

APPEAL

APPEAL – Findings made by court not backed by evidence – whether challengeable on appeal under omnibus ground SPARKLING BREWERIES V U.B.N 2001 89 LRCN 2564.

APPEAL – Omnibus ground – Postulates that there was no evidence which if accepted would support the finding of the learned trial judge of the inference which he made N.T.A V ANIGBO 1972 5 SC 156; SPARKLING BREWERIES V UBN 2001 89 LRCN 2564 at 2579.

APPEAL – Issue not raised at lower court whether can be raised on appeal without leave UOR V LOKO 1988 2 NWLR Pt. 77 430 POPOOLA V ADEYEMO 1992 8 NWLR Pt. 257 1; HONIKA SAWMILL V HOFF 1994 2 NWLR Pt. 326 P.252; ROCKONOH PROPERTY CO. V NITEL 2001 89 LRCN 2602 at 2603.

APPEAL – Court of Appeal Rules – Ord. 3 r 2 (1) – Requirement of – Leave granted by Court of Appeal to appellant to file amended Notice of Appeal – Amended notice of appeal not filed but argued in brief of argument – Brief is incompetent – KOREDE V ADEDOKUN 2001 90 LRCN 2700; OGBEIDE V ONOCHIE 1988 1 NWLR 370 at 482; OSINUPEBI V SAIBU 1982 7SC 104.

APPEAL – CONCURRENT FINDINGS OF FACT – The Appellate Court will not interfere unless there is error on the face of the record occasioning a miscarriage of justice – CHUKWUOGOR V OBUORA 1987 3 NWLR Pt. 61; WOLUCHEM V GUDI 1981 5 S.C 319 at 326 – 330; OVERSEAS CONSTRUCTION CO. Nig. LTD. V CREEK ENTERPRISES (NIG) LTD. 1985 3 NWLR Pt. 13, 407, KENOM V TEKAM 2001 90 LRCN 2821

APPEAL – GROUNDS OF APPEAL FROM WHICH ISSUES FOR DETERMINATION ARE FORMULATED – ARGUMENT NOT BASED ON – TREATMENT OF – AKPAN V STATE 2001 90 LRCN 2849.

APPEAL – ISSUES FOR DETERMINATION NOT COVERED BY GROUND OF APPEAL – An appellate court can only hear and decide on issues raised on the grounds of appeal filed – MANAGEMENT ENTERPRISES V OLUSANYA 1987 2 NWLR Pt. 55, 179;

ADELAJA V FANOIKI 1990 2 NWLR Pt. 131 137 at 148; A.G ANAMBRA STATE V ONUSELOGU ENTERPRISES LTD 1987 4 NWLR Pt. 66 547;

AFRICAN PETROLEUM LTD V J.K OWODUNNI 1991 8 NWLR Pt. 210, 391;

ACHIAKPA V NDUKA 2001 90 LRCN 2865.

APPEAL – CONCURRENT FINDINGS OF FACT – An appellate court will not interfere except there is a miscarriage of justice or violation of some principles of law or procedure ACHIAKPA V NDUKU supra; NATIONAL INSURANCE CORP. OF NIG. V POWER AND INDUSTRIAL ENGINEERING Co. LTD 1986 1 NWLR Pt. 14 1 at 36;

MORA V OKONKWO 1987 3 NWLR Pt. 60 314 at 321; IGWEGO V EZEUGO 1992 6 NWLR Pt. 249 561 at 574.

APPEAL – ORDER OF RETRIAL – May be made where there has been an error in law or an irregularity in procedure of such a nature that on the one hand the trial was not rendered a nullity and on the other hand, the court is unable to say that there has been no miscarriage of justice BAKARE V APENA 1986 4 NWLR Pt. 33. 1; ABIBU V BINCETU 1988 1 NWLR Pt. 68, 57;

FADLALLAH V AREWA TEXTILES LTD 1997 51 LRCN 1739; 1997 8 NWLR Pt. 518 546.

APPEAL – EVALUATION OF EVIDENCE OF TRIAL COURT – The evaluation of evidence and the ascription of probative value to such evidence are the primary functions of the trial court which saw, heard and assessed the witnesses as they testified in the witness box – AKINLOYE V EYIYOLA 1968 NMLR 92; IKO V STATE 2001 90 LRCN 2896; AGBEJE V AJIBOLA 2002 93 LRCN 1; NZIWU V ONUORAH 2002 94 LRCN 119; LAYINKA V MAKINDE 2002 98 LRCN 1139; STATE V AJIE 2000 80 LRCN 2513; ABIDOYE V ALAWODE 2001 85 LRCN 736 HAUSA V STATE 1994 6 NWLR Pt. 350 281 at 290

APPEAL – GROUNDS OF APPEAL – COMPETENT TO INCORPORATE PARTICULARS OF ERROR IN GROUNDS – NECESSITY TO DISTILL ISSUES FROM GROUNDS – MIL. ADMIN. BENUE STATE V ULEGEDE 2001 91 LRCN 3044.

APPEAL – RETRIAL – can be ordered where there is such an irregularity that it will be unjust not to order a new trial – EXAMPLES OF SUCH IRREGULARITIES are failure to evaluate evidence – OKEOWO V MEGLIORE 1979 11 SC 138; ABIBU V BINUTU 1988 1 NWLR Pt. 68 57; EZEOKÉ V NWAGBO 1988 1NWLR Pt. 72 616.

Also where there has been a mistrial, or a substantial misdirection – ONIFADE V OLAYIWOLA 1990 7 NWLR Pt. 161 P. 130.

See generally – ISAAC AYOOLA V JINADU ADEBAYO 1969 1 ANLR 759; AWOTE V OWODUNNI (NO. 2) 1987 2 NWLR Pt. 57, 366 at 378; DURU V ONWUMELU 2001 92 LRCN 3148.

APPEAL – CONCURRENT FINDINGS OF FACT – DUTY – OLATUNDE V ABIDOGUN 2001 92 LRCN 3214.

APPEAL – REPLY BRIEF – To be limited to finding answers to questions raised in Respondents brief IKINE V EDJERODE 2001 92 LRCN 3288

APPEAL – WHETHER EVERY ERROR IS SUFFICIENT TO ALLOW – It is only when the error is substantial and has occasioned a miscarriage of justice, that an appeal will be allowed – OJENGBEDE V ESAN 2001 92 LRCN 3326; ONAJOBI V OLANIPEKUN 1985 4 S.C Pt. 2 156 at 163; AZUETONMA IKE V UGBOAJA 1993 6 NWLR Pt. 301 539 at 556; ANYANWU V MBARA 1992 5 NWLR Pt. 242, 386 at 400; AGBEJE V AJIBOLA 2002 LRCN I; STD. PRINTING & PUBLISHING LTD. V NAB LTD. (2003) FWLR Pt.137, p.1097 at 1110;

APPEAL – WHETHER WRONGFUL ADMISSION OF EVIDENCE *PER SE*, SUFFICIENT TO ALLOW APPEAL – Where the piece of evidence admitted did not affect the decision, the judgment will not be reversed – EZEOKÉ V NWAGBO 1988 1 NWLR Pt. 72, 616 at 630; UMEOJIAKO V EZENAMUO 1990 1 NWLR Pt. 126, 255 at 270; MONIER CONSTRUCTION CO. LTD V AZUBUIKE 1990 3 NWLR Pt. 136 24 at 88; IDUNDUN V OKUMAGBA 1976 9 210 SC 227 at 245;

OJENGBEDE V ESAN 2002 92 LRCN 3326.

APPEAL – RECORD OF PROCEEDINGS FAULTY – DUTY ON PARTY TO PROVE DEFECT – Must supply clearly what the proceedings actually ought to be. Not enough to simply posit that proceedings are defective – OJENGBEDE V ESAN supra.

APPEAL – RETRIAL – GUIDING PRINCIPLES – Court will not order retrial to allow a party merely to re-litigate a case – DURU V ONWUMELU 2001 92 LRCN 3148

APPEAL – REPLY BRIEF – Should be restricted to answering questions raised in Respondents brief – IKINE V EDJERODE 2001 92 LRCN 3288

APPEAL – CONCURRENT FINDINGS OF FACT OF LOWER COURT – Appeal Court will not disturb same unless a substantial error is apparent on the face of the record of proceedings or where they are perverse or unsupported by evidence – OJENGBEDE V ESAN 2001 92 LRCN 3326.

APPEAL – RAISING NEW QUESTION ON APPEAL – The Supreme Court will allow it when it involves a substantial point of law – AKPENE V BARCLAYS BANK LTD 1977 1 S.C 47; FADIORA V GBADEBO 1978 3 S.C 219, 247 – 249;
NIG. ENG. LTD. V DENAP LTD supra P. 3434;
EZE V A.G RIVERS STATE 2001 92 LRCN 3504

APPEAL – WHERE ERROR DID NOT OCCASION MISCARRIAGE OF JUSTICE – The decision of lower court cannot be reversed – ADEWUMI V A.G. EKITI supra.

APPEAL – [RETRIAL](#) – PRINCIPLES IN CRIMINAL CASE – YAHAYA V STATE 2002 94 LRCN 106.

APPEAL – CONCURRENT FINDING OF FACT – DUTY OF APPEAL COURT NOT TO INTERFERE – NZIWU V ONUORAH 2002 94 LRCN 120
JOSEPH SALIBA V RODA YASSIN 2002 94 LRCN 136;
LAYINKA V MAKINDE 2002 98 LRCN 1139
HAUSA V STATE 1994 6 NWLR Pt. 350 281 at 291

APPEAL – RECORD OF – PARTIES BOUND BY IT – The parties are bound by it and they are presumed to be correct unless the contrary is proved – SOMMER V F.H.A 1992 7 LRCN 100; 1992 1 NWLR Pt. 219 548; TEXACO PANAMA V SHELL PETROLEUM 2002 94 LRCN 157

APPEAL – APPLICATION FOR LEAVE TO APPEAL – CONDITIONS FOR GRANT – INORDINATE DELAY MAY DEFEAT APPLICATION – OLUMEGBON V KAREEM 2002 98 LRCN 1157.

APPEAL – ADDITIONAL GROUNDS – LAW GOVERNING FILING OF ORIGINAL AND AMENDED GROUNDS – The law governing the filing of an initial and amended appeal are not the same. The former is governed by the Court of Appeal Act and the latter by the Rules. Non compliance with the Act is fatal but non compliance with the Rules is a mere irregularity – SURAKATU V NIG. HOUSING DEV. SOCIETY LTD 1981 4 S.C 20; EKWERE V STATE 1981 9 S.C. 4; OGBOMO V STATE 1985 1 NWLR Pt. 2 225 at 240; TSOKWA OIL V BANK OF THE NORTH 2002 98 LRCN 1235.

APPEAL – ISSUES MUST BE BASED ON GROUNDS – IDIKA V ERISI (No 2) 1988 2 NWLR Pt. 78 563; IYAYI V EYIGEBE 1987 3 NWLR Pt. 61, 523 OMO V JSC 2000 80 LRCN 2566.

APPEAL – FRESH POINT WITHOUT LEAVE – The Court cannot consider it – OFORLETE V STATE 2000 80 LRCN 2670.

APPEAL – REVIEW OF FACTS BY APPELLATE COURT – RETRIAL OR NON SUIT – KAALIL & DIBBO TRANSPORT LTD V ODUMADE 2000 80 LRCN 2768.

APPEAL – APPLICATION FOR LEAVE TO AMEND GROUNDS – The discretion to grant leave is to be liberally exercised without injustice to the other party or undue delay to the case – SHANU V AFRIBANK 2000 81 LRCN 2973

APPEAL – DISTINCTION BETWEEN GROUND OF LAW AND FACT OR MIXED LAW AND FACT – SHANU V AFRIBANK 2000 81 LRCN 2973; NWABUEZE V N.I.P.O.S.T 20006 8NWLR Pt.983, p.480 at 491

APPEAL – EXTENSION OF TIME – [COUNSEL'S ERROR](#) – The error of counsel, if reasonable is an acceptable explanation for delay to apply for leave to appeal – AKINYEDE V THE APPRAISER 1971 I ANLR 162; DOHERTY V DOHERTY 1964 1 ANLR 299;

BOWAYE ADEDIWURA 1976 6 S.C. 143;

ALAGBE V HIS HIGHNESS S. ABIMBOLA 1978 NSCC 84;

SHANU V AFRIBANK supra P. 2978

APPEAL – WHERE PARTY CONSENTED TO IRREGULAR PROCEDURE AT TRIAL – CANNOT COMPLAIN ON APPEAL – As it is not every irregularity that will nullify proceedings, a procedure adopted by the appellant at trial which was not objected to by the respondent could not ground an appeal – OJIEGBE V OKWARANYA 1962 ANLR 605 at 608;

OBAJIMI V .A.G. W.N. 1967 1 ANLR 31;

AJANWALE V ATANDA 1988 I NNLR Pt. 68, 22;

AKHIWU V THE PRINCIPAL LOTTERIES OFFICER MIDWEST 1972 1 ANLR Pt. 1 229;

DURWODE V STATE 2000 82 LRCN 3038.

APPEAL – LEAVE TO APPEAL IN INTERLOCUTORY MATTERS – DISCRETION TO BE SPARINGLY USED – The court should not use its discretionary power of granting leave to appeal in interlocutory matters where the applicant intends to delay the substantive case – BIOCON AGROCHEMICAL V KUBU 2000 82 LRCN 3332.

APPEAL – INTERLOCUTORY APPEAL TO DETERMINE SUBSTANTIVE ISSUE – Not proper to do so – BIOCON supra 3337, 7-UP BOTTLING Co. V ABIOLA 2001 LRCN 2214

APPEAL – TAKING NEW POSITION ON APPEAL – A party cannot set up a new case different from the case made at the trial – AKUNEZIRI V OKENWA 2000 82 LRCN 3367

APPEAL – ABANDONMENT OF GROUNDS WHEN NO ISSUE FORMULATED-Failure to formulate issues means that the Appeal is abandoned ARAKA V EJEAGWU 2000 82 LRCN 3406.

APPEAL – COURT RAISED ISSUE SUO MOTU – If the court raises an issue *suo motu* without allowing the parties to address on it, it is a breach of fair hearing – ARAKA V EJEAGWU 2000 LRCN 3406; HAMBE V HUEZE 2001 84 LRCN 455.

APPEAL – AGAINST INTERLOCUTORY DECISION CAN BE INCLUDED IN APPEAL AGAINST FINAL JUDGMENT – But leave must be obtained – ONWE & ORS V OKE & ORS 2001 83 LRCN 33

APPEAL – ONUS STILL ON PROSECUTION TO PROVE OFFENCE –
Prosecution must prove beyond reasonable doubt that accused was at the scene
– ADEDEJI V STATE 1971 1 ANLR 75;
PETER V STATE 1997 48 LRCN 556; 1997 3 NWLR Pt. 496 625 at 642.
DOGO V STATE 2001 83 LRCN 179

APPEAL – MINOR ERROR – It is not every slip in a judgment that will affect
a judgment – ODOFIN ONI 2001 83 LRCN 394;
CHIME V CHIME 2001 83 LRCN 340.

APPEAL – GROUND CONTAINING ARGUMENT – This is not valid –
ADAH V ADAH 2001 84 LRCN 508.

APPEAL – GROUNDS OF LAW OR FACT – It is a ground of law alone when
the complaint can be dealt with without resort to determination of any question
of fact – M.D.P.D. T V OKONKWO 2001 85 LRCN 908

APPEAL – ACADEMIC OR SPECULATIVE ISSUES – The court should
decline to decide the point – NKWOCHA V GOVERNOR OF ANAMBRA
STATE 1984 6 S.C. 302; GOVERNOR OF KADUNA STATE V DADA 1986
4 N.W.L.R Pt. 38 687; RICHARD EZEANYA V GABRIEL OKEKE 1995 4
NWLR Pt. 388 142;
UDULUE V IBEZIM 2002 99 LRCN 1568

APPEAL – TRITE ERRORS – It is only when the error is substantial and
occasions a miscarriage of justice that the appellate court should interfere –
ONAJOBI V OLANIPEKUN 1985 4 S.C. Pt. 2, 156 at 163; AZUETONWA
IKE V UGBOAJA 1993 6 NWLR Pt. 242, 386 at 400

APPEAL – FRESH ISSUE – Need to obtain leave to file and argue same – OBIAKOR V STATE 2002 100 LRCN 1710: But where the fresh issue relates to JURISDICTION, no need for leave – OBIAKOR supra

APPEAL – DUTY OF APPELLATE COURT TO CONSIDER ALL ISSUES – EXCEPTIONS – An appellate court must consider all issues before it. Except where the consideration of one issue can dispose of the appeal – ANYADUBA V N.R.T.C. LTD 1992 5 NWLR 535; OKONJI V NJOKANMA 1991 5 LRCN 1674; 1991 7 NWLR Pt. 202 131; SANUSI V AMEYEGUN 1992 4 NWLR Pt. 237, 527; 7 UP BOTTLING CO. V ABIOLA 2001 88 LRCN 2214.

APPEAL – [RETRIAL](#) – CONDITIONS – DISTINCTION BETWEEN – NULLITY & IRREGULARITY – YAHABA V STATE 2002 94 LRCN 106

APPEAL – MIXED LAW AND FACT – LEAVE – Where the appeal is one based on mixed law and fact leave must be obtained -ABIDOYE V ALAWODE 2001 85 LRCN 736.

APPEAL – NOTICE OF APPEAL – AMENDMENT – Can be amended to meet the ends of justice – OKPALA V IBEME 1989 2 NWLR Pt. 102 208; ADELAJA V ALADE 1994 1813 LRCN 275; 1994 7 NWLR Pt. 358 537; FIRST BANK supra P. 1086.

APPEAL – GROUNDS OF FACT OR MIXED LAW AND FACTS – Leave to appeal must be obtained before filing – ORAKOSIM V MENKITI 2001 87 LRCN 1536;

OBTJURU V OZIMS 1985 2 NWLR Pt. 6 167;

ERISU V IDUKA 1984 4 NWLR Pt. 66 511

APPEAL – ISSUE FORMULATED NOT RELATED TO ANY GROUND – Such issue is unarguable and incompetent – AKPAN V STATE 1994 25A LRCN 137; 1994 9 NWLR Pt. 368, 347; MOHAMMED GARBA V STATE 2000 77 LRCN 1126; ODU V STATE supra.

APPEAL – ISSUE NOT RAISED AT TRIAL – PARTY CANNOT RAISE ON APPEAL WITHOUT LEAVE- INCARE NIG. V BOLEX ENT. 2001 87 LRCN 1933

APPEAL – APPLICATION TO APPEAL OUT OF TIME – COURT CANNOT CONSIDER MERITS OF APPEAL AT THIS STAGE – C.B.N V AHMED supra – Party to show reason for delay.

APPEAL – NOT ENTERED IN COURT OF APPEAL – WHETHER COURT CAN ENTERTAIN MOTION FOR STAY – OGUNREMI V DADA 1962 2 SCNLR 417; COKER V ADEJUMO 1965 1 ANLR 120.

APPEAL – ISSUE RAISED NOT RELATED TO ANY GROUND – Not competent – ADELUSOLA V AKINDE 2004 VOL. 120 LRCN 4683 at 4685; OKPALA V IBEME 1989 2 NWLR Pt. 102, 208; EHOT V STATE 1993 4 NWLR Pt. 290, 644; MADUMERE V OKAFOR 1996 4 NWLR Pt. 445, 637

APPEAL- DIFFERENCE BETWEEN STAY OF EXECUTION PENDING APPEAL AND INJUNCTION PENDING APPEAL – Stay of execution applies to executory judgements, while injunction pending appeal concerns mainly declaratory judgments. Both of them are aimed at suspending temporarily the legal right of the successful party – **OSHO V ATTORNEY GENERAL OF EKITI STATE** (2002) FWLR Pt.100, p.1308 at 1328. GROUND OF APPEAL BASED ON UNDISPUTED FACTS- Where a ground of appeal is based on a complaint of errors arising from conclusion on undisputed facts, it constitutes a

ground of law –OGBECHIE V ONOCHIE (1986) 2NWLR Pt.23, p.484;
Kaine v Ojukwu (2000) FWLR Pt.28, p.2231 at 2241.

MIXED LAW AND FACT – Where the ground of appeal is based on disputed facts and by the complaint the correctness of the ascertained facts is being challenged, this constitutes a ground of mixed fact and law – IFEDIORA V UME (1988) 2 NWLR Pt.74, p. ; Kaine v Ojukwu (2000) FWLR Pt.28, p.2231 at 2241.

HOW TO DETERMINE ISSUES IN APPEAL – The test to determine an issue in a suit or appeal, is its consequential ability to give rise to a relief either way when decided upon – IBORI V AGBI (2004) ALL FWLR Pt.202, p.1799 at 1828.

ERROR OF LAW – MEANING - NWABUEZE V N.I.P.O.S.T 20006 8NWLR Pt.983, p.480 at 492.