Before Our Lordships

Amiru SanusiJustice of the Court of Appeal
Emmaunel Akomaye AgimJustice of the Court of Appeal
Misitura Omodere Bolaji-YusuffJustice of the Court of Appeal

Between

1. THE HON. ATTORNEY-GENERAL, ANAMBRA STATE 2. THE SECRETARY TO THE STATE GOVERNMENT 3. ANAMBRA STATE BOUNDARIES COMMITTEE 4. MR OKECHUKWU EZEAKUAPPELANT(S)

And

1. ERNEST EZEME 2. CHIDI IFEANDU 3. CHIEF NWAFOR 4. CHIEF CHRISTOPHER EZEME 5. CHIEF STEPHEN OBIORAH 6. CHIEF ELIZER ONWUALU (For Themselves And On Behalf Of The Members Of Nwania Family, Akuzo Village, Nkpor) [1ST SET OF RESPONDENTS] 7. NATHANIEL UDEAGU 8. FESTUS OMEJIEKE 9. WALTER ENWELUM 10. RAPHAEL ANACHUNA 11. EMMANUEL AZUOGALANYA 12. BASIL OMEJIEKE 13. SYLVANUS OMEJIEKE (For Themselves And On Behalf Of The People Of Oze In Oyi Local Government Area) [2ND SET OF RESPONDENTS] 14. IKECHUKWU EJIKEME 15. NELSON CHUKWUMA 16. LINUS UCHENU 17. CLEMENT UZUEGWU (For Themselves And On Behalf Of The Members Of Amafor, Nkpor-Agu Village, Nkpor) [3RD SET OF RESPONDENTS]RESPONDENT(S)

RATIO DECIDENDI

PRACTICE AND PROCEDURE - PRELIMINARY OBJECTION
- Whether leave of Court is required by a Respondent to move a preliminary objection raised in the briefs of argument
"Before I proceed further, it is necessary to consider and determine the preliminary objection. Order 10 Rule 1 of the Court of Appeal Rules, 2011 stipulates the procedure for raising a preliminary objection against the hearing of an appeal. A party who intends to raise an objection to the hearing of an appeal must give three days notice to the other party before the objection can be heard. By a long line of authorities, it is now an acceptable practice to give the required notice in the respondent's brief. Where the notice of preliminary objection is embedded in a respondent's brief, the respondent must seek and obtain the leave of the Court to move the notice of objection before the oral hearing of the appeal commences. Failure to do so is fatal to the objection as it will be deemed to have been abandoned, See Oforkire v. Maduike [2003] 5 NWLR [Pt. 812] page 166, Minister, of Works and Housing Vs Shittu [2007] 16 NWLR [Pt. 1060] Page 351. Ben Vs State [2006] 16 NWLR [Pt.1006] Page 582. Although the notice of preliminary objection to the instant appeal and the argument in support was incorporated in the 3rd set of respondents' brief, counsel did not move the objection before the oral hearing of the appeal commenced. Though the appellant's counsel was absent, her brief of argument was deemed adopted under Order 18 Rule 9 (a) of the Court of Appeal Rules. Counsel to the 2nd set of respondents also adopted his brief in support of the appeal. The learned counsel ought to

have moved his objection before the appellants' brief was deemed adopted and before the counsel to the 2nd set of respondents adopted his brief in support of the appeal. Thus, the counsel to the 3rd set of respondents having failed to move and argue his preliminary objection before the oral hearing of the appeal commenced, the preliminary objection is deemed abandoned and all the submissions relating thereto are hereby discountenanced."

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ADMINISTRATIVE LAW - CERTIORARI

- Nature of order of certiorari

"An application for Certiorari is a process by which a party seeks a judicial review of the proceedings of an inferior Court, Tribunal or Order quasi-judicial body. An Order of Certiorari is issued directing the inferior Court, Tribunal or other quasi-judicial body to bring up its records to the higher Court for review."

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ADMINISTRATIVE LAW - CERTIORARI

- Procedure for applying for an order of certiorari

"...By virtue of the above rules, a party seeking an order of certiorari must file two applications. The first one is an ex-parte application for leave of the Court to apply for an order of certiorari. The second application is filed when the leave sought has been granted by the Court and must be on notice to the other party. It is the Law that when a party applies for leave to apply for an order of certiorari to quash the proceedings of a Lower Court or Tribunal, he must establish a prima facie case or show that there is a need for the intervention of the Higher Court. An application for leave to apply for an order of certiorari is not granted as a matter of course. I am of the firm view that all the materials to be relied on must be placed before the Court at that stage, particularly the proceedings being sought to be quashed. It is only when the proceedings is before the Court that the Court will be able to decide whether a prima facie case has been made to warrant a grant of leave to apply for an order of certiorari, See Tabai Vs C.R.S.U S. & Tech. (1997) NWLR (Pt. 529) page 373 at page 379-380 (H-A) Where Katsina-Alu, JCA (as he then was) stated thus:- "Before an application for certiorari is made the law requires that the applicant must first seek and obtain leave of the Court. In most cases, leave is sought ex-parte. An application for leave is a prayer wherein the applicant is urging the Court to exercise its discretionary power. In the circumstance the applicant has a duty to make available all relevant materials in the application to enable the Court to exercise its discretion judicially. Where therefore relevant materials are not made available to the Court, the application will be refused. Leave is not granted as a matter of course. At the stage of the ex-parte application, the applicant need not make a clear and clean case on the merits to deserve being granted the prayer. Understandably, that has to wait until the main application is moved. The applicant must however disclose some real injury done to him for which he seeks a redress."

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EVIDENCE - DOCUMENTARY EVIDENCE

- Whether a Court can act on a document not tendered and admitted in evidence

"In my view the Court will unwittingly be engaging in speculation on the existence of a record of proceedings or that any proceeding ever took place by granting leave to apply for an order of certiorari to quash proceedings of a Lower Court when the record of such proceedings is not before the Court. I am fortified in this view by the provisions of Sections 85 and 128 (i) of the Evidence Act, 2011 which provides that the contents of documents and in particular a judgment of a Court or any other judicial proceedings can only be proved either by primary or by secondary evidence of the document itself. There is an avalanche of cases on whether or not a document relied on by a party in proof of his case must be before the Court, See Sokwo Vs Kpongbo (2003) 2 NWLR Pt. 803 pages 111 at page 153 where this Court per Oduyemi [JCA] held as follows: "The Courts, in the administration of Justice, have not liberty to act on instinct;

cases are decided on proof by admissible and credible evidence and not on evidence not made available to the Court - (as is the case of the Odugbo panel report in this Suit). In effect decision are not based on intuition that documentary evidence not placed before it must have existed Katto Vs C. B. N. [1991] 9 NWLR (Pt.214) Page 126." See Omotayo Vs C.S.A. (2010) 16 NWLR [Pt.1218] Page 1 at page... Omale Vs UMV of Agriculture Markurdi & Ors. [2011] LPELR 4366 (CA). I am of the firm view that any proceedings which is the subject of any application for a judicial review of certiorari must be before the Court at the two stages of the proceedings."

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JUDGMENT AND ORDER - ORDER OF CERTIORARI

- Effect of leave granted in an order of certiorari

"However where leave has been granted all issues relating to the application for leave are closed and cannot be reopened by the same Court that granted the leave. The only option open to an aggrieved party is to appeal, See Ugoh Vs B.S.L.G. SC [1995] (Supra). The Court below having granted leave to the 1st set of respondents to apply for an order of certiorari and without an appeal, the matter is foreclosed."

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ADMINISTRATIVE LAW - PREROGATIVE WRITS

- Procedure for hearing of claims for prerogative orders and writs of habeas corpus

"By virtue of Order 24 Rule 8 of the High Court Rules, 1988 of Anambra State, the hearing of claims for prerogative orders and writs of habeas corpus will be by oral argument of the parties based on the documents before the Court, provided that where affidavits are irreconcilably in conflict, the Court may permit examination of witnesses viva voce to reconcile the conflict. The Law is settled that where the words of a statute are clear and unambiguous, the ordinary or literal meaning of the words used should be adopted no words should be added or omitted. Certainly, the mere filing and exchange of affidavits and written addresses in support of a motion without more does no amount to hearing of an application. It is only when an application is moved or argued and the addresses are adopted that an application can be said to have been heard. In the instant case, the provisions of Order 24 Rule 8 of the High Court Rules are very clear and unambiguous; the hearing of an application for certiorari is by oral argument. Hearing of the motion on notice for an order of certiorari has thus not commenced since no oral argument has been presented by any of the parties."

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PRACTICE AND PROCEDURE - MISTAKE OF COUNSEL/COURT/REGISTRY

- Attitude of Court towards mistake of counsel

"It is common knowledge that mistakes and blunders do occur in the course of litigation but the attitude of the Court is not to punish the parties for the mistakes and the blunders they make especially where the mistake and blunder can be rectified without causing injustice or injuring to the other party. See Shuaibu Vs Muazu [2014] 8 NWLR [Pt.1409] page 207 at 339-340 9 E-C) where His Lordship Sankey, J.C.A., referred to the pronouncement of His Lordship Tobi JSC in Abubakar Vs Yar Adua [2008] 4 NWLR [Pt.1078] Page 465 at 510-512 Paragraphs (G-B) as follows: "The basic principle of law is that it is the object of the Court to decide the rights of the parties and not to punish them for mistakes they make in the litigation process, particularly when the mistakes are really mistakes. It is known fact that blunders must take place in the litigation process and because blunders are inevitable, it is not fair, in appropriate cases, to make a party in the blunder to incur the wrath of the law at the expense of hearing the merits of the case. Rules of Court, which include here, practice Directions, are not intended to be ridiculously applied to a slavish point particularly if such an application will do injustice in the case. Rules of Court are meant to be obeyed. Of course, that is why they are made. There should be no argument about that. But there is an important qualification or caveat and it is that

their obedience cannot or should not be slavish to the point that justice in the case is destroyed or thrown overboard. The greatest barometer, as far as the public is concerned, is whether at the end of the litigation process justice has been done to the parties. Therefore, if in the course of doing justice, some harm is done to some procedural rules which hurt the rule, such as Paragraph 7 of the Practice Directions, the Court should be happy that it took that line of action in pursuance of justice. This Court cannot myopically or blindly follow the Practice Directions and fall into a mirage and get physically and mentally absorbed or lost. Let that day not come."

JUDGEMENT SUMMARY

INTRODUCTION:

THIS APPEAL BORDERS ON CIVIL PROCEDURE.

FACTS:

THIS APPEAL AROSE FROM A JUDICIAL REVIEW PROCEEDING INITIATED BY THE 1ST SET OF RESPONDENTS IN THIS APPEAL IN THE HIGH COURT OF ANAMBRA STATE, IN SUIT NO.HID/MISC.5/2000. THE PROCEEDING WAS COMMENCED BY A MOTION EX-PARTE DATED 12TH JANUARY, 2000 FOR LEAVE TO APPLY FOR:
I. AN ORDER OF THIS HONOURABLE COURT GRANTING LEAVE TO THE APPLICANTS TO APPLY FOR AN ORDER OF CERTIORARI BRINGING INTO THIS HONOURABLE COURT THE PROCEEDINGS OF THE ANAMBRA STATE BOUNDARIES COMMITTEE REGARDING THE LAND DISPUTE BETWEEN THE APPLICANTS AND THE 2ND SET OF RESPONDENTS FOR THE PURPOSE OF BEING QUASHED ON THE GROUNDS SET OUT IN THE STATEMENT IN SUPPORT ACCOMPANYING THIS MOTION PAPERS.
II. AN ORDER DIRECTING THAT THE GRANTING OF LEAVE IN THIS SUIT SHALL OPERATE AS A STAY OF ALL ACTIONS RELATING TO THE APPLICANTS' APPLICATION.
III. AND FOR SUCH FURTHER ORDER OR ORDERS AS THIS HONOURABLE COURT MAY DEEM FIT TO MAKE IN THE INTEREST OF JUSTICE.

THE COURT GRANTED THE LEAVE AS SOUGHT BY THE APPLICANTS (1ST SET OF RESPONDENTS IN THE APPEAL). THE APPELLANTS AND THE 2ND AND 3RD SET OF RESPONDENTS WERE SERVED WITH THE MOTION ON NOTICE FILED PURSUANT TO THE LEAVE OF THE COURT. IN RESPONSE, THEY FILED VARIOUS COUNTER AFFIDAVITS AND WRITTEN ADDRESSES. IN THE ADDRESS OF THE APPELLANTS' COUNSEL, HE SUBMITTED THAT THE MOTION ON NOTICE IS INCOMPETENT FOR FAILURE TO EXHIBIT THE PROCEEDINGS SOUGHT TO BE QUASHED AND SHOULD BE STRUCK OUT. THE 1ST SET OF RESPONDENTS WHO WERE THE APPLICANTS BEFORE THE TRIAL COURT THEN APPLIED BY A

MOTION ON NOTICE FOR:-
"AN ORDER DIRECTING THE SECRETARY OF THE 3RD RESPONDENT TO PRODUCE AND PLACE BEFORE THIS HONOURABLE COURT, THE CERTIFIED TRUE COPY OF THE PROCEEDINGS OF THE SAID 3RD RESPONDENT THE SUBJECT MATTER OF THIS APPLICATION."

THE APPLICATION WHICH WAS SERIOUSLY CONTESTED BY THE APPELLANTS WAS GRANTED AS PRAYED BY THE TRIAL COURT. AGGRIEVED BY THE RULING OF THE TRIAL COURT, THE APPELLANT APPEALED TO THE COURT OF APPEAL.

ISSUES:

THE COURT OF APPEAL ADOPTED THE FOLLOWING ISSUE FOR THE DETERMINATION OF THE APPEAL:
THE ISSUE IN ESSENCE IS WHETHER THE COURT BELOW WAS RIGHT IN GRANTING THE APPLICATION OF THE 1ST SET OF RESPONDENTS FOR AN ORDER DIRECTING THE SECRETARY OF THE 3RD APPELLANT TO PRODUCE AND PLACE THE CERTIFIED TRUE COPY OF THE PROCEEDINGS SOUGHT TO BE QUASHED BEFORE THE COURT.

DECISION/HELD:

ON THE WHOLE, THE COURT OF APPEAL FOUND NO MERIT IN THE APPEAL AND SAME WAS ACCORDINGLY DISMISSED.

MISITURA OMODERE BOLAJI-YUSUFF, J.C.A. (DELIVERING THE LEADING JUDGMENT): THIS APPEAL AROSE FROM A JUDICIAL REVIEW PROCEEDING INITIATED BY THE 1ST SET OF RESPONDENTS IN THIS APPEAL IN THE HIGH COURT OF ANAMBRA STATE, IN SUIT NO.HID/MISC.5/2000. THE PROCEEDING WAS COMMENCED BY A MOTION EX-PARTE DATED 12TH JANUARY, 2000 FOR LEAVE TO APPLY FOR:

I. AN ORDER OF THIS HONOURABLE COURT GRANTING LEAVE TO THE APPLICANTS TO APPLY FOR AN ORDER OF CERTIORARI BRINGING INTO

THIS HONOURABLE COURT THE PROCEEDINGS OF THE ANAMBRA STATE BOUNDARIES COMMITTEE REGARDING THE LAND DISPUTE BETWEEN THE APPLICANTS AND THE 2ND SET OF RESPONDENTS FOR THE PURPOSE OF BEING QUASHED ON THE GROUNDS SET OUT IN THE STATEMENT IN SUPPORT ACCOMPANYING THIS MOTION PAPERS.

II. AN ORDER DIRECTING THAT THE GRANTING OF LEAVE IN THIS SUIT SHALL OPERATE AS A STAY OF ALL ACTIONS RELATING TO THE APPLICANTS' APPLICATION.

III. AND FOR SUCH FURTHER ORDER OR ORDERS AS THIS HONOURABLE COURT MAY DEEM FIT TO MAKE IN THE INTEREST OF JUSTICE.

THE COURT GRANTED THE LEAVE AS SOUGHT BY THE APPLICANTS (1ST SET OF RESPONDENTS IN THIS APPEAL). THE APPELLANTS AND THE

2ND AND 3RD SET OF RESPONDENTS WERE SERVED WITH THE MOTION ON NOTICE FILED PURSUANT TO THE LEAVE OF THE COURT. IN RESPONSE THEY FILED VARIOUS COUNTER AFFIDAVITS AND WRITTEN ADDRESSES. IN THE ADDRESS OF THE APPELLANTS' COUNSEL, HE SUBMITTED THAT THE MOTION ON NOTICE IS INCOMPETENT FOR FAILURE TO EXHIBIT THE PROCEEDINGS SOUGHT TO BE QUASHED AND SHOULD BE STRUCK OUT. THE 1ST SET OF RESPONDENTS WHO WERE THE APPLICANTS BEFORE THE COURT BELOW THEN APPLIED BY A MOTION ON NOTICE FOR:-

"AN ORDER DIRECTING THE SECRETARY OF THE 3RD RESPONDENT TO

PRODUCE AND PLACE BEFORE THIS HONOURABLE COURT, THE CERTIFIED TRUE COPY OF THE PROCEEDINGS OF THE SAID 3RD RESPONDENT THE SUBJECT MATTER OF THIS APPLICATION."

THE APPLICATION WHICH WAS SERIOUSLY CONTESTED BY THE APPELLANTS WAS GRANTED AS PRAYED BY THE COURT BELOW. THE RULING OF THE COURT BELOW IS REPRODUCED BELOW;

"ORDER 37 RULE 8 (2) ARISES AFTER LEAVE HAS BEEN GRANTED AND DURING THE HEARING OF THE MOTION. I ACCEPT THAT HEARING OF THE MOTION IS AT THE POINT OF PRESENTATION OF ARGUMENT BY THE PARTIES IRRESPECTIVE OF THE FACT THAT WRITTEN ADDRESSES WERE ORDERED. ORDER 37 RULE

2

8 (2) IS NOT MANDATORY BUT MERELY DISCRETIONARY. I ACCEPT THAT I CAN AT THIS POINT HEAR THE APPLICANTS ACCOUNT FOR HIS FAILURE TO FILE A COPY OF THE PROCEEDINGS.

I AGREE WITH SENATOR ANAH THAT THE CASES CITED BY MRS. ONWUKA AND MR. OBIDINMA ARE IN APPLICABLE HERE BECAUSE OF THE EXCEPTION IN ORDER 37 RULE 8 (2).

ON JURISDICTION EVEN IF I ACCEPT THE ARGUMENT OF MRS. ONWUKA I CAN ONLY STRIKE OUT THE CASE TO ENABLE THE APPLICANT COME BACK AGAIN. THERE IS SURELY NO NEED FOR THAT.

THESE DAYS THE COURTS DO NOT PLACE TOO MUCH EMPHASIS ON TECHNICALITIES.

IN THE CIRCUMSTANCES THIS APPLICATION SUCCEEDS. I HEREBY MAKE

AN ORDER DIRECTING THE SECRETARY OF THE 3RD RESPONDENT TO PRODUCE AND PLACE BEFORE THIS COURT THE CERTIFIED TRUE COPY OF THE PROCEEDINGS OF THE SAID 3RD RESPONDENT ON THE SUBJECT MATTER OF THIS APPLICATION."

THE APPELLANT BEING DISSATISFIED WITH THE RULING OF THE COURT FILED AN APPEAL ON THREE GROUNDS WHICH WITHOUT THEIR PARTICULARS ARE:-

GROUND 1 "THE LEARNED TRIAL JUDGE ERRED IN LAW WHEN HE MADE THE ORDER THAT THE PROCEEDINGS OF THE 3RD RESPONDENT WHICH WERE NOT FILED AT

THE TIME THE APPLICANTS SOUGHT AND OBTAINED LEAVE TO APPLY FOR THE JUDICIAL CERTIORARI SHOULD NOW BE PRODUCED AND HANDED OVER TO THE APPELLANTS.

GROUND 2

THE LEARNED TRIAL JUDGE ERRED IN LAW WHEN HE HELD THAT NON-INCLUSION OF THE RECORD OF PROCEEDINGS OF THE 3RD RESPONDENT SOUGHT TO BE QUASHED AT THE TIME WHEN LEAVE WAS SOUGHT IS A MERE IRREGULARITY WHICH CAN BE CURED BY ORDER 26 RULE 3 OF THE HIGH COURT RULES OF ANAMBRA STATE 1988.

GROUND 3

THE LEARNED TRIAL JUDGE ERRED IN LAW WHEN HE MADE AN ORDER DIRECTING THE 3RD RESPONDENT/APPELLANT TO PRODUCE THE RECORD

OF ITS PROCEEDINGS AND HAND SAME OVER TO THE APPLICANTS WITHOUT REGARD TO ORDER 23 RULE 46 OF THE HIGH COURT RULES OF ANAMBRA STATE, 1988."

THE APPELLANTS' BRIEF OF ARGUMENT IS DATED 15TH MARCH, 2007. IT WAS DEEMED PROPERLY FILED AND SERVED ON 16TH APRIL, 2007. ON 24TH SEPTEMBER 2014, WHEN THE APPEAL CAME UP FOR HEARING, THE APPELLANTS' COUNSEL WAS ABSENT. HER BRIEF OF ARGUMENT WAS DEEMED ADOPTED PURSUANT TO ORDER 18 RULE 9 (4) OF THE COURT OF APPEAL RULES, 2011. ALL THE RESPONDENTS' COUNSEL ADOPTED

THEIR BRIEFS OF ARGUMENT.

THE 3RD SET OF RESPONDENTS' COUNSEL INCORPORATED A NOTICE OF PRELIMINARY OBJECTION AGAINST THE HEARING OF THE APPEAL IN HIS BRIEF OF ARGUMENT DATED 2ND JULY, 2014 AND FILED ON THE SAME DAY. THE PRELIMINARY OBJECTION CHALLENGED THE COMPETENCE OF THE APPEAL ON THE GROUNDS THAT:

"(A) THE PRESENT APPEAL IS QUESTIONING THE DISCRETION OF THE COURT BELOW.

(B) QUESTION OF DISCRETION IS OF MIXED LAW AND FACT.

(C) THE LEAVE OF COURT IS REQUIRED TO FILE THE NOTICE AND GROUNDS OF APPEAL.

(D) NO LEAVE WAS OBTAINED TO FILE THE PRESENT APPEAL."

BEFORE I PROCEED FURTHER, IT IS NECESSARY TO CONSIDER AND DETERMINE THE PRELIMINARY OBJECTION. ORDER 10 RULE 1 OF THE COURT OF APPEAL RULES, 2011 STIPULATES THE PROCEDURE FOR RAISING A PRELIMINARY OBJECTION AGAINST THE HEARING OF AN APPEAL. A PARTY WHO INTENDS TO RAISE AN OBJECTION TO THE HEARING OF AN APPEAL MUST GIVE THREE DAYS NOTICE TO THE OTHER PARTY BEFORE THE OBJECTION CAN BE HEARD. BY A LONG LINE OF AUTHORITIES, IT IS NOW AN ACCEPTABLE PRACTICE TO GIVE THE REQUIRED NOTICE IN THE RESPONDENT'S BRIEF. WHERE THE NOTICE OF

PRELIMINARY OBJECTION IS EMBEDDED IN A RESPONDENT'S BRIEF, THE RESPONDENT MUST SEEK AND OBTAIN THE LEAVE OF THE COURT TO MOVE THE NOTICE OF OBJECTION BEFORE THE ORAL HEARING OF THE APPEAL COMMENCES. FAILURE TO DO SO IS FATAL TO THE OBJECTION AS IT WILL BE DEEMED TO HAVE BEEN ABANDONED, SEE **OFORKIRE V. MADUIKE [2003] 5 NWLR [PT. 812] PAGE 166, MINISTER, OF WORKS AND HOUSING VS SHITTU [2007] 16 NWLR [PT. 1060] PAGE 351. BEN VS STATE [2006] 16 NWLR [PT.1006] PAGE 582**.

ALTHOUGH THE NOTICE OF PRELIMINARY OBJECTION TO THE INSTANT APPEAL AND THE ARGUMENT IN SUPPORT WAS INCORPORATED IN THE 3RD SET OF RESPONDENTS' BRIEF, COUNSEL DID NOT MOVE THE OBJECTION

BEFORE THE ORAL HEARING OF THE APPEAL COMMENCED. THOUGH THE APPELLANT'S COUNSEL WAS ABSENT, HER BRIEF OF ARGUMENT WAS DEEMED ADOPTED UNDER ORDER 18 RULE 9 (A) OF THE COURT OF APPEAL RULES. COUNSEL TO THE 2ND SET OF RESPONDENTS ALSO ADOPTED HIS BRIEF IN SUPPORT OF THE APPEAL. THE LEARNED COUNSEL OUGHT TO HAVE MOVED HIS OBJECTION BEFORE THE APPELLANTS' BRIEF WAS DEEMED ADOPTED AND BEFORE THE COUNSEL TO THE 2ND SET OF RESPONDENTS ADOPTED HIS BRIEF IN SUPPORT OF THE APPEAL. THUS, THE COUNSEL TO THE

3RD SET OF RESPONDENTS HAVING FAILED TO MOVE AND ARGUE HIS PRELIMINARY OBJECTION BEFORE THE ORAL HEARING OF THE APPEAL COMMENCED, THE PRELIMINARY OBJECTION IS DEEMED ABANDONED AND ALL THE SUBMISSIONS RELATING THERETO ARE HEREBY DISCOUNTENANCED.

THE APPELLANTS' COUNSEL IN HER BRIEF FORMULATED THE FOLLOWING ISSUES FOR DETERMINATION:

"1. WHETHER FAILURE TO PLACE BEFORE THE COURT THE PROCEEDINGS OF THE ANAMBRA STATE BOUNDARY COMMITTEE IN THE APPLICATION FOR LEAVE FOR AN ORDER OF CERTIORARI IS A MERE IRREGULARITY OR A FUNDAMENTAL VICE."

2. WHETHER THE LEARNED TRIAL JUDGE WAS RIGHT IN DIRECTING THAT THE RECORD OF PROCEEDINGS OF THE 3RD RESPONDENT/APPELLANT BE

HANDED OVER TO THE APPLICANTS/RESPONDENTS AFTER HEARING HAD CLOSED AND ADDRESSES CONCLUDED AND CONTRARY TO ORDER 23 RULE 46 OF THE HIGH COURT RULES OF ANAMBRA STATE, 1988."

THE 2ND SET OF RESPONDENTS' BRIEF OF ARGUMENT IN SUPPORT OF THE APPEAL DATED 24TH MAY, 2007 AND FILED ON THE SAME DAY FORMULATED THE FOLLOWING ISSUE FOR DETERMINATION.
"WHETHER THE LEARNED TRIAL JUDGE HAD COMPETENCE TO MAKE OR COULD HAVE MADE THE ORDER."

THE

1ST SET OF RESPONDENTS' COUNSEL FORMULATED THE FOLLOWING ISSUES FOR DETERMINATION:-
"1. WHETHER THE APPLICANT'S FAILURE TO EXHIBIT TO THEIR APPLICATION AT THE STAGE OF APPLYING FOR LEAVE VITIATED THE PROCEEDINGS IN THE CIRCUMSTANCES OF THIS SUIT."
2. WHETHER THE LEARNED TRIAL COURT WAS RIGHT IN GRANTING THE APPLICANT'S PRAYER."

THE 3RD SET OF RESPONDENTS' COUNSEL FORMULATED THE FOLLOWING ISSUES FOR DETERMINATION:
"1. WHETHER THE APPEAL IS COMPETENT.

2. WHETHER THE LEARNED TRIAL COURT WAS RIGHT IN MAKING AN ORDER DIRECTING THE SECRETARY OF THE 3RD APPELLANT TO PRODUCE AND PLACE BEFORE THE COURT BELOW THE PROCEEDINGS OF THE 3RD APPELLANT IN RESPECT TO THE SUBJECT MATTER OF THIS SUIT."

I HAVE PERUSED THE ISSUES FORMULATED BY COUNSEL TO BOTH PARTIES AND THE GROUNDS OF APPEAL, I AM OF THE VIEW THAT THE ONLY ISSUE WHICH CALLS FOR DETERMINATION IS THE ISSUE 2 IDENTIFIED BY THE 3RD SET OF RESPONDENTS' COUNSEL. THE ISSUE IN ESSENCE IS WHETHER THE COURT BELOW WAS RIGHT IN GRANTING THE APPLICATION OF THE 1ST SET OF RESPONDENTS FOR AN ORDER DIRECTING THE SECRETARY OF THE 3RD APPELLANT TO

PRODUCE AND PLACE THE CERTIFIED TRUE COPY OF THE PROCEEDINGS SOUGHT TO BE QUASHED BEFORE THE COURT.

THE LEARNED APPELLANTS' COUNSEL SUBMITTED THAT WHEN LEAVE HAS BEEN GRANTED AND AN APPLICANT APPLIES FOR AN ORDER OF CERTIORARI, THE APPLICANT MUST COMPLY WITH THE PROVISIONS OF ORDER 37 RULE 8 (2) OF THE ANAMBRA STATE HIGH COURT RULES, 1988 BY FILING A COPY OF THE PROCEEDINGS SOUGHT TO BE QUASHED VERIFIED BY AN AFFIDAVIT. SHE ARGUED THAT THE 1ST SET OF RESPONDENTS HAVING FAILED TO PLACE BEFORE THE COURT BELOW A COPY OF THE PROCEEDINGS COMPLAINED OF,

VERIFIED BY AFFIDAVIT AND HAVING NOT ACCOUNTED FOR THEIR FAILURE TO DO SO BEFORE THE HEARING OF THE APPLICATION FOR CERTIORARI, THE APPLICATION IS INCOMPETENT AND CANNOT BE CURED BY THE APPLICATION FOR AN ORDER TO PRODUCE THE PROCEEDINGS, HE REFERRED TO **AKOSA VS A. G. OF ANAMBRA STATE LAW REPORT 356 AT 380-381, BAMAIYI VS BAMAIYI (2005) 15 NWLR PT. 948 PAGE 334 AT 361, LEKWOT VS JUDICIAL TRIBUNAL (1997) 8 NWLR (PT. 515) 334, ONYALI VS OKPALA (2000) FWLR (PT.3) PAGE 495 AT 513**. COUNSEL FURTHER ARGUED THAT A PARTY TO A MOTION MUST PRESENT HIS CASE EN-BLOC AND NOT PIECEMEAL AND WHERE SPECIAL

CIRCUMSTANCES EXIST TO JUSTIFY AN ADDITIONAL AFFIDAVIT EVIDENCE LEAVE OF THE COURT MUST BE SOUGHT AND OBTAINED BEFORE IT IS FILED, IT CANNOT BE FILED AT THE OPTION OF THE PARTIES, SHE REFERRED TO **IKENNA VS BOSAH (1997) 3 NWLR (PT.494) PAGE 435 AT 454-455, MAJORAH VS FASSASI (1986) 5 NWLR (PT.40) PAGE 243. (1986) 5 NWLR (PT.40) PAGE 243.**

COUNSEL ALSO ARGUED THAT FAILURE TO PLACE THE PROCEEDINGS SOUGHT TO BE QUASHED BEFORE THE TRIBUNAL BEFORE THE GRANT OF LEAVE TO APPLY FOR AN ORDER OF CERTIORARI IS A SERIOUS ERROR WHICH CANNOT BE CURED BY THE PROVISIONS OF ORDER 26 RULE 3 OF THE HIGH COURT RULES. SHE REFERRED TO ORDER 23 RULES 46 AND 47 OF THE HIGH COURT RULES IN SUPPORT OF HER SUBMISSION THAT THE COURT BELOW WAS WRONG IN MAKING AN ORDER DIRECTING THE 3RD APPELLANT TO PRODUCE

THE RECORD OF ITS PROCEEDINGS AND PLACING SAME BEFORE THE COURT WHEN NO NOTICE TO PRODUCE THE DOCUMENT WAS SERVED ON THE 3RD APPELLANT AND THERE IS NO REASONABLE GROUND TO BELIEVE THAT SUCH DOCUMENT WILL NOT BE PRODUCED PURSUANT TO SUCH NOTICE. SHE URGED THE COURT TO SET ASIDE THE RULING OF THE COURT BELOW AND DETERMINE THE SUBSTANTIVE APPLICATION FOR CERTIORARI

BY VIRTUE OF SECTION 16 OF THE COURT OF APPEAL. THE LEARNED 2ND SET OF RESPONDENTS' COUNSEL IN HIS BRIEF IN SUPPORT OF THE APPEAL ARGUED THAT IT IS ONLY WHEN EITHER OF THE TWO CONDITIONS STATED UNDER ORDER 37 RULE 8 (2) OF THE HIGH COUT RULES IS MET THAT AN APPLICANT FOR AN ORDER OF CERTIORARI CAN BE ALLOWED TO QUESTION THE RECORD OF ANY PROCEEDINGS. HE SUBMITTED THAT IT IS A FUNDAMENTAL REQUIREMENT FOR AN APPLICATION FOR CERTIORARI TO QUASH THE PROCEEDINGS OF A COURT THAT THE RECORD OF PROCEEDINGS OF THE COURT OR AN INFERIOR TRIBUNAL OR ADJUDICATING AUTHORITY MUST BE EXHIBITED OR FILED, HE REFERRED TO **LEKWOT VS JUDICIAL TRIBUNAL (SUPRA)**. THE LEARNED COUNSEL ALSO ARGUED THAT THE APPLICATION FOR **CERTIORARI** WAS INCOMPETENT **AB INITIO** AND THERE WAS NOTHING UPON WHICH THE SUBSEQUENT PROCEEDINGS INCLUDING THE PROCEEDINGS CULMINATING IN THE ORDER BEING APPEALED AGAINST CAN STAND. HE URGED THE COURT TO UPHOLD THE APPEAL AND SET ASIDE THE RULING OF THE COURT BELOW.

IN OPPOSITION TO THE APPEAL, THE 1ST SET OF RESPONDENTS' COUNSEL ARGUED THAT AT THE STAGE OF THE APPLICATION FOR LEAVE, ALL THAT IS REQUIRED IS TO MAKE OUT A PRIMA

FACIE CASE. ONCE THAT IS DONE AND LEAVE IS GRANTED, THE ISSUE OF ITS VALIDITY IS CLOSED UNLESS APPEALED AGAINST, HE REFERRED TO **UGOH VS B. S. L.G. S C. (1995) 3 NWLR (PT.383) PAGE 288 AT 322 (H).** HE ARGUED FURTHER THAT FAILURE TO ATTACH THE PROCEEDINGS SOUGHT TO BE QUASHED TO THE APPLICATION FOR LEAVE CANNOT VITIATE THE PROCEEDINGS NOR THE GRANT OF THE ORDER FOR LEAVE BECAUSE BY A VIRTUE OF ORDER 37 OF THE HIGH COURT RULES, IT IS AT THE STAGE OF HEARING THE APPLICATION FOR CERTIORARI THAT FAILURE TO EXHIBIT THE PROCEEDINGS SOUGHT TO BE QUASHED WOULD BE FATAL.

COUNSEL SUBMITTED THAT ORDER 24 RULE 8 OF THE HIGH COURT RULES STIPULATES THAT HEARING OF CLAIMS FOR PREROGATIVE ORDERS AND WRITS OF HABEAS CORPUS WILL BE BY ORAL ARGUMENT OF THE PARTIES BASED ON THE DOCUMENT(S) BEFORE THE COURT AND EVEN THOUGH WRITTEN ADDRESSES WERE FILED, NO ORAL ARGUMENT HAS BEEN MADE BEFORE THE APPLICATION THAT LED TO THIS APPEAL WAS MADE. HE ALSO SUBMITTED THAT ALL THE 1ST SET OF RESPONDENTS DID WAS TO SEEK THE HELP OF THE COURT TO GET THE MATERIAL WHICH NO ONE DISPUTES IS WITH

THE APPELLANTS BUT WHICH THEY HELD ON TO HOPING TO SCORE A TECHNICAL

VICTORY AND NO COURT OF JUSTICE CAN ALLOW SUCH TO HAPPEN IN THIS ERA OF SUBSTANTIAL JUSTICE, HE REFERRED TO **UGOH VS B.S.L.G.S.C. (SUPRA) AT PAGES 318-319 (F- A).**

THE LEARNED COUNSEL FURTHER SUBMITTED THAT THE COURT BELOW WAS RIGHT IN GRANTING THE APPLICATION BECAUSE THE HEARING OF THE APPLICATION HAD NOT COMMENCED AND IF JUDICIAL DISCRETION HAS BEEN EXERCISED BONAFIDE NOT ORDINARILY OR ILLEGALLY BY A COURT OF LAW, AN APPEAL COURT WILL NOT ORDINARILY INTERFERE WITH THAT EXERCISE, HE REFERRED TO **UNILAG & ORS. VS OLANIYAN & ORS (1985) 1. S.C. 295.** HE URGED THE COURT TO DISMISS THE APPEAL.

THE LEARNED COUNSEL FOR THE 3RD SET OF RESPONDENTS ALSO IN OPPOSITION TO THE APPEAL SUBMITTED THAT A LITIGANT IS ENTITLED TO HAVE ANY ERROR CORRECTED IN THE PROCEEDINGS IF THE CORRECTION OF SUCH ERROR WILL NOT OCCASION AN INJUSTICE TO THE OTHER PARTY. HE FURTHER SUBMITTED THAT IN THIS CASE, THE APPELLANTS HAVE NOT DISCLOSED WHAT INJUSTICE THEY WILL SUFFER IF THE PROCEEDING IS BROUGHT BEFORE THE COURT. HE REFERRED TO **UTC VS PAMOTEI (1989) 2 NWLR PT. 103 PAGE 244.** HE URGED THE COURT

TO DISMISS THE APPEAL.

AN APPLICATION FOR CERTIORARI IS A PROCESS BY WHICH A PARTY SEEKS A JUDICIAL REVIEW OF THE PROCEEDINGS OF AN INFERIOR COURT, TRIBUNAL OR ORDER QUASI-JUDICIAL BODY. AN ORDER OF CERTIORARI IS ISSUED DIRECTING THE INFERIOR COURT, TRIBUNAL OR OTHER QUASI-JUDICIAL BODY TO BRING UP ITS RECORDS TO THE HIGHER COURT FOR REVIEW. THE PROCEDURE FOR A JUDICIAL REVIEW PROCEEDING IN ANAMBRA STATE AS AT YEAR 2000 WHEN THE PROCEEDINGS LEADING TO THIS APPEAL WAS INITIATED WAS AS PROVIDED IN ORDER 37 OF THE HIGH COURT RULES, 1988 OF . THE RULES RELEVANT TO THIS APPEAL ARE RULES 3, 6, 8, WHICH READ; (3)

"1. NO APPLICATION FOR JUDICIAL REVIEW SHALL BE MADE UNLESS THE LEAVE OF THE COURT HAS BEEN OBTAINED IN ACCORDANCE WITH THIS RULE.

2. AN APPLICATION FOR LEAVE SHALL BE MADE EX PARTE TO THE COURT, AND SHALL BE SUPPORTED:-

A) BY A STATEMENT, SETTING OUT THE NAME AND DESCRIPTION OF THE APPLICANT, THE RELIEF SOUGHT AND THE GROUNDS ON WHICH IT IS SOUGHT, AND

B) BY AFFIDAVIT, TO BE FILED WITH THE APPLICATION, VERIFYING THE

FACTS RELIED ON.

3. THE APPLICANT SHALL FILE THE

APPLICATION NOT LATER THAN THE DAY BEFORE THE MOTION IS HEARD AND SHALL AT THE SAME TIME LODGE COPIES OF THE STATEMENT AND EVERY AFFIDAVIT IN SUPPORT.

4. THE COURT HEARING AN APPLICATION FOR LEAVE MAY ALLOW THE APPLICANT'S STATEMENT TO BE AMENDED, WHETHER BY SPECIFYING DIFFERENT OR ADDITIONAL GROUNDS OR RELIEF OR OTHERWISE ON SUCH TERMS, IF ANY, AS IT THINKS FIT.

5. WHERE LEAVE IS SOUGHT TO APPLY FOR AN ORDER OF CERTIORARI TO REMOVE FOR THE PURPOSE OF ITS BEING QUASHED ANY JUDGMENT, ORDER, CONVICTION OR OTHER PROCEEDINGS WHICH IS SUBJECT TO APPEAL AND A TIME IS LIMITED FOR THE BRINGING OF THE APPEAL, THE COURT MAY ADJOURN THE APPLICATION FOR LEAVE UNTIL THE APPEAL IS DETERMINED OR THE TIME FOR APPEALING HAS EXPIRED.

6. IF THE COURT GRANTS LEAVE, IT MAY IMPOSE SUCH TERMS AS TO COSTS AND AS TO GIVING SECURITY AS IT THINKS FIT.

7. WHERE LEAVE TO APPLY FOR JUDICIAL REVIEW IS GRANTED, THEN:-

A) IF THE RELIEF SOUGHT IS AN ORDER OF PROHIBITION OR CERTIORARI AND THE COURT SO DIRECTS, THE GRANT SHALL OPERATE AS A STAY OF THE PROCEEDINGS TO WHICH THE APPLICATION RELATES UNTIL THE DETERMINATION OF THE APPLICATION OR UNTIL THE COURT

OTHERWISE ORDERS;

B) IF ANY OTHER RELIEF IS SOUGHT, THE COURTS MAY AT ANY TIME GRANT IN THE PROCEEDING SUCH INTERIM RELIEF AS COULD BE GRANTED IN AN ACTION BEGUN BY WRIT;

(6)

1. COPIES OF THE STATEMENT IN SUPPORT OF AN APPLICATION FOR LEAVE UNDER RULE 3 SHALL BE SERVED WITH THE NOTICE OF MOTION OR SUMMONS AND, SUBJECT TO RULE 2, NO GROUNDS SHALL BE RELIED UPON OR ANY RELIEF SOUGHT AT THE HEARING EXCEPT THE GROUNDS AND RELIEF SET OUT IN THE STATEMENT.

2. THE COURT MAY ON THE HEARING OF THE MOTION ALLOW THE APPLICANT TO AMEND HIS STATEMENT WHETHER BY SPECIFYING DIFFERENT OR ADDITIONAL GROUNDS OF RELIEF OR OTHERWISE, ON SUCH TERMS, IF ANY, AS IT THINKS FIT AND MAY ALLOW FURTHER AFFIDAVITS TO BE USED IF THEY DEAL WITH MATTERS ARISING OUT OF AN AFFIDAVIT OF ANY OTHER PARTY TO THE APPLICATION.

3. WHERE THE APPLICANT INTENDS TO ASK TO BE ALLOWED TO AMEND HIS STATEMENT OR TO USE FURTHER AFFIDAVITS, HE SHALL GIVE NOTICE OF HIS INTENTION AND OF ANY PROPOSED AMENDMENT TO EVERY OTHER PARTY.

4. EACH PARTY TO THE APPLICATION SHALL SUPPLY TO EVERY OTHER PARTY ON DEMAND AND ON PAYMENT OF THE PROPER COURT CHARGES

COPIES OF EVERY AFFIDAVIT WHICH HE PROPOSES TO USE AT THE HEARING INCLUDING, IN THE CASE OF THE APPLICATION FOR LEAVE UNDER RULE 3;

(8)

1. ON THE HEARING OF ANY NOTION UNDER RULE 5, ANY PERSON WHO DESIRES TO BE HEARD IN OPPOSITION TO THE MOTION OR SUMMONS, AND APPEARS TO THE COURT TO BE A PROPER PERSON TO BE HEARD, SHALL BE HEARD, NOTWITHSTANDING THAT HE HAS NOT BEEN SERVED WITH NOTICE OF THE MOTION OR THE SUMMONS.

2. WHERE THE RELIEF SOUGHT IS OR INCLUDES AN ORDER OF CERTIORARI TO REMOVE ANY PROCEEDINGS FOR THE PURPOSE OF QUASHING THEM, THE APPLICANT MAY NOT QUESTION THE VALIDITY OF ANY ORDER, WARRANT, COMMITMENT, CONVICTION, INQUISITION OR RECORD UNLESS BEFORE THE HEARING OF THE MOTION HE HAS FILE A COPY THEREOF VERIFIED BY AFFIDAVIT OR ACCOUNTS FOR HIS FAILURE TO DO SO TO THE SATISFACTION OF THE COURT HEARING THE MOTION OR SUMMONS.

3. WHERE AN ORDER OF CERTIORARI IS MADE IN ANY SUCH CASE AS IS REFERRED TO IN RULE 2, THE ORDER SHALL, SUBJECT TO RULE 4, DIRECT THAT THE PROCEEDINGS SHALL BE QUASHED FORTHWITH ON THEIR REMOVAL INTO THE COURT.

4. WHERE THE RELIEF SOUGHT IS AN ORDER OF CERTIORARI AND THE COURT IS SATISFIED THAT THERE

ARE GROUNDS FOR QUASHING THE DECISION TO WHICH THE APPLICATION RELATES, THE COURT MAY, IN ADDITION TO QUASHING IT, REMIT THE MATTER TO THE COURT, TRIBUNAL OR AUTHORITY CONCERNED WITH A DIRECTION IN ACCORDANCE WITH THE FINDINGS OF THE COURT.

5. WHERE THE RELIEF SOUGHT IS A DECLARATION, AN INJUNCTION OR DAMAGES AND THE COURT CONSIDERS THAT IT SHOULD NOT BE GRANTED ON AN APPLICATION FOR JUDICIAL REVIEW BUT MIGHT HAVE BEEN GRANTED IF IT HAD BEEN SOUGHT IN AN ACTION BEGUN BY WRIT BY THE APPLICANT AT THE TIME OF MAKING HIS APPLICATION, THE COURT MAY, INSTEAD OF REFUSING THE APPLICATION, ORDER THE PROCEEDINGS TO CONTINUE AS IF THEY HAD BEEN BEGUN BY WRIT.

BY VIRTUE OF THE ABOVE RULES, A PARTY SEEKING AN ORDER OF CERTIORARI MUST FILE TWO APPLICATIONS. THE FIRST ONE IS AN EX-PARTE APPLICATION FOR LEAVE OF THE COURT TO APPLY FOR AN ORDER OF CERTIORARI. THE SECOND APPLICATION IS FILED WHEN THE LEAVE SOUGHT HAS BEEN GRANTED BY THE COURT AND MUST BE ON NOTICE TO THE OTHER PARTY. IT IS THE LAW THAT WHEN A PARTY APPLIES FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI TO QUASH THE PROCEEDINGS OF A LOWER COURT OR TRIBUNAL, HE MUST ESTABLISH

A *PRIMA FACIE* CASE OR SHOW THAT THERE IS A NEED FOR THE INTERVENTION OF THE HIGHER COURT. AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI IS NOT GRANTED AS A MATTER OF COURSE. I AM OF THE FIRM VIEW THAT ALL THE MATERIALS TO BE RELIED ON MUST BE PLACED BEFORE THE COURT AT THAT STAGE, PARTICULARLY THE PROCEEDINGS BEING SOUGHT TO BE QUASHED. IT IS ONLY WHEN THE PROCEEDINGS IS BEFORE THE COURT THAT THE COURT WILL BE ABLE TO DECIDE WHETHER A *PRIMA FACIE* CASE HAS BEEN MADE TO WARRANT A GRANT OF LEAVE TO APPLY FOR AN ORDER OF CERTIORARI, SEE **TABAI VS C.R.S.U S. & TECH. (1997) NWLR (PT. 529) PAGE 373 AT PAGE 379-380 (H-A)** WHERE KATSINA-ALU, JCA (AS HE THEN WAS) STATED THUS:- **"BEFORE AN APPLICATION FOR CERTIORARI IS MADE THE LAW REQUIRES THAT THE APPLICANT MUST FIRST SEEK AND OBTAIN LEAVE OF THE COURT. IN MOST CASES, LEAVE IS SOUGHT EX-PARTE. AN APPLICATION FOR LEAVE IS A PRAYER WHEREIN THE APPLICANT IS URGING THE COURT TO EXERCISE ITS DISCRETIONARY POWER. IN THE CIRCUMSTANCE THE APPLICANT HAS A DUTY TO MAKE AVAILABLE**