**CHIEF OBIOMA O. A. MGBOJI AND OTHERS**

**V.**

**CHIEF C. B. C. AJUZIEOGU AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 22ND DAY OF FEBRUARY, 2016

CA/OW/216/2012

**LEX (2016) - CA/OW/216/2012**

OTHER CITATIONS

2PLR/2016/36 (CA)

(2016) LPELR-40079(CA)

**BEFORE THEIR LORDSHIPS**

ITA GEORGE MBABA, J.C.A

PETER OLABISI IGE, J.C.A

FREDERICK O. OHO, J.C.A

**BETWEEN**

1. CHIEF OBIOMA O. A. MGBOJI (ULELU II ELECT)

2. CHIEF I. O. NWANKPA (VILLAGE HEAD) (for himself and on behalf of Umumgboji Village/kindred of Obuda Aba Autonomous Community)

3. ELDER JUSTICE R. C. AJUZIEOGU (for himself and on behalf of the Eze Selection Committee for Obuda Aba Autonomous Community)

4. HON. EVANS ONYEIKE(for himself and on behalf of the entire Obuda Aba Autonomous Community except the 1st, 6th - 9th Defendants) Appellant(s)

AND

1. CHIEF C. B. C. AJUZIEOGU

2. THE EXECUTIVE CHAIRMAN, ABA SOUTH L.G.A

3. THE COMMISSIONER FOR LOCAL GOVT. AND CHIEFTAINCY AFFAIRS, ABIA STATE

4. THE ATTORNEY GENERAL, ABIA STATE

5. THE GOVERNOR, ABIA STATE

6. COMRADE CHIMERE KAMA ENWEREJI

7. CHIEF CHIMA CHIGBU

8. COMRADE LOVEDAY C. C. EMMANUEL

9. VICTOR NWORGU ISIGUZO - Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF ABIA STATE

**REPRESENTATION**

NNAMDI A. OKORIE Esq. - For Appellant

AND

H. U. UDENSI Esq. - For Respondent

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

CUSTOMARY LAW - CHIEFTAINCY:- Claim for declaration as person lawfully selected for a traditional stool - Relevant litigation considerations

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ABUSE OF COURT/JUDICIAL PROCESS: What constitutes

ACTION - HEARING OF A CASE: Whether "hearing" and "hearing de novo" are one and the same

ACTION - INTERLOCUTORY APPLICATION/MATTERS: Whether a Court can pronounce on substantive matters at interlocutory stage

APPEAL - UNAPPEALED FINDING(S): Effect of un-appealed findings of Court

APPEAL - ISSUE(S) FOR DETERMINATION: Whether issues must be distilled from grounds of appeal: Effect of issues not so distilled

COURT - COURT OF CO-ORDINATE JURISDICTION: Whether a Court can sit on appeal over decision of another Court of co-ordinate jurisdiction – Relevant considerations

COURT - DISCRETION OF COURT: Award of costs - How discretion of Court must be exercised as regards award of costs

COURT - HIGH COURT: Whether there is only one High Court of a State

COURT - JURISDICTION: Proper order to make where Court lacks jurisdiction

JUDGMENT AND ORDER - FINAL JUDGMENT/ORDER: What constitutes final judgment

**MAIN JUDGMENT**

**PETER OLABISI IGE, J.C.A**. (DELIVERING THE LEADING JUDGMENT):

This appeal is against the decision of the High Court of Abia State contained in the Ruling of the Honourable Justice C. C. Thomas Adiele delivered on 30th day of July, 2012.The Appellants had by Paragraph 27 of their Amended Statement of Claim prayed the Lower Court as follows:

27. WHEREFORE THE PLAINTIFFS jointly and severally claim as follows:

i) A DECLARATION that the 1st Plaintiff is the duly selected and accepted person by the Umumgboji Village and the Obuda Aba Community as the ULELU II of Obuda Aba Community according to Custom and Tradition of the Obuda Aba people.

ii) AN ORDER directing the Defendants to recognize him as such and to set the machinery in Motion for his presentation, recognition and issuance of Staff of Office in accordance with the relevant Laws in Abia State.

iii) A PERPETUAL INJUNCTION restraining the 2nd - 5th Defendants from presenting and or recognizing any other person than the 1st Plaintiff as the ULELU II of Obuda Aba Community.

By a Motion dated 8th day of June, 2010 and filed on the same date the 3rd, 4th and 5th Respondents sought for the dismissal in limine at the Lower Court for lack of jurisdiction to hear or determine the suit. The grounds upon which the application was based were stated as follows:

(a) That before contesting for the Ezeship stool, the 1st Claimant/Respondent refused, failed or neglected to comply with the provisions of:

i) Section 7(6) (d) of the Traditional Rulers and Autonomous Communities Law, Cap 10, Vol. 1, Laws of Abia State of Nigeria, 1991 - 2000;

ii) Rules 0442 (b) and 04422 of the Abia State Public Services Rules; and

iii) Section 5(h) of the Constitution of Obuda, Aba Autonomous Community, 2000 and Article 31(h) of the Amendment Constitution of Obuda, Aba Autonomous Community, 2008.

(b) That the Statement of Claim as filed by the Plaintiffs/Respondents did not disclose any cause of Action against the 3rd, 4th and 5th Defendants/Applicants;

(c) That this Suit is Premature;

(d) That the Claimants/Respondents have no Locus Standi to institute this Suit and

(e) That the Suit is Incompetent.

The Motion was heard by Hon. Justice OBISIKE OJI who delivered his Ruling on the application on 20th day of June, 2011. The said Learned Judge stated on page 16 of the record that even though the Applicants raised five grounds for their contention that the Suit be dismissed, it is ground (a) that governs the other grounds. The Learned trial Judge thereafter held thus:

It is also not the function of the Court when constructing statutes to supply omission therein. See OLOWU V. ABOLORE (1993) 6 SCNJ (Pt. 1) 1, 19. Guided by these decisions, a look at the laws relied on by the applicant shows that it is not made a condition precedent to taking any step to seek the office of Eze of an autonomous community to first resign your public office. It is clear that it is at the point of recognition of such person by the Governor as the Eze that he must be satisfied that such a person is not a public servant. if the Law Maker intended that such person must resign his office before taking any step in such matter it would have said so in clear terms like it did in the Electoral Act. I am not prepared to read into the law what is not contained therein. On the Public Service Rules, the Claimants Counsel was on firm grounds in his submission that the rules cited refer to partisan political activity. The pleading of the Claimants they have more sufficient interest to maintain this suit. I also agree with the claimants counsel that the applicants are sued as nominal parties who will be bound by the outcome of this suit. The Nwamara Case cited by counsel is the Court of Appeal decision. The case got to the Supreme Court in CHIEF L. U. OKEAHIALAM & ANOR. V. NZE J. U. NWAMARA & ORS. (2003) 7 SCNJ 132. At page 141 that Court held:

In this country, any persons recourse to the Court is a constitutional right guarantee by Section 36 of the 1999 Constitution . There is nothing in Section 25 of Law No. 11 of 1981 (now Section 28 ) which barred such recourse. As already stated, the right of appeal in the provision to Section 25 was restricted to cases in which the ground of complaint in that the rule of natural justice has not been observed. Such is not an exclusive remedy, operating to the exclusion of the right of invoking the supervisory jurisdiction of the Courts which the Constitution granted and which only the Constitution can take away".This Suit is not premature. Having so found I hold that this application lacks merit and it is accordingly dismissed. I award no Cost. (Pages 165 - 166 of the record).

Thereafter the matter was transferred from HON. JUSTICE OBISIKE OJI OF ISUIKWUATO JUDICIAL DIVISION OF ABIA STATE HIGH COURT to HON. JUSTICE C. C. T. ADIELE of OSISIOMA JUDICIAL DIVISION of the Abia State High Court for hearing by the HON. JUSTICE S. O. E. NWANOSIKE, then Acting Chief Judge of Abia State vide a letter dated 18th day of October, 2011.

While the matter was pending before the Court at OSISIOMA JUDICIAL DIVISION the 1st, 6th - 9th Respondents brought a Notice of Preliminary Objection dated 25th day of January, 2012 and filed on 2nd February, 2012 praying for:

AN ORDER striking out or dismissing this suit for being premature, frivolous, abuse of Court process, vexations, incompetent, lacking in merit and for want of the requisite jurisdiction of this Honourable Court. AND for such further Order or Orders as this Honourable Court may deem fit and expedient to make in the circumstance?

The grounds for the objection are as follows:

"1. The Cause of action in this Suit is anchored on the selection, presentation and recognition of the 1st Defendant as an Eze or Traditional Ruler of the OBUDA ABA AUTONOMOUS COMMUNITY.

2. The Claimants purport to be dissatisfied with the election and recognition of the 1st Defendant as and Eze or Traditional Ruler.

3. The Claimants seek, by this action to restrain the and to 4th Defendants from recognizing the 1st Defendant as the said Eze or Traditional Ruler of Obuda Aba Autonomous Community.

4. The Claimants’ Suit seeks to prevent the 2nd - 4th Defendants from performing their Executive/Administrative functions or duties as enshrined in the Abia State Chief Law.

5. The Claimants cannot prevent or stop the 2nd - 4th Defendants from performing their Administrative duties.

6. This Suit is premature and can only be instituted after the 2nd to 4th Defendants must have exercised their Administrative/Executive duties in this regard.”

Ruling on the Objection on 30th day of July, 2012 the learned trial Judge, C. C. THOMAS ADIELE J., held thus:

At the risk of repetition, let me emphasis unequivocally that the Statutory Power of recognition vested in the Governor begins only when the Eze of the Autonomous Community is presented to the Governor. Until this is done, there cannot be any challenge to the exercise of his discretionary statutory powers. The Law as I understand, it is that once the Governor has exercised his power of recognition under Section 9 of the Abia State Traditional Rulers and Autonomous Communities Law Cap. 1166 Laws of Abia State, 2005, any person who feels his rights have been infringed is as liberty to take out an action in the High Court, which in the exercise of its jurisdiction under Section 272 (1) of the 1999 Constitution is empowered to entertain same. See EGBUSON V. IKECHUKWU (1977) 6 SC 7 AT 34; MERCHANT BANK LTD. V. FEDERAL MINISTER OF FINANCE (SUPRA)In view of the foregoing, this Honourable Court lacks the requisite jurisdictional competence to hear this action/suit because the condition precedent to the exercise of Court’s Jurisdiction has not been fulfilled, that is, the recognition or otherwise of the 1st defendant/applicant as Eze or Traditional Ruler by the Governor of Abia State (5th Defendant). See MADUKOLU V. NKEMDILIM (1962) 1 ALL NLR 587 AT 589 - 590; (1962) 2 SCNLR 341.Accordingly, I am in agreement with learned Counsel for the 1st defendant that this action is premature; this Court lacks the jurisdiction to entertain it. Suit No. A/280/2008 is incompetent and is hereby STRUCK OUT?.See page 195 of the record.

The Appellants were aggrieved by the decision of ADIELE J. and have by their Notice of Appeal dated 2nd august, 2012 and filed on 3rd August 2012 appealed to this Court on ten grounds which without their particulars are as follows:

**GROUND ONE**

The Honourable Court erred in law, which occasioned a miscarriage of justice when it assumed jurisdiction to sit on appeal over a decision of a Court of coordinate jurisdiction.

**GROUND TWO**

The Honourable Court erred in law which occasioned a miscarriage of Justice when it held that it is not bound by the decision of Justice Obisike Oji in the same Suit No. a/280/08.

**GROUND THREE**

The Honourable Court erred in law when it misdirected itself which occasioned a miscarriage of justice when it held that the Applicants and Prayers before Justice Obisike Oji in Suit No. A/280/08 were different from the Applicants and Prayers before him in the same Suit No. A/280/08.

**GROUND FOUR**

The Honourable Court erred in law when it exceeded its mandate and jurisdiction which occasioned a miscarriage of justice when it held that this Suit was transferred/assigned to C. C. THOMAS ADIELE J., for hearing and determination de novo by the Hon. Acting Chief Judge.

**GROUND FIVE**

The Honourable Court erred in law and misdirected itself in exceeding its jurisdiction which occasioned a miscarriage of justice when it held that transferred matters ought to have a breath of fresh air and commence de novo. In that case, any pending applications ought to be determined by the new Judge.

**GROUND SIX**

The Honourable Court erred in law when it failed to abide by the doctrine of stare decisis and hierarchy of Court system by choosing to prefer the decision of the Court of Appeal to that of the Supreme Court.

**GROUND SEVEN**

The Honourable Court erred in law and misdirected itself as well as misrepresented the facts when it delved into the substantive matter at the interlocutory stage when it held that it was only the 1st defendant that scaled through the hurdle of presentation to the 2nd defendant.

**GROUND EIGHT**

The Honourable Court erred in law which occasioned a miscarriage of justice when it held that the right of action in chieftaincy matters accrues after Governor’s exercise of his discretion of recognition of a traditional ruler.

**GROUND NINE**

The Honourable Court erred in law which occasioned a miscarriage of justice when it struck out Suit No. A/280/08 for being premature.

**GROUND TEN**

The Honourable Court erred in law when it granted a relief not claimed by parties when it awarded a cost of N10,000.00 against the claimants when the defendants did not ask for cost?.(Pages 197 - 201 of the record).

The Appellants Brief of Argument dated 30th day of May, 2013 was filed on 31st day of May, 2013 but deemed duly filed on 16th day of January, 2014 by this Court. The 2nd, 3rd, 4th and 5th Respondents did not filed Brief of Argument.

The 1st, 6th - 9th Respondents filed their 1st, 6th to 9th Respondents’ Brief of Argument dated 20th day of September, 2013 on 16th day of January, 2014. Appellants filed Appellants Reply Brief of Argument on 5th February, 2014 heard on 28th day of September, 2015. Judgment in this appeal was not delivered before now due to the fact that I was on National Assignments which involved the hearing of appeals (both on interlocutory and final appeals) from Election Petitions Tribunals.

Now the Appellants distilled six issues for the determination of this appeal viz:

“(i) Whether JUSTICE C. C. T. ADIELE has the competence and jurisdiction to sit on appeal/overrule a conclusive decision of JUSTICE OBISIKE OJI in the same suit. (GROUNDS 1 - 3 OF THE GROUNDS OF APPEAL).

(ii) Whether or not the trial Court per JUSTICE C. C. T. ADIELE exceeded its mandate in hearing the application dated 25/1/2012 or ALTERNATIVELY what was the import of the Order of Transfer made on 18/10/2011 with Ref. No. GROUNDS OF APPEAL).

(iii) Whether an autonomous community and or an interested person has to wait until a traditional ruler not selected by the community is recognized before approaching the Court, OKEAHIALAM V. NWAMARA vis-a-viz WABARA V. NNADEDE (GROUND 6 OF THE GROUNDS OF APPEAL).

(iv) Whether or not the appellants herein are to wait until their rights are breached before approaching the Court or ALTERNATIVELY whether a State Law can remove right granted citizens by the Constitution (GROUNDS 8 - 9 OF THE GROUNDS OF APPEAL).

(v) Whether a Court is competent to delve into the substantive issue at an interlocutory stage. (GROUND 7 OF THE GROUNDS OF APPEAL).

(vi) Whether or not the award of cost in this case is a proper judicial discretion (GROUND 10 OF THE GROUNDS OF APPEAL).”

The 1st, 6th to 9th Respondents also formulated six issues for the consideration of the appeal thus:

"(i) Whether the Learned trial Judge, of the Osisioma Judicial Division of the Abia State High Court exceeded his jurisdiction to entertain, de novo, a suit transferred to his Court from Isuikwuato Judicial Division of the said Abia State High Court? (Ground 4).

(ii) Whether the Learned trial Judge, sat on appeal over a decision of a Court of coordinate jurisdiction to entertain Suit No. A/280/2008 transferred to his Court by the Acting Chief Judge of Abia State? (Ground 1).

(iii) Whether the Learned trial Judge delved into the substantive matter at the interlocutory stage? (Ground 7).(iv) Whether the Learned trial Judge erred in law when he allegedly held that the right of action in chieftaincy matters accrues after Governor’s exercise of his discretion of recognition of a Traditional Ruler? (Ground 8).

(v) Whether the Learned trial Judge properly exercised his discretion in awarding cost the Appellants? (Ground 10).

(vi) Whether or not the Appellants herein are to wait until their rights are breached before approaching the Court or ALTERNATIVELY whether a State Law can remove right granted citizens by the Constitution? (Ground 8 - 9).”

The appeal will be determined based on the six Issues formulated by the Appellants. I will take Issues 1 and 2 together:

ISSUES (i) and (ii)

(i) WHETHER JUSTICE C. C. T. ADIELE HAS THE COMPETENCE AND JURISDICTION TO SIT ON APEAL/OVERRULE A CONCLUSIVE DECISION OF JUSTICE OBISIKE OJI IN THE SAME SUIT (GROUNDS 1 - 3 OF THE GROUNDS OF APPEAL).(ii) WHETHER OR NOT THE TRIAL COURT PER JUSTICE C. C. T. ADIELE EXCEEDED ITS MANDATE IN HEARING THE APPLICATION DATED 25/1/2012 OR ALTERNATIVELY WHAT WAS THE IMPORT OF THE ORDER OF TRANSFER MADE ON 18/10/2011 WITH REF. NO. JDID/CT/S/Z/V.VI/97 AT PAGE 173 OF THE RECORDS. (GROUNDS 4 - 5 OF THE GROUNDS OF APPEAL).

The Learned Counsel to the Appellants stated that the trial Court per Justice C. C. T. Adiele lacked the jurisdiction and competence to hear the 1st, 6th - 9th Respondent? application dated 25/1/2012 after the same Court, according to N. A. Okorie Esq., the Appellants Learned Counsel, per Obisike Oji, J. had conclusively dismissed similar application. To Learned Counsel the hearing of application by 1st, 6th - 9th Respondent’s application amounts to sitting on-appeal over the decision of a Court of Coordinate Jurisdiction. That proper steps for Respondents could have taken was to appeal the Order/Ruling of OBISIKE OJI, J. as according to Appellants it was not even open to the Respondents to apply to set aside the Order. He relied on the cases of MILITARY ADMINISTRATOR BENUE V. ULEGBE (2001) 17 NWLR (PT. 741) 194 at 199 and F.C.D.A. V. SULE (1994) 3 SCNJ 71. He also relied on page 9 of the Ruling of Justice Obisike Oji contained on page 168 of the record.

That none of the Respondents appealed the ruling of OJI, J., which decided that the action of Appellants was not premature. That the Ruling was attached as Exhibit ‘B? to Appellants Counter Affidavit against the of 1st, 6th - 9th Respondents.

That Adiele, J. merely sought for difference where there was none and rather went ahead to review the decision of his brother Obisike Oji, J. That the Abia State High Court no longer possessed the power to set aside the Order already made by OBISIKE, J. He relied on the cases of:

NDIC V. SBN PLC. (2003) 1 NWLR (Pt. 801) 311 at 324 and SKEN CONSULT (NIG) LTD. & ORS. UKEY (1981) 4 SC 6.

He referred to the grounds contained in two applications to show that they are the same.

That it does not matter that it was not the same Respondents who filed Objection before OBISIKE, J. that filed Objection before ADIELE, J. That the decision of Obisike Oji, J., constitutes res-judicata because it was not appealed against. That the application of the 1st, 6th - 9th Respondents was an abuse of Court process. That the trial Judge was aware of OJI, J’s Ruling. He urged the Court to resolve Issue 1 in Appellants’ favour.

Arguing Issue (ii) the Learned Counsel to the Appellants N. A. Okorie Esq. contended that the trial Court per ADIELE, J., exceeded its mandate in hearing the application dated 25/1/12. That the Order of then Chief Judge of Abia Ag. Directing ADIELE, J. to hear the case did not mean hearing should be commenced de novo. That where a former Court granted an application for service out of Jurisdiction/Leave to serve by substituted means, the new Court or defendants would not expect the claimant to make the said application before new Court. That what Adiele J., ought to have done was hearing evidence of witnesses in the case since OJI, J., had held the Suit was not premature. That where a Court takes it upon itself to exercise jurisdiction it does not possess its decision will amount to nullity. He relied on the case of MINISTER OF WORKS & HOUSING V. SHITTU (2008) ALL FWLR (PT. 401) 847 at 852 ratio 9.

In his response on Issue 1, the Learned Senior Counsel to the 1st, 6th - 9th Respondents K. C. NWUFO SAN submitted that the Learned trial Judge did not exceed his jurisdiction to entertain the Suit de novo since it was transferred from Isikwuato Judicial Division of the said Abia State. That the Learned trial Judge did not sit on appeal over any decision of a fellow Judge of Coordinate Jurisdiction. That the Motion filed by 3rd - 5th Respondent was heard by OJI, J., while the Objection of the 1st, 6th - 9th Respondents was heard by ADIELE, J. That the decisions cited and relied upon by the Appellants though good authorities in themselves were grossly cited out of context in that they are in applicable. That they are all in respect of Suit pending before same Judge. That the Case of OKEAHIALAM V. NWAMARA & ORS. (2003) 7 SCNJ 132 at 141 relied heavily upon by Appellants as giving jurisdiction to a Court to entertain a suit seeking to restrain the Governor from executing or exercise his executive actions did not support Appellants position. That in the instant case the situation is different because Governor of ABIA STATE (5th Respondent) was yet to accord any recognition to the 1st Respondent as Traditional Ruler of his Community when the Appellants instituted Suit No. A/280/2008. He relied on the Case of WABARA & ORS.(2009) 16 NWLR (PART 1166 P. 204 at 219, 220, 224. That the Governor could not be restrained from exercising its discretion relying on the case of A. G. ANAMBRA STATE V. OKAFOR (1992) 2 NWLR (Pt. 224) 419. He urged the Court to resolve Issue 1 against the Appellants.

On Issue 2, the Learned Silk stated that the contention of the Appellants under Issue No. 2 is grossly misconceived. That Appellants attempt at distinguishing between the hearing of a Suit and hearing a Suit de novo is a distinction that is meaningless and a mere semantic. That as far as the matter was transferred from one Court to another, both hearing and hearing de novo are one and the same thing in the circumstance.

The 1st, 6th -9th respondents further contended that since their Notice of Preliminary Objection was in the Court’s file as at the time the case was transferred to the trial Judge, the said Judge has a duty to hear and determine it one way or the other. Reliance was placed on the cases of:

1. G. E. N. ONYEKWULUJE V. G. B. ANIMASHAUN (1996) 3 SCNJ 24 at 31 per MOHAMMED J.S.C.

2. F. B. N. PLC. V. E. D. TSOKWA (2004) 5 NWLR (PART 7866) 271 at 306 C - D.

3. AUGUSTA CHIME & ORS. MOSES CHIME (2001) 3 NWLR (PART 701) 527 at 552 E - F per IGUH, JSC.

The Learned Silk therefore submitted that Motions and Notice of Preliminary Objections are to be heard or heard de novo just like the substantive suits and not to be CONTINUED. He stated the trial Judge was right in hearing the Preliminary Objection of 1st, 6th - 9th Respondents which was not heard by HON. JUSTICE OBISIKE OJI but heard for the first time by THOMAS, J.

The 1st, 6th - 9th Respondents also complained that Issue No. 3 which was distilled from grounds 4 and 5 and that it ought to be struck out. That Ground 5 of the appeal is grossly incompetent as it complains of both errors in Law and misdirection on facts. He relied on the Cases of F. B. N. LTD. V. MOSES NJOKU (1995) 3 NWLR (PART 384) 452 at 474 and CHIEF F. O. ANIBIRE & ORS. V. RAFIU WOMILOJU & ORS. (1993) 5 NWLR (Pt. 295) 623 at 630 E - H per KOLAWOLE, JCA. That when a competent issue for determination is argued together with an incompetent issue for determination, the former will become incompetent as well because the Court cannot choose and pick or differentiate between the competent and incompetent Issues for determination. He relied on the case of AMGBARE V. SILVA (2007) 1 NWLR (PART 1121) 1 at 80 (sic). He urged the Court to strike out Appellant’s Issue No. 2 and dismiss Appellants appeal.

In their Appellants Reply Brief they maintained the Lower Court sat as Appellate Court on decision of OBISIKE OJI, J. That the cases relied upon by Respondents are not apposite.

Now the 1st, 6th - 9th Respondents had contended that Issue No. 2 distilled from Grounds 4 and 5 of Appellants grounds of appeal is incompetent because one of the grounds namely Grounds of the Appellants appeal is incompetent because it contains and complained of both errors in Law and misdirection on the facts.

There is no doubt that an Issue for determination in an appeal to Appellate Court must be distilled from competent ground or grounds of appeal. Where a ground of appeal is shown to be incompetent, it is moribund and liable to be struck out. Any issue for determination that is tied to such incompetent ground or grounds of appeal will be subsumed with the incompetent grounds or ground of appeal and will be struck out also. See:

(1) SUNKANMI ADEBESIN V. THE STATE (2014) 9 NWLR (PART 1413) 609 at 631 B - E per NGWUTA, JSC who said:

“If anything, the situation is more confounded for the reason that a ground of appeal cannot be a ground of law and a ground of fact at the same time. See Nwadike V. Ibekwe (supra).Each of the grounds 1 and 2 in the appellant’s notice of appeal alleges error in law and fact as shown earlier in this judgment. This Court is ill-equipped to split a single ground of appeal complaining of error in law and error in fact to divide what part is founded on law and what part is based on fact. The two grounds are incompetent and are hereby struck out. See Aniekwe V. Okereke (1996) 6 NWLR (Pt. 452) 60 ratio 4; Nwadike V. Ibekwe (supra); Amadi V. Okoli (supra); Boogom V. Awam (1995) 7 NWLR (Pt. 410) 692.The appellant is left with only grounds 3 in his notice of appeal. Learned Counsel for the appellant did not marry either of his Issues 2 and 3 with any ground of appeal as he ought to have done but he did indicate that Issue 1 was framed from ground 3. It is therefore safe to assume, and I do assume, that Issues 2 and 3 were distilled from either grounds 1 and 2 or both. The two issues must share the fate of the incompetent grounds of appeal which gave rise to them. They are hereby struck out.”

(2) BARRISTER ORKER JEV & ANOR. V. SEKAN DZUA IYORTYYOM & ORS. (2014) NWLR (PART 1428) 575 at 608 F - H to 609 A per OKORO, JSC who said:

“On the other submission which stretched argument in this issue much longer, I wish to say that this Court has, in a plethora of decisions held that though one can validly lump several related grounds of appeal into one issue and argue same together, if any of the grounds so lumped together is found to be incompetent, then it contaminates the whole issue and renders it incompetent as the Court cannot delve into the said issue on behalf of the litigant and excise the argument in respect of the competent grounds from those of the incompetent grounds in the issue. The law is no doubt settled that any issue, or issues formulated for the determination of an appeal must be distilled from, or must arise or flow from a competent ground or grounds of appeal. Again, issues distilled from either incompetent grounds of appeal or a combination of competent and incompetent grounds of appeal are in themselves not competent and are liable to be struck out. An incompetent ground of appeal cannot give birth to a competent issue for determination, See Akpan v. Bob (2010) 17 NWLR (Pt. 1223) 421; Amadi v. Orisakwe (1997) 7 NWLR (Pt. 511) 161; Fagunwa & anor. V. Adibi & ors. (2004) 7 SCNJ 322; (2004) 17 NWLR (Pt. 903) 544."

Ground 5, of the Appellants’ Notice and grounds of appeal says:

“The Honourable Court erred in law and misdirected itself in exceeding its jurisdiction which occasioned a miscarriage of justice when it held that transferred matters ought to have a breath of fresh air and commence de novo. In that case, any pending applications ought to be determined by the new Judge.”

I am of the firm opinion that the ground of appeal just quoted is not an admixture of error in law and misdirection on the facts as erroneously argued by the 1st, 6th - 9th Respondents. The Appellants are not talking of facts but are complaining that the trial Court lacked the jurisdiction to hold as he did that transferred matters ought to have a breath of fresh air and commence de novo. Ground 5 of the said Notice and grounds of Appeal as filed by Appellants is competent and issue formulated from it along with ground 4 is competent.

On the contention of the 1st, 6th - 9th Respondents that Hearing and Hearing De novo are one and the same thing, I will call in aid the meanings given to them in BLACKS LAW DICTIONARY, NINTH EDITION on pages 788 and 789 thereof as follows:

Hearing

1. A Judicial Session open to the public, held for the purpose of deciding issues of fact or of Law, sometimes with witnesses testifying the Court held a hearing on the admissibility of DNA evidence in the murder case.

2. Administrative Law. Any setting in which an affected person presents arguments to a decision maker.

Hearing de novo -

1. a reviewing Court’s decision of a matter a new, giving no difference to a Lower Court’s findings.

2. A new hearing of a matter, conducted as if the original hearing had not taken place.

Hearing connotes Audi alteram patem principle encapsulated in Section 36 (1) of the 1999 Constitution which provides:

36 (1) In the determination of this civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

Hearing De Novo cannot therefore mean one and the same thing.

There can be no doubt that the 1st, 6th - 9th Respondents are parties to the suit leading to this appeal and then have fully participated in all the proceedings in the suit when the matter was pending before Hon. Justice OBISIKE OJI sitting then at ISUIKWUATO JUDICIAL DIVISION of ABIA STATE including the hearing of the Motion to dismiss the Suit filed by the 3rd to 5th Respondents against the Appellants’s Suit on ground of lack of jurisdiction on the part of Abia State High Court to determine or adjudicate on appellants action.

The 1st, 6th - 9th Respondents were contented being passive when the said application was moved before OJI, J. even though they were fully aware of the said Motion. It was after the learned trial Judge then sitting at ISUIKWUATO JUDICIAL DIVISION ruled against the 3rd - 5th Respondents application that the 1st, 6th - 9th Respondents wrote to the Ag. Chief Judge of Abia State for transfer of the Suit/Action to OSISIOMA DIVISION, on 18th day of December, 2011.

The 1st, 6th - 9th Respondents Notice of Preliminary Objection was dated 25th day of January 2012 and filed on 2nd February, 2012 at ABA JUDICIAL DIVISION before the matter, was transferred to OSISIOMA JUDICIAL DIVISION. The said application filed on 2/2/2012 was on all fours with the Motion of 3rd - 5th Respondents which sought to dismiss the Appellants’ Suit in limine for lack of jurisdiction when the learned trial Judge who heard the 3rd - 5th Respondents’ Motion for dismissal in limine for want of jurisdiction (OJI J.) refused the 3rd - 5th Respondents application and dismissed same on 20th day of June, 2011 and fixed the matter for 15th day of July, 2011 for hearing. The 1st, 6th - 9th Respondents did not deem it fit or right to appeal against the Ruling of OJI, J. assuming jurisdiction in the Suit.

I have earlier on in this Judgment REPRODUCED THE MOTION FILED BY THE 3rd - 5th Respondents for dismissal of the Suit limine and the notice of Preliminary Objection filed subsequent to Ruling of OJI, J. on 3rd - 5th Respondents’ Motion on 20 - 6 - 2011.

I am of the solemn view that the 1st, 6th - 9th Respondents’ Notice of Preliminary Objection dated 25th January, 2012 and filed on 2nd day of February, 2012 was a Crass or gross abuse of Court process. Apart from indulging in forum shopping the 1st, 6th - 9th Respondents deliberately refused to appeal the Ruling of OJI, J. but rather preferred to filed their own Notice of Preliminary Objection was an improper use of legal process. See: HON. A. G. OF LAGOS STATE V. THE HON. A. G. OF THE FEDERATION & ORS. (2014) 4SCM 1 at 41 f to 42A where Muhammad, JSC said:

The Law is trite that the employment of judicial process is only regarded generally as an abuse of process when a party improperly uses the issues of judicial process to the irritation and annoyance of his opponents, and the multiplicity of actions on the subject matter against the same opponent on the same issues. See: Saraki v. Kotoye (1912) 9 N.W.L.R. (Pt.264) 156 at 188 and Okafor v. A. G Anambra State (1991) 6 N.W.L.R. (Pt.200) 659 at 681. However, the case directly relevant to the present situation we have in this case is the case of A.G. Ondo State v. A.G Ekiti states (2001) 17 N.W.L.R. (Pt.743) 706 at 771; (2001) 12 SCM, 23 where Karibi-Whyte JSC hit the nail on the head when he said.

I agree with Mr. Adewale - Hon Attorney General of Ekiti State, that the action seeking in this Court for a relief already before another Court in a pending action between the parties is without doubt an abuse of the judicial process. Plaintiff did not have an answer to the allegation. See Dama v. Adamu (1999) 4 N.W.L.R. (Pt. 598) 311 and Bena Plastic Industries v. Vasilyer (1999) 10 N.W.L.R. (Pt. 624) 620.

On pages 50G-I, NGWUTA, JSC opined.

Moreover, in Appeal No. CA/428/05, the Court of Appeal, Lagos Division dismissed the plaintiff’s appeal on its Sales Tax Law, a matter directly an issue in this case. This Court of Appeal delivered its judgment on 13th July, 2007. The plaintiff as the appellant in the appeal has not deemed it necessary to appeal that judgment, and so the matter is Sales Tax Law being null and void is deemed been settled between the parties. See Omeregbe v. Lawal (1980) 3-4 SC 108 It amounts to abuse of process of Court for the plaintiff to bring the matter afresh before this Court by resort to forum shopping. In my view, the said ground of the preliminary objection is also well-taken

At pages 731 to 74 A-B of the same Report KUDIRAT KEKERE - EKUN, JSC had this to say:

The subject matter of the concluded appeal and the instant case is substantially similar and an appeal in respect of the issue contested before the Court of Appeal would have the same effect as a resolution of the issues in this Case. See: Minister for Works & Housing v. Thomas (Nig) Ltd (2002) 2 NWLR (Pt. 732) 740 AT 780 e - h & 785 e-h; Ali v. Albishir (2008) 3 NWLR (Pt.1073) 94 at 142 E - 144B. It is therefore somewhat curious that rather than appeal against the judgment of the Court of Appeal delivered on 13/17/2007, or await the outcome of the pending suit/appeal, the plaintiff chose to file a fresh suit in an attempt to invoke the original jurisdiction of this Court. If dissatisfied with any of the decisions, the proper course of action is to pursue the appeals to their logical conclusion. In the circumstances, I am of the considered view that the present suit amounts to an abuse of process.

I am mindful of the argument of Learned Senior Counsel to 1st, 6th -9th Respondents to the effect that, since the matter has been transferred to another Judge and 1st, 6th -9th Respondents Notice of Preliminary Objection was in the file, ADIELE J. cannot ignore it and that since His Lordship was starting the case de novo order of OJI J. dismissing the Motion of 3RD - 5TH Respondents challenging his jurisdiction, has dissolved automatically.

With considerable respect to the learned silk to the 1st, 6th - 9th Respondents the argument or his submission over-looked the fact that pursuant to Section 270 (1) and 2 of the 1999 Constitution there is only one High Court for each State of the Federation whose jurisdiction is shared by all JUDGES of the said High Court in the States notwithstanding that there are various Divisions in each of the States in the Federation of NIGERIA. Thus any decision, Ruling, or Order made by any of the Judges of the High Court of Abia State remains the Order or Ruling of ABIA STATE HIGH COURT. They remain sacrosanct or extant until set aside by an appellate Court. See: SHELL PETROLEUM DEVELOPMENT COMPANY NIGERIA LTD V. CHIEF TIGBARA EDAMKUE & ORS (2009) 14 NWLR (PART 1160) 1 at 25 where OGBUAGU JSC said:

I am aware there is only one High Court in a State with Judicial Divisions, created for administrative convenience or purposes. The Judges of the Federal High Court sit in different States or separate Courts as in the Federal Capital Territory. Both Courts are bound by one Statutory Rule of Court. See: the cases of S. O. Ukpai v. Okoro & Ors. (1983) 2 SCNLR 380 @ 388, 390, 391; Skenoconsult (Nig.) Ltd. V. ukey (1981) 1 S. C. 6 interpreting Section 234 of the 1979 Constitution. Egbo v. Laguma (1988) 2 NWLR (Pt. 80) 109 and Chief Egbo & 16 Ors. V. Chief Agbara & 4 Ors. (1997) 1 NWLR (Pt. 481) 293; (1997) 1 SCNJ. 91 - per Iguh, JSC.

And on page 27 F - G. His Lordship said:

“I note in fact, that the said Orders of Sanyaolu, J., made on 7th February, 1995, amending the capacities the respondents prosecuted both suits, were not appealed against. The effect is that those Orders subsist in law. See: the Case of Chief Ogunyade v. Oshunkeye & Anor. (2007) 15 NWLR (Pt. 1057) 218 @ 257 cited and relied on by the respondents in their brief (it is also reported in (2007) 7 SCNJ 170). In the concurring Judgment of Onnoghen, JSC in the Case of Chief Ogunyade v. Oshunkeye & Anor. (2007) 15 NWLR (Pt.1057) 218 @ 257, cited and relied on in Paragraph 3.3 (6) at page 7 of the respondent’s brief, His Lordship stated inter alia as the Law is settled that any point(s) of law or facts not appealed against is deemed to have been conceded by the party against whom it was decided and that the said point(s) remain(s) valid and binding on the parties."

And on pages 28 F - H to 29

A His Lordship said:

"However, I am aware and concede on this also settled, that no Judge can or is entitled to reverse, vary or alter the Order or decision of another Judge of co-ordinate jurisdiction except on issue of jurisdiction. See: the Cases of Akporue & Anor. V. Okei (1973) 12 S.C. 137; (1973) 3 ECSLR 1010 @ 1014; Orewere & Ors. v. Abiegbe & Ors. (1973) 3 ECSLR 1164 @ 1167 - that the proper action is to go on appeal; National Insurance Corporation of Nigeria v. Power Industrial Engineering Co. Ltd. (1990) 1 NWLR (Pt. 129) 697 @ 707 C. A. - per Akpata. JCA (as he then was). In other words, in the absence of statutory authority, one Judge has no power to set aside or vary the order of another Judge of concurrent and co-ordinate jurisdiction. See: the Cases of Amamabu v. Okafor (1966) 1 ALL NLR 205 @ 207 and Uku v. Okumagba (1974) 1 ALL NLR (Pt. 1) 475 cited in the Case of Wimpey (Nig.) Ltd. & Anor. V. Alhaji Balogun (1986) 3 NWLR (Pt. 28) 324 @ 339. This is especially when such Order has been entered or drawn up."

The Learned trial Judge (ADIELE, J) was in error in granting the relief sought by the 1st, 6th -9th Respondents by striking out the Suit of the appellants’ when he held:

"In view of the foregoing, this Court lacks the requisite jurisdictional competence to hear this action/suit because the condition precedent to the exercise of Court’s jurisdiction has not been fulfilled, that is the recognition or otherwise of the 1st Defendant/applicant as Eze or traditional Ruler by the Governor of Abia State (5th Defendant). See MADUKOLU v. NKEMDILIM (1962) 1 ALL NLR 587 at 589 -590, (1962) 25 CNLR 341. Accordingly, I am in agreement with the learned counsel for the 1st defendant that this action is premature, this Court lacks jurisdiction to entertain it. Suit No. A/280 2008 is incompetent and is hereby struck out."

This is contrary to the Ruling of the same Abia State HIGH COURT (OJI, J.) who had earlier on 20/6/2011 categorically stated:

"As already stated the right of appeal in the proviso to Section 25 was restricted to cases in which the ground of complaint is that the rule of natural justice has not been observed. Such is not an exclusive remedy, operating to the exclusion of the right of involving the supervisory jurisdiction of the Courts which the Constitution granted and which only the Constitution can take away. This suit is not premature.”

That being the case none of the parties to this action can ask the Court to again determine whether or not the suit of the Appellants was premature except by way of an appeal to the Court of Appeal. The OSISIOMA DIVISON OF ABIA STATE HIGH COURT ought to have dismissed the Notice of preliminary objection filed by the 1st, 6th -9th Respondents.

There was no trial begun in this matter where it could be said evidence was taken from witnesses. Thus there could be no trial de novo. The orders made or Ruling delivered by OJI, J., cannot be affected by the transfer of the Case to ADIELE J. by Ag. Chief Judge of Abia State save by or vide an appeal as earlier stated. The subsequent order made by ADIELE, J., amount to sitting on appeal over the decision of a Judge of Co-ordinate jurisdiction. The Learned Trial Judge ADIELE J., had no jurisdiction to give contrary decision to the one given by OJI, J., who had held that the Appellants action was not premature and that the Abia State High Court had jurisdiction. I refer to the cases of:

(1) NATIONAL HOSPITAL, ABUJA & Ors V. NATIONAL COMMISSION FOR COLLEGES OF EDUCATION & ORS. ( 2014) 11 NWLR (PT. 1418) 309 AT 334 D-G PER YAHAYA, JCA WHO SAID:

"However, if the understanding of the appellants is that their appeal includes this aspect, then I hold that it must fail because the trial Court had no jurisdiction to entertain the issues already decided and pronounced upon by the Federal High Court Kaduna. The trial Court was right that it could not grant the reliefs sought by the appellants/plaintiffs, since they bear directly on the judgment and orders of the Federal High Court, Kaduna. Furthermore, to grant the reliefs sought by the appellants/plaintiffs, would amount to the trial Court sitting on appeal and reversing the judgment of the Federal High Court Kaduna. That would be wrong because a Court of co-ordinate jurisdiction cannot sit on appeal over its counterpart. The trial Court had no jurisdiction to entertain the suit of the appellants. Also tied to this, is the fact that in law, any interest based on a challenge (not appeal) of a decision of a competent Court which has not been appealed against, cannot be a valid interest enough, to ground locus standi. It was a woolly contention on the part of the appellants to ground locus standi despite the unchallenged judgments and Order of the High Court Kaduna"?

(2) LAWRENCE S.U. AZUH V. UNION BANK OF NIGERIA PLC (2014) 11 NWLR (PT. 1419) 580 at 608 F-H to 609 A-C per KEKERE EKUN JSC who said:

"Where criminal charges are pending against an accused person, his right to freedom of movement pending the determination of the case may be curtailed by the Court seized of the matter or by a higher Court, depending on the nature of the offence. By the averment in Paragraph 7 of the affidavit in support of the motion ex-parte, the appellant had been granted bail by Court No.5 of the same High Court. The enrolled order in respect thereof does not form part of the record before us. However, it is evident, from the reliefs sought, that the respondent was not satisfied with bail conditions granted by that Court which led to the institution of the suit that gave rise to this appeal, whose sole purpose was to have the bail conditions varied by making them more stringent, and specifically to ensure that the appellant remained within the country for the duration of his trial. In view of a subsisting order granting bail to the appellant by a Court of co-ordinate jurisdiction, did the trial Court have the jurisdiction to vary the said order, or to sit on appeal over that order? The position of the law as stated by this Court in Witt & Busch Ltd v Dale Power Systems PLC (2007) 17 NWLR (Pt 1062) 1 at 25, para E.F.G. (2007) 5 - 6 SC 121, per Ogbuagu, JSC, is as follows:-.in the absence of statutory authority or except where the judgment or Order is a nullity, one judge has no power to set aside or vary the order of another judge of concurrent and co-ordinate jurisdiction. The rationale or reason for this is that there is only lone High Court in a State.See Anambra v Okafor (1966) 1 All NLR 205 at 207; Uku v Okumagba (1974)1 ALL NLR (Pt.1) 475, Wimpey (Nig) Ltd v. Balogun (1980) 3 NWLR (Pt. 28) 324 at 331 cited with approval in Witt & Busch Ltd v. Dale Power Systems Plc., (Supra)

The Learned Supreme Court Justice also relied on the judgment of the apex Court in the case of N. D. M. B LTD v. U.B.N LTD (2004) 12 NWLR (Pt. 888) 599 and continues on page 610 A- F as follows:

On further appeal to this Court, in allowing the appeal to this Court, in allowing the appeal, His Lordship, Pat Acholonu, JSC had this to say at pages 621 - 622 Paras. H - C (supra). The theory of justice to which we adhere rests a prior on the premise that there must be certainty and parties to the legal duel should be in a position to know where they stand at a certain time. A System of law where Judges of the same degree i.e of co-ordinate jurisdiction make contradictory and inconsistent orders in respect of the same subject matter involving the same parties i.e each relying on his whims, caprices prejudices and sometimes a vaunting ego, makes nonsense and mockery of the law. The beauty of the law is that just as stare decisis exercises a restraining influence on our Courts, so too do discipline in the Courts in dutifully adhering to normative order by which Courts of co-ordinate jurisdiction do not sit On appeals on each other, attracts respect for the law. ‘Per Uthman Mohammed, JSC at page 622 para. F (supra). That order made by the Federal High Court ought not to have been made after its attention was drawn to the extant order of the Lagos High Court. In the instant case, having drawn the Courts attention in Paragraph 7 of the affidavit in support to the fact that High Court No.5, Asaba had already granted the appellant bail, the trial Court had no jurisdiction to entertain the application for the ex-parte interim orders, which had the effect of varying the bail conditions already granted by a Court of concurrent or co-ordinate jurisdiction.

A judgment or, Ruling of a coordinate jurisdiction can only be set aside on application of the person against whom it was made under certain stringent conditions stated in the case of CHIEF EMMANUEL BELLO V. INEC & ORS 2010 3SCM 1 at 28H to 29 A - B per MAHMUD MOHAMMED JSC NOW CJN who said:

I may observe at this stage that the misconceived course taken by the Respondent in this case is similar to the course adopted by the Plaintiffs in the case of Okoye v. Nigerian Construction and Furniture Co. Ltd (1991) 2 N.S.C.C vol. 22 Part 1 page 422 also reported in (1991) 6 N.W.L.R (Pt. 199) 501 at 332 where this Court held that failure to join as a party a person who ought to have been joined will not render the proceedings a nullity on ground of lack of jurisdiction or competence of the Court. Akpata JSC specifically stated the position as follows:

In my view failure to join a necessary party is an irregularity which does not affect the competence or jurisdiction of the court to adjudicate on the matter before it. However, the irregularity may lead to unfairness which may result in setting aside the judgment on appeal setting aside of judgment or making on order striking out the action or remitting the action for a retrial in such circumstance that will not be for lack of jurisdiction or on the basis of the judgment being a nullity. The trial Court itself is incompetent to review the judgment, more so another Court of co-ordinate jurisdiction.

On page 54 55A ADEKEYE, JSC also said:

A Court has an inherent power to set aside its judgment or order where it has become so obvious that it was fundamentally defective or given without jurisdiction. In such a case, the judgment or order given becomes null and void, thus liable to be set aside. Okafor v. Okafor (2000) 11 NWLR Pt 677 pg. 21 Skenconsult (Nig) Ltd v Ukey (1981) 1 SC pg. 6. Obimnure v. Erinosho (1966) 1 ALL NLR pg 250. The power of a Court to set aside its judgment is statutory. The Court does not have power to set aside its judgment without a statutory provision enabling it to do so. A Court of concurrent or coordinate jurisdiction can set aside the judgment or order of another Court in circumstance where-

(a) The writ or application was not served on the other party or

(b) The action was tainted with fraud or the Court lacks jurisdiction to entertain the action. Lawal v. Dawada (1972) 8-9 SC pg. 83

The Order or Ruling of OBISIKE OJI, J, made on 20/6/2011 was made within his jurisdiction and it was not and it is not a nullity. None of the parties to the suit applied to have it set aside. It remains a binding decision on all the parties to the proceedings. See ALHAJI M.B. BUHARI AWODI & ANOR V. MALLAM SALU AJAGBE (2014) 12 SCM (PT.2) 181 at 195 F per OKORO, JSC who said:

As at the time of writing this judgment, there is no appeal against the findings of the Court below quoted above, the effect is that both parties are bound by the said finding of the Lower Court.

The 1st, 6th - 9th Respondents cannot surreptitiously set aside the Ruling delivered in the action by OBISIKE OJI, J., vide another Notice of preliminary Objection brought in the same vein and same Suit as that of 3rd - 5th Respondents. See: AZUH V U B N supra.

Issues 1 and 2 are hereby resolved in favour of the appellants.

ISSUE III & IV

(iii) Whether an autonomous Community and an interested person has to wait until a traditional ruler not selected by the Community is recognized before approaching the Court, OKEAHIALAM v. NWAMARA vis-a-vis WABARA v. Nnadede (Ground 6 of the grounds of appeal)

(iv) Whether or not the appellants herein are to wait until their rights are breached before approaching the Court or ALTERNATIVELY whether a state Law can remove right granted citizens by the Constitution (Grounds 8 and 9).

I am of the view that having resolved issues (i) and (ii) in favour of the appellants’ consideration of Issues iii and iv is unnecessary.

ISSUE V

WHETHER A COURT IS COMPETENT TO DELVE INTO THE SUBSTANTIVE ISSUE AT AN INTERLOCUTORY STAGE (Ground 7).

It is the submission of the appellants Learned Counsel that the Lower Court delved into the substantive issue in the Appellants claims before the Lower Court contrary to the principles of law that a Court has no competence to pronounce on substantive issue at interlocutory stage. He relied on the case of AFRICAN PETROLEUM PLC V. ADENIYI (2012) ALL F.W.L.R. (PT. 624) 126 at 129 ratio 6.

In reply the Learned Senior Counsel to the 1st, 6th - 9th Respondents contended that the trial Judge did not delve into substantive matter at interlocutory stage because the effect of the proceedings and the decision were not interlocutory but final. That the ‘right? of the appellants to prevent the Governor from exercising his executive duty of recognizing 1st Respondent was finally disposed of by the decision of the Lower Court. He relied on the cases of WILLIAMS UDE & ORS V. JOSIAH AGU & ORS (1961) 2 NSCC 45 at 47; AMINU OJORA & ORS V. LASISI ODUNSI (1964) NWLR 12 at 14 and GABRIEL OLATUNDE V. OBAFEMI AWOLO UNIVESRSITY & ANOR (1998) 5 NWLR (Pt 849) 178 at 186 B-C per IGU, JSC.

The appellants are right in their submission that a Court must be careful not to pronounce on substantive matters or issues to be decided in the action at the end of the day in interlocutory application or motion.

See: OBA JAMES ADELEKE & ORS V. NAFUL ADEWALE LAWAL (2014) 3 NWLR (Part 1393) 1 AT 21 A per AKA'‘AHS JSC who said:

In the determination of an interlocutory application pending the trial of the substantive case care should be taken not to make pronouncement which may prejudiced trial of the claims filed and still pending before the Court to do otherwise is to prejudge the matter in respect of which evidence is yet to be led.

It is also true as contended by the Respondents that where a decision of a Court terminates or forecloses the rights of a claimant in an action the decision is final notwithstanding that the order brings to an abrupt end the right of a claimant to ventilate his grievance in matter affecting his rights and obligations.

However, where a Court decides that it has no jurisdiction in an action it is not right for it to pronounce on the merit of the case as it has not been heard on the merit and all it can do is to strike out the action. The learned trial Judge was therefore wrong in his Ruling when he held thus:

Indeed the 1st defendant is the one that has scaled through the hurdle of presentation to the Aba South Local Government Chairman. No candidate has passed that stage when he was duly called upon to determine whether appellant’s case was premature or whether the HIGH COURT has the jurisdiction to adjudicate on the subject matter of the action between the parties in this appeal.

ISSUE V is resolved in favour of Appellants.

ISSUE (VI)

WHETHER OR NOT THE AWARD OF COST IN THIS CASE IS A PROPER JUDICIAL DISCRETION.

The Appellants conceded that the Learned trial Judge awarded cost against them while acting judicially. They however contended that the exercise of his discretion to award costs against them was not judiciously exercised. That the Court did not consider all the circumstances of the case that the trial JUDGE did not give any reason for the award of costs against them.

The Leaned Senior Counsel to 1st, 6th - 9th Respondents contended that the costs awarded in favour of the said Respondents was obviously right. That cost is solely at the discretion of the Court. That the only provisio is that it should not be punitive. He relied on the case of NNPC V. KLIFCO NIG LTD (2011) 4 SCNJ 107 at 127 per RHODES VIVOUR, JSC.

The law is trite that a Court has discretion to award costs in favour of a successful party in any civil proceedings before the Court unless the loser is able to show special reasons or convince the Court that it ought not to award costs in the circumstance. The Court concerned is also enjoined to act judicially and judiciously so that the cost will not be punitive. It may also decides not to award costs. See: AKINBOBOLA V. PLISSON FISKO (1991) ISC (Pt 11) 1 and NNPC V. CLIFCO (NIG) LTD (2011) 4 SCM 194 AT 215 B-C where RHODES VIVOUR, JSC said thus:

"The award of costs is entirely at the discretion of the Court, costs follow the event in litigation. It follows that a successful party is entitled to costs unless there are special reasons why he should be deprived of his entitlement. In making an award of costs, the Court must act judiciously and judicially. That is to say with correct and convincing reasons. See: Anyaegbunam v. Osaka (1993) 5 NWLR (Pt. 294) p. 449; Obayagbona v. Obazee (1972) 5 SC p. 247."

Contrary to the claim of the Appellant that the trial Court did not give any reason for the award the trial Court did, for the Court said:

The defendants are entitled to cost inclusive of their out of pocket expenses which I assess at N10,000.00 only.

However since Issues 1 and (ii) have been resolved against the 1st, 6th - 9th Respondents the order for costs made by the trial Court cannot stand. Issue VI is resolved in favour of Appellants.

In the result the Appellants appeal has merit and it is hereby allowed. The decision of Abia State High Court contained in the Ruling of Honourable C. C. THOMAS ADIELE delivered on 30th day of July, 2012 is hereby set aside. The Notice of the Preliminary Objection dated 25th day of January, 2012 and filed on 2nd day of February, 2012 by the 1st, 6th to 9th Respondents is hereby dismissed. The Hon. Chief Judge of Abia State is hereby directed to assign the Case, Suit No. A/280/2008, to another Judge of the said Court for trial of the said suit/action on the merit. There will be no order as to costs.

**ITA GEORGE MBABA, J.C.**A.:

I had the privilege of reading the draft of the lead judgment just delivered by my learned brother, PETER OLABISI IGE, JCA, and I agree with him, completely that the appeal is meritorious and should be allowed.

It is surprising that the learned trial judge, Thomas Adiele J, despite being aware of a pending valid decision of his colleague, Oti J - a Judge of co-ordinate jurisdiction, over an issue he was called upon to hear, assumed jurisdiction, as if it could sit on appeal over the earlier decision and come up with, a different decision!

I think, while the application by the 1st, 6th and 9th Respondents, filed on 25/1/12 before Thomas Adiele J, remained a gross decision of Oti J on a similar motion, made on 20/6/11. The action of the learned trial judge, Thomas, Adiele J. in entertaining it and entering an contradictory decision was rascally, reprehensible and condemnable, exposing the administration of justice and judicial process to ridicules, suspicion and, scandal. It shows lack of tact and poor defence to the basic rules and the law.

I too allow the appeal and abide by the consequential order of my learned brother, IGE, JCA.

**FREDERICK O. OHO, J.C.A**.:

I had the opportunity of reading the draft of the judgment just delivered by my learned brother, PETER OLABISI IGE, JCA and I am in agreement with the reasoning and conclusions in adjudging this Appeal meritorious. I also abide by the consequential orders made thereto.