ABDULKARIM

v.

INCAR (NIG) LTD

(1992) LPELR-26(SC)

ABDULKARIM v. INCAR (NIG) LTD

(1992) LPELR-26(SC)

In The Supreme Court

On Friday, July 24, 1992

SC.183/1989

Before Our Lordships

Muhammadu Lawal UwaisJustice of the Supreme Court of Nigeria
Saidu KawuJustice of the Supreme Court of Nigeria
Philip Nnaemeka-AguJustice of the Supreme Court of Nigeria
Abubakar Bashir WaliJustice of the Supreme Court of Nigeria
Olajide OlatawuraJustice of the Supreme Court of Nigeria
Emmanuel Obioma OgwuegbuJustice of the Supreme Court of Nigeria
Shehu Usman MohammedJustice of the Supreme Court of Nigeria

Between

ALHAJI SHUAIBU ABDULKARIMAPPELANT(S)

And

INCAR (NIGERIA) LTD.RESPONDENT(S)

RATIO DECIDENDI

WORDS AND PHRASES - "CONSENT"
- Meaning of "consent"
"Now, it is recognised that the word 'consent' has at least two shades of meanings. It could be used in the narrow technical sense with reference to a consent judgment or order in which the parties, irrespective of their claims and contentions in a case, agree to strike a compromise embodied in an agreement signed by the parties and subsequently made an order of court. See: Nigeria Water Resources Development Ltd. v. Jaiyesimi (1963) 1 All NLR 215 (1963) 2 SCNLR 37. This type of judgment or order is not based on any findings of Court or the merit of the party's case on issues in litigation in the case. It is based solely on what the parties themselves have agreed. There is also the broad sense in which the word "consent" is used to qualify a judgment or other decision to which a party submits mainly because he cannot resist it: he has nothing to offer against it but he may not necessarily have agreed to it. Both types of judgments or orders are consent judgment/orders all the same. Thesiger L.J. recognized this duality of the meaning of the word "consent" when he stated in Bewley v. Atkinson (1879) 13 Ch.D. 283, at pp.298-299 thus:- "I think it could hardly be disputed that although in the strict technical etymology the word 'consent' as well as 'agreement' implies two parties, yet 'consent' used in the ordinary way in which that term is used, is satisfied when it is found that one person has given what is popularly known as consent." Lord Greene, M.R., made much the same point in Chandless - Chandless v. Nicholson (1942) 2 K.B. 321, C.A. at p.324. Sexual offences which require the ingredient of consent illustrate the difference very clearly. A woman may readily consent to the act, willingly. Or she may be hesitant, reluctant or grudging: but once she consciously permits it, there is "consent" - see Holman v. The Queen (1970) W.L.R.2 . Both of them are consent all the same in the broad sense. But there may be occasions when a woman who does not consent to the act may submit to the act only to save her own neck from a violent rapist even though she does not consent to it. See R. v. Day 9 C & P.724. There is no consent when the act has been forced on her by threat or intimidation. The theoretical difference between the two types of consents is that the technical sense involves an act of reason accompanied with deliberation and weighing of the pros and cons on either side and then a voluntary agreement which is made an order of Court whereas, in the broad sense it only happens that although it was not the result of the deliberation and voluntary agreement of the

parties, either party has submitted to it. Hence, consent of the first type involves a submission; but not every submission of the second type amounts to consent. I think the line of division between the two is that submission in the latter class to qualify as a consent shall have been given without a contest. Where there has been a contest and the Court gives its decision, there is no consent."

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JUDGMENT AND ORDER - CONSENT JUDGMENT

- Meaning and nature of consent Judgment

"...it appears to me that a decision of the High Court made with the consent of the parties means more than such a decision made after a formal agreement by the parties which has been made an order of Court. It includes those decisions to which a party submits without a contest, the whole idea being that the law will not allow such a party to blow hot and cold at will. It excludes those decisions which the Court deliberately reaches in exercise of its adjudicative functions after considering the cases of the parties, the evidence in support thereof and the submissions, if any, by counsel."

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WORDS AND PHRASES - "DECISION"

- Meaning of "decision"

"The word "decision" in these provisions has the meaning given to it by Section 277 subsection (1) of the 1979 Constitution which provides - "277 (1) In this Constitution, unless it is otherwise expressly provided or the context otherwise required - 'decision' means, in relation to a Court, any determination of that Court and includes judgment, decree, order, conviction, sentence or recommendation."

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INTERPRETATION OF STATUTE - SECTION 220(2)(C) OF THE 1979 CONSTITUTION

- Interpretation of Section 220(2)(c) of the 1979 Constitution as regards the condition to be fulfilled before an appeal against a consent judgment can succeed

"No doubt this appeal raises one issue of significant importance in the interpretation of Section 220(2)(c) of the Constitution of the Federal Republic of Nigeria 1979 concerning the rights of appeal conferred on parties to a dispute after the decision of the High Court. It is this Section 220(2)(c) that is being called into question in this appeal. Whilst Section 220(1) of the 1979 Constitution gives the right of appeal without any condition, Section 220(2)(c) limits the right in its provision: "Nothing in this section shall confer any right of appeal - (c) without the leave of a High Court or of the Court of Appeal from a decision of the High Court made with the consent of the parties or as to costs only." 'Decision' has been defined under S.279 of the 1979 Constitution. This definition has already been stated in the judgment of my learned brother Uwais, J.S.C. Suffice it to say that it is only when there is a decision that there can be either an appeal as of right or with leave. The facts culminating in the decisions of the lower Courts have been stated by Uwais, J.S.C. The judgment of the High Court by Abubakar J. states: "This case is hereby dismissed as the matter was litigated upon up to the Supreme Court." Earlier on there had been a concession made by Mr. Eka Kanam whereby he agreed that the objection raised by Mr. Omotosho was valid. Mr. Omotosho urged the Court to strike out the action. It was under that circumstance that the Court acting on the concession of the learned counsel dismissed the action. The requirement of S.220(2)(c) of 1979 Constitution in this case is to obtain leave of the High Court or the lower Court once it is a consent judgment before there can be a valid appeal."

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INTERPRETATION OF STATUTE - RULES OF INTERPRETATION OF CONSTITUTION

- Rules governing the interpretation of Constitutional provisions

"It is settled that in the interpretation of any provision of the Constitution, our Courts should be liberal so that the intendment of the Constitution can be met. I cannot put this better than had been done by Sir Udo Udoma in Nafiu Rabiu v. The State (1981) 2 NCLR 293 at p.326 where he said: "And where the question is whether the Constitution has used an expression in the wider or narrower sense, in my view, this Court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something ... in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the object and purpose of the Constitution."

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ADMINISTRATIVE LAW - JUDICIAL REVIEW

- Processes judicial review entails

"...judicial review entails three different processes, namely, the Courts, particularly the Supreme Court, ensuring that every arm of government plays its role in the true spirit of the principle of separation of powers as provided for in the Constitution; that every public functionary performs his functions according to law, including the Constitution, and for the Supreme Court - that it reviews Court decisions including its own when the need arises in order to ensure that the country does not suffer under the regime of obsolete or wrong decisions. It is the last type of review that is relevant in this case."

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CASE LAW - DEPARTURE FROM PREVIOUS DECISIONS

- Circumstances wherein Court can depart from or overrule its previous decisions

"Although the Supreme Court will respect its previous decisions, as a Court of last resort which is not bound by precedent, it will not hesitate to over-rule any previous decision of its own which it is satisfied was reached on wrong principles. It had done so in many cases. See for examples: Johnson v. Lawanson (1971) 1 NMLR 380; Mrs. Bucknor- Maclean & Anor v. Inlaks Ltd. (1980) 8-11 S.C. 1. This is the only way to keep the stream of justice pure."

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JUDGMENT AND ORDER - CONSENT JUDGMENT

- Meaning and nature of consent Judgment

"...when a man gives his consent in respect of a claim against him as to the amount due from him, whether a part or the whole claim, and where it is a part and the plaintiff agrees to the amount admitted, the judgment of that Court even for the lesser amount is a consent judgment. The approach to the 20 Nigerian Weekly Law Reports 21 September, 1992 (Olatawura, J.S.C.) interpretation of the Constitution should be one of Liberalism: Nafiu Rabiu v. The State (1980) 8-11 S.C. 130; (1981) 2 NCLR 293. Consent judgment can be given before trial or before the conclusion of a trial thereby preventing the Court from reaching a decision on the evidence before it. It is an agreement reached by the parties in respect of the claim before the Court. Once it is not illegal or against public policy the Court will give effect to it."

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APPEAL - LEAVE OF COURT/LEAVE TO APPEAL

- Effect of failure to obtain leave of Court to appeal where same is required

"As no leave to appeal to the Court of Appeal was obtained, the appeal before this Court is incompetent. The Court of Appeal had no jurisdiction to entertain the appeal. The decision of the Court of Appeal is null and void. There is therefore no appeal before this Court."

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JUDGMENT AND ORDER - CONSENT JUDGMENT

- Requirements of a valid consent judgment

"In Woluchem v. Wokoma (supra) this Court held that in order to have a consent judgment, the parties must be ad idem as far as the agreement is concerned, their agreement must be free and voluntary and the terms of settlement must be filed in Court."

JUDGEMENT SUMMARY

INTRODUCTION:

THIS APPEAL BORDERS ON CIVIL PROCEDURE.

FACTS:

THE APPEAL IS AGAINST THE DECISION OF THE FEDERAL COURT OF APPEAL IN WHICH THE JUDGMENT OF THE TRIAL COURT AGAINST THE PLAINTIFF WAS AFFIRMED.
THE PLAINTIFF IN THIS CASE BY WRIT OF SUMMONS INSTITUTED AN ACTION AGAINST THE DEFENDANT AT THE HIGH COURT OF KANO STATE, CLAIMING A DELIVERY UP OF TWO LORRY VEHICLES OR THE TOTAL SUM OF N400,000.00 WHICH WAS THEIR CURRENT VALUE THEN AND DAMAGES FOR WRONGFUL DETENTION AT THE RATE OF N9,000.00 PER MONTH. THE DEFENDANT FILED AN APPLICATION SEEKING THAT THE WRIT OF SUMMONS FILED BEFORE THE TRIAL COURT BY THE PLAINTIFF BE STRUCK OUT, AS HE RELIED ON THREE GROUNDS, AND FINALLY THAT THE CASE BE DISMISSED. THE TRIAL COURT IN ITS JUDGEMENT STATED THAT THE PLAINTIFF WAS ENTITLED TO DAMAGES FOR THE ADMITTED WRONGFUL SEIZURE AND WOULD HAVE AWARDED DAMAGES IF ANY HAD BEEN CLAIMED. BUT NONE WAS CLAIMED, AND NONE PROVED. SO WAS UNABLE TO AWARD ANY.
THE PLAINTIFF/APPELLANT DISSATISFIED WITH THE DECISION OF THE TRIAL COURT, APPEALED TO THE COURT OF APPEAL WHICH EQUALLY DISMISSED THE APPEAL WITH COSTS OF N300.00 IN FAVOUR OF THE DEFENDANT/RESPONDENT.
THE APPELLANT STILL DISSATISFIED WITH THE JUDGEMENT OF THE COURT OF APPEAL FURTHER APPEALED TO THE SUPREME COURT.

ISSUES:

THE APPELLANT FORMULATED TWO ISSUES FOR DETERMINATION OF THE APPEAL BY THE SUPREME COURT:
"(1) WHETHER IN VIEW OF ORDER 10, KANO HIGH COURT CIVIL PROCEDURE RULES, THE DISMISSAL OF THE APPELLANTS (SIC) CLAIM IN LIMINE IS JUSTIFIED PLEADINGS NOT HAVING BEEN EXCHANGED.
(2) WHETHER SUITS NO. K/190/78 AND SC4/83 RAISES ESTOPPEL AGAINST THE APPELLANTS (SIC) CLAIM FOR DETENTION OF VEHICLE AND DAMAGES ARISING THEREFROM."

THE SUPREME COURT SUO MOTO RAISED A SOLE ISSUE FOR DETERMINATION OF THE APPEAL, VIZ:
"(1) WHETHER LEAVE TO APPEAL FROM THE DECISION OF THE HIGH COURT TO THE COURT OF APPEAL WAS OBTAINED HAVING REGARD TO THE PROVISIONS OF SECTION 220(2)(C) OF THE 1979 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA."

DECISION/HELD:

IN THE FINAL ANALYSIS, THE SUPREME COURT STRUCK OUT THE APPEAL AND AWARDED COSTS OF N1,000.00 IN FAVOUR OF THE RESPONDENT.

MUHAMMADU LAWAL UWAIS, J.S.C. **(DELIVERING THE LEADING JUDGMENT):** IN HIS WRIT OF SUMMONS, THE APPELLANT, AS PLAINTIFF, CLAIMED AGAINST THE RESPONDENT, AS DEFENDANT, IN THE HIGH COURT OF KANO STATE AS FOLLOWS:
"(1) DELIVERY UP OF THE SAID TWO LORRY VEHICLES NUMBERS KNF 3652 AND KNF 4741 OR THE TOTAL SUM OF N400.000 (THEIR CURRENT MARKET VALUE).
(2) DAMAGES FOR THEIR WRONGFUL DETENTION AT THE RATE OF N9,000.00 PER MONTH, FROM OCTOBER, 1984 (THE DATE OF THE SUPREME COURT JUDGMENT) TILL DELIVERY IS MADE OR COST OF VEHICLE PAID TO THE PLAINTIFF.
(3) OTHER CONSEQUENTIAL RELIEF AS THE COURT MAY DEEM FIT TO MAKE."

THE WRIT OF SUMMONS WAS TAKEN OUT ON THE 14TH DAY OF JULY. 1987. BEFORE STATEMENT OF CLAIM WAS FILED BY THE PLAINTIFF, THE DEFENDANT BROUGHT AN APPLICATION ON THE 21ST DAY OF AUGUST, 1987 PRAYING THUS:
"(A) AN ORDER THAT THE WRIT OF SUMMONS HEREIN DATED 21ST DAY OF JULY, 1987 (SIC) BE STRUCK OUT ON THE GROUNDS THAT:
(I) IT DISCLOSES NO REASONABLE CAUSE OF ACTION, AND
(II) IT IS AN ABUSE OF THE PROCESS OF THE COURT AND,
(III) IF THERE IS A CAUSE OF ACTION, THE SAME IS STATUTE BARRED.
4
(B) AN ORDER THAT THE ACTION BE DISMISSED.
FURTHER TAKE NOTICE THAT AT THE HEARING OF THIS APPLICATION, COUNSEL WILL USE AND RELY ON THE CONTENTS OF THE AFFIDAVIT OF PIUS OKOKO ATTACHED TO THIS MOTION.

THIS APPLICATION IS MADE UNDER ORDER 2 RULE 2 OF THE RULES OF THE SUPREME COURT 1976 ENGLAND AND/OR ORDER 10 RULE 20 OF THE KANO STATE HIGH COURT (CIVIL PROCEDURE) RULES 1976."

THE AFFIDAVIT IN SUPPORT OF THE APPLICATION READS IN PART AS FOLLOWS:-

"2. THAT ON THE 23RD DAY OF OCTOBER, 1978, THE PLAINTIFF INSTITUTED ACTION AGAINST THE DEFENDANT IN SUIT NO. K/190/78 IN THE KANO HIGH COURT CLAIMED *INTER ALIA* AS PER HIS WRIT.

'RELEASE AND POSSESSION OF THE SAID VEHICLES REGISTRATION NOS. (AMENDED) KNF 3652 AND KNF4741 NOW IN CUSTODY OF THE DEFENDANTS OR IN THE ALTERNATIVE FOR THE VALUE OF THE SAID VEHICLES. THE STATEMENT OF CLAIM OF THE PLAINTIFF AND THE DEFENCE OF THE DEFENDANTS AS FILED IN THE SAID ACTION HAVE BEEN PRODUCED AS SHOWN TO ME AND THE SAME ARE ATTACHED TO THIS ACTION AS 'EXHIBITS P01 AND EXHIBITS P02.'

3. THE ACTION IS SUIT K.190/78 WAS STRENUOUSLY PROSECUTED IN RESPECT OF THE VEHICLES NOW BEING CLAIMED IN THIS SUIT AND AFTER AN EQUALLY STRENUOUS DEFENCE, THE TRIAL JUDGE JONES, C.J. HELD *INTER ALIA*:

'PLAINTIFF ASKS FOR A RULING THAT THE SEIZURE AND RETENTION OF TWO OF THESE VEHICLES TERMINATES THE HIRE PURCHASE AGREEMENTS IN RESPECT OF THEM. I HAVE ALREADY HELD THAT THOSE HIRE AGREEMENTS HAD

5

ALREADY BEEN RESCINDED AND REPLACED BY A NEW SINGLE CONTRACT. I FIND THAT I BELIEVE THE EVIDENCE FOR DEFENCE THAT IN FACT THEY NOW HAVE ONLY ONE OF THESE VEHICLES KNF 3652 IN THEIR POSSESSION AND ONLY BECAUSE IT IS IN NEED OF REPAIRS AND NOT BECAUSE THEY HAVE ANY CLAIM TO IT. NEVERTHELESS, PLAINTIFF WOULD BE ENTITLED TO DAMAGES FOR THE ADMITTED WRONGFUL SEIZURE. I WOULD AWARD DAMAGES IF ANY HAD BEEN CLAIMED. BUT NONE WAS CLAIMED, AND NONE PROVED. SO I REGRET I AM UNABLE TO AWARD ANY.'

THE JUDGMENT OF JONES, C.J. AS HE THEN WAS, AND FROM WHICH THE ABOVE HAVE BEEN QUOTED, HAS BEEN PRODUCED AND SHOWN TO ME A COPY THEREOF IS ATTACHED HERETO MARKED 'EXHIBIT P0.3."

4. THE PLAINTIFF DISSATISFIED WITH THE JUDGMENT OF JONES. C.J. IN SUIT NO. K/L90/78, APPEALED TO THE FEDERAL COURT OF APPEAL, AS THE COURT WAS THEN KNOWN, AND THE COURT PER ADEMOLA, J.C.A., RULED IN APPEAL NO. KCA/K/94/79 AS FOLLOWS:

'I COME NOW TO THE QUESTION OF DAMAGES IN RESPECT OF WRONGFUL SEIZURE OF THE CARS. I AGREE WITH THE

LEARNED TRIAL JUDGE IN THE NON-AWARD OF DAMAGES ON THIS ITEM FOR THE REASONS HE GAVE THAT NO DAMAGES WERE CLAIMED AND NO DAMAGES WERE PROVED. IT IS TRITE LAW THAT A COURT OF LAW CANNOT AWARD WHAT WAS NOT CLAIMED NOR COULD I GIVE WHAT WAS NOT PROVED.' THE JUDGMENT OF THE COURT OF APPEAL FROM WHERE THE ABOVE HAVE BEEN QUOTED HAS BEEN PRESENTED AND SHOWN TO ME AND COPY THEREOF IS ATTACHED HERETO MARKED 'EXHIBIT P0.4.'

5. THAT THE FURTHER APPEAL OF THE PLAINTIFF TO THE
6
SUPREME COURT IN APPEAL NO. SC/40/1983 WAS DISMISSED WITH COSTS. THE JUDGMENT OF THE SUPREME COURT HAS BEEN REPORTED IN THE JUDGMENTS OF THE SUPREME COURT OF NIGERIA FOR OCTOBER, 1984.

6. THAT BY REASON OF THE ABOVE PREMISES, I VERILY BELIEVE THAT THE PRESENT ACTION BY THE PLAINTIFF IS AN ATTEMPT TO RELITIGATE BETWEEN THE SAME PARTIES AND OPEN THE SAME SUBJECT MATTER WHICH HAVE (SIC) BEEN BROUGHT FORWARD, OR WHICH MIGHT HAVE BEEN BROUGHT FORWARD AS PART OF THE SUBJECT IN CONTEST, BUT WHICH WAS NOT BROUGHT FORWARD, ONLY BECAUSE THEY HAVE FROM NEGLIGENCE, INADVERTENCE OR EVEN ACCIDENT OMITTED AS PART OF THEIR CASE IN THE FIRST INSTANCE.

7. THAT I VERILY BELIEVE THAT THE ALLEGED WRONGFUL SEIZURE WAS ALLEGED TO HAVE TAKEN PLACE MORE THAN 8 YEARS AGO.

8. THAT THE PLAINTIFF TO MY KNOWLEDGE IS STILL INDEBTED TO THE DEFENDANT IN THE SUM OF N193,304.00K WITH THE INTEREST ACCRUING."

THE APPLICATION CAME UP FOR HEARING ON THE 14TH DAY OF SEPTEMBER, 1987 BEFORE TIJANI ABUBAKAR J. (AS HE THEN WAS). MR. OMOTOSHO WHO APPEARED FOR THE DEFENDANT STATED AS FOLLOWS:-

"WE HAVE A MOTION BROUGHT PURSUANT TO ORDER 10 RULE 20 OF THE KANO STATE HIGH COURT (CIVIL PROCEDURE) RULES, 1976. WE ARE ASKING FOR THE FOLLOWING PRAYERS:-

(1) THAT THE WRIT OF SUMMONS IN THIS CASE BE STRUCK OUT BECAUSE IT DISCLOSES NO REASONABLE CAUSE OF ACTION. IT IS AN ABUSE OF THE PROCESS OF THE COURT. EVEN IF THERE IS ACCUSE (SIC) OF ACTION, IT IS STATUTE
7
BARRED.

(2) THAT THE ACTION BE DISCUSSED (SIC DISMISSED) FOR THE SAME REASONS.

WE HAVE A NINE(9) PARAGRAPH AFFIDAVIT IN SUPPORT OF THE MOTION. WE RELY ON ALL THE SAID 9 PARAGRAPHS.

(TAKEN AS READ) THE CASE (SIC CAUSE) OF ACTION RAISED AN ISSUE OF ESTOPPEL. THIS CASE IS THE SAME AND THE PLAINTIFF IS SEEKING THE SAME RELIEF AS IN SUIT NO. K/L90/78 WHICH HAS BEEN ADJUDICATED. WE RAISED THE DEFENCE OF RES JUDICATA. (SEE PAGE 53 OF OUR ANNEXTURE 3 ATTACHED TO OUR AFFIDAVIT) AT PAGE 26, THE 3RD PARAGRAPH THE COURT OF APPEAL AFFIRMED THE DECISION OF THE TRIAL JUDGE. THE PLAINTIFF APPEALED TO SUPREME COURT AND THE JUDGMENT IS REPORTED IN (1984) 10 S.C. PAGE 1. THE SUPREME COURT AT 51 (READ PARAGRAPH) THE SUPREME COURT AFFIRMED THE DECISIONS OF THE LOWER COURTS. THIS PRESENT ACTION IS AN ATTEMPT TO RELITIGATE THE ISSUE OF DAMAGES WHICH HAS GONE UP TO SUPREME COURT. THIS THE PLAINTIFF CANNOT DO IN LAW; SEE SECTION 53 OF THE EVIDENCE ACT NOW (SIC) THE FOLLOWING CASES OF THE SUPREME COURT -

(I) STANDARD BANK NIGERIA LIMITED V. CHIEF F.M. IKOMI (1972) 1 S.C. 164 AT 178.

(2) ODJEVWEDJE V. ECHANOKPE (1987) 1 NWLR (PT.52) P.633 HOLDING (10), (11) AND (12).

I SUBMIT THE PRESENT SUIT WHICH IN SUBSTANCE IS FOR A CLAIM FOR DAMAGES AND/OR REPOSSESSION OF THE VEHICLE IN QUESTION COULD HAVE BEEN RAISED BY THE PLAINTIFF THROUGH REASONABLE DILIGENCE. THIS COURT COULD NOT ALLOW HIM TO COME AGAIN AS A FRESH CASE. SECONDLY, IF THERE IS A CAUSE OF ACTION, I SUBMIT

8

IN THE ALTERNATIVE THAT THIS ACTION IS STATUTE BARRED. THE CAUSE OF ACTION FROM THE WRIT AROSE SOMETIME IN 1978. IF THIS IS THE CASE THE ACTION IS STATUTE BARRED. I REFER TO EGBE V. ADEFARASIN (1987) 1 NWLR (PT.47) 1 , SPECIALLY HOLDING NO. 8-14. ORAL EVIDENCE IS NOT NECESSARY CONTRARY TO PARAGRAPHS 3 AND 6 OF THE PLAINTIFF'S COUNTER AFFIDAVIT THE CAUSE OF ACTION AROSE IN 1978 NOTE DATE OF THE COURT'S DECISION. I URGE THE COURT TO STRIKE OUT THE ACTION."

IN REPLY MR. EKA KANAM WHO REPRESENTED THE PLAINTIFF STATED THUS:

"WE OPPOSE THE APPLICATION AND RELY ON OUR COUNTER AFFIDAVIT OF 11 PARAGRAPHS. WE RELY ON ALL THE PARAGRAPHS IN PARTICULAR PARAGRAPH

3. THE SUBJECT MATTER OF THE CASE IS FOR DELIVERY OF TWO VEHICLES WHICH HAVE BEEN DETAINED BY THE DEFENDANT. THIS IS AN ACTION IN DETINUE. I REFER TO THE JUDGMENT OF THE SUPREME COURT AT PAGE 49, ABOVE THE COURT RULED ON THE PLAINTIFF'S DECLARATION."

THEN MR. EKA KANAM WAS RECORDED TO HAVE SAID:-

"I CONCEDE (SIC) TO THE APPLICATION OF MY

LEARNED.(SIC) I AGREE THIS IS AN ISSUE OF EXECUTION OF JUDGMENT AND SHALL COME ACCORDINGLY."

THE SUMMARY RULING OF TIJANI ABUBAKAR J. WAS VERY BRIEF. IT SIMPLY READS:
"COURT: THE CASE IS HEREBY DISMISSED AS THE MATTER WAS LITIGATED UPON UP TO (SIC) SUPREME COURT.
COURT: N50.00 COST (SIC) FOR THE DEFENDANT."

AGGRIEVED BY THE RULING, THE PLAINTIFF BEING REPRESENTED BY THE PRESENT COUNSEL APPEALED AGAINST IT TO THE COURT OF APPEAL, RAISING THE
9
FOLLOWING ISSUES FOR DETERMINATION -
"(1) WHETHER THE TRIAL COURT WAS RIGHT IN ENTERTAINING THE APPLICATION CULMINATING IN THE DISMISSAL OF THE APPELLANT'S CASE AT THE STAGE AT WHICH IT DID.
(2) WHETHER THE PREVIOUS SUIT HAS (SIC) BEEN PROVED TO OPERATE AS ESTOPPEL AGAINST THE APPELLANT IN THE NEW SUIT."

IT IS TO BE OBSERVED THAT THE SECOND ISSUE DID NOT ARISE SINCE THE RULING WAS GIVEN ON THE PLAINTIFF CONCEDING TO THE DEFENDANT'S APPLICATION. BE THAT AS IT MAY, THE COURT OF APPEAL (OGUNDARE, ACHIKE AND AKPABIO, J.J.C.A.) IN DISMISSING THE APPEAL REMARKED AS FOLLOWS, PER AKPABIO, J.C.A.-
"I SHOULD ALSO NOTE THE FACT THAT THE LEARNED TRIAL JUDGE DID NOT RELY ON HIS OWN FINDINGS ALONE AT THE LOWER COURT WHEN HE DISMISSED THE PLAINTIFF'S CLAIM. HE RELIED ALSO ON A CONCESSION MADE BY ONE MR. EKA KANAM, WHO WAS THE LEARNED COUNSEL FOR THE PLAINTIFF, WHO SAID:
"I CONCEDE TO THE APPLICATION OF MY LEARNED FRIEND. I AGREE THIS IS AN ISSUE OF EXECUTION OF JUDGMENT AND SHALL COME ACCORDINGLY."
WE ARE OF THE VIEW THAT MR. EKA KANAM CORRECTLY APPRECIATED THE ISSUES INVOLVED AND WAS RIGHT IN MAKING THE CONCESSION HE MADE. IT IS OUR VIEW THAT THE PLAINTIFF/APPELLANT SHOULD NOW TAKE APPROPRIATE STEPS IN EXECUTING THE DECLARATION MADE BY THE SUPREME COURT IN HIS FAVOUR. HE COULD REALISE THE FRUITS OF THAT JUDGMENT BY DOING ONE OR TWO THINGS OR BOTH NAMELY:
(A) APPLY FOR THE ISSUE OF A WARRANT OF "POSSESSION"
10
AGAINST THE DEFENDANT/RESPONDENT FOR RECOVERY OF THE VEHICLES, OR
(B) APPLY TO THE SUPREME COURT FOR THE

DEFENDANT/RESPONDENT TO BE COMMITTED TO PRISON FOR CONTEMPT OF THE SUPREME COURT.
THESE ARE WHAT PLAINTIFF/APPELLANT SHOULD DO AND NOT START THE WHOLE ACTION AFRESH.
IN EFFECT THEREFORE, THIS APPEAL FAILS AND IS HEREBY DISMISSED WITH N300.00 COSTS IN FAVOUR OF DEFENDANT/RESPONDENT."

THE PLAINTIFF STILL NOT SATISFIED APPEALED FURTHER TO THIS COURT. WHEN THE APPEAL CAME UP BEFORE US ON THE 1ST DAY OF JUNE, 1992 (UWAIS, KAWU. NNAEMEKA-AGU, OGWUEGBU AND MOHAMMED J.J.S.C.) WE RAISED THE ISSUE *SUO MOTU* WHETHER LEAVE TO APPEAL FROM THE RULING OF THE HIGH COURT TO THE COURT OF APPEAL HAD BEEN OBTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 220 SUBSECTION (2)(C) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1979. MALLAM MAHMOUD GAFAR SUBMITTED THAT THE RULING OF THE HIGH COURT WAS NOT BASED ON THE CONSENT OF THE PLAINTIFF'S COUNSEL AND THEN ASKED FOR ADJOURNMENT TO ADDRESS THE COURT FULLY ON THE CONSTITUTIONAL POINT. THIS WAS GRANTED TO THE 4TH DAY OF JUNE, 1992. HENCE THE NECESSITY TO EMPANEL A FULL COURT.

IN HIS ADDRESS MALLAM MAHMOUD GAFAR ARGUED THAT THE RULING OF TIJANI ABUBAKAR J. WAS NOT A CONSENT JUDGMENT AS CONTEMPLATED BY SECTION 220 SUBSECTION (2)(C) OF THE 1979 CONSTITUTION. TO SUPPORT THIS ARGUMENT HE CITED THE FOLLOWING CASE- R.LAUWERS IMPORT-EXPORT V. JOZEBSON INDUSTRIES
11
LTD. (1988) 3 NWLR (PT.83) 429 AT PP.444- 446 AND 454; WOLUCHEM V. WOKOMA (1974) 3 S.C 153 AT PP.166 AND 168 LINE 16 AND NATIONAL WATERS RESOURCES DEVELOPMENT LTD. V. JAIYESIMI (1963) 2 SCNLR 37 AT 39, PARAGRAPH C. (1963) 1 ALL NLR 215AT 217 PARAGRAPH 2 . HE ARGUED FURTHER THAT BY DISMISSING THE PLAINTIFF'S ACTION THE HIGH COURT DID NOT CARRY OUT WHAT THE PARTIES AGREED UPON; WHICH WAS THAT THE ACTION SHOULD BE STRUCK OUT AS PRAYED BY THE DEFENDANT. LEARNED COUNSEL CANVASSED THAT THE PHRASE "DECISION BY CONSENT OF PARTIES" IN SECTION 220 SUBSECTION (2)(C) OF THE CONSTITUTION DOES NOT MEAN CONSENT TO JUDGMENT. HE FINALLY SUBMITTED THAT THERE IS NO DISTINCTION BETWEEN CONSENT TO JUDGMENT AND SUBMISSION TO JUDGMENT.

MR. OKULAJA, LEARNED COUNSEL FOR THE DEFENDANT ARGUED THAT THE PRESENT CASE IS DISTINGUISHABLE FROM

THE CASE OF R. LAUWERS IMPORT-EXPORT (SUPRA). HE ALSO CONTENDED THAT THERE IS A DISTINCTION BETWEEN "CONSENT JUDGMENT" WHICH IS A TECHNICAL TERM OR TERM OF ART AND THE PHRASE "DECISION MADE WITH THE CONSENT OF THE PARTIES" IN SECTION 220 SUBSECTION (2)(C) OF THE CONSTITUTION WHICH IS WIDER IN MEANING THAN CONSENT JUDGMENT. HE REFERRED TO THE CASE OF R. LAUWERS IMPORT EXPOR T (SUPRA) AT P.445C AND SAID THAT AGBAJE, J.S.C. RESTRICTED HIMSELF TO CONSENT JUDGMENT WHICH IS TECHNICAL. LEARNED COUNSEL POINTED OUT THAT THE PROVISIONS OF SECTION 220 SUBSECTION (2)(C) DO NOT CONTAIN THE EXPRESSION "CONSENT JUDGMENT". HE SUBMITTED THAT THE ORDINARY DICTIONARY MEANING OF "CONSENT" SHOULD BE GIVEN TO THE WORD "CONSENT" IN SECTION 220 SUBSECTION (2)(C)
12
OF THE CONSTITUTION. FURTHERMORE THE WORD "CONSENT" AS EMPLOYED IN THE SECTION IS NOT RESTRICTIVE; IT THEREFORE EMBRACES BOTH CONSENT JUDGMENT AND SUBMISSION TO JUDGMENT AND MUCH MORE.

WITH REFERENCE TO THE DISTINCTION BETWEEN STRIKING OUT A CASE AND DISMISSAL AS ARGUED BY THE PLAINTIFF'S COUNSEL, MR. OKULAJA SUBMITTED THAT THE DISTINCTION IS IRRELEVANT TO THE CASE. IN ANY CASE, HE SAID, WHERE A PLEA OF RES JUDICATA SUCCEEDS IN AN ACTION, THE ACTION IS TO BE DISMISSED. IN DETERMINING THE MEANING OF THE WORD "DECISION' IN SECTION 220 SUBSECTION (2)(C) OF THE CONSTITUTION, HE SUBMITTED THAT THE WORD EMBRACES BOTH THE STRIKING OUT AND THE DISMISSAL OF AN ACTION. HE DREW ATTENTION TO PRAYER (B) IN THE MOTION BEFORE THE HIGH COURT WHICH URGED THAT THE ACTION BE DISMISSED AND SUBMITTED THAT BY DISMISSING THE PLAINTIFFS ACTION, THE TRIAL JUDGE ACCEDED TO THE PRAYER. REFERENCE WAS THEN MADE TO PARAGRAPH 527 OF HALSBURY'S LAWS OF ENGLAND, 4TH EDITION, VOLUME 26 AT PAGE 257.

FINALLY, MR. OKULAJA URGED US NOT TO FOLLOW THE RESTRICTIVE MEANING GIVEN TO SECTION 220(2)(C) BY AGBAJE J.S.C. IN R. LAUWERS IMPORT-EXPORT CASE (SUPRA). IN REPLY, MALLAM MAHMOUD GAFAR DREW ATTENTION TO SECTION 110 SUBSECTION 2(III) OF THE 1963 CONSTITUTION IN RESPECT OF THE DECISION IN THE CASE OF NATIONAL WATER RESOURCES DEVELOPMENT LTD. *V. JAIYESIMI* (SUPRA) AND SUBMITTED THAT THE PROVISIONS THEREIN ARE IN PARI MATERIA WITH THOSE OF SECTION 220 SUBSECTION (2)(C) OF THE 1979

13
CONSTITUTION. NOW SECTION 220 SUBSECTION (2)(C) CONTAINS THE FOLLOWING PROVISIONS:
"(2) NOTHING IN THIS SECTION SHALL CONFER ANY RIGHT OF APPEAL-
(C) WITHOUT THE LEAVE OF THE HIGH COURT OR OF THE COURT OF APPEAL, FROM A DECISION OF THE HIGH COURT MADE WITH THE CONSENT OF THE PARTIES OR AS TO COSTS ONLY."
THE WORD "DECISION" IN THESE PROVISIONS HAS THE MEANING GIVEN TO IT BY ***SECTION 277 SUBSECTION (1) OF THE 1979 CONSTITUTION*** WHICH PROVIDES -
"***277 (1)*** IN THIS CONSTITUTION, UNLESS IT IS OTHERWISE EXPRESSLY PROVIDED OR THE CONTEXT OTHERWISE REQUIRED -
'DECISION' MEANS, IN RELATION TO A COURT, ANY DETERMINATION OF THAT COURT AND INCLUDES JUDGMENT, DECREE, ORDER, CONVICTION, SENTENCE OR RECOMMENDATION."

IN THE LIGHT OF THE FOREGOING THERE CAN BE NO DOUBT THAT THE RULING GIVEN BY TIJANI ABUBAKAR J. IN THE PRESENT CASE IS INDEED A DECISION FROM WHICH A PARTY CAN APPEAL. THIS IS NOT IN DISPUTE AS FAR AS THE PARTIES HEREIN ARE CONCERNED. WHAT IS CONTENTIOUS IS WHETHER THERE WAS RIGHT OF APPEAL FROM THE RULING TO THE COURT OF APPEAL WITHOUT THE LEAVE OF THE HIGH COURT OR THE COURT OF APPEAL AS ENVISAGED BY SECTION 220 SUBSECTION (2)(C). IN INTERPRETING THE SECTION IN R. LAUWERS IMPORT-EXPORT V. JOZEBSON INDUSTRIES LTD. (SUPRA) THIS COURT (NNAMANI, UWAIS, KAWU, BELGORE AND AGBAJE J.J.S.C.) OBSERVED AT P.446 THEREOF AS FOLLOWS PER AGBAJE, J.S.C. -
"THE JUDGMENT IN QUESTION IN THIS APPEAL IS NOT ON
14
ITS FACE EXPRESSED TO BE A CONSENT JUDGMENT. THE HIGHEST ONE CAN SAY ABOUT THE JUDGMENT IS THAT THE DEFENDANT IN THE CASE ADMITTED LIABILITY TO THE SUM OF N904,644.39 IN THE CLAIM AGAINST IT AND BECAUSE OF THIS ADMISSION JUDGMENT WAS ENTERED AGAINST THE DEFENDANT IN THAT SUM. IN EFFECT THE DEFENDANT SUBMITTED TO JUDGMENT IN THE SUM JUST STATED. HAVING REGARD TO THE AUTHORITIES AS I HAVE STATED THEM ABOVE THE JUDGMENT IN QUESTION WILL NOT IN MY JUDGMENT AMOUNT TO A CONSENT JUDGMENT IN THE TECHNICAL SENSE OF THAT EXPRESSION.
HAVING HELD AS I HAVE JUST DONE THAT THE JUDGMENT IN QUESTION IS NOT A CONSENT JUDGMENT, IT FOLLOWS THAT THERE IS NO BASIS FOR HOLDING THAT THE JUDGMENT IS CAUGHT BY THE PROVISIONS OF SECTION 220

SUB-SECTION 2(C) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1979 ALREADY COPIED ABOVE. ACCORDINGLY, I REJECT THE CONTENTION OF COUNSEL FOR THE PLAINTIFF THAT THE DEFENDANT REQUIRED LEAVE TO APPEAL AGAINST THE JUDGMENT."
(ITALICS MINE)

THE IMPLICATION OF THIS DECISION IS THAT THE PHRASE "WITH THE CONSENT OF THE PARTIES" IN SECTION 220 SUBSECTION (2)(C) OF THE 1979 CONSTITUTION IS HELD TO MEAN CONSENT JUDGMENT AND THAT IT IS ONLY WITH REGARD TO CONSENT JUDGMENT THAT LEAVE IS REQUIRED BEFORE THERE CAN BE AN APPEAL FROM THE DECISION OF THE HIGH COURT TO THE COURT OF APPEAL. WITH RESPECT, I THINK THAT IS TOO NARROW A MEANING TO BE GIVEN TO THE WORDS. IT IS SETTLED THAT IN THE INTERPRETATION OF ANY PROVISION OF THE CONSTITUTION, OUR COURTS SHOULD BE LIBERAL SO THAT THE INTENDMENT
15
OF THE CONSTITUTION CAN BE MET. I CANNOT PUT THIS BETTER THAN HAD BEEN DONE BY SIR UDO UDOMA IN NAFIU RABIU V. THE STATE (1981) 2 N.C.L.R. 293 AT P.326 WHERE HE SAID:
"'AND WHERE THE QUESTION IS WHETHER THE CONSTITUTION HAS USED AN EXPRESSION IN THE WIDER OR NARROWER SENSE, IN MY VIEW, THIS COURT SHOULD WHENEVER POSSIBLE, AND IN RESPONSE TO THE DEMANDS OF JUSTICE, LEAN TO THE BROADER INTERPRETATION, UNLESS THERE IS SOMETHING ... IN THE TEXT OR IN THE REST OF THE CONSTITUTION TO INDICATE THAT THE NARROWER INTERPRETATION WILL BEST CARRY OUT THE OBJECT AND PURPOSE OF THE CONSTITUTION."

THIS COURT IN R. LAUWERS IMPORT-EXPORT CASE (SUPRA) PURPORTEDLY RELIED ON THE DECISION IN NATIONAL WATER RESOURCES DEVELOPMENT V. JAIYESIMI (SUPRA) TO HOLD THAT THE EXPRESSION "WITH THE CONSENT OF THE PARTIES" MEANT CONSENT JUDGMENT. WITH UTMOST RESPECT, THE DECISION IN THE LATTER CASE, IF CAREFULLY READ, COULD NOT HAVE GIVEN RISE TO THE DECISION WHICH WAS REACHED. THE SUMMARY JUDGMENT OF THE HIGH COURT, WHICH STATED THE FACTS OF THE CASE ALSO, IS CONTAINED ON P.216 THEREOF (SEE (1963) 2 SCNLR 37 AT P.38) AND IT READS:
"NOTE BY COURT: BOTH COUNSEL AGREE THAT THE PLAINTIFF BE AWARDED 850 AS RENT FOR ONE YEAR PLUS 425 BEING SIX MONTHS RENT IN LIEU OF NOTICE. JUDGMENT ENTERED FOR PLAINTIFF FOR 1,275. COSTS ASSESSED AT 100 GUINEAS."
THESE FACTS ARE SIMILAR TO THE FACTS IN R. LAUWERS

IMPORT-EXPORT CASE, (SUPRA) WHERE AGBAJE, J.S.C. STATED AS FOLLOWS:
16
"THE JUDGMENT IN QUESTION IN THIS APPEAL IS NOT ON ITS FACT EXPRESSED TO BE A CONSENT JUDGMENT. THE HIGHEST ONE CAN SAY ABOUT THE JUDGMENT IS THAT *THE DEFENDANT IN THE CASE ADMITTED LIABILITY TO THE SUM OF N904,644.39 IN THE CLAIM AGAINST* IT AND BECAUSE OF THIS ADMISSION JUDGMENT WAS ENTERED AGAINST THE DEFENDANT IN THAT SUM. IN EFFECT THE DEFENDANT SUBMITTED TO JUDGMENT IN THE SUM JUST STATED."

THE FEDERAL SUPREME COURT IN CONSIDERING WHETHER THERE COULD BE AN APPEAL AGAINST THE JUDGMENT IN NATIONAL WATER RESOURCES DEVELOPMENT CASE (SUPRA) WITHOUT LEAVE BEING OBTAINED IN TERMS OF SECTION 110 SUBSECTION (2)(A)(III) AND SUBSECTION (4) OF THE 1963 CONSTITUTION, WHICH PROVIDED THUS-
"(2) AN APPEAL SHALL LIE FROM DECISIONS OF THE HIGH COURT OF A TERRITORY TO THE FEDERAL SUPREME COURT AS OF RIGHT IN THE FOLLOWING CASES -
(A) FINAL DECISIONS IN ANY CIVIL PROCEEDINGS BEFORE THE HIGH COURT SITTING AT FIRST INSTANCE:.....
PROVIDED THAT NOTHING IN PARAGRAPH (A) OF THIS SUBSECTION SHALL CONFER ANY RIGHT OF APPEAL -
.....
(III) FROM ANY ORDER MADE *WITH THE CONSENT OF THE PARTIES*; .....
(4) SUBJECT TO THE PROVISIONS OF SUBSECTIONS (2) AND (3) OF THIS SECTION, AN APPEAL SHALL LIE FROM DECISIONS OF THE HIGH COURT OF A TERRITORY TO THE FEDERAL SUPREME COURT WITH THE LEAVE OF THE HIGH COURT OR THE FEDERAL SUPREME COURT IN THE FOLLOWING CASES -
.....
17

(B) ANY CASE IN WHICH, BUT FOR THE TERMS OF THE PROVISO TO SUBSECTION (2) OF THIS SECTION, AN APPEAL WOULD LIE AS OF RIGHT TO THE FEDERAL SUPREME COURT BY VIRTUE OF PARAGRAPH (A) OF THAT SUBSECTION;
.....
HELD THUS PER ADEMOLA, C.J.F. AT P. 217 (1963) 2 SCNLR P.39 PARAGRAPH C)-
"IN THE INSTANT CASE, THE TRIAL JUDGE DID NOT ADJUDICATE ON ANY ISSUE IN THE ACTION; NOR DID HE DECIDE HOW THE ACTION SHALL BE DETERMINED: HE MERELY ENTERED JUDGMENT FOR THE AMOUNT AGREED UPON. IT CANNOT BE SAID THAT HE TOOK ANY

RESPONSIBILITY WHATEVER FOR THE ACTION BEING DETERMINED IN THE WAY IT WAS DETERMINED. ALTHOUGH THE WORDS 'BY CONSENT' WERE NOT WRITTEN AFTER THE WORD 'JUDGMENT', IT WAS ABUNDANTLY CLEAR THAT THE DECISION DETERMINING THE ACTION WAS BROUGHT ABOUT BY CONSENT OF THE PARTIES."

IT IS CLEAR FROM THE FOREGOING THAT THE WORDS "WITH THE CONSENT OF THE PARTIES" IN SECTION 110 SUBSECTION (2)(A)(III) WERE NOT GIVEN A NARROW MEANING AS ASSUMED IN R. LAUWERS IMPORT-EXPORT CASE, PER AGBAJE, J.S.C. AND AS CONTENDED BY LEARNED COUNSEL FOR THE PLAINTIFF IN THE PRESENT CASE.

THE SIGNIFICANCE OF THE PROVISIONS IN SECTION 220 SUBSECTION (2)(C) OF THE 1979 CONSTITUTION IS TO LIMIT LITIGATION WHERE SOME MODICUM OF AGREEMENT HAS BEEN REACHED BETWEEN THE PARTIES. THE AGREEMENT CAN TAKE ANY FORM. IT COULD BE IN THE FORM OF CONSENT JUDGMENT IN ITS TECHNICAL SENSE, OR SUBMISSION TO JUDGMENT OR ADMISSION OF CLAIM OR CONCEDING TO A CLAIM - AS IN THE APPLICATION TO STRIKE
18

OUT OR DISMISS THE CLAIM IN THE PRESENT CASE TO WHICH THE PLAINTIFF'S COUNSEL CONCEDED. THE CIRCUMSTANCES UNDER WHICH A DECISION COULD BE REACHED "'WITH THE CONSENT OF THE PARTIES" WILL, INDEED, ALWAYS DEPEND ON THE PECULIAR, FACTS OF EACH CASE.

I HAVE NO DOUBT, THEREFORE, THAT THE DECISION IN R. LAUWERS IMPORT-EXPORT CASE WHICH LIMITED THE APPLICATION OF THE PROVISIONS OF SECTION 220 SUBSECTION (2)(C) TO CONSENT JUDGMENT IS, FOR THE ABOVE REASONS, WRONG AND SHOULD NOT BE FOLLOWED IN THE PRESENT CASE.

ORDINARILY, THE AFORESAID SHOULD HAVE DISPOSED OF THIS APPEAL, BUT THERE IS ONE OTHER POINT RAISED BY LEARNED COUNSEL FOR THE PLAINTIFF IN THE COURSE OF HIS ARGUMENT. THE POINT BEING THAT THE PRAYER IN THE DEFENDANT'S APPLICATION BEFORE THE HIGH COURT WAS FOR THE PLAINTIFF'S WRIT OF SUMMONS TO BE STRUCK OUT AND NOT THE CASE TO BE DISMISSED AS WAS DONE BY THE LEARNED JUDGE. THIS CONTENTION IS MISCONCEIVED AND, THEREFORE, IS BEREFT OF MERIT BECAUSE PRAYER IN THE MOTION BROUGHT BY THE DEFENDANT STATED - AS FOLLOWS -
"(B) AN ORDER THAT THE ACTION BE DISMISSED."

WHILE PRAYER (A) ASKED THAT THE WRIT OF SUMMONS BE STRUCK OUT. SEE ABOVE. FURTHERMORE, THE SAME PRAYERS WERE REPEALED ORALLY BY COUNSEL FOR THE PLAINTIFF WHEN MOVING THE MOTION. SEE ABOVE.

IN ANY EVENT, THE POINT CAN ONLY BE APPOSITE HAD THERE BEEN A VALID APPEAL IN THE COURT OF APPEAL. AS ALREADY SHOWN, THERE WAS NO COMPETENT APPEAL BEFORE THAT COURT AND A *FORTIORI* BEFORE THIS COURT.
19

IN THE RESULT, THERE IS NO COMPETENT APPEAL BEFORE US, AND IT IS HEREBY STRUCK OUT. THE DECISION OF THE COURT OF APPEAL, EVEN THOUGH AFFIRMING THAT OF THE HIGH COURT, IS HEREBY SET ASIDE SINCE IT WAS GIVEN WITHOUT JURISDICTION AND IS A NULLITY. COSTS ASSESSED AT N1,000.00 ARE HEREBY AWARDED AGAINST THE PLAINTIFF IN FAVOUR OF THE DEFENDANT.

***SAIDU KAWU, J.S.C.*:** I HAVE HAD THE ADVANTAGE OF READING, IN DRAFT, THE LEAD JUDGMENT OF MY LEARNED BROTHER, UWAIS. J.S.C, WHICH HAS JUST BEEN DELIVERED. I AGREE WITH HIM ENTIRELY THAT THERE IS NO COMPETENT APPEAL BEFORE US AND THE PURPORTED APPEAL IS ACCORDINGLY STRUCK OUT. THE DECISION OF THE COURT OF APPEAL AFFIRMING THAT OF THE HIGH COURT IS SET ASIDE. COSTS ASSESSED AT N1,000.00 ARE AWARDED TO THE DEFENDANT.

***PHILIP NNAEMEKA-AGU, J.S.C.*:** THE SOLE ISSUE THAT HAS ARISEN IN THIS APPEAL IS TO BE RESOLVED BY A CONSTRUCTION OF THE WORDS
"A DECISION OF THE HIGH COURT MADE WITH THE CONSENT OF THE PARTIES....."
IN SECTION 220(2)(E) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC, 1979. MY LEARNED BROTHER, UWAIS, J.S.C. HAS STATED IN DETAIL HOW THE ISSUE AROSE.

NOW, IT IS RECOGNISED THAT THE WORD "'CONSENT" HAS AT LEAST TWO SHADES OF MEANINGS. IT COULD BE USED IN THE NARROW TECHNICAL SENSE WITH REFERENCE TO A CONSENT JUDGMENT OR ORDER IN WHICH THE PARTIES, IRRESPECTIVE OF THEIR CLAIMS AND CONTENTIONS IN A CASE, AGREE TO STRIKE A COMPROMISE EMBODIED
20

IN AN AGREEMENT SIGNED BY THE PARTIES AND SUBSEQUENTLY MADE AN ORDER OF COURT . SEE: NIGERIA

WATER RESOURCES DEVELOPMENT LTD. V. JAIYESIMI
(1963) 1 ALL NLR 215 (1963) 2 SCNLR 37. THIS TYPE
OF JUDGMENT OR ORDER IS NOT BASED ON ANY FINDINGS OF
COURT OR THE MERIT OF THE PARTY'S CASE ON ISSUES IN

LITIGATION IN THE CASE. IT IS BASED SOLELY ON WHAT THE
PARTIES THEMSELVES HAVE AGREED. THERE IS ALSO THE

BROAD SENSE IN WHICH THE WORD "CONSENT" IS USED TO
QUALIFY A JUDGMENT OR OTHER DECISION TO WHICH A
PARTY SUBMITS MAINLY BECAUSE HE CANNOT RESIST IT:
HE HAS NOTHING TO OFFER AGAINST IT BUT HE MAY NOT
NECESSARILY HAVE AGREED TO IT. BOTH TYPES OF
JUDGMENTS OR ORDERS ARE CONSENT JUDGMENT/ORDERS
ALL THE SAME. THESIGER L.J. RECOGNIZED THIS DUALITY OF

THE MEANING OF THE WORD "CONSENT" WHEN HE STATED
IN BEWLEY V. ATKINSON (1879) 13 CH.D. 283, AT
PP.298-299 THUS:-
"I THINK IT COULD HARDLY BE DISPUTED THAT ALTHOUGH IN
THE STRICT TECHNICAL ETYMOLOGY THE WORD 'CONSENT' AS
WELL AS 'AGREEMENT' IMPLIES TWO PARTIES, YET
'CONSENT' USED IN THE ORDINARY WAY IN WHICH THAT
TERM IS USED, IS SATISFIED WHEN IT IS FOUND THAT ONE
PERSON HAS GIVEN WHAT IS POPULARLY KNOWN AS
CONSENT."
LORD GREENE, M.R., MADE MUCH THE SAME POINT IN
CHANDLESS - CHANDLESS V. NICHOLSON (1942) 2 K.B.
321, C.A. AT P.324. SEXUAL OFFENCES WHICH REQUIRE
THE INGREDIENT OF CONSENT ILLUSTRATE THE DIFFERENCE
VERY CLEARLY. A WOMAN MAY READILY CONSENT TO THE
ACT, WILLINGLY. OR SHE MAY BE HESITANT, RELUCTANT OR
GRUDGING: BUT ONCE SHE CONSCIOUSLY PERMITS IT, THERE
21

IS "CONSENT" - SEE HOLMAN V. THE QUEEN (1970)
W.L.R.2 . BOTH OF THEM ARE CONSENT ALL THE SAME - IN
THE BROAD SENSE. BUT THERE MAY BE OCCASIONS WHEN
A WOMAN WHO DOES NOT CONSENT TO THE ACT MAY
SUBMIT TO THE ACT ONLY TO SAVE HER OWN NECK FROM A

VIOLENT RAPIST EVEN THOUGH SHE DOES NOT CONSENT TO
IT. SEE ***R. V. DAY*** 9 C & P.724. THERE IS NO CONSENT
WHEN THE ACT HAS BEEN FORCED ON HER BY THREAT OR
INTIMIDATION. THE THEORETICAL DIFFERENCE BETWEEN THE
TWO TYPES OF CONSENTS IS THAT THE TECHNICAL SENSE
INVOLVES AN ACT OF REASON ACCOMPANIED WITH
DELIBERATION AND WEIGHING OF THE PROS AND CONS ON
EITHER SIDE AND THEN A VOLUNTARY AGREEMENT WHICH

IS MADE AN ORDER OF COURT WHEREAS, IN THE BROAD SENSE IT ONLY HAPPENS THAT ALTHOUGH IT WAS NOT THE RESULT OF THE DELIBERATION AND VOLUNTARY AGREEMENT OF THE PARTIES, EITHER PARTY HAS SUBMITTED TO IT. HENCE, CONSENT OF THE FIRST TYPE INVOLVES A SUBMISSION; BUT NOT EVERY SUBMISSION OF THE SECOND TYPE AMOUNTS TO CONSENT. I THINK THE LINE OF DIVISION BETWEEN THE TWO IS THAT SUBMISSION IN THE LATTER CLASS TO QUALIFY AS A CONSENT SHALL HAVE BEEN GIVEN WITHOUT A CONTEST. WHERE THERE HAS BEEN A CONTEST AND THE COURT GIVES ITS DECISION, THERE IS NO CONSENT.

THE QUESTION RAISED BY THIS APPEAL IS, THEREFORE, WHETHER THE WORDS -
"A DECISION OF THE HIGH COURT MADE WITH THE CONSENT OF THE PARTIES."
IN SECTION 220(2)(C) OF THE 1979 CONSTITUTION INTENDED THE WORD "CONSENT" IN THE NARROW TECHNICAL SENSE, AS WAS HELD BY THIS COURT IN R.
22
LAUWERS IMPORT-EXPORT V. JOZEBSON INDUSTRIES LTD. (1988) 3 NWLR (PT.83) 429, AT PP.444-446 , OR WHETHER IT INTENDS "CONSENT" IN THE BROAD SENSE.

IT APPEARS TO ME THAT IT HAS BEEN FIRMLY ESTABLISHED IN MANY CASES DECIDED SINCE 1979 THAT OUR PROPER APPROACH TO THE INTERPRETATION OF THE CONSTITUTION IS THAT OF LIBERALISM. THIS IMPLIES NOT ONLY THAT WORDS OF THE CONSTITUTION SHALL BE GIVEN THEIR BROAD MEANINGS. IT ALSO MEANS THAT IN KEEPING WITH THE MAXIM: UT RES MAGIS VALEAT QUAM PEREAT ; WHERE ALTERNATIVE CONSTRUCTIONS ARE EQUALLY OPEN, WE SHOULD PREFER A BROADER CONSTRUCTION WHICH WOULD BRING ABOUT AN EFFECTIVE RESULT AND IS CONSISTENT WITH THE INTENTION OF THE LEGISLATURE. SEE ON THIS: NAFIU RABIU V. KANO STATE (1980) 8-11 S.C. 130: (1981) 2 NCLR 293, A.G. KADUNA STATE V. HASSAN (1985) 1 NWLR (PT.8) 483, MILITARY GOVERNOR OF ONDO STATE V. ADEWUNMI (1988) 3 NWLR (PT.82) 280; SAVANNAH BANK (NIG) LTD. V. PAN ATLANTIC (1987) 1 NWLR (PT.49) 212.

APPLYING THIS PRINCIPLE TO THE PRESENT CASE, IT APPEARS TO ME THAT A DECISION OF THE HIGH COURT MADE WITH THE CONSENT OF THE PARTIES MEANS MORE THAN SUCH A DECISION MADE AFTER A FORMAL

AGREEMENT BY THE PARTIES WHICH HAS BEEN MADE AN ORDER OF COURT. IT INCLUDES THOSE DECISIONS TO WHICH

A PARTY SUBMITS WITHOUT A CONTEST, THE WHOLE IDEA BEING THAT THE LAW WILL NOT ALLOW SUCH A PARTY TO BLOW HOT AND COLD AT WILL. IT EXCLUDES THOSE DECISIONS WHICH THE COURT DELIBERATELY REACHES IN EXERCISE OF ITS ADJUDICATIVE FUNCTIONS AFTER CONSIDERING THE CASES OF THE PARTIES, THE EVIDENCE IN