**AIMS FOODS LIMITED**

**v.**

**OLUFEMI FADEYI**

IN THE COURT OF APPEAL OF NIGERIA

ON THURSDAY, THE 6TH DAY OF FEBRUARY, 2020

CA/L/1007/18

**LEX [2020] - CA/L/1007/18**

**OTHER CITATIONS**

3PLR/2020/1 (CA)

(2020) LPELR-49521(CA)

**BEFORE THEIR LORDSHIPS**

MOHAMMED LAWAL GARBA, JCA

JOSEPH SHAGBAOR IKYEGH, JCA

TIJJANI ABUBAKAR, JCA -end!

**BETWEEN**

AIMS FOODS LIMITED - Appellant(s)

AND

OLUFEMI FADEYI - Respondent(s)-end!

**ORIGINATING COURT**

HIGH COURT OF LAGOS STATE, IKEJA DIVISION, LAGOS -end!

**REPRESENTATION**

K. Isola-Osobu with him, A. Toba - For Appellant

AND

Bayo Yusuff - For Respondent-end!

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

DEBTOR AND CREDITOR – RECOVERY OF DEBT - SUMMARY JUDGMENT PROCEDURE:- Procedure for recovery of due debt – Where parties are ad idem on rate of interest chargeable on debt – Duty of court thereto

DEBTOR AND CREDITOR – RECOVERY OF DEBT - SUMMARY JUDGMENT PROCEDURE:- Essence of the summary judgment procedure in a Claim relating to a debt or liquidated money demand – Distinction from a default judgment procedure - Similarity with the undefended list procedure – When would be deemed properly invoked

DEBTOR AND CREDITOR – RECOVERY OF DEBT - SUMMARY JUDGMENT PROCEDURE:-Usual mode of determining matters under the procedure – Placing of Affidavit evidence placed before a Court by the parties which contain all the relevant and material facts of the claim with specific and sufficient particulars to enable the Court to determine it without the need for oral evidence or proof – Where defendant files no pleadings to challenge or controvert the facts contained in the Statement of Claim and did not also file a Counter Affidavit to dispute and controvert the facts deposed to in the Affidavit in support of the motion for judgment – Legal effect of

DEBTOR AND CREDITOR – RECOVERY OF DEBT:- General rule that pre-judgment interest claimed must be specifically pleaded and sufficiently proved by a claimant before it can properly be granted or awarded – Exception thereto

ALTERNATIVE DISPUTE RESOLUTION – ARBITRATION:- Matter referred to Arbitration – Motion brought before a Court to refer a matter already under arbitration before arbitration – Where deemed superfluous – Whether can sustain a claim for denial of fair hearing

COMMERCIAL LAW – CONTRACTS:- Principle that parties are bound by their agreement – Where parties are contractually ad idem as to the rate of Prejudgment interest payable on a debt – Whether would override the requirement for a party to plead and prove a claim for prejudgment interest - Order 11, Rule 5(2) of the Lagos State High Court Civil Procedure Rules, 2012 in review

CONSTITUTIONAL LAW – JUDICIARY AND JUSTICE ADMINISTRATION:- Section 294(1) of the 1999 Constitution (as amended) – Duty on all Courts of law in Nigeria; particularly superior Courts of record established directly under the Constitution, to deliver their judgments/decisions in writing not later than ninety (90) days after conclusion of evidence and final addresses in all cases/matters brought before them and furnish all the parties with duly authenticated copies thereof within seven (7) days of the delivery thereof – Nature of – Whether allows exercise of court discretion - Breach or non-compliance therewith - Section 294(5) – When appellate court would interfere therewith

CONSTITUTIONAL LAW – JUDICIARY AND JUSTICE ADMINISTRATION:- Section 294(1) of the 1999 Constitution (as amended) – Judgment delivered outside of the constitutionally prescribed timeline parameters – When miscarriage would be deemed to have been occasioned - Burden of proof thereto – On whom lies

CONSTITUTIONAL AND HUMAN RIGHTS LAW - RIGHT TO FAIR HEARING:- Principles of fair hearing – Basis and essence of – Denial of - Duty of court thereto – Knee-jerk invocation of same by parties/counsel – Attitude of court thereto

CONSTITUTIONAL AND HUMAN RIGHTS LAW - RIGHT TO FAIR HEARING:- Principle that a Court of law has the judicial and judicious duty to hear and pronounce on all pending applications or motions properly and duly brought before it in the course of proceedings, hearing or trial of a case – Failure thereto – Whether would constitute a breach or denial of the right to fair hearing of the party who filed such application/motion

ETHICS – LEGAL PRACTITIONER – DUTY OF DILLIGENCE:- Failure of Counsel to apprehend and satisfy the requirements of the Law relating to miscarriage of justice arising from the delivery of judgment outside of the constitutionally prescribed timeframe – Implications for justice administration

ETHICS – LEGAL PRACTITIONER – MISUSE OF THE PRINCIPLE OF FAIR HEARING: Court’s Attitude of Court to the wrongful invocation of the constitutional principle of fair Hearing (per Tobi JSC cited with approval in current case):

“Learned Counsel for the appellant roped in the fair hearing principle. I have seen in recent time that parties who have bad cases embrace and make use of the constitutional provisions of fair hearing to bamboozle the adverse party and the Court, with a view to moving the Court away from the live issues in litigation. They make so much weather and sing the familiar song that the constitutional provision is violated or contravened. They do not stop there. They raise the defence in the most inappropriate cases because they have nothing to canvas in favour of their case. The fair hearing provisions in the Constitution is the machinery or locomotive of justice, not a spare part to propel or invigorate the case of the user. It is not a casual principle of law available to a party to be picked up at will in a case and force the Court to apply it to his advantage. On the contrary, it is a formidable and fundamental provision available to a party who is really denied fair hearing because he was not heard or that he was not properly heard in the case. Let the litigants who have nothing useful to advocate in favour of their cases leave the fair hearing constitutional provision alone because it is not available to them just for the asking.”[Adebayo v. A. G., Ogun State (2008) 7 NWLR (Pt. 1085) 201]

“Counsel, quite a legion, find the fair hearing principle duly entrenched in the Constitution as a pathway to success whenever they are in trouble on the merit of the case before the Court. Some resort to it as if it is a magic wand to cure all ills of the litigation. A good number of counsel resort to the principle even when it is inapplicable in the case. The Constitutional principle of fair hearing is for both parties in litigation. It is not only for one of the parties. In other words, fair hearing is not a one-way but a two-way traffic in the sense that it must satisfy a double carriage-way, in the context of both the plaintiff and the defendant or both the appellant and the respondent. The Court must not invoke the principle in favour of one of the parties to the disadvantage of the other party undeservedly. The fair hearing principle formerly entrenched in Section 33 of the 1979 Constitution, and now Section 36 of the 1999 Constitution, is not for the weakling, the slumberer, the indolent or the lazy litigant, but it is for the party who is alive and kicking in the judicial process by taking advantage of the principle at the appropriate time. The principle is not available to a party who sets a trap in the litigation process against the Court and accuse the Court of assumed wrong doing even when such so-called wrong doing is, as a matter of fact, propelled or instigated by the party, through his Counsel.” Per NIKI TOBI JC, Newswatch Comm. Ltd. v. Atta (2006) 4 SC (Pt. II) 114, (2006) 12 NWLR (Pt. 993) 144-end!

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE:- Affidavit evidence filed under summary judgment procedure – Where not controverted or challenged - so deemed to have admitted all those facts, the issue or question of proof of the interest on the sum or amount claimed did not arise since the law is that a fact admitted requires no further proof.

JUDGMENT AND ORDER - DELIVERY OF JUDGMENT:- Time frame within which judgment of the court must be delivered – How computed - Judgment delivered outside the time frame – Legal effect - Party alleging miscarriage of justice by reason of a delay in the delivery of judgment – Duty thereon

JUDGMENT AND ORDER - SUMMARY JUDGMENT PROCEDURE:- Miscarriage of justice – What constitutes – Duty on party asserting thereof - Nature of evidence required to establish same

JUDGMENT AND ORDER - SUMMARY JUDGMENT PROCEDURE:- Principles governing summary judgment procedure - Summary judgment in the sum claimed by a party along with the interest agreed to by parties – Proper treatment of claim thereto pursuant to the provisions of Order 11, Rules 1 and 5(2) of the Lower Court's Civil Procedure Rules, 2012 (2012 Rules)

JUDGMENT AND ORDER - SUMMARY JUDGMENT PROCEDURE:- Nature of as a judgment on the merits of case –Distinction from a default judgment

JUDGMENT AND ORDER – PRE-JUDGMENT INTERESTS:- General requirements for the grant of a pre-judgment interest claimed – Need for same to be specifically pleaded and sufficiently proved by a claimant - Where by agreement or contract, parties expressly agree that interest shall be chargeable and even freely expressed and stipulated the rate of such interest accruable and payable in their transaction- Duty of court thereto

WORD AND PHRASES:- “Summary judgment” – Meaning of

WORD AND PHRASES:- “Miscarriage of justice” – Meaning of-end!

**CASE SUMMARY**

ORIGINATING FACTS/CLAIMS

The Plaintiff/Respondent claimed for the following before the Lower Court which that Court decided in the Ruling of 7th June, 2018: -

“B. An Order compelling the Defendant to immediately pay over to the Claimant the sum of N96,572,779 (Ninety Six Million, Five Hundred and Seventy Two Thousand, Seven Hundred and Seventy Nine Naira).

C. Pre-judgment Interest on the said N96,572,779 (Ninety Six Million, Five Hundred and Seventy Two Thousand, Seven Hundred and Seventy Nine Naira) at 18% p.a. reckoned from 17th September, 2015 to the date of judgment in this Suit.

D. Post Judgment interest on the said N96,572,779 (Ninety Six Million, Five Hundred and Seventy Two Thousand, Seven Hundred and Seventy Nine Naira) at 10% p.a. reckoned from the date of Judgment in this Suit to the date of full and final liquidation of the Defendants outstanding indebtedness to the Claimant.”-end!

DECISION(S) APPEALED AGAINST

Trial entered judgment for the Plaintiff as claimed. The ruling of the trial Court was, however, given about two weeks outside of the ninety (90) days after final addresses as prescribed in Section 294(1) of the Constitution, a breach on the part of the Court that formed one of the issues presented before the appellate Court. -end!

ISSUE(S) FOR DETERMINATION ON APPEAL

APPELLANT’S ISSUES FOR DETERMINATION

“1. Whether the refusal of the lower Court to hear and determine the Appellants motion on notice dated the 4th of April, 2017 before giving its judgment is not a denial of the Appellants Fundamental Right to fair hearing guaranteed by Section 36 of the Constitution. (Distilled from Ground 3).

2. Having regard to the claim of the Respondent for interest, whether the lower Court was right in granting his motion on notice dated 9th November, 2016 for summary judgment. (Distilled from Ground 2)

3. Whether the judgment of the lower Court delivered on the 7th day of June, 2018 outside the 90 days limited by Section 294(1) of the 1999 Constitution as amended is null and void.” -end!

RESPONDENT’S ISSUES FOR DETERMINATION

[Similar issues were also filed by Respondent]-end!

COURT’S ADOPTED ISSUES FOR DETERMINATION

[Court adopted the issues as framed by Appellant]-end!

**MAIN JUDGMENT**

MOHAMMED LAWAL GARBA, J.C.A. (Delivering the Leading Judgment):

On the 7th June, 2018, the High Court Lagos State, Ikeja Division (Lower Court) granted the Respondents motion of 9th November, 2016 for summary judgment against the Appellant, who being dissatisfied therewith, brought this appeal vide the Notice of Appeal dated the same date; i.e. the 7th June, 2018, on three (3) grounds.

In the Appellants brief filed on 30th August, 2018, an issue was formulated from each of the grounds for determination in the appeal as follows: -

1. Whether the refusal of the lower Court to hear and determine the Appellants motion on notice dated the 4th of April, 2017 before giving its judgment is not a denial of the Appellants Fundamental Right to fair hearing guaranteed by Section 36 of the Constitution. (Distilled from Ground 3).

2. Having regard to the claim of the Respondent for interest, whether the lower Court was right in granting his motion on notice dated 9th November, 2016 for summary judgment. (Distilled from Ground 2)

3. Whether the judgment of the lower Court delivered on the 7th day of June, 2018 outside the 90 days limited by Section 294(1) of the 1999 Constitution as amended is null and void. (Distilled from Ground 31).

Similar issues are also said to arise for decision in the Respondents brief filed on the 5th October, 2018 and since the issues raised by learned counsel for the parties are substantially the same, I would use the formulation by the Appellant in the determination of the appeal.

I intend to deal with issue 3 first, Issue 1 and then Issue 2.

Issue 3: Appellants Submissions:

The submissions are that the Respondents motion for summary judgment was heard by the Lower Court on the 22nd February, 2018, and judgment reserved for delivery on the 30th May, 2018, but was eventually delivered on 7th June, 2018, after a period of 103 days from the 22nd February, 2018, in contravention of the provisions of Section 294(1) of the 1999 Constitution (as amended). The provision of Section 294(1) of the Constitution was set out and the case of Ojokolobo V. Alamu (1987) LPELR -2392(SC) which dealt with the provisions of Section 258(1) of the 1979 Constitution (said to be im pari materia with the provision of Section 294(1) of the 1999 Constitution) was cited in support of the argument that non-compliance with the provision renders the judgment null and void.

It is also the argument of Counsel that the Appellant suffered a miscarriage of justice since the Lower Court also failed to hear its pending application to refer the matter for Alternative Dispute Resolution (ADR) and breached the principles governing summary judgment procedure. NNPC v. Zaria (2014) LPELR-22362(CA), College of Education, Ekiadolor V. Obayagbona (2016) LPELR-40154 (CA) and Akpan V. Union (1999) 7 SC (Pt. II) 13 were referred to for the argument and the Court is prayed to resolve the issue in Appellants favour.

Respondents Submissions:

The issue is also Respondents Issue 3 and the arguments on it are to the effect that the facts in the case of Ojokolobo V. Alami (supra) relied on by the Appellant are different, it is in apposite and does not support the Appellants case. Reference was then made to page 160A of the Record of Appeal whereat the Lower Court responded to the Respondents oral application for re-adoption of final addresses on the basis that delivery of the judgment was outside the ninety (90) days prescribed by the Constitution. It is submitted that the position of the Lower Court was right since no oral evidence was led but only documents were filed in the motion for judgment and that because the Appellants Counsel agreed with the position by the Lower Court expressly, it is now strange for the Appellant to allege miscarriage of justice, without proof thereof as required in the case of Atungwu V. Ochekwu (2013) 14 NWLR (Pt. 1375) 605 @ 624-5. The case of Beks kimse Nigeria Limited V. Africa (2016) 1 NWLR (Pt. 1494) 456 @ 473 was also cited on the requirement of miscarriage of justice occasioned by non-compliance with the provisions of Section 294(1) of the Constitution in order for judgment to be declared null and void.

According to Counsel, the Record of Appeal shows that the Lower Court considered and evaluated all the documents filed in the Respondents motion and the Appellant who failed to file any process cannot assume the role of a victim of miscarriage of justice.

Resolution:

Pursuant to the provisions of Section 294(1) of the 1999 Constitution (as amended), all Courts of law in Nigeria; particularly superior Courts of record established directly under the Constitution, have a legal duty and a binding judicial obligation to deliver their judgments/decisions in writing not later than ninety (90) days after conclusion of evidence and final addresses in all cases/matters brought before them and furnish all the parties with duly authenticated copies thereof within seven (7) days of the delivery thereof.

The deliberate employment or use of the word shall in the provision takes away and manifestly excludes or removes any discretion, option or choice in compliance by a Court with the mandatory constitutional command that is exhortatory in tenor.

Section 1(1) of the 1999 Constitution (as amended) provides that: -

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

See also Utih V. Onoyivwe (1991) 1 NWLR (Pt. 166) 166, Achineku V. Ishagba (1988) 4 NWLR (Pt. 89) 411, Maiwada V. FBN, Plc. (1997) 4 NWLR (Pt. 500) 497, Bakoshi v. Chief of Naval Staff (2004) 5 NWLR (Pt. 896) 268, Onochie V. Odogwu (2006) 2 SCNJ, 96 @ 114, (2006) 6 NWLR (Pt. 975) 65 @ 89-90, Nwankwo V. YarAdua (2010) 12 NWLR (Pt. 1209) 578 @ 589.

Failure or refusal by a superior Court of record in Nigeria to abide by, comply with or obey the provision in any matter/case would constitute and amount to a contravention and breach of the Constitution by such a Court which renders the failure and refusal unconstitutional. Ordinarily, a breach or non-compliance with or contravention of the Constitution or any of its provisions by a Court of law in the conduct of its judicial proceedings, would render the proceedings and any bye-product or outcome thereof, legally null and void for being unconstitutional. Ifezue v. Mbadugha (1984) 1 SCNLR, 427, Knight Frank & Rutley Nigeria Limited v. A.G. Kano State (1998) 4 SC, 251, (1998) 7 NWLR (Pt. 556) (Pt. 556) 1, Adediran v. Interland Transp. Limited (1999) 9 NWLR (Pt. 614) 155, Adisa v. Oyinwola(2000) 1 NWLR (Pt. 674) 116, Attorney General, Abia State v. Attorney General of the Federation (2002) 6 NWLR (Pt. 673) 264. However, in its wisdom, the Constitution in Section 294(5), provides that:-

(5) The decision of a Court shall not be set aside or treated as a nullity solely on the ground of non- compliance with the provisions of subsection (1) of this section unless the Court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof.

These provisions simply and expressly say that non-compliance with, contravention or breach of the provision of subsection (1) of the section by a Court of law, shall not alone, be a ground for treating the decision of a Court delivered in the breach or non-compliance as a nullity or be set aside, unless an appellate Court is satisfied that a miscarriage of justice was suffered by reason thereof. In other words, even if a decision of a Court was delivered in breach, contravention of or non-compliance with the provisions of Section 294(1) which prescribe and stipulate that the decision shall be delivered within and not later than ninety (90) after the conclusion of evidence and final addresses, such a decision shall remain valid and legally effective, unless the appellate Court reviewing the decision is satisfied that the party complaining of the non-compliance has suffered a miscarriage of justice thereby, when it shall be declared a nullity and set aside on that ground, alone. By these provisions, a decision delivered by a Court of law outside or after the expiration of the period of ninety (90) days prescribed in Subsection (1) of Section 294, is not automatically a nullity or invalidated by the non-compliance alone unless the appellate Court is satisfied that a miscarriage of justice was occasioned and suffered by the party complaining of the non-compliance.

This is the position stated and restated by Supreme Court in the cases of Atungwu v. Ochekwu (2013) 14 NWLR (Pt. 1375) 605, Akoma v. Osenwokwu (2014) 11 NWLR (Pt. 1419) 462, Alimi v. Kosebinu (2016) 17 NWLR (Pt. 1542) 337, among several other cases, as well as by this Court in many cases such as SPDCN v. Commissioner for Land & Housing (2013) 11 NWLR (Pt. 1310) 11 and Total Nigeria Plc v. New Cargo Handling Company Limited (2015) 17 NWLR (Pt. 1489) 558.

In the premises of these authorities, the law is now that an appellant who challenges a decision of a Lower Court on the ground of non-compliance with or breach of the provisions of Section 294(1) of the Constitution for being delivered outside or after the expiration of ninety (90) days of the conclusion of evidence and final addresses, has the legal duty and burden not only to prove the non-compliance; which is a matter of fact, but also satisfy the appellate Court that he indeed, suffered a miscarriage of justice in the case by reason of the non-compliance in the delivery of the decision.

In the present appeal, it is not an issue joined by the parties that the summary judgment by the Lower Court was delivered outside and after the expiration of the period of ninety (90) days after the final addresses in respect of the Respondents motion of 9th November, 2016 were adopted on the 22nd February, 2018.

The fact, therefore, that the decision/Ruling was not delivered in compliance or in accordance with the prescription of time in the provision of Section 294(1) is not in dispute or require proof or further proof by the Appellant. The first condition or limb of the judicial requirement of proof of the non-compliance with the provisions has been satisfied or satisfactorily met by admission or concession of the parties. See: Section 123 of the Evidence Act, 2011, Oguanuhu v. Chiegboka (2013) 6 NWLR (Pt. 1357) 588, Amico Const. Company Limited v. Actec International Limited (2015) 17 NWLR (Pt. 1487) 146, Cole v. Jibunoh (2016) 4 NWLR (Pt. 1503) 499, John Holt, Plc v. Allen (2014) 17 NWLR (Pt. 1437) 443.

The next conjunctive condition in the application of the provision of Section 294(1) which is stipulated in subsection (5) is that the Appellant shall satisfy this Court that it suffered a miscarriage of justice by reason that the Lower Courts decision/Ruling was delivered in breach of non-compliance with Section 294(1), in the peculiar circumstances of the case.

One may then ask the question as to what, generally, is a miscarriage of justice in the judicial proceedings of a Court of law? In the Blacks Law Dictionary, 9th Edition at page 1088, the phrase miscarriage of justice is defined as A grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime. Also termed failure of justice.

In the 5th Edition of the Blacks Law Dictionary, cited by Olatawura, JSC in the case of Sanusi v. Ameyogun (1992) 1 NWLR (Pt. 237) 527, the term was defined as: -

Decision or outcome of legal proceedings that is prejudicial or inconsistent with substantial right of party.

Then, Tobi, JSC, in his proficiency, defined the concept in the case of Gbadamosi v. Dairo (2007) 1-2 SC (Pt. II) 157, (2007) 3 NWLR (Pt. 1021) 282, as follows: -

Miscarriage of justice connotes decision or outcome of legal proceeding that is prejudicial inconsistent with the substantial rights of a party. Miscarriage of justice means a reasonable probability of more favourable outcome of a case for the party alleging it. Miscarriage of justice is unjustice done to the party alleging it.

The Learned Law Lord then said: -

The burden of proof is on the party alleging that the justice has been miscarried.

Miscarriage of justice has also been described as simply justice miscarried, failure of justice, failure on the part of the Court to do justice, it is justice misapplied, mis-appreciated, misappropriated, an ill-conduct on the part of the Court which amounts to injustice, such a departure from the rules which permit judicial procedure as to make that which happened not in the proper sense of the word, judicial procedure at all.

See: Nnajiofor v. Ukonu (1986) 4 NWLR (Pt. 36) 505, Larmie v. D.P.M.S. Limited (2005) 12 SC (Pt. 1) 93, Akayepe v. Akayepe (2009) 11 NWLR (Pt. 1152) 217, Jinadu v. Esurombi-Aro (2005) 14 NWLR (Pt. 44) 142 @ 184, Onagoruwa v. The State (1993) 7 NWLR (Pt. 303) 49, Okonkwo v. Udoh (1997) 9 NWLR (Pt. 519) 16, Irolo v. Uka (2002) 14 NWLR (Pt. 786) 195, Oguntayo v. Adelaja (2009) 15 NWLR (Pt. 1153) 150 @ 186.

From the definitions of miscarriage of justice, it is determined and dependent on the peculiar facts and circumstances of a case and the legal duty of proof is on the party alleging that the justice of his case has been miscarried such that it has failed in the case.

The party has to satisfy an appellate Court that from the record of the proceeding conducted by a trial/Lower Court, it has failed to do justice by use of a procedure that would make what happened, in the proper sense, not a judicial procedure, thereby reaching an unfavourable and unfair outcome in the case.

Has the Appellant demonstrated from the record that there was and it indeed suffered a miscarriage of justice in the circumstances of the case? As shown before now, all that the Appellant said in the Brief is that it suffered a miscarriage of justice by reason of the Lower Courts non-compliance with the provisions of Section 294(1) along a failure to hear the motion of 4th April, 2017 and breach of principles governing summary judgment.

On the non-compliance with the provisions of Section 294(1), the law as pointed out in the judicial authorities cited on the point, non-compliance alone; without more, does not constitute miscarriage to nullify a decision, under the provision of Section 294(5).The failure to hear the Appellants motion of 4th April, 2017, on its part, is the Appellants separate and distinct issue 1 in the appeal.

As for the alleged breach by the Lower Court of the principle governing summary judgment, the Appellant did not demonstrate how or in what manner the alleged breach occurred or happened from the record of the proceedings.

The Apex Court, has given an insight into what may constitute a miscarriage of justice in respect of non-compliance with the provision of Section 294(1) and the duty of a party alleging it to prove same before an appellate Court. In Akoma v. Osenwokwu (supra), Galadima, JSC, in the lead judgment stated, at page 489 of the Report, that: -

Firstly, the fact that Section 294(1) of the 1999 Constitution makes it mandatory for a Court to deliver it judgment within 90 days after final address, and that by Section 294 (5) of the same Constitution, a judgment will not be invalidated or nullified for non-compliance unless and until the appellate Court considering such a complaint on appeal is fully satisfied that the appellant has shown that it had suffered a miscarriage of justice by such late delivery of judgment. Further, the fact that in determining whether a miscarriage of justice was occasioned due to inordinate delay, the emphasis is not the length of time simpliciter, but on the effect it produced in the mind of the Court, such as if the delay is found to have obviously [affected] the Courts perception, appreciation and evaluation of the cases and that it is one the Court would readily interfere.

In this appeal, the Appellant did not even make any attempt to show that the delay in delivering the Ruling in question, in fact, affected the Lower Courts perception, appreciation and assessment or evaluation of the documentary evidence before it in the Respondents motion for summary judgment. What is more, the Appellant here did not say and prove that the delay in delivering the Ruling was, in the circumstances of the case, inordinate so as to have had any negative effect on the Lower Courts perception, appreciation and assessment of the evidence placed before it in the motion.

In fact, from the Record of Appeal and the account given by the Learned Counsel for the Appellant, the Ruling was to have been delivered on the 30th May, 2018, but was delivered on the 7th June, 2018; a period of about eight (8) days later. Worthy of note, is the fact that no witnesses testified at the hearing of the Respondents motion for judgment and only Affidavit evidence and written addresses were placed before the Lower Court and considered by it in the Ruling.

So the demeanour and credibility of witnesses did not arise for assessment and evaluation in the Ruling for any delay in the delivery of the Ruling to have had any reasonable effect on the Lower Courts perception, appreciation and evaluation of their evidence. Even if there were witnesses who gave oral evidence, the period of delay could not have, in the absence of proof by the Appellant, reasonably impaired the Lower Courts vision, perception and proper appraisal of their evidence in the course of the Ruling, since in addition; there was the Affidavit evidence along with the Exhibits attached thereto, to be considered.

In the result, for the above reasons, the Appellants argument on issue 3 are bereft of merit as it has failed to satisfactorily show that it suffered any sort of real miscarriage of justice for reason of non-compliance with the provisions of Section 294(1) in the delivery of the Ruling by the Lower Court.

The issue is resolved against the Appellant.

Appellants Issue 1: Appellants Submissions:

The arguments are that failure by the Lower Court to hear the Appellants motion of 4th April, 2017 for the case to be referred to the Multi Door Court House (LMDC) for ADR, before delivering the Ruling on the Respondents motion for summary judgment, was in breach of the Appellants right to fair hearing as guaranteed by Section 36 of the Constitution.

Section 16(9) of LMDC Law, 2007 [Lagos State]and Order 3, Rule 11 of the [Lagos State High Court] Civil Procedure Rules, 2012 (2012 Rules) were referred to and it is submitted that the Lower Court has a duty to refer the case to the Multi Door Court House as it was registered/marked ID/ADR/232/2016, in accordance with its Rules which are binding, on the authority of South Atlantic Pet. Limited v. Ministry of Petroleum Resources (2013) LPELR-21892 (SC). Duru v. FRN (2013) 28-WRN, 1 @ 18 (SC), Nwankudu v. Ibeto (2010) LPELR-4391 (CA) and Afro Continental Nigeria Limited v. Co-operative Associate of Professionals Inc. (2003) LPELR-217 (SC) were cited for the argument of breach of the Appellants right to fair hearing and it is further contended that the failure to hear the Appellants motion is contrary to the principle of law that a Court must hear every application and give a decision as stated in Mobil Producing Nigeria Unlted v. Monokpo (2003) LPELR-1886 (SC), among other cases.

The Court is urged to resolve the issue in favour of the Appellants as it has shown that its right to fair hearing has been breached.

Respondents Submission:-

Citing Ika Local Government Area v. Mba (2007) 12 NWLR (Pt. 1049) 679, it is said that fair hearing is based on the objective view or opinion of a reasonable person who watched the proceedings of a Court whether in his opinion, justice was done to the parties. It is then submitted by Learned Counsel that it is not correct that the Lower Court did not decide the Appellants motion of 4th April, 2017, and page 139 of the Record of Appeal was referred to where the Lower Court decided the said motion on the 23rd of May, 2017 when the Learned Counsel for the Appellant absented himself. In further argument, counsel for the Respondent said the Appellants Counsel had a duty to keep abreast of the proceeding after absenting himself in the course thereof, on the authority of Afonja Comm. Bank Nigeria Limited v. Akpan (2001) LPELR-6958 (CA). The cases cited for the Appellant on the issue are said to be inapplicable to the facts of the Appellants case since the motion of 4th April, 2017 was decided before delivering of the Ruling appealed against. Pages 140, 142 and 143-9 of the Record of Appeal were cited and Section 36(1) of the 1999 Constitution set out, said to have been upheld in the case of First Alstate Sec. Ltd v. Adesoye H. Ltd (2013) 16 NWLR (Pt. 1381) 470 @ 494 whose facts are said to be almost similar to the instant appeal wherein a party mis-used the constitutional provisions. On the authority of Chidoka v. F.C.F.C. (2013) 5 NWLR (Pt. 1346) 144 @ 162, it is submitted that a party who failed to use an opportunity to present his case cannot later complain of denial of fair hearing. According to Learned Counsel, the Appellant who refused or failed to file a defence in the case of the Respondent which was an ADR matter merely employed delay tactics to deny the Respondents entitlement for over a year.

The Court is urged to hold that the Appellant cannot be heard to cry of denial of the right to fair hearing since it was granted ample opportunity by the Lower Court.

Resolution:

The constitutionally guaranteed right to fair hearing in the determination of the civil rights and obligations of a person/party by a Court of law or other tribunal established by law, is a fundamental one of substance the breach or denial of which, by established judicial principles of law, would vitiate the entire proceedings of such a Court or other tribunal from the beginning to the end. It is a right that the law says cannot be waived or statutorily taken away from a party to judicial proceedings on the authority of, inter alia, Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) 290, Awoniyi v. Registered Trustees, Rose Order, AMORC Nigeria (2000) 6 SC (Pt. 1) 103, Agbogu v. Adichie (2003) 2 NWLR (Pt. 805) 509, Okafor v. Attorney General, Anambra State (1991) 3 NWLR (Pt. 200) 59, Araka v. Ejeagwu (2001) 5 WRN, 1, Ovunwo v. Woko (2011) 6 MJSC (Pt. III) 83, Gitto Construction Generali Nigeria Limited v. Etuk (2013) LPELR-20817 (CA), Otapo v. Sunmonu (1987) 1 NWLR (Pt. 58) 587. The law is also settled that a Court of law has the judicial and judicious duty to hear and pronounce on all pending applications or motions properly and duly brought before it in the course of proceedings, hearing or trial of a case and so failure or refusal to do so, would constitute or amount to a breach or denial of the right to fair hearing of the party who filed such application/motion. Nwokoro v. Onuma (1990) 1 NWLR (Pt. 136) 22, Nalsa & Team Assoc v. NNPC (1991) 8 NWLR (Pt. 212) 652, Alfa v. Atanda (1993) 5 NWLR (Pt. 296) 729, Newswatch Comm. Limited v. Atta (2006) 6 N.S.C.Q.R, 438, United Parcel Service Limited v. Ufot (2006) ALL FWLR (Pt. 314) 337, FAAN v. Wamal Express Limited (2011) 1 MJSC (Pt. 11) 1105.

The complaint of the Appellant here is that the Lower Court failed or refused to hear its motion of 4th April, 2017 for the case to be referred for ADR, which was pending before delivering the Ruling appealed against.

The Record of Appeal at pages 89-94, shows the Appellants motion of 4th April, 2017 along with the Affidavit and Written Address in support thereof and when the matter came up for hearing on the 23rd May, 2017, page 139 shows the proceedings of the Lower Court on that as follows: -

Parties Absent

Appearance: Lewis Akanimo with Bayo Yussuf for Claimant.

No appearance for Defendant.

Mr. Akanimo: I spoke to the Defendants Lawyer and he said he will send someone, I am surprised he is not here.

COURT: The Defendant has filed an Application for the Court to refer the matter to ADR. The Application is superfluous, it is already an ADR matter. I will advise parties to make use of the Lagos Settlement Week in June.

Akanimo: We do not really want to go to Mediation; we have explored all avenues of settlement. Going to mediation will be futile.

COURT: In the circumstances, I will direct that the Defendant file his Statement of Defence and Counter Affidavit to the Motion for judgment.

Clearly, from this record, which binds the parties and Court; see Gwandu v. COP, Kebbi State (2006) ALL FWLR (Pt. 1294) 529, Gamu v. Hausa (2006) ALL FWLR (Pt. 293) 378, Sapo v. Sunmonu (2010) 11 NWLR (Pt. 1203) 374, the learned Counsel for the Appellant was aware of the proceedings of that day, promised to send someone but eventually failed/refused to do so or appear in the case. In the circumstances, the Lower Court was right and properly proceeded with the matter in the absence of the Counsel for the Appellant who opted and chose to stay away from the Court by being absent without the courtesy of any communication to that Court to excuse the absence. Gbagi v. Okpoko (2014) 4 NWLR (Pt. 1396) 136, Maduike v. Tetelis Nigeria Limited (2016) 6 NWLR (Pt. 1509) 619.

The underlined portion of the above proceeding of the Lower Court leaves no doubt that the Appellants motion of 4th April, 2017 which sought for the case against it to be referred to ADR was effectively, completely and finally determined/decided by the Lower Court when it emphatically stated that: -

The application is superfluous, it is already an ADR matter. I will advise parties to make use of the Lagos Settlement Week in June.

After this decision and in consequence of the position of the Learned Counsel for the Respondent, the Lower Court directed the Appellant to file its statement of Defence and Counter Affidavit to the motion for judgment and then, adjourned the matter to 27th September, 2017 for further directions.

The Record of Appeal reproduced above has frontally debunked the claim by the Appellants learned Counsel that the Lower Court did not determine the motion of 4th April, 2017 for the matter to be referred to ADR before the Ruling appealed against, was delivered.

It may be recalled that I have stated earlier that the Learned Counsel for the Appellant was aware of the proceedings of the Lower Court on the 23rd May, 2017, but chose not to appear or send another counsel as he promised, to represent the Appellant at the hearing whereat, the motion of 4th April, 2017 was determined by the Lower Court. Since the Appellants counsel was afforded the opportunity to be presented and be heard at the proceedings, but decided not utilize it, the Appellant, cannot now claim to have been denied a fair hearing on the ground that the said motion was not heard before the Ruling appealed against was delivered.

Perhaps, I should point out that the Appellant who was directed on 23rd May, 2017 to file its Statement of Defence and Counter Affidavit, to the motion for summary judgment, was represented by Counsel from thence up to the 7th une, 2018 when the Ruling was delivered, but did not comply or take any step to comply with the directive.

The exhortation of Tobi, JSC, in the case of Adebayo v. A. G., Ogun State (2008) 7 NWLR (Pt. 1085) 201 (cited in the Respondents Brief) on the penchant for the mis-use of the principle of fair hearing by Counsel in deliberate attempt to delay and eventually frustrate expeditious, disposal/determination undefendable cases, is quite apt and pungent here. In his very weighty voice, His lordship had stated that: -

Learned Counsel for the appellant roped in the fair hearing principle. I have seen in recent time that parties who have bad cases embrace and make use of the constitutional provisions of fair hearing to bamboozle the adverse party and the Court, with a view to moving the Court away from the live issues in litigation. They make so much weather and sing the familiar song that the constitutional provision is violated or contravened. They do not stop there. They raise the defence in the most inappropriate cases because they have nothing to canvas in favour of their case. The fair hearing provisions in the Constitution is the machinery or locomotive of justice, not a spare part to propel or invigorate the case of the user. It is not a casual principle of law available to a party to be picked up at will in a case and force the Court to apply it to his advantage. On the contrary, it is a formidable and fundamental provision available to a party who is really denied fair hearing because he was not heard or that he was not properly heard in the case. Let the litigants who have nothing useful to advocate in favour of their cases leave the fair hearing constitutional provision alone because it is not available to them just for the asking.

In the earlier case of Newswatch Comm. Ltd. v. Atta (2006) 4 SC (Pt. II) 114, (2006) 12 NWLR (Pt. 993) 144, His lord stated that: -

Counsel, quite a legion, find the fair hearing principle duly entrenched in the Constitution as a pathway to success whenever they are in trouble on the merit of the case before the Court. Some resort to it as if it is a magic wand to cure all ills of the litigation. A good number of counsel resort to the principle even when it is inapplicable in the case. The Constitutional principle of fair hearing is for both parties in litigation. It is not only for one of the parties. In other words, fair hearing is not a one-way but a two-way traffic in the sense that it must satisfy a double carriage-way, in the context of both the plaintiff and the defendant or both the appellant and the respondent. The Court must not invoke the principle in favour of one of the parties to the disadvantage of the other party undeservedly. The fair hearing principle formerly entrenched in Section 33 of the 1979 Constitution, and now Section 36 of the 1999 Constitution, is not for the weakling, the slumberer, the indolent or the lazy litigant, but it is for the party who is alive and kicking in the judicial process by taking advantage of the principle at the appropriate time. The principle is not available to a party who sets a trap in the litigation process against the Court and accuse the Court of assumed wrong doing even when such so-called wrong doing is, as a matter of fact, propelled or instigated by the party, through his Counsel.

The roping of the principle and right to fair hearing by the Counsel for the Appellant who admittedly is indebted to the Respondent, here in an attempt to impugn the Ruling by the Lower Court on the respondents motion for summary judgment, is merely meant and intended to obfuscate the real issue in the case before the Lower Court. The allegation of denial of the Appellants right to fair hearing in respect of the motion of 4th April, 2017 is undoubtedly spurious and untenable on the face of thy Record of Appeal.

The Issue One (1) is devoid of merit and resolved against the Appellant.

Issue Two (2):

Appellants Submission:

It is submitted that the Respondent did not plead and prove the interest claimed and the Lower Court was wrong to have granted the motion for summary judgment and awarded the sums claimed including the interest. According to Counsel, relying on Ubah v. Fidelity Bank, Plc (2013) LPELR-20657(CA), the Lower Court had no jurisdiction to grant the claim of the Respondent for recovery of debt and interest under the summary judgment procedure since same is not within the contemplation of the rules, but ought to have, on the authority of, among other cases, Tom Total Nig. Ltd. v. Skye Bank (2017) LPELR-41953(CA); Ferrero & Co. Ltd. v. Henkel Chem. Nig. Ltd (2011) LPELR-12(SC) and UBA, Plc v. Oranuba (2013) LPELR-20692(CA), transferred the matter to the general cause list for the Respondent to prove the interest element claimed. It is contended that in the circumstances, the decision by the Lower Court is perverse since it is against the rules and principles governing summary judgment procedure and reliance was placed on Emmanuel v. Umana (2016) LPELR-40037(SC) for the argument. Opara v. Diamond Bank, Plc (2011) LPELR-4268(CA) was cited in support of the call on the Court to set aside the decision of the Lower Court and to resolve the issue in Appellants favour.

Respondents Submissions:

A portion of the statement by the Court in Ubah v. Fidelity Bank, Plc (supra) was set out and it is submitted that the facts of the case do not help the Appellants case since the parties by their agreement, are ad idem on the rate of interest accruable and the Lower Court has a duty to hold parties bound by their agreement. It is also the case of the Respondent that a suit is maintainable under the summary judgment procedure if the claim relates to a debt or liquidated money demand, relying on Nkwo Mkt. Comm. Bank Nig. Ltd. v. Obi (2010) 14 NWLR (Pt. 1213) 169; Maja v. Samouris (2002) 3 SC, 37 and Dyeris v. Mobil Oil Nig. Plc (2009) LPELR-8914(CA).

In addition, on the authority of Akpan v. A. I. P. I. C. Ltd (2013) LPELR-20081(SC), it is submitted that the Respondent established his entitlement to the interest claimed in the Affidavit in support of the motion for judgment, based on the agreement of the parties.

The Court is urged to resolve the issue in Respondents favour and hold that the Lower Court was justified in granting the interest.

Now, the claims by the Respondent which the Lower Court decided in the Ruling of 7th June, 2018 were in paragraphs B, C and D of the Endorsement on the Writ of Summons dated 9th December, 2016 which were repeated in the concluding paragraph of the Statement of Claim of the same date. They are as follows: -

B. An Order compelling the Defendant to immediately pay over to the Claimant the sum of N96,572,779 (Ninety Six Million, Five Hundred and Seventy Two Thousand, Seven Hundred and Seventy Nine Naira).

C. Pre-judgment Interest on the said N96,572,779 (Ninety Six Million, Five Hundred and Seventy Two Thousand, Seven Hundred and Seventy Nine Naira) at 18% p.a. reckoned from 17th September, 2015 to the date of judgment in this Suit.

D. Post Judgment interest on the said N96,572,779 (Ninety Six Million, Five Hundred and Seventy Two Thousand, Seven Hundred and Seventy Nine Naira) at 10% p.a. reckoned from the date of Judgment in this Suit to the date of full and final liquidation of the Defendants outstanding indebtedness to the Claimant.

It was after the service of the Writ of Summons and Statement of Claim filed by the Respondent on the Appellant and the failure/refusal by the latter to respond/react to the claims by way of a Statement of Defence, that the Respondent filed the Motion of 9th November, 2016 for summary judgment pursuant to the provisions of Order 11, Rules 1 and 5(2) of the Lower Courts Civil Procedure Rules, 2012 (2012 Rules). The provisions are thus: -

(1) Where a Claimant believes that there is no defence to his claims, he may file with his Originating Process, the Statement of Claim, list of documents to be relied upon, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief, and a written brief in respect thereof.

5(2) Where it appears to a Judge that the Defendant has no good defence the Judge may thereupon enter judgment for a Claimant.

Order 20 (1) of the same Rules also provide that:

20(1) If the claim is only for a debt or liquidated demand, and the Defendant does not within the time allowed for the purpose, file a Defence, the Claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.

Admittedly, the Appellant was served with the motion of 9th November, 2019 and, as shown under Issue 1, was even directed by the Lower Court on 23rd May, 2017 to file its Statement of Defence to the action and counter Affidavit to the motion for judgment, which however, Counsel/Appellant both chose to ignore and disregard throughout the proceedings of the case. What the Lower Court did in the case of the Respondent was completely within and in line with the provisions of Order 11, Rule 1 and 5(2) as well as Order 20(1) of its 2012 Rules for summary judgment and default pleadings, respectively. The procedure used, followed, adopted and employed by the Lower Court in the consideration of the Respondents motion of 9th November, 2017 for summary judgment is as provided for in its rules of procedure for such cases and the Appellant has not shown any particular or specific step taken by the Lower Court in the consideration and grant of the said motion that can seriously, be said to be in breach of the procedure. It is not enough or sufficient for a party to make a blanket allegation of the breach or failure by a Court to follow its rules or other principles of law without demonstrating the specific manner in which the rules or principles were offended in the steps taken by the Court in the course of its proceedings. In Order 11 Rule 5(2), the Lower Court was required to consider the facts placed before it by a Defendant in a case brought under the summary judgment procedure, if any, in order to determine that he has no good defence to the action against him and then proceed to enter judgment for the claimant. In the Appellants case, no defence at all, was filed even after a specific directive by the Lower Court for the Appellant to file a defence to the action so that the case could be determined on its merit, so the Appellant defaulted in filing pleadings in the case, which was a claim for only debt or liquidated demand, thereby automatically, entitled the Respondent to apply for final judgment for the amount claimed with costs under Order 20, Rule 1.

However, the judgment applied for by the Respondent and granted by the Lower Court was a summary judgment; a judgment the law considers on the merit and subject only to an appeal, see N.N.S.C. v. AgricorIncorp. (1991) 3 NWLR (Pt. 177) 109; Mark v. Eke (2004) 1 SC (Pt. II) 1; Uko v. Ekpenyong (2006) All FWLR (Pt. 324) 1927; Duke v. Akpabuyo LG. (2006) All FWLR (Pt. 294) 559; Nnabude v. G. N. G. (W/A/) Ltd (2010) 15 NWLR (Pt. 1216) 365, and not a default judgment which can be set aside under the provisions of Order 20, Rule 12 of the 2012 Rules.

In ordinary cases, the law is that pre-judgment interest claimed requires to be specifically pleaded and sufficiently proved by a claimant before it can properly be granted or awarded. See Petgas Res. Ltd v. Mbanefo (2006) All FWLR (337); Petroleum (Special) Trust Fund v. Western Project Consort. Ltd (2007) 14 NWLR (Pt. 1055) 1; Ogbu v. Ani (1994) 7 NWLR (Pt. 355) 128, (1994) 7 SCNJ, 383; Jallco Ltd v. Owoniboys Tech. Serv. Ltd (1995) 4 SCNJ, 256; Reynolds Const. Co. Ltd v. Rockonoh Prop. Co. Ltd (2005) 4 SC, 1, (2005) 10 NWLR (Pt. 934) 15. However, where by agreement or contract, parties expressly agree that interest shall be chargeable and even freely expressed and stipulated the rate of such interest accruable and payable in their transaction, then the Court would look no further than the terms of the agreement by the parties which bind them, for the award of such interest. The express agreement by the parties constitutes sufficient and satisfactory proof that the interest specified and stipulated by them was payable and accruable in the transaction. Mech. Ltd. v. Agility & Brothers Ent. Nig. Ltd (2006) ALL FWLR (Pt. 298) 1289; International Trust Bank, Plc v. Kautal Hairu Co. Ltd. (2006) ALL FFWLR (Pt. 292) 116; G. M. O. N. & S. Co. Ltd. v. Akputa (2010) 9 NWLR (Pt. 1200) 443; Okafor v. Eziogu (2011) LPELR-3923 (CA); Texaco Oveseas Nig. United v. Pedmar Nig. Ltd (2002) 13 NWLR (Pt. 785) 526; M. H. Nig. Ltd v. Okefiena (2011) 6 NWLR (Pt. 1244) 514.

Furthermore, the summary judgment procedure, which is akin to and like the undefended list procedure, is a unique procedure put in place to enable an expeditious disposal of simple claims for liquidated sum or money demand to which, from the facts presented before the Court, the Defendant either expressly admits indebtedness or has no real defence in law to the claim, without the rigorous of the often, time and resource wasting procedure of a normal trial.

In the procedure, usually, the matter is determined based on the Affidavit evidence placed before a Court by the parties which contain all the relevant and material facts of the claim with specific and sufficient particulars to enable the Court to determine it without the need for oral evidence or proof. As in the Appellants case, where there was an express agreement by the parties that interest was to be chargeable and payable and the rate and other terms of the interest were set out by them and the Appellant did dispute the agreement, but refused/failed to file any process to react, respond and to defend the claim, the Lower Court had no other option than to enter judgment as provided for and in line with the provision of Order 11, Rule 5(2) of the 2012 Rules. Since the Appellant did not file pleadings to challenge or controvert the facts contained in the Respondents Statement of Claim and did not also file a Counter Affidavit to dispute and controvert the facts deposed to in the Respondents Affidavit in support of the motion for judgment and so deemed to have admitted all those facts, the issue or question of proof of the interest on the sum or amount claimed did not arise since the law is that a fact admitted requires no further proof. See Section 123 of the Evidence Act 2011; Okesuji v. Lawal (1991) 1 NWLR (Pt. 170) 661; Ajomale v. Yaduat (No.2) (1991) 5 NWLR (191) 266; Jikantoro v. Dantoro (2004) 5 SC (Pt. II) 1; Akpa v. State (2008) 7 MJSC, 77; Reg. Trustees v. Medical & Health (2008) 3 MJSC, 121; NNPC v. Olagbaju (2006) ALL FWLR (Pt. 334) 1855; Duzu v. Yunusa (2010) 10 NWLR (Pt. 1201) 80.

In the premises of the extant position of the law, the Lower Court was right to have entered summary judgment in the sum/amount claimed along with the interest agreed to by the parties as shown in the unchallenged and uncontroverted facts averred and deposed to in the Respondents pleadings and affidavit evidence in support of the motion for judgment. This is the vital and crucial difference between the Appellants case and the general statement of the Court in the Ubah v. Fidelity Bank, Plc (supra), heavily and strenuously relied on by the Appellant. Whereas the Court found no iota of evidence establishing that the respective parties were ad idem regarding the rates of interest in the Ubahs case, as demonstrated before now, there was the unchallenged fact and evidence that the parties expressly, freely and voluntarily agreed that interest at the rate of 18% p.a. on the transaction between them was chargeable and payable.

Parties to a contract or agreement, except in recognized situations, are bound by the terms and conditions they freely chose to govern and regulate their relationship and no Court of law, will allow, permit or encourage any of them to renege or resile from such terms and conditions of the contract or agreement, particularly where they are written in a document, under any pretext. See Okogie v. Epoyin (2010) 11 NWLR (Pt. 1206) 456; JFS Inv. Ltd v. Brawal Line Ltd (2010) 18 NWLR (Pt. 1225) 495; Kaydee Ventures Ltd. v. Min., FCT (2010) 7 NWLR (Pt. 1192) 171; Larmie v. D. P. M. & S. Ltd (2006) ALL FWLR (Pt. 296) 775, (2005) 12 SC (Pt. 1) 93; A. G., Rivers State v. A. G., Akwa Ibom State (2011) 3 MJSC, 1.

In the result, I find no merit in the arguments of the Appellant on the issue and it is resolved against it.

On the whole, with the resolution of all the three (3) Issues raised for determination in the appeal against the Appellant, the appeal is left devoid of merit and bound to fail.

The appeal is in consequence, dismissed for lacking in merit and the Ruling delivered by the Lower Court on the 7th June, 2018 entering summary judgment in favour of the Respondent, is hereby affirmed in its entirety.

The Respondent is entitled to costs for prosecuting the appeal which the Court assesses at Five Hundred Thousand Naira (N500,000.00) to be paid by the Appellant.

**JOSEPH SHAGBAOR IKYEGH, J.C.A.:**

I am in full agreement with the lucid judgment prepared by my learned brother, Mohammed Lawal Garba, J.C.A. (Hon. P.J.), which I had the privilege of reading in draft.

**TIJJANI ABUBAKAR, J.C.A.:**

I had the privilege of reading in draft the leading Judgment prepared and rendered in this appeal by my Learned brother GARBA, JCA. I am in full agreement with the reasoning and conclusion and adopt the Judgment as my own. I have nothing extra to add. I join my brother in holding that the appeal is devoid of merit and therefore deserves to be and is hereby dismissed by me. I also affirm the Ruling delivered by the lower Court on the 7th day of June, 2018. I abide by the consequential orders made including the order on costs. -end!