IN THE SUPREME COURT OF NIGERIA

Suit No: SC423/2001

Petitioner: Attorney-General Of Rivers State

And

Respondent: Gregory Obi Ude S. E. Anusionwu (Substituted By Uche Anusionwu) Bernard Eze B.I. Obi Chima Electrical Israel Obia R. D. Iheji Solomon Electrical Philip Odurukwe Johnson Wax Electrical Everclen Paints Aaron Egbunike A. E. Dockso

Date Delivered: 2006-07-14

Judge(s): Salihu Modibbo Alfa Belgore , Aloysius Iyorgyer Katsina-Alu , Dahiru Musdapher , George Adesola Oguntade ,Ikec

Judgment Delivered

This is the second journey of the dispute concerning the land and property at N'o 2 Ekpeye (Umuoji) Street, Diobu, Port Harcourt, otherwise known as Plot 1, Block 261, Wobo Layout, Port Harcourt. The first journey is reported in the case of Ude vs. Nwara (1993) 2 NWLR (Pt. 278) 638.

The dispute herein was commenced by the Appellant herein as the Plaintiff, the Attorney-General of Rivers State on behalf of the Rivers State Government claiming possessions, rents and mense profits against the Defendants, the Respondents herein, as the occupants of the property whose lease granted to the 1st Defendant expired in 1971. The 1st Defendant had earlier given the 2nd Defendant Power of Attorney over the management of the property and the 2nd Defendant put the 3rd to the 13th Defendants as tenants occupying the building erected thereon. The Respondents resisted the Appellant's claims. Pleadings were filed and the 2nd Defendant, therein filed a Counter-claim, in which he claimed.

'(i) A declaration that the (Plaintiff), 2nd defendant is entitled to have the lease of the property renewed in his name for at lease 99 years with effect from January, 1972.

(ii) An Order that lease be renewed in the name of the Counter-claimant.'

In the alternative, the Counter-claimant claimed the sum of N20, 000,000.00 (twenty million Naria) as compensation for the buildings before possession is taken by the Plaintiff. The Plaintiff, the Appellant herein filed Statement of Defence to the Counter-Claim. The parties amended their pleadings. After some preliminary matters were disposed of, the matter proceeded to trial before Manuel. J.

On the 27/11/1996, the Plaintiff, the Appellant herein opened its case and called P.W. 1 who gave his evidence in chief and the learned Counsel for the Defendants, Respondents herein, asked for adjournment to enable a senior Counsel to appear in Court and to cross-examine P.W. 1 called by the Plaintiff. The matter was adjourned to 24/2/1997, 25/2/1997 and 4/3/1997 for continuation. On the 4/3/1997 the matter was adjourned to 22nd-26th of May for hearing. When the matter resumed on the 22/5/1997, the learned Counsel for the Defendants started and concluded the cross-examination. Thereafter the Plaintiff closed its case. The case was adjourned to 26/5/1997 for the defence to commence. When the matter resumed on the 26/5/1997, the learned Counsel for the Defendants was not in Court, but wrote to ask, for adjournment and the matter was adjourned to 10th, 16th, and 17th of December 1997 for defence. On the 16/12/1997, when the matter was next mentioned, the learned Counsel appearing for the Defendants asked for an adjournment to enable the senior Counsel handling the matter to appear. The Court allowed the adjournment despite the opposition of the Plaintiff's Counsel. The matter was adjourned to 17/12/1997. The defence opened its case on the 17/12/1997 and D.W. 1 was called. The learned Counsel for the Defendants during the evidence in chief of D.W. 1 asked for adjournment to tender some document, which 'has not been got from the Supreme Court.' The application for adjournment was opposed by the learned Counsel for the Plaintiff. The case was adjourned to 2nd and 7th of April 1998 for continuation of hearing. When the matter resumed on the 2nd of April 1998, the learned Counsel for the Defendants

was not in Court, none of the Defendants was in Court including the 1st Defendant who was giving evidence as D.W. 1 or the 2nd Defendant, who made the Counter-claim. The learned trial Judge adjourned the matter despite the opposition of the learned Counsel for the Plaintiff. When the matter next resumed on the 22/6/1998, again the learned Counsel of the Defendants and the Defendants were absent and the learned Counsel of the Plaintiff reminded the Court that the Plaintiff had closed its case since the 22/5/1997 and after several times, the matter was being called, neither the Defendants nor their Counsel was in Court and that no explanation whatsoever was ever offered for their absence. He urged the Court to close the case for the defence and the Counter-claim and enter judgment on the evidence adduced.

The learned trial Judge yet again adjourned the matter to the 24/6/1998 'to give the Defendants another chance and this should be the last chance'. When the matter resumed on 24/6/1998, the Defendants were absent from Court and their Counsel was also absent. The learned trial Judge agreed with the Plaintiffs Counsel and closed the case of the Defendants including the Counter-claim of the 2nd Defendant and adjourned the matter to the 29/6/1998 for addresses. The learned Counsel for the Plaintiff addressed the Court on the 29/6/1998 in the absence of Counsel, the Defendants including the Counter-claimant. The Plaintiff's Counsel concluded his address on the 2/7/1998 whereupon the matter was adjourned for judgment. In the judgment delivered on the 3/8/1998, the learned trial Judge ordered the Defendants and each one of them jointly and severally to give up possession forthwith of the premises situate at No 2 Ekpeye (Umuorji) Street Diobu, Port Harcourt, otherwise known as Plot 1, Block 261, Wobo Layout, Port Harcourt to the Plaintiff. The 2nd Defendant's Counter-claim was dismissed.

The Defendants felt aggrieved with the decision and appealed to the Court of Appeal. Before the Court of Appeal, the Defendants as the Appellants submitted the following issues for the determination of the appeal: -

(1) Is the action in Court caught by the Rivers State Limitation Law, such as to bar and extinguish the right of the Respondent to possession of the land in dispute'

(2) Is the learned trial Judge right to hold that Ude vs. Nwara (1993) 2 NWLR (Pt. 273) 638 did not extinguish the right of the Respondent/Lessor of re-entry or possession in the particular suit'

(3) Is the learned trial Judge right to have 'foreclosed' the Appellant's case on the 26/6/1998 leading further evidence on the Amended Statement of Defence and Counter'claim'

(4) Did the Respondent prove its case on that burden explicit in Mogaji & Others vs. Odofin & Others (1978) 4 SC 91 at 93'

The Court of Appeal in its consideration of the appeal before it resolved issues 1, 2 and 4 against the Defendants but in its consideration of issue No 3 stated, after narrating the various adjournments as itemised earlier in its judgment: -

'All these adjournments and events took place in the absence of the Appellants (Defendants). It would appear that the Appellants did not take any steps to find out what was happening to their case as from the 7/4/1998 when they should have been in Court but failed to turn up. The Appellants had a duty to themselves and the Court below the follow up the progress of their case. They therefore have a major share of the blame of what happened to them in the Court below.

I am firmly of the view that despite the misbehaviour of the Appellants in not showing up in Court on the 2nd and 7th of April, 1998 and not giving any reasons for their absence in the Court, the trial Court knowing the seriousness of the issues in the case could have given the Appellants notice of the adjourned dates before closing their case and giving judgment against them. I therefore see merit under this issue.'

Thus the Defendants succeeded on that single issue having lost all the other issues, their appeal was allowed, the judgment of the trial Court was set aside and the case was remitted to the Chief Judge of Rivers State for re-assignment to another Judge other than Manuel. J. who will hear the case de novo. The Plaintiff felt unhappy with the decision of the Court of Appeal and has now appealed to this Court.

The amended Notice of Appeal filed with the leave of this Court contains 3 (three) grounds of appeal. Mr Clement Nwara

applied to this Court to join as an interested Party, to appeal as a co-Appellant against the decision of the Court of Appeal. This Court on the 14/3/2005 granted the party interested aforesaid, leave to appeal as a co-Appellant. He filed a Notice of Appeal on the 21/3/2005 in which he set out four grounds of appeal. In pursuance of the rules of this Court, both the two Appellants filed briefs of arguments. The Respondents merely filed a brief in response to the brief filed by the 1st Appellant, the Attorney-General of Rivers State. They did not react to the brief filed by the party interested/Appellant. It should also be noted that with the leave of this Court, the Appellant has amended its brief and the Respondents did not file any amended Respondents' brief. At the hearing of the appeal learned Counsel adopted the written briefs.

Now, in his brief for the Appellant, as amended, the learned Counsel has formulated and submitted the following three issues for the determination of the appeal: -

1. Was the Court of Appeal right in declining to decide that the claim of the Plaintiff was not statute-barred'

2. Did the lower Court err in law in interfering with the learned trial Judge's exercise of discretion in the conduct and determination of the instant case, when such exercise of discretion was not found to be perverse'

3. Whether the Court of Appeal erred in remitting this suit to the trial Court for a retrial after it held that the Plaintiff/Respondent has proved its case in the Court below.

The learned Counsel for the party interested/Co-Appellant has identified and submitted the following two issues for the determination of the appeal: -

'1. Whether the Court of Appeal was right in interfering with the discretion of the learned trial Judge which has been exercised not only with regard to principles of law but in accordance with the dictates of justice.

2. Whether the Court of Appeal was right by failing to decide the issue of Limitation Law properly raised and placed before it.'

While the learned Counsel for the Respondent formulated only one issue for the determination of the appeal thus: -

'Was the Court of Appeal right to have ordered a retrial by another Judge of the Rivers State Judiciary''

In my view, the first issue formulated by the Appellant and the 2nd issue formulated by the Co-Appellant/Party interested have no bearing whatsoever on the issue the Court of Appeal based its decision to allow the appeal of the Respondents herein. I have in this judgment alluded to the fact that the Court of Appeal based its decision on the grounds that the Respondents were not granted fair hearing by the trial Judge when their case was closed in their absence and when no hearing notice was served on them. The other three issues raised by the Respondents were not resolved in their favour. An appeal is a complaint against a decision and is not a licence or an excuse to raise all kinds of issues that have no relevance to the issue or issues upon which the decision complained against was based. The question whether the claims of the Appellant as the Plaintiff was statute barred so as to extinguish the right of the Appellant to the possession of the land in dispute was not an issue that was decided or which arose from the decision of the trial Court. It was a fresh issue and in my view, the Court of Appeal was right, when it held: -

'In this case, the Appellants did not lead evidence in the Court below to prove that the action of the respondent was statute barred. The result was that the issue of the statute-bar was never considered by the Court below and the Appellants are raising the issue for the first time. It is my view that it is not a matter that this Court should decide without evidence on the pleadings.'

Thus, the Court of Appeal rightly in my view ignored the complaint of the Respondents on this score. As mentioned earlier, the issue did not in any way feature whatsoever in the crucial decision of the Court of Appeal. I accordingly ignore the issue on the application or non-application of the relevant Limitation Law and consequently the issue relating to this question in the briefs of both the Appellant and the Co-Appellant are ignored by me.

Before I proceed to deal with the remaining issues for the determination of the appeal, I observe the Respondents have raised a preliminary objection to the competence of the appeal, but at the hearing of the appeal, the learned Counsel for the Respondents did not apply or seek leave of Court to raise the said objections. The Preliminary Objection in this case not having been raised and argued at the appeal, the objection is deemed abandoned. See Nsrim vs. Nsrim [1990] 3 NWLR (Pt. 138) 255 at 297 Onoche vs.Odogwu [2006] 2 SCM 95. I accordingly deem the Preliminary Objection abandoned. I shall now deal with the remaining issues.

Issue 2

This is concerned with the exercise of discretion made by the learned trial Judge in closing the case of the Respondents when they failed to appear in Court. I have at the beginning of this judgment related in some details what transpired at the trial Court before the 17/12/1997 and on that date when the Respondents opened their defence and began to lead evidence. D.W. I was called and the learned Counsel for the Respondents asked for an adjournment to get some documents from the Supreme Court. The matter suffered several more adjournments due to the Respondents' neglect or refusal to appear in Court until the 24/6/1998 when the Respondents' case was closed by the learned trial Judge due to their persistent absence in Court. The learned trial Judge on the 24/6/1998 at page 79 of the record of appeal stated thus:

'Court

I agree with Counsel for the Plaintiff that the Defendants are no longer serious or interested in the matter. This is because for the non-appearance of the Defendants and their Counsel. Learned Counsel for the Plaintiff applied on the 22/4/1998 that they be foreclosed for the matter to continue. On that day, I promised I was going to consider the application on the next date of adjournment.

On the 22/6/1998, the Honourable Court was again reminded of its promise of the previous date of adjournment. I then in order to give the defence another opportunity to come and make up for their [discourteous] attitude to the Court notwithstanding, adjourned the matter to 24/6/1998 and for the last time. Today 26/6/1998, neither the Defendants nor their Counsel is in Court to prosecute the matter, which is for them to defend. It is crystal clear they are no longer interested for whatever reason only known to them.

This is because on 17/12/1997, they opened their defence with their DW. 1, Dr. Uche Dominic Anusionwu. Since then, they have decided not to come to Court again without explanation. They have thus abandoned their defence and left the Court undecided as to their next move. This is a situation this Honourable Court cannot accept. It is one of the pillars of an adversary concept of litigation whereby the parties should know how their case stood.

For one party to hold the other to ransom in the hope that the matter will die a natural death cannot be tolerated. The Court will call a halt to such attitude.

It is therefore ordered that the defence is hereby foreclosed from giving any further evidence in its defence.'

Now, on this point, the Court of Appeal per the judgment of Ogebe J.C.A. with which Pats Acholonu J.C.A. [as he then was] of blessed memory, and Akpiroroh J.C.A. concurred, said at page 186-187 of the records of appeal thus: -

'The record shows that clearly on the 17/12/1997 the Appellants opened their defence and started examining their 1st witness. In the middle of the examination, the learned Counsel for them asked for an adjournment to get some document from the Supreme Court.'

The learned justice proceeded to recount the number of adjournments made by the learned trial Judge in order to accommodate the Respondents who persistently neglected to appear in Court to continue with their defence. The learned justice continued.

'The Appellants had a duty to themselves and to the Court to follow up the progress of their case. They therefore have a major share of the blame for what happened to them in the Court below. I am firmly of the view that despite the misbehaviour of the Appellants in not showing up in Court, the trial Court knowing the seriousness of the issues in the case should have given to the Appellant notice of the adjourned dates before closing their case and giving judgment against them.'

Thus, the Respondents' appeal was allowed on this sole ground. Now, it is submitted by the learned Counsel for the two Appellants that the question of adjournment is a matter of discretion of the Court concerned and appellate Court should not ordinarily interfere with the exercise of the discretion of the trial Court. Learned Counsel relied on the case Ntukidem vs. Oko [1986] 5 NWLR (Pt. 45) 909.

It is also submitted by the Appellants that the trial Court had judiciously and judicially exercised its discretion to refuse adjournment and that the exercise of such a discretion shall not be interfered with by an appellate Court, unless the appellate Court comes to the conclusion that the exercise of such discretion was manifestly wrong, arbitrary, reckless, injudicious or contrary to justice. Vide University of Lagos vs. Aigoro [1985] 1 NWLR (Pt. 1) 145; University of Lagos vs. Olaniyan [1985] 1NWLR (Pt. 1) 156.

It is again submitted by the learned Counsel for the Appellant since the Court of Appeal agreed with the learned trial Judge that the Respondents were guilty of bad behaviour and had indeed abandoned their case, the Court of Appeal was in error to have held that the trial Judge was in error when he closed the case of the Respondents. It is again argued that with all the indulgence granted the Respondents, the Court of Appeal acted erroneously to have held that the respondent were entitled to a hearing notice, when they refused to appear in Court and when they also refused to find out the progress of their case in the trial Court. The Respondents failed to give their reasons for their failure and refusal to appear in Court and they were not accordingly entitled to have a fresh hearing notice.

It is submitted by the learned Counsel for the Respondents, that the trial Court had the duty to issue hearing notices to the Respondents on the new dates fixed for the hearing of the matter notwithstanding the fact that the Respondents were absent from Court and that no explanation was given for the absence. It is argued that the Court had a duty under section 36 of the Constitution to ensure fair hearing.

Learned Counsel referred to and relied on the case of Scott Emuakpor vs. Ukavbe & Others [1995] 12 SC 41. It is submitted that the trial Court denied the Respondents the right of being heard; thus rendering the trial a nullity. See Dawodu vs. Ologundudu [1986] 3 NWLR (Pt. 33) 104; Laganjo vs. Arouye [1959] SCNLR 416 at 420. It is submitted that the issue in this case is not the exercise of discretion, but a breach of the constitution relating to fair hearing, which no Court should ignore. The failure to issue hearing notices rendered the entire proceedings before the trial Court a nullity and the Court of Appeal rightly set aside the decision and ordered re-trial. See Alhaji Sanusi vs. Ameyogun [1992] 4 NWLR (Pt. 237) 527 at 556.

On a calm view of what the Court of Appeal decided, I agree with the learned Counsel for the Respondents, that the Court of Appeal did not decide on the injudicious use of the power of discretion to adjourn or not to adjourn the case, but merely on the issue of the failure of the trial Court to issue hearing notices to the Respondents when the matter was adjourned and that is notwithstanding the fact that the Respondents were aware of the date of hearing and absented themselves from Court and also failed to advance any reason for their absence.

Now fairness is the determining factor for the application of principles of natural justice. In other words natural justice is fair play in an action. See Ex parte Obiyan [1973] 12 SC. 21. A hearing of matter in Court cannot be said to be fair if any of the parties appearing before the Court is refused a hearing or is denied the opportunity to be heard or present his case or call evidence; see for example Governor, Imo State vs. Nwauwa [1997] 2 NWLR (Pt. 490) 675. The right to fair hearing is a fundamental Constitutional right guaranteed by the Constitution of the Federal Republic of Nigeria 1960, 1979, and 1999, and a breach of it in trials or adjudications vitiates the proceedings rendering the same null and void and of no effect.

Any judgment which is given without due compliance and which has breached fundamental right of fair hearing is a

nullity and is capable of being set aside either by the Court that gave it or by an appellate Court. See Bamgboye vs. University of Ilorin [1999] 10 NWLR (Pt. 622) 290 Deduwa vs. Okorodudu [1976] 9-10 sc. 392, Amadi vs. Aplin [1972] 4 SC. 228. Sadau vs. Kadir [1956] 1 FSC. 39 - 41.

But a party to a legal dispute cannot claim breach of fair hearing where he has wilfully absented himself from the hearing or failed to give evidence when called upon to do so. That once a trial has commenced after the issues have been joined at the pleadings, there is fair hearing when a party refuses or neglects to take part in the proceedings. The duty of the Court is to provide a level ground and give every body an environment within which to ventilate its claims and defences. In this judgment I have recounted how the Respondents abandoned the trial and disappeared. Pleadings, not being human beings have no mouth to speak in Court. And they speak through witnesses. If witnesses do not narrate them in Court, they remain moribund, if not dead at all times and for all times to the procedural disadvantage of the owner, in this context the Respondents. It is elementary law that the rules or principles of equity help only the vigilant and they do not assist an indolent party who fails to pursue his right diligently and within a reasonable time. Where this happened, the Courts regard such delay or indolence of the party either as fatal to his case or as amounting to a waiver of his right under the maxim that equity helps only the vigilant. But it must be emphasised that failure to serve a hearing notice where the service of hearing Notice is required, renders null and void any order made against the party who should have been served with the process. See Madukolo vs. Nkemdilim [1962] 2 SC. NLR 31. Again where a Court adjourns a case beyond a date when the litigants have notice of the hearing of the case, the Court has a duty to notify the parties of the subsequent adjournment. Whenever the Court adjourns a matter for want of service, the adjourned date should be endorsed on the process and fresh service attempted unless it be shown that hearing notice and the service thereof has been effected before the adjournment. By the undisputed facts of this case, the Respondents were aware of the adjourned date and indeed the Respondents asked for and were granted adjournment to continue with their case. The Respondents deliberately neglected and abandoned their defences to the action, they have themselves to blame as the Court of Appeal stated. In my view, the Court of Appeal acted erroneously when they held that the Respondent were under the circumstances of this case, entitled to be told of the adjourned date. The Respondents were absolutely to blame. The Court of Appeal was in error to have held that the trial Judge was wrong to have exercised his discretion to close the case of the Respondents when they failed to appear in Court. When it was the Respondents who asked for and were granted an adjournment to appear in Court in a certain date to prosecute their claims before the Court. They refused to appear in Court and had failed to find out what was happening in the Court. They simply abandoned their case and accordingly, the Respondents were not entitled to fresh hearing date under the circumstances. I accordingly resolve the issue in favour of the Appellants.

This was the only issue upon which the Respondents succeeded in the Court of Appeal and it is only the legitimate and central issue of the appeal. Having resolved the issue in favour of the Appellant, there is no need or necessity to discuss the remaining issue. Suffice it for me to merely state that the appeal is allowed, the judgment and order of the Court of Appeal in this matter is set aside and in its place, the decision of the trial Court is restored. The Appellant is entitled to costs both at the Court below and this Court assessed at N7, 500.00 and N10, 000.00 respectively jointly and severally against the Respondents.

Judgement delivered by
Salihu Modibbo Alfa Belgore. CJN

I agree that this appeal has great merit and I allow it for the reasons set out fully in the judgment of my learned brother Musdapher. J.S.C. I give the same order as to costs.

Judgement delivered by
Aloysius Iyorgyer Katsina-Alu, J.S.C.

I have had the advantage of reading in draft, the judgment delivered by my learned brother Musdapher, J.S.C. in this appeal. I agree entirely that the appeal has merit and must be allowed.

The Plaintiff by his amended particulars of claim dated 5 July 1995 and filed on 11 July 1995 claimed against the Defendants as follows:

'Possession of the premises situate at No 2 Ekpeye (Umuoji) Street, Diobu, Port-Harcourt.'

By his Statement of Claim filed on 11 July 1995 and his Statement of Defence to the Counter-claim dated 26 September 1994, the Plaintiff averred that the land in dispute is a State Land formerly under the then Government of Eastern Nigeria, now belonging to the Rivers State Government following the creation of the State in 1967.

In 1965, the then Government of Eastern Nigeria granted a lease in respect of the State Land, the land in question, to the 1st Defendant, Gregory Obi Ude for a term of 7 years commencing from 1st January, 1965 to 31st December, 1971. The said lease was registered.

The lease granted to the 1st Defendant expired on 31 December 1971 and was never renewed. Consequently, ownership of the property reverted back to the Rivers State Government. The 1st and 2nd Defendants however, continued in occupation of the said land without the right, title, licence or authority of the Plaintiff.

The Plaintiff also averred that the Rivers State Government has no intention to renew the said lease in favour of the 1st Defendant. The Plaintiff disclosed that the Rivers State Government had granted a Statutory Right of Occupancy over the said land to one Clement Nwara, party interested herein, but could not give possession of the land to the said Clement Nwara because of the presence of the Defendants on the land.

The Defendants in their amended Statement of Defence and Counter-claim admitted that the land in dispute is State Land belonging to the Rivers State Government. They also admitted that the lease granted to the 1st Defendant expired on 31 December 1971. The Defendants however averred that the lessee having erected an approved structure on the land within 2 years was entitled to have the lease extended or renewed for 99 years or for an indefinite period. In the alternative, the Defendants claimed compensation in the sum of N20, 000,000.00 as the current value of the property.

It was on the basis of these pleadings that the case went to the trial before Manuel J.

The Plaintiff called one witness (P.W. 1) and closed his case.

The Defendants opened their case on 17 December 1997 when D. W. 1 testi'fied. He was still testifying when learned Counsel for the Defendants sought and obtained adjournment to the 2nd and 7th of April 1998 for continuation. On the adjourned dates the Defendants and their Counsel were absent in Court and no reason was given for their absence. From then on the Defendants and their Counsel never attended Court on subsequent numerous adjourned dates, thereby abandon'ing their case. On the application of Plaintiffs Counsel on 24 June 1998, the Defendants' case was foreclosed by the order of the Court.

In his judgment, the learned trial Judge found for the Plaintiff. He said:

'In this case the Defendants did not really defend their case. Their witness D.W.1 did not even complete his evidence, which was not subjected to cross-examination and there'fore has no value. Necessary documents to establish their case was not produced and therefore this Honourable Court has no real evidence to rely on, in determining the value of their case. In their pleading and evidence they admitted the lease granted them (exhibit A) has expired and has not been renewed. This is an admission of facts which need no further proof as admissions are the strongest proof in a case.'

On appeal to the Court of Appeal, that Court per Ogebe, J.C.A. held that:

'On the 4th issue, the Appellants contend that the Respondent did not prove the claim even on the minimum proof and should not have been granted the reliefs claimed.

I do not agree with this submission. My simple answer is found in the pleadings. Paragraphs 3-4 of the Amended

Statement of Claim read as follows:

3. The 1st Defendant is the person to whom the then Government of Eastern Nigeria granted a lease in respect of the said land for a term of seven (7) years with effect from 1st January 1965 to 31st December 1971. The said lease was registered as No 7 at page 7 in Volume 398 of the Register of Lands now in Port Harcourt. The Plaintiff shall rely on the said lease at the trial of this action.

4. The said lease expired in 1971 and was never renewed in favour of the 1st Defendant or anybody and consequently reverted to the Rivers State Government.'

These paragraphs were admitted by the Appellants in their Amended State'ment of Defence and Counter-claim of 2nd Defendant in paragraph 2 thereof thus:

'The Defendants admit paragraphs 2, 3 and 4 of the Amended Statement of Claim .....'

It is trite law that what is admitted need no further proof. See Sufianu & Ors. V. Animashuan & Ors (2000) 14 NWLR (Pt. 688) 650 at pg. 663. With this admission and evidence of P.W. 1, one cannot say that the Respondent did not prove his case in the lower Court.'

The Court of Appeal however allowed the appeal and sent back the case for re-trial. The Court reasoned thus:

'On a calm view of all I have said in this judgment, I allow this appeal only on the ground that Appellants were not given a chance to complete their defence before judgment was given against them. In the result, I allow the appeal, set aside the judgment of the lower Court and remit the case to the Chief Judge of Rivers State for re-assignment to another Judge other than Manuel, J.'

This further appeal to this Court is by the Plaintiff.

This appeal revolves around the question whether or not the Defendants were not given a chance to complete their defence. To imply that the Defendants were not given a chance to complete their defence shows a total lack of understanding of the facts and circumstances of the case.

It is now settled that it is a matter within the discretion of the Court whether or not to grant an adjournment. But that discretion must at all times be exercised not only judicially but also judiciously. It is the duty of a Judge to clearly state whether he grants or refuses an adjournment and his reasons for doing so and it should be apparent from the record that he gave a careful consideration for his decision: Udo v. The State (1988) 3 NWLR 316. In matters of discretion, no one can be authority for another and the Court cannot be bound by a previous decision to exercise its discretion in a particular way, because that would be as it were, putting an end to the discretion. Ceekay Traders Ltd. v. General Motors Co. Ltd. (1992) 2 NWLR (Pt. 222) 132 at 147. Clearly, adjournments and control of proceedings are matters within the discretion of the trial Judge which discretion must be exercised judicially and judiciously.

This case suffered multiple adjournments at the instance of the Defendants, and on every occasion the Defendants and their Counsel were absent from Court.

They never appeared in Court until the trial Judge was made to believe by their conduct, that they had abandoned their defence. The consequence of this was that the learned trial Judge foreclosed their defence. In making the order for fore'closure, he ruled:

'It is crystal clear they (the Defendants are no longer interested for whatever reason only known to them. This is because on 17/12/97 they opened their defence with DW1 (sic) Dr. Uche Dominic Anusionwu and the matter was adjourned to 02/04/98 for continuation of hearing ..... since they have decided not to come again without explanation. They have thus abandoned their defence and left the Court undecided as to their next move. This is a situation this Honourable Court cannot accept. It is one of the pillars of our adversary concept of litigation that there must be an end to

litigation whereby parties should know how their cases stood. For one party to hold the other to ransom in the hope that the matter will die a natural death cannot be tolerated. The Court will call a halt to such attitude .....'

I cannot agree more. It seems to me that if every party who is given ample opportunity to prosecute his case, contemptuously ignores the Court, he cannot turn round on appeal and claim that he was not given a fair hearing. Such a party does not deserve further indulgence. There must be an end to litigation.

On the facts, both the trial Court and the Court of Appeal have found, based on the Defendants' admission, that the Plaintiff has proved his case.

In the light of the foregoing reasons and also the fuller reasons given by my learned brother Musdapher, J.S.C., I also allow this appeal with costs as awarded.

Judgment delivered by
George Adesola Oguntade, J.S.C.

I have had a preview of the judgment just delivered by my learned brother Dahiru Musdapher, J.S.C. I agree with his reasoning and conclusion and I subscribe to the order of costs.

Judgment delivered by
Ikechi Francis Ogbuagu, J.S.C.

I have had the privilege of reading before now, the lead judgment of my learned brother, Musdapher, J.S.C., just delivered.

From the painstaking and detailed exposition of the facts in this case leading to the instant appeal, I entirely agree with the reasoning and conclusion that the appeal has merit and succeeds. I will therefore, be brief in my own contribution at least by way of emphasis.

Before going into the merit of the appeal, I will deal with the Preliminary Objection raised by the Respondents at page 5 of their Brief of Argument as to the competence of the appeal. I note however, that during the oral hearing of the instant appeal on 2nd May 2006, the learned Counsel for the Respondents, never breathed or said a word about the said objection. It was never raised. On the authorities, it is deemed abandoned and therefore, the Court or I will discountenance it. In my judgment in the case of Magit v. University of Agriculture, Makurdi & 3 Ors. reported in (2005) 19 NWLR (Pt. 959) 211 @ 238-239; (2005) 12 S.C. (Pt. 1) 122 @ 130 '131; (2005) 12 SCNJ. 203 @ 215-216: (2005) 12 SCM 226 @ 237 ' 238; (2006) Vol. 133 LRCN. 46 @ 75 ' 77; (2006) All FWLR (Pt. 298) 1313 @ 1328 - 1329 and (2006) Vol. 3 MJSC 111 @ 130, I dealt at some detail, the effect or consequence of a Respondent to an appeal who has raised in his Respondent's Brief, a Preliminary Objection but who failed/neglected/refused to seek the leave of the Court to move the objection before the hearing of the substantive appeal. The effect or consequence, is that the said Preliminary Objection, is deemed to have been abandoned and the Court will ignore or discountenance it. This is why I have discountenanced the said Preliminary Objection.

I note that Mr. Anachebe - the leading Counsel for the Respondents, did not file a Reply to the Brief of Argument filed by the party interested and so, he was not justified at the hearing of the appeal, in objecting to the participation of the party interested on the ground that 'they had been adjudged trespassers'.

Now, to the main appeal. I must confess that this matter has given me some concern. The reason is borne out from the said facts in the said lead judgment. I say no more. However, since the appeal succeeded in the Court below only in respect of Issue 3, I will deal with the said issue, which from the Briefs of the parties, are Issues Two and Three of the Appellant, and it is also Issue No 1 of the Party Interested. It is also, the lone issue of the Respondents.

In the Appellant's Brief, Issue three, reads as follows:

'Whether the Court of Appeal erred remitting this suit to the trial Court for a re-trial after it held that the Plaintiff/Respondent as (sic) (meaning has) proved its case in the Court below'.

My answer straight away is rendered in the affirmative. For the avoidance of doubt, the Court below - per Ogebe, J.C.A., at pages 187 - 188 of the Records, had this to say, inter alia,

'On the 4th issue the Appellants contend that the Respondent did not prove the claim even on the minimum proof and should not have been granted the reliefs claimed.

I do not agree with this submission. My simple answer is found in the pleadings. Paragraphs 3 - 4 of the Amended Statement of Claim read as follows:

'3. The Defendant is the person to whom the then Government of Eastern Nigeria granted a lease in respect of the said land for a term of seven (7) years with effect from f January, 1965 to 31st December, 1971. The said lease was registered as No 7 at page 7 in Volume 398 of the Register of Lands now in Port Harcourt. The plaintiff shall rely on the said lease at the trial of this action.

4. The said lease expired in 1971 and was never renewed in favour of the 1st Defendant or anybody and consequently reverted to the Rivers State Government'.

'These paragraphs were admitted by the Appellants in their amended Statement of Defence and Counter-claim of 2nd Defendant in paragraph 2 thereof thus: 'The Defendants admit paragraphs 2, 3 and 4 of the amended Statement of Claim.....'.

'It is trite law that what is admitted need no further proof. See Suffanu & Ors. v. Animashaun & Ors. (2000) 14 NWLR (Pt. 688) 650 at Pg. 663. With this admission and the evidence of P.W. 1, one cannot say that the Respondent did not prove his case in the lower Court'.

[the underlining mine]

I note that the learned trial Judge, at page 102 lines 7-9 of the Records, found that the Appellant proved its case. His words: 'I am satisfied that the Plaintiff has proved its case and is therefore entitled to the relief claimed.....'.

So, in view of these findings of fact and the holding, what was the reason for remitting the case to the trial Court for re-trial, I or one may ask' Surely, there was nothing to re-try! In fact, see the observation of Nnaemeka-Agu, J.S.C., in the case of Onifade v. Alhaji Olayiwola & 2 Ors. (1990) 7 NWLR (Pt. 161) 130 @ 160; (1990) 11 SCNJ. 10, as to the propriety in ordering a re-trial. In summary therefore, the Court below, having found as a fact that the Appellant, was/is entitled to judgment at the trial Court on the facts admitted by the Defendants/Respondents, the issue of a retrial, certainly did not arise, and I so hold.

Now, as to the consistent absence of the Defendants/Respondents and their learned Counsel and the regular/frequent applications for adjournment in spite of the extreme magnanimity and over indulgence of the learned trial Judge, let me refer to a few cases in order to completely debunk, the assertion by the Respondents, that there was denial of fair hearing because according to them and the Court below that stated at page 187 of the Records, inter alia, as follows:

'However, the Court having adjourned the case beyond the 7th of April, 1998 when the Appellants had notice of hearing of the case, had a duty to notify them of the subsequent adjournment .....'.

The case of Ntukidem v. Oko (1986) 5 NWLR (Pt. 45) 909 at page 922 S.C. - per Aniagolu, J.S.C., was referred to and partly reproduced. In the case of Taiwo Ajani v. Situ Giwa (1986) 3 NWLR (Pt. 32) 797 @ 806 - 807 S.C. - Oputa, J.S.C., held as follows:

'Section 33(1) guarantees the Plaintiff a fair hearing of his case within a reasonable time which constitutional guarantee should never ever be held hostage by the laziness, tardiness or delaying tactics of Defence Counsel .....'

[the underlining mine]

Holding the Court to ransom in the above case, was described by the learned Jurist, as 'an intolerable situation indeed'.

It is now firmly settled that the Courts, do not aid the indolent. The principle or rule comes into play, only where a party is denied any opportunity to be heard. It is not applicable to a Defendant, who fails to appear to defend an action against him. See Shahimi v. Akinola (1993) 5 NWLR (Pt. 294) 434 C A. In Ekrebe v. Efeizonor (1993) 7 NWLR (Pt. 307) 588 C.A, it was held that a Defendant who fails to come to Court to defend an action against him, cannot complain of denial of fair hearing under Section 33(1) of the 1979 Constitution. In any case, the decision whether or not to grant an adjournment, it has been held, is at the discretion of a Court. Once that discretion is properly and judicially and judiciously exercised, an appellate Court will not interfere. See the cases of Odusote v. Odusote (1971) 1 NMLR 228 @ 231, 232; Solanke v. Ajibola (1986) 1 ANLR 46, (1967) NSCC Vol. 5 page 40 @ 44, 46 and Awani v. Eyejuwa II (1976) S.C. 307 just to mention but a few.

In the case of Kaduna Textile Ltd. v. Umar (1994) 1 NWLR (Pt. 317) 143@ 159 C.A. Achike, J.C.A. (as he then was), stated inter alia, as follows:

' The question is, is it fair and just to the other party or parties as well as the Court that a recalcitrant and defaulting party should hold the Court and the parties to ransom' Should the business of the Court be dictated by the whims and caprices of any party' I think not. It goes without saying that justice must be even handed, for the law is no respecter of persons'.

[the underlining mine]

Surely and certainly, it is a Latin maxim that Interest Reipublicae ut sit finis litium - There must, in the public interest be an end to litigation. See the cases of Ara v. Fabohunde (1983) 2 S.C. 75 @ 83 - per Aniagolu, J.S.C. and Nwadike & Ors. v. Ibekwe & Ors. (1987) 12 S.C. 14, (1987) 11-12 SCNJ. 12. Indeed, it is settled, that a defendant, cannot benefit from his own default. See the case of Chief Ekanem & 2 Ors. v. Chief Akpan & 2 Ors. (1991) 8 NWLR 211 (Pt. 211) 616 @ 634 C.A. - per Uwaifo, J.C.A. (as he then was). In the instant case, the Respondents in particular, and their learned Counsel, have only themselves to blame.

In conclusion, I too, find merit in this appeal. I also allow it. I abide by the consequential orders in respect of costs contained in the said lead judgment of my learned brother, Musdapher, J.S.C.