**MR. GABRIEL ULEKE AND ANOTHER**

**V.**

**PRINCESS BENEDICT A. KAKWA AND ANOTHER**

IN THE COURT OF APPEAL OF NIGERIA

THE 17TH DAY OF APRIL, 2013

CA/C/193/2010

**LEX (2013) - CA/C/193/2010**

OTHER CITATIONS

2PLR/2013/115

(2013) LPELR-20819 (CA)

**BEFORE THEIR LORDSHIPS**

MOHAMMED LAWAL GARBA, J.C.A

JOSEPH TINE TUR, J.C.A

ONYEKACHI A. OTISI, J.C.A

**BETWEEN**

1. MR. GABRIEL ULEKE

2. DR. GODWIN AMANKE - Appellant(s)

AND

1. PRINCESS BENEDICT A. KAKWA

2. OBANLIKU LOCAL GOVT. COUNCIL - Respondent(s)

**ORIGINATING COURT**

CROSS RIVER STATE HIGH COURT

**REPRESENTATION**

E. A. UBUA, Esq. - For Appellant

AND

J. K. OMANG, Esq. - For Respondent

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

TORT AND PERSONAL INJURY: Wrongful seizure of movable property – claim of general and special damages – relevant consideration

CONSTITUTIONAL LAW - RIGHT TO FAIR HEARING: Dismissal of a suit by a Court without hearing Counsel or a party – Whether constitutes a violent breach of the provisions of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 which governs fair hearing - Violation and denial of a party's right to fair hearing guaranteed by the constitution by a court in any judicial proceedings – Effect thereof on entire proceeding

CHILDREN AND WOMEN LAW: Women in Political leadership - Local Council - Rule of law and other relevant considerations

**PRACTICE AND PROCEDURE ISSUES**

ACTION- INTERLOCUTORY PROCEEDING: interlocutory stage – Need for court, in considering and deciding applications brought by the parties in respect of the substantive cases before it, to avoid making pronouncements which touch or are likely to pre-judge such substantive cases

COURT - INHERENT JURISDICTION: Every Court and its inherent jurisdiction to stop an abuse of its process – Dismissal as punishment for abuse of process

COURT - RAISING ISSUE SUO MOTU: Duty of court not to raise an issue suo motu in a case and proceed to decide the case on that issue without calling on the parties to address it on the issue - Failure thereof – Whether amount to making a case by the court which was not made by the parties – Need for court where it raises an issue suo motu which it considers material for the proper determination of the case, to give the parties, particularly the party likely to be adversely affected by the issue, an opportunity to be heard

**MAIN JUDGMENT**

MOHAMMED LAWAL GARBA, J.C.A. (DELIVERING THE LEADING JUDGMENT):

The Appellants had filed a writ of summons and statement of claim on the 16/7/2010 at the High Court of Cross River State, Obudu against the Respondents for the following reliefs:

1. A declaration that the seizure of claimants' Peugeot 504 saloon car bearing engine number FX 3965045 X and Chassis No. VF 3504 Mo 106049832 by the Defendants is wrongful and illegal.

2. The sum of N5,000,000.00 (Five Million Naira) as general and special damages for wrongful seizure/detention of the car.

3. An order directing the defendants to return the said car to claimants in a good condition and repair forthwith. (See pages 1, 2 and 5 of the records).

The Appellants also filed two motions for injunction; one ex-parte and the other on notice which were later transferred along with the suit, to the Ogoja Division of the High Court where the learned counsel moved the ex- parte motion on the 23/7/2010. Ruling on the ex parte motion was delivered on the 26/7/2010 and the motion as well as suit No. HD/38/2010, to which it related were dismissed on the ground that they constituted an abuse of the High Court process because the claims of the Appellants were said to relate to issues in another pending suit. Being aggrieved by that decision, the Appellants brought this appeal vide a notice and 3 grounds of appeal filed on the 24/8/2010 and in line with the requirements of the Rules of the court, filed the Appellant's brief on the 8/4/11.

After the expiration of the time prescribed by the Rules for the Respondents to file their brief of argument in the appeal if they intended to contest the appeal, learned counsel for the Appellants brought an application on the 6/6/2012 for the appeal to be heard on the Appellants' brief alone. It was heard on the 4/12/12, when Mr. J. K. Omang, Esq., appeared for the Respondents and said he did not oppose the grant of the motion and it was granted as prayed. In the presence of learned counsel for the parties, the appeal was set down for hearing on the 18/3/2013 on the Appellants' brief alone, accordingly. On the 18/3/13, Mr. J.K. Omang was absent from the court and did not send any communication to the court to excuse the absence. There was no record that the learned counsel had filed the Respondents' brief or taken any step to do so. The court therefore proceeded with the hearing of the appeal as scheduled and Mr. E. A, Ubua, Esq., learned counsel for the Appellants, adopted the Appellants' brief and urged us to allow the appeal. The following two (2) issues were formulated by the learned counsel for decision in the appeal as follows:-

1. Whether or not the learned trial judge was right in dismissing the substantive suit under the circumstances he did.

2. Whether or not Appellants were accorded a fair hearing before the dismissal of their suit.

Since the Respondents did not file a brief in the appeal, the appeal is uncontested and they are in law deemed to have conceded to all the points and issues canvassed in the Appellants' brief. See Odiase v Agho (1972) 1 ALL NLR (pt.1), 170; Okongwu v NNPC (1989) 4 NWLR (115) 296; UBN v Oki (1999) 8 NWLR (614) 244 at 251; Ugboaja v Sowemimo (2008) (10) MJSC, 105: Salau v Para-Koyi (2001) 13 NWLR (731) 602. However, the absence of a contest by the Respondents does not guarantee or even translate to an automatic success of the appeal because the law still requires the court to consider whether the appeal is sustainable in law. In the case of Unity, Bank Plc. V Bouri (2008) ALL FWLR (416) 1825 at 1848, the Supreme Court had put the position thus:

"The failure of a respondent to file a reply brief is immaterial. This is because an appellant will succeed on the strength of his case. But a respondent will be deemed to have admitted the truth of everything stated in the appellants' brief in so far as such is born (sic) out by the records. In other words, it is not automatic. An appellant must succeed or fail on his own brief, John Holt Ventures Ltd. v Oputa (1996) 9 NWLR (470) 101 CA; Onyejekwe v The Nigeria Police Council (1999) 7 NWLR (Pt, 463) 704 CA; Waziri v Waziri (1998) 1 NWLR (Pt. 533) 322 CA; UBA Plc v. Ajileye (1999) 13 NWLR (Pt. 633) 116 CA."

See also Akas v Manager & Receiver (2001) 8 NWLR (715) 436 at 442; Ebe v Ede (2004) 3 NWLR (860) 215; Echere v Ezirike (2006) ALL FWLR (323) 1597; Salau v Para-Koyi (supra); Nible v Akpan (2007) 38 WRN, 185 at 195.

In the above premises of the law, I would consider the issues submitted by the learned counsel for the Appellant in the determination of the appeal.

ISSUE 1:

Whether or not the High Court was right to dismiss the substantive suit in the circumstances it did:-

Learned counsel had submitted that courts are at all times enjoined to adjudicate on the facts and issues placed before them by the parties and not to make a case for any of them, citing inter alia, Shasi v Smith (2009) 40 NSCQR 255 at 271 and Olufeagba v Abdul-Raheem (2009) 40 NSCQR, 684 at 727 8. It was his submission that the question of the substantive case being an abuse of the High Court's process was not an issue raised by the defendants in any way and that at the stage of the ex-parte motion, the substantive case was not in issue or placed before the High Court for decision. According to him, all that the Appellants placed before that court, were facts showing that they had a prima facie case warranting the grant of the interim injunction they sought and that it would have been wrong for the High Court to decide the issue of the substantive case at that stage even if raised by the defendants. Relying on the cases of Orti v Zaria Ind. Ltd. (1992) 1 SCNJ, 29 at 56; Odutola Holdings Ltd. v Ladejobi (2006) 26 NSCQR (2) 1026 at 1051 and Danone v Voltic Nig. Ltd. (2008) 6 SCM 43 at79, he said that courts have been admonished not to pre-judge the substantive suit when considering interlocutory applications. Learned counsel conceded that the High Court had the powers to raise issues not specifically placed before it by the parties for the purpose of doing justice in a case but that it would not proceed to decide such issues without inviting the parties to address it on them. Stirling Ltd. Yahaya (2005) 11 MJSC, 138 and Chanu v UBA (2010) 41 NSCQR, 656 at 679 B0 were cited as authorities for the submission. It was then pointed out that the High Court raised the issue of the substantive case being an abuse of the court process in its ruling suo motu and decided it by dismissing the Appellants' case without affording them a hearing, a practice said to have been deprecated in the case of Shasi v Smith (supra). In further argument, counsel said the High Court was wrong to have dismissed the substantive suit in the ruling on an application for injunction by raising an issue suo motu and without giving the parties an opportunity to be heard thereon. He urged us to resolve the issue in favour of the Appellants.

On his issue 2, learned counsel said that Section 36(1) of the 1999 Constitution (as altered) provided for an inviolable right to a fair hearing for the parties in the determination of their civil rights and obligations by courts of law and that one of the key elements of the right is that the parties must be given an opportunity to put forward their case and not to be shut out. Placing reliance on Mobil v Monokpo (2004) 2 MJSC, 1 at 30, he submitted that the right is so fundamental that the court is under an obligation to hear the parties on a case no matter how unmeritorious it might be. It was argued further that the parties were yet to join issues in the substantive case because the defendants had not filed a defence or raise any objection to the case before the High Court suo motu dismissed it without hearing the parties, thereby shutting them out. Learned counsel contended that the Appellants were in the circumstances, denied a fair hearing by the High Court and their constitutional right violated by the suo motu dismissal of their case without a hearing. He cited the case of UBA Plc. V Mode Nig. Ltd. (2002) FWLR (112) 147 at 168 and also said that the High Court had made out a case for the defence instead of playing the role of an impartial umpire in line with the principle of nemo judex causa which is a cardinal pillar of fair hearing. We were urged to resolve the issue in favour of the Appellants and in conclusion, to allow the appeal on all the grounds, set aside the ruling of the High Court and remit the case back to that court for trial before another judge thereof.

Now, from the record of the appeal, the learned counsel for the Appellants had filed and argued the motion ex parte for interim injunction before the High Court on the 23/7/2010 by adopting the written address filed along therewith. As borne out by page 56 of the record of the appeal, the High Court after the learned counsel for the Appellant had adopted his written address on the motion, adjourned it to the 26/7/2010 for ruling.

Undoubtedly therefore, what was placed and argued by the learned counsel was the motion for interim injunction which was supported by the facts deposed to in the affidavit filed along therewith to which were annexed several documents relied on for the motion. The reliefs sought on the motion were pending the hearing of the motion on notice for interlocutory injunction based on the facts set out in the affidavit of urgency also deposed to in support of the motion ex parte by the 1st Appellant. This was what the High Court adjourned to consider and then decide whether or not the Appellants had made out a case for the exercise of its discretion in their favour, On the 26/7/2010 to which the High Court adjourned the motion for ruling the Appellants expected and the only duty of the High Court was to make a pronouncement on whether the prayer for the interim injunction sought for in the motion, was granted as prayed on its merit or it was refused and dismissed for the lack of merit. The High Court had the duty to confine itself to the issues canvassed in the motion which it adjourned for ruling. See Overseas Const. Ltd. v creek Ent, Ltd. (1985) 3 NWLR (13) 407; Orhue v NEPA (1998) 7 NWLR (557) 187; African Continental Seaways Ltd. v. Nig Dred,, Roads & Gen, Works Ltd. (1977) 5 SC, 235; Longe v. FBN Plc (2010) 6 NWLR (1189) 1.

If however in the course of preparing the ruling on the motion the High Court found it necessary to raise and consider other issues outside those canvassed in the motion and which were not covered or addressed in the submissions by the parties in the motion, then before it can properly proceed to decide those other issues which are to affect the parties one way or the other, the High Court had legal obligation to invite the parties and hear them on such issues. The law is now firmly established that a court should or must not suo motu raise an issue in a case and proceed to decide the case on that issue without calling on the parties to address it on the issue for that would amount to making a case by the court which was not made by the parties. That is the law stated by the Supreme Court in the case of Cookey v Fombo (2005) 5 SC (Pt.II) 102 at 112 when it said:-

"It is also the law that a court should not take up a point suo motu and decide the matter before it on that point without hearing the parties. See UBA Ltd. v Achoru (1990) 6 NWLR (Pt.156) 254; Okafor v Attorney-General & Commissioner for Justice (1998) 31 LRCN, 3679 at 3713; Kato v. Central Bank of Nig. (1999) 5 SC (Pt.II) 21; (1999) 69 LRCN 1119".

In the recent case of Effiom v C.R.S.I.E.C. (2010) 14 NWLR (1213) 106 at 133, the apex court had restated the position of law as follows:-

"It is wrong for a court to raise an issue of fact suo motu and decide it without giving the parties an opportunity to be heard on it. This is so because the court is bound to by and therefore confined to the issues raised by the parties. Thus, where the court raises an issue suo motu which it considers material for the proper determination of the case, it must give the parties, particularly the party likely to be adversely affected by the issue, an opportunity to be heard."

See also Tukur v Govt. of Gongola State (1989) 4 NWLR (117) 517; Atande v. Lakanmi (1974) 3 SC, 109; Finnih v Imade (1992) 1 NWLR (219) 511.

In the present appeal, the issue of whether the substantive suit No.HD/38/2010 filed by the Appellants was an abuse of the High Court process, was one of pure fact to be demonstrated by the facts and circumstances which make it so, The issue was not likely but indeed, adversely affected the Appellants who were not afforded the opportunity to be heard on it before the High Court relied solely on it to dismiss their suit after raising it suo motu in the ruling appealed against.   
The refusal, failure or omission by the High Court to call on the Appellants to address it on the issue whether their suit was an abuse of its process, which was suo motu by it, before relying on it to decide the fate of the case, was clearly wrong in law and amounted to shutting out the Appellants on the issue. It was an infraction of the right to be afforded the opportunity to be heard in the determination of their civil rights and obligation by the High Court which had the duff to uphold and apply the constitutional right to fair hearing in all proceedings conducted by it.

The law is elementary now that the violation and denial of a party's right to fair hearing guaranteed by the constitution by a court in any judicial proceedings, would vitiate and render the whole proceedings null, void and of no legal effect in law, such proceedings are an exercise in futility and therefore worthless. See Okafor v A-G, Anambra State (1991) 6 NWLR (200) 659; Alsthom S.A. v Saraki (2005) 1 SC (Pt.1); Naukanba v Kalomo (2005) 1 SC, (Pt.1) 80; Newswatch Comm, Ltd. v Atta (2006) ALL FWLR (318) 580; Tsokwa v UBA (2008) 2 MJSC, 104; Victino Fixed Odds Ltd. v Ojo (2010) 8 NWLR (1197) 486.

Furthermore, the general position of the law is that at the interlocutory stage, a court, in considering and deciding applications brought by the parties in respect of the substantive cases before it, should avoid making pronouncements which touch or are likely to pre-judge such substantive cases. See UBN Plc v Astra Builders (W.A) Ltd. (2010) 5 NWLR (1186) 1; Idanre L.G. v Govt. of Ondo State (2010) 14 NWLR (1214) 509: Adetomo v Zenith Int'l Bank Plc. (2011) 12 MJSC (Pt.III) 75; Okotie-Eboh v Manager (2004) 11 - 12 SC, 174 at 177. By deciding the fate of the substantive suit before it in the ruling on an ex parte application for interim injunction, the High Court had not only pre-judged the substantive case, but had completely disposed of it by dismissing it on a point it raised suo motu in the ruling contrary to the exhortations of the law. Such a procedure is patently wrong, undesirable and so cannot be right in law, particularly when the parties were denied the opportunity to be heard on the point relied on for the decision.

In the final result, I find merit in the submissions by the learned counsel for the Appellants on the two (2) issues and so resolve both in favour of the Appellants. The appeal succeeds for the reasons stated above and is allowed. Consequently, the Ruling of the High Court delivered on the 26/7/2010 dismissing the Suit No. HD/38/2010 is hereby set aside and the said suit is restored on the list of the High Court. It is ordered that the suit be remitted to the Chief Judge of Cross River State High Court for assignment to another judge of that court for determination. The Appellants shall bear their costs of prosecuting the appeal.

**JOSEPH TINE TUR, J.C.A.:**

The facts have been clearly set out in the lead judgment of my Lord Mohammed Lawal Garba, JCA, and I concur with the conclusion and orders made therein. What was before the learned trial Judge on 23rd day of July, 2010 for determination was a motion ex parte supported by affidavit praying for the following reliefs.

"1. An order mandating the Deputy Sheriff of this Honourable Court to remove Peugeot 504 Salon car with Engine No. FX3965045X and Chassis Number VF3504MO 106049832 currently bearing registration Number CRLG14BNS or AA903KMM from the control of Respondents and custody same in this Court or the Police Station pending the determination of the Motion on Notice filed herein.

2. And for such further order(s) or other order-as this Honourable Court may deem fit to make in the circumstance."

The supporting affidavit by the 1st appellant read as follows:

"1. That I am the 1st Claimant/Applicant herein and thus conversant with the facts of this case as stated herein.

2. That I have the authority and consent of the 2nd Claimant/Applicant to make this affidavit for and on his behalf.

3. That 2nd Claimant is the owner of Peugeot 504 Saloon car bear Engine Number FX3965045X, Chassis Number VF3504MO 106049832 and improvised Number CRLG 14BNS.

4. That 2nd Claimant/Applicant bought it on the 13th day of June, 2008 while Chairman of Obanliku Local Government Area. A copy each of Agreement/change of ownership made with Alhaji Muhammed Allah De, the agent who sold the vehicle his cash and invoice receipts are hereby attached and marked Exhibits "A1", "A2" and "A3" respectively.

5. That the car originally belonged to the Benue State Government which sold it as scrap to one Hon. Samuel Dzakpe who in turn gave it to the aforesaid agent for sale. A copy of each of the receipts and sales documents evidencing title of the car is attached and marked Exhibits "B1", "B2", "B3", "B4" and "B5" respectively.

6. That 2nd claimant/Applicant sent me to buy the said car as a personal property and entrusted it to me to use as his personal aide to run his domestic errands.

7. That he verbally promised to give the car to me to own as a gift after his tenure in office as Chairman.

8. That following a power tussle, 2nd Claimant/Applicant was allegedly impeached from office despite a Court order against same and 1st Respondent usurped his position.

9. That defendants/respondents got the police to seize the said car along with other official cars attached to 2nd Claimant/Applicant erroneously thinking that it was property of the 2nd Defendant/Respondent.

10. That I have made entreaties to the Defendants/Respondents through the police including writing a Solicitors letter to the Area Commander, Nigeria Police, Ogoja for the return of the said vehicle to no avail. A copy of the said letter is hereto attached and marked Exhibit "C".

11. That Defendants/Respondents are currently using the car as one of their official vehicles without our consent or any payment to us for hire of same.

12. That we have filed this suit to recover the car but owing to an earlier indication that we would sue, the Defendants/Respondents are now planning to treat the car as scrap and sell it out as such.

13. That recently I confronted 1st Defendant/Applicant and sought to know why she was not ready to release the car and she boasted that she will auction the car and the suit I am planning to file will not help me.

14. That E. A. Ubua, Esq. has also advised me that have a responsibility to take steps to minimize damages we will suffer.

15. That I sincerely believe that this application should be granted as respondent who have enough official cars will not be prejudiced thereby. I verily believe that the balance of convenience is in our favour.

16. That E.A. Ubua, Esq. has informed me and I verily believe that this case raises substantial questions of law with high prospects of success.

17. That the car is a gift to me and I should have it and use it. No damages will suffice if this car is unlawfully auctioned the way defendants are planning.

18. That I believe it is in the interest of justice and of great urgency that this application be granted and we undertake to pay damages should the suit turn out to be frivolous.

19. That I swear to this affidavit bonfide conscientiously believing the contents to be true and correct, and in accordance with the Oaths Act, 2004."

The affidavit of urgency read as follows:

"1. That I am the 1st Claimant/Applicant herein and thus conversant with the facts of this case as stated herein.

2. That I have the authority and consent of the 2nd Claimant/Applicant to make this affidavit.

3. That I sincerely believe that there is great urgency in granting the application brought herein exparte.

4. That the urgency is not made up or self induced.

5. That 1st Defendant/Respondent threatened me last week in her office when I went to ask for the car that she would auction the car and my suit will not help me recover it.

6. That the transport officer has informed me and verily that an application has been made to Ministry of Local to board the car as scrap.

7. That the car is not government vehicle and if sold it will be difficult to recover.

8. That I sincerely believe that it is in the interest of justice that this application be granted.

9. That I swear to this affidavit bonafide, conscientiously believing the contents to be true and in accordance with the oaths Act, 2004.”

Only the ex-parte application was moved on 23rd day of July, 2010 and adjourned to 26th day of July, 2010 for ruling. The learned Counsel to the appellants did not move the motion on notice. The learned trial Judge however held in his ruling on the motion ex-parte as follows:

"From those pleadings it is clear that the subject of the instant application is an off shoot of the impeachment of the 2nd claimant from office as Chairman of Obanliku Local Government Council. It is also clear from them that that impeachment has been challenged in Court and that challenge is sub-judice.

On the statement of claim the following claims are endorsed:

"1. A declaration that the seizure of the same claimants' car by the defendants is wrongful and illegal.

2. N5m general and special damages for the wrongful and illegal seizure of the vehicle.

3. An order directing the defendants to return the vehicle to the claimants.'

All those three claims are related to the impeachment of the 2nd claimant as Chairman of Obanliku Local Government Council. They sought to be vindicated in the action challenging the impeachment. Parties are not allowed to litigate their grievances piece meal. Since it is possible to determine the ownership of the vehicle in this case in the suit challenging the removal of the 2nd claimant as Chairman of Obanliku Local Government Council which is already pending, the filing of suit No.HD/38/2010 involving the same parties over the same subject matter: impeachment of 2nd claimant as Chairman of Obanliku Local Government Council, amounts to abuse of the processes of this Court.

Every Court has inherent jurisdiction to stop an abuse of its process. In Niwa v. STB PLC (2008) Pt.1072 NWLR it was held that the punishment for abuse of process is dismissal.

Accordingly, this application and suit No.HD/38/2010 are hereby dismissed. Parties absent.

The learned trial Judge dismissed the motion exparte but without hearing from learned Counsel to the appellants proceeded to examine the merit of the substantive suit and dismissed same. There was also no recourse to the motion on notice hence this appeal.

A dismissal of a suit by a Court without hearing Counsel or a party constitutes a violent breach of the provisions of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 which governs fair hearing. The opportunity to be heard before an order dismissing the substantive suit was not given to the appellants nor their learned Counsel. The issue of abuse of process called for a hearing from Counsel. See Habib Nigeria Bank Ltd. vs. Nashtex International Nig. Ltd. (2006) All FWLR (Pt.326) 311.

The appellants are entitled to have the order of dismissal set aside exdebito justitiae. See Kotoye vs. CBN & Ors. (1989) 1 NWLR (Pt.98) 419 at 444 per Nnaemeka-Agu, JSC.

I also allow this appeal and remit same for retrial before another judge of the High Court of Justice of Cross River State.

**ONYEKACHI A. OTISI, J.C.A.:**

I have had the opportunity of reading in draft the Judgment just delivered by my learned Brother, Mohammed Lawal Garba JCA. I agree that this appeal has merit.

On an issue being raised suo motu by a court, the Supreme Court in Kraus Thompson Organisation Ltd V. University of Calabar  (2004) 4 S.C. (Pt.1) 65, per Dahiru Musdapher JSC (as he then was) said:

"Now, it is settled law that when on issue is not placed before a Court, such court has no business whatsoever to deal with it as decisions of a Court of Law must not be founded on any ground in respect of which it has neither received argument from or on behalf of the parties before it nor even raised by or for the parties or either of them. See SHITTA BEY VS. FPSC (1981) 1 SCNCLR 372, SAUDE VS. ABDULLAHI (1989) 4 NWLR (Pt.116) 387.

The law is also well established that it is not competent for any Court suo motu to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before it. See COMMISSIONER FOR WORKS, BENUE STATE AND ANOR VS. DEVCON DEVELOPMENT CONSULTANTS LTD. (1988) 3 NWLR (pt.83) 407. NIGERIAN HOUSING DEVELOPMENT SOCIETY LTD AND ANOR VS. MUMINI (1977) 2 SC 57, ADENIJI VS. ADENIJI (1972) 1 ALL NLR (Pt.1) 298; A.C.B. LTD. VS. NORTHERN NIGERIA (1967) NMLR 231. There can be no doubt that courts of law have the power to raise suo motu relevant issue or issues which are not before the court for the determination of the case.  In exercising this power, however, the court must adhere strictly to the principles of natural justice and in particular, to the audi alteram partem rule. Accordingly, the law is also well settled that on no account should a court raise a point or issue suo motu no matter how clear it may appear to be, and then proceed to resolve it one way or the other without inviting the parties to address it on the point. If it does so, it will be in flagrant abuse and breach of the aggrieved party's right to fair hearing as entrenched in the Constitution. See UGO VS. OBIEKWE (1989) 1 NWLR (pt.99) 566, OJE Vs. BABALOLA (1991) 4 NWLR (pt.185) 267. In other words, when a court for any compelling reasons finds it necessary and particularly in the interest of justice, to raise a point or issue suo motu, the parties must be given an opportunity to be heard on such point or issue, particularly the party that may be prejudiced as the result of the point raised suo motu, see EJOWHOMU case supra, ADEGOKE VS. ADIBI (1992) 5 NWLR (pt.242) 410, ATANDA Vs. LAKANMI (1974) 3 SC 109, ODIASE Vs. AGHO (1972) 1 All NLR (Pt.1) 76".

See also Stirling Civil Engineering (Nig) Ltd V. Yahaya (2005) 4 S.C. 124.

This decision represents the position of the law, as ably resolved in the lead Judgment. For this reason, and, for the fuller reasons given in the lead Judgment, I also allow this appeal. I abide with the Orders made.