



Case Title:

7-UP BOTTLING CO. LTD & ORS

v.

ABIOLA & SONS BOTTLING CO. LTD

(2001) LPELR-1(SC)

7-UP BOTTLING CO. LTD & ORS v. ABIOLA & SONS BOTTLING CO. LTD

(2001) LPELR-1(SC)



In The Supreme Court

On Friday, June 08, 2001
SC.63/1996

Before Our Lordships

Michael Ekundayo Ogundare
Emmanuel Obioma Ogwuegbu
Sylvester Umaru Onu
Umaru Atu Kalgo
Samson Odemwingie Uwaifo

Justice of the Supreme Court of Nigeria
Justice of the Supreme Court of Nigeria
Justice of the Supreme Court of Nigeria
Justice of the Supreme Court of Nigeria
Justice of the Supreme Court of Nigeria

Between

1. 7-UP BOTTLING CO. LTD. 2. ADEMOLA SOMORIN
(TRADING UNDER THE NAME & STYLE OF ADEMOLA
SOMORIN & CO) 3. FIRST CITY MERCHANT BANK
LIMITED

APPELANT(S)

And

ABIOLA AND SONS BOTTLING CO LTD.

RESPONDENT(S)

RATIO DECIDENDI

TORT – CONVERSION – Court with jurisdiction in an action for Conversion as a Tort

"One form of conversion is where there has been a positive and unequivocal wrongful act of dealing with goods in a manner inconsistent with the owner's rights and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them. see Ashby v. Tolhurst (1937) 2 All ER 837; Moorgate Mercantile Co. Ltd. v. Finch and Another (1962) 2 All ER 467; Howard E. Perry & Co. Ltd. v. British Railways Board (1980) 2 All ER 579; Commissioner of Police v. Oguntayo (1993) 6 NWLR (Pt.299) 259; Ojini v. Ogo Oluwa Motors Nigeria Ltd. (1998) 1 NWLR (Pt.534) 353. Conversion as a cause of action is a tort over which any State High Court has jurisdiction to entertain."

ACTION – CAUSE(S) OF ACTION – How the Court determines reasonable cause of action

"The law is sufficiently settled that in determining whether the plaintiff's (respondent's) action discloses any cause of action or the nature thereof, the Court will necessarily restrict itself to the plaintiffs/respondent's statement of claim without recourse to the defendant's/appellant's statement of defence vide Shell B.P. Ltd. & Ors. v. Onasanya (1976) NSCC 334 at 336, (1976) 6 SC 89. See also Aladegbemi v. Fasanmade (1988) 3 NWLR (Part 81)129."

APPEAL – ISSUE(S) FOR DETERMINATION – Whether an Appellate Court is bound to consider/determine all the issues properly raised before it

"The general rule, it is now well settled, is that an appellate Court has a duty to consider all the issues placed before it. Albeit, where it is of the view that a consideration of one is enough to dispose of the appeal, it is not under any obligation to consider all the other issues posed."

JUDGEMENT SUMMARY

INTRODUCTION:

This appeal borders on Civil Procedure.

FACTS:

The appeal emanated from the Kwara State High Court, Ilorin, presided over by Gbadeyan, J.

In the case which began as an offshoot of another action, Respondent obtained a loan from the 3rd Appellant, a banking institution. Although the loan was still outstanding and the Respondent claimed it was not due for repayment, the 3rd Appellant proceeded to appoint the 2nd Appellant as the receiver/manager of the resulting debenture.

Following its (Respondent's) failure to pay up, it in the meantime filed an action to contest the legality of the debenture to stem the acts of the 2nd Appellant that began selling its factory etc. to the 1st Appellant in purported exercise of its powers under the mortgage debenture between the parties, It (Respondent) thereupon obtained interim order of injunction restraining the Appellants from selling these properties and/or the factory, pending the determination of the motion on notice for the substantive order of interlocutory injunction.

While the interim order was still subsisting and notwithstanding the said order, the 2nd Appellant engaged in selling the Respondent's properties such as vehicles and plants. It thereupon engaged in bringing committal proceedings for contempt against the appellants, which finally failed in the Court of Appeal.

Meanwhile, the respondent filed another action at the trial Court claiming damages for its properties in the hands of the receiver/manager allegedly sold in violation of the order of interim injunction made in the original suit.

Pleadings in the new action were filed and exchanged. Subsequent to the filing of their statement of defence, appellants brought an application before the Court for:

"1. AN ORDER setting down for hearing and disposal before trial the issue of law concerning the jurisdiction of the Court as raised in paragraphs 17, 18 and 19 of the statement of defence.

2. AN ORDER permitting argument of the issues of law raised in paragraphs 17, 18 and 19 of the statement of defence to be argued on this motion to wit: ..."

The application was dismissed at the trial Court. The appellate Court did not look favourably on the appeal either. It remitted the case to the High Court for continuation of the trial. Appellants appealed to the Supreme Court.

ISSUES:

The Appellants formulated the following issues for the determination of the appeal.

"1. Whether their Lordships' of the Court of Appeal were right in failing to consider properly all the issues and matters submitted to the Court and if their Lordships were not right in their approach,can the Supreme Court consider these issues?

2. Whether the Respondent's (a Company under receivership) claim for damages, for wrongful sale of its assets in the hands of the receiver/manager is justifiable in the High Court of Justice of Kwara State or the Federal High Court in view of Section 7 of the Federal High Court Act.

3. Whether their Lordships of the Court of Appeal were right in holding that the Respondent's claim was a mere tort of conversion; the claims though arising from Suit No. KWS/215/88 whereby the Kwara State High Court can properly exercise jurisdiction.

4. Whether the case was not an abuse of Court process when Suit No. KWS/215/88 whose order was allegedly violated and other pending cases between the same parties, on the same or substantially the same cause of action, were subsisting, and the claim for damages was capable of being subsumed into Suit No. KWS/215/88 whose order was allegedly violated and which was capable of enforcing its orders and award damages."

The respondents formulated two issues as arising for determination, namely:-

"(i) Whether the Court of Appeal was bound to consider all the issues raised by the appellant when the resolution of only the issue relating to jurisdiction could effectively dispose of the entire appeal, and whether such non consideration of all the issues amounts to a denial of fair hearing to the appellants.

(ii) Whether the Court of Appeal was wrong in holding that the respondent's claim was one of conversion in tort and has nothing to do with receivership."

The Court determined the appeal on the issues formulated by both parties to the appeal.

DECISION/HELD:

On the whole, the Supreme Court held that the appeal failed and it was accordingly dismissed with N10,000.00 costs awarded against appellants jointly and severally.

SYLVESTER UMARU ONU, J.S.C. (Delivering the Leading Judgment) :

This is an appeal against the final decision of the Court of Appeal (hereinafter referred to as the Court below) arising from an *interlocutory decision* of Gbadeyan, J. of the High Court of Justice of Kwara State holden at Ilorin, wherein the preliminary objection of the defendants, herein appellants, to the competence of the suit as well as the jurisdiction of the trial Court to entertain same, was dismissed.

The background facts of the case that culminated in the appeal may be briefly stated as follows:

In the case which began as an off-shoot of another action No. KWS/215/88 herein on appeal and whose history is tortuous, the plaintiff now respondent, obtained a loan from the 3rd defendant/appellant, a banking institution. Although the loan was still outstanding and the

respondent claimed it was not due for repayment, the 3rd defendant/appellant proceeded to appoint the 2nd defendant/appellant as the receiver/manager of the resulting debenture. Following its (respondent's) failure to pay up, it in the meantime filed an action in the Kwara State High Court in Suit No. KWS/215/88, to contest the legality of the debenture to stem the acts of the 2nd defendant/appellant that began selling its factory etc. to the 1st defendant/appellant in purported exercise of its powers under the mortgage debenture between the parties. It (respondent) thereupon obtained interim order of injunction restraining the defendants/appellants from selling these properties and/or the factory, pending the determination of the motion on notice for the substantive order of interlocutory injunction. While the interim order was still subsisting and notwithstanding the said order, the 2nd defendant/appellant engaged in selling the respondent's properties such as vehicles and plants. It thereupon engaged in bringing committal proceedings for contempt against the defendants/appellants, which finally failed in the Court of Appeal in November, 1990.

This led to the inception of the present action in the Kwara State High Court (Coram: Gbadeyan, J.) wherein the plaintiff/respondent claimed damages for its properties traceable to the hands of the receiver/manager who allegedly sold them as receiver/manager in violation of the interim order

of injunction made. By paragraph 19 of the respondent's statement of claim, it is averred thus:

"19 WHEREOF the plaintiff claims from the defendants jointly and/or severally as follows:

1. A declaration that the removal, sale and/or disposal of the said 44 vehicles and/or plants by the defendants in disregard of the Court Order restraining same is illegal, null and void;
2. A sum of N18,031,980.00 being the market value of its vehicles and/or plants illegally sold by the defendants as at the time of sale;
3. General Damages of N132,919, 181.00 being the current cost of purchase of such vehicles and/or plants illegally sold by the defendants;
4. ALTERNATIVELY: Restitution of the said 44 vehicles and/or plants in the working conditions they were before the defendant illegally sold them."

Pleadings were ordered, filed and exchanged in the new action. The appellants in their joint statement of defence pleaded in part thus:

"17. The defendants shall by way of preliminary objection contend that the suit is incompetent in that conditions precedent to the exercise of the jurisdiction of the Court has not been fulfilled.

18. The defendants shall also contend that the suit is an abuse of the Court's process as the cause of action in this suit is substantially the same and/or can be subsumed in Suit No. KWS/215/88 **ABIOLA & SONS BOTTLING CO. LTD. v. 7UP BOTTLING COMPANY LTD. AND ORS.** and Suit No.

KWS/122/91 **ABIOLA & SONS BOTTLING CO. LTD. & ANOR. v. FIRST CITY MERCHANT BANK LTD. & 2 ORS**

all of which are still pending.

19. The defendants shall further contend that this Honourable Court has no jurisdiction to try this case."

Subsequent to the filing of their statement of defence, the appellants brought an application before the Court for:

"1. AN ORDER setting down for hearing and disposal before trial the issue of law concerning the jurisdiction of the Court as raised in paragraphs 17, 18 and 19 of the statement of defence.

2 AN ORDER permitting argument of the issue of law raised in paragraphs 17, 18, and 19 of the statement of defence to be argued on this motion, to wit:

(a) The condition precedent to exercise of the jurisdiction of the Court has not been fulfilled, that is to say, leave of the Court to sue the receiver/manager in respect of the property in receivership was not obtained before the issuance and service of the writ of summons.

(b) That the issue of the validity, legality and correctness/or otherwise of the appointment of the 2nd defendant as a receiver/manager pleaded in paragraphs 2 and 3 of the statement of claim are the same cause of action in Suit No. KWS/215/88,

**ABIOLA & SONS BOTTLING CO. LTD. V. FIRST CITY
MERCHANT BANK LTD.**

(c) *The High Court of justice of Kwara State has no jurisdiction to hear and determine the plaintiff's claim which concerns relates to the management of the properties of the plaintiff's in receivership by the Reciever/Manager".*

Upon the grounds, that is to say:

- "1. No leave or order of the Court was sought, obtained or granted before the plaintiff issued and served the writ of summons and other processes on the 2nd defendant who was at all material times the receiver/manager of the plaintiff.
2. The issue of validity, legality and correctness of the appointment of the 2nd defendant as the receiver/manager of the plaintiff are causes of action in other suits pending in the other Courts.
3. That the plaintiff's cause of action arose from the operation of the plaintiff as a Company in receivership."

The appellants thereafter sought the following reliefs from the trial Court:

- "1. AN ORDER striking out the issuance and service of the writ of summons and other processes on the second defendant.
2. AN ORDER striking out paragraphs 2 and 3 of the statement of claim or in alternative AN ORDER staying hearing of the validity, legality or correctness of the appointment of the 2nd defendant as receiver/manager of the plaintiff company.
3. AN ORDER transferring the case to the Federal High Court within jurisdiction."

In his ruling dated 20th September, 1995, the learned trial Judge held, *inter alia* that:

- "1 This is an action for conversion in tort between same parties. The State High Court has unlimited jurisdiction to try it by virtue of **Section 236(1) of 8**

the 1979 Constitution. I am persuaded by SADENI FARMS LTD. (*supra*). I find it apposite and I respectfully apply it."

"2 This case at hand is in all respects dissimilar to the previous subsisting suit or suits and it is to that extent not duplicitous as the instant case constitutes distinct latent heads of claim which, not existing at the onset, procedurally, could not be joined with claims in the earlier suit."

Dissatisfied with the ruling of the trial Court, the appellants appealed to the Court below upon a notice of appeal containing six grounds. In their respective briefs of argument both the appellants and the respondent identified four issues each for determination.

For the appeal to the Court below, the appellants proffered four issues for determination, to wit:

"1 Whether the Court has jurisdiction when the plaintiff's claim arose from the management of a property of a company in receivership or a civil cause or matter arising from the operation or management of a company under Company's Act and not mere violation of a Court order. Even if the suit arose from an alleged disobedience of Court order, whether the Court still has jurisdiction to entertain the suit.

2. Whether the Court was competent to adjudicate on this case when there existed cases pending between the parties on the same or substantially the same cause of action.

3 Whether the condition precedent to exercising

jurisdiction by the Court was satisfied by the respondent/plaintiff.

4 Whether the learned trial Judge ought to entertain the claim of the plaintiff, which was capable of being subsumed into Suit No. KWS/215/88 whose order was allegedly disobeyed by way of amendment."

The appeal was eventually heard and in a considered judgment, the Court below per Ogebe, J.C.A. delivering the leading judgment concurred in by Abdullahi, J.C.A. (as he then was) and I.T. Muhammad, J.C.A., held *inter alia*:

"After carefully considering all the issues formulated in this appeal, it appears to me that the resolution of the first Issue alone will determine the outcome of the appeal. See [*Anyaduba & Anor. v. Nigerian Renowned Trading Co. Ltd.*](#) (1992) 5 NWLR (Pt. 243) 535 at page 561. The other issues are manifestly academic and can only properly arise after full hearing of the matter in the Court below and either of the parties chooses to appeal from the final decision of the Court. A Court of appeal must be wary of going into issues that may arise in the substantive appeal when it is considering it. See [*Eperokun & Ors. v. University of Lagos*](#) (1986) 4 NWLR (Pt. 34) 162 and [*Saraki & Anor. v. Kotoye*](#) (1992) 9 NWLR (Pt. 264) 156 at page 185.

The principle of law to apply to this case is as stated by both sides. For a Court to determine its jurisdiction to hear a matter it has to look carefully at the claim and examine its nature. The trial Court

10

at this stage has no business looking at the statement of defence. Its sole responsibility is to examine the claim of the appellant and make up its mind on its jurisdiction. See the following cases:- [Opiti v. Ogbeiwi](#) (1992) 4 NWLR (Pt. 234) 184 at 195; [Adeyemi v. Opeyori](#) (1976) 9 -10 Se.31 at 49; [Mustapha v Governor, Lagos State](#) (1987) 2NWLR (Pt. 58) 539"

Continuing, the learned Justice further held:
"The respondent's claim as averred in paragraph 19 of the respondent's statement of claim which was reproduced earlier in this judgment is a claim in conversion on tort. This cause of action arose because the appellants were said to have gone ahead and violated an earlier Court order in Suit No. KWS/215/88 in which an interim order was made restraining the appellants from selling the properties of the respondent. There is nothing in the respondent's claim as presently constituted to show that the matter in dispute has to do with receivership. It is the appellants who by their statement of defence brought in the question of receivership. Since they are not counter- claiming for anything one cannot look at their statement of defence to determine the matter of jurisdiction."
(Italics above is mine for emphasis).

Aggrieved by this decision, the appellants have further appealed to this Court upon four grounds of appeal. In their brief of argument, they proffered the following four issues for this Court's resolution:
"1. Whether their Lordships' of the Court of Appeal

were right in failing to consider properly all the issues and matters submitted to the Court and if their Lordships were not right in their approach, can the Supreme Court consider these issues?

2. Whether the respondent's (a Company under receivership) claim for damages, for wrongful sale of its assets in the hands of the receiver/manager is justiciable in the High Court of Justice of Kwara State or the Federal High Court in view of Section 7 of the Federal High Court Act.

3. Whether their Lordships of the Court of Appeal were right in holding that the respondent's claim was a mere tort of conversion; the claims though arising from Suit No. KWS/215/88 whereby the Kwara State High Court can properly exercise jurisdiction.

4. Whether the case was not an abuse of Court process when Suit No. KWS/215/88 whose order was allegedly violated and other pending cases between the same parties, on the same or substantially the same cause of action, were subsisting, and the claim for damages was capable of being subsumed into Suit No. KWS/215/88 whose order was allegedly violated and which was capable of enforcing its orders and award damages."

The respondent's counsel in the brief submitted on its behalf formulated two issues as arising for our determination, namely:-

"(i) Whether the Court of Appeal was bound to consider all the issues raised by the appellant when

the resolution of only the issue relating to jurisdiction could effectively dispose of the entire appeal, and whether such non consideration of all the issues amounts to a denial of fair hearing to the appellants.

(ii) Whether the Court of Appeal was wrong in holding that the respondent's claim was one of conversion in tort and has nothing to do with receivership."

At the oral hearing of this appeal on the 12th day of March, 2001, certain pertinent matters such as the fact that the action was disposed of in 1998 were canvassed by learned counsel for the respondent and to these learned counsel for the appellants conceded. Albeit, learned counsel for the appellants submitted that he would like to go on with the argument of the appeal and we saw no reason for not obliging him.

Indeed we permitted him to go ahead. The preliminary point as to Issue 4 containing an allegation of abuse of process of Court with regard to ground 3 and the failure of the Court below to pronounce on other issues as to whether their non-consideration did not amount to a denial of the appellants' right to fair hearing was canvassed. It having been resolved that no miscarriage of justice was occasioned thereby, I shall proceed to consider the above two issues as follows:

ISSUE 1:

This issue which relates to grounds 1 and 3 of the grounds of appeal equally raised by the appellants

and the respondent in their briefs of argument, principally seek the resolution of one question that of jurisdiction. Thus, while the appellants invited the Court below (and also in this Court) to determine whether the trial Court had jurisdiction in view of the respondent's claim arising from the management of a company in receivership, the respondent's 1st issue urged the Court below to determine whether the suit before the trial Court related to receivership or operation of the Companies and Allied Matters Decree (Act). This is because the determination of both grounds would, in my firm view, determine the entire appeal since both of them dealing on jurisdiction are fundamental. See [Akinsanya v. U.B.A.](#) (1986) 4 NWLR (Pt. 35)273 at 409; [Onyema & Ors. v. Oputa & Ors.](#) (1987) 3 NWLR (Pt.60) 259, (1987) 2 NSCC 900; [Oloriode v. Oyebi](#) (1984) 5 SC 1, (1984) 1 SCNLR 390 and [Oloba v. Akereja](#) (1988) 3 NWLR (Pt. 84) 508.

Thus, after reviewing the submissions of both parties on the said issues, it is no surprise that the Court below per Ogebe, J.C.A. observed: "After carefully considering all the issues formulated in this appeal it appears to me that the resolution of the first issue alone will determine the outcome of the appeal." Continuing, the Court below proceeded to hold that the respondent's claim at the trial Court was in tort of conversion and that there was nothing in the suit as "presently constituted to show that the matter in dispute has to do with

receivership." By so holding, the Court below had effectively determined that the trial Court had jurisdiction to try the suit since the tort of conversion is not one of the causes of action on which the Federal High Court has been endowed with exclusive jurisdiction. It is for these reasons that I share the respondent's view that having held that the trial Court had jurisdiction to try the suit, the Court below was under no obligation to consider the other issues. The general rule, it is now well settled, is that an appellate Court has a duty to consider all the issues placed before it. Albeit, where it is of the view that a consideration of one is enough to dispose of the appeal, it is not under any obligation to consider all the other issues posed . In the instant case where the Court below arrived at the view that the only "live" issue (the sole issue on jurisdiction) is enough to dispose of the appeal, this Court will not impose upon it the obligation to consider all the other issues posed by the appellant. As indeed happened, the lower Court decided the appeal from the trial Court's ruling on the sole issue of whether the State High Court has jurisdiction to hear the case having to do with conversion of the respondent's property rather than of receivership which would have been appropriate for trial by the Federal High Court vide Section 7 of the Federal High Court Act and [Akinbola & Sons v. Plisson Fisko \(Nig.\) Ltd.](#) (1986) 4 NWLR (Pt. 37) 621 C.A . – the decision of the Court below, in my view, did not amount to a denial of fair hearing. That being so, I

15

hold that it does not matter that the Court below failed to consider the other issues raised by the appellants in their brief and which failure did not occasion a miscarriage of justice. See [Union Bank of Nigeria Ltd. v. Nwaokolo](#) (1995) 6 NWLR (Pt. 400) 127; [Kotoye v. C.B.N.](#) (1989) 1 NWLR (Pt. 98) 419 and [Bamaiyi v. The State](#) (2001) 8 NWLR (Pt.715) 270.

Besides and in addition, the failure to consider these other issues has, in my opinion, not occasioned a miscarriage of justice. See [Mora & Ors. v. Nwalusi & Ors](#) (1962) 1 All NLR (Pt. 4) 681 and [Stool of Abinabina v. Enyimadu](#) (1947) 12 WACA 171 at 173.

As this Court succinctly put it, "An appellate Court has a duty to consider all the issues placed before it vide [Okonji v. Njokanma](#) (1991) 7 NWLR (Pt. 202) 131. But in the instant case the issue on which the appeal was decided was the most important "Live" issue before it, challenging as it does the order of non-suit on the claim for declaration of title. If a Court of Appeal is of the view correctly that a consideration of one issue is enough to dispose of the appeal, it is not under any obligation to consider all the other issues posed. If however it is erroneous in its decision, the consequence may be setting aside of its decision on appeal with an order of re-hearing. The Court of Appeal was right in its decision here, and its failure to consider those other issues has not led to miscarriage of justice."

16

See the case of [Anyaduba v. Nigerian Renowned Trading Co. Ltd.](#) (1992) 5 NWLR (Pt. 243) 535 at 561 paragraphs D – E. See also [Okonji v. Njokanma](#) (supra) and [Ebba v. Ogodo](#) (1984) 1 SCNLR 372 .

Indeed, the above position is more enhanced in this case as the appeal complained of was interlocutory in nature. The law is trite that an appellate Court should not pour the totality of its own mind on the merits of a matter (in contrast to the case on hand) on which it is not going to make a final decision on the merits. See [Bakare v. A.C.B. Ltd.](#) (1986) 3 NWLR (Pt. 26) 47 at 58 . Thus, the Court below said right when it held that the other issues "can only properly arise after full hearing of the matter in the Court below and either of the parties chooses to appeal from the final decision of the Court. Indeed, a Court of appeal must be wary of going into issues that may arise in the substantive appeal when considering an appeal from an interlocutory decision of a lower Court like the present appeal".

From the foregoing, I am of the firm view that the non-consideration of all the issues before the Court below, save issue 1, did not and could not amount to a denial of fair hearing to the appellants. I am of the further view that as the "live" issue has been determined in the instant appeal, the non consideration of other issues does not amount to a denial of fair hearing. As this Court opined in [Anyaduba v. N.R.T.C. Ltd.](#) (supra):

"But in the instant case, the issue on which the

appeal was decided was the most important "live" issue before it.. ... If a Court of appeal is of the view correctly that a consideration of one issue is enough to dispose of the appeal, it is not under an obligation to consider all the other issues posed."

Besides, I am of the opinion that the non-consideration of all the other issues by the Court below, assuming but not conceding was erroneous, same was not sufficient to nullify the judgment of the Court below because it neither substantially nor materially affect the decision. See [Akeredolu v. Akinremi](#) (1989) 3 NWLR (Pt. 108) 164 at 175 and [Adeyeri II v. Atanda](#) (1995) 5 NWLR (Pt. 397) 512 at 528. Issue 1 is accordingly answered in the negative.

ISSUE 2

This issue which relates to grounds 2 and 4, asks whether the Court below was wrong in holding that the respondent's claim was one of conversion in tort and so has nothing to do with receivership in a Company.

The law is sufficiently settled that in determining whether the plaintiff's (respondent's) action discloses any cause of action or the nature thereof, the Court will necessarily restrict itself to the plaintiffs/respondent's statement of claim without recourse to the defendant's/appellant's statement of defence vide [Shell B.P. Ltd. & Ors. v. Onasanya](#) (1976) NSCC 334 at 336, (1976) 6 SC 89. See also

[Aladegbemi v. Fasanmade](#) (1988) 3 NWLR (Part 81)

129 .

In necessarily restricting itself to the statement of claim, the Court is not obliged to consider seriatim all the averments in the statement of claim. It is sufficient that the Court looks at same as a whole and/or refer to few averments that form the gravamen of the claim. Thus, the Court below in the present case rightly, in my view, referred to the relief sought by the respondent (as contained in paragraph 19 of the statement of claim, which paragraph forms an integral part and in fact, formed the core of the respondent's claim at the trial Court). According to the Court below "the respondent's claim as averred in paragraph 19 of the respondent's statement of claim which was reproduced earlier in this judgment, is a claim of conversion in tort." I cannot agree more.

The Court below in determining the nature of the respondent's claim also considered paragraphs 5, 6, 7, 8 and 12 of the statement of claim, the general purport of which it condensed into the following words:

"This cause of action arose because the appellants were said to have gone ahead and violated an earlier Court order in Suit No. KWS/215/88 in which an interim order was made restraining the appellants from selling the properties of the respondent."

19

Apart from the averments alluded to above, the paragraphs dealing with introduction of parties and paragraphs 5, 6, 7, 8, 12 and 19 of the statement of claim and all the other paragraphs clearly enumerate by description and particulars the vehicles, machineries, and/or plants illegally disposed of by the appellants. In this regard, the submission of the appellants that "the Learned Justices of the Court below in considering this matter limited and restricted themselves to the reliefs in the statement of claim and thus misunderstood the objection" is insupportable. We were also further urged to discountenance the appellant's submission that in determining the nature of the respondent's claim in the Suit KWS/215/88 (page 11 in appellant's brief) the Court should not have had recourse to the statement of claim alone. This, I will decline to do because to do so would be a clear affront to the principle that a cause of action is determined by reference to the plaintiff's statement of claim. The appellants' contention that the statement of claim in suit No. KWS/215/88 is clearly the same statement of claim as in Suit No. KWS/270/89 by reliance on the case of Shell B.P. Ltd. & Ors. v. Onasanya (*supra*), is in my view, not correct.

The appellants' final submission that we should disregard the respondent's claim in relation to conversion which they contend is ancillary to the main claim of receivership is, in my view, untenable. This is more so in that as decided in the

case of Shell B. P. Ltd. & Ors. v. Onasanya (supra), it is necessary as the respondent has done in the instant case, that his claim discloses a cause of action. This is the moreso that the claim in receivership as set out in the appellants' brief is a figment of their imagination *vis a vis* what is borne out in the respondent's statement of claim. It is for this reason, that I entirely agree with the Court below when it held:

"There is nothing in the respondent's claim as presently constituted to show that the matter in dispute has to do with receivership; it is the appellants who by their statement of defence brought in the question of receivership."

My answer to the issue canvassed herein (Issue II), is also accordingly rendered in the negative. Both issues having been resolved against the appellants, this appeal fails and it is accordingly dismissed with N10,000.00 costs awarded against them (appellants) jointly and severally.

MICHAEL EKUNDAYO OGUNDARE, J.S.C.:

This case has had a chequered history. The action which is an off shoot of another action (KWS/215/88) was instituted in 1989 and remained unheard until recently due to an interlocutory application made by the defendants herein (who are now appellants in this Court) for a dismissal of the action on the ground of want of jurisdiction, etc. of the trial High Court. The trial High Court ruled that it had jurisdiction to hear and determine the action. The defendants appealed

unsuccessfully to the Court of Appeal against that decision and have now further appealed to this Court. With the dismissal of the appeal by us the case would have had to go back to the trial High Court for determination on its merits 12 years after its institution. Happily, however, the trial Court proceeded with the hearing of the suit which it decided in plaintiffs favour in 1998.

The facts leading to the action are that the plaintiff who is respondent in this appeal, took some banking facilities from the 3rd defendant for the purpose of its business. Following its failure to pay up, the 3rd defendant, in purported exercise of its powers under the mortgage debenture deed between the parties, appointed the 2nd defendant a receiver/manager of the plaintiff. The 2nd defendant, in the course of its duties as receiver/manager sold the plaintiff's factory to the 1st defendant. The plaintiff went to Court in suit KWS/215/88 to challenge the acts of the defendants. The plaintiff applied to the Court and obtained *ex parte* an interim order of injunction restraining the defendants from selling plaintiff's properties in the factory pending the determination of the motion on notice for the substantive order of interlocutory injunction. While the interim order was still subsisting and notwithstanding the said order, a number of the plaintiffs properties such as vehicles and plants were sold by the 2nd defendant. The plaintiff brought committal proceedings for contempt which finally failed in the Court of Appeal

in November 1990.

Meanwhile, the plaintiff brought the present action before the Kwara State High Court claiming damages for its properties in the hands of the receiver/manager allegedly sold in violation of the order of interim injunction made in the original suit KWS/215/88. By paragraph 19 of its statement of claim, it specifically claimed:

- "1. A declaration that the removal, sale and/or disposal of the said 44 vehicles, and/or plants by the defendants in disregard of the Court order restraining same is illegal, null and void;
- 2. A sum of N18,031,980.00k being the market value of its vehicles and/or plants illegally sold by the defendants as at the time of sale;
- 3. General Damages of N132,919,181.00k being the current cost of purchase of such vehicles and/or plants illegally sold by the defendants;

ALTERNATIVELY

- 4. Restitution of the said 44 vehicles and/or plants in the working conditions they were before the defendants illegally sold them"

Pleadings in the new action were filed and exchanged. In their joint statement of defence, the defendants pleaded –

"17. The defendants shall by way of preliminary objection contend that the suit is incompetent in that conditions precedent to the exercise of the jurisdiction of the Court has not been fulfilled.

18. The defendants shall also contend that the suit is an abuse of the Court's process as the cause of

action in this suit is substantially the same and or
can be subsumed in suit No. KWS/215/88 ABIOLA &
SONS BOTTLING CO. LTD. V. 7UP BOTTLING
COMPANY LTD. AND ORS. and suit No.
KWS/122/91 ABIOLA & SONS BOTTLING CO. LTD.
& ANOR. V. FIRSTCITY MERCHANT BANK LTD. & 2
ORS. all of which are still pending.

19. The defendants shall further contend that this
Honourable Court has no jurisdiction to try this
case."

Subsequent to the filing of their statement of
defence, the defendants brought an application
before the Court for:

"1. AN ORDER setting down for hearing and
disposal before trial the issue of law concerning the
jurisdiction of the Court as raised in paragraphs 17,
18 and 19 of the statement of defence.

2. AN ORDER permitting argument of the issues of
law raised in paragraphs 17, 18 and 19 of the
statement of defence to be argued on this motion
to wit:

(a) The condition precedent to exercise of the
jurisdiction of the Court has not been fulfilled, that
is to say, leave of the Court to sue the
receiver/manager in respect of the property in
receivership was not obtained before the issuance
and service of the writ of summons.

(b) That the issue of the validity, legality and
correctness/or otherwise of the appointment of the
2nd defendant as a receiver/manager pleaded in
paragraphs 2 and 3 of the statement of claim are
the same cause of action in Suit No. KWS/215/88,

Abiola & Sons Bottling Company Ltd. v. 7up Bottling Company & Ors. KWS/122/91, **Abiola & Sons Bottling Company Limited v. First City Merchant Bank Limited.**

(c) The High Court of Justice of Kwara State has no jurisdiction to hear and determine the plaintiff's claim which concerns and relates to the management of the properties of the plaintiff in receivership by the receiver/manager."

upon the grounds, that is to say:

- "1. No leave or order of the Court was sought, obtained or granted before the plaintiff issued and served the writ of summons and other processes on the 2nd defendant who was at all material times the receiver/manager of the plaintiff.
- 2. The issue of validity, legality and correctness of the appointment of the 2nd defendant as the receiver/manager of the plaintiff are causes of action in other suits pending in the other Courts.
- 3. That the plaintiffs cause of action arose from the operation of the plaintiff as a Company in receivership."

They sought the following reliefs:

- "1. AN ORDER striking out the issuance and service of the writ of summons and other processes on the second defendant.
- 2. AN ORDER striking out paragraphs 2 and 3 of the statement of claim or in alternative AN ORDER staying hearing of the validity, legality or correctness of the appointment of the 2nd defendant as receiver/manager of the plaintiff company.

3. AN ORDER striking out the suit for lack of jurisdiction, in the alternative.

AN ORDER transferring the case to the Federal High Court within jurisdiction"

The learned trial judge, in his ruling dismissing the application held, *inter alia*, that:

"1. This is an action for conversion in tort between same parties. The State High Court has unlimited jurisdiction to try it by virtue of Section 236(1) of the 1979 Constitution

. I am persuaded by SADENI FARMS LTD. (*Supra*). I find it apposite and I respectfully apply it."

2. "This case at hand is in all respects dissimilar to the previously subsisting suit or suits, and it is to that extent not duplicitous as the instant case constitutes distinct latent heads of claim which, not existing at the onset, procedurally, could not be joined with claims in the earlier suit."

On appeal to the Court of Appeal, the defendants raised four issues for determination, that is:-

"1. Whether the Court has jurisdiction when plaintiffs claims arose from the management of a property of a company in receivership or a civil cause or matter arising from the operation or management of a company under Company's Act and not mere violation of a Court order.

Even if the suit arose from an alleged disobedience of Court order, whether the Court still has jurisdiction to entertain the suit.

2. Whether the Court was competent to adjudicate on this case when there existed cases pending

between the parties on the same or substantially the same cause of action.

3. Whether the condition precedent to exercising jurisdiction by the Court was satisfied by the respondent/plaintiff.

4. Whether the learned trial Judge ought to entertain the claim of the plaintiff which was capable of being subsumed into Suit No. KWS/215/88 whose order was allegedly disobeyed by way of amendment."

The parties proffered arguments in their respective briefs on the four issues formulated. In his lead judgment (with which Umaru Abdullahi J.C.A. as he then was and I.T. Muhammad J.C.A. agreed) Ogebe J.C.A. after reviewing the arguments of the parties on Issue 1, went on to say:

"After carefully considering all the Issues formulated in this appeal, it appears to me that the resolution of the first Issue alone will determine the outcome of the appeal. See [Anyaduba & Anor. v. Nigerian Renowned Trading Co. Ltd.](#) (1992) 5 NWLR (Pt.243) 535 at p.561. The other issues are manifestly academic and can only properly arise after full hearing of the matter in the Court below and either of the parties chooses to appeal from the final decision of the Court. A Court of Appeal must be wary of going into issues that may arise in the substantive appeal when it is considering an appeal from an interlocutory decision of a lower Court like the present appeal. See [Eperokun & Ors. v. University Of Lagos](#) (1986) 4 NWLR (Pt.34) 162 and [Saraki & Anor. v. Kotoye](#) (1992) 9 NWLR (Pt.264)

156 at p. 185".

The learned Justice of the Court of Appeal considered Issue 1 and concluded:

"The respondent's claim as averred in Para. 19 of the respondent's statement of claim which was reproduced earlier in this judgment is a claim of conversion on tort. This cause of action arose because the appellants were said to have gone ahead and violated an earlier Court order in Suit No. KWS/215/88 in which an interim order was made restraining the appellants from selling the properties of the respondent. There is nothing in the respondent's claim as presently constituted to show that the matter in dispute has to do with receivership. It is the appellants who by their statement of defence brought in the question of receivership. Since they are not counter claiming for anything one cannot look at their statement of defence to determine the matter of jurisdiction. I have read the case of [Akinbobola & Sons v. Plisson Fisko \(Nig.\) Ltd. In Receivership and Others](#) (1986) 4 NWLR (Pt.37) 621 . That was a clear case of receivership appointed by the Court and is entirely different from the facts of the present case in which the appellants are being sued for conversion. In my respectful view the trial Court has jurisdiction to try the matter. Accordingly, I dismiss this appeal and remit the case to the High Court for continuation of the trial."

It is against this decision that the defendants have further appealed to this Court upon four grounds of

28

appeal. And in their brief of argument they formulated the following four issues for the determination of the appeal:

"1. Whether their Lordship of the Court of Appeal were right in failing to consider properly all the issues and matters submitted to the Court and if their Lordship were not right in their approach, can the Supreme Court consider these issues.

2. Whether the respondent's (a Company under receivership) claim for damages wrongful sale of its assets in the hands of the receiver/manager is justiciable in the High Court of Justice of Kwara State or the Federal High Court in view of Section 7 of the Federal High Court Act.

3. Whether their Lordship of the Court of Appeal were right in holding that the respondent's claim as contained in the statement of claim was a mere tort of conversion, the claims though arising from suit No. KWS/215/88 whereby the Kwara State High Court can properly exercise jurisdiction.

4. Whether the case was not an abuse of Court process when suit No. KWS/215/88 whose order was allegedly violated and other pending cases between the same parties, on the same or substantially the same cause of action, were subsisting, and the claim for damages was capable of being subsumed into suit No. KWS/215/88 whose order was allegedly violated and which was capable of enforcing its orders and award damages."

At the oral hearing of the appeal, Mr. Adeyele,

29

learned counsel for the plaintiff disclosed to the Court that the action from which this appeal arose had been heard and determined by the trial Court in 1998. This information notwithstanding, Mr. Okunloye, learned counsel for the defendants was of the view that they could still pursue the appeal. In view of the nature of the issues raised in this appeal, I think he is right.

Mr. Adeyele raised an objection to Issue 4 which, he submitted, was not covered by any ground of appeal. Mr. Okunloye, in reply, conceded that there was no specific ground of appeal on abuse of process of Court but submitted that the issue was properly raised based on ground 3. I think he is again right. Ground 3 reads:

"III. The learned Justices of the Court of Appeal erred in law when they denied the appellants their constitutional rights to fair hearing in the determination of their appeal against the decision of the High Court of Justice of Kwara State when their Lordship completely ignored and failed to consider and pronounce on all the vital issues submitted to the Court throughout their consideration of the appeal.

PARTICULARS OF ERROR IN LAW

I. The appellants as defendants complained in their grounds 5 and 6 of the grounds of appeal that the plaintiff's action constitute an abuse of Court process.

2. The issue was fully addressed in the brief of argument and the Court ignored consideration of

the issue in the judgment.

3. The appellants addressed the Court on the issue of alleged conversion as being mere ancillary to the principal claim and the Court did not consider it.

4. The appellants addressed the Court on the issue of non compliance with rules of Court and the incompetence of the suit, the issue was not touched throughout the judgment.

5. The failure of the Court to consider these issues denied the appellant their rights to fair hearing as these issues were decisive of the appeal."

The issue of abuse of process of Court was raised in the Court below but was not pronounced upon by that Court. If this Court agrees with the defendants that the Court below was wrong in not pronouncing on it, then we will need to examine it in order to decide whether a miscarriage of justice arose as a result of the failure of the Court below to consider and pronounce on that issue.

Having disposed of the preliminary issue raised at the oral hearing of this appeal I now turn to its consideration.

Issue I

It is the submission of Mr. Okunloye that the Court below had a duty to consider and pronounce on all issues submitted to it for adjudication and that it failed in that duty in this case. He urged this Court to examine and pronounce on those issues not considered by the Court below.

It is submitted on behalf of the plaintiff that the Court below having held that the trial Court had jurisdiction to try the case, it was under no obligation to consider the other issues raised in the appeal in the Court below. Reliance is placed on [Anyaduba v. Nigerian Renowned Trading Co. Ltd.](#) (1992) 5 NWLR (Pt.243) 535 at 561 d–e for this submission. It is further submitted, relying on [Bakare v. ACB Ltd.](#) (1986) 3 NWLR (Pt.26) 47 at 58 , that "an appellate Court should not pour the totality of its own mind on the merits of a matter on which it is not going to make a final decision on the merits." It is finally submitted that no miscarriage of justice was occasioned by the failure of the Court below to pronounce on all the issues raised before it as that failure did not substantially and materially affect the decision of that Court. [Akeredolu v. Akinremi](#) (1989) 3 NWLR (Pt.108) 164 at 175 and [Adeyeri II v. Atanda](#) (1995) 5NWLR (Pt.397) 512 at 528 are cited in support.

This Court has said it times without number that it is the duty of a Court to give its decision on issues raised before it – see [Okhideme v. Toto & Anor.](#) (1962) 2 SCNLR 8; (1962) ANLR (Pt. 1) page 307; [Okonji v. Njokanma](#) (1997) 7 NWLR (Pt.202) 131 at p. 146A:
"As it was held in [Ebba v. Ogodo and Anor](#) (1984) 1 SCNLR 372, (1984) NSCC (Vol. 15) 25 5, that a Court of Appeal should not deal with issues not before it; so also when a party submits an issue to the Court for determination the Court must make a

32

pronouncement on that issue except where the issue is subsumed in another issue."

Per Olatawura, J SC; p. 151 C–D, "Until all or any of the grounds are either successfully objected to or abandoned, it is the duty of the Appeal Court to examine the issues formulated on them , "per Wali JSC; p. 155A "The Court of Appeal was under a duty to consider and determine all issues placed before it for determination." per Nwokedi JSC. See also [Ojogbue & Ors. v. Ajie Nnubia & Ors](#) (1972) 1 All NLR (Pt.2) page 226 at 232, (1972) ANLR 664 at 664; [Jamgbadi v. Jamgbadi](#) (1963) 2 SCNLR 311, (1963) NSCC 281 at 282; [Bayol v. Ahemba](#) (1999) 10 NWLR (Pt.623) 381 at 392–393; [Ifeanyi Chukwu \(Osondu\) Co. Ltd. v. Soleh Boneh \(Nig.\) Ltd.](#) (2000) 5 NWLR (Pt.656) 322 at 251 F–R

where I observed:

"Before I proceed further I like to comment briefly on the course taken by the Court of Appeal in this case. Ogebe JCA in his lead judgment said:

'The answer to the first issue is a capital YES. Since this issue disposes of this appeal, I shall not engage in an academic exercise in discussing the other issues.'

This approach to the issues placed before the Court is, to say the least, unfortunate. The course taken, while permissible with the final Court of Appeal is not always the proper course for an intermediate Court to take. Unless in the clearest of cases, an intermediate Court should endeavour to resolve all issues put before it."

The reason for this principle is not far-fetched. It is, as Coker JSC put it in [Ojogbue & Ors. v. Ajie Nnubia & Ors](#) (*supra*):

" A judgment of the Court must demonstrate in full a dispassionate consideration of the issues properly raised and heard and must reflect the results of such an exercise."

And in [Odunayo v. The State](#) (1972) 8-9 SC.290,296 Sowemimo JSC, as he then was, explained it further when the learned Justice of the Supreme Court said:

"There must be, and there are a number of cases where it is most desirable, especially in the case of an intermediate Court of appeal, that the final Court of Appeal, which is the Supreme Court of Nigeria, should have the benefit of the opinion of that Court on points raised before it, should it come up for further consideration by this Court."

It is however submitted for the plaintiff that as the Court below had held that the trial Court had jurisdiction to entertain the suit before it, it was under no obligation to pronounce on the other issues argued as an appellate Court would not pour the totality of its own mind on the merits of a matter on which it is not going to make a final decision on the merits. [Anyaduba v. Nigerian Renowned Trading Co. Ltd.](#) (*supra*) and [Bakare v. A. C.B.](#) (*supra*) are cited in support of this submission. In [ANYADUBA](#), Omo JSC in his lead judgment observed at page 561 of the report: "An appellate Court has a duty to consider all the

34

issues placed before it vide [Okonji v. Njokanma](#) (1991) 7NWLR (Pt.202) 13 1 . But in the instant case the issue on which the appeal was decided was the most important "live" issue before it challenging as it does the order of non-suit on the claim for declaration of title. If a Court of Appeal is of the view correctly that a consideration of one issue is enough to dispose of the appeal, it is not under any obligation to consider all the other issues posed. If however it is erroneous in its decision, the consequence may be the setting aside of its decision on appeal with an order for re-hearing. The Court of Appeal was right in its decision here, and its failure to consider those other issues has not led to miscarriage of justice."

A reading of the judgment of Omo JSC will disclose that all the issues that were not pronounced upon by the Court of Appeal in that case were subsumed in the issue relating to title to the land in dispute in the case and as that issue was resolved in favour of the defendant in the case, it was considered unnecessary to go into other issues which were in any event, dependent on the issue resolved by the Court of Appeal. The observation of Omo JSC must therefore be seen in the light of the facts of that case. It is, therefore, no authority for the proposition put forward by learned counsel on behalf of the plaintiff in this case. In a case where the Court of Appeal is ordering a retrial before the trial Court, prudence may dictate that other issues raised before it may not be pronounced upon if so to do, will prejudice the retrial. I would think that it

is in the clearest of cases that an intermediate Court of appeal would refrain from determining all issues argued before it if one issue would suffice to determine the appeal. I think the Court below should bear in mind at all times the observation of Sowemimo JSC, as he then was, in [*Odunayo v. The State*](#) (supra) earlier quoted by me in this judgment. And to this I add the observation of Nnaemeka–Agu JSC in [*Sanusi v. Ameyogun*](#) (1992) 4 NWLR (Pt.237) 527 at pp. 550–551 to the following effect:

"It is left for me to say a few words about the submission of learned counsel for the respondents that the Court of Appeal should have considered other issues raised before it and that if it did, it would have dismissed the case instead of ordering a retrial. The short point to it is that the appellant, who raised ground 7 and issue number 5, did not raise them in the alternative but cumulative with other grounds. If a consideration of them made it unnecessary for other issues raised by him to be considered, I do not see how he can complain.

While it is true that such a course has its own risks because a Judge of utmost sincerity and optimum honesty, as well as profound industry and knowledge of the law could reach a decision which could turn out to be wrong on appeal, it is equally true that where, from the nature of the issue which an appellate Court has accepted, it is inclined to order a retrial, it is advisable to say as little as possible on the merits of other facts of the case which are not relevant to the order of retrial and

36

which may prejudice the retrial. Once an appellate Court bears these two principles in mind" it cannot go far wrong. It is a question of balancing these two considerations at all times."

Turning now to the case on hand, the four issues placed before the Court below have been set out in an earlier part of this judgment; they are jurisdiction of the trial Court, competence of that Court to adjudicate when there existed cases pending between the parties on the same or substantially the same cause of action, whether condition precedent to exercise of Court's jurisdiction was satisfied and whether the trial Court ought to entertain the claim which was capable of being subsumed into KWS/215/88. I think the Court below was in serious error when it, per Ogebe JCA, held that a resolution of the first issue, that is, jurisdiction alone would determine the outcome of the appeal.

It cannot be said that the other three issues are subsumed in the question of jurisdiction which is which Court as between the Federal High Court and the Kwara State High Court had jurisdiction to entertain the matter. The second issue raised the question of abuse of Court's process for if there were cases pending between the same parties on the same or substantially the same cause of action, it would be abuse of process of Court for the plaintiff to institute yet another action in the same Court against the same defendant while these other cases were still pending. This is an issue different

from the first issue of jurisdiction. The same consideration goes for the other two issues. The Court below ought to have pronounced on each of these issues. It is dereliction of duty for it to refrain from pronouncing on the other three issues; it is however not a case of lack of fair hearing. Issue 1 must therefore be resolved in favour of the defendants.

Having now concluded as above, what order must this Court make. Ordinarily, the case ought to be sent back to the Court below to determine the issues not pronounced upon by it. But these issues are now raised in this appeal as Issue 4. And it is essentially issue of law. Desirable as it is that this Court should have the benefit of the opinion of the Court below on these issues, I think it is a matter we can consider here without that benefit. And learned counsel for the defendants have urged us so to do. This interlocutory matter is already 12 years old. The interest of justice requires that an end be put to it now. I will, therefore, proceed to consider Issue 4. And as the facts on which Issues 2-4 are based dovetail into each other, I shall consider them together.

Issues 2-4:

On Issues 2 and 3, the Court below found that plaintiffs cause of action in the case on hand was in the tort of conversion and that, therefore, the Kwara State High Court had jurisdiction to entertain the suit. The defendants challenge this

finding in this appeal. It is their contention that on a proper reading of the plaintiffs statement of claim his grouse was against the exercise by the 2nd defendant of his powers of receiver/manager of the plaintiff, a limited liability company and the action therefore, should be brought in the Federal High Court.

I have read the statement of claim, particularly paragraphs 4, 7, 14 and 15 and other paragraphs highlighted in the brief of the defendants; I have no reason to disagree with the finding of the two Courts below that plaintiffs action is grounded in the tort of conversion and has nothing to do with the official management of plaintiff company by the 2nd defendant. The plaintiff was not complaining about the sales of its assets by the 2nd defendant prior to the Court's order of interim injunction but the sales made in disobedience of that order. On the making of that order, the 2nd defendant could no longer sell until the order was discharged; he became a custodian of those assets. Any sale made by him while the injunction subsisted could not be in *lawful* exercise of his powers of receiver/manager. I, therefore, resolve Issues 2 and 3 against the defendants.

On Issue 4, it is the contention of the defendants that the cause of action in the present case was the same as the cause of action in KWS/215/88. That cannot be correct. The latter action was for various

declarations, orders, damages and injunction in respect of the debenture deed and appointment of the 2nd defendant as a receiver/manager. The present action was for damages for alleged wrongful sales of plaintiff 's assets. The learned trial Judge was right when he held that the causes of action were dissimilar. The present action cannot, therefore, constitute an abuse of the process of Court. Issue 4 is resolved against the defendants.

On Issue 3 raised before the Court below and on which no pronouncement was made by it, I have considered the arguments advanced in support thereof in the brief of the defendants in the Court of Appeal. It was contended on their behalf that the plaintiff should have sought and obtained the leave of the High Court before instituting the present case against the 2nd defendant who was its receiver/manager. The failure to do so was fatal to the action, it was submitted.

As I have observed above, the 2nd defendant was sued as custodian of plaintiffs assets which he allegedly sold unlawfully. He was, therefore, sued as tort feisor and not as receiver/manager. I know of no rule of law, and our attention has not been drawn to any which requires that leave to sue must be obtained in the circumstances of this case. I, therefore, would resolve that issue against the defendants.

The sum total of all I have said above is that although the Court below was wrong not to have pronounced on Issues 2–4 placed before it for determination, those issues (including the issue of jurisdiction determined by that Court) having now been resolved against the defendants, the error has not occasioned any miscarriage of justice.

It is for the reasons contained in this judgment that I have come to the same conclusion as my learned brother Onu JSC, a preview of whose judgment I had the advantage of here now, that this appeal fails and it is dismissed by me. I award N 10,000.00 costs to the plaintiff.

EMMANUEL OBIOMA OGWUEGBU, J.S.C.:

I have had the privilege of a preview of the draft of the judgment which has just been delivered by my learned brother Onu, J.S.C. I agree with him that the appeal fails.

The plaintiff who is the respondent in this Court applied for and obtained loan and overdraft facilities from the 3rd defendant who is the 3rd appellant before us. The 3rd defendant pursuant to the deed of debenture mortgage over the plaintiff's fixed and floating assets appointed the 2nd defendant receiver/manager of the plaintiff company. In the view of the 3rd defendant the loan is due and payable. The plaintiff contends that it is not due for repayment and the appointment of receiver/manager is irregular and premature. As a result, the plaintiff instituted an action in the High

Court of Kwara State (suit No. KWS/215/88) questioning the legality of the action of the 3rd defendant in appointing the 2nd defendant receiver/manager. In the meantime the receiver/manager proceeded to sell part of the assets of the plaintiff to the 1st defendant. The plaintiff obtained an order *ex parte* restraining the defendants from selling its assets pending the determination of the motion on notice for the substantive order. Notwithstanding the pending order of Court, 2nd defendant continued with the sale of the assets of the plaintiff. Committal proceedings were commenced in the High Court and when it failed on appeal to the Court of Appeal, plaintiff instituted the action leading to this appeal in the Ilorin High Court claiming as follows:

"1. A declaration that the removal, sale and/or disposal of the said 44 vehicles and/or plants by the defendants in disregard of the Court order restraining same is illegal, null and void;

A sum of N18,031,980. 00 being the market value of its vehicles and/or plants illegally sold by the defendants as at the time of sale; General damages of N132,919,181.00 being the current cost of purchase of such vehicles and/or plants illegally sold by the defendants;

ALTERNATIVELY

Restitution of the said 44 vehicles and/or plants in the working conditions they were before the defendants illegally sold them"

The defendants filed a statement of defence in

reply to the plaintiff's statement of claim and subsequently brought an application before the High Court for:

"AN ORDER permitting argument of the issues of law raised in paragraphs 17, 18 and 19 of the statement of defence to be argued on this motion to wit:

(a) The condition precedent to exercise of the jurisdiction of the Court has not been fulfilled, that is to say, leave of the Court to sue the receiver/manager in respect of the property in receivership was not obtained before the issuance and service of the writ of summons.

(b) That the issue of the validity, legality and correctness/or otherwise of the appointment of the 2nd defendant as a receiver/manager pleaded in paragraphs 2 and 3 of the statement of claim are the same cause of action in suit Nos. KWS/215/ 88, [Abiola & Sons Bottling Company Ltd. v. 7up Bottling Company Ltd. and Others](#); KWS/122/91 [Abiola & Sons Bottling Company Ltd. v. First City Merchant Bank Ltd.](#)

(c) The High Court of Justice of Kwara State has no jurisdiction to hear and determine the plaintiffs claim which concerns and relates to the management of the properties of the plaintiff in receivership by the receiver/manager. "

Gbadeyan, J. heard arguments of counsel and in a reserved ruling dated 20th September, 1995 dismissed the preliminary objection and held that the High Court has jurisdiction to entertain the

claim. The defendants who were not satisfied with the ruling appealed to the Court below. The following four issues were formulated by the defendants for determination by the Court below:

"1. Whether the Court has jurisdiction when plaintiff's claims arose from the management of a property of a company in receivership or a civil cause or matter arising from the operation or management of a company under Company's Act and not mere violation of a Court order.

Even if the suit arose from an alleged disobedience of Court order, whether the Court still has jurisdiction to entertain the suit.

2. Whether the Court was competent to adjudicate on this case when there existed cases pending between the parties on the same or substantially the same cause of action.

3. Whether the condition precedent to exercising jurisdiction by the Court was satisfied by the respondent/plaintiff.

4. Whether the learned trial Judge ought to entertain the claim of the plaintiff which was capable of being subsumed into Suit No. KWS/215/88 whose order was allegedly disobeyed by way of amendment."

The Court below heard oral arguments from both learned counsel and in a reserved judgment considered the first issue alone and held as follows:

"This cause of action arose because the appellants were said to have gone ahead and violated an earlier Court order in Suit No. KWS/215/88 in

which an interim order was made restraining the appellants from selling the properties of the respondent. There is nothing in the respondent's claim as presently constituted to show that the matter in dispute has to do with receivership. It is the appellants who by their statements of defence brought in the question of receivership. In my respectful view the trial Court has jurisdiction to try the matter. "

The other issues were not considered as they are in the opinion of that Court "manifestly academic and can only properly arise after full hearing of the matter in the Court below and either of the parties choose to appeal from the final decision of the Court."

It concluded that the trial Court has jurisdiction to try the case. The defendants' appeal was dismissed. In their further appeal to this Court, the defendants have identified four issues and the first issue is whether the Court of Appeal was right in failing to consider properly all the issues and matters submitted to it.

The Court of Appeal being an intermediate appellate Court, its decisions do not enjoy the finality of those of Supreme Court by virtue of Section 235 of the Constitution. Whereas the Supreme Court can determine an appeal on one of the issues submitted to it in an appeal, the Court of Appeal cannot afford to ignore other issues properly

placed before it since its decision on one or some of
45

the issues may be faulted on a further appeal to
this Court. Where, however, an intermediate
appellate Court rests its decision on one of the
issues, it should also express its views and
pronounce on the other issues identified for its
determination. Even where the intermediate Court
is of the settled view that the sole issue on which
its decision is anchored will be upheld by the
Supreme Court, it is prudent to express an
alternative view. The purpose of this is to save the
expense and delay which will result should the
Supreme Court hold a contrary view. See [*Kotoye v. C.B.N. \(1991\) 9 NWLR \(Pt.214\) 126*](#); [*Okonji & Ors. v. Njokanma & Ors. \(1991\) 7 NWLR \(Pt.202\) 131*](#)
and Nipol Ltd. v. Bioku Investment & Property Co. Ltd. (1992) 3 NWLR (Pt.232) 727.

A careful examination of the writ of summons and
the statement of claim reveal that the defendants
are sued for conversion, namely, the illegal
removal, sale and/or disposal of the plaintiff's forty
four vehicles in total disregard of a subsisting Court
order restraining the vehicles in total disregard of a
subsisting Court order restraining the 2nd
defendant from doing so. There is nothing in the
statement of claim suggesting receivership or
management of plaintiff's company by a third party.
The learned trial judge and the Court below were
right in holding that the Kwara State High Court
has jurisdiction to determine the case and not the
Federal High Court as contended by the defendants.

On the complaint by the appellants that the Court below did not consider all the issues placed before it for the determination of the appeal, I have gone through those issues and they would not have made any difference to the outcome of the appeal if the Court below had considered them.

On the whole this appeal lacks merit and I also dismiss it and abide by the order as to order as to costs contained in the judgment of my learned brother Onu, J.S.C.

UMARU ATU KALGO, J.S.C.: I have read in advance the leading judgment of my learned brother Onu JSC which has been delivered in this appeal. I entirely agree with the reasoning and conclusions reached therein. There is no merit in the appeal and it ought to be dismissed.

The appellants have raised 4 issues for determination by this Court and the respondent raised 2. The respondent's issue (ii) is not dissimilar to the appellants' issue 3 though the latter added the question of jurisdiction of the trial Court to entertain the matter. In my respectful view, this is the crux of the whole case, for it is trite that in all matters before a Court the fundamental one is the issue of jurisdiction which must first be determined before anything else otherwise all proceedings relating thereto will be nullity and an exercise in futility. See [Alao v. C.O.P.](#) (1987) 4 NWLR (Pt. 64) 199; [Alh. Rufai v. Alh.](#)

Olugbeja (1986) 5 NWLR (Pt.40) 162; Funduk Engineering Co. v. MC Arthur (1995) 4 NWLR (Pt. 392) 640.

Still on this issue, and having carefully examined the statement of claim in this case i.e No. KWS/270/89, I have no doubt in my mind that the respondent as plaintiff, was suing in conversion of their vehicles sold and or the proceeds of sale thereof and so the case was not based on receivership. I agree with the Court of Appeal when in its judgment, per Ogebe JCA, it said:

" This cause of action arose because the appellant were said to have gone ahead and violated an earlier Court ruling that was made restraining the appellants from selling the properties of the respondent. There is nothing in the respondent's claim as properly constituted to show that the matter in dispute has to do with receivership. It is the appellants who by their statement of defence brought in the question of receivership."

Therefore since the respondent sued the appellants in conversion, the trial Court has in my view, the jurisdiction to entertain the action now pending before it in this matter.

It is well – settled that an appeal Court must consider all issues presented before it by the parties. There are however exceptions according to the facts and circumstances of each case. One of

such circumstances as laid down by this Court is
48

where the Court concerned is of the view that a consideration of one issue is enough to dispose of the appeal, it is not under any obligation to consider all the issues. See [Anyaduba v. N.R.T.C Ltd.](#) (1992) 5 NWLR (Pt.243) 535; [Okonji v. Njokanma](#) (1991) 7 NWLR (Pt. 202) 131; [Sanusi v. Ameyogun](#) (1992) 4 NWLR (Pt. 237) 527. In this appeal, the Court of Appeal dealt with the issue of jurisdiction of the trial Court to entertain the case and left the other ancillary issues which it considered as academic. In the light of the above authorities and what I said earlier about the issue of jurisdiction in a case, I think that the Court of Appeal was not wrong in failing to consider the other ancillary issues in the circumstances of this case. There is no miscarriage of justice as a result or denial of fair hearing.

For the above and more detailed reasons given in the leading judgment of my learned brother Onu JSC, I find that there is no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal. I abide by the consequential orders made in the leading judgment including the order of costs.

SAMSON ODEMWINGIE UWAIFO, J.S.C.:

I read in advance the judgment of my learned brother Onu JSC. I agree with him that the appeal fails.
The plaintiff/respondent obtained loan from the 3rd defendant/appellant. The loan was outstanding and

although the plaintiff claims that it was not yet due for repayment, the 3rd defendant appointed the 49

2nd defendant as a receiver/manager of the plaintiffs debenture. The plaintiff filed action in Suit No. KWS/215/88 to contest the legality of the debenture and the appointment of the 2nd defendant as a receiver/manager. The action was brought in the Kwara State High Court. In the meantime the 2nd defendant began selling the plaintiffs property including motor vehicles, machines and equipment. The plaintiff then obtained an *ex parte* injunction against the defendants. It would appear the sale continued notwithstanding the *ex parte* injunction.

The plaintiff thereafter filed an action, also in the Kwara State High Court, claiming as follows:

"1. A declaration that the removal, sale and/or disposal of the said 44 vehicles and/or Plants by the defendants in disregard of the Court Order restraining same is illegal, null and void.

2. The sum of N18,031,980.00 being the market value of its vehicles and/or plants illegally sold by the defendants as at the time of sale.

3. General damages of N132, 919, 181.00 being the current cost of purchase of such vehicles and/or plants illegally sold by the defendants.

Alternatively

4. Restitution of the said 44 vehicles and/or plants in the working conditions they were before the defendants illegally sold them."

The defendants/appellants raised a preliminary objection to the claim that it ought to have been

50

filed in the Federal High Court because it relates to receivership of a company. It should be noted that the preliminary objection was not in respect of the earlier action in which an *ex parte* injunction was granted. If such objection had been raised in that action, it is clear to me what the result would have been. The learned trial judge held that the present action was based on the tort of conversion and overruled the objection. The appellants appealed to the Court of Appeal and raised four issues for determination, the first of which was whether the Court has jurisdiction since the claim arose from the management of the property of a company under receivership. The Court of Appeal dealt with only that first issue holding that the appellants were sued for conversion and that the State High Court has jurisdiction. The further appeal to this Court is in the main to determine whether the lower Court was right.

There is no doubt that the 2nd defendant/appellant acted on the basis that he was appointed a receiver by the 3rd defendant/appellant under a deed of mortgage debenture. That could well be a matter for the Federal High Court. But a subsisting order of Court, whether or not issued by the competent Court, had restrained him from acting. At that point he ceased in law, albeit temporarily, from being a person acting under a receivership mandate. By selling the plaintiff/respondent's property as he did, he committed the tort of conversion because he

was acting under no authority or excuse for
51

dispossessing the plaintiff/respondent of its
property and/or to disposing of them.

One form of conversion is where there has been a
positive and unequivocal wrongful act of dealing
with goods in a manner inconsistent with the
owner's rights and an intention in so doing to deny
the owner's rights or to assert a right inconsistent
with them: see [Ashby v. Tolhurst](#) (1937) 2 All ER
837; [Moorgate Mercantile Co. Ltd. v. Finch and
Another](#) (1962) 2 All ER 467; [Howard E. Perry &
Co. Ltd. v. British Railways Board](#) (1980) 2 All ER
579; [Commissioner of Police v. Oguntayo](#) (1993) 6
NWLR (Pt.299) 259; [Ojini v. Ogo Oluwa Motors
Nigeria Ltd.](#) (1998) 1 NWLR (Pt.534) 353

Conversion as a cause of action is a tort over which
any State High Court has jurisdiction to entertain.
It was a different cause of action from the pending
Suit No. KWS/215/88.

As I said, the lower Court decided the appeal from
the trial Court's ruling on the sole issue whether
the State High Court has jurisdiction to hear this
case. It clearly came to the right decision that it
has. Having so correctly decided, it does not matter
that it failed to consider the other issues raised by
the appellant, which failure is made an issue in this
present appeal. I must hold that it was sheer waste
of time to raise that issue in this Court. For the

above reasons, I too find no merit in this appeal
and dismiss it with N10,000.00 costs to the
respondent.

Appeal dismissed.

Appearances:

Olaseeni Okunloye, Esq.

For Appellant(s)

Duro Adeleye, Esq.

For Respondent(s)

