**TONY ANOZIA**

**V.**

**MRS PATRICIA OKWUNWA NNANI & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 23RD DAY OF JANUARY, 2015

CA/OW/29/2013

**LEX (2015) - CA/OW/29/2013**

**OTHER CITATIONS**

2PLR/2015/140 (CA)

(2015) LPELR-24277(CA)

**BEFORE THEIR LORDSHIPS**

RACHAEL CHIKWE AGBO, JCA

IGNATIUS IGWE AGUBE, JCA

ITA GEORGE MBABA, JCA

**BETWEEN**

TONY ANOZIA - Appellant(s)

AND

(1) MRS PATRICIA OKWUNWA NNANI

(2) IGNATIUS "NNANI" - Respondent(s)

**REPRESENTATION**

APPELLANT IN PERSON - For Appellant

AND

A. O. NWANKWO Esq. - For Respondent

**ORIGINATING COURT(S)**

IMO STATE HIGH COURT (Hon. Justice Goddy Anunihu, Presiding)

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

CONSTITUTIONAL LAW AND HUMAN RIGHTS – RIGHT TO PRIVACY - COURT ORDERED PATERNITY TEST: Whether an adult can be compelled through the order of a Court to undergo a DNA test to prove his paternity – Conditions under which a child may be subjected to a paternity or DNA test

FAMILY LAW – IMPLICATIONS OF A VALID MARRIAGE: Presumptions as to paternity secured under a valid marriage

CUSTOMARY LAW – PRESUMPTION OF PATERNITY IN A VALID MARRIAGE: Attitude of the court towards a mother’s testimony regarding child’s paternity – Presumption of paternity during the pendency of a valid marriage – Paternity of a child born in the year the father died

CHILDREN AND WOMEN LAW:- Paternity of child – Presumption of legitimacy of child born during pendency of marriage – 3rd-party petition for DNA test on a 58 year old man to ‘prove’ paternity – Respect for family bonds, reputation and human dignity of widow in the household of her deceased husband – judicial proceedings tending to impeach that – attitude of courts theret

SCIENCE AN TECHNOLOGY LAW:- Deoxyribonucleic acid, DNA, Testing – Hereditary molecule that contains the genetic code of any organism – Whether suitable test for the determination of the paternity of a 57 year old man

ETHICS – LEGAL PRACTITIONER: Senior member of the bar - abuse of court process –claim founded on an obscene and reprehensive immoral foundation tending towards scandal and blackmail which a sound lawyer would be ashamed to associate with – attitude of court thereto

HEALTHCARE LAW:- Paternity testing – DNA – Technology enabled testing of genetic constitution of an adult to confirm his paternity without his consent – Propriety – Attitude of court thereto

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE - PROOF OF PATERNITY – STANDARD FOR MINOR AND ADULT: The procedure for determining paternity in judicial proceedings – At whose instance a suit for determination of paternity of a child may be brought – Presumptions as to paternity of a child born during the pendency of a marriage - Whether an adult can be compelled to undergo a DNA test to prove the claim of a third party

EVIDENCE – ONUS ON A CLAIMANT TO PROVE CASE – IMPLICATIONS OF THE ADVERSARIAL SYSTEM - INTERLOCUTORY APPLICATION FOR A DNA TEST: Whether a court can issue an interlocutory injunction which effect is to supply evidence in support of the case of the claimant or any party to the proceedings

ACTION - INTERLOCUTORY APPLICATION: Competency of an interlocutory application which effect is to dispense with the substantive suit

APPEAL - ISSUES FOR DETERMINATION – GROUND OF APPEAL – RATIO DECIDENDI: The foundation of a competent issue for determination

WORDS AND PHRASES – “DNA” – “DNA TEST”: Meaning and Applicability in the determination of paternity

NOTABLE PRONOUNCEMENT

“DNA, that is, **"Deoxyribonucleic acid"** is a molecule that contains the genetic code of any organism. It is hereditary and has become a euphemism for scientific analysis of genetic constitution, to determine one's roots. I doubt whether that form of proof can be ordered or is necessary to determine the paternity of a 57 years old man, who does not complain about his parenthood, just to please or indulge a self acclaimed predator, who emerges to distabilize family bonds and posts as a biological father!” ITA G. MBABA, JCA

“What impression was/is the appellant trying to create to the world about himself? Is he trying to project himself as a sex maniac, a promiscuous and adulterous young man cast in the mold of the play boy of the Western world who abdicated his responsibility at the opportune time only to wake up like Rip Van Winkle from his slumber to claim a 57 year old man?” - IGNATIUS IGWE AGUBE JCA

**MAIN JUDGMENT**

**ITA G. MBABA, J.C.A**. (Delivering the Leading Judgment):

This is an appeal against the interlocutory decision of the trial Court in Suit No. HOG/1/2012, delivered on 7/11/2012 by Hon. Justice Goddy Onunihu, dismissing the application by the Appellant for:

(1) An Order setting the suit down for an order of Court referring the parties to a DNA test and

(2) To issue bench warrant for the arrest and detention of the 1st and 2nd defendants for their failure to react or respond to this suit, as prescribed in the High Court Rules.

Appellant in the main suit filed on 24/1/2012, had prayed for:

(1)   A declaration of paternity of the 2nd Defendant to wit: That the claimant is the father of the 2nd Defendant born in 1957 by the 1st Defendant, by reference of the parties to a laboratory for a DNA test and judicial pronouncement made of the result thereof

(2) Consequential order directed to the 2nd Defendant to change to the surname of his Native father, Id est, Anozia Onowu of Umuosu Quarters of Oguta in accordance with Native justice, equity and good conscience." (See Page 1A of the Records).

Appellant had filed his statement of claim, which was stoutly denied by the Defendants, who also filed their defence. Without allowing the hearing of this rather strange claim, Appellant brought an application on 3/7/12, seeking the orders (earlier reproduced in this judgment). And in refusing the application, the learned trial Court said:

"... If the Court is to embark on this exercise (ordering for claimant and 1st Defendant to be subjected to a DNA test to prove that he was responsible for the pregnancy that resulted in the birth of 2nd defendant), the Court will be leaving its role of adjudication to play the role of inquisition. The Court is a trial Court and not an investigative agency or body. What the claimant is asking the Court to do is to assist him to procure the evidence which he requires to prove his case, in view of his claim in this suit. That is not part of the duty of Court. Looked from another perspective, the claimant's motion is intended to invoke the use of an interlocutory application to determine the substantive suit. This is not allowed..." See page 30 of the Records.

That is the Ruling Appellant appealed against as per the Notice of Appeal, filed on 7/11/12, wherein he disclosed 5 grounds of Appeal. Appellant filed his brief on 4/2/13 and distilled five issues for determination, as follows:

(1) Whether there is a more empirical way of determining paternity than reference of parties to a DNA test

(2) Whether from pleadings and depositions of parties and sui generis nature of the controversy. HEARING of oral evidence should ever be contemplated.

(3) Whether the claim in the substantive suit is same as the prayer in the MOTION on Notice thus, invoking the principle of non determination of the substantive suit at the interlocutory stage.

(4) Whether non conformity with the Oaths Act in the affidavit in support of the motion is not deemed to have been waived when the Respondent took steps in the proceedings by filing a counter affidavit and joining issues with the Appellant.

(5) Whether on the non-deposition of facts in opposition of the facts deposed to by the Applicant the Court should not have granted the prayer of the applicant.

The Respondents filed Respondents' brief and Notice of preliminary objection on 19/12/12, which was deemed duly filed on 7/5/14. They were objecting to grounds IV and V of the Appeal, that the grounds did not arise from the decision/Ruling appealed against.

The Respondents distilled a single issue for determination from grounds 1, 2, and 3 of the appeal:

Whether on the facts, state of pleading and circumstances of this case, the Honourable Trial Judge ought to have acceded to the interlocutory prayers of the Appellant before proceeding to the hearing and determination of the substantive suit.

Appellant filed a Reply brief on 19/5/14, to contest the preliminary objection by the Respondents. The parties adopted their briefs, when the appeal was heard on 10/11/14.

The Respondents' objection to grounds IV and V was on the grounds that:

(i)   Ground IV... does not arise from the decision/Ruling appealed against

(ii) Ground V has no "particulars" and does not also arise from the decision/Ruling of the trial Court appealed against.

The Respondent Counsel argued that from the perusal of the Ruling of the trial Court, grounds (IV) and (V) of the appeal did not derive from that decision; that where the basis for attacking a judgment is false or non-existing, the ground of appeal is incompetent. He relied on the case of *FMC Ido -Ekiti Vs Olajide (2011)11 NWLR (pt. 1258)256, ratio 8; Dankolo Vs Rewane Dakole (2011)16 NWLR (PT.1272)22 ratios 14 and 15; Nwamuo Vs Okoro (2006)11 NWLR (Pt.900)*

On the absence of particulars to support the ground of appeal, Counsel relied on *Dikibo Vs Ibuluya (2006) 16 NWLR (Pt.1006) 583.*

In his Reply brief Appellant argued that listing particulars to support a ground of appeal is not necessary in all situations, as particulars are only meant to explain what appellant means in the ground, and so where the ground is self explanatory, particulars are dispensed with. Counsel also argued and submitted that the Ruling was based on issues canvassed and that the issues canvassed influenced the Court's Ruling, whether a particular issue was specifically mentioned in the judgment or not.

Appellant's grounds (IV) and (V) were:

(IV) The trial judge erred in law in striking out the application on the ground that the affidavit in support thereof did not conform to the oaths Act in that the Respondents, having deposed to a counter affidavit and joined issues with the Applicant on the substantive application, CANNOT be heard to attack the peripheral and tangential issue of propriety of affidavit in support.

(V) The trial Judge erred in law in refusing to grant the application, in that the Respondents did not depose to any facts in opposition to the substantive prayer, thus he exercised his discretion in vacuo descending into the arena."  See pages 33 and 34 of the Records.

I have earlier reproduced the grounds upon which the learned trial Court founded its ruling, dismissing Appellants' application, namely; that a grant of the application would amount to the Court assisting the Appellant to procure evidence to prove his case, thereby making the Court to abandon its adjudicatory role and become investigative agency, and that the application was meant to use the interlocutory process to determine the substantive case.  
I have looked at the short Ruling of the trial Court on pages 29 and 30 of the Records, and could see no reference in the Ruling to the concerns expressed by the Appellant in grounds (IV) and (V) of the appeal (which are also the issues (IV) and (V)). That means, the grounds (IV) and (V) and the issues, therefrom, formulated by the Appellant were completely outside the contemplation and purview or reasoning of the trial Court when it reached its conclusions.   
The law is trite that an appeal (the grounds and issue therefrom) must be founded on and derived from a valid complaint touching on the ratio decidendi (live issue) of the decision appealed against. See the case of *Obosi Vs NIPOST (2013) LPELR -21397 CA,* where it was held:

"An issue for determination of appeal must flow from or predicate on the ground(s) of appeal, which, in turn, must derive from or challenge the ratio decidendi or live issue in the judgment appealed against."  See also *Unilorin Vs Olwawepo (2012)52 WRN 42, held 1; Alataha Vs Asin (1999)5 NWLR (pt. 601)32; Punch Nig. Ltd. Vs Jumsum Nig. Ltd. (2011)12 NWLR pt 1260)162*.

It was also held in that case of Obosi Vs NIPOST (Supra) that *"by Order 6 Rule 2 (2) of the Court of Appeal Rules, 2011, where a ground of appeal alleges misdirection or error in law, the particulars and the nature of the misdirection or error shall be clearly stated..."* See also *Olufeagbu Vs AbdulRaheem (2009)18 NWLR (pt.1173)384.*

I therefore agree with the Respondents that the grounds (IV) and (V) and the issues distilled therefrom are strangers to this appeal and ought to be struck out. They are struck out, accordingly.

Arguing the appeal, the Appellant, who appeared in person, on issue 1, submitted that the determination of paternity of a person is a purely scientific process that subsumes oral evidence; that paternity inquiry means the discovery of which male spermatozoa fertilized the egg of the woman, giving rise to pregnancy; that it is a mystery which only science can solve. He argued that under common law, there is presumption of paternity of a child born during the subsistence of marriage, but that is rebuttable; that science has now torn through the facade of nature to present us with an easy solution through DNA. He wondered why the Court refused the easy solution offered by science and was still clamouring for a more difficult path. He relied on the case of Gbadamosi Vs Kabo Travel Ltd (2000) 8 NWLR (pt. 668)248 at 288, where it was held that:

*"Judges are required to keep abreast of time and not to live in complete oblivion of happenings around them. They are to keep pace with the time."*

*Appellant also relied on the case of Leaders & Co Ltd. Vs Kusamotu (2004) 4 NWLR (pt.864)519; Atoyebi Vs Bello (1992)11 NWRL (pt.528)268*

On issue 2, Appellant submitted that no amount of oral evidence can decide, conclusively, the issue of paternity; that whereas one man can engage in sexual acts with a woman for years without the woman conceiving, five minutes of sexual engagement with another man may result in pregnancy. He also wondered about a situation where a woman had sex with one man at 8pm and with another at 10pm, how paternity can be determined by oral evidence in such situation; that the DNA test must be resorted to in such circumstances.

On issue 3, Appellant said

*"Nothing can be more evidence of the Judge's avowed policy of deciding Appellants cases against him than his MISCHIEVIOUS MISCONSTRUING of what the Claimant/Appellant Claims and what he prays in his motion"*;

He argued that in the suit, Appellant was seeking a declaration of paternity of the 2nd Defendant, whereas the relevant prayer in the motion was for *"an order setting the suit down for an order referring the parties to a DNA**test"* He argued that DNA test is only a means of determining paternity not a declaration of paternity in favour of the claimant.

He urged us to resolve the issues for him and allow the appeal.

The Respondents' Counsel, A.O. Nwankwo Esq, arguing the sole issue distilled from grounds 1, 2 and 3, submitted that Appellant's relief in the main suit seeks the trial Court to refer the parties to a laboratory for a DNA test. He referred us to pages 1A and 3 of the Records of Appeal; that it follows that when Appellant filed the motion for an order referring the parties to a DNA test, Appellant was praying the Court to decide and/or grant him the substantive relief via the interlocutory application; he said that Appellant had admitted, in the course of arguing the motion that the relief he sought via the motion, was the same as the relief in the substantive suit. He referred us to page 28 of the Records.

Counsel submitted that it is improper and incompetent for a Court to decide any issue pending in the substantive suit, while considering an interlocutory application; that is, the Court in forbidden to grant a relief being sought in the substantive suit via an interlocutory application. He relied on the case of *First African Trust Bank Ltd. Vs Bassil Ezegbu (1993)6 SCNJ (pt.1)122 at 145; African Continental Bank Plc Vs Obmiamia Bricks & Stone Nig. Ltd. (1993)6 SCNJ 98 at 109; Group Danone Vs Voltic Nig. Ltd. (2008)34**NSCOR 40*

Thus, Counsel submitted that the trial Court was perfectly in touch with the law, when he held that indulging the Appellant by granting the interlocutory application would amount to granting substantive relief via the interlocutory application, and that doing so would compromise the adjudicatory role of the Court. He relied on the case of *Dada Vs Bankole (2008) 33 NDCQR 191 at 209 -210*. He urged us to dismiss the appeal.

**RESOLUTION OF ISSUES**

I think, Appellant's issues 1, 2 and 3 can be taken together under the single issue formulated by the Respondent; that is:

Whether from the facts, state of pleadings and circumstances of this case, the trial Court ought to have acceded to the interlocutory prayers of the Appellant before proceeding to the hearing and determination of the substantive suit.  
Appellant's issues 1, 2 and 3 focused on the need for DNA test as most authentic empirical way of determing paternity and the fact that where DNA is required oral evidence would not be necessary. Appellant also argued that the substance of the motion -"order setting the suit down for an order referring the parties to a DNA test," is different from the relief in the main suit, which was:

"Declaration of Paternity of the 2nd Defendant... by reference of the parties to a laboratory for a DNA test and judicial pronouncement made of the result thereof."

I must observe that the entire argument by the Appellant did not appear to address the real issue(s) thrown up by the Ruling of the learned trial Court, which the appeal was meant to contest. The trial Court, in refusing the Application for "an order setting the suit down for an order referring the parties to DNA test," had held that Appellant was trying to make the Court an investigation agency and was seeking to use the Court to procure evidence for use in the case; that, that was not permissible, especially as that would amount to Appellant using the interlocutory application to realise the relief he sought in the main suit! Appellant's arguments never addressed those issues but rather tried to argue, forcefully, on the need to resort to DNA test as the scientific means of determining paternity in modern times. Appellant argued that Judges are required to keep abreast of time and not to live in complete oblivion of happenings around them; that they are to keep pace with the time. He relied on the case of *Gbadamosi Vs Kabo Travel Ltd. (2000)8 NWLR (pt.668)243 at 288.*  
Appellant even argued, under issue 2, that no amount of oral evidence can decide, conclusively, the issue of paternity, and queried:

"What of a situation where a woman had sex with one man at 8pm and with another at 10pm. How is the paternity to be determined through HEARING? IT WILL BE IMPOSSIBLE. That is why DNA must be restorted to." (See page 3 of the Appellant's Brief).

Of course, by so arguing, Appellant rather established the fears of the trial judge, that Appellant wanted to employ the Court to procure evidence for him to use for the substantive suit, and that he wanted to get the claims in the substantive suit determined via the interlocutory application!

By insisting that the interlocutory application ought to have been granted, and implying that DNA test was indispensable in the circumstances, as oral evidence would never be conclusive to determine paternity of the 2nd Defendant, Appellant was admitting he had no evidence to establish his claim and so needed the Court to assist him extract a possible evidence from the Defendants, by ordering them to submit to DNA test to find possible evidence to support his claim. That means his whole case was founded on speculation and assumption that if the DNA test was ordered, the result was likely to favour him - Appellant!

Certainly, Appellant cannot be allowed such whimsical past time, as it has no place in law. It is unimaginable for a Court to order two unwilling adults or senior citizens to submit to DNA test, in defiance of their fundamental rights to privacy for the purpose of extracting scientific evidence to assist Appellant to confirm or disprove his wish that the 2nd Defendant -a 57 year old man -is his child, of an illicit amorous relationship!

I think Appellant's claim at the Court below, founded on an obscene and reprehensive immoral foundation, was a scandal and blackmail, which a sound lawyer would be ashamed to associate with. He had averred in paragraphs 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18 and 19, as follows:

*"(4) The claimant... and his friend, Godwin Agaba... soon after writing their WAEC examination, were walking along St. Mary's Church Avenue, from the new layout to the old town in January or February 1957 while the 1st Defendant was coming from the opposite direction*

*(5) After greetings, the claimant and his friend continued their walk and she continued in her direction*

(6) After few steps, the 1st Defendant called the Claimant.

(7) The 1st Defendant told the claimant that she would visit him the following day.

(8) The Claimant had a room in his uncle R.S. Oputa's house at Eneke Road, Oguta.

(9) When the 1st Defendant came, the claimant naturally made love to her as that was her purpose for the visit.

(10) The Claimant observed at the time of the love making that her 'period' had not quite finished -a fact which accounts for the Oyibo complexion of the 2nd Defendant.

(11) Soon after the love making, the Claimant who did not place any premium on the possible affect (sic) of his act and his friend travelled to Port Harcourt.

(12) From Port Harcourt, the Claimant travelled to Lagos, to Moscow, to London, only touching Oguta in 1966

(13) It was then that the 1st Defendant told the Claimant that the 2nd Defendant is his son.

(14) The claimant did not lay claim on the 2nd Defendant because he was yet to stand on his feet and was blinded by ambition for world domination.

(15) By 1957 when the love making took place the husband of the 1st Defendant was terminally ill and could probably not perform sex act and the 2nd Defendant (sic) was only about 25 years and sex starved.

(16) Now that the claimant is standing on his two feet, he wants to claim what is his.

(17) The husband of the 1st Defendant died later in that same 1957"

Of course, in the joint statement of defence by the 1st and 2nd Respondents (mother and son), they denied the averments of the Appellants, and the 1st Defendant denied ever having sexual intercourse with the Appellant, and averred that her husband was the father of the 2nd Respondent, having impregnated her sometime in 1957 and the 2nd Respondent was born and named by her husband before his (husband) later died in 1957, and the 2nd Respondent was raised up and trained by his father's family, and that 'oyibo' complexion is common in her family line and the husband's family line.

I will resist the temptation to comment on the substance of this case, since the same is yet to be heard, but I think I can [bare] my mind on the brazen, scandalous conduct of the Appellant, which portrays his high moral turpitude, in seeking to force a 57 year old man to take him (Appellant) as father, trying to use law to blackmail him (2nd Respondent) and his mother (1st Respondent) to accept Appellant, and that under a foundation that appears flawed and abominable.

Since the Appellant admits the 1st Respondent was a married woman when he allegedly had sexual intercourse with her, and the child was born within wedlock to 1st Respondent's husband, can he make such claims? The law has always acknowledged the right of a woman to say who the father of her child is, and of course, where a child is born within wedlock, the presumption is conclusive, that the child is the seed or product of the marriage. Appellant even admitted that much, when he submitted on page 3 of the Appellant's Brief, as follows:

"At common law, there is a presumption of paternity of a child born during the subsistence of marriage."

DNA test has to do with the use of genetic analysis, scientifically, to determine the paternity of a child, i.e, whose male spermatozoa fertilized the egg of a female, and, I think, this is usually applicable and relevant where there is dispute as to the paternity of a child, or where there is disputing claims or uncertainty as to the paternity of an individual,

See the case of *Olayinka Vs Adeparusi & Anor (2011) LPELR 8691 CA*, where this Court, per Denton West JCA held:

"... If a party is claiming paternity, it is trite that a Court of law should be allowed to determine same on proof of evidence relating to paternity, which could only be done by referral for a DNA test of the parties involved. After such test the Court has a duty to declare, the actual father of the child in dispute in consonance with the evidence at its disposal.

DNA, that is, ***"Deoxyribonucleic acid"*** is a molecule that contains the genetic code of any organism. It is hereditary and has become a euphemism for scientific analysis of genetic constitution, to determine one's roots. I doubt whether that form of proof can be ordered or is necessary to determine the paternity of a 57 years old man, who does not complain about his parenthood, just to please or indulge a self acclaimed predator, who emerges to distabilize family bonds and posts as a biological father!

I think it is only the 2nd Respondent (a mature adult) that can waive his rights and/or seek to compel his parents (or those laying claim to him) to submit to DNA test to prove his root. Of course, where one is a minor (not mature adult) and his paternity is in issue, the Court can order the conduct of DNA test, in the overall interest of the child, to ascertain where he belongs. That is not the situation in this case, where Appellant has a duty to establish his claim on the 2nd Respondent, independently, and to produce such evidence to the Court. Of course, if he elects to use the DNA test, to establish his claim it is up to the Appellant to go for it on his own, and/or woo the Respondents to do so, without a resort to the coercive powers of the Court, to compel his adversary to supply him with the possible evidence he needs to prove his case. The law is that, he who asserts must prove! See section 131 and 132 of the Evidence Act 2011.

I resolve this issue against the Appellant and hold that the Appeal is, completely, devoid of merit. It is, accordingly, dismissed with One Hundred Thousand Naira (N100,000.00) cost against the Appellant to the Respondents.

**RAPHAEL CHIKWE AGBO, J.C.A.:**

I have read with great pleasure in draft the highly seminal lead judgment, delivered by my learned brother **Mbaba JCA** which ruling I agree completely with both in reasoning and conclusion. In Nigeria the judicial system is [adversarial], thus he who alleges proves.

In this appeal the Appellant is challenging the refusal of the trial court in an interlocutory application to order the 2nd Respondent to subject himself to a medical procedure which he calls DNA test to enable the Appellant to prove that the 2nd Respondent is an illegitimate child. The Respondents have no duty to help the Appellant to establish his case. That remains squarely his responsibility. The Appellant was asking the trial court to encroach on the privacy of a citizen, a right entrenched by S.34 of the constitution of the Federal Republic of Nigeria. The prayer is scandalous in the extreme and must be deprecated. The trial judge was right in refusing the application. I also dismiss this appeal and abide by all the consequential orders made by my learned brother in the lead judgment.

**IGNATIUS IGWE AGUBE, J.C.A.:**

I have the read the lead judgment of my learned brother **Mbaba, JCA** and the facts of this case with utmost consternation and horror that in this twenty first century, a gentleman of the Bar can so unabashedly rake up such putrid, scandalous and ridiculous claim before a Court of law. The averments in paragraphs 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19 and 26 paint the picture of a new gorgon that is destructive to sight as well as the mind and to borrow the legendary Shakespeare, "my young remembrance cannot parallel a fellow" to those averments as tongue nor mouth cannot condemn nor name them because of their offensive nature.

My learned brother could not have put it better that the Appellant's claim was founded on an obscene and reprehensible immoral foundation as well as a scandal and black mail of unimaginable proportions that a lawyer worth his salt should not only be ashamed to associate with it but ought to touch with a very long pole, if at all.

What impression was/is the appellant trying to create to the world about himself? Is he trying to project himself as a sex maniac, a promiscuous and adulterous young man cast in the mold of the play boy of the Western world who abdicated his responsibility at the opportune time only to wake up like Rip Van Winkle from his slumber to claim a 57 year old man?

In any case, he has admitted in his pleading that by the time he had the amorous relationship with the 1st Respondent, the 1st Respondent was married and the product of the relationship was born within wedlock to the 1st Respondent's husband. Having so admitted, what then is the need for the DNA test? I agree with my Lord that at this juncture of the 2nd Respondent's age it is only he who can waive this right to the paternity of the one who brought him to this world but who is now dead and/or agree to subject himself to DNA test where there is no rival claim to his paternity except the embarrassing claim of the Appellant.

I too am in tandem with the decision of the Lower Court that is will tantamount to abdicating its adjudicatory role to now play the role of an inquisitor. If the Appellant's application were to be granted. The Appellant truly was calling on the Lower Court and indeed this Court to assist him procure evidence with which to prove his case in view of this claim to the paternity of the 2nd Respondent. The Lower Court cannot as it rightly held compel the 1st and 2nd Respondents to go for DNA test when the substantive suit has not been heard. Or in the alternative as my learned brother in the lead judgment has reasoned, it is left for the Appellant to woo the Respondents to do so without resort to the coercive powers of the Court. Alternatively still, since the Respondents failed to respond to this Substantive Claim having been duly served, he could file a motion for judgment if he is sure of the efficacy of this claim.

I shall also dismiss this frivolous, embarrassing and vexatious Appeal with N100,000.00 costs against the Appellant and in favour of the Respondents.