**SYLVANUS EZE**

**V**

**UNIVERSITY OF JOS**

SUPREME COURT OF NIGERIA

5TH DAY OF MAY 2017

SC. 428/2013

**LEX (2017) - SC.428/2013**

OTHER CITATIONS

2PLR/2017/118 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided and Read the Lead Ruling)

CHIMA CENTUS NWEZE, JSC

AMIRU SANUSI, JSC

AMINA ADAMU AUGIE JSC

PAUL ADAMU GALINJE JSC

**BETWEEN**

SYLVANUS EZE – Appellant

AND

UNIVERSITY OF JOS – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL (Judgment of the Court delivered on 17 December 2012).

2. FEDERAL HIGH COURT (JOS DIVISION)

**REPRESENTATION/LAWYERS**

E. O. OKORO with E. I. NDIDIGWE and K. S. VONDIP) - for the Appellant/Applicant.

D. D. RIMDAM with B. D. DAZE - for the Respondent.

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

EDUCATION AND LAW – TEACHER MISCONDUCT:- Allegation of unlawfully demanding and receiving money from newly admitted university students – Suspension of lecturer and subsequent Administrative proceedings relating thereto leading to final dismissal – Challenge of based on non-compliance with statutory requirement in the establishment law of the University – Whether can be raised for the first time at the level of the Supreme Court

ADMINISTRATIVE AND GOVERNMENT LAW:- Suspension of a university teacher based on allegation of misconduct – Report of Panel of investigation into allegation which afforded the teacher an opportunity to defend himself – Dismissal based thereon – Propriety of

EMPLOYMENT AND LABOUR LAW:- Suspension of employee of a statutory body – Subsequent dismissal based on report of a panel of Inquiry which afforded employee an opportunity to defend self – Judicial challenge of dismissal – Issue based on a substantive issue of law connected with the establishment statute of the University – Where raised for the first time at the Supreme Court - How treated

CONSTITUTIONAL LAW – JUSTICE ADMINISTRATION:– Fair hearing - Propriety of raising same at any stage of proceedings - Breach of - Where established - Effect of.

CONSTITUTIONAL LAW – JUSTICE ADMINISTRATION:– Fair hearing - Right to - Constitutionality of under S. 36(1), 1999 Constitution - Attribute of - Breach of – Effect.

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ORIGINATING SUMMONS:- Nature of - When it would be proper to adopt as mode of commencement of action.

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APPEAL - FRESH ISSUE OF LAW ON APPEAL:- Application to raise - Grant of - Purport of - Conditions precedent thereto.

EVIDENCE – AFFIDAVIT:- Nature of - Facts deposed thereinFailure to controvert - Effect of - Conflicts therein – When oral evidence is require to determine.

JUDGMENT AND ORDERS – DECISION:- Laid down procedure for arriving at - Departure from – Effect.

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**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant/Applicant was a lecturer at the University of Jos, the Respondent. He was alleged to have been demanding and receiving money from newly admitted students unlawfully and was subsequently queried and suspended.

Based on the report of the Disciplinary Committee, the Appellant was dismissed. Aggrieved, the appellant filed an originating summons in the Federal High Court, Plateau State, challenging his dismissal. He prayed the court to determine that having been placed on suspension whether the council of the university had extant power to discipline him as it did, having regard to the provisions of section 15 of the University of Jos Act, 1990. The trial court dismissed the suit.

Dissatisfied, the Appellant appealed to the Court of Appeal where his appeal was also dismissed. Dissatisfied still, the Appellant appealed to the Supreme Court.

The Appellant filed an application, seeking an Order of court granting him leave to raise fresh issue for the first time on appeal; as well as an Order deeming the brief already filed as duly filed and served.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the trial court. The trial Court had dismissed the suit of the Appellant challenging his dismissal from the Respondent institution. Dissatisfied, the Appellant appealed to the Supreme Court.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

“Whether the application to raise fresh issue of law for the first time before the Supreme Court, should be granted in the interest of justice.”

*BY RESPONDENTS:*

“Whether, considering the nature and circumstances of this case/appeal, this is an application that should be granted by this honourable court.”

*AS ADOPTED BY COURT*

[The Court adopted the sole issue formulated by the Appellant].

**MAIN JUDGMENT**

RHODES-VIVOUR JSC: (DELIVERING THE LEAD RULING):

The appellant/applicant’s notice of motion filed on 11 July 2014 seeks the following orders:

1. An order of this court granting the appellant/applicant leave to raise and argue fresh issue of law for the first time before the Supreme Court against the decision of the Court of Appeal, Jos delivered on 17 December 2012.

2. An order of this court deeming the appellant’s brief which contains argument on the fresh issue of law as duly filed and served, separate copies having been filed and paid for.

Sylvanus Eze, the appellant/applicant deposed to a 15- paragraph affidavit in support of the motion. Annexed to it are documents marked exhibits 1, 2 and 3. Emmanuel Jawander, the Principal Registrar (Land matters) with the respondent deposed to an 11-paragraph counter-affidavit.

At the hearing of the notice on motion on 13 February 2017, learned counsel for the appellant/applicant, E. O. Okoro Esq., adopted his written submissions and reply on points of law filed on 11 July 2014, and 8 June 2016 respectively and urged this court to grant the application in the interest of justice.

On the other side of the fence, learned counsel for the respondent, D. D. Rimdam Esq. adopted his written address filed on 23 October 2014 and urged this court to dismiss the application.

The facts are these: The appellant/applicant was a lecturer at the University of Jos (respondent). In 2006, while still a lecturer in the University of Jos, there was an allegation that he was demanding and receiving money from newly admitted students without the authority of the university. He was queried and subsequently placed on suspension by the Vice-Chancellor of the university. Between 8-11 August 2006, the appellant appeared before the Council/Senate Disciplinary Committee to defend himself, and between 2-4 November 2006, the council of the university considered the report of the disciplinary committee and decided to dismiss the appellant. The appellant was accordingly dismissed. Dissatisfied with the turn of events, the appellant filed an originating summons on 31 May 2007 before a Federal High Court (Jos Division), challenging his dismissal from the service of the University of Jos. The trial court dismissed the suit, and on 17 December 2012, the Court of Appeal affirmed the decision of the trial court, and dismissed his appeal. Pending before this court is an appeal by the appellant from the judgment of the Court of Appeal.

In his written submissions, learned counsel for the appellant/applicant formulated a sole issue for determination of this application. It reads:

“Whether the application to raise fresh issue of law for the first time before the Supreme Court, should be granted in the interest of justice.”

On his part, learned counsel for the respondent also formulated a sole issue for determination of the application. It reads:

“Whether, considering the nature and circumstances of this case/appeal, this is an application that should be granted by this honourable court.”

I have examined both issues and I am satisfied that in considering the appellant’s issue, the respondent’s issue would be comprehensively addressed. In view of this observation, the sole issue formulated by the appellant shall be considered for the determination of this application.

Issue for determination:

Whether the application to raise fresh issue of law for the first time before the Supreme Court should be granted in the interest of justice.

Arguing the issue, learned counsel for the appellant observed that the respondent dismissed the appellant without complying with the provisions of section 15(1) of the University of Jos Act. He further observed that in his originating summons, he challenged his dismissal on the ground that the respondent did not comply with section 15 of the University of Jos Act, contending that both courts below agreed that the respondent followed the correct procedure before arriving at its decision to dismiss the appellant. He observed that both courts below also did not consider section 15(1) supra, contending that it amounts to a denial of fair hearing for the appellant to be denied a hearing as provided by section 15(1) supra and section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999. Relying on Intercontinental Bank Plc v. Olam (Nig.) Ltd (2013) All FWLR (Pt. 693) 1949, (2013) 6 NWLR (Pt. 1351) 468; Adeosun v. Governor of Ekiti State (2012) All FWLR (Pt. 619) 1044, (2012) 4 NWLR (Pt. 1292) 581.

He submitted that this is a proper case where the appellant’s/applicant’s application to raise fresh point of law ought to be granted.

Opposing the application, learned counsel for the respondent observed that both cases relied on by the appellant, Intercontinental Bank Plc v. Olam (supra) Ltd and Adeosun v. Governor of Ekiti State (supra) were commenced by writ of summons and pleadings and so were not applicable to this case commenced by originating summons. He submitted that the appellant having commenced his suit by originating summons is not allowed to change his mind and the nature of proceedings at the Supreme Court level as he is trying to do by this application.

Reliance was placed on Federal Housing Authority v. Kalejaiye (2010) 19 NWLR (Pt.1226) 147, (2011) All FWLR (Pt. 562) 1633.

Learned counsel for the respondent argued that the appearance or non-appearance of the appellant before the Governing Council of the respondent is an issue of fact which ought to have been taken before the trial court and not raised for the first time in the Supreme Court as the Supreme Court would be denied the benefit of opinions of the lower court.

He observed that by raising the issue of denial of fair hearing, the appellant is springing a surprise on the respondent as such an issue ought to have been raised at the trial court. He further argued that since the appellant is seeking equitable relief which is given at the courts discretion, he should convince the courts why he never raised the issue of fair hearing before the Federal High Court. Concluding, he urged this court to dismiss the application as it lacks merit.

According to the appellant/applicant, this application has become necessary because he claims that he was not given fair hearing since he did not appear in person before the Council of the University in accordance with section 15(1) of the University of Jos Act, before it took the decision to dismiss him.

Is this true? The affidavits would answer that question, and the question is” Whether the appellant appeared in person before the Council of the University in accordance with section 15(1) of the University of Jos Act.

A relevant extract from the affidavit in support of this application reads as follows:

“8e. That the issue of the failure of the Council of the University of Jos to invite me to appear in person under 15(1) of the University of Jos Act could have been taken at the trial court on the affidavit evidence of both parties but unfortunately was not taken.

In response to the above, paragraph 6 of the counter affidavit is instinctive. It reads:

6. That I am aware that the appellant/applicant after making his representations in writing, also personally appeared before the Council/Senate Disciplinary Committee and was heard by them.

I must explain the position in law of affidavits before I resolve the above.

An affidavit is a deposition by the deponent, stating clearly his factual position on the issue for consideration. So once the facts deposed to in an affidavit have not been controverted, such facts must be taken as true except they are moonshine.

It is only where there are contested allegations of material facts that the court ought to invite the parties to call oral evidence to resolve the said conflicts. See Akinsete v. Akindutire (1966) 1 All NLR 147; Alagbe v. Abimbola (1978) 2 SC 39, (1978) NSCC 84; Efet v. INEC & 2 Ors. (2011) All FWLR (Pt. 565) 203, (2011) 102 SC (Pt. III) 61; Inegbedion v. Selo-Ojemen & Anor. (2013) All FWLR (Pt. 688) 907, (2013) 1-2 SC (Pt. II) 59.

There is a world of difference between the Council of University of Jos and the Council/Senate Disciplinary Committe.

The fact that the appellant did not appear before the Council of the University of Jos is not denied by the respondent. This is a case of a fact not denied or countered by the respondent. It is established to my satisfaction that the appellant was not invited to appear before the Council of the respondent as provided by section 15(1) of the University of Jos Act.

In the light of the above finding which to my mind is correct, the facts of this case are not and cannot be the subject of serious argument.

Before I go to the merits of the application, I intend to deal and dispose of the complaints of learned counsel for the respondent.

Originating summons is one of the ways of commencing an action. In such an action, pleadings are not filed. Affidavit takes the place of pleadings. Reliance is placed on affidavits and facts are not in dispute. Originating summons are thus not suitable for hostile proceedings where the facts are seriously in dispute. So once a suit has been filed by originating summons and it becomes obvious that facts are in dispute or the proceedings are likely to be hostile, a writ of summons would be ordered. Originating summons can be used in matters that involve interpretation of documents, statutes, contract etc. and it is by no means a procedure to enlarge the jurisdiction of the court. The striking aspect of suits commenced by originating summons is that there are no pleadings or witnesses, and so proceedings are simple and concluded quickly. See Pam v. Mohammed (2008) All FWLR (Pt. 436) 1868, (2008) 16 NWLR (Pt. 1112) 1, (2008) 5 -6 SC (Pt. 1) 83; Osunbade v. Oyewunmi (2007) All FWLR (Pt. 368) 1004, (2007) 4-5 SC 98.

In the appellant’s originating summon before the trial court, the sole question for determination reads:

Whether the plaintiff, having been placed on suspension on 21 July 2006, the Council of the University had subsisting/extant power to discipline him as they did vide the decision taken at the 5th regular meeting of 2-4 November 2006 having regards to the provisions of section 15 particularly 15(2), (3) (4) of the University of Jos Act, Cap. 456 Laws of the Federation of Nigeria, 1990.

The facts deposed to in the affidavit in support of the originating summons were sufficient to support the case.

It is so obvious from the above, that at the trial court, the applicant asked that court to consider section 15 of the University of Jos Act, and that includes consideration of subsections 1 of section 15 supra. The applicant has not changed his mind and the nature of proceedings at the Supreme Court as learned counsel for the respondent suggests. Rather, the applicant is asking this court to consider section 15(1) supra which was not considered by both courts below and commencing the action by originating summons is very much in order since facts are not in dispute.

The issue of appearance or non-appearance of the appellant before the Governing Council of the respondent as provided by section 15(1) of the University of Jos Act is a question of fact.

At this stage of the suit, the opinion of both courts below are no longer necessary as this court can examine the record of appeal to see if the respondent complied with section 15(1) supra before the appellant was dismissed.

This court rarely makes pronouncements on an issue over which it does not have the benefit of the opinion of the courts below, but would do so as in this case where non-compliance with section 15(1) supra may amount to a denial of the appellant’s right to fair hearing. An allegation that a party was denied fair hearing can be raised at any stage of proceedings even at the Supreme Court for the first time. If found to be true, it could amount to the trial being declared as nullity for miscarriage of justice.

The respondents complaint that raising the issue of denial of fair hearing at this stage amounts to springing a surprise on the respondent is rather strange.

The respondent can only seriously complain about surprise if he had no notice of what the appellant is complaining about, or if the issue of denial of fair hearing was brought to the notice of the respondent too late, thereby depriving him of the opportunity to respond properly. The appellant raised the issue of denial of fair hearing in this application filed on 11 July 2014.

The respondent responded to the issue by his counter-affidavit and written submissions on 23 October 2014. That is to say, the respondent replied to the appellant’s allegation that he was denied fair hearing three months after it was made. The respondent had adequate time to respond to the issue of denial of fair hearing.

He cannot in good faith still maintain such a stance in 2017.

I shall now consider the merits of the application. An application to raise fresh issue of law on appeal is granted to prevent an obvious miscarriage of justice.

In order to justify the reception of fresh issue of law on appeal, the following conditions must be fulfilled:

Firstly, the issue must be pleaded as it cannot be at large.

Secondly, the issue must involve substantial points of law.

Finally, further evidence would not be required. See Fadiora v. Gbadebo (1978) 3 SC 219, (1978) 1 All NLR 97, (1978) 1 NSCC 121; Koya v. United Bank for Africa Ltd (1997) 1 NWLR (Pt. 481) 251, (1997) 1 SCNJ 1.

The fresh issue of law is section 15(1) of the University of Jos Act. A review of the record of appeal reveals that it was pleaded (see paragraph 6 of the affidavit in support of the originating summons). The issue involves substantial points of law, and in considering it in the top court, further evidence by way of calling witnesses would not be necessary. It follows that the conditions are resolved easily in favour of the appellant/applicant.

Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), guarantees the right to fair hearing.

An attribute of that provision is that parties to an action should be given adequate notice and opportunity to be heard and to present their case to the best of their ability. Even the Lord God gave Adam an oral hearing despite the evidence supplied by his act of covering his nakedness, before the case against his continued stay in the garden of Eden was decided against him.

Natural justice demands that a person must be heard before the case against him is decided.

Any breach of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) can lead to the entire proceedings being declared null and void. See Adigun v. Attorney-General, Oyo State (No. 1) (1987) 1 NWLR (Pt. 53) 678, (1987) 3 SC 250; Jang v. Dariye (2004) FWLR (Pt. 194) 412.

It is manifest from the facts of this case that there was an infraction or infringement of the appellant’s constitutional right to fair hearing, when the respondent denied the appellant his right to be heard by the Council of the University of Jos as provided by section 15(1) of the University of Jos Act before he was dismissed, and both courts below failed to see the infraction.

It is now left for the top court to ensure that the appellant’s right to fair hearing as provided by the Constitution is guaranteed.

This can only be done by allowing counsel to be heard in this court on appeal, on section 15(1) of the University of Jos Act.

There would be a miscarriage of justice where there is a departure from well laid down procedure before arriving at a decision, thereby resulting in a failure of justice. When there is a miscarriage of justice, the decision would be inconsistent with the substantial right of the party. There is a miscarriage of justice when the court fails to do justice, in such a case, injustice reigns supreme. In short, it is justice misapplied. See Djukpan v. Orovuyovbe & Anor. (1967) 1 All NLR 134; Okonkwo & Anor v. Udo (1997) 9 NWLR (Pt. 519) 16; Ojo v. O. Anibire & Ors. (2004) All FWLR (Pt. 214) 176, (2004) 10 NWLR (Pt. 882) 571.

Section 15(1) of the University of Jos Act was raised by the appellant before the trial court and the Court of Appeal but was not considered by both courts.

It is long settled that this court will not allow a party on appeal to raise any question not raised in the trial court or grant leave to a party to argue new points or new grounds not canvassed in the court below except where the new points involve substantial points of law which should be allowed to prevent clear miscarriage of justice. The application is hereby granted.

In the light of all that I have been saying, leave is granted the appellant/applicant to raise and argue fresh issue of law to wit:

Section 15(1) of the University of Jos Act. It is hereby ordered that the argument on the fresh issue of law is deemed duly filed and served today, 13 April 2017.

**NWEZE JSC:**

I had the advantage of reading the draft of the leading ruling which my lord, Rhodes-Vivour JSC, just delivered now. I agree with his lordship that the application, being meritorious, ought to be granted as prayed. Order as prayed. I abide by the consequential orders on my lord.

**SANUSI JSC:**

I had the advantage of reading before now, the ruling just delivered by my noble lord, Rhodes-Vivour JSC. I am in entire agreement with his reasoning and conclusion that this application is meritorious and should be granted. While abiding by the consequential order(s) made therein, I will advance few comments of mine.

In the motion on notice filed before this court on 11 July 2014, the appellant/applicant sought the dual relief reproduced below:

1. An order of this court granting the appellant/applicant leave to raise and argue fresh issue of law for the first time before the Supreme Court against the decision of the Court of Appeal, Jos, delivered on 17 December 2012.

2. An order of this court deeming the appellant’s brief which contains argument on the fresh issue of law as duly filed and served, separate copies having been filed and paid for.

The applicant has annexed three exhibits to his motion which he also supported with a 15-paragraph affidavit. The respondent filed an 11-paragraph counter-affidavit, written addresses were filed and exchanged by the parties and later adopted along with reply at the hearing of the application by learned counsel for the parties.

The facts giving rise to this application have been ably summarised in the lead ruling and therefore need not be repeated here. The fulcrum of the application is whether the applicant herein, not been opportune to appear in person before the council of the respondent university, was given fair hearing, especially in view of the provisions of section 15(1) of the University of Jos Act, (hereinafter referred to “the Act). It is the grouse of the applicant that both the trial court and the Court of Appeal (lower court) did not consider the provisions of section 15(1) of the Act, hence he is urging this court to grant him leave to raise that vital point in this court for the first time for the determination of this court.

Generally speaking, this court is always hesitant in allowing a new or fresh question or issue not raised in the Court of Appeal to be raised before it, except where the new or fresh issue sought to be raised involve substantial points of law either substantive or procedural which need to be allowed in order to prevent miscarriage of justice or infringement of right(s) of fair hearing.

Such issue to be raised must be relevant and no further evidence is necessary. See Eze v. Attorney-General, Rivers State (2001) 8 NSCQR 537, (2001) 18 NWLR (Pt. 746) 524, (2002) FWLR (Pt. 89) 1109; Owners of M/V Gongola Hope v. Smurfit Cases (Nig.) Ltd (2007) All FWLR (Pt. 388) 1005, (2007) 15 NWLR (Pt. 1056) 189, (2007) 7 SC (Pt. II) 56; Olalomi Industries Ltd v. Nigerian Industrial Development Bank Ltd (2009) 12 NWLR (Pt. 1167) 266, (2009) LPELR-2564 (SC).

Now in view of the fact that the applicant is seeking leave to raise new or fresh issues and the issue which he proposed to raise to my mind, involves consideration of section 15(1) of the University of Jos Act, i.e. the law governing or establishing the respondents’ herein, the leave sought should not be withheld because and such provisions is no doubt relevant to the gravamen of his substantive appeal coupled with the fact that the two courts below had never adverted their minds to such provisions of the Act in their respective judgment, especially the judgment of the lower court he appealed against. It is my view, that the justice of the matter is that he should be granted leave to do so as he requested.

The applicant by his desire to raise fresh issue which is no doubt an issue of law and which also does not involve further or additional evidence being adduced, I think it will be unjust if heis denied such leave to raise the said fresh point of law, as to refuse him such leave will amount to denial of fair hearing and will also ultimately occasion a miscarriage of justice on him.

It is my contention that the demand for leave is an exceptional circumstance, hence, this is a clear example of a case where its circumstance demands the indulgence of this court to grant him the leave he requested. I will accordingly exercise my discretion in the applicant’s favour.

Thus, for these few comments of mine and for the fuller and more detailed reasons ably marshaled in the leading ruling,

I also see merit in the instant application and I accordingly grant same as prayed. I abide by all consequential orders made in the lead ruling.

**AUGIE JSC:**

I have read in draft, the lead ruling just delivered by learned brother, Rhodes-Vivour JSC, and I agree with that in the circumstances of this case, the application to raise the fresh issue should be granted.

He dealt with the issues at stake, and I will only say a few words to emphasize the points made because it is usually a herculean task to convince or get this court to grant an application of this nature.

Mostly, an appellate court will not allow a party to raise issue not raised at the trial court except where the fresh issue or question involves substantial points of law, substantive or procedural, which need to be allowed to prevent an obvious miscarriage of justice.

On the issue of when a question of law is said to be substantial, this court explained in African Newspaper (Nig.) Ltd v Federal Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137, that such a question must be one of which arguments in favour of more than one interpretation might reasonably be adduced; and one which must be necessarily be decided in the cause or matter and not which may be unnecessarily to decide. See also Okenwa v. Military Governor, Imo State (1996) 6 NWLR (Pt. 455) 394 SC, (1996) 6 SCNJ 221, where Iguh JSC, also explained as follows:

There can be no doubt that an appellate court must not allow an appellant to jettison before it, the question on which the parties have joined issue and fought their case before the trial court as to do otherwise would amount, in effect, to permitting the appellant to commence an entirely new case before the appellate court. In the same vein, an appellate court before which a new point is sought to be canvassed will, on the authorities, refuse to grant leave to do so where the fresh point raised introduces a new line of defence completely different from the issues fought by the parties in the court below... An appellant will also not be allowed to raise on appeal, a fresh point or question, which was not raised or tried or considered by the trial court, particularly where to raise such a point or question will require fresh or additional evidence to be adduced... Where, however, such a fresh point or question involves a substantial point of law, substantial or procedural, and it is plain that no further evidence needs to be adduced which would affect the decision on the matter, the appellate court will allow the question to be raised and the point taken to prevent a miscarriage of justice. See Attorney-General, Oyo State v. Fairlakes Hotel Ltd (No. 1) (1988) 12 SC (Pt. 1) 1, (1988) 5 NWLR (Pt. 92) 1 at 29 SC; John Bankole & Ors. v. Mojidi Pelu & Ors. (1991) 8 NWLR (Pt. 221) 523. In Attorney-General, Oyo State v. Fairlakes Hotel Ltd (supra), this court succintly stated the principles guiding the appellate courts in the exercise of their discretion to grant leave to a party to raise, for the first time, a point of law not raised or canvassed in the court below thus:

The discretion has been exercised in a variety of situations in the interest of the administration of justice. The following situations are disclosed by some of the decided cases, among many, where substantial points of law, substantive and procedural are involved. The leave has been granted to raise a new point of law:

(1) When the point of law raised discloses ex facie that the court has no jurisdiction.

(2) Where the point of law raised arose out of the decision of the court of first instance and could not have been raised earlier in that court...

(3) Where the point of law raised involves the interpretation of documents relevant to the determination of the case before the court...

(4) Where all the materials necessary for the determination of the point of law raised are present in the records of the court.

(5) Where the court is satisfied that the evidence is such that establishes beyond doubt, that the facts, if fully investigated would have supported the new plea.

I must add also that at this stage, this court is not concerned with the validity or otherwise of the fresh issue sought to be raised by the appellant; that is a matter to be pronounced upon in the event of leave being granted to the appellant to raise the fresh point or issue. Thus, I will make no observation whatsoever on the issue. Suffice it to say that what I need to consider at this stage is whether or not the fresh issue sought to be raised is really a substantial question of law.

In other words, the question must be distinguished from whether or not there is any merit on the point itself, the decision of which can only be taken full arguments from the parties have been heard.

In this case, the appellant is asking this court to consider section 15(1) of the University of Jos Act that was not considered by the two courts below. In other words, he is raising the flag of fair hearing.

As my learned brother, Rhodes-Vivour JSC said in the lead ruling an allegation that a party was denied a fair hearing can be raised at any stage of the proceedings, even at this court, for the first time.

In the circumstances, I am also satisfied that the issue sought to be raised by the appellant does indeed involve a substantial question of law and it will not be necessary to call witnesses to resolve same.

It is for this and the other seasoned reasons in the lead ruling that I also grant the application as prayed. I abide by the consequential orders in the lead ruling, including the order as to appellant’s brief.

**GALINJE JSC:**

I have read before now, the draft of the ruling just delivered by my learned brother, Bode Rhodes-Vivour JSC and I entirely agree with the reasoning contained therein and the conclusion arrived thereat.

The appellant’s motion on notice dated and filed on 9 September 2013, seeks for the following reliefs:

1. An order of this court granting the appellant/applicant leave to raise and argue fresh issue of law for the first time before the Supreme Court against the decision of the Court of Appeal, Jos, delivered on 17 December 2012 to writ:

That the appellant/applicant was not given fair hearing in as he did not appear in person before the council of the University in accordance with section 15(1) of the University of Jos Act before it took the decision to dismiss him.

2. An order of this court deeming the appellant’s brief which contains argument on the fresh issue of law as duly filed and served, separate copies having been filed and paid for.

This application is predicated on 10 grounds and supported by a 15-paragraphed affidavit deposed to by the applicant himself. In opposition to the appellant/applicant’s motion on notice, the respondent filed on 23 October 2014, an eleven paragraph counter-affidavit. In line with the relevant rules of this court, parties filed and exchanged briefs of argument. The issues formulated by respective parties and their argument in support are elaborately set out in the lead ruling. By their argument, the parties are asking the court to determine whether the appellant/applicant was given a fair hearing at the trial court and the Court of Appeal since he did not appear in person before the council of the University of Jos. The question of whether the appellant/applicant was given fair hearing is a question to be determined on appeal. Delving into the compliance with the provisions of section 15(1) of the University of Jos Act will amount to determining the appeal at interlocutory stage, which this court cannot do.

The issue for determination at this stage is whether an appellant can raise on appeal a question which was not raised, tried or considered by the trial court. The general rule adopted in this court is that an appellant will not be allowed to raised on appeal a question which was not raised or tried or considered by the trial court. However where the question involves substantial points of law, substantive or procedural and it is plain that no further evidence will be adduced in support of that question, this court will allow it to be raised and the points taken in order to prevent an obvious miscarriage of justice. See K. Akpene v. Barclays Bank of Nigeria & Anor. (1977) 11 NSCC 29 at 31, (1977) 1 SC 47; Shonekan v. Smith (1964) All NLR 168 at 173; Stool of Abinabina v. Chief Kojo nyinadu (1953) AC 207 at 215, (1953) 12 WACA 171.

The fresh issue the appellant/applicant seeks to raise, as reproduced elsewhere in this ruling is clearly directing the attention of this court to the provision of section 15(1) of the University of Jos Act. It is therefore an issue of law which requires no further evidence. For this few words and the elaborate reasons in the lead ruling, I am convinced that this application should be granted. Accordingly, this application is granted as prayed.

I endorse all the consequential orders made in the lead ruling of my learned brother.

Application granted