

# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC95/2003

**Petitioner:** Shell Petroleum Development Company Nigeria Limited, Victor A.

And

**Respondent:** X. M. Federal Limited, Humanitex Nigeria Limited

Date Delivered: 2006-07-14

**Judge(s):** Idris Legbo Kutigi, Niki Tobi, Mahmud Mohammed, Walter Samuel Nkanu Onnoghen, Ikechi Francis Ogbuagu

## **Judgment Delivered**

I should have had no difficulty or hesitation, in dismissing this appeal brevi manu on a 'Bench Ruling', on the ground that it is absolutely frivolous in the extreme. But as usual, this Court, being the apex Court of the land, I am constrained to deal with the appeal, on its merit having regard to the issues formulated by the parties in their respective Briefs of Argument for determination.

This is an appeal against the decision of the Court of Appeal, Lagos Division (hereinafter called 'the Court below') - delivered on 4th February, 2003 dismissing the Appellants' appeal from an interlocutory decision of the Federal High Court in its Ruling delivered on 8th October, 1998.

I will in summary and for the avoidance of any doubt, state briefly, as follows:

The Respondents, as plaintiffs in the Federal High Court, Lagos on 26th July 1995 filed a Writ of Summons together with a Statement of Claim, claiming against the Defendants/Appellants, a declaration and an order of perpetual injunction. The Appellants in reaction challenged the competence of the said suit in limine - praying that the suit be struck out or dismissed on the ground that no reasonable cause of action was disclosed.

After hearing arguments from both learned Counsel for the parties, the learned trial Judge - Odunowo, J. in a considered Ruling delivered on 12th June 1996, dismissed the application.

I note that the Respondents filed a fresh Statement of Claim on 21st June 1996, after pleadings had been ordered by the trial Court. The Appellants on 15th November 1996 filed their Amended Statement of Defence. Notwithstanding the said Ruling of 12th June 1996, the Appellants on 27th January 1997, filed a fresh application seeking,

'An order dismissing or alternatively striking out the Plaintiff's Writ of Summons and Statement of Claim on the ground that the Court lacks jurisdiction to hear the suit'.

The ground for the application is stated to be,

'.....that the plaintiff's (sic) Writ of Summons and Statement of Claim disclosed no reasonable cause of action'.

See page 38 of the Records. It could be seen at once, that this ground, is similar to the application that gave rise to the said Ruling of 12th June 1996.

The Respondents, filed a Preliminary Objection and prayed that,

'.....the prayer being sought in the said motion dated 27th January 1997 had been distinctly raised and determined by the Federal High Court in its Ruling delivered on the 12th June, 1996 and cannot be relitigated in this civil suit'.

One of the arguments proffered by the Appellants at the hearing of the Objection, was/is that 'the ruling of the 12th June, 1996 was delivered without jurisdiction. However, the learned trial Judge, after hearing arguments on both the application and the Preliminary Objection, on 8th October 1998, in a considered Ruling, dismissed the Appellants' said application. He finally stated at page 14 of the Records, as follows:

'.....after a sober reflection on the facts, arguments and circumstances of this application, I have no difficulty whatsoever in reaching the conclusion that the defendants' motion is lacking in merit and it is hereby dismissed. It follows that the plaintiffs' preliminary objection succeeds and it is accordingly hereby upheld. The case shall proceed to trial as previously scheduled. '..'

That is to say that before the Appellants brought their said second application, the learned trial Judge, had fixed the case for hearing to 30th October 1996, as the parties had filed and exchanged their pleadings. But the Appellants refused to abide by the said fixture. They filed an appeal to the Court below, not against the earlier Ruling of 12th June 1996, but against the said later Ruling of 8th October 1998.

I note that before concluding the said Ruling of 8th October 1998, the learned trial Judge at pages 13 and 14 of the Records, stated, inter alia, as follows:

'Firstly, I have no doubt that the defendants' motion of 27th January 1997 is virtually the same as the earlier one which culminated in my ruling of 12th June 1998.....'

'Secondly, it will be recalled that the matter had earlier been set down for trial on 30th October 1996, which date was subsequently postponed to 30th January 1997 for settlement or trial. It was after that date that the defendants brought their curious motion of 27th January 1998. All the authorities are in agreement that once issues have been joined, the objection based on want of reasonable cause of action is no longer available. So long as the Statement of Claim discloses some cause of action, the application to strike out the action cannot succeed on the grounds that the case is weak and not likely to succeed .....

Finally, Mr. Ademola is quite right in his submission that the defendants are estopped from bringing the present application, especially since by the 'said application was filed issues had already been joined by the parties .....

(The underlining mine)

The Court below - per Oguntade, JCA (as he then was) at pages 158, 159 and 160 of the Records, stated inter alia, as follows:

'It seems to me that the defendants are merely chasing shadows here rather than substance. They appear to be clinging to technicality at the expense of justice. The important thing to consider is the substance or the material in the two statements of claim .....

In the ruling delivered on 8-10-98, the lower Court declined to consider the latter application by the defendants on the ground that it had considered in the ruling delivered on 12-6-96 the matters agitated by the latter application brought by the defendants. The defendants' appeal is against the ruling of 8-10- 98 and not against the ruling of 12 - 6 - 96.

Clearly therefore, the defendants cannot be allowed to use the appeal against a ruling of 8 -10 - 98 as a platform to attack the ruling made on 12 - 6 - 96. Appellants' issue 3 is therefore struck out.

This appeal has no merit. It is dismissed with N8, 500.00 costs in favour of the respondents'.

Dissatisfied with the said decision of the Court below, the Appellants have appealed to this Court on five (5) grounds of appeal. I note that the 5th ground, is also numbered 4. The Appellants have formulated three (3) issues for determination, namely:

'2.1. Whether or not the Court below was not in error in holding that the Appellant's application challenging the jurisdiction of the Court constitutes an abuse of Court process which thereby precludes the Court from entertaining the

application' Grounds 2 and 5.

2.2. Whether the Federal High Court has the jurisdiction to determine and grant the reliefs claimed by the Respondents in that Court'

2.3. Whether the Court of Appeal was not in error when it struck out the Appellants' issue No. 3 (which raised a jurisdictional issue) on the sole ground that the appeal before it was not filed against a decision of the trial Court which had determined that issue against the appellants'.

The Respondents also formulated three issues for determination namely,

#### '4.01 Issue One

Whether or not the Court of Appeal was in error in holding that the Appellants' application challenging the jurisdiction of the trial Court for want of reasonable cause of action, after issues had been joined and the matter even set down for trial, constituted an abuse of the Court's process.

#### 4.02 Issue Two

Whether or not the Court of Appeal was right in holding that the Federal High Court has the statutory jurisdiction to entertain this suit arising out of and relating to arms license upgrade and importation of arms and ammunition.

#### 4.03 Issue Three

Whether or not the Court of Appeal was in error when it struck out the Appellants' issue No. 3 for not arising from the ruling appealed against at the Court of Appeal'.

As can be seen from the said issues of the parties, although differently worded, they are similar in substance. However, in my respectful view, the only issue that is germane or relevant in the determination of this appeal is Issue 3 of the parties. I have earlier in this judgment gone through in some detail, what transpired in the 'history' of the subject matter of this appeal. For the avoidance of doubt, the appeal to the Court below was against the said Ruling of the trial Court of 8th October 1998 and not that of 12th June 1998. I have earlier in this judgment, reproduced part of the pronouncement of the Court below at page 160 in particular in support of this fact that rather than the Appellants appealing against the

Ruling of 12th June 1998, laboured in vain, so to speak and proceeded to appeal against that of 8th October 1998 which was a Ruling that the trial Court refused to revisit a subject-matter of the latter application of the Appellants which it had already decided and ruled upon. Period! In other words, until the decision of the trial Court of 12th June 1998 is appealed against and set aside by the Court below, that decision subsists and is binding on the Appellants in particular or the parties in general. Surely, the Court below was justified and right in my respectful view, in its holding that the trial Court's decision that the decision of 12th June 1996 operated as an estoppel to bar the Appellants from making the application of 2nd January, 1997 which gave rise to the Ruling of 8th October, 1998. I so hold.

Since I am unable to fault the decision of the Court below in this regard, I have no option than to dismiss this appeal for being unmeritorious and not worthy of my wasting further time and energy, in considering and determining the other two (2) issues of the parties which become or are non-issues at all in the circumstances.

However, in conclusion, I wish to state that it has been firmly settled in a line of decided cases, of what 'a reasonable cause of action' means. In the case of *Dr. Irene Thomas & Ors. v. The Most Rev. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 @ 682, the term, was defined as a cause of action with a chance of success - per *Obaseki, J.S.C.*

When does a claim, disclose a reasonable cause of action' In the case of *Republic of Peru v. Peruvian Guano Co.* 35 Ch. D. 495, *Chitty, J.* said inter alia,

'There is some difficulty in affixing a practice meaning to this term in point of law " every cause of action is a reasonable one'.

Now, what then is a cause of action' Lord Esher, M. R. in the case of *Read v. Brown* (1888) 22 Q.B.D. 128 @ 131/151 stated what the term denotes or means thus:

'Every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to be proved'.

This Court in the case of *Lasisi Fadare & Ors. v. Attorney General of Oyo State* (1982) 1 ANLR (Pt. 1) 24 @ 41 - per *Aniagolu J.S.C.*, referred to the above definition.

In the case of *Amodu v. Dr. Amode & Kwara State College of Technology* (1990) 5 NWLR (Pt. 150) 356 @ 367; (1990) 9 SCNJ. 1 @ 8-9, cause of action, was described to mean,

'all those things necessary to give a right of action whether they are to be done by the plaintiff or a third person'.

The Court referred to the case of *Harnaman v. Smith* (1855) 10 Exch. 659 @ 666 - per *Parker, B.* See also the case of

Ayanboye & 2 Ors. v. Balogun (1990) 9 SCNJ. 23 @ 33.

In the case of Chief Afolayan v. Oba Ogunrinde & 3 Ors. (1990) 1 NWLR (Pt. 127) 369 @ 371; (1990) 2 SCNJ 62, Karibi-Whyte, J.S.C. stated that a cause of action means,

- '(a) a cause of complaints
  
- (b) a civil right or obligation for the determination by a Court of law
  
- (c) a dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine'.

His Lordship further stated that it is a factual situation, which enables one person to obtain a remedy from another in Court with respect to injury. That it consists of every facts which it would be necessary for the plaintiff to prove, if traversed in order to support his right to judgment. See also the case of Ogbini v Mrs. Beauty Ololo & 3 ors. (1993) 7 SCNJ. (Pt. II) 447 @ 454 - by the learned Jurist referring to some other cases in this regard.

In the case of Attorney-General, Kwara State & 2 ors. v. Olowole (1993) 1 NWLR (Pt. 272) 645 @ 663, (1993) 1 SCNJ. 208 @ 221, Nnaemeka-Agu, J.S.C., observed as follows:

'I would be content in this respect to adopt the definition of the expression by Diplock, L.J. in Letank v. Cooper (1965) 1 Q.B. 222 @ 242 where he defined it as -

'..... simply a factual situation, the existence of which entitles one person to obtain from the Court, a remedy against another person'.

In the earlier case of Oshoboja v. Amuda & Ors., (1992) 7 SCNJ. (Pt. II) 317 @ 336, this Court again, thoroughly dealt with this issue. It held also that a reasonable cause of action means a cause of action with some chances of success, when only the allegations in the Statement of Claim are considered. For cause of action, it cited or referred to several other cases in this regard.

Finally, (although I can go on and on), in the case of Drummond Jackson v. British Medical Associations & Ors. (1970) 1 WLR 668 @ 696 C.A., Lord Pearson stated as follows:

'First there is in paragraph (1) (a) of the rule, the expression 'reasonable cause of action' to which Lindley, M.R. called attention in *Hubbeck & Sons Ltd. v. Wilkenson, Hey wood & Clark Ltd.* (1899) 1 Q. B. 86 pp. 90-91. No exact paraphrase can be given, but I think 'reasonable cause of action' means a cause of action with some chance of success when (as required by paragraph (2) of the rule) only the allegations in the pleading are considered, if it is found that the alleged cause of action is to fail, the statement of claim should be struck out'.

See recently, the case of *Attorney General of the Federation v ANPP & 2 Ors.* (2003) 12 SCNJ. 67 @ 83 - per Tobi, J.S.C.

In *Obi Okoye ' Essays on Civil Proceedings, page 224 Art 110, defined it thus '*

'By a cause of action is meant any facts or series of facts which are complete in themselves to found a claim or relief'.

See also the case of *Dyson v. Attorney General* (1911) 1 K.B. 410 @ 419 - per Multon, L.J. and *Bullen & Leak & Jacobs Precedents of Pleadings 12th Edition page 142* and the cases referred to therein.

I say no more. But I believe the learned Counsel for the Appellants, 'may' see, if the learned trial Judge's decision, was on a sound footing or not.

Costs follow the event. The Respondents are entitled to costs fixed at N10,000.00 (ten thousand naira) payable to them by the Appellants.

Judgment delivered by

Idris Legbo Kutigi, J.S.C.

I read before now the judgment just delivered by my learned brother Ogbuagu, JSC. I agree with him that the appeal lacks merit. It is really a hopeless appeal, which should not have been brought in the first place. It is probably a tactic to delay the trial of the case. I endorse the order for costs.

Judgment delivered by

Niki Tobi. J.S.C.

I have read in draft, the judgment of my learned brother, Ogbuagu, J.S.C. and I agree with him. The respondents as plaintiffs instituted an action at the Federal High Court, Lagos claiming eight reliefs against the defendants/appellants. They also filed along with the writ of summons, the Statement of Claim. This was on 24th July 1995. The appellants filed an application on 22nd September 1995 praying the Court to strike out the action on the ground that the Statement of Claim did not disclose a reasonable cause of action. The application was dismissed by the learned trial Judge on 12th June 1996 on the ground that the Statement of Claim filed by the respondents contravened Order 31 Rule 1 of the Federal High Court (Civil Procedure) Rules 1976 as it was filed without an Order of Court.

The respondents filed a fresh Statement of Claim on 21st June 1996 after pleadings had been ordered by the Court. The appellants filed their Amended Statement of Defence on 15th November 1996. On 27th January 1997, the appellants filed a fresh application for an order 'dismissing or alternatively striking out the Plaintiffs' Writ of Summons and Statement of Claim on the ground that the Court lacks jurisdiction to hear the suit.'

The respondents filed a preliminary objection to the hearing of the application on the ground that a similar application had been heard and determined by the Court. On 8th October 1998, the learned trial Judge dismissed the application on the following grounds:

- '1. The application of 27th January, 1997 being similar to that of 22nd September 1995 could not be revisited.
2. The appellants having filed a Statement of Defence and thereby joining issues with the plaintiffs/respondents could not have the issues raised in the application set down for argument.'

Appeal to the Court of Appeal was dismissed. That Court struck out appellants' Issue No. 3. This is a further appeal to this Court. Although both parties formulated three issues each for determination, I am in agreement with my learned brother that the third issue of each party is enough to take care of this appeal. That issue in the appellants' brief reads:

'Whether the Court of Appeal was not in error when it struck out the Appellants' Issue No. 3 (which raised a jurisdictional issue) on the sole ground that the appeal before it was not filed against a decision of the trial Court which had determined that issue against the appellants.'

It is clear from the above that the learned trial Judge gave two Rulings dated 12th June 1998 and 8th October 1998. The Court of Appeal took the 8th October 1998 Ruling which was before it. It did not take the 12th June 1998 Ruling which was not before it.



It is elementary law that parties are bound by decision of a Court of law unless an appeal is filed and subsequently decided otherwise. This is based on the principle of law that parties who submit themselves to the jurisdiction of the Court must accept the decision of the Court. Where a party reneges or tries to pull out from the result of the litigation by way of judgment, the winning party can initiate enforcement procedure to obtain the real fruits of the judgment. In law, a subsisting decision of a Court of law can, in appropriate situations, operate as estoppel.

In conclusion, the appeal is dismissed as it lacks merit. I award N10,000.00 costs to the respondents.

Judgment delivered by

Mahmud Mohammed, J.S.C.

I have had the privilege of a preview of the judgment, which has just been delivered by my learned brother, Ogbuagu J.S.C. I am respectfully in full agreement with his reasoning and conclusion in resolving the issues arising for determination in this appeal, which I hereby adopt as mine. I have nothing useful to add.

Accordingly, I also dismiss the appeal with N10,000.00 costs to the Respondents.

Judgment delivered by

Walter Samuel Nkanu Onnoghen, J.S.C.

This is an appeal against the judgment of the Court of Appeal sitting in Lagos in appeal No. CA/L/174/99 delivered on 4th February 2002 in which it dismissed the appeal of the appellants against the ruling of the Federal High Court, sitting in Lagos in suit No. FHC/L/CS/849/95 delivered on 8th October 1998.

In paragraph 24 of the Statement of Claim, the present respondents, who are plaintiffs in the trial Court, claimed the following reliefs:

'24. Whereof the plaintiffs claim jointly and severally against the defendants as follows:

1. A Declaration that there are two valid contracts existing between the Plaintiffs and the Defendants made in writing and dated 1st December, 1993, 18th April 1994 and 17th August 1994 for purchase of ammunition and weapons.
2. An order of specific performance of the contract between the Plaintiffs and the Defendants.
3. Damages for breach of contract.

PARTICULARS:

- (i) 20% of \$548,798.51 being the first contract value between the 1st defendant and the 1st plaintiff that is, \$109,760.00 or its equivalent at the prevailing market rate.
  - (ii) 20% of \$869,648.51 being the second contract value between the 1st defendant and the 1st plaintiff that is, \$173,810.00 or its Naira equivalent at the prevailing market rate.
  - (iii) General Damages in the sum of \$20 million for transport, feeding, accommodation, etc.
  - (iv) General Damages in the sum of \$39,897.75 for detailed expense report or its Naira equivalent at the prevailing market rate.
4. An order of perpetual injunction restraining the Defendants whether by themselves or by their servants or agents or otherwise from entering into the same contract with anybody or agent in respect of purchase of ammunition and weapon as aforesaid or for any other purpose whatsoever
  5. Alternatively, an inquiry into what damages have been suffered by the plaintiffs by reason of the defendants' unilateral repudiation of the Materials Requisition/ Purchase Order of the 24th day of June, 1994, as well as other expenses/costs incurred by the Plaintiffs on behalf of the Defendants in respect to the procurement of approvals for the weapons upgrade and import.

6. Further or in the alternative an account of profits made by the Defendants whether by themselves or their servants or agents or otherwise for use of such approval or any part thereof.
  
7. Payment of the amount certified in answer to such inquiry or account as aforesaid demanded in paragraphs 5 and 6 hereof
  
8. Exemplary, aggravated and special damages against the Defendants including costs'.

The reaction of the defendants upon service of the statement of claim on them is to file an application, praying the trial Court to strike out the claim of the plaintiffs on the ground that no reasonable cause of action was disclosed therein.

On the 12th day of June, 1996 the trial Judge, Odunowo, J., dismissed the application in a considered ruling in which he stated, inter alia, as follows: -

'Unfortunately pleadings are yet to be ordered pursuant to order XXXI Rule 1 of the Federal High Court (Civil Procedure) Rules 1976. Careful perusal of the record reveals that a statement of claim was purportedly filed without authority as far back as 26th July 1995 but there is nothing in the file to indicate that copies were served on the defendants. It is therefore not surprising that the defendants could not have filed their statement of Defence since neither side sought an order for pleadings. Nonetheless I am prepared to regard this lapse as an irregularity for the purpose of the present application since both sides have presented their arguments on this hypothesis.

I have looked at both the writ and statement of claim and it is quite obvious that the sole claim consists of a declaration and various other consequential reliefs. I have no difficulty in coming to the conclusion that the present application by way of demurrer is clearly misconceived because all the plaintiffs are seeking from this Court is a judicial pronouncement on the nature of the legal transaction between the parties'.

(Emphasis supplied)

The above passage clearly shows that though the statement of claim was filed without a prior order of pleadings being made by the trial Court as required by the relevant rules of the Court and therefore, irregularly filed, the trial Court nonetheless waived the irregularity and proceeded to consider the application on its merit and dismissed same.

However, despite the above ruling of the Court, the defendants filed another motion on 27/1/97 calling on the trial Court

to dismiss or strike out the action on the ground that the Court lacked the jurisdiction to hear the suit and that the statement of claim disclosed no reasonable cause of action. In reaction to that motion, the plaintiff filed a preliminary objection praying the Court that:

'...the prayer being sought in the said motion dated 27th January 1997 has been distinctly raised and determined by the Federal High Court in its Ruling delivered on the 12th June, 1996 and cannot be relitigated in this civil suit'.

On the 8th day of October 1998, the trial Court delivered a ruling on the application and dismissed the defendants' application on the ground that the defendants are estopped by the ruling of 12th June 1996 from bringing a fresh application. The defendants were not happy with that ruling and consequently appealed to the Court of Appeal, which as I earlier stated in this judgment, dismissed the appeal resulting in the present further appeal to this Court.

Learned Counsel for the appellants has formulated the following three issues for determination: -

"2.1 Whether or not the Court below was not in error in holding that the appellants' application, challenging the jurisdiction of the Court constitutes an abuse of Court process which thereby precludes the Court from entertaining the application' Grounds 2 and 5.

2.2 Whether the Federal High Court has the jurisdiction to determine and grant the reliefs claimed by the Respondents in that Court.

2.3 Whether the Court of Appeal was not in error when it struck out the appellants' issue No. 3 (which raised a jurisdictional issue) on the sole ground that the appeal before it was not filed against a decision of the trial Court which has determined that issue against the appellants'.

Learned senior Counsel for the appellants Seeni Okunloye Esq, SAN (now late), submitted that the subject matter of the suit being an action for a simple breach of contract is not one over which the Federal High Court can assume jurisdiction, that the ruling of the trial Court made on 12th June 1996 dismissing the application of 22nd September 1995 was not made on the merit as no proper statement of claim was before the Court as at the day argument were heard thereon, that in the light of the above appellants were not barred from bringing a similar application the moment a proper statement of claim is filed; that the statement of claim does not disclose a reasonable cause of action particularly as the basic ingredients of a valid contract are missing and urged the Court to allow the appeal.

On the other hand learned Counsel for the respondents, Tete Michael Adam Esq. submitted that the Court of Appeal was right in holding that the application of 20/1/97 ought not to have been filed having regard to the extant decision of the trial Court made on 12/6/96 and that the said application under the circumstance amounts to abuse of process apart from the decision of 12/6/96 operating as an estoppel since no appeal was filed against same, that the trial Court has

jurisdiction in the matter before it and that the ruling of 12/6/96 was on the merit. Finally, learned Counsel submitted that the Court of Appeal is right in striking out issue No. 3 which dealt with the question of non-disclosure of a reasonable cause of action which question was not part of the determination of the trial Court in the ruling of 8/10/98 which was the subject matter of the appeal before that Court and urged the Court to dismiss the appeal.

From the facts as revealed in this judgment, it is very clear and I hereby hold that this is a very needless appeal. There is no disputing the fact that there is no appeal against the earlier decision of the trial Court on a very similar application made by the appellants.

That decision was made on 12/6/96, part of which has earlier been reproduced in this judgment. In that ruling the learned trial Judge specifically stated that though the statement of claim relevant to the application then being considered was not filed in accordance with the rules of Court thereby rendering the same irregular, the Judge proceeded to exercise the discretion conferred on him by the Rules to waive the irregularity for the purpose of the application particularly as both parties had treated the said statement of claim as if it was regular and argued their respective cases on that understanding. The trial Judge then proceeded to consider the merit of the said application and dismissed same. At the risk of repetition, I reproduce part of that ruling hereunder: -

'I have looked at both the writ and the statement of claim and it is quite obvious that the sole claim consists of a declaration and various other consequential reliefs. I have no difficulty in coming to the conclusion that the present application by way of demurrer is clearly misconceived because all the plaintiffs are seeking from this Court is a judicial pronouncement on the nature of the legal transaction between the parties'.

Learned Counsel for the appellants did not appeal against that ruling which ruling, it is my respectful view constitutes in law, what is called estoppel and I hold that the lower Court is correct in so holding. It is important to note that though learned Counsel for the appellants did not appeal the above ruling but that of 8/10/98 which did not decide the merit of the application as a result of the preliminary objection being sustained, yet he proceeded to formulate issue No. 3 before the lower Court which states thus: -

'3. Whether or not the writ of summons and statement of claim filed by the Respondent/ plaintiffs discloses a reasonable cause of action - Ground 4.'

It is clear from the above that learned Counsel was trying to bring in that issue, which never arose from the decision appealed against, through the back door and I hold the view that the lower Court was right in refusing to entertain and determine same. It is settled law that a decision of a Court not appealed against remains valid, subsisting and binding between the parties and is presumed acceptable to the parties. The learned trial Judge did go further in the ruling of 12/6/96 to hold, still on the reasonable cause of action, thus: -

'Until this case is fully explored, it is premature, if not impossible to conclude that the plaintiffs have no reasonable cause of action against the defendants. To that extent we are obliged to accept the truth of all the allegations of fact (which is

usual in a demurrer proceeding) contained in the plaintiffs' statement of claim. That being so, the application under Order XXVII fails'.

In conclusion, I agree with my learned brother Ogbuagu, J.S.C. in the lead judgment that this appeal is devoid of merit and should be dismissed. I accordingly dismiss same with costs as contained in the said lead judgment and abide by any other consequential orders therein contained.

Appeal dismissed for the respondents.

Counsel

Olu Daramola, Esq.

with

Messrs Simon Onu

I.E.K. Ogunwumijo. .... For the Appellants

Elete Michael Adam Esq.

with

Comfort I. Enejo (Miss) ..... For the Respondents