**CHIEF ESSIEN BASSEY ESSIEN AND OTHERS**

**V.**

**FELIX OKON EDET AND OTHERS**

IN THE COURT OF APPEAL (CALABAR JUDICIAL DIVISION)

THE 20TH DAY OF MARCH, 2003

SUIT NO: CA/C/99/98

**LEX (2003) - CA/C/99/98**

OTHER CITATION:

2PLR/2004/101 (SC)

[2004] 5 NWLR (Pt.867)519

(2003) LPELR-CA/C/99/98

**BEFORE THEIR LORDSHIPS**

RAPHAEL OLUFEMI ROWLAND, JCA

SIMEON OSUJI EKPE, JCA

ISTIFANUS THOMAS, JCA

**BETWEEN**

1. CHIEF ESSIEN BASSEY ESSIEN

2. OKON EDET EFFIONG

3. EFIOK ESSIEN EKANEM

4. CHIEF OKON EDEM ETIM

5. ITA OKON EFFIONG

(For themselves and as representing Nna Enin village, Uruan) - Appellants

And

1. FELIX OKON EDET

2. OKON EFFIONG EKPO

3. EFFIONG OKON ASUQUO

4. OKON INYANG EFFIONG

5. CHIEF ETIM DUTT

(For themselves and as representing Anakpa village, Uruan) Respondents

**ORIGINATING COURT**

AKWA IBOM STATE HIGH COURT, HOLDEN AT UYO (Umoren, J., Presiding)

**REPRESENTATION**

G. A. UDOUSORO - For the Appellants

EMMANUEL EDET - For the Respondents

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

REAL ESTATE AND PROPERTY LAW – LAND MATTERS:- Declaration of title and trespass – Fair hearing principles – Service of Notice – Breach of thereto – Effect on judgment given therefrom – Duty of appellate thereon

CONSTITUTIONAL LAW - FAIR HEARING: Settled law that one basic requirement of natural justice is that a party should be given an opportunity to state his case without let or hindrance - Rule of audi alteram partem – Implication of - Rule of fairness and fair trial - Whether a court cannot be fair unless it considers both sides of the case as may be presented by the parties

CONSTITUTIONAL LAW - FAIR HEARING: Principle of fair hearing that the parties in a case must be heard on the case formulated and presented by them – Breach of – Whether renders the entire proceedings a nullity entitling a party thereby affected, ex debito justitiae, to have the proceedings set aside

**PRACTICE AND PROCEDURE ISSUES**

ACTION - APPLICATIONS: Application brought before the court – Rule that it is an elementary and fundamental principle of our administration of justice for the courts to hear all motions or applications properly brought before them – Application of

ACTION - SERVICE OF HEARING NOTICE: Hearing notice as an important process in an adversary system of adjudication – Basis of - Principle of law that where service of hearing notice is required or called for - Proceedings conducted without due service of it – Whether is rendered null and void – How treated

**MAIN JUDGMENT**

SIMEON OSUJI EKPE, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal from the judgment of Umoren, J. (as he then was) in suit No. HU/30/80, filed at the High Court, Uyo in Akwa Ibom State and delivered on the 20th of January, 1997 at Ikot Ekpene High Court of the same State.

The plaintiffs in a representative capacity had sued the original defendants on record and claimed jointly and severally the following reliefs in the writ of summons:

"(1) N50,000.00 (fifty thousand Naira) being special and general damages for trespass.

(2) A perpetual injunction restraining the defendants, their agents and assigns from committing further acts of trespass on the said land belonging to the plaintiffs".

Pleadings were ordered and later filed and exchanged after both parties who were out of time to file the same with their survey plans had obtained from the court below extension of time to do so. In paragraph 25 of the statement of claim, the plaintiffs claimed the following reliefs:

"Wherefore, the plaintiffs claim against the defendants as follows:

(a) A declaration that the plaintiffs are entitled to the customary or statutory certificate of occupancy over the land in dispute.

(b) N50,000.00 being general damages for trespass.

(c) A perpetual injunction restraining the defendants, their agents and assigns from committing further acts of trespass on the land in dispute".

The defendants filed their statement of defence and counter-claim. In paragraph 22 thereof the defendants counter-claimed for (1) a declaration of title to the customary right of occupancy over the two parcels of the land in dispute with a survey plan No. RIM/10420 (LD) dated 14/3/85, (2) N100,000.00 (One hundred thousand Naira) being general damages for trespass, (3) forfeiture of the lands verged yellow and green in the plaintiffs' plan granted to the plaintiffs under native law and custom, (4) perpetual injunction.

In the trial that followed, the plaintiffs called three witnesses and tendered their survey plan No. AQ 26/83 (LD) dated 13/6/83, through PW1 without objection as exhibit 'A' and closed their case. After the close of the case for the plaintiffs, the defendants opened their defence and called two witnesses. The second defence witness (DW2) was still giving evidence-in-chief when the defendants filed a motion for amendment of the statement of defence and the counter-claim. At that juncture, the learned trial Judge was transferred to Ikot Ekpene Judicial Division and the hearing of the case suffered a temporary set back.

After the learned State Chief Judge had granted the learned trial Judge an extension of jurisdiction to continue with the case at Ikot Ekpene High Court, the case was resumed before Umoren, J., the trial Judge, at Ikot Ekpene High Court on 1/7/96. The record of proceedings of that day's hearing at pages 181 to 182 shows that some of the plaintiffs with their counsel were present, while the defendants and their counsel were absent. Dr. A. Essien of counsel for the defendants wrote for an adjournment. The learned counsel for the plaintiffs stoutly opposed the application for adjournment and urged the trial Judge to consider the case of the defendants as abandoned and closed and to allow him a short date to address the court. The learned trial Judge in acceding to the submission of the plaintiffs' counsel, had this to say at page 182 of the record of appeal:

"I accept the view of the learned plaintiffs' counsel that the defendants have abandoned the case. I do not think I have any choice other than to terminate the matter at this stage on the merits. But before I do so, I shall allow the learned counsel for the plaintiffs to address me.

I however order hearing notice to be served on the defendants or their counsel. Case adjourned to 9/7/96 for address. Letter dated 1/7/96 is admitted as exhibit 'A'."

On 9/7/96 (mistakenly typed as 9th July, 1997, vide page 183 of the record of proceedings), when the case came up again as previously adjourned, the plaintiffs except the 3rd plaintiff were present while all the defendants and their counsel were absent. The learned trial Judge took the address of the plaintiffs' counsel and adjourned the case to 25/11/96 for judgment which was eventually delivered on 20/1/97 by the learned trial Judge.

In the reserved judgment, the learned trial Judge considered the case of the plaintiffs and that of the defendants as so far presented by DW1 and DW2 before the defence was deemed as abandoned and closed. The learned trial Judge found for the plaintiffs and entered judgment for them. He accordingly declared that the plaintiffs were entitled to the customary right of occupancy over the pieces or parcels of the land in dispute delineated and verged pink and yellow in the plaintiffs' plan. He awarded the sum of N5,000.00 as general damages and granted perpetual injunction against the defendants as claimed in the statement of claim. He also assessed and awarded costs of N2,000.00 in favour of the plaintiffs.

Aggrieved by the decision of the learned trial Judge, the defendants have appealed to this court in a notice of appeal predicated on one ground of appeal, viz, the omnibus ground of appeal filed on 4/2/97.

Sooner or later, after filing the appeal, all the original defendants/appellants on record died one after the other and were substituted with the present defendants/appellants by the order of the court to carry on with the appeal. Thereafter, the present defendants/appellants with the leave of the court filed their amended notice and grounds of appeal incorporating the original ground of appeal filed earlier. On the whole, the appellants filed five grounds of appeal.

In this appeal, the defendants shall hereinafter be referred to as the appellants, while the plaintiffs shall be referred to as the respondents.

The appellants filed their brief of argument in which they formulated three issues for the determination of the appeal. They read:

"(1) Were the appellants given a fair hearing in the case when they were not served with the hearing notices especially as there was change of venue for 'the hearing of the case from Uyo High Court sitting at Uyo to Ikot Ekpene High Court sitting at Ikot Ekpene', and was it proper in the circumstances for the trial court to close the case in their absence for the appellants.

2. Whether the learned trial Judge was right in giving judgment for the respondents.

3. Whether the claim for declaration of title in the statement of claim which was not claimed in the writ of summons could supercede the writ without being amended to include the claim for declaration for customary or statutory certificate of occupancy as asked for by the respondents.

The respondents also filed the respondents' brief of argument and identified three issues for the determination of the appeal, namely:

"(1) Whether the hearing in the instant case was unfair when the learned trial Judge proceeded and gave judgment nine months after the appellants had abandoned the case.

(2) Whether the judgment of the lower court was based on right and well laid down principles of law having arrived at after a proper exercise of judicial discretion.

(3) Whether a plaintiff can alter, extend or modify his statement of claim, thus including a relief which was not originally in the particulars of claim or writ of summons but could be made out from the facts of the case and conveniently tried along side the original relief without introducing an entirely new and additional cause of action".

The appellants also filed the appellants' reply brief of argument in reaction to the issues raised in the respondents' brief.

It is note-worthy that the issues identified by the respondents have semblance of similarity with the issues framed by the appellants in their brief of argument. I will therefore adopt the issues framed by the appellants in their brief of argument for the determination of the appeal.

Arguing issue No.1, the appellants submitted that a court is bestowed with jurisdiction when it is satisfied that the parties have been served with hearing notices in the case and the parties or any of them served failed to appear in court, and in that case the court can proceed with the hearing of the case. The appellants referred to page 180 of the record of appeal when the case came up at Oyo High Court on 22nd day of April, 1996 and the court was not sitting, thereby resulting in an adjournment to 1/7/96. Again at pages 181 to 182 of the record of appeal, the case came up on 1/7/96 as adjourned, for continuation of hearing, but this time at Ikot Ekpene High Court, before the learned trial Judge who had been transferred from Uyo High Court to Ikot Ekpene High Court. On that date (1/7/96), all the defendants and their counsel were absent. But their counsel wrote for adjournment. The learned trial Judge in granting the adjournment noted that the appellants had abandoned the case, and he peremptorily ordered that the defence (appellants' case) be deemed closed and adjourned the case to 9/7/96 for address by the learned counsel to the respondents. It was therefore contended for the appellants that the learned trial Judge by refusing to grant an adjournment and peremptorily decreeing that the defence case be deemed closed, and by inviting the learned counsel for the respondents to proffer his address at that stage, had effectively shut out the appellants altogether from presenting their case for consideration of the court. The case of I.I.G. (Nig.) v. Alao (1990) 3 NWLR (Pt.141) 773; George v. George (2000) FWLR (Pt.23) 118, (2001) 1 NWLR (Pt. 694) 349 were cited. It was further contended that on 9/7/96, when the case came up for address by the respondents' counsel, the learned trial Judge failed to satisfy himself that the hearing notices he ordered on 1/7/96 to be served on the appellants or their counsel were in fact served before he proceeded to hear or take the address of the respondents' counsel without the appellants or their counsel becoming aware of the hearing of the case. The appellants therefore submitted that it was wrong for the learned trial Judge to close the case of the appellants in the circumstances on the first day of the resumption of hearing at Ikot Ekpene without granting the appellants an adjournment. It was also submitted that as hearing notices were not served on the appellants before the court continued hearing the case on 9/7/96, it therefore lacked the jurisdiction to hear the case on 9/7/96 and deliver judgment on 20/1/97, in the absence of the appellants without service of hearing notices on them or on their counsel, and that the judgment so delivered on 20/1/97 was a nullity.

The cases of Agena v. Katseen (1998) 3 NWLR (Pt.543) 560; Mbadinuju v. Ezuka (1994) 8 NWLR (Pt.364) 535; Skenconsult (Nig) Ltd. v. Ukey (1981) 1 SC 6 were alluded to. It was further argued that the appellants were not given a fair hearing in the case as guaranteed by section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria. It was posited that fair hearing involves a fair trial and a fair trial of a case consists of hearing the whole case and it implies that every reasonable and fair-minded observer who watched the proceedings should be able to come to the conclusion that the court has been fair to all the parties in the case. The appellants stressed that it was a breach of the principle of fair hearing for the trial court to shut the appellants out of the case when they never concluded their evidence or closed their case. The following cases were alluded to Whyte v. Jack (1966) NMLR 215; Tukur v. Govt., Gongola State (1989) 4 NWLR (Pt.117) 517; Nalsa & Team Associates v. NNPC (1991) 8 NWLR (Pt.212) 652; Adigun v. A.-G., Oyo State (1987) 1 NWLR (Pt.53) 678; UTHMB v. Nnoli (1994) 8 NWLR (Pt.363) 376 at 402; Mohammed v. Olawunmi (1990) 2 NWLR (Pt.153) 459 at 485; Bamgboye v. Unilorin (1999) 10 NWLR (Pt. 622) 290, (2001) FWLR (Pt.32) 12; Ayorinde v. Fayoyin (2001) FWLR (Pt.75) 483 at 489. Finally, on this issue, it was submitted that the principles of natural justice require that the appellants should have been given opportunity to put forward their case fully and freely and to apply to the court to hear any material witness and consider relevant documentary evidence with a view to reaching a fair and just decision, but this was denied the appellants.

The respondents in their brief of argument held the view that the appellants were given a fair hearing throughout the trial till the judgment as they were ably represented by counsel and were aware of the venue and the dates of hearing but they deliberately stayed away from court. The respondents referred to the record of proceedings of 22nd April, 1996, 1st July, 1996 and 9th July, 1996 and submitted that the court did order for service of hearing notices on the appellants at the proceedings of 22nd April, 1996 and 1st July, 1996, vide pages 180 and 181 to 182 of the record of proceedings. It was submitted that there is no law or rule of court that provides that once hearing notice is not served on the patty, even once, while the case is still interlocutory or pending, the party must abandon the case entirely. The respondents further submitted that the grant of adjournment in a case is a matter entirely at the discretion of the court to be exercised in accordance with the particular facts and circumstances of the case and if the appellants cannot show that the court below exercised its discretion on wrong grounds, it cannot be said that the appellants were denied fair heating and cannot complain. They cited Obomehense v. Erhahon (1993) 7 NWLR CPt.303) 22, (1993) 10 KLR 78 at 96.

For a better understanding of the contentions of the parties on this issue which is hinged on fair hearing, I shall give a synopsis of the proceedings in the court below from 13/7/94, when DW2 commenced his evidence-in-chief to 9/7/96 when the respondents' counsel rendered his final address, and thereafter the case was adjourned to 16/12/96 for judgment, which was eventually delivered on 20/1/97, thus:

"DW2 commenced his evidence-in-chief on 13/7/94 but he did not conclude. The case was adjourned to 2nd and 16th November, 1994 for continuation of the evidence of DW2. But on the 2nd of November, 1994 when the case came up for continuation of hearing, the learned counsel for the respondents was absent and did not write to excuse himself and ask for an adjournment.

Udofia, J. who presided at the court on that date adjourned the case to 30/1/95 for motion. There is no indication of what happened on 30/1/95, but the case came up on 23/1/95 instead of 30/1/95, the adjourned date. On that 23/1/95, both counsels for the parties were present with some of the litigants, but the learned trial Judge was recorded to be 'indisposed by ill-health', consequently, the case was adjourned to 3/3/95 and 24/4/95 respectively, but the court did not sit. Then followed series of adjournments up to 22/4/96 for the reason that the court was not sitting".

In the meantime, on 19/4/95, the appellants had filed a motion on notice for amendment of the statement of defence and counterclaim as shown and delineated in the proposed amended statement of defence and counter-claim, exhibit 'A' annexed to the affidavit in support of the motion.

On 22/4/96, the case came up again at Uyo High Court for continuation of hearing. The court did not sit and the case was adjourned to 1/7/96 for continuation.

On that date, i.e. 1/7/96 at pages 181 and 182 of the record, the case came up at Ikot Ekpene High Court before Umoren, J. who was hearing the case earlier at Uyo High Court. In the court, some of the respondents with their counsel were present, while the appellants with their counsel were absent. The appellants' counsel wrote for adjournment. The respondents' counsel vigorously opposed the application for adjournment and opined that the appellants were no longer interested in the case. He urged the court to consider the defence as closed and allow him a short adjournment to address the court. In a short ruling by the learned trial Judge at page 182 of the record of appeal, he stated thus:

"The letter dated 1st July, 1996, and signed by Dr. A. Essien states that he is at Ikot Abasi High Court and other lawyers in his chambers are in other High Court in Uyo.

One wonders why one of them was not sent to Ikot Ekpene. Considering that this suit was fixed by counsel on both sides to be taken today. The reason advanced by the learned counsel and I agree with the learned counsel for the plaintiffs that the defendants are playing on time and have no intention of doing this case to conclusion.

I accept the view of the learned plaintiffs' counsel that the defendants have abandoned the case.

I do not think I have any choice other than to terminate the matter at this stage on the merit.

But before I do so, I shall allow the learned counsel for the plaintiffs to address me. I however order hearing notice to be served on the defendants or their counsel.

Case adjourned to 9/7/96 for address. Letter dated 1/7/96 is admitted as exhibit 'A'." (Italics is mine for emphasis)

Then, on 9/7/96, the case came up for address as was adjourned.

The appellants and their counsel were again absent. The learned trial Judge took the address of the learned counsel for the respondents and adjourned the case to 16/12/96 for judgment which was eventually delivered on 20/1/97 against the appellants.

The fundamental question is, given the scenario and circumstances under which the proceedings were conducted, can it be said that the appellants were given a fair hearing by the learned trial Judge. Without any hesitation, I will answer the question in the negative. I shall elaborate here.

Firstly, on 19/4/95, the appellants filed a motion on notice for amendment of the statement of defence and counter-claim in the suit, vide pages 158 to 178 of the record of proceedings. The motion was pending in the court below before the appellants' case was 'terminated' or closed by the learned trial Judge. By closing the case of the appellants, the learned trial Judge also foreclosed the heating of the said motion. A motion on notice for amendment of the statement of defence and counter-claim like the one filed by the appellants in the instant case cannot be treated as trivial or inconsequential. The learned trial Judge did not advert his attention to it.

It is an elementary and fundamental principle of our administration of justice for the courts to hear all motions or applications properly brought before them. In Nalsa & Team Associates v. NNPC (1991) 8 NWLR (Pt.212) 652 at 660 the Supreme Court held that where an application is properly brought before the court, the principles of fair hearing demands that it should be heard on its merits. See Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 587; Okoro v. Okoro (1998) 3 NWLR (Pt.540) 65. In the instant case, I hold the view that by not hearing the said motion for amendment which was properly pending before the court below, when the learned trial Judge closed the case of the appellants on 1/7/96, the appellants were not given a hearing, let alone a fair hearing in respect of the said pending motion.

Another aspect of the proceedings in the court below which impinges on lack of fair hearing is in respect of non-service of the hearing notices on the appellants or their counsel as ordered by the learned trial Judge, before hearing the address of the respondents' counsel. On 1/7/96, when the learned trial Judge peremptorily closed the case of the appellants in their absence and adjourned to 9/7/96 for address by counsel for the respondents, he also ordered for service of hearing notices on the appellants or their counsel. When the court resumed on 9/7/96 to take the address, neither the appellants nor their counsel was present in court. Despite their absence, the learned trial Judge took the address of the learned counsel to the respondents without ensuring that the appellants and/or their counsel were served with the hearing notices as ordered by him. In any case, there is nothing on record to show that the appellants and/or their counsel were properly served with the hearing notices ordered by the learned trial Judge for hearing on 9/7/96. Undoubtedly, it was the duty of the learned trial Judge to examine its records to make sure whether the hearing notices were duly or properly served on the appellants and/or their counsel who were absent, before proceeding with hearing the address by the learned counsel for the respondents. See Ogundoyin v. Adeyemi (2001) 13 NWLR (Pt.730) 403 at 422-423.

In my view, in the absence of proof of service of the hearing notices as ordered by the learned trial Judge, it is difficult for me to conclude that the appellants or their counsel knew of the proceedings of 9/7/96. The inference I therefore draw is that there was no service of hearing notices of the proceedings of 9/7/96. It is the law that an affidavit of service is prima facie proof of service in relation to how and where service was effected. See Bello v. National Bank of Nigeria Ltd. (1992) 6 NWLR (Pt. 246) 206 at 208.

Hearing notice as an important process of the court is a fundamental requirement in our adversary system of adjudication. It is an established principle of law that where service of hearing notice is required or called for, any proceedings conducted without due service of it, is rendered null and void. Non service of hearing notice is a fundamental vice, which vitiates the proceedings. In other words, where proceedings (except ex parte proceedings) are conducted when no hearing notice has been served on a party who should have been necessarily served, the whole proceedings are rendered null and void, no matter how well conducted they were because the court lacks jurisdiction to entertain the matter. See Nasco Management Service v. Amaku Transport Ltd. (2003) 2 NWLR (Pt.804) 290; Mbadinuju & Ors. v. Ezuka & Ors. (1994) 8 NWLR (Pt. 364) 535; Agwarangbo & Ors. v. Nakande (2000) 9 NWLR (Pt,672) 341; Adisa v. Teno Engineering Ltd. (2000) 1 NWLR (Pt.695) 633; N.B.C. Plc. v. Ezeifo (2001) 12 NWLR (Pt.726) 11. In the instant case, I hold the candid view that the court below not only lacked jurisdiction to hear the case on 9/7/96 because the appellants and their counsel were not served with the hearing notices as ordered by the learned trial Judge, but also because the hearing on 9/7/96 in the absence of the appellants who were not notified of the hearing was in breach of the well known natural justice principle of audi alteram partem which is an aspect of fair hearing.

The third worrisome aspect of the proceedings in the court below is the arbitrary and peremptory termination or closure of the appellants' case on 1/7/96 in their absence by the learned trial Judge, while appellants' defence witness (DW2) had not yet concluded his evidence in the court and the appellants had not formally closed their case. The learned trial Judge, in my view, ought to have granted an adjournment to the learned counsel for the appellants who wrote exhibit 'A' for adjournment and awarded costs against the appellants or against their counsel personally, rather than 'terminate' their case at that stage in their absence, thereby shutting out the appellants' defence and denying them fair hearing. It is settled law that one basic requirement of natural justice is that a party should be given an opportunity to state his case without let or hindrance. See Onwunechili v. Akintemi (1985) 3 NWLR (Pt.13) 504. The rule of audi alteram partem postulates that the court must hear both sides at every material stage of the proceedings before handing down a decision. It is a rule of fairness and a court cannot be fair unless it considers both sides of the case as may be presented by the parties.

See Ekuma v. Silver Eagle Shipping Agencies Ltd. (1987) 4 NWLR (Pt.65) 472. In law, a hearing can only be said to be fair when, inter alia, all the patties to the dispute are given a hearing or an opportunity of hearing. If any of the parties is refused or denied a hearing or is not given an opportunity of being heard, such hearing cannot qualify as a fair hearing under the rule of audi alteram partem. See Olumesan v. Ogundepo (1996) 2 NWLR (Pt.433) 628; Gukas v. Jos International Breweries Ltd. (1991) 6 NWLR (Pt.199) 614; Mohammed v. Olawunmi (1990) 2 NWLR (Pt.133) 458. It has been held that fair hearing connotes a fair trial and a fair trial is the heating of the whole case. And the test of a fair hearing is the impression of a reasonable person who was present at the hearing, whether from his observation justice was done in the case. See Mohammed v. Kano N.A. (1968) 1 All NLR 424; Otapo v. Sunmonu (supra).In the instant case, it is my considered view that by closing the appellants' case arbitrarily and peremptorily in their absence without giving them an opportunity to be heard on the matter, the learned trial Judge acted in breach of the appellants right of fair hearing enshrined in section 36(1) of the 1979 Constitution of the Federal Republic of Nigeria which is in pari materia with section 33(1) of the 1999 Constitution. In Ude & Ors. v. A. -G., Rivers State (2002) 4 NWLR (Pt.756) 66 which is similar to the case in hand, the appellants were the defendants in the court below and had commenced their defence and their witness had started to testify in the witness box.

However, as it appeared, for undisclosed reason(s) the appellants never featured in the case again and no hearing notice was issued on them until their defence was closed by the trial court. The respondents' counsel then addressed the trial court and judgment was entered in favour of the respondent, while the 2nd appellant's counter-claim was dismissed. Dissatisfied with that judgment, the appellants appealed to the Court of Appeal, Port Harcourt Division.

One of the issues agitated in that appeal by the appellants was that the appellants were not given fair hearing by the trial court as their case was closed in their absence and judgment was entered against them without hearing notice. For the respondent in that appeal, it was submitted that the appellants abandoned their defence and left the court with no choice but to close their case and given judgment for the respondent. In unanimously allowing the appeal, Ogebe, JCA in the leading judgment had this to say at page 78:

On a calm view of all I have said in this judgment, I allow this appeal only on the ground that appellants were not given a chance to complete their defence before judgment was against them.

I entirely agree with their Lordships in that case. Similarly, in the instant case, the appellants were not given the chance to complete their defence before judgment was given against them. In as much as the appellants cannot, in my view, be completely exonerated from blame for being absent from the court on 1/7/96 when the trial court closed their defence, the position of the law is that the principle of fair hearing which is an aspect of natural justice is so sacrosanct and so deep-rooted in our legal system that it cannot be compromised by the courts wherever and when ever it is shown to have been breached.

The principle of fair hearing not only demands but also dictates that the parties in a case must be heard on the case formulated and presented by them. It is only then that the concept of fair hearing will have any real meaning. See General Oil Ltd. v. Ogunyade (1997) 4 NWLR (Pt.501) 613.

It is settled law that where there is a breach or denial of fair hearing, the entire proceedings are a nullity and a party thereby affected is entitled ex debito justitiae to have the proceedings set aside. See Dawodu v. Ologundudu (1986) 4 NWLR (Pt. 33) 104; Ogundoyin v. Adeyemi (2001) 13 NWLR (Pt.730) 403 at 422, (2001) FWLR (Pt.71) 174.From my over-view of the proceedings in this case as shown in the record of appeal, I have no doubt that some aspects of the proceedings were characterised by breaches of the appellants' right of fair hearing as illustrated above. In the circumstances, therefore, the entire proceedings are a nullity and should be set aside.

Therefore, issue No.1 is resolved in favour of the appellants.

In view of the conclusion, I have thus reached on issue No.1, I do not consider it necessary to discuss issues Nos. 2 and 3 as no practical purpose will be achieved thereby. It will only amount to mere academic exercise to deliberate on the issues.

In the final result, therefore, I hold that this appeal has merit and it is hereby allowed. I set aside the judgment of the court below and remit the case to the Chief Judge of Akwa Ibom State for reassignment to another High Court Judge for hearing de novo.

I award the sum of N5,000.00 costs in favour of the appellants.

**RAPHAEL OLUFEMI ROWLAND, J.C.A.:**

I have had the privilege to read in draft the judgment of my learned brother Ekpe, JCA, just delivered. I entirely subscribe to his view that the appeal succeeds and it is accordingly allowed by me. I abide by the consequential orders made therein including the order on costs.

**ISTIFANUS THOMAS, J.C.A.:**

I have had the privilege of reading in draft, the leading judgment just delivered by my learned brother, Ekpe, JCA, and I entirely agree with the reasons and conclusions he arrived at. I have nothing more useful to add to the exposition of the principle of audi alteram partem as ably demonstrated in the lead judgment. I abide by the consequential orders made and adopt them as my own.

Appeal allowed.