial court not challenged on appeal – Effect

EVIDENCE - ACTION- ADDRESS OF COUNSEL:- Address of counsel - Whether can cure the lack of evidence required to establish a case or state of fact asserted

**MAIN JUDGMENT**

**JOSEPH OLUBUNMI KAYODE OYEWOLE, J.C.A**. (Delivering the Leading Judgment):

This appeal emanated from the judgment of the High Court of Akwa Ibom State sitting at Oron in the Oron Judicial Division, delivered by Archibong J, on the 7th December, 2011.

The parties were marine transporters based in oron, Akwa-Ibom state and plying the Oron, Nigeria- Idenau in Cameroon route. A dispute arose over loading arrangements which resulted in the disruption of the appellant's business operations upon which he took out a writ against the respondents before the trial Court seeking the following reliefs as per paragraph 26 of the statement of claim dated 18th March, 2008:

''A declaration that the action of the defendants in impounding four boats of the plaintiff and depriving him of right to load his boat at New Marina Beach, Oron is illegal, unconstitutional and a breach of the fundamental right of the plaintiff to associate and conduct his business in any part of Nigeria.

A declaration that the action of the defendants to compel the plaintiff to join their association or load his boat turn by turn according to their union rules and regulations is unconstitutional, breach of peace and freedom of association. Payment of the sum of N300,000 per day being the amount plaintiff realizes from the loading of four boats daily which as a result of the defendants have been stopped since 11th February, 2008 till date.

An order compelling the defendants to release the plaintiff boats to him and never to intrude, disturb or intervene in the activities of the plaintiff business in regards to the loading/chattering of boat in his company premises/office. (sic)The sum of N10 million general damages.''

The defendants were served upon which the parties joined issues on their pleadings and proceeded to trial. At trial both sides adduced oral and documentary evidence in support of their averments at the end of which their various counsel adopted their written addresses.

In his reserved judgment, the learned trial judge found no merit in the appellant's case and dismissed it.

Apparently dissatisfied with that outcome, the appellant filed a notice of appeal dated 6th February,2011which was later amended via the amended notice of appeal filed on 18th February, 2014 containing 7 grounds.

At the hearing of the appeal Mr. Eze learned counsel for appellant adopted the appellant's brief of argument filed on 9th May, 2014 but deemed properly filed and served on 11th November, 2015 as well as the appellant's reply brief filed on 4th September, 2014 but deemed properly filed and served on the same 11th November, 2015 as the arguments of the appellant in furtherance of his appeal.

Therein he distilled and argued 4 issues for determination as follows:

1. Whether the decision of the lower Court was not wrongly founded and based on a non-viable, invalid and non existing statement of defence.

2. Whether the lower Court was not wrong when he held that the appellant was a registered member of the respondents' association.

3. Whether the defence available to the defendants' association which is not a party in the suit avails the defendants in this suit.

4. Whether the lower Court was wrong in dismissing the appellant's claims.

For the respondents, Mr. Edet holding brief for Mr. Ukoh who settled the respondents' brief, adopted the said respondents' brief filed on the 18th June, 2014 but deemed properly filed and served on the 11th November, 2015 as the arguments of the respondents in opposing this appeal.

Therein the learned counsel adopted the issues for determination formulated and argued by the appellant.

That being so, the first issue to be resolved is whether the decision of the lower Court was not wrongly founded and based on a non-viable, invalid and non-existing statement of defence.

Arguing this issue, Mr. Eze submitted that the learned trial Court based its judgment on an amended statement of defence which was non-existent as the respondents only filed a proposed amended statement of defence which was not followed up with an actual amended statement of defence after leave to amend was granted them.

Responding to this, Mr. Ukoh submitted that the respondents were not just granted leave to amend their statement of defence but that the already filed amended statement of defence was deemed by the learned trial Court to have been properly filed and served thereby negating any necessity to file any fresh amended statement of claim. He drew attention to the proceedings of 28th April, 2008, the date in question.

In the judgment of the learned trial Judge contained on pages 162-182 of the record of appeal, reference was to the statement of defence amended on 28th April, 2009.

What transpired at the trial Court on 28th April, 2009 can be found on pages 131-132 of the record of appeal. On the said day, the respondents as defendants moved the Court for 2 reliefs namely; leave to amend their statement of defence and order to deem the amended statement of defence already filed as proper.

The appellant as plaintiff did not oppose the application upon which the learned trial Judge ruled as follows:

Court: There being no opposition and it being meritorious, I hereby grant this application as prayed and accordingly ordered (sic) as follows:

That leave be and is hereby granted the applicants to amend their statement of defence.

That the amended statement, of defence already filed and served be and is hereby deemed as properly filed and served appropriate fees having been shown to have been paid.

This order remains unchallenged and is accordingly binding on the parties. See UWAZURUIKE VS NWACHUKWU (2012) 52 NSCQR 478.

It takes the wind out of the sail of the contention of the appellant on this issue. The arguments of the appellants were totally misconceived and devoid of any merit.

I accordingly resolve this issue against the appellant.

The next issue is whether the lower Court was not wrong when he heard that the appellant was a registered member of the respondents' association.

Arguing this issue, Mr. Eze submitted that while the appellant averred in his pleadings that the respondents belonged to two associations, exhibit D, the certificate of incorporation contained the name of a different association distinct from the names contained in the Constitution, receipts, accounts books and other documents tendered and admitted in evidence for the respondents while no evidence was led reconciling the said documents as belonging to a single entity, thereby leaving the trial Court in a quandary as regards which association the appellant was alleged to belong. He referred to ARCHTBONG VS ITA (2004) ALLFWLR (PT 197) 930, ORHUE VS NEPA (1998) 59 LRCN 3940 and OMOYINMI VS OLANIYAN (2000) 4 NWLR (PT 651) 38.

The learned counsel further submitted that the evidence of DW3 that the association did not collect dues from members contradicted the evidence of the respondents with regards to tendered receipts thereby failing to prove the membership of the appellant of the said association. He referred to BASIL VS FAJEBE (2001) FWLR (PT 51) 1914.

He contended that exhibits G and G1 were not signed by anybody thereby rendering them unreliable. He referred to KWARA INVESTMENT CO. LTD VS GARUBA (2000) FWLR (PT 2) 198, ROCKONOH PPTY CO. LTD VS NITEL PLC & ANOR (2001) FWLR (PT 67) 885 and AG ABIA VS AGHARAONYE (1999) 6 NWLR (PT 607) 362.

He also submitted that from the appellant's pleadings, the dispute between the parties started in 2006 while the documents tendered purportedly showing his membership came thereafter thereby suggesting that the said documents were made in anticipation of litigation and thereby inadmissible. He referred to ELEMA VS NEPA (2000) 2 NWLR (PT 644) 337, SHANU VS AFRIBANK PLC (2003) FWLR (PT 136) 823 and KARE VS COKER (1982) 12 SC 252.

He stated that the learned trial Judge unjustifiably disregarded the pleadings and evidence of the appellant disputing membership of the same association with the respondents and that while in the witness box the respondents failed to confront him with any evidence suggesting such membership. He referred to AGBANIFO VS ALWEREOBA (988) 2 SCNJ (PT 1) 146, MOHAMMED VS ALI (1989) 2 NWLR (PT 103) 349 at 353 and NWOBODO VS ONOH (1984) 1 SCNJ at 88.

The learned counsel further submitted that the appellant having joined issues with the respondent on the issues of membership of their association did not need to file a reply to their statement of defence. He referred to OSHODI VS EYIFUNMIM (2000) FWLR (PT 8) 1277, MUSTAPHA VS AJILORE (2000) FWLR (PT 8) 1328, OGWUEGBU VS AGOMUO (1999) 7 NWLR (PT 609) 144 and AGUNDU VS GBERBO (1999) 9 NWLR (PT 617) 71.

He urged the Court to hold that the findings of the trial Court in this regard was not supported by the adduced evidence and accordingly resolve this issue in favour of the appellant.

Mr. Ukoh for the respondents referred to the pleadings of the appellant and the various documents tendered by the respondent containing different names of associations and submitted that they all referred to the same body and that none of the parties was under any misapprehension as to the association being referred to and that the trial Court was not speculating in picking and choosing a name and concluding that the appellant was a member thereof. He referred to ARCHIBONG VS ITA (supra) and OMOYINMM V. OLANIYAN (supra).

He submitted that the decision of the trial perverse if it resulted in miscarriage of AREGBESOLA VS OYINLOLA (2011) ALL FWLR (PT 570) 1290 at 1390.

He further submitted that the evidence of DW3 was not contradictory as it was taken out of context and that exhibits G, G1, H and H1 did not need to be signed to be authentic as they were internal documents of the association involved and had been duly authenticated by the association's auditor.

He also submitted that there was no evidence supporting the contention of the appellant that the documents of the respondents were made in anticipation of litigation and that failure to adduce such evidence would not bar admissibility. He referred to OKUWOBI VS ISHOLA (1973) 3 SC 43 at 48.

The learned counsel further submitted that the moment the defendants denied the allegations of the plaintiff and went further to adduce fresh facts, the plaintiff should had filed a reply otherwise he would be deemed to have admitted the fresh facts. He referred to Section 133 (2) of the Evidence Act.

He added that the documents tendered by the respondents were duly pleaded and admitted without objection from the appellant who would not be allowed to complain of denial of fair hearing in respect thereof and that the judicial authorities referred to by the appellant in relation thereto were inapplicable.

He concluded on the issue by urging the Court to hold that the trial Court was right on the findings complained about.

In his reply brief, Mr. Eze submitted that no evidence was adduced by the respondents that the various names referred to the same association and that submission of counsel cannot take the place of evidence. He referred to CHEMIRON INT'L LTD VS EGBUJUONUMA (2007) ALL FWLR (PT 395) 444.

He also submitted that where a finding of a trial Court is not supported by evidence, the appellate Court wilt interfere to reverse such finding. He referred to INEC VS OKORO (2010) ALL FWLR (PT 516) 44.

He reiterated his earlier arguments and urged the Court to resolve in favour of the appellant.

The law is settled that appraisal of evidence and ascription of probative values thereto is the exclusive purview of the trial Court and an appellate Court will only interfere if the findings made were found to be perverse or unsupported by the adduced evidence on the records. see AWOYALE OGUNBIYI (1986) 2 NWLR (PT 24) 626.

The crux of the portion of the judgment of the trial Court complained of here is on page 174 of the record of appeal wherein the learned trial Judge observed, found and held as follows:

"The defendants in paragraphs 2, 3, 4, 5, 6, 8, 8(a), 8(b) G and 13 of their amended statement of defence plead facts and documents to show that the plaintiff is and had been a registered member of Seamen Transport Association which Constitution requires members to load their boats, canoes and vessels in turns to ensure orderly and smooth sea transportation and checking of crimes associated with sea faring.

The defendants through DWI , DW2 and DW3 also testified to the effects that the plaintiff is a registered member of the said Association and has registered his boats with the association as such he ought to abide by the Constitution, Rules and Regulations of the Association one of which is loading of boots canoes and vessels in turns.

The plaintiff throughout the proceedings did not deny the paragraphs of the statement of defence nor challenge or contradict the evidence of DWs I, 2 and 3 on the issue of his membership of the Association and the registration of his boats with the Association. Based on the above therefore I find and hold that the plaintiff having registered his boats with the Seamen Transport Association and has been paying his dues to the Association is hand had been a registered member of the Association. See the various documentary evidence tendered by the defendants in this regard particularly Exhibits F, G, G1 , Y, Y1 -Y9."

The learned trial Judge as could be seen based his above findings on the unchallenged pleadings and testimonies of the respondents and their witnesses.

The appellant however maintained that the said pleadings were challenged and that the pieces of evidence in issue were unreliable.

A perusal of the pleadings of the parties will shed needed light on the issue. In the statement of claim, the appellant averred unequivocally that his business had a separate identity and standing from the respondents and that he was not part of their set up in any manner. Specifically he stated in paragraphs 2, 14-16 as follows:

(2) The defendants are members of Seamen Association and Boats Owners/Operators of Seaman Transport Association whose office is at New Marina Beach, Oron.

(14) One of the grudges of the defendants was that the plaintiff should not load any boat in his office unless he takes a turn by turn from them, that is, once a boat is load in his office, the plaintiff have to wait for the defendants' boat to load their own boat before the plaintiff boat will load another boat. (sic).

(15) The plaintiff being legally sole enterprises do not need to obtain any permission or consent of the defendants before he load his boat. (sic).

(16) The plaintiff is not bound by the rules and regulations guiding the member of the defendants as he does not belong to them and has a right to load his boat, as he wants which he has been doing since 24 years ago. (sic).

On their Part, the defendants expressly admitted paragraph 2 of the statement of claim and stated their position in paragraphs 2, 3, 4, 5, 6, 8, 8(a), 8(b) G and 13 of their amended statement of defence referred to in his judgment by the learned trial Judge.

It seems to me that parties had by their pleadings joined issues on the membership of the Association. The contrary story put forward by the respondents/defendants did not require a reply before it could be considered denied. It seems to me that the learned trial Judge was not on firm grounds when he chose to give credence to the version of the issue given by the respondents/defendants on the ground that the appellant/plaintiff did not file a reply when his averments on the issue were obviously unequivocal.

The position of the law was extensively clarified by OGBUAGU, JSC as follows.

"I note that, the Appellants, never filed any counter-claim in which case, the Respondent, should have filed a defence. From the above pleadings, I wonder what other "Reply, the Appellants, expected the Respondent to file which will amount to any other joining of issues. If anything, in my respectful view, it is infact the Appellants, who had joined issues in respect of the above said pleadings of the Respondent. This is why I stated that this issue , is a surprise to me. It is now firmly settled as rightly submitted in the Respondent's Brief , that the proper function of a Reply, is to wise in answer to the defence, any matter which must be specifically pleaded, which make the defence not maintainable or which otherwise might take the defence by surprise or which wise issue of fact not arising out of the defence. The case of Akeredolu and ors v. Akinremi and ors (1989) 3 NWLR (pt.108) 164 at 172. (it is also reported in (1989) 5 SCNJ. 71) is cited in support and relied on.

In other words and this is also settled, that a Reply, is used by Plaintiff , to answer new issues raised in the Statement of defence such as in case of confession and avoidance. It is therefore, not necessary to file a Reply if its only purpose, is to deny the allegations of fact made in the Statement of defence because of the principle of joinder of issues. Where no counter-claim is filed, a Reply, is generally unnecessary if it is also to deny allegations in the Statement of Defence. After the completion of pleadings, issue is or issues are said to be joined and the case is ready for hearing. Such a joinder of an issue, operates as a denial of every allegation of fact in the pleadings upon which the issue has been joined. (See also Principles of Practice & Procedure in Civil actions in the High Courts in Nigeria by T. Akinola Aguda paragraph 110: paragraph 18.06 of High Court and Supreme Court and the cases of Dabup v. Kolo (1993) 9 NWLR (pt.317) 254 at 27O, 281; (1993) 12 SCNJ. 1: Umenyi v. Ezeobi (1990) 3 NWLR (pt.140,) 621 C.A.: Obat v. Central Bank of Nigeria (1993) I NWIR (Pt. 310) 140 at 162: (1993) 9 SCNJ. (Pt.ii) 268).

In fact, it is also settled that if no Reply is filed, all material facts alleged in the Statement of Defence, are put in issue. A reply to merely join issues, to therefore, not permissible. "See UNITY BANK & ANOR VS BOUARI (2008) 33 NSCQR 1296 at 1330-1331.

The other leg upon which the learned trial Judge anchored the finding in issue relates to the documentary exhibits F, G, G1, Y, Y1-Y5 tendered by the respondents. Exhibit F was the Constitution of Seamen Transport Association, the account registration book of Seamen Transport Association was exhibit G and page 3 thereof was exhibit G1 and the official receipts of seamen Transport Association and leaves thereof dated 27/12/07, 29/12/07,, 30/12/07, 23/12/07 and 24/12/07 were exhibits Y, Y1-Y5 respectively.

The entry on exhibit G1 shows the registration of two boats said to belong to the appellant on 15th August, 1996 while exhibits Y1 to Y5 were all dated between 24th to 30th December, 2007. The credibility of these documents was shaken by the unequivocal evidence of DW3 under cross-examination as shown on lines 20-21 of page 157 of the record of appeal, that their Association does not collect dues from its members. The attempt of learned counsel of the respondents to redress this damage in his brief is indeed belated and must be perceived poorly. It is trite that while counsel is only master of the law, and legal submissions cannot replace evidence. See DR OLORUNTOBA-OJU & ORS VS PROF ABDUL-.RAHEEM & ORS (2009) 39 NSCQR 105 at 156.

The remaining documents did not contain the names of the appellant.

It is instructive that none of the documents relied on by the learned trial Judge bears the signature of the appellant or could be said to have emanated from him. They were all documents of the respondents said Association.

It is also noteworthy that while the respondents' witness DW3 alluded to the existence of a membership register, no register of members of the said Association was tendered showing the membership details of the appellant.

No application for membership was equally tendered neither was any minutes of meeting tendered showing that the appellant attended any meeting of the said Association.

Furthermore, the certificate of registration admitted as exhibit D, is the certificate of registration of a business name Seaman Transport Association under Part B of the Companies and Allied Matters Act and not the certificate of registration of incorporated trustees which associations by their nature are supposed derive lives from under Part C of the said Act.

While the appellant tendered exhibit A as the certificate of registration of his own business name, the respondents have exhibit D. Both were business names standing at par as registered business names under Part B of the Companies and Allied Matters Act and very distinct from incorporated trustees under Part C.

As well submitted by the learned counsel for the appellant, the Association which was said to embrace the parties including the appellant was Seamen Association different from what was in exhibit D but the registration certificate of which was not produced.

I do not see the basis for justifiably concluding that the appellant was a member of the respondents' Association as to be held to their decisions and organizational structure.

The findings of the learned trial Judge in this regard is supported by the evidence adduced at the trial and I am duty bound to interfere with it in the interest of justice.

I therefore resolve this issue in favor of the appellant.

Issues 3 and 4 were argued together by both counsel. The said issues are;

Whether the defence available to the defendants' association which is not a party in the suit avails the defendants in this suit. And whether the lower Court was not wrong in dismissing the appellant's claims.

For the appellant, Mr. Eze submitted that the respondents were sued in their individual capacities and cannot bring their Association into the picture when they did not adduce evidence that they were mandated by their said Association to carry out the acts complained of by the appellant.

He urged the Court to grant the reliefs sought by the appellant.

Mr. Ukoh responded that the appellant in pleadings stated that the respondents acted for an Association and cannot therefore approbate and reprobate.

Issue 3 as formulated did not relate to any complaint or any portion of the judgment of the trial Court and is incompetent will accordingly be discountenanced. See OLONADE VS SOWEMIMO (2014) ELC 1155 and ASALU VS DAKAN (2006) 26 NSCQR 950.

Issue 4, however is accordingly, resolved in favour of the appellant in view of the conclusion earlier reached on issue 2 above.

Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides as follows:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

I must observe that the constitutional right of association guaranteed above not only allows freedom to lawfully associate, the implication of the right thus conferred precludes forceful cohabitation, or compelled associations.

The essence of free enterprise is that competition be encouraged in business activities. This enures to the consumers who will profit from the opportunity for choices thereby ensuring competition for his patronage.

The appellant did not challenge other findings of the learned trial Judge as to the majority of his claims and those findings remain binding. See UWAZURUIKE VS NWACHUKWU (supra)

In the circumstances, this appeal partly succeeds and I allow it in part.

Accordingly, it is hereby declared that the action of the respondents to compel the appellant to join their association or load his boat turn by turn according to their union rules and regulations is unconstitutional, and constitutes a breach of the freedom of association guaranteed by the Constitution of the Federal Republic of Nigeria as amended.

Parties shall bear their respective costs.

**ONYEKACHI AJA OTISI, J.C.A**.:

I had the opportunity of reading in advance a copy of the Judgment delivered by my learned Brother, J.O.K. Oyewole, JCA, in draft form, allowing this appeal, in part.

The issues raised in this appeal have been comprehensively addressed. I am in agreement with his reasoning and conclusion, which I adopt as mine. I abide by the orders made in the lead Judgment.

**PAUL OBI ELECHI, J.C.A**.:

I have read before now the judgment just delivered by my Learned brother Joseph Olunbunmi Oyewole, JCA.

I cannot but agree with the reasoning and conclusion reached thereon to the effect that the instant appeal is devoid of merits. It is therefore my privilege to adopt same reasoning and conclusion reached in the Judgment as mine and accordingly dismiss the appeal. The Judgment of the Federal High Court Calabar, Calabar Judicial Division delivered on the 4th of july, 2011 by Ademola J is hereby affirmed by me.

Parties are to bear their respective costs.

Appeal dismissed.