**OLATAYO ARIBO**

**V.**

**CENTRAL BANK OF NIGERIA & ANOR.**

IN THE COURT OF APPEAL OF NIGERIA

ON MONDAY, THE 22ND DAY OF MARCH, 2010

CA/L/786/08

**LEX (2010) - CA/L/786/08**

OTHER CITATIONS

2PLR/2010/51(CA)

**BEFORE THEIR LORDSHIPS**

PAUL ADAMU GALINJE, JCA

IBRAHIM MOHAMMED MUSA SAULAWA, JCA

REGINA OBIAGELI NWODO, JCA

**BETWEEN**

OLATAYO ARIBO - Appellant(s)

AND

1. CENTRAL BANK OF NIGERIA

2. DIRECTOR, BANKING SUPERVISION, CENTRAL BANK OF NIGERIA - Respondent(s)

**ORIGINATING STATE**

FEDERAL HIGH COURT, LAGOS JUDICIAL DIVISION

**REPRESENTATION**

A M. MAKINDE with IKODUDU - For Appellant

AND

TUNDE OLOJO - for the Respondent - For Respondent

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

BANKING AND FINANCE:- Central Bank – Blacklisting of an official of a commercial bank for prohibited foreign exchange connected acts under the Banking and Financial Institution Act, BOFIA – Onus of proof – On whom lies - Implications for employability of affected person

BANKING AND FINANCE LAW:- Bank official – Engagement in illegal foreign exchange dealings – Character of as a criminal conduct - Burden of proof as beyond reasonable doubt – Where based on findings of Special Committee of Central Bank – Duty of court to pay advertence thereto – Effect of failure thereof

CRIMINAL LAW AND PROCEDURE:- Illegal Foreign Exchange transaction – Proof of in civil proceedings– Standard of proof – Nature of evidence that may sustain same

CONSTITUTIONAL LAW – FAIR HEARING:- The fair hearing principle entrenched in the constitution - Fundamental nature of in the judicial process or the administration of justice or in administrative panels – Rule that fair hearing lies in the procedure followed in the determination of a matter and not the decision – Legal implication

CONSTITUTIONAL LAW – FAIR HEARING:- Need for it to be pleaded and evidence lead in support – Whether the Issue cannot be introduced in the Grounds of Appeal as a new point without a decision in respect of fair hearing in the Judgment appealed against nor leave to raise same as a fresh Issue

**PRACTICE AND PROCEDURE ISSUES**

APPEAL:- Ground of appeal - Purpose of the particulars in a Ground of Appeal – Necessity for particulars to arise from the ground founded on the decision of the court appealed against

APPEAL:- Particulars of ground of appeal – What particulars must relate to and flow from - When a ground of appeal cannot stand as a result of its incompetent particular – Proper treatment

APPEAL:- Ground of appeal struck out - Consequence of – Whether the issue for determination distilled from it automatically becomes incompetent as having no basis and liable to be struck out or ignored

APPEAL - JURISDICTION:**-** Court of Appeal - Jurisdiction to entertain – Basis of on existence of a valid Notice of Appeal filed against a decision of the court below as approved under the constitution – Need for Notice to contain competent Grounds of Appeal – Effect of failure thereto

APPEAL:- Single Issue for Determination distilled from more than one Ground of Appeal – Where one of the grounds is found to be incompetent – Whether fatal for the competence of the Issue – Proper treatment of by court

APPEAL:- Findings of fact made by trial Judge – Attitude of appellate court to invitation to interfere therewith – When finding deemed not based on evidence presented or perverse – Proper treatment of

COURT:- Speculation – Duty to refrain from – Distinction from relying on facts already established in another Judgment where parties plead issue estoppel or Res Judicata

EVIDENCE – JUDGMENT - APPEAL:- Fact, evidence or decision that arose in respect of another suit separate from the case appealed against – Whether cannot be entertained by the court – Justification of

EVIDENCE:- Rule that a party is enjoined to present evidence to support his claim - Evidence of witnesses in an earlier case – Whether cannot be relied upon in another suit by reference to that evidence led in another Judgment wherein the evidence was considered

JUDGMENT AND ORDERS:– **C**ourt judgments - Purpose of

JUDGMENT AND ORDERS:- Perverse judgment – Meaning of

JUDGMENTS AND ORDERS:- Rule that court Judgments are used to determine and confirm what was actually decided in the case and not to use the evidence given in it for or against any of the parties therein – Legal implication

JUDGMENTS AND ORDERS:- Distinction between the doctrine of estoppel and the special case of relying on a previous Judgment as conclusive of the Issue in dispute –

WORDS AND PHRASES:-“Appeal” – Meaning of

WORDS AND PHRASES:- “Speculation” – “Perverse Judgment“ - Meaning of

**MAIN JUDGMENT**

**REGINA OBIAGELI NWODO, J.C.A: (Delivering the Leading Judgment):**

This is an appeal against the Judgment of the Federal High Court, Lagos Judicial Division delivered on the 14th of July, 2008 dismissing the claim of the Plaintiff.

The Plaintiff in the court below now the Appellant commenced an action by originating summons filed on 31/3/2008 in the Federal High Court wherein he claimed the following reliefs:

'1. A mandatory order directing the Defendants particularly the 2nd Defendant to de-blacklist the Plaintiff and delete the name of the Plaintiff from the list of blacklisted persons.

2. An order directing the Defendant particularly the 2nd Defendant to comply with the declaration of Hon. Justice D. D. Abutu in the Judgment delivered on 11th April, 2005.

3. An order directing the Defendant particularly the 2nd Defendant to notify the Plaintiff in writing removal of his name from blacklisted list.

4. An order for payment of exemplary and aggravated damages in the sum of N40,000,000:00 (Forty Million Naira) by the Defendants to the Plaintiff for loss of employment and earnings from 2005 to day of Judgment in the suit.

5. The cost of this suit'.

In the same summons the following questions were raised for determination:

'1. Whether the Defendants could blacklist the Plaintiff under S.44(2) of BOFID?

2. Whether the act of blacklisting of the Plaintiff by the 2nd Defendant's letter of 19th September, 2005 is not a violation and act of disrespect to the Judgment of Abutu J. delivered on 11th April, 2005?

3. Whether the Defendants ought to be compelled to delete the name of the plaintiff from its list of blacklisted persons?

4. Whether the act of the Defendants has unlawfully deprived the Plaintiff of securing gainful employment and loss of earnings?

5. Whether Plaintiff is entitled to damages claimed?'

In support of the summons is a 26 paragraph affidavit deposed to by the Plaintiff. The respondent in response filed a counter-affidavit of 10 paragraphs on 7/05/08 deposed to by Mrs. Ekundayo Olutoye.

The learned counsels representing the parties addressed the court on the summons. The Learned trial Judge in a considered Judgment held:

“It is not in dispute that the Plaintiff herein and its erstwhile employer, Equity Bank of Nigeria limited were involved in illegal foreign exchange transactions for which the Central Bank of Nigeria can impose sanctions. Equity Bank of Nigeria Limited (Plaintiff's erstwhile employer) was penalized in the whooping sum of N293, 129 Million and its dealership licence suspended indefinitely. It is my humble view that the Plaintiff's involvement in the illegal foreign exchange is serious misconduct in relation to his duties while in the services of Equity Bank of Nigeria Ltd.

It is also my view that the condonation of the Plaintiff's serious misconduct in the illegal foreign exchange transactions by a fellow culprit is no bar to the Central Bank of Nigeria exercising its power to sanction the Plaintiff The Defendants are therefore within their statutory powers under Section 44(2)(d) of the Banks and other Financial Institutions Act 1991 (as amended) to blacklist the Plaintiff as done in Exhibit 'DM3' in this suit.

Each of the questions for determination is resolved against the Plaintiff. The Plaintiff's claim fails in its entirety, and same is dismissed. No order as to costs.”

Dissatisfied with the above decision of court below, the Appellant filed a Notice of Appeal on 20/8/2008 containing 4 grounds of Appeal. The learned counsel in accordance with the Rules of this court filed and exchanged written Briefs of the parties.

Mr. A. M. Makinde, the learned counsel for the Appellant at the hearing of the Appeal on 12/1/10 adopted the Appellants Brief dated 22nd October, 2008 filed on 24th October, 2008 and with the leave of court he cited the following additional authorities: SPDC v. Olarewaju (2008) 12 SC (pt.3) at pg 27, Olatunbusu v. Nisi (1988) 1 NSCC pg 1025, Olarewaju v. Afribank (2001) 7 SC (pt.3) at pg.1. He urged the court to allow the Appeal. Whilst the Learned counsel to the Respondent, Chief Tunde Olojo adopted the Respondents Brief dated and filed on 24th March, 2009 and urged the court to dismiss the appeal.

The Appellant, a former staff of Equity Bank of Nigeria Plc instituted suit No. FHC/L/CS/163/2003 against his former employer and the 1st Respondent seeking declaratory reliefs that the termination of his appointment was null and void having resigned his appointment. He also sought a Declaration against the 1st Respondent that he cannot be blacklisted by them having not breached any provisions of the Banking and Financial Institution Decree. The Appellant was the Divisional Head of Foreign Exchange in his former Bank - Equity Bank of Nigeria Plc When the Bank's banking licence on foreign exchange was withdrawn by the 1st Respondent because of foreign transaction problem, the Bank was fined. The 1st Respondent set up, the Special Board Committee which produced a final report. Thereafter Appellant filed the suit in the Federal High Court No.FHC/LICS/63/2003 seeking the reliefs earlier set out in this Judgment. Judgment was delivered in that suit wherein Abutu J. on 11/04/2005 held as reproduced hereunder:

'1. It is declared that the Plaintiff not having been dismissed and his appointment not having been terminated for reasons of fraud, dishonesty or conviction for an offence involving fraud or dishonesty, the 2nd Defendant cannot invoke the provisions of S.44(4) of the Banks and other Financial Institutions Act, 1991 (as amended) against the Plaintiff to blacklist him.

2. It is further declared that the 1st Defendant having accepted the resignation of the Plaintiff and paid him his entitlement cannot subsequent validly terminate the appointment of the Plaintiff.

3. The 1st Defendant's letter dated 5th February, 2003 for the termination of the appointment of the Plaintiff is hereby declared null and void and of no effect.

The said letter is hereby set aside'.

There is no evidence this decision was appealed against. Subsequently, the Appellant sought for employment in National Bank of Nigeria Limited. He went through interviews until the National Bank of Nigeria sought clearance for employment of Appellant from the Director of Banking Supervision Central Bank of Nigeria as is customary with certain positions in the Banking system. The Director did not react until the Appellant wrote to the Director of Banking Supervision on 28th July, 2005 appealing for clearance to enable him pick up the appointment with National Bank On a letter dated 19th September, 2005 the Director replied and confirmed that the Appellant have been barred from holding any official position in the financial industry. The Appellant's contention is that the grounds for blacklisting him were invalidated by the Judgment of Abutu J. in suit No. FHC/L/CS/163/2003. The Appellant then proceeded to the Federal High Court and commenced a suit by originating summons filed on 31/3/08.

This appeal is founded on the decision of the court below in respect of that claim.

Mr. Makinde in the Appellants Brief formulated 3 Issues for determination which reads as follows:

'Issue 1:

Whether the Learned trial Judge was not in error when he held relying on the Judgment of Abutu J. in suit No. FHC/L/CS/163/03 at page 20 of the record in arriving at the decision that the Appellant was guilty of serious misconduct in relation to his duties while in the services of Equity Bank of Nigeria Limited upon which the Respondents can exercise their powers to blacklist the Appellant under S.44(2) (d ) of BOFIA in the absence of any evidence that Appellant was afforded a fair hearing?

Issue 2:

Whether the Learned trial Judge was not in error to have speculated on the content of the Appellant's former employer Special Board Committee Report which was not before the Court to have come to the conclusion of Appellant's guilty of illegal foreign Exchange Transaction?

Issue 3:

Whether the Learned trial Judge was not in error when he held relying on the Judgment of Abutu J. in suit No FHC/L/CS/163/03 at page 20 of the record in arriving at the decision that the Appellant was guilty of serious misconduct in relation to his duties while in the services of Equity Bank of Nigeria Limited upon which the Respondent can exercise their powers to blacklist the Appellant under S.44 (2) (d) of BOFIA in the absence of any evidence that Appellant was afforded a fair hearing?'.

Learned counsel for the Respondent Chief Olojo subsumed the three Issues into one which reads as follows:

'Whether, having regard to the weight of material evidence before the lower court, the honourable court was not right to have dismissed the Appellant's claims; in other words, whether in specific terms, there was not enough material evidence before the lower court to establish that the 1st Respondent validly exercised its statutory right under Section 44(2)(d) of Banks and Other Financial Institutions Act (BOFIA) to blacklist the Appellant following the report of a Special Board Committee which found him guilty of serious misconduct emanating from his involvement in foreign exchange malpractices.

The Issues formulated in the Appellant Brief I will adopt in the consideration of this appeal.

Under Issue One whether the Learned trial Judge was not in error when he held relying on the Judgment of Abutu J. in suit No. FHC/L/CS/163/03 in arriving at the decision that the Appellant was guilty of serious misconduct in relation to his duties upon which the Respondents can exercise their powers to blacklist the Appellant under S.44 (2)(d) of BOFIA in the absence of any evidence that Appellant was afforded a fair hearing?

Mr Makinde's submission is that the Learned trial Judge relied heavily on the findings of Abutu J. in the Judgment in suit NO.FHC/L/CS/163/03 to arrive at the conclusion that the Appellant was guilty of serious misconduct as regard the illegal foreign exchange transaction when the issue for consideration and determination in that suit and the suit leading to the present appeal are not the same. He contends that in FHC/L/CS/163/03 the issue was whether Appellant could be blacklisted under S.44(4) of BOFIA which blacklisting is based on termination of appointment whilst the reliefs in the present case is based on S.44(2)(d) which deals with blacklisting based on the ground of serious misconduct. It is his contention that the provision under S.44 (2) (d) was not an Issue for consideration before Abutu J. in FHC/L/CS/163/03. It is his submission that the blacklisting of the Appellant became actionable when the Respondent invoked S.44 (2) (d) to blacklist the Appellant. It is his further submission that the Respondent will need to establish the serious misconduct that Appellant was guilty of to warrant blacklisting as they cannot rely on the evidence led in respect of suit No. FHC/L/CS/163/03 Learned counsels referring to page 10 of the record of Appeal where Abutu J. in his Judgment summarized the evidence of D.W.1 contended that Appellant having appeared before a fact finding committee not a disciplinary committee any indictment will be in breach of Appellant's right to fair hearing and of the S.36 of the 1999 Constitution. It is his further submission, that the Report of the Special Board Committee cannot be relied on to invoke S.44 (2)(d) of BOFIA because the committee failed the test of informing Appellant that he was under trial He cited Adeniyi v. Gov. Council Yaba Tech. (1993 - 1994) All N.L.R pg. Vol 2, SPDC v. Olarewaju (2008) 12 SC (pt.3) at pg. 27, Olarewaju v. Afribank (2001) 7 SC (pt.3) at pg. 1, Olatubusu v. Nisi (1988) 1 NSCC pg.9025.

It is his contention that Appellant was not given any opportunity to defend himself on the allegation for which Respondent's have now blacklisted him Consequently, he was denied a fair hearing.

Chief Olojo in the Respondent Brief contends that the Learned trial Judge relied on the report of the special Board Committee. It is his submission that the compendium of the relief sought by the Appellant, the issues raised by the parties and adopted by the court and the findings therein shows that the Issue before the court related to both S.44(4) and 44(2)(d) of BOFID and the report of the special committee which found Appellant guilty of forex malpractices. Chief Olojo's submission is that the findings of Abutu J. in exhibit 'DM1' stands as proper judicial findings and considerations, as between the parties for aye and, except there is an Appeal on it, the inescapable conclusion is that, it is final and subsistingdecision He referred to Igwego v. Ezengo (1991) 6 N.W.L.R (pt.249) 561 at 587, paras G - H; Ashiru v. Olukoga (2006) 11 N.W.L.R (pt.990) 1 at 21 and S.132(2) of Evidence Act.

Learned counsel's further submission is that there was no iota of speculation by the lower court and as such all the authorities cited by the Appellant are irrelevant. Chief Olojo on pages 8, 9 & 10 of his Brief addressed the court extensively on issue of fair hearing. It is his contention that Appellant's argument on fair hearing is an after-thought. It is his submission that the Appellant cannot raise the issue of fair hearing having raised same and is determined in the trial before Abutu J. as conveyed in Exhibit 'DM1'.

Learned counsel for the Respondent further submitted that the Appellant cannot raise in this appeal the issue of Natural Justice or Administrative Law which he failed to raise during the trial. The learned counsel for the Appellant did not file any reply on point of law, to the arguments of learned counsel for the Respondent in particular the point raised that the issue of fair hearing was not raised at the trial stage He had the opportunity to respond to that but he failed to do so waiving that right of reply.

Issue One formulated by the Appellant is tied to ground one of the Notice of Appeal filed 20/8/08 It is trite law that a Ground of Appeal is a complaint against the decision of a court. An appeal is usually against a ratio decidendi of the Judgment or Ruling appealed against. Therefore an appeal presupposes the existence of some decision of the court below appealed against. Once there is no decision on a point then there cannot be an appeal against what has not been decided. See Ogunbiyi v. Ishola (1996) 6 N.W.L.R. (Pt.452) SC. 12; Oredoyin & Ors. v. Arowolo & Ors. (1989) 4 NWLR (Pt.114) 172.

In the instant appeal, Ground 1 on the Notice of Appeal reads as follows:  
'Grounds of Appeal

1. The Learned trial Judge erred in law when he held that the Defendantacted within their statutory powers under S.44 (2)(d) BOFIA 1991 as amended to blacklist the Plaintiff as done in Exhibit DM3 in this suit.

Particulars of Error

(a) The Defendants relied on the purported verdict of the Special Board Committee on Foreign Exchange transaction of Plaintiff's former employee Equity Bank the 1st Defendant in Exhibit DM1 to suit No.FHC/L/CS/163/03.

(b) The oral evidence of the Plaintiff and Defendants witness In Suit No FHC/L/CS/163/03 attached as Exhibit DM1 in this suit showed the Plaintiff was never issued a query, did not appear before any Committee whilst Exhibit DM 10 In Suit No. FHC/L/CS/163/03 was not the report of any disciplinary Committee as held by the Judge.

(c) The Plaintiff was denied fair hearing by the Defendant in respect of the blacklist by the Defendants in contravention of S.36 1999 Constitution and Rule of Natural Justice'.

Under paragraph b & c of the particulars of error, the Appellant raised the complaint that no query was issued to him and further that he was denied fair hearing in contravention of S.36 of the 1999 constitution.

These particulars under paragraphb and c did not arise from the decision of the court below delivered on 14th July, 2008. The facts therein were equally not pleaded as evidenced in the affidavit. Appellant in his affidavit in support of the originating summons did not aver to any fact on absence of query issued to him nor did he aver to facts on fair hearing. There is no evidence Appellant in the court below filed and relied on another further affidavit apart from the affidavit supporting the originating summons. The Appellant cannot under para 3 in the Particulars of Error refer to oral evidence in Suit No. FHC/L/CS/163/03 which evidence led to the decision of Abutu J. which decision is not on appeal before this court.

The Jurisdiction of this court to entertain an appeal enures from a valid Notice of Appeal filed against a decision of the court below as approved under the constitution, it must be a Notice containing competent Grounds.

Consequently, any fact, evidence or decision that arose in respect of another suit which is not the decision appealed against cannot be entertained by the court. An appeal is a challenge against the Judgment of a trial court and it is never predicated on what a court has not decided in its Judgment. See Oloruntoba-Ojo v. Abdul-Raheem (2009) 39 NSCOR SC 105

The purpose of the particulars in a Ground of Appeal is to elucidate and advance the complaint in the Ground of Appeal, the particulars therefore must arise from the ground which ground is founded on the decision of the court appealed against. Furthermore, the Ground of Appeal must be read together with the particulars. On issue of particulars in a Notice of Appeal Adekeye J.S.C. in Oloruntoba-Ojo v. Abdul-Raheem Supra said:

'The particulars must relate to and flow from the ground of appeal Where a ground of appeal cannot stand as a result of its incompetent particular that ground of appeal is defective and it ought to be struck out. See also Ajaokuta Steel Co. Ltd. v. O. O. Biosah Co. (Nig.) Ltd. (1997) 11 N.W.L.R (pt.527) pg 145; Ogbonnaya v. Adapalm Nig. Ltd. (1993) 5 N.W.L.R. (pt. 292) pg 147. The Supreme Court in Kashadadi v. Noma (2007) 13 NWLR (Pt.1052) SC. 510 Per Mukhtar J.S.C. said:

"In determining the validity or competence of a Ground of Appeal, it is absolutely necessary to read the ground in its entirety i.e. the main body of the ground and its particulars thereunder'.

The particulars b & c under the Ground 1 of the Notice of Appeal raised the complaint of fair hearing.

The fair hearing principle entrenched in the constitution is so fundamental in the judicial process or the administration of justice likewise in administrative panels. Fair hearing lies in the procedure followed in the determination of a matter and not the decision. Therefore it must be pleaded, evidence lead in support and a decision taken for the Appellant to raise same. He is challenging the decision of the 2nd Respondent to blacklist him without hearing his version yet he failed to plead those relevant facts.

The Supreme Court per Tobi J.S.C articulated the position of late advancement of principle of fair hearing in the case of Adebayo v. A.G Ogun State (2008) 7 N.W.L.R. (pt 1085) SC 201 when he said:

"Fair hearing, which is entrenched in the constitution, is based on determining or testing the constitutionality of a trial in terms of procedure. It is a very fundamental principle of law which the parties and the courts are free to apply in relevant situations in relation to the facts of the case reject the principle, the court will have no competence to force the principle of law on the case".

When a party desires to raise issue of fair hearing he ought to aver to facts in his pleading or affidavit as in the case on his contention on that principle thus the other party will be on notice, that he will canvass same for determination by the court. The Issue cannot be introduced in the Grounds of Appeal as a new point without a decision in respect of fair hearing in the Judgment appealed against nor leave to raise same as a fresh Issue, See Borishade v. NBN Ltd. (2007) 1 N.W.L.R (pt 1015) CA 217.

Ground One in the instance appeal when read together with the particulars on fair hearing cannot be competent as the Issue of fair hearing did not arise during trial as rightly submitted by the Respondent counsel nor is it part of the decision of the court the appropriate order to make is one of strike out See Borishade v. N.B.N. Ltd. (2007) 1 N.W.L.R (pt.1015) CA 217. Ground 1 is struck out. The consequence of having struck out Ground 1 is that the issue for determination distilled from it automatically becomes incompetent as having no basis. It has to be struck out or ignored. Omo v. Judicial Services Committee of Delta State (2000) 12 N.W.L.R (pt682) 44, Yaro v. Arewa Const. Ltd. (2007) 17 N.W.L.R (pt.063) SC 333.

Under Issue 2 whether the Learned trial Judge was not in error to have speculated on the contents of the Appellant's former employer's Special Committee Report which was not before the court below for consideration before the Learned trial Judge reached the conclusion of Appellant being guilty of illegal Foreign Exchange Transaction?

It is Mr. Makinde's submission that the Special Committee Report on the Foreign Exchange Transaction which purportedly pronounced the Appellant guilty was never produced before the court by the Respondents who relied upon same for the blacklisting of the Appellant which was acted and pronounced upon by the Learned trial Judge. It is his further submission that the Learned trial Judges statement on the Appellant involvement in the illegal Foreign Exchange Transaction when he did not see the report was speculative. He submits that the courts are not allowed to speculate and any Judgment or decision based on speculation must be set aside. He cited Kode v. Yussuf (2001) 2 SC 87.

Learned counsel for the Respondent contention is that Exhibit 'DM1' contains the consideration findings, conclusions and decision which Abutu J. arrived at after a Judicial and Judicious assessment of the evidence, (Oral and documentary) including the unchallenged report presented before him. It is his submission that the Special Report enjoys the parity of status like every other evidence and Judicial findings by Abutu J. and having been made, it cannot be subjected to a re-hearing. Learned counsel Mr. Makinde's contention is that it cannot be subjected to any further test of credibility as to what it contains as it emanates from a Judgment of a competent Jurisdiction and that the contents of Exhibit 'DM1' affords the conclusive evidence of the facts which it evaluated. He submits the findings of Abutu J. in exhibit 'DM1' stands as proper Judicial findings and considerations as between the parties for ayeand except there is an Appeal on it, the inescapable conclusion is that, it is a final and subsisting decision. He cited Igwego v. Ezengo (1991) 6 N.W.L.R (pt.249) 561 at 587; Ashiru v. Olukoga (2006) 11 NWLR (Pt.990) 1 at 21 and S.132(1) of Evidence Act. It is his submission that there is no iota of speculations by the lower court. The Learned trial Judge quoted copiously the findings, evidence and decision of Abutu J. in Exhibit 'DM1' (Judgment).

Issue 2 raises the question of whether the Learned trial Judge was in error when he held the Respondent rightly blacklisted the Appellant without  seeing the Special Committee Report which is the reason given by the Respondent in the letter Exhibit 'DM3' blacklisting the Appellant.

I pose the question, what is the purport of the Judgment exhibited as Exh. 'DM1' to the affidavit in support of the originating summons in the Court below?It is trite that court Judgments are used to determine and confirm what was actually decided in the case and not to use the evidence given in it. See Supreme Court decision in David Hauma v. Akpa-Ime (2000) 12 NWLR. (pt. 680) SC 156 per Kalgo J.S.C.:

It has been well settled that court Judgments are only used when tendered in a trial to determine and confirm what was actually decided in the case and not to use the evidence given in it for or against any of the parties therein. See Igwego v. Ezeugo (1992) 6 NWLR (pt.249) 561 at 587; Ukaegbu v. Ugoji (1991) 6 N.W.L.R. (pt.196) 127; Adomba v. Odiese (1990) 1 N.WLR. (pt.125) 165'. Egboran v. Akpotor (1997) 7 SC NJ 392.

See also Ukaegbu v. Ugoji (1991) 6 N.W.L.R. (pt.195) SC 127where the Supreme Court made a distinction between the doctrine of estoppel and the special case of relying on a previous Judgment as conclusive of the Issue in dispute, the Special Committee Report is the basis of the decision of the 2nd Respondent to blacklist the Appellant as evidenced in Exhibit 'DM3'. This document was not presented before the Learned trial Judge by exhibiting same in the affidavit. It is a document relevant in the circumstance. The fact that Abutu J. looked at the Special Committee Report in consideration of the Issue before him in another case does not allow any of the parties in the instance case to rely on the evidence led in that case to support the present case which based it on a cause of action that arose after that decision, vis-a-vis when the letter delisting the Appellant was issued to him. The final decision of Abutu J, can be evidence by presenting his Judgment but the evidence led therein cannot be relied on to urge the court in another case to grant the reliefs sought in that case on a different cause of complaint. A party is enjoined to present evidence to support his claim.

It is settled law that the evidence of witnesses in an earlier case cannot be relied upon in another suit by reference to that evidence led in another Judgment wherein the evidence was considered See Hauma v. Akpe Ime Supra.

The Judgment of Abutu J. is relevant as to what was the decision of the court therein and the orders made therein, in order to establish what was the final order of the court. The Report of the committee was a vital and relevant evidence to have been exhibited before the court below. The Learned trial Judge arrived at his decision that Appellant was involved in illegal foreign exchange after reference to evidence in the Judgment of Abutu J. in Exh. 'DM1' without the Report of the Special Committee exhibited as evidence before the court below. There was no evidence before the Learned trial Judge for him to reach that conclusion of illegal transaction which led to the decision confirming the blacklisting. The Learned trial Judge after quoting part of the Judgment of Abutu J. on page 65 of the record held as follows:

'It is not in dispute that the Plaintiff herein and its erstwhile employer, Equity Bank of Nigeria Limited were involved in illegal Foreign Exchange transactions for which the Central Bank of Nigeria can impose sanctions.  Equity Bank of Nigeria limited (plaintiff's erstwhile employer) was penalized in the whooping sum of N293,129 Million and its dealership license suspended indefinitely. It is my humble view that the Plaintiff's involvement in the illegal foreign exchange is serious misconduct in relation to his duties while in the services of Equity Bank of Nigeria Ltd.

It is also my view that the condition of the Plaintiff's serious misconduct in the illegal foreign exchange transactions by a fellow culprit is no bar to the Central Bank of Nigeria exercising its power to sanction the Plaintiff. The Defendants are therefore within their statutory powers under Section 44(2)(d) of Banks and other Financial Institutions Act 1991 (as amended) to blacklist the Plaintiff as done in Exhibit 'DM3' in this suit. Each of the questions for determination is resolved against the Plaintiff. The Plaintiff's claim fails in its entirety, as same is dismissed. No order as to costs'. (underlined mine)

This findings reproduced were not based on evidence presented or led in the court below but rather the trial court relied on the findings in another Judgment in relation to issues bordering on termination of appointment under S.44(4) of BOFIA and threat to Blacklist whilst the present cause of complaint falls under S.44(2) of BOFIA. To adjudge a person to be involved in illegal Foreign Exchange transaction requires prove beyond reasonable doubt other than on a balance of probabilities. Illegal Foreign Transaction connotes criminality. The issue before the court below arose from a cause of action generated by the letter from the Respondent exh. 'DM3' dated 19th September, 2005 wherein he was barred. This exh DM3 gave the Appellant cause of complaint to go to court. This was months after the decision of Abutu J. on a different cause of action founded on threat to bar him in financial industry which findings and evidence made in that case have been heavily relied on by the Learned trial Judge in the court below in arriving at his final decision. Exh. 'DM3' is clear and explicit and I reproduce for emphasis:

'Sep 19th, 2005

BSD/G4.T12/NBN/VOL.11/01  
Mr. Olayato Aribo  
22 Daddy Adediran Street  
Ire-Akari Estate  
Isolo, Lagos.

Dear Sir,

RE: APPEAL FOR CLEARNACE VIDE APPOINTMENT WITH NATIONAL BANK OF NIGERIA LIMITED

Your letter dated July 28, 2005 refers.

We refer to the verdict of the Special Board Committee on Foreign Exchange Transaction of Equity Bank which sat in September and October, 2002. The investigation found you guilty of illegal foreign exchange dealings along with some other senior management staff of the bank.

In line with the provisions of Section 44(2)(d) of the BOFI Act 1991 as amended, you are barred from holding any employment or official position in the financial industry including sitting on the board of any bank or any other financial institution under the supervisory purview of the Central Bank of Nigeria.

Yours faithfully,

H. O. AMAZU

FOR: DIRECTOR OF BANKING SUPERVISION'.

It is indisputable looking at the above reproduced letter that the Learned trial Judge should not have arrived at his decision on the Appellants involvement in illegal Foreign Exchange without looking at the Special Committee Report. The fact that it was not exhibited by either of the parties meant there was no sufficient evidence presented before the Learned trial Judge for him to decide on whether the prayer to deblacklist Appellant should be granted or not.

The Learned trial Judge cannot rely on evidence nor findings of Abutu J. to arrive at his decision that Appellant was involved in an illegal Foreign Exchange Transaction. I must add that speculation means to form an opinion about something without knowing all the details or facts. The Learned trial Judge did form an opinion on the issue of illegal transaction by reliance on only the Judgment in another case when the decision in that other case was not based on the issue of Appellant involvement in illegal Foreign Exchange Transaction. This is not a question of relying on facts already established in another Judgment as parties did not plead issue estoppel nor Res Judicata. The Learned trial Judge was in error when he arrived at his decision without the Special Board Committee Report.

Consequently, Issue Two I find in favour of the Appellant.

Appellant's Issue 3 is distilled from Grounds 3 and 4.The Appellate court is always reluctant to interfere with the findings of fact made by the Learned trial Judge unless it is not based on evidence presented or it is perverse. It is perverse when the trial court took into account matters which it ought not to have taken into account or where it runs counter to evidence. See Yaro v. Arewa Const. Ltd. (2007) 17 N.W.L.R (pt.1063) SC 3334. Ground 3 is founded on the issue of breach of Fundamental Right. It reads thus:

"The Learned trial Judge misdirected himself in Law when he held that Plaintiff was guilty of serious misconduct in relation to his duties while in the service of Equity Bank in the absence of any evidence that Plaintiff was afforded fair hearing on the report purportedly acted upon which constituted a breach of his Fundamental Rights".

Like I had earlier addressed in this Judgment the issue of fair hearing did not arise from the decision of the Learned trial Judge nor leave obtained to raise the Issue. It is also trite that the particulars of the Ground must arise from the main complaint in the ground. See Vincent v. Vincent (2008) 11 N.W.L.R. (pt.1097) 35CA.This Ground 3 is incompetent and is hereby struck out.

Ground 4 reads thus:

'The Learned trial Judge erred in Law when he held inter alia that the phrase serious misconduct used in S. 44 (2) (d) of BOFIA gives the Central Bank of Nigeria the latitude to look at and examine the activities of staff of banks in Nigeria to determine which conduct is serious misconduct'.

The above Ground 4 and Ground 3 are tied to Issue 3 and having held that Ground 3 is incompetent the court cannot now separate Ground 3 from Ground 4 because One Issue is distilled from both, nor can the court rewrite the Brief of counsel under Issue 3 by separating the argument under Issue 3. This is because Appellant has distilled One Issue from Ground 3 & 4. By the Rules of Written Brief parties do not argue Grounds of Appeal, they argue Issues See Christaben Group Ltd. v. Oni (2008) 11 N.W.L.R. (pt.1097) CA 84.

It is settled law that where an issue for determination is distilled from both competent and incompetent Grounds of Appeal, it is not the duty of the court to separate the arguments in respect of the competent ground from arguments in respect of the incompetent grounds. The said Issue would be incompetent in its entirety. Sehindemi v. Gov. Lagos State (2006) 10 N.W.L.R. (pt.987) 1. Consequently, Issue 3 cannot be partially incompetent based on Ground 3, the entire Issue 3 is incompetent and is hereby struck out.

I have found Issue 2 in favour of the Appellant. This Issue 2 is fundamental to this appeal as the Learned Trial Judge erred when he found there was illegal Foreign Exchange Transaction and that the blacklisting was in order in the absence of the Special Committee Board Report tendered as evidence before him. The evidence presented was not sufficient for the Learned trial Judge to have held that the Appellant is involved in illegal Foreign Exchange and that same is serious misconduct. The court below agreed with the Respondents act of blacklisting the Appellant when there is no evidence to support that decision of the court. The onus of prove was on the Respondent to justify the deblacklisting of the Appellant but they failed to discharge that burden. S.44(2)(d) of BOFIA envisages there must be misconduct before a person is blacklisted, therefore for a party to rely on that provision he must establish the misconduct. The Learned trial Judge erred when he confirmed the blacklisting of the Appellant in the light of evidence before the court.

In the circumstance of the forgoing, it is my view that this appeal will succeed in part. I set aside the decision of the Learned trial Judge on the 14/7/08 in respect of Reliefs 1 & 3 on the Originating Summons. In its place I order that the name of the Appellant be de-blacklisted by the Respondent. I award cost of N30,000:00 in favour of the Appellant.

**PAUL ADAMU GALINJE, J.C.A.:**

I read in advance the judgment just delivered by my learned brother, Nwodo, J.C.A., and I agree with the reasoning contained therein and the conclusion arrived thereat. For the same reasons in the lead judgment I hereby allow the appeal in part and subscribe to all the consequential orders therein including order as to cost.

**IBRAHIM MOHAMMED MUSA SAULAWA, J.C.A.:**

I had read, before now, the draft judgment prepared and just delivered by my learned brother, Nwodo, J.C.A. I agree with the reasoning and conclusion reached therein, to the effect that the appeal succeeds in part. The appeal is hereby allowed in part by me.

I abide by all the consequential orders therein.