IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY, THE 25TH DAY OF APRIL, 2025
BEFORE THEIR LORDSHIPS:

ABBA BELLO MOHAMMED	JUSTICE, COURT OF APPEAL
OKON EFRETI ABANG	JUSTICE, COURT OF APPEAL
DONATUS UWAEZUOKE OKOROWO	JUSTICE, COURT OF APPEAL

CA/ABJ/CV/83/2024

BETWEEN:

EMEKA UGWUONYE ... APPELLANT

AND

DAVID AIYEDOGBON ... RESPONDENT

JUDGMENT
[DELIVERED BY OKON EFRETI ABANG, JCA]

This appeal is against the decisions of High Court of Federal Capital Territory dated 6/3/2022 and 28/9/2023 respectively Coram Kekemeke J. wherein the trial court entered Judgment against the appellant in favour of the Respondent a legal practitioner in the sum of N100,000,000.00 (One Hundred Million Naira) as aggravated damages for the libellous publications made of and concerning the Respondent. The trial court made an Order of perpetual

CTC = ₦1,000

COURT OF APPEAL CASHIER OFFICE DATE 01-5-2025 paid

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COURT OF APPEAL, ABUJA DIVISION
Sign:
ZAINAB A. KASSIM
Principal Registrar II
Date: 6-5-2025

injunction restraining the appellant, his agents privies associates however called from making further defamatory publications against the Respondent and his family members. The trial Court also awarded N500,000.00 as cost of the action in favour of he Respondent payable by the Appellant. By a writ of summons filed on 10/11/2016, the Respondent filed the suit against the appellant at the trial court claiming the following reliefs -

(i) **The sum of 10 billion naira as aggravated damages of his character, reputation and bringing him down in the estimation of right thinking members of the society and exposing him to odium and ridicule.**

(ii) **An Order of perpetual injunction restraining the Defendant, his agents, privies, associates or however called from making further defamatory publication against the claimant and his family.**

The case then proceded to trial. The appellant did not appear during the hearing of the suit. On 11/10/2021, the appellant brought an application before the trial court for extention of time within which to file his defence. The trial court

refused the application for enlargment of time to file defence because the appellant failed to provide evidence of payment of default fee.

On 28/9/2023, the trial Court delivered its Judgment and granted the claims of Respondent though in part for defamation against the appellant based on defamatory statements contained in several documents downloaded on the internet by the Respondent and also based on unchallenged oral evidence before the trial Court.

The appellant claimed that the documents were tendered and admitted in evidence without the Respondent complying with mandatory provisions of section 84 of Evidence Act with respect to admissibility of computer generated documents.

The appellant then appealed against the decision of the trial court to this Court.

At page 5 of his brief of argument, the appellant formulated two issues for determination. The issues are as follows;

(i) **Whether the trial court is not in error when it relied on exhibits B, C1, C2, C3, C4, E, 91, 92, K1, K2 and L to give Judgment in favour of the Respondents when the documents which**

are computer generated Evidence are inadmissible for not complying with mandatory provisions of section 84 of the Evidence Act 2011.

(ii) Whether the trial court was not in error and denied the appellants his constituted right to fair hearing when it dismissed the appellant's application to file his statement of defence out of time on the ground of failure of the appellant to provide proof of compliance with payment of penalty.

The Respondent at page 2 of his brief filed on 13/9/2024 adopted issues formulated by appellant for the resolution of issues in dispute in this appeal.

On his issue 1, appellant submitted that the trial court erred in law when it relied on exhibits B, C1, C2, C3, C4, E, G1, G2, K1, K2 and L to hold that the Respondent proved libel against the appellant and therefore entitled to Judgment against the appellant. That these documents were generated and downloaded from the internet and printed from the Respondent's computer. That their admissibility in evidence

is governed by the provisions of section 84 of the Evidence Act 2011. Learned Senior Counsel for the appellant relied on the case of KUBOR VS DICKSON (2013) 4 NWLR pt. 1345 p. 534 and the provisions of section 84(i) and (iv) of the Evidence Act 2011.

Learned Counsel then submitted that for a piece of document generated from computer or downloaded from the internet to be admissible in evidence, a certificate must be produced by a party who seeks to tender the document. That the certificate must identify the documents to be tendered and it must also give the particulars of the device involved in the production of the documents. That these document are inadmissible in evidence and the trial court was therefore in grave error when it admitted and relied on them to grant the claim of the Respondent.

Learned Counsel further stated that in the event that the court is inclined to look at the documents at pages 63-64 of the supplementary record captioned certificate of production of electronically generated evidence pursuant to section 84(a)(b)(c) & (d) of the Evidence Act 2011 Laws of the Federation dated 14/10/2010 as certificate of compliance,

that it is a worthless document for the purpose of compliance with the mandatory provisions of section 84 of the Evidence Act.

Learned Senior Counsel reproduced the document referred to above in his brief of argument and submitted with great force that the document speaks for itself. That the document relied upon by the Respondent failed to identify the documents sought to be authenticated by means of the certificate. That certificate did not provide the particulars of the devices used in producing the documents. That the Respondent purported certificate of compliance does not relate to any of the documents it claimed to have generated from his computer and printed from the internet. Learned SAN then stated that where a statute provide the manner of doing anything, any other manner adopted different from what is provided in the statute must be discountenanced. He relied on the case of **OJUKWU V. KAINE & ORS (2000) 15 NWLR (PT. 691) P. 516 AT 523, IGP VS BELLO (2023) 1 NWLR PT. 1865 P. 265.**

That the trial Court cannot by a wave of hand brush aside the provisions of Section 84 of the Evidence Act in the interest

of doing justice and relied on the case of **CALABAR CENTRAL COOPERATIVE THRIFT & CREDIT SOCIETY LTD V EKPO (2008) 6 NWLR (PART 1083) P. 362 AT 398.** That the aforementioned documents downloaded from the internet by the Respondent tendered and admitted by the trial Court are legally inadmissible pieces of evidence without a valid certificate produced in complaince with the mandatory provisions of Section 84(4) of Evidence Act. **Again learned Silk relied on BLAISE V FRN (2017) 6 NWLR (PART 1560) 90 AT 135.**

See also **ONUOHA V UBEH (2019) 15 NWLR (PART 1694) PAGE 1 AT 20.** Learned SAN then urged the Court to expunge the documents from the records of procedings because they are legally inadmisssible under the Evidence Act. That it is immaterial whether such evidence was objected to or not. It again relied on **ABOLARIN V OGUNDELE (2012) 10 NWLR (PART 1308) 2 NWLR (PART 1072) P. 552 AT P. 570.**

That where these documents are expunged from the record of procedings, then the judgment of the trial Court entered in favour of the Respondent cannot stand. This is so because

the trial Court relied on these documents to give judgment on defamation suit against the Appellant.

That a judgment of a Court of law based on inadmissible evidence is equivalent to putting something on nothing. It cannot stand. That a Court of law is expected in all proceedings to admit and act only on evidence which is admissible in law under the Evidence Act. Learned Counsel for the Appellant urged the Court to resolve this issue in favour of the Appellant and on this score alone set aside the judgment delivered in favour of the Respondent dated 28/9/2023.

On his issue 2, the Appellant stated that on 11/10/2021 he filed an application for extension of time to file his statement of defence. That the trial Court dismissed the appplication even where the Respondent did not oppose it on the ground that the Appellant failed to exhibit proof of compliance with payment of default fee. That the trial Court erred in law in dismissing the Appellant's application for extension of time to file defence.

That the right of every party to defend a suit brought against him is a constitutional right. That no party should

either expressly or by omission be shut out, inhibited or suppressed from presenting his case or defence to the best of his ability. Learned Senior Counsel relied on the case of **UNITED BANK FOR AFRICA PLC V EDET OKON EFFIONG (2011) 16 NWLR (PART 1722) P. 84 AT 109**.

Learned Senior Counsel further argued that the decision to dismiss the Appellant's application for extension of time to file his statement of defence was a breach of the Appellant's right to fair hearing and according to him, that it amounts to outright shutting out of the Appellant from defending the suit on the merit.

That the law is settled that a Court inoder to do substantial justice will lean towards accomodating a statement of defence even if it was brought after the Plaintiff has closed his case. **OTEJU V MAGNA MARITIME SERVICES LTD (2000) 1 NWLR (PART 640) P. 331**.

Learned Counsel sought to distinguish between Rules of Court and constitutional provisions. That the provisions for payment of default fee is a provision of the Rules of Court while the right to file defence in a suit is constitutional. That the Constitution will prevail where there is a conflict between

the Rules of Court and the provisions of the constitution. Learned Senior Counsel placed special emphasis on **BUHARI V INEC (2008) 19 NWLR (PART 1120) P. 4246 AT P. 393**.

That in order to do substantial justice, the trial Court ought to have struck out the Appellant's application rather than dismissing it. Learned Counsel reasoned that this is so inorder to leave the window of opportunity open for the Appellant to provide evidence of payment of default fee in a subsequent application for extension of time to file defence. That incompetent application cannot be dismissed but can only be struck out as was held by the Suprmeme Court in **NWAOHOR V COP (2018) 10 NWLR (PART 1628) P. 568.** That dismissing the application has the effect of completely shutting out the Apppellant from exercising his constitutional right to be heard.

That failure to pay fees under this Rules of Court is usually treated as a mere irregularity by our Courts. Learned Counsel relied on **LENLEHIN V AKANBI (2016) 1 NWLR (PART 1495), SPDCN LTD V AGBARA (2016) 2 NWLR (PART 1496) P. 363**.

On this note learned Counsel for the Appellant then urged the Court to resolve issue 2 in favour of the Appellant and allow the appeal.

My Lords, I have carefully, calmly and dispassionately considered arguments canvassed by the Respondent on the two issues formulated by the Appellant in his brief filed on 13/9/2024. The Appellant in his reply brief filed on 20/11/2024 stated as follows:

That the Respondent turned law on its head when he submitted that the issue of inadmissibility of exhibits B, B1, C2, C3, C4, E, G1, G2, K1, K2 and L was never raised nor submitted at the trial Court for its determination by the Appellant who was the defendant at the trial Court. That it is necessary that a document used in a litigation process must not only be relevant, it should also be admissible. The Appellant further averred that a document that is inadmissible on the ground of failure to fulfil a statutory condition precedent remains legally inadmissible and cannot under any circumstance constitute evidence in the case at the trial Court or on appeal even where sich documentary evidence is admitted by consent.

As regard Respondent's argument in paragraphs 2.8 and 2.9 of his brief, that the Appellant brought technicalities to the detriment of substantial justice with regard to his complaince with Section 84 of the Evidence Act, the Appellant submitted that it is not a technical justice to insist on strict compliance with the provisions of an enabling statute like Evidence Act, 2011.

That there was no oral evidence led in support of the exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L to obviate the necessity of complying with the provisions of Section 84 of the Evdience Act. Learned Counsel urged the Court to allow the appeal.

RESOLUTION OF ISSUES FOR DETERMIANTION

Issue 1 whether the trial Court is not in error when it relied on exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L to give judgment in favour of the Respondent when the documents which are computer generated evidence are inadmisible for not complying with madatory provisions of Section 84 of the Evidence Act, 2011.

My Lords, the starting point in the resolution of the Appellant's first issue for determination is to state that the Appellant's issue 1 is not as straight forward as the learned Senior Counsel for the Appellant A. I. AROTIOKWA presented it.

The Respondent instituted the suit leading to this appeal against the Appellant on 10/12/2016 for allegedly publishing defamatory statement against him without lawful excuse. The Appellant was served the originating processes sometime in 2017. The Appellant failed, refused and/or neglected to enter appearance or file a defence for upwards of 5 years. However on 8/3/2018, the Respondent gave evidence in the matter and tendered several documents during trial and were admitted in evidence and accordinly marked as exhibits. The Appellant was absent in Court when the matter was called though served with the origianting processes and hearing notice. No excuse was offered for his absence. The Appellant was not in Court to raise the issue relating to inadmissibility or otherwise of these documents in evidence being computer generated documents. The trial Court was not afforded the opportunity to take a decision on the issue

of inadmissibility of these documents in evidence since the issue was not raised before it.

A point has to be made at this early stage of this judgment and quickly too and it is crucial to note that Appellant was not in Court and did not take part in the proceedings when the documents were tendered by the Respondent in evidence not that he was in Court and merely elected not to oppose the admissiblity of these documents in evidence.

The Appellant did not file his statement of defence and also failed to file his final written address. In this case, the Appellant was not in Court inorder to be heard before the judgment was entered against him on 28/9/2023, Notwithstanding that he was served with the originating processes inclusive of hearing notices.

Therefore the judgment delivered on 28/9/2023 was a default judgment. It is a default judgment because parties were not heard on the merit.

Being a default Judgment and being concious of the fact that the issue of the inadmissibility of the computer generated documents was never raised before the trial Court, it would have been for the Appellant to take advantage of the

relevant Rules of High Court of Federal Capital Territory (Civil Procedure) Rules 2018 to apply to the trial Court to set aside the Judgment and then raised for the the first time before the trial Court the Respondent's alleged failure to comply with provisions of Section 84(4)(a) of the Evidence Act 2011. The Appellant cannot on appeal claim that the trial Court ignored the provisions of Section 84(4)(a) of the Evidence Act 2011 without the Appellant raising it before the trial Court to enable it take a decision on it.

In the case of **MOHAMMED V HUSSEINI (1998) 14 NWLR (PART 584) P. 108** the Supreme Court in delivering Judgment on a similar matter where a defendant did not appear at the trial Court as in this case held:

> ***"I have no hesitation in agreeing with the trial Court and the Court of Appeal that the Judgment of Olagunju J delivered on 20/11/1992 is a default Judgment as it was delivered in the absence of filing a statement of defence and non appearance of defence counsel at the hearing. Any Judgment obtained where one party does not appear at the trial may be set aside by the Court***

upon such terms as may be just upon an application made within 6 days after the trial or within such longer period as the Court may allow for good cause shown."

The issue of the Respondent allegedly not complying with the provisions of Section 84(4)(a) of the Evdience Act 2011 before the computer generated documetns were received in evidence is so fundamental that would have compelled the Appellant to approach the trial Court first to set aside the default Judgment on that score and the trial Court would have taken a decision on it.

This is so because the Appellant cannot rush to the Court of Appeal to set aside a default judgment on the ground that the trial Court admitted inadmissible evidence without the issue being raised before the trial Court. While considering this judgment, I called for the main file to see if the Appellant applied to the Court for leave to raise this issue as a fresh issue and I found none.

Supreme Court in **MOHAMMED V HUSSEINI's** case supra acknowledged that an aggrieved party can also appeal against a default judgment without approaching the trial Court to set

same aside but then the Appellant must be extremely careful to ensure that the ground of appeal attacks the ratio decidendi of the trial Court's Judgment. In this case, in the entire Judgment of the trial Court of 35 pages dated 28/9/2023 that the Appellant urged this Court to set aside on the ground that the trial Court admitted inadmissible documents, the trial Court did not take any decision on the issue as regard the inadmissibility of computer generated documents in evidence because it was not raised before it.

In this matter, the Respondent in paragraph 2.6 of his brief filed on 13/9/2024 rightly raised this issue that the question of the admissibility of exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L being computer generated evidence was never submitted to the trial Court for its determination by the the Appellant who was the defendant at that Court.

Regretably A. Arotiokwa learned Senior Counsel for the Appellant in paragraph 1.2 of his reply brief arrogantly responded by submiting that the Respondent's argument is misconceived and that the Respondent turned the law on its head. My Lords what an unfair comment coming from the learned Senior for the Appellant that occupies an enviable

position at the Bar and who did not put his house in order before filing the appeal to this Court.

The Respondent in raising this issue did not turn the law on its head.'The Respondent raised a fundamental issue in this regard that borders on the competence of Appellant's ground one of his notice of appeal and the issue for determination that was distilled therefore.

This is so because the jurisdiction of the Court of Appeal under Sections 241 and 242 of 1999 Constitution as amended is appellate not original. Put differently, this Court was constituted to entertain appeals against the decision of the trial Court and other Courts and Tribunals established under the Constitution. This Court has no original jurisdiction to entertain issue that was not raised at the trial Court except with leave. If a trial Court did not decide an issue, there cannot be an appeal to this Court except with leave. In this case, the trial Court in the judgment appealled against dated 28/9/2023 did not decide any issue concerning inadmissibility of exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L being computer generated evidence under section 84 of the Evidence Act 2011 because it was not raised by the Appellant.

The law is settled and requires no restatement that where there is no decision on an issue, there cannot be an appeal against a non existent decision except with the leave of Court. The Appellant did not apply and obtained leave before appealing against non existent decision.

The Supreme Court of Nigeria, the apex Court in the land, the only voice of infalibility that I know resolved this in several judicial pronouncements. I think it is proper to make reference to two of such decisions.

In SARAKI V KOTOYE (1982) 9 NWLR 9 NWLR (PART 264) P. 156 AT P. 184, a similar situation occurred in this case where the Appellant appealed agaisnt issues that the Court of Appeal did not decide, Supreme Court held:

> *"The grounds of appeal therefore are the reasons why the decision is considered by the aggrieved to be wrong. The purpose of the grounds alleged is to isolate and accentuate for attack the basis of the reasoning of the decision challenged. In all cases, the subject matter for determination must be an issue in contoversy between the parties. The decision appealed*

against must have decided the issue. In every appeal, the issue or issues in controversy are fixed and circumscribed by a statement of the part of the decision appealed against. Hence the grounds of appeal must ex necessitate be based on such issues in controversy. Where a ground of appeal cannot be fixed and circumscribed within a particular issue in controversy in the Judgment challenged, such ground of appeal cannot justifiably be regarded as related to the decision.

A fortiori no issue for for determination can be formulated therefrom. It is a well settled proposition of law in respect of which there can hardly be a departure that the grounds of appeal against a decision must relate to the decision and should constitute a challenge to the ratio of the decision. Grounds of appeal are not formulated in nubibus. They must be in firma terra namely arise fron the Judgment. However meritorious the ground of appeal based either on points of

critical constitutional importance or general public interest, it must be connected with a controversy between parties. This is the precondition for the vesting of judicial powers of the Constitution in the Courts."

The Appellant that did not take part in the procedings of the trial Court cannot attempt to beat the fastest man in the world, rush to the Court of Appeal, in an indecent haste and for the first time without obtaining prior leave of the Court raise such a fundamental earth shaking issue about evaluation of evidence or that computer generated documents are inadmissible on the ground of alleged failure of the Respondent to fulfil a statutory precondition without same having been raised at the trial Court for the trial Court to take a decision on it that will be appealable. In line with the decision of the Supreme Court in SARAKI V KOTOYE supra, there was no controversy at all on this issue between parties at the trial Court.

Notwithstanding the critical constitutional importance or fundamental issue of law involved here, Appellant's ground of

appeal ought to attack a decision of the trial Court and in this case there is none.

The full panel of the Supreme Court in the case of **FRN V NWOSU (2016) 17 NWLR (PART 1541) P. 226 AT 274** held:

> ***"It is settled law that grounds of appeal to be valid and competent, they must be related to the decision being appealed against and should constitute a challenge to the ratio of the decision on apppeal.***
>
> ***Thus where a ground of appeal as couched does not arise from the Judgment and purports to raise an issue not decided by the Judgment appealed against, both the ground and the issue it purports to raise are incompetent and liable to be struck out."***

At the risk of being repetitive, the issue of inadmissibility of computer generated documents for failure to comply with the provisions of Section 84(4)(A) of the Evidence Act 2011 was not raised by the Appellant at the trial Court and there was no decision of the trial Court on it.

Having failed to seek leave of this Court to raise the issue as a fresh issue, the Appellant's ground 1 is incompetent and liable to be struck out with its issue for determination.

The issue of evaluation of inadmissible evidence of computer generated documents without complying with the provisions of Section 84(4)(a) of the Evidence Act having not been raised before by the Appellant at the trial Court cannot be raised on appeal being fresh issue without leave of the Court.

In ONYEMANZU V OJIAKO (2010) 4 NWLR (PART 1185) 504 AT 526 it was held:

> *"On the question of raising fresh issues in appeal, it is setttled law that parties are not allowed to raise fresh issues on appeal without first and formost obtaining the leave of the appelllate Court to raise them."*

In LAGOS STATE BULK PURCHASE CORPORATION V PURIFICATION TECHNIQUES (NIG) LTD (2012) LPELR - 20617 PP. 3031 SC held:

> *"It is trite position in law is that where a new issue is to be introduced and argued afresh, the*

party introducing it has the duty to apply and obtain leave to do so from the Court."

Though Supreme Court in the case of **AKPAN V BOB (2010 17 NWLR (PART 1223) P. 421 AT 464 - 465** held that a ground of appeal need not arise from the precise words of the decision appealed against but can arise from factors such as the procedure in which the decision was rendered and from commission or omissions by the Court from which an appeal emanates in either refusing to do what it ought to do or doing what it ought not to do or even in overdoing the act complained of.

However even at this, the issue ought to have been raised before the trial Court. Where the trial Court overlooks taking a decision on it, then the trial Court refusal or neglect can then be subject of appeal.

In this case, the Appellant that failed to fully participate in the proceedings at the trial and for upwards of 5 years failed to file his defence, the Appellant that was nonchallant playing the game of hide and seek cannot after default judgment being delivered then rush to Court of Appeal in an indecent haste to raise without leave that the trial Court admitted

inadmissible evidence to warrant the judgment being set aside.

The question is why did he not take part in the proceedings for him to have raised the issue of the Respondent not complying with the provisions of Section 84(4)(a) of the Evidence Act 2011, when he was duly served with the originating processes inclusive of hearing notices. It is not as if the Appellant was ill and incapable to attend Court. The Appellant just made up his mind not to attend Court that nothing will happen.

It is not that the Appellant did not know that the proceedings was ongoing. He knew very well of the pendency of the proceedings for an upward of 5 years. He was even in Court to cross examine PW1 but later abandoned proceedings when the matter was adjourned.

My Lords, before I am through with this issue, I will discuss cases cited by the Appellant in urging the Court to expunge exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L from the record because according to him the Respondent did not comply with the provisions of Section 84(4)(a) of the Evidence Act rendering the document inadmissible in

evidence in any event. The first in line of cases cited by the Appellant is **KUBOR V DICKSON (2013) 4 NWLR (PART 524) P. 577 - 578**. It was a decision from Election Tribunal. Parties were represented in Court and took part in the proceedings. The Appellant tendered exhibits D and L which were internet printout of Punch Newspaper and list of candidates posted on INEC website from the Bar. The Respondent's Counsel raised the objection at the Tribunal of the documents not complying with the provisions of Section 84(4)(a) of the Act, because no witness tendered the documents in evidence. That there was no certificate issued pursuant to Sectionn 84 of the Evdience Act. The Tribunal rejected the documents. Supreme Court affirmed the decision.

In the instant case, the Appellant did not participate in the proceedings and the issue was not raised before the trial Court., he cannot raise the issue on appeal without leave of Court. KUBOR V DICKSON is not helpful to the Appellant. The second case is **BLAISE V FRN (2017 6 NWLR (PART 1560) P. 90 AT 136** and the third case is **IGP V BELLO (2023) 1 NWLR (PART 1865) P. 265** both cases are

decisions from this Court diferently constituted. In these two cases, parties were represented by Counsel and the objection was raised at the trial Court. In this case, the Appellant was nowhere to be found. He abandoned proceedings and only resurfaced when he realised that Judgment has been entered against him. He cannot raise the issue for the first time on appeal without leave of Court. These two cases are not helpful to the Appellant.

My Lords, the implication of the Respondent raising in paragraph 2.6 of his brief that the question of the admissibility of exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L of computer generated evidence was never submitted to the trial Court for its determination by the Appellant and Appellant responding to it in his reply brief is that Appellant's ground 1 of his notice of appeal filed on 8/3/2023 on the authority of **KOTOYE V SARAKI, FRN V NWOSU** cases supra is incompetent. The issue for determination distilled therefore is also incompetent and they are accordingly struck out.

However, in the event that the Court is overuled on the above findings to the effect that the Appellant's ground one of the

notice of appeal is competent and the issue distilled therefrom is also valid and the exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L being computer generated documents are inadmissible in evidence for the failure of the Respondent to comply with the provisions of Section 84(4)(a) of the Evdience Act 2011 and deserving to be expunged from the record of proceedings, there are still other pieces of admissible evidence on record that the trial Court would have acted on to arrive at the same findings that the libellous publication made by the Appellant was defamatory of the Respondent. The Appellant made defamatory libellous statements against the Respondent. The Respondent would still have succeeded in an action for libel because it is on record that these defamatory statements were in writing, published, and they referred to the Respondent. That they were also published to someone other than the Appellant. That the statements were defamatory of the Respondent. That the statements were false and the Appellant had no justification for making such publication of the defamatory words against the Respondent.

The Respondent need not file Respondent's notice to this effect because these evidence are credible, forms part of the record of appeal and this Court has jurisdiction to look at any part of the record of Court in order to do justice in a matter placed before it. See FUMODOH V ABORO (PART 214) NWLR.

Beyond this, under the provisions of Section 15 of the Court of Appeal Act, this Court has jurisdiction over the whole proceedings as if the proceedings had been instituted in this Court as the Court of first instance.

My Lords, I have alreay pointed out here that the Appellant complained that the trial Court entered judgment based on inadmissible computer generated documents in proof of defamatory claim against the Appellant.

That where these documents are expunged from the record, the judgment cannot stand as the Respondent cannot put something on nothing.

In this regard, where the Respondent adduced other admissible evidence in proof of the defamatory claims, the judgment will still subsists even where the documents complained of are expunged from the record. This is a simple

exercise. Moreso the Respondent made referene to other credible evidence in his brief that also estabIsihed defamatory claim against the Appellant. Please see paragraphs 2.12, 2.13, 2.14 and 2.15 of the Respondent's brief filed on 13/9/2024.

My Lords it is my humble but firm view that other than exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L in evidence, complained of by the Appellant, there are other credible cogent, substantial evidence on record that supports the claim of the Respondent that the Appellant published libellous statements against him without lawful justification. Apart from the computer generated documents complained of by the Appellant, the Respondent pleaded facts and deposed to same in his written statement on oath that made reference to these documnts and other documents not mentioned by the Appellant formed but part of the documents in evidence that indeed the Appellant published libellous statements against the Respondent.

In paragraph 5, 8(i), (ii), (iii), (iv), (v), (vi), and several depositions in the Respondent's written statement on oath dated 14/12/2016 at pages 18, 23 of the record of appeal

Volume 1, the Respondent stated that the Appellant made statements and published same against him that he killed and/or murdered his wife Mrs Charity Aiyedegbon, The libellous statements are as follows:

> *"David has extraordinary ability to intimidate and he is apparently quite vicious person." "But I think I have evidence that he killed her". "Some elements in the Nigeria Police have been bought over to cover up the murder of his Charity Ayedegbon by her husband."*
>
> *"I now have overwhelming evidence that Mr David Aiyedagbon killed his wife". This is the headless and disembered body of Charity Kingdom." I will describe David as a low life and cold blooded murderer of his own wife."*

These defamatory statements were made on different occasions between 19th June to 22nd June, 2016.

Different persons from the Respondent's depositions on oath read of the statements.

That a lot of social media users also read these statements.

That he is now labelled as a murderer. That his reputation

lowered in the estimation of right thinking members of the society. That he was disparaged and exposed to hatred, approbrium odium, contempt and ridicule. Originating processes were served on Appellant since 2017. The Appellant did not respond by way of filing his defence for upwards of 5 years. The defamatory statements were further published by the Appellant and a lot of people read same for instance one Nnem Calyn Nnem responded in exhibit G as follows:

> ***"He can't hide his evil act any more because his time is up. The whole world knows how evil he is now."***

Gloria Ifeyinwa Nwabueze said in the comment column:

> ***"He is the devil incarnate. I pray he doesn't repent."***

See also exhibit K in evidence. Though exhibits G and K are also computer generated documents, they are not among those documents objected to by Appellant. Therefore the Court can freely rely on them to prove libel against the Respondent by the Appellant. In exhibit G, Appellant wrote concerning the Respondent thus:

"If he had common sense he should know that the only thing he really needs is to find his wife alive."

The post attracted 124 negative comments from social media users against the Respondent.

In paragraph 16 of the Respondent's deposition on oath which represents his evidence in chief, the Respondent stated that as a result of the false defamatory publication made by the Appellant against him, his church suspended hos daughter's wedding indefinitely.

Again in paragraph 17 of his depositions on oath, the Appellant stated that his community ostracised him again because of the defamatory publication made by the Appellant against him. In paragraph 18 of his witness written statement on oath, he stated that his business partners broke the business relationship with him because of the false publication made by the Appellant against him.

In paragraph 21 of his written statement on oath, the Respondent stated that he has been gravely injured in his reputation and social standing in the society as people now shun him and made faces and cynical remarks about him being

a cold blooded murderer and as a result he has lost almost all his friends and associates, his church, community and home. His community withdrew the merit award they gave him. That he is now treated as a social leper by right thinking members of the society.

The Respondent tendered exhibit H which is the original letter from Realm of Glory International Churches suspending the Appellant's daughter's wedding on account of the Appellant's continuous publication of defamatory statement against him.

The Respondent also tendered exhibit J which is the original letter from Morgrace Global Networking dated 27/9/2016 wherein the organisation severed business relationship with him on acount of trending publications on the social media by the Appellant that the Respondent murdered his wife in order to prevent her from enjoying the proceeds of the business they engaged together.

The Respondent again tended exhibit I which is original letter issued by the Respondent's Village Union Aiyegunle-Gbede descendants Union where his community withdrew the

Respondent's merit award of distinguished service and also ostracized him from the community.

There are also exhibits F and D being counterpart copies of the letter the Respondent's solicitor wrote to the Appellant with documentary proof of service conveying these defamatory words to the Appellant and demanding from him an unqualified apology.

Exhibits I, H, J, G, F, D are not computer generated documents that is not subject to the provisions of Section 84(1) - (4) of the Evidence Act 2011. They are original documents. That is direct evidence under Section 85 of the Evidence Act, 2011 which is the best evidence indicating that the Appellant defamed the Respondent.

Therefore even if exhibits B, C1, C2, C3, C4, E, G1, G2, K1, K2 and L are expunged from the record on account of the Appellant's objection, the trial Court was perfectly entitled to rely on exhibits I. H. J. F and D in evidence to grant the Respondent's claim. The Appellant argued this appeal believing that once exhibits B, G, C2, C3, C4, E, G1, G2, K, K2 and L are expunged, the Respondent's judgment cannot stand. This is a false hope. The Respondent's Judgment will still

stand because exhibits I, H, J, F and D in evidence demonstrate clearly that the Appellant's libellous statement against the Respondent was published.

Beyond this, the Respondent's written statement on oath dated 14/12/2016 represents the Respondent's evidence in chief. It also represents the Respondent's oral evidence in this matter that the Appellant published concerning him that he murdered his wife. This is defamatory.

The Appellant did not challenge these pieces of evidence against him even where he had the opportunity to do so. For upwards of 5 years, the Appellant failed to file his defence. Appellant a legal practitioner called to Nigerian Bar that is expected to know the consequence of the failure to challenge any piece of evidence made against a party in a litigation process, thereby fumbled and gambled with his rights.

Even under cross examination by this same Appellant on 28/6/2028 at page 1745 of the record of appeal, the Respondent was firm and remained unshaken when he stated as follows:

> *"On 25/6/16 he said he has overwhelming evidence that I killed ny wife Charity. The same*

time he said he will describe me as a low life and a cold blooded murderer of his wife on the 19/6/16 he said he has evidence. The Appellant defamed me by saying I killed her."

The above is the Respondent's evidence even under cross examination that he was defamed by Appellant. The Appellant has not challenged this evidence. What other legally admissible evidence is the Appellant looking for to show that he demfamed the Respondent. The law is settled beyond disputation, beyond any restatement that a Court has an uncompromising duty or obligation to act on an unchallenged evidence.

Supreme Court in **MEKWUENYE V IMOUKWEADE (2021) ALL FWLR (PART 1080) (PART 1012)** held:

"Facts not disputed, challenged or controverted are taken as admitted. A defendant who fails to traverse or join isssues with the claimant on his averments is deemed to admit the facts pleaded againsnt him. Address of Counsel cannot take place of evidence."

Again relying on the decision of the Supreme Court in the case of **UZODINMA V IZUNASO No. 2 (2011) 17 NWLR (PART 1275) 30, 75** it was held that the Court is at liberty to look at and utilize any document in its file even the disputed computer generated document in order to do justice in the case. The apex Court in the above cited case held at 75 paragraph F - H thus:

> ***"A Court is at liberty to look at and utilize a document in its file while writing its judgment or ruling despite the fact that the document was not tendered and admitted as an exhibit at the trial. The purpose of the principle is that the Court is created to do substantial justice between the parties in the resolution of the issues in controversy between them."***

In conclusion on Appellant's issue 1, it is my view the said issue is incompetnet being predicated on an incompetent ground of Appellant's notice of appeal. It is not an appeal against the decision of the trial Court within the meaning of Section 318(1) of 1999 Constitution as amended. Parties did not join issues at the trial Court on the issue of

inadmissibility of exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L being computer generated documents, The Appellant also failed to seek leave of Court to raise it as a fresh issue.

In the event that the Court is overruled, even if exhibits B, C1, C2, C3, C4, E, G1, G2, K1 and L are expunged from the record exhibits I, H, J, F and D and the unchallenged oral evidence of the Respondent have demonstrated beyond any iota of doubt that the Appellant defamed the Respondent. Appellant issue 1 is resolved in favour of the Respondent against the Appellant.

Resolution of Appellant's issue 2, that is whether the lower Court was not in error and denied the Appellant his constitutional right to fair hearing when it dismissed the Appellant's application to file his statement of defence out of time on the ground of failure of the Appellant to provide proof of compliance with payment of penalty.

My Lords the starting point in the resolution of the Appellant's issue 2 is to agree entirely with the learned Counsel for the Respondent Mr. Tony Ogbulafor that a party who was given the opportunity to defend his case but refused to do so cannot claim he has been denied fair hearing. The

Appellant was sued in 2016 and served the originating processes in 2017. He refused without any lawful excuse to file his statement of defence within the prescribed period allowed by the Rules of the trial Court. The Appellant however had time to attend social media activities, a vocation that has nothing to do with his callings as a legal practitioner. Apart from not filing his defence within the prescribed period, the Appellant participated in the proceedings of the trial Court on 16/5/2018 and 28/6/2018 by appearing in Court to cross examine the Respondent. Please see the proceedings of the trial Court at pages 1737 - 1747 of the record.

When it was convenient to him and at his appointed time, five years after being served with the Respondent's originating processes, the appellant on 11/10/2021 casually as if it is a social media affair that he engaged in filed an application for extension of time to file his defence without looking at the requirement of Order 56 rules 1 and 2 of the High Court of FCT (Civil Procedure) Rules 2018 that enjoined him to pay 200.00 for each day of being in default. If the Appellant was really diligent in his work and being a legal practitioner

nothing stopped him in filing his defence within 21 days upon being served with the Respondent's originating processes in 2017.

Being not concious of the fact that he has been in default for upward of 5 years to file his statement of defence and he was enjoined by the Rules of Court to pay penalty of 200.00 for each day of being in default, the Appellant took the risk of his life in arguing the application when the default fee was not paid and evidence of compliance attached to the affidavit in support of motion. What did he expect the trial Court to do? Before this Court learned Senior Counsel for the Appellant cited authorities that are irrelevant to the proceedings and even cited the case of **OTEJU V MAGNA MARITIME SERVICES LTD (2000) 1 NWLR (PART 640) 331** that has been overruled by the Supreme Court in the case of **MAGNA MARITIME SERVICES LTD V OTEJU (2005) 14 NWLR (PART 945) P. 517**, the appeal I argued while in legal pactice before my elevation to the Bench. I shall return to this case later in this judgment.

Having regard to the entire facts and circumstances of this case, the Appellant was not denied fair hearing when his

application for enlargement of time to file defence was dismissed. Rather, the failure of the Appellant to file his defence for upwards of 5 years was an independent decision, exercise of legal right. a choice made by him. Infact it was a legal strategy adopted by him to enhance his case and give him adequate time to attend to his social media activities. Judgment entered against him was his choice, what he bargained for. Infact a repercusiion for his excesses that he must live with. He has himself and only himself to blame. I so hold.

Contrary to the submissions of Appellant in paragraphs 5.1, 5.2, 5.3, 5.4 of his brief of argument, the dismissal of the Appellant's application for enlargement of time to file his defence was not a breach of his right to fair hearing. He was not shut out from defending the suit. The trial Court did not descend to the arena of legal conflict when the application was dismissed at the time the Respondent did not even oppose the application.

The Appellant denied himself hearing not the Court or the Respondent. Where the application was argued on its merit, and the trial Court found the application to be lacking in

merit, the appropriate order to make is an order dismissing the application and not that of striking out. This is so whether or not the Respondent oppose the application.

Parties cnnot by consent or acquiesence confer jurisdiction on a Court of law.

The Appellant cited and relied on **DIKKO V IBADAN SOUTH WEST LOCAL GOVERNMENT (1992) 2 NWLR (PART 486) P. 235 and UNITED BANK FOR AFRICA PLC V EDET OKON EFFIONG (2011) 16 NWLR (PART 1272) P. 84 AT P. 109** completely out of context.

In UBA PLC V EFFIONG supra, the trial Court did not ascertain whether the defendant/appellant was actually served with the motion for judgment in default of defence but merely believed the statement of Counsel that it has been served since 22/12/2005. Motion for judgment moved and granted. Judgment entered against the Appellant. Application to set aside the default judgment refused by the trial Court. Aggrieved by the decision, the defendant appealed. Allowing the appeal, the Court made the findings relied upon by the Appellant in this case that when a party has been effectively fenced off or shunted from his rightful

position of being able to present his case/defence, such a party is at liberty to proclaim or complain that he has heen treated unfairly and that his constituionally guaranteed right to fair hearing has been breached. Such a party who seeks redress must be given due attention , a listening ear and accorded requisite relief. That due process and observance of rule of law did not reckon with the inequality or double standard. All parties before a Court deserve to be treated fairly have their cases determined on the merits at the dispensation of substantial and not technical justice. The ratio of this Court in UBA PLC's case supra has nothing to do with this matter.

My Lords, with all respect to learned Senior Counsel to the Appellant, the facts and issues that arose in UBA PLC V EFFIONG's case supra are miles apart from the facts of the instant case.

Appellant in the instant appeal was served with the origianting processes in 2017, 5 years before the application for enlargement of time to file defence was filed in 2021.

In this case, the Appellant that denied himself hearing to have sufficient time for his social media activities, defamed

the Respondent, took part in proceedings and later abandoned proceedings. In UBA PLC V EFFIONG supra, the defendant applied to set aside the default judgment but in this case no attempt was made to set aside the said judgment. The Appellant herein only appealed to this Court to set aside said judgment without the raising the issue of alleged inadmissibility of computer generated documents before the trial Court. Learned Appellant's Counsel had no reason in relying on **UBA PLC V EFFIONG supra**. Appellant also relied on **DIKKO V IBADAN SOUTH WEST LGA** supra again out of context. The Appellant in the instant case that refused to file his defence within 21 days upon service of the writ of summons and failed to pay default fee for 5 years of being in default so as to regularize his defence to enable the Court hear him shut out himself from being heard and not the trial Court.

Again the Appellant had no good reason to rely on the case of FSB INTERNATIONAL BANK LTD V IMANO (NIGERIA) LTD (2000) 11 NWLR (PART 679) 620, INTERNATIONAL MESSENGER (NIG) LTD V OGE (1996) 3 NWLR (PART 437)

P. 429, OTEJU V MAGNA MARITIME SERVICES LTD (2000) 1 NWLR (PART 640) P. 331.

FSB INTERNATIONAL BANK LTD V IMANO (NG) LTD's case supra was an application for summary judgment under the provisions of Order 10 rule 3 of the High Court of Lagos state (Civil Procedure) Rules 1972 where filing of statement of defence was completely outside the contemplation of the said proceedings.

Notwithstanding that filing of statement of defence was not required under the provisions of Order 10 Rules for summary judgment under High Court of Lagos State (Civil Procedure) Rules 1972, the defendant still filed the defence out of time. The trial Court again considered the statement of defence though it was not necessary to do so but to ascertain if the defendant had good defence to the claim even though the defence was irregularly filed. The central point in this case was that there was no need to file a statement of defence under the summary judgment proceedings of the Lagos State (Civil Procedure) Rules 1972. So the trial Court was just on his own to consider defence even though it was irregularly filed. In this instant case except a defaulting party pays

penalty for late filing of the statement of defence, time can not be extended for him to file his defence, so as to be heard.

Beyond this, there was no provisions under High Court of Lagos State (Civil Procedure) Rules 1972 that would require a defaulting party to pay penalty of 200.00 for each day of being in default as it is the requirement of Order 56 rules 1 & 2 of High Court of Federal Capital Territory (Civil Procedure) Rules 2018.

In FSB BANK LTD supra, Supreme Court interpreted the provisions of Order 10 rule 3 of High Court of Lagos State (Civil Procedure) Rules 1972 that is not the same with the provsions of Order 56 rules 1 & 2 of the Hgh Court of FCT (Civil Procedure) Rules 2018 that the trial Court interpreted in this appeal. Appellant cited FSB BANK LTD's case supra still out of context.

In **INTERNATIONAL MESSENGERS (NIG.) LIMITED VS OGE's case supra** statement of defence was filed after 2 weeks from the period the Defendant was ordered to file its defence. The trial court ignored the defence and proceeded to enter Judgment for the Respondent for the sum of 40,000

in 1990. Appeal of the Defendant was allowed. It was in this instance that the Court of Appeal said that where a party files his statement of defence out of time, the Court ought not to disregard such statement of defence rather the court should suo moto extend the time within which the statement of defence is to be filed. In the first place, the Court of Appeal in OGE's case supra interpreted the High Court of Kano State (Civil Procedure) Rules that did not make provisions for payment of penalty for each day of a Defendant being in default of filing his statement of defence.

In this case, which is different from facts and issues that arose in the International Messengers' case supra the provisions of Order 56 Rules 1 & 2 supra placed restriction on a party that is in default of filing defence within a stipulated period to pay penalty for the period of days of being in default before time can be enlarged for him to file his defence. In any event, INTERNATIONAL MESSENGER VS OGE'S case supra is a Court of Appeal's decision which is persuasive here. It is not certain if Supreme Court has

affirmed or overruled this decision. This case is not of assistance to the appellant.

The appellant also relied on the Court of Appeal decision in the case of OTEJU VS MAGNA MARITIME SERVICES supra that the Court held that

> "*if before Judgment is entered in a suit, the Defendant serves a defence even though out of time, a Court of trial must never ignore it. A judgment in default Judgment cannot be entered. That the trial court was in error when it ignored the defence and entered Judgment against the appellant. The Judgment is liable to be set aside.*"

My Lords I have stated earlier in this Judgment that the Court of Appeal's decision cited above has been set aside by the Supreme Court in the case of **MAGNA MARITIME SERVICES LIMITED VS OTEJU (2005) 14 NWLR pt. 945 p. 517 p. 536 - 517.** The facts of this case that I handled right from the trial Court Federal High Court, Court of Appeal and the Supreme Court before my elevation to the bench are in pari materia with the facts of the instant appeal.

Like in the instant appeal, the Defendant in the MAGNA MARITIME's case supra was given ample opportunity to file his defence and be heard. The Defendant's Counsel frustrated the proceedings by asking for numerous adjournment. Records show that the matter was adjourned at the instance of Defendant for 17 times. The trial Judge Ukeje CJ (retired) had the patience of the biblical Job and endured the antics of the defendant. Like in the instant appeal, the Defendant walked out on the court and abandoned proceedings. Like in this case, the Defendant filed a defence out of time without an order of Court extending the time for him to do so. The trial court like in this case proceeded to hear the Plaintiff's case alone and entered Judgment in its favour and granted its claims. The Defendant appealed and claimed at the Court of Appeal that he was denied fair hearing. That the trial Court did not consider his defence. The appeal was allowed and Judgment of the trial court set aside.

On further appeal, Supreme Court allowed the appeal of the Plaintiff and held;

> "it is true that justice delayed is justice denied and that no party to a case is entitled to hold the court to ransom at his or her whims and caprices. A party who has the temerity to bluff the court at the trial stage without justification would not be heard on appeal to seek redress on the subject of the bluff."

Like in the instant appeal, the Defendant in MAGNA MARITIME's case supra was granted all the opportunities available to Court to file his defence in the matter but he decided not to do so but instead filed numerous applications to delay and frustrate proceedings at the trial Court.

Like in MAGNA MARITIME case supra, the trial Court accommodated the appellant herein in many respect all in the genuine efforts to do justice but the appellant because of his new found vocation in the social media did not take advantage of the fair mind of the trial court. For instance, he failed to comply with the rules of trial court to pay penalty for the period of being in default, the trial court was enjoined by settled authorities to refuse the application.

In this case, the Appellant was given enough time to file his defence and defend the claims against him but he failed to do so.

On 16/5/2018 the appellant was in Court in person to cross examine PW1. On 5/12/2018, one O. Ojamon of Counsel appeared in Court on his behalf to cross examine PW1. The matter was adjourned to 24/1/2019 for continuation of hearing but the appellant refused to appear in Court despite being served with hearing notice of Curt's proceedings. The matter was later adjourned to 28/2/2019 still the appellant did not appear in Court nor his lawyer no excuse was offered for their absence.

On 28/2/2019, the appellant did not appear in Court, it was adjourned to 4/4/2019 for further hearing. On 31/10/2019, the Defendant asked for adjournment to open his defence though even on 31/10/2019, no defence was filed. On 4/12/2019, the Defendant was not in Court. On 10/11/2020, the matter came up in court for defence, the appellant was not in Court. On 15/6/2022 the Appellant was not in Court to open his defence. On 10/11/2022 the trial court had no other option than to foreclose the right of the appellant to defend

the matter. With these adjournments, the Appellant refused to file his defence at the trial court for upwards of 5 years and each time the matter came up the appellant was served hearing notice of Court proceedings.

As it was held by the Supreme Court in MAGNA MARITIME'S CASE supra p. 541, no party has the right to hold the court of law to ransom.

I agree with the Learned Counsel for the Respondent that the trial Court did all that was humanly possible to hear the case of the appellant but he bluffed the court because his mind was fixed on social media activities. What an unethical conduct!!! He was pre-occupied with thoughts of further defaming the Respondent. It is my view my Lords that the appellant that had the temerity to bluff the trial Court without justification cannot be heard on appeal to seek redress on the subject matter of the bluff.

Contrary to the submissions of the appellant, he was accorded the opportunity to put forward his case but failed to take advantage of the said opportunity.

The appellant's counsel cited the case of **IVBIYARO VS FRANCIS (2002) 1 NWLR (PT. 747) P. 45** on the effect

of a suit being dismissed out of context. Appellant's Counsel cited any case that crosses his mind or imagination without considering whether it is relevant or not. In **IVBIYARO VS FRANCIS's** case supra, the trial court dismissed the case of the Plaintiff when PW1 was yet to be cross examined apparently because the matter had been adjourned at the instance of appellant consistently.

The need to strike out a matter instead of same being dismissed was in respect of the suit that disposed of the Plaintiff's rights without the matter being heard on its merit. In this case, it was appellant's application for enlargement of time to file defence that was dismissed same having been argued on its merit. It is immaterial that the Respondent did not oppose the application. If the appellant did not pay the penalty and evidence not shown, what was the need of Appellant arguing the application in the first instance? Appellant should take whatever he has seen in this matter. This is the result of Counsel not being diligent in the matter he is handling. The application could not have been struck out just because the Respondent did not oppose it. Parties cannot by acquiescence or consent confer jurisdiction on the Court.

The trial court was entitled to dismiss the application if he found the application to be lacking in merit. The appellant took the risk of his life in arguing the application when it was clear and obvious that he did not pay the mandatory penalty for being in default of filing his defence. He failed to provide materials to enable the Court exercise its discretion in his favour. He should have applied to withdraw the application for it to be struck out than for him to take a risk of arguing the application that was lacking in merit. The appellant only reaped what he sowed. The trial court was right in dismissing the said application having found it to be unmeritorious. The trial Court did not jump into the arena of conflict. The trial judge only discharged his functions without fear or favour, affection or ill will. The appellant relied on **NWAOHA VS COP (2018) 10 NWLR PT. 1628 568** and **IVBIYARO V. FRANCIS** supra completely out of context.

As regard compliance by the appellant with the provisions of Order 56 rules 1 & 2 of the High Court of FCT (Civil Procedure) Rules 2018 concerning payment of penalty of 200.00 naira for each day of being in default to file statement of defence, my Lords what is in issue here is

payment of default fee of N200.00 per day of being in default and not payment of insufficient filing fee. Therefore the appellant again cited out of context **LANLEHIN VS AKANBI (2016) 1 NWLR PT. 1495, SPDCN LIMITED VS AGBARA (2016) 2 NWLR PT. 1496.**

In the instant case, the provisions of Order 56 rules 1 and 2 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 provide that every application for enlargement of time shall be accompanied by proof of compliance with Rule 1 of Order 56 to the effect that penalty for each day of default of N200.00 per day was paid.

This is the condition for the appellant to comply with before time is extended for him to file his statement of defence out of time in order to be heard. Therefore, the trial court has a duty to enforce the said provisions of Order 56 rules 1 & 2 supra. The rules of Court were not made for fun. They were made to be complied.

In **MAGNA MARITIME SERVICE LIMITED V. OTEJU** supra Supreme Court at page 54 held -

> *"A Court of law can indulge a party only within the confines of its Rules. In other words, a*

Court of law can indulge a party in so far as it Rules permit. But where the Rules of court in line with the fair hearing principles order specific conduct on the part of the parties, the court has a duty to enforce the Rules. In such a situation, the defence of fair hearing is not available to the aggrieved party because the rule itself has be complied with the fair hearing".

In NEWSWATCH COMMUNICATION LIMITED VS ATTA (2006) 12 NWLR PT 993 SC P. 144 AT 171 & 173

Supreme Court held -

"A trial Judge can indulge a party in the judicial process for sometimes but not for all times. Therefore a trial Judge has the right to withdraw his indulgence at the point when the fair hearing principle will be compromised, compounded or will not really be fair as it affects the opposing party.

At this stage the trial Judge will retrace his steps of indulgence and follow the part of fair hearing as it affects the opposing party who equally yearns for it in the judicial process. Therefore the party who

is not up and doing to take advantage of the fair hearing principle at his doorsteps by the trial judge cannot complain that he was denied fair hearing.

It is the duty of the Court to create the atmosphere or environment for fair hearing of a case but it is not the duty of the Court to make sure that a party takes advantage of the atmosphere or environment by involving himself on the fair hearing of the case. Therefore a party who refuses or fails to take advantage of the fair hearing process created by the Court cannot turn around to accuse the court of denying him fair hearing. The court is not a slave of time that must wait indefinitely for a party to decide when he will come to present its case.

To delay hearing a case deliberately is an abuse of court's process which in turn defects justice."

The Appellant was not denied fair hearing when the trial court dismissed his motion for enlargement of time to file his defence for him to be heard. All cases cited by the appellant in his issue 2 do not apply to the facts and circumstances of this case. The cases were cited completely out of context.

The Appellant's issue 2 is resolved in favour of the Respondent against the Appellant. The appeal lacks merit it is accordingly dismissed. The Judgment of the trial court dated 29/8/2023 is hereby affirmed. Cost of N500,000.00 (Five Hundred Thousand Naira) is hereby awarded in favour of the Respondent payable by the Appellant forthwith.

OKON EFRETI ABANG
JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY
COURT OF APPEAL, ABUJA DIVISION
Sign: GSS180
ZAINAB A. KASSIM
Principal Registrar II
Date: 6-5-2025

APPEARANCES:

A. Arotiokwa for the Appellant.

T. Ogbulue Oghulohor with him S. O. Umegwu.

CA/ABJ/CV/83/2024
ABBA BELLO MOHAMMED, JCA

I had read a draft of the leading judgment delivered by my learned brother, OKON EFRETI ABANG, JCA. I agree with and adopt all his reasons and conclusions in also finding this appeal devoid of merit. A party, like the Appellant herein, who had been afforded all opportunities to be heard but had failed to utilize same, cannot turn around to complain of lack of fair hearing. See: JOEL OKUNRINBOYE EXPORT CO. LTD v SKYE BANK PLC (2009) LPELR-1618(SC) at 27, paras. A – C; and GIDIYA & ORS v SANUSI & ORS (2022) LPELR-58932(SC) at 6 – 7, paras. D – G.

Accordingly, I also dismiss the Appellant's appeal for lack of merit and abide by the consequential orders made in the leading judgment.

ABBA BELLO MOHAMMED
JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY
COURT OF APPEAL, ABUJA DIVISION
Sign: ...
ZAINAB A. KASSIM
Principal Registrar II
Date: 6-5-2025

APPEAL No. CA/ABJ/CV/83/2024

DONATUS UWAEZUOKE OKOROWO, JCA

My Learned Brother, **OKON EFRETI ABANG, JCA**, availed me of the draft Judgment just delivered. I agree with the reasoning and conclusion in the the lead judgment that the Appeal lacks merit. In addition, I make the following contributions.

A key issue in this appeal is the Appellant's claim that his right to a fair hearing was violated when the lower court denied his application for extension time to file his defence due to non-payment of the default fee as required by Order 56 Rules 1 and 2 of the Civil Procedure Rules of the High Court of the Federal Capital Territory. The Appellant neglected without lawful reason to file his Statement of Defence on originating processes filed in 2016 and served on the Defendant in 2017. It was 5 years after being served with the originating process, on 11/10/2021 that application for extension of time to file defence was made but decline by the lower for neglecting to pay the default fees. It this refusal that the Appellant complained was intended to shut him out of the proceeding and is a breach of his right to defend the suit.

The Appellant saw the cliché of fair hearing as anchor to void the judgment of the lower court on appeal. The principle of fair hearing enshrined in Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ensures that every party to a legal proceeding is given an opportunity to present their case and respond to the case against them. However, the question that arises in this case is whether the Appellant who was given an opportunity to defend his case but refused to do so can complain of a lack of fair hearing. The Supreme Court of Nigeria has addressed this issue in plethora of cases. In **AYOADE v. STATE (2020) LPELR-49379(SC)**, the court held that a party who had an opportunity to be heard but did not utilize it cannot later claim a breach of fair hearing. The court emphasized that the essence of fair hearing is the opportunity to be heard, and if a party chooses not to take advantage of this opportunity, they cannot later complain of being denied a fair hearing.

In **COMPACT MANIFOLD & ENERGY SERVICES LTD v. PAZAN SERVICES NIG. LTD (2019) LPELR-49221(SC)** the Supreme Court considered circumstance where a party cannot be heard to complain of being denied the right to fair hearing as in the instant case and held thus:

> *"Now, the question begging for answer is whether the appellant was denied fair hearing by the trial Court. My*

answer to the above question is in the negative. The appellant cannot complain of denial of fair hearing when it had ample opportunity to defend itself but failed to avail itself of that opportunity. The settled position of the law is that once a trial Court has given a party ample opportunity to defend himself and the party does not avail himself of that opportunity, then the party cannot complain that he was denied fair hearing. See **Ogunsanya v. State (2011) 12 NWLR (Pt. 1261) page 40; Ordi Orugbo v. Una (2002) 16 NWLR (Pt. 792) 175."** *Per JOHN INYANG OKORO, JSC (P. 27, paras. A-D*

This Court also in the case of **ODENIYI v. WHOT REM CREDIT & THRIFT COOPERATIVE SOCIETY (2024) LPELR-62104(CA)**, affirmed that a party who had an opportunity to be heard but did not utilize it cannot bring an action for breach of fair hearing emphasizing that the right to fair hearing is satisfied once a party is given the opportunity to be heard, regardless of whether they choose to exercise that right.

The summary of the decisions is that a party who was given an opportunity to defend their case but refused to do so cannot later complain of a lack of fair hearing. The principle of fair hearing is satisfied by the opportunity to be heard, and it is the responsibility of the party to take advantage of that opportunity. Failure to do so does not constitute a breach of the right to fair hearing. Afortiori, the right to fair hearing is not a license for parties to delay proceedings or refuse to participate in the judicial process.

Failure of the Appellant to file defence and to defend this case at the trial court surfacing after 5 years with defective application panders on the side of indolence or rather failure to understand his obligation to respond to court summons when called up to answer a claim of a citizen against him. Apart from ground of failure to pay the default fee, the refusal to grant the application by the lower is justified on grounds of indolence.

It for this and other fuller reasons adumbrated in the lead judgment that I too hold that the Appeal lacked merit and is accordingly dismissed. I affirm the judgment of the lower court and abide by the order of cost made in the lead judgment.

DONATUS UWAEZUOKE OKOROWO

JUSTICE, COURT OF APPEAL