

BRIEF WRITING FOR THE COURT OF APPEAL AND THE SUPREME COURT

BY
DR. MUDIAGA ODJE, S.A.N., O. F.R.

A. INTRODUCTION

1. GENESIS OF THE MATTER: ENGLISH OR AMERICAN CONNECTION

It is trite that while brief writing is not part of, or indeed popular with, English practice and procedure; writing of briefs and other legal memoranda for the Courts in the United States of America ranks, alongside other writings generally, as almost a national obsession. So, lawyers over there not only lodge appellate briefs of argument; but also submit to Courts of first instance and tribunals for consideration, advocacy documents or processes variously described as trial briefs, trial memoranda, memoranda of law or trial blueprints.¹

2. COMPARISON OF THE NIGERIAN SYSTEM OF BRIEF WRITING WITH ENGLISH PRACTICE AND PROCEDURE

In the consolidated appeals in Yonwuren v. Moden Signs (Nig. Ltd; Nwaora & Anor. v Nwakonobi & Ors. and Daniel Onokpite & Anor v. Ememoh & Anor.,² decided by a full Court of seven Justices, the Supreme Court held that it lacked jurisdiction to restore the appeals it had

-
1. See generally the following American works on the subject
 - (a) Edward D. Re, *Brief Writing And Oral Argument*, 6th Ed. (1987) pp. 25 – 50;
 - (b) Peck G., *Writing Persuasive Briefs* (1984) Chap. 9, pp. 157 – 172;
 - (c) Stasky W.P. and Wornet R.J., Jr., *Case Analysis And Fundamentals and Legal Writing*, 3rd Ed. (1589) pp. 75 – 80;
 - (d) Brand N. and White J.O., *Legal Writing; The Strategy of Persuasion* (1988) Chap. four, pp. 61-87.
 - (e) Bornstein A.O., *Appellate Advocacy in Nutshell* (1984) Chap. 7, pp. 189 – 237.
 - (f) Smith B. B., *The Literate Lawyer: Legal Writing and Oral Advocacy* (1986) Chap. Vi pp. 93 - 148.
 2. (1985) 1 FWLR (pt.2) 244; (1985) 2 S.C.86.

earlier dismissed for want of prosecution due to the failure of the appellants to file briefs of argument. And specifically on the topic under consideration, Obaseki J.S.C., after comparing the provisions relating to brief filing under the Supreme Court Rules of 1977 with the position in England as well as the procedure by way of petition followed in respect of appeals in the Judicial Committee of the Privy Council remarked:

“It is however to be observed that there is no provision in the English Rules similar in terms to the provisions of Order 9 Rule 7 (i.e. provisions governing dismissal of appeal for failure of appellant to file brief of argument) ... Even in the Judicial Committee Rules 1957, Rule 37 makes provisions for an appellant whose appeal has been dismissed for non-prosecution to present a petition to Her Majesty – in- Council praying that the appeal be restored. We have no such provision in our rules because of the fact that the appeal can be decided on the briefs filed without an oral hearing.”¹

3. BRIEF WRITING IN COURT OF APPEAL AND SUPREME COURT AMERICAN CONCERT AND CONNECTION

From the foregoing discussion and comparative outline, it is clear that the current practice and procedure of brief writing in the Court of Appeal and the Supreme Court of Nigeria reached Nigeria from Uncle Sam’s country, the United States of America; and not from Britain, nor indeed, through English law, practice and procedure in respect of which, we are somewhat grateful inheritors and rather enterprising adapters.

4. RATIONALE FOR THE ADOPTION OF BRIEF WRITING IN NIGERIA

Before the introduction of the requirement of Brief writing in

1. At p. 269 F and P. 109 respectively.

respect of appeals before the court of Appeal and the Supreme Court, appeals were argued on the grounds of appeal filed. In those days, oral arguments and submission were urged before the appellate courts for hours, if not days on end. For example, the writer still has a vivid recollection of the fact that oral arguments and submissions by counsel in Appeal No. SC.309/74: D.O. Idudun & Ors. v Daniel Okumagba², in which he appeared as one of the Counsel for the Respondents, occupied two weeks of four working days each between 29th March and 8th April, 1976.

Obviously, the system of reliance on only oral submissions was found to be tedious and time-consuming, and therefore found to be unsatisfactory. Hence, the requirement of brief writing was introduced, and, as will be shown, the time for oral argument in appeals had to be limited to one hour on each side, unless extended by Court. In other words, the brief of argument has, since its introduction, become more important than oral argument in the appellate process.

5. POSITION OF BRIEF WRITING IN NIGERIA NOT DIFFERENT FROM THAT IN THE UNITED STATES

Similarly, in the United States, which may be regarded as the mother country of the concept of brief writing: oral argument held the field as the central focus in the determination of appeals right till the mid-fifties. Thereafter, there occurred, as a result of litigation explosion, a shift of emphasis from oral hearing, which dragged on for days, to brief writing which has since dominated the process of appeal.

A good picture of the emergence of brief writing in the United States as sketched above is contained in the book written by Professor Robert Martineau, an American Professor of Law. According to him:

“Appellate review developed in England primarily as an oral process... oral arguments often lasted for several days. That tradition was carried over to this country Beginning in the

mid 1950's, however, oral arguments became shorter... Appellate attorneys must now rely primarily upon their briefs. Oral argument is no longer the central focus of the appellate process but rather just one step in the process through which the appellate court performs its functions of error correction and law development."

And on limitation imposed on oral argument of appeals over there, another American author, D. Re Edwards, Chief Judge & Distinguished Professor of Law points out:

*"The era of forensic oratory is almost a matter of the past. For example, in the Supreme Court of the United States, in the early period when cases were few, extended oral argument was permitted. Today, one is rarely privileged to speak for more than half an hour, except by special leave of court."*²

B. BRIEF HISTORY OF BRIEF WRITING IN NIGERIA

1. SUPREME COURT OF NIGERIA

Brief writing in Nigeria has a history of close on two decades. As far as the Supreme Court is concerned, it all started on 1st September, 1977 as a result of the Supreme Court Rules 1977³ which were made by the Supreme Court of Nigeria and, rather strangely, signed by the Chief Justice and the seven Justices of the Court at the time. But although the 1977 Rules came into force on 1st September 1977, they were inapplicable to pending appeals in the Supreme Court. Such appeals continued to be dealt with in accordance with the 1961 Rules⁴ of the Supreme Court made by the Supreme Court on 10th May, 1972, but signed only by the Chief Justice at the time, Chief Justice T. O. Elias.

In 1979, no doubt to ensure speedy hearing of appeals to the Court from decisions in elections held in that year, the Supreme Court amended its Rules.⁵ And as has been alluded, the new rule empowered the Supreme Court to accelerate the hearing of appeals in exceptional circumstances and in the

1. Martineau, R.J. Modern Appellate Practice; Federal and State. Civil Appeals (1983) pp. 209 – 211.
2. Justice Edward D. Re, Brief Writing and Oral Argument 6th Ed., 1987 p. 179.
3. L. N. 48 of 1977.
4. L. N. 96 of 1961.
5. L. N. 18 of 1979 --- The Supreme Court (Amendment) Rules, 1979.

interest of justice by waiving compliance with its Rules relating to the preparation and filing of briefs.

After being in use for nearly eight years, the Supreme Court Rules 1977³ were revoked and replaced by the Supreme Court Rules 1985¹ with minor amendment effected by means of Practice Direction later in that year.² It should be noted that the 1985 Rules of the Supreme Court were amended in 1991 by the Supreme Court (Amendment) Rules 1991 with effect from 1st October, 1991.³

2. COURT OF APPEAL

The initial introduction of brief writing in the Court of Appeal was by means of the purely temporary practice Direction⁴ issued by the President of Court, requiring the filing of briefs in respect of appeals lodged in the Court under section 130 of the Electoral Act 1982 relating to election petitions arising from the general elections held in 1983.

Clearly, this temporary requirement of brief writing left much to be desired. For instance, the appellant was required to file his brief with his notice and grounds of appeal, while the respondent had two days within which to file his brief. It should be observed that the appellant had fourteen days within which to appeal either to the Court of Appeal or the Supreme Court under section 132 of the Electoral Act No. 8 of 1982. Furthermore, it must be stressed that under the same section of the 1982 Act, both appellate Courts were required to give their decisions not later than seven days from the date on which the appeals are filed. But as will be recalled, this section of the Act was unanimously declared unconstitutional, null and void by the Supreme Court on the ground that it breached the doctrine of separation of powers and constituted

1. S. I. of 1985

2. S.I. 18 of 1985, providing that time for filing of briefs shall not run during the period of vacation declared between July and September each year.

3. S. I. of 1991 Published as Government Notice No. III in Federal Gazette No. 23 Vol. 78 pp. 283-285. See also (1991) 6 NWLR (pt. 197) pp. vii – xi and (pts, 198 – 200) at pp. vi – x of each page.

4. S.I. 40 of 1983 - Practice Direction No. 1 of 1983.

an interference by the legislature in the judicial functions of the Courts.⁵

The introduction of brief writing on a permanent basis in respect of appeals before the Court of Appeal took effect on 1st September, 1984 by virtue of the Court of Appeal (Amendment) Rules 1984.⁶

It is worthy of note that although the Rules came into force on 1st September, 1984, they are not applicable to appeals which had been listed for hearing on or before 31st December 1984. The significance of this note is manifest by the fact that the Court of Appeal had erroneously in a couple of cases nevertheless ordered briefs to be filed in respect of appeals listed for hearing before 31st December, 1984, contrary to the mandatory provisions of Order 6 Rule 1 (2) of the Court of Appeal (Amendment) Rules. And more significant still were the facts that the Court of Appeal did dismiss one appeal for the apparent default on the part of the appellant to file a brief ordered by the Court in contravention of the Court of Appeal (Amendment) Rules;¹ while it also dismissed yet another appeal, clearly excepted from the filing of briefs, on the ground that the brief filed by the appellant as a result of the invalid order of the Court to that effect was not up to standard.²

3. BRIEFS IN THE COURT OF APPEAL AND THE SUPREME COURT

(1) Basic Similarity Between Applicable Rules of Courts

There is a basic similarity between the Rules governing the preparation and filing of briefs in appeals before the Court of Appeal and the Supreme Court. The word ‘brief’ is defined somewhat identically in both Order 6 Rule 2 of the Court of Appeal (Amendment) Rules 1984 and Order 6 Rule 5 (1) of the Supreme Court (Amendment) Rules 1991 as:

“being a succinct statement of ... argument in the appeal.”

5. See: Unongo v Aper Aku & 2 Ors. (1983) 11 SC. 129; (1983) 2 SCNLR 332
Kadiya v Lar & 2 Ors., (1983) 11 SC. 209; (1983) SCNLR 368.
Ibeh v. Nzenwa & Ors. (1983) 11 SC. 295.

6. S. I. 26 of 1984

1. Olaore & Ors. v. Oke (1987) 4 NWLR (pt.67) 769 at p. 775 F; (1987) 12 SC. 1 at p. 12 (1987) 11 – 12 SCNJ 64 at p. 69.

2. Obiora V Osele (1989) 1 NWLR (pt. 97) 279 at pp. 296 F and 304 F. (1989) 1 SCNJ 213 at pp. 226 at 234.

The Rules applicable in both Courts in respect of brief writing are designed with a view to presenting in advance to the Courts the cases to be argued by the parties at the hearing of the appeals, in order to expedite the determination of the issues in controversy between the parties. Thus, the Rules limit oral argument on each side to one hour, unless a request for additional time is granted by the Courts.³

Again, as will be apparent later, the Rules applicable in appeals before both Courts provide some sanctions and consequences for failure of the parties to file their briefs punctually according to the Rules or within such times as allowed by the Courts.

(2) Differences Between Applicable Rules of Courts

There are however few differences between the rules governing the preparation and the filing of briefs in the appeals before both appellate courts.

Understandably, Order 6 of the Supreme Court Rules 1985 (formerly Order 9 of the 1977 Rules) is more detailed than its court of Appeal counterpart.

For example, Order 6 Rules 2 to 4 of the Supreme Court Rules 1985, amended by S. I. of 1991, Supreme Court (Amendment) Rules 1991, effective 1/10/91, provide for the filing of briefs in respect of applications for leave to appeal or enlargement of time within which to appeal or seek leave to appeal, quite unlike Order 6 of the Court of Appeal (Amendment) Rules 1984 and the Court of Appeal Rules 1981 which contain no provisions for the filing of briefs in respect of such applications. It should be noted here that judging from experience at the Court, the Supreme Court is consistent in its attitude not to accede to applications governed by the provisions of Order 6 Rules 2 and 3 (i.e. application for leave and/or enlargement of time to appeal or to seek leave to appeal) unless they are supported by briefs, **inter alia**.

But be it noted the Supreme Court has emphatically held in the appeal

3. Order 6 Rule 8 (3) Rules of the Supreme Court 1985 and Order 6 Rule 9 © of the Court of Appeal (Amendment) Rules, 1984

Onuoha v Ibero¹ that it would not entertain briefs filed in respect of applications not specially required to be supported by briefs of argument.

On the other hand, the Court of Appeal in Okoroafor & Anor v. The Miscellaneous Offences Tribunal & Anor.² is inclined to the view that a brief of argument filed in respect of an important issue, such as the interpretation of a statute, is quite in order notwithstanding the absence of a rule of Court specifically providing for the filing of such a brief. The Court distinguished the Supreme Court decision in Onuoha v Ibero as one that dealt with a mere motion in contradistinction to the important issue involved in Okoroafor's case;² whereupon, Pats-Acholonu JCA, who delivered the Leading Ruling, observed graphically inter-alia:

*“By reducing the argument in a form of brief, all the shades of the issues in controversy are well marshalled out and the Court is enabled to make a critical appraisal or analysis as presented. I am not of the view that because the applicants chose to reduce the arguments to brief writing to aid oral argument, the application should be thrown overboard, for brief writing aids counsel in his oral argument.”*³

Again, while Order 6 Rule 3(d) of the Court of Appeal (Amendment) Rules 1984 prescribes that a brief shall be concluded with both a numbered summary of the points to be raised and the reasons upon which the argument is founded: order 6 Rule 9(5) (b) of the Supreme Court Rules 1985 provides that the briefs shall be concluded with only a numbered summary of the reasons upon which the argument is founded.

It is emphasized that unlike the Court of Appeal (Amendment) Rules 1984; Order 6 Rule 3 of the 1985 Supreme Court Rules empowers the Supreme Court to appraise and consider the brief filed in support of the application in Chambers, without hearing oral argument either in open court or in chambers.

-
1. (1994) 1 NWLR (pt. 322) 503 at pp. 519 F and 523 F.
(1994) 1 SCNJ 44 at pp. 51, 56 – 57.
 2. (1995) 4 NWLR (pt. 387) 57.
 3. At p. 75D.

Similarly, while Order 6 Rule 9 of the supreme Court Rules 1985 makes provision for the inclusion in a brief of any invitation addressed to the Court urging it to depart from and overrule its own decision; Order 6 of the Court of Appeal (Amendment) Rules 1984 is quite blank and silent on the point.

Further, the periods of time allowed for the filing of brief of argument are more ample in appeals before the Supreme Court than those prescribed in appeals before the Court of Appeal. Thus, while the lengths of time for filing briefs in appeals before the Supreme Court are 10 weeks, 8 weeks and 4 weeks for the Appellant's brief, Respondent's brief and Appellant's reply brief respectively;¹ the periods of time allowed in appeals before the Court of appeal are 60 days, 45 days and 14 days respectively for the types of briefs mentioned above.² It should be added that the times prescribed for the filing of the appellant's brief as stated above do not run unless and until the record of appeal is correctly compiled to the satisfaction of the parties.³

Another significant difference introduced by the Supreme Court (Amendment) Rules 1991 with effect from 1st October, 1991 is the liability of the parties to pay a penalty of ₦5.00 each day they are in default with respect to filing of their briefs of argument.⁴

Finally, until fairly recently, and unlike the Supreme Court Rules, the Court of Appeal had no rules excluding from computation of time the period declared for the vacation of the Court. However, as regards the 1988 legal year, the President of the court by Practice Direction No. 1 of 1988 duly declared the period between 15th July and 31st August 1988 as the vacation period during which, time did not run with respect to the filing of briefs of argument and

-
1. Order 5 Rules 5 (1) (2) (3) Supreme Court Rules, 1985.
 2. Order 6 Rules 2, 4 and 5 Court of Appeal (Amendment) Rules 1984.
 3. Western Steel Workers Ltd. & Anor. V Iron and Steel Workers Union of Nigeria & Anor. (1986) 3 NWLR (pt. 30) 617 at p. 628 E; (1986) 6 S.C. 35 at p. 53.
 4. Order 6 Rule 5(7) Supreme Court. (Amendment) Rules, 1991.

applications for leave to appeal.⁵

Perhaps, it should be added here that Practice Direction No. 1 of 1988 was made as a result of the problem raised in Appeal No. SC.213/87: Nneji & Ors v. Chukwu & Ors.¹ in which Counsel for the appellants failed to file their brief punctually because of his erroneous belief that the time for filing briefs in appeals before the Court of Appeal did not run during the long vacation.

(3) **Brief Filed in Court of Appeal Cannot Be Adopted/Used in the Supreme Court**

There is just no provision in the Rules of Court for the adoption and use in the Supreme Court of a brief of argument filed in the Court of Appeal. The reason for the absence of such provision is not far to seek. For whereas, a brief filed in the Court of Appeal is based on the proceedings of a Court below, for example, the High Court, Sharia Court of Appeal or Customary Court of Appeal: a brief filed in the Supreme Court relates to the appeal decided by the Court of Appeal. Consequently, such adopted brief will be rejected as not raising any issue for determination.

But, there may be no objection where the brief filed in the Supreme Court embodies or lifts the argument or submissions contained in the brief filed in the Court of Appeal, providing that the latter deals with the judgment of the lower court.

The propositions of law stated above are derived from the decision of the Supreme Court in Adeyemi & 3 Ors. V. State¹ where, Olatawura J.S.C., delivering the lead judgment, stated the legal position as follows:

“The learned counsel for the 4th appellant ...has introduced a procedure unknown to the Rules of the Supreme Court by adopting the brief filed and used in the Court below and to rely on it. There is no provision for that in our Rules. A separate brief is filed in the

5. Government Notice No. 288 Federal Republic of Nigeria Official Gazette No. 46 Volume 75 14th July 1988, p.783. See also (1988) 4 NWLR (pt. 87) 256.

1. (1991) 1 NWLR (pt. 170) 676 at p. 695. (1991) 2 SCNJ 60 at p. 72.
See also: Dada & 3 Ors. V. Otunba Ogunsanya & Anor.
(1992) 3NWLR 754 at p. 769 E.
(1992) 4 SCNJ 162 at p. 173.

Court of Appeal and the Supreme Court. Brief filed in the Court of Appeal is based on the case presented in the High Court. The brief filed in this Court is in respect of the appeal argued and decided by the Court of Appeal. It is permissible, where applicable, to make the same submissions made before the lower court. This will be embodied in the brief filed in the Supreme Court. Not only are we going to read a brief not relevant to matters before us, but also to pronounce on an issue already decided upon by the lower court and which is not made an issue in this court.¹”

See also ADEHI v. ATEGA & 39 Ors 1995 NWLR (pt. 398, 656 at 665 at par. E.

Having thus disposed of the introductory, comparative and basic aspects of the matter, it is now proposed to move on to a consideration of the meaning, purpose and types of briefs as well as their content (anatomy), preparation and writing.

C DEFINITION, PURPOSE AND TYPES

1. DEFINITION

It will be recalled that in the course of the comparative analysis of the relevant Rules of both the Supreme Court and the Court of Appeal undertaken in paragraph 3 on page 5 of this paper, it was pointed out that order 6 Rule 5 (1)(a) of the Supreme Court (Amendment) Rules 1991 and Order 6 Rule 2 of the Court of Appeal (Amendment) Rules 1984 have defined a brief in identical words as:

A succinct statement of the argument in the appeal.

Thus, the operative words in the statutory definition underlined above are succinct statement, that is, a statement which synonymously speaking, is brief, short, concise and terse.

(i) Yet Appellate Briefs Are Often Lengthy Documents Both In The United States And Here In Nigeria

It should be stated that, notwithstanding the definition given above, appellate briefs on which the fate of appeals hang are often lengthy documents.

One result of this state of affairs is that laymen in the United States of America sometimes describe an appellate lawyer as -----

*A person who writes a 10,000 – word document and still calls it a ‘brief’.*¹

And here at home some Nigerian appellate lawyers have not been less enterprising in this regard than their American colleagues. For example, only fairly recently, to be exact in December 1992, the Supreme Court frowned on the bulkiness of the brief of argument filed by the learned senior counsel for the Appellant in the case of Universal Vulcanizing (Nig.) Ltd. v. Ijesha United Trading & Transport Co. Ltd. & 6 Ors.² There, the brief in question was a 70 page foolscap size typed document described by the Supreme Court as being more of a treatise than a brief.

And commenting on the extraordinary length of the brief and its infliction on the Court, Uche Omo J.S.C., remarked in his lead judgment in the appeal ---

*“The document ... is most certainly not succinct. It is lengthy, otiose and not surprisingly repetitive. This Court will continue to insist that counsel should comply with the rules of Court. It is to be hoped that this Court will not be inflicted in the future with the tiresome task of wading through such a document.”*³

2. Justice Philip Nnaemeka – Agu’s Definition in His Book “Manual Of Brief Writing In The Court Of Appeal And The Supreme Court of Nigeria, 2nd Edition (1991)”⁴

In his book¹ mentioned above, now enjoying its second edition, Nnaemeka-Agu J.S.C. agreed with the Definition of an appellate brief judicially given in the American case of Duncan V. Kohler, 37 Minn. 379. By that definition, a brief is ---

*“a considered statement of the proposition of law or fact or both, which a party or his counsel wishes to establish at the appeal together with reasons and authorities which can sustain them.”*⁴

3. Definition for our purpose

By a process of selective combination and composition, we may define a brief for our purpose, which is an appellate brief, as follows:

-
1. Statesky W. P. and Wernet R. J., Jr.; Case Analysis and Fundamentals of Legal Writing 3rd Ed. (1989) p. 279.
 2. (1992) 9 NWLR (pt. 266) 388. (1992) 11-12 SCNJ (pt. 11) 243.
 3. At p. 397 B – C and p. 248 respectively.
 4. At p. 5.

A concise written argument based on the grounds of appeal presented to an appellate court with the objective of persuading that court to reverse, affirm or vary the decision of the lower court.

(4) Documents not Ranking as Briefs

On the basis of our definition as well as the other definitions discussed above, mere written submissions containing no arguments on the grounds of appeal filed, but which merely state that ---

“The grounds of appeal, it is submitted, are detailed and elaborate and are hereby incorporated as part of this Brief of argument;”¹

AND

“It is my humble opinion that no issue for determination arise in this appeal as the finding and conclusions of the learned trial Judge cannot be faulted in law and fact.”²

do not qualify as briefs.

Nor can a document be legitimately described as a brief which merely collates the claim, the statement of defence and notice of appeal, and then concludes with a series of assumed answer,³ or which fails to frame any issue arising in the appeal;⁴ as in the case of Ntita V. The State referred to above.

2. PURPOSE OF BRIEF

The whole purpose of a brief is to inform, elucidate and persuade. In other words, the appellate court should, through the medium of the argument in the brief, be clearly informed and be fully seised of the facts, issues and points of law involved in the case; and be skillfully persuaded of the merits of the case being advocated therein.

In this connection, it is fitting to set out the apt words of Lord Byron in Don Juan Canto X (1788 – 1824), quoted with approval by Kolawole J. C. A. in his lead judgment in Nwadiaro & 2 Ors v. Shell Petroleum Development Company of Nigeria Limited,⁵ where he remarked:

-
1. (1986) 3 NWLR (PT.31) 731 AT P. 740 a (1986) 6 S.C. 75 AT P. 86
 2. Ntita V. The State (1993) 3 NWLR (pt. 283) 505 at p. 512 A-B. (1993) 3 SCNJ 28 at p. 32.
 3. Alao v. Akano (1988) 1 NWLR (pt. 71) 431 at p. 448 G;
(1988) 2 SCNJ (pt. 11) 300 at p. 317.
 4. Onifade v. Olayiwola & 6 Ors. (1990) 7 NWLR (pt. 161) 130 at pp. 157, 164, 166 and 175;
(1990) 11 SCNJ 10 at pp. 21, 26, 30 and 38.
 5. (1990) 5 NWLR (pt. 150) 322 at p. 334G.

“As Lord Byron said in Don Juan Canto X (1788 – 1824) – ‘The Lawyer’s brief is like the surgeon’s knife, dissecting the whole inside of a question, and with it all the processes of digestion’”⁵

3. **TYPES OF BRIEFS**

(1) Appellant’s ,Respondent’s, Reply (Appellant’s) Inclusive

The normal types of briefs are the appellant’s brief, the respondent’s brief in response, usually filed later (though curiously not always so);⁶ and the appellant’s reply filed to counter issues or points raised in the respondent’s brief, and which were not canvassed in the appellant’s original brief.

However, where there is a cross- appeal, a party is permitted to file an inclusive brief clearly stating that it is filed in respect of both the appeal and the cross-appeal.¹

(2) Supplementary

There is also the supplementary brief which, as its name implies, is filed in addition or supplementary to the main brief of appellant or respondent. In Oduye v. Nigeria Airways Limited,² a case involving statutory tenancy and mesne profits, the appellant filed a supplementary brief in order to invite the Supreme Court to depart from, review and overrule its earlier decision pursuant to the provisions of Order 6 Rule 9 of the Supreme Court Rules, 1985. In State v. Aibangbee & Anor.,³ the Accused/Appellants in a murder case filed a supplementary brief.

6 As in Amaefule & Anor v. State (1988) 2 NWLR (pt. 75) 156 at p. 174 D where the Respondent apparently filed its brief before receiving the Appellant’s brief of argument! Also reported (1988) 4 SCNJ 69 at p. 84.

See also AKU V. ANYAEBE & 2 ORS 1995 5 NWLR Pt. 397, 631 at 637 par. G – P.

1. Order 6 Rule 7, Court of Appeal (Amendment) Rules 1984

Order 6 Rule 6(2), Supreme Court Rules 1985. See also LOUIS Onian & 2 Ors. v Chief J.I. G. Onyia (1989) 1 NWLR (pt.99) 514 at p. 541 A – B. Ogbechie & Ors v. Onichie & Ors. (1988) 1 NWLR (pt. 70) 370 at p. 402 E – G; (2988) 2 SCNJ (pt. 1) 170 at pp. 202 – 203;

Adefulu & 12 Ors v. Oyesile & Ors (1989) 5 NWLR (pt. 122) at p.418; (1989) 12 SCNJ 44 AT P. 80.

2. (1987) 2 NWLR (pt. 55) 126 at p. 154 – 155; (1987) 4 SC. 202; (1987) 4 SCNJ 40.

3. (1988) 3 NWLR (pt. 84) 548 at p. 570 G; (1988) 7 SCNJ (pt. 1) 128 at p. 145.

However, a supplementary brief can only be filed with the leave of the Court. In Din v. Attorney-General of the Federation,⁴ both parties in the case were permitted to file supplementary briefs because the Supreme Court suo motu raised two fresh issues at the close of addresses by Counsel, and thereafter decided to hear further addresses from Counsel on the issues so raised.

But in Okpala & Anor v. Ibeme & Ors.,⁵ a bread and butter case involving land, the Supreme Court frowned on the practice of filing a supplementary brief without leave of Court on the ground that the Rules of Court did not provide for the filing of such a brief. Nnaemeka-Agu, J.S.C., delivering the lead judgment of the Court, cautioned about the matter in this way:

*“Quite apart from the fact that there does not appear to be any authority for filing any supplementary brief, there is no provision in the rules for filing a supplementary brief without leave of the Court.”*⁶

(3) Amicus Curiae

This is a brief filed on an occasion when the Court grants permission for the filing of a brief amicus curiae by a person who is not a party to the case, but accepted as a friend of the Court. The purpose of such a brief is to assist the Court in deciding legal questions of national or public interest and importance.

It should be observed that the usual mode of securing the services of an amicus curiae is by invitation issued by the Court requesting court appearance. Thus, in Attorney-General of Ogun State v. Alhaja Aberuagba,¹ Bello J.S.C., (as he then was) observed:

4. (1988) 4 NWLR (pt. 87) 147 at p. 168 – 189;
(1988) 9 SCNJ 14 at p. 30.
5. (1989) 2 NWLR (pt. 102) 208
6. At p. 220 B – C.
1. (1985) 2 NWLR (pt. 3) at p. 409 C – D

“As the appeal raised very important constitutional issues concerning the Federal and State’s taxing powers, we invited all the Attorneys-General in the Federation as amici curiae to file briefs of argument on the issues and to appear for oral argument at the hearing. The Attorney-General of the Federation and the Attorneys-General of ten States responded to the invitation ... In parenthesis, I should like to express my appreciation for the assistance given to the Court by learned counsel for the parties and learned amici curiae.”²

Similarly, in Appeal No. SC. 169/87: Garuba Abioye & 4 Ors v. Sa’Adu Yakubu & 5 Ors³ the Honourable Chief Justice of Nigeria invited the Attorney-General of the Federation, all the Attorneys-General of the States as well as five Senior Advocates of Nigeria namely: Chief F.R.A. Williams, Kehinde Sofola Esq., the writer P. O. Balonwu and Alhaji Abdulai Ibrahim, to submit briefs of argument and also appear at the Supreme Court on 21st May 1991 to present oral argument. While the learned Attorneys responded to the invitation either personally or through their subordinate officers; all the five Senior Advocates personally responded to the invitation.

It should be observed that the question presented in that appeal was one of national importance in that it involved the rights of customary owners of land vis-à-vis the position of customary tenants of land used for agricultural purposes as envisaged under the provisions of the Land Use Act, 1978.⁴ After hearing arguments from all the twenty-seven counsel in the appeal, the Supreme Court held that the rights of customary owners of land were not affected by the provisions of the Land Use Act² whether the land was used for agricultural purposes or not.

On the other hand, similar invitations issued by the Supreme Court to the Attorneys-General of Anambra and Rivers State in the case of

2. (1985) 4 S.C. (pt. 1) 288.

At p. 409 C-D and pp. 306 respectively.

3. The report of the case covers an entire part of the Nigerian Weekly Law Reports, to wit; (1991) 5 NWLR (pt. 190) 130 – 256.

See also (1991) 6 SCNJ 69 – 155.

4. Cap. 202, Vol. 11, Laws of the Federation of Nigeria, 1990.

Peenok Investments Ltd. v. Hotel Presidential Ltd.,⁵ were not honoured by the learned gentlemen. Whereupon, Irikefe J.S.C., as he then was, condemned both states in these words:

*“When this appeal came before us, we invited the Attorneys –General of both Anambra and Rivers State to come before us and address the Court as amici-curiae. Neither State honoured the invitation of Court. While the Rivers State Government maintained studied silence, the Anambra State sent a reply indicating that its Attorney – General was out of the country on State duties while the Legal Adviser who had been dealing with case was bereaved. The utter nonchalance exhibited by these two States over this matter cannot, in my view be too strongly condemned.”*¹

However, the very recent decision of the Supreme Court in Savannah Bank of Nigeria Ltd. & Anor v. Ajilo & Anor.² is authority for the proposition that an amicus curiae may appear and argue before the Court on his own application.

D. BRIEF FORMAT AND REQUIREMENTS

1. RELEVANT RULES, JUDICIAL PRONOUNCEMENTS AND JURISTIC WRITING

Brief writing is an art to be acquired and mastered in the light of the relevant rules of Court, judicial pronouncements and juristic contributions on the subject.

(1) Relevant Rules of Court

It is important for the brief writer to note at the outset that both the Court of Appeal and the Supreme Court have relevant rules not only prescribing the format and contents of a brief; but also imposing requirements as to the succinctness or conciseness in the matter as well as to citation of legal authorities. The relevant provisions in this connection

5. (1982) 12 S.C. 1.,
1. At p. 24.
2. (1989) 1 NWLR (pt. 97) 305 at p. 322 B.
(1989) 1 SCNJ at p. 178

are Order 6 Rules 2 to 5 of the Court of Appeal (Amendment) Rules 1984 and Order 6 Rules 5 to 7 of the Supreme Court Rules, 1985.

(2) Judicial Pronouncements and Juristic Works

It is also important in this matter to pay heed to the authoritative pronouncements made by the courts concerning the correct format and other requirements of briefs and to consider the views expressed by jurists in their works on brief writing.

At this juncture, respectful mention should be made of the Honourable Justice Nnaemeka Agu's treatise titled 'Brief Writing in the court of Appeal and the Supreme Court of Nigeria'. His Lordship's book is so illuminating and helpful that it has received the grateful acknowledgement of both the Court of Appeal and the Supreme Court.

Thus, in Archbode Engineering Ltd. v. Water Resources Hydro Technique Wasserlechnik A.G.³ Adenekan Ademola J.C.A., delivering the lead judgment of the Court of Appeal, relied on the learned Justice's work (even in its then unpublished form) in laying down what the format and contents of a brief should be.

Similarly, in Engineering Enterprises of Niger Construction Co. of Nigeria v Attorney-General of Kaduna State,¹ Eso J. S. C. described the learned justice' treatise as an excellent book on the subject of brief writing.² However, it should be observed that the learned justice of the Supreme Court was wide ranging in his references, and so listed ten appeals before the supreme court in respect of which counsel had filed excellent briefs. The judgments of the court in these appeals which were listed as unreported³ have since been reported and are set out hereunder: --

(i) Akpapuna v Nzeka II⁴

(ii) Shodeinde v Registered Trustees of Ahmadiya Movement in Islam⁵

3. (1985) 3 NWLR (pt. 12) 300 at p. 304 - 305
1. (1987) 2 NWLR (pt. 57) 381; (1987) 5 S.C. 27; (1987) 13.
2. At p. 390, pp. 49 – 50 and p. 24 respectively.
3. At p. 390: p. 49 – 50 and p. 24 respectively.
4. (1983) 2 SCNLR 1; (1983) 6 S.C. 158.
5. (1980) 1 & 2 S.C, 163.

- (iii) Bronik Motors Ltd. v. Wema Bank Ltd.⁶
- (iv) Unongo v. Aper Aku⁷
- (v) Oloyo v Alegbe⁸
- (vi) Transbridge C. Ltd. v Survey International Ltd.⁹
- (vii) Akinsanya v. U. B. A. Ltd.¹⁰
- (viii) Attorney-General of Bendel State v. U. B. A. Ltd.¹¹
- (ix) Emenimaya & Ors. v. Okorji¹²
- (x) Oduye v. Nigeria Airways Ltd.¹³

Incidentally, it may be mentioned that among the briefs commended in the ten appeals listed above, two of them were the respondents' briefs prepared by the writer in the two cases of Akrapuna v. Nzeka II supra and Unongo v. Aper Aku supra.

Perhaps another appeal in which the Supreme took the trouble to set out the format and contents of a good brief was Adimora v. Ajufu & 2 Ors.¹⁴ In that case, Oputa J. S.C., delivering the Lead Judgment of the Court, also referred to the earlier decision of the Court in Engineering Enterprise of Niger Contractors v. Attorney General of Kaduna State¹⁵ in which he advised Counsel settling brief to remember the A.B.C. of all legal writings, to wit, ACCURACY, BREVITY AND CLARITY – wise counsel given to practicing lawyers by an American Chief Judge cum Professor of law in his book.¹⁶

2. FORMAT AND REQUIREMENTS OF A GOOD BRIEF

By way of rationalization of the relevant rules of the court governing brief writing as well as the judicial pronouncements and juristic writing bearing on the matter, it may be stated that the format and contents of a good brief of argument should include the following features, that is to say ---

-
- 6. (1983) 1 SCNLR 296; (1983) 6 S. C. 158.
 - 7. (1983) 2 SCNLR 332; (1983) 11 S.C. 129.
 - 8. (1983) 2 SCNLR 35; (1983) 7 S.C. 86.
 - 9. (1986) 4 NWLR (pt. 37) 576.
 - 10. (1986) 4 NWLR (pt. 37) 547
 - 11. (1986) 4 NWLR (PT. 35) 273.
 - 12. (1987) 3 NWLR (pt. 59) 6; (1987) 5 S. C. 35.
 - 13. (1987) 2 NWLR (pt. 55) 126; (1987) 4 S.C. 202.
 - 14. (1988) 3 NWLR (pt. 80) 1 at p. 7; (1988) 6 SCNJ 18 at p. 20.
 - 15. (1987) 2 NWLR (pt. 57) 381 at pp. 413 – 414;
(1987) 5 S.C. 27 at pp. 95 – 97; (1987) 5 SCNJ 13 at pp. 40 – 41.
 - 16. Edward D. Re, Brief Writing and Oral Argument 6th Ed., (1987) p. 8

- (a) Introduction or background facts;
- (b) Decision of the lower court;
- (c) Issues for Determination;
- (d) Legal Arguments;
- (e) Conclusion and Reasons, and
- (f) List of Legal Authorities

3. IMPORTANCE AND DOMINANCE OF BRIEFS IN APPEAL PROCEEDINGS

As has been seen, the purpose of the requirement of brief writing is two-fold; to obviate the former tedious and time-consuming practice of reliance on oral submission before the appellate courts; and to enhance the speedy hearing of appeals.

That is why the Court of Appeal and the Supreme Court have always attached importance to the filing of briefs punctually, that is, within the times prescribed by the relevant Rules of Court or such extended times allowed by the Courts. For as Obaseki J. S.C. warned in Ogbu & Ors v. Urum & Anor.¹

*“The filing of briefs is an important innovation in our rules of court. Its dominance in appeal proceedings cannot be over-emphasised.”*²

4. FAILURE TO FILE BRIEFS

Dismissal for Want of Prosecution & Bar to Oral Argument now Striking out Order under Supreme Court (Amendment) Rules, 1991

Under the relevant Rules of both Courts, if an appellant fails to file his brief of argument punctually, he runs the fairly obvious risk of having the appeal dismissed for want of prosecution.³ The decisions of the Supreme Court in support of this point are legion.⁴

-
1. (1981) 4 S.C. 1; (1981) 1 All NLR (pt. 11) 240.
 2. At p. 7 and p. 245 respectively.
 3. Order 6 Rule 10, Court of Appeal (Amendment) Rules, 1984 .
Order 6 Rules 3 (2) and 9, Supreme Court Rules, 1985.
 4. See for instance: Ogbu’s case supra; Orobator v Amata (1981) 5 S. C. 276
Chief T. O. S. Benson v Nigerian Agip Oil Company Ltd (1982) 5 S. C. 1.
Omorieg v. Emovon (1982) 6 S.C. 6.
Balarable Musa v Ramza & Ors. (1982) 7 S.C. 118.
Yonwuren v. Modern Signs (Nig.) Ltd.,
Emomoh v Onikpite
Nwaora v Nwakonobi (1985) 1 NWLR (pt. 2) 244 ; (1985) 2 S.C. 86
Chukwuka & Ors. v. Ezulike (1986) 5 NWLR (pt. 45) 892. (1986) 12 S.C. 246
Oyeyipo & Anor. v. Oyinloye (1987) 1 NWLR (pt. 50) 256. (1987) 2 S.C. 148.

On the other hand, a respondent who fails to file his brief will not be heard in oral argument except with the leave of court.¹ It should be noted that drastic dismissal of the appeal for failure of the appellant to file brief which used to be dismissal on the merits or beyond recall; has since been mellowed by Order 6 Rule 9 of the Supreme Court (Amendment) Rules 1991 which provides instead for striking out of the appeal, presumably with liberty to restore or relist on application.

5. **NO DISMISSAL OF APPEAL, WHERE APPELLANT'S BRIEF PUNCTUALLY FILED**

Until fairly recently, it used to be the view that it was good law to dismiss an appeal where the brief filed by the appellant was of poor quality or faulty in form and contents; or unimpressive in presentation; for example, in not formulating or properly formulating the issues arising in the appeal. Thus, in Archbode Engineering Ltd. v. Water Resources Hydro Technique Wasser Technic A. G. & Anor.² the Court of Appeal unanimously dismissed the appeal for want of prosecution on the ground that the brief filed by the appellant was faulty; and he was thereby in default of filing a valid brief of argument.³ Again in Gaamstac Eng. Ltd. & Anor. v. Federal Capital Development Authority,⁴ the appeal was dismissed for want of prosecution on the ground that the appellant's brief formulated issues for determination which were not tied to any grounds filed in the appeal.⁵

However, with the greatest respect, the decision of the Court of Appeal in Archbode Engineering supra case as well as in Gaamstac Engineering supra does not now represent the law. This is because of the very recent judgment

-
1. Order 6 Rule 9 (d), Court of Appeal (Amendment) Rules, 1984.
Order 6 Rule 9 (1), Supreme Court Rules, 1985.
See also: Management (Enterprises Ltd, & Anor v. Otusanya
(1987) 2 NWLR (pt. 55) 179 at p. 194 D – F: (1987) 4 S.C. 367 – 368.
Loc. cit. See also the following cases – Alhaji Ibrahim v. Alhaji Shagari (1983) 9 S.C. 59 at pp. 86 - 87.
(1983) 2 SCNLR 176 at p. 192.
Nwachukwu v. State (1986) 2 NWLR (pt. 25) 765 at p. 772 A - C; (1986) 4 S.C. 378 at p. 386.
 2. (1985) 3 NWLR (pt. 12) 300,
 3. At p. 305,
 4. (1988) 4 NWLR (pt. 88) 296,
 5. At pp. 306 – 307

of the Supreme Court in Obiora v. Osele⁶ in which the Court of last resort was of the firm view that the decision of the Court of Appeal in Archbode Engineering case supra had been implicitly overruled by its earlier pronouncements in Ekpan & Anor v. Uyo & Ors.⁷ and Engineering Enterprise of Niger Contractor Co. of Nigeria v. Attorney – General of Kaduna State.⁸ In Obiora v. Osele⁵ supra, the Supreme Court expressly held that once a brief is filed, it constitutes the appellant’s or the respondent’ argument in the appeal; and nowhere in the Court of Appeal Rules is any provision made for striking out the appellant’s argument in the appeal no matter how inelegantly drafted and presented.

It is thus clear that once Counsel for the appellant has filed a brief of argument on behalf of his client, he has done his duty. Accordingly, there can be no warrant for holding that a brief has not been filed or that there can be dismissal of the appeal for want of prosecution. In short, a brief is a brief no matter how poor or faulty. For, in the characteristically graphic words of Oputa J. S.C. in Obiora v. Osele:¹

*“A bad, faulty and/or inelegant brief will surely attract some adverse comments from the Courts but it will be stretching the matter too far to regard such defective brief as no brief. A faulty brief is a brief which is faulty. One cannot close one’s eyes to the fact of its existence.”*²

E. PRACTICAL HINTS ON BRIEF WRITING

It is now proposed to give some practical hints on brief writing. These hints relate to the following aspects of the subject, viz:-

1. Front Cover.
2. Reference to Record of Appeal

6. (1989) 1 NWLR (pt. 97) 279; (1989) 1 SCNJ 213.

7. (1986) 3 NWLR (pt. 26) 63; (1986) 5 S.C. 1.

8. (1987) 2 NWLR (pt. 57) 381; (1987) 5 S.C. 27.

1. (1989) 1 NWLR (pt. 97) 279; (1989) 1 SCNJ 213.

2. At p. 300G and p. 230 respectively.

3. Preliminary Objection, if any;
4. Statement of Facts;
5. Formulation of Issues Arising in the Appeal;
6. Arrangement and Exposition of Points in Argument;
7. Conclusion and Reasons;
8. Neatness, Legibility and Accuracy of Brief and
9. Mastery of Brief Writing.

These aspects of brief writing will be concisely dealt with one by one; or in the abbreviated language of pleadings, seriatim.

1. Front Cover

It is recommended that as far as possible both covers of the brief should be bound in a simple form. The front cover of the brief should serve at once as a title page and general index of the work. It should of course be headed in the cause or appeal; should indicate clearly the party filing the brief, the name and address of the Counsel submitting it as well as the date of the brief.

Thus arranged, the first cover and the index serve as a table of contents, provide a ready summary of the entire brief, and furnish the open sesame designed to persuade the court as to the merits of even the most difficult case.

2. References to Record of Appeal

As far as possible, every page of the brief dealing with the facts of the case should refer to the pages and lines of the Record of Appeal where the stated facts or matters are to be found. The advantage of such 'page and line' references to the Record of Appeal is that it assists the Court to locate quickly and early the facts referred to, and so enable it to understand more readily the case being advocated in the brief.

3. Preliminary Objection, if any

It is permissible for a preliminary objection to be raised in the brief of argument instead of doing so by filing of a separate notice or application. This is because it is not the form of notice of the preliminary objection that matters; but the fact that notice of such objection has been given to the opponent within a reasonable and appropriate time.¹

4. Statement of Facts

The factual statement should be completely accurate and properly supported by the cold printed evidence in the case. Vital facts must be stated even if they do not support one's case. However, it is usually possible to match such unfavourable facts with other facts which may help to temper the situation in one's favour.

It should be emphasized, as pointed by Oputa JSC in Engineering Enterprise of Niger Contractor Co. of Nigeria v. Attorney-General of Kaduna State,² that unless Counsel maintain a balanced position in his statement of favourable and unfavourable facts by scrupulously presenting the facts without undue bias and/or embellishment:

*“ the integrity of his brief will have been seriously compromised and the effectiveness of the brief will suffer as the Court may then approach the brief with a degree of skepticism or even disbelief.”*³

Brief Not to be Prepared by Counsel if too personally involved Or is a Party to Litigation

It is advisable that Counsel should not prepare a brief in respect of a case in which he is too personally involved or where he is indeed a party to the action. The reason for this advice is that such a Counsel is bound to lose his objectivity and detachment in the conduct of the case. In one of the cases between Fred Egbe and Honourable Justice Adefarasin of blessed memory, Oputa J.S.C. observed:

-
1. Ajide v. Kelani (1985) 3 NWLR (pt. 12) 248 at pp. 257 - 258; (1985) 11 S.C. 124 at pp. 137 - 138.
Dilibe & Ors V. Nwakoze (1986) 5 NWLR (pt. 41) 315 at p. 320 C-G.
Uwa Printer Ltd. v. Investment Trust Ltd. (1988) 5 NWLR (pt. 92) 110 at p. 119 F-G; (1988) 12 SCNJ (pt. 1) 102 at pp. 109 - 110. NWLR (pt. 56) at p. 337 G - F.
 2. (1987) 2 NWLR (pt. 57) 38; (1987) 5 S.C. 27.
 3. At p. 413 and pp. 95 - 96 respectively

“In this case, the Appellant, a very eminent Counsel, undertook to conduct his case himself. He who descends into the arena of conflict cannot avoid the dust of the encounter. ... In his Introduction, the Appellant in his brief alluded to certain facts which do not form part of this case either as pleaded or as established by the evidence of the 9 witnesses who testified.”¹

5. Formulation of Issues Arising In The Appeal
(1) Meaning of Issues Arising in the Appeal

The issues arising in the appeal flow, as will be more fully shown, from the reasons encompassing one or more grounds of appeal.²

In Standard Consolidated Dredging and Construction Company Ltd. & Anor v. Katonecrest Nigeria Ltd.,³ Nnaemeka – Agu J.C.A. (as he then was) defined the term “issue arising for determination” by reference to two English cases of Bowell v. Daring & Ors (1915) 1 K.B. 54 at p. 62 and Fidelitas Shipping Co. Ltd. v. V/O Exportchleb (1966) 1 Q.B. 638 at p. 642, and came to the conclusion that an issue arising for determination is one that will result in a verdict in favour of the framer in the entire appeal, if the issue framed by him is decided in his favour. It should be pointed out that His Lordship adopted the negative definition of the term by quoting with approval Lord Diplock’s dictum in Fidelitas Shipping Co. Ltd. v. V/O Exportchleb *supra* stating:

“But while an issue may thus involve a dispute about facts, a mere dispute about facts divorced from their legal consequences is not ‘an issue.’

At this juncture, it should be added that His Lordship, since elevated as a Justice of the Supreme Court, has confirmed his earlier definition of the term ‘issue arising for determination’ in the later case of Ugo v. Obiokwo & Anor,⁴ where he quoted his earlier definition and judgment with undoubted approval.⁵

¹. Fred Egbe V. Hon. Justice J.A. Adefarasin (1987) 1 NWLR (pt. 47) 1 at p. 19E –F; (1987) 1 SC. 1 at p. 33.
². See for instance, two recent Supreme Court cases: Madagwa v. State (1988) 5 NWLR (pt. 92) 60 at pp. 69 -70 (1988) 12 SCNJ (pt. 1) 52 at pp. 58 – 59. Louis Oniah & Ors v. Chief J.I.G. Onyiah (1989) 1 NWLR (pt. 99) 514 at p. 527 C.
³. (1986) 5 NWLR (pt. 44) p. 791 at p. 799 A – E.
⁴. (1989) 1 NWLR (pt. 99) 566; (1989) 2 SCNJ 95.
⁵. At pp. 580 – 58 and p. 104 respectively.

(2) Sequence of Issues in Relative Order of Importance in the Appeal

Unless preliminary matters of substance relating to procedure and jurisdiction impinge on the landscape and dictate priority for consideration, the issues arising for determination should be arranged in relative order of importance, that is, from the most crucial to the most casual in the entire appeal. In this way, the Court is presented first with the most important aspects of the case put forward in the brief of argument.

(3) Issue to be Related to or Based on Grounds of Appeal

The issue arising in the appeal should be phrased in the form of indirect questions, beginning usually with the word whether, and in such a manner that the desired answer is somewhat obvious. And it is of crucial importance to ensure that the issues formulated as arising in the appeal must be related to or based on the grounds of appeal properly before the Court. This because as Olatawura J.C.A. put the point in Anukwua & Ors. v. Ohia & Ors.¹

*“It is the duty of Counsel when settling issues in a brief to relate them to the grounds of appeal so that if an appeal is allowed, it will be easy to know on which grounds the appeal is allowed.”*²

Stated in other words, and as emphasized by Karibi-White, J.S.C., in the recent case of Olowosago & Ors v. Adebajo & Ors.³

*“The issues for determination cannot and should not be at large, but must fall within the purview of the grounds of appeal filed.”*⁴

Further and by way of more emphasis on this point, reference ought to

1. (1986) 5 NWLR (pt. 44) 150.
2. (1936) 5 NWLR (pt. 44) 155 E.F. See also *Western Steel Works Ltd. & Anor v. Iron & Steel Workers Union of Nigeria & Anor.* (1987) 1 NWLR (pt. 49) 283 at p. 304; (1987) 2 SC. 11 at p. 45; per Oputa, J.S.C.
3. (1988) 4 NWLR (pt. 78) 563.
4. At p. 283.

made to the figurative words employed by Nnaemeka – Agu, J.S.C., in his judgments in Idika & Ors v. Erisi & Ors.⁵ and Atanda & Ors. v. Ajani & Ors⁶, where the learned Justice of the Supreme Court cautioned that issues or questions for determination:

*“do not arise in nubibus - - hanging in the skies.”*⁶

And as a matter of fact, there is a stern warning on this point issued by Uwais, J. S. C, in his lead judgment in Latunde & Anor v. Lajinfin,⁷ where he likened the inclusion in a brief of issues not based on grounds of appeal as “smuggling”; and then warned that such groundless issues are to be appropriately ignored by the Court as being irrelevant, incompetent and valueless with respect to the appeal. See IDISE V. WILLIAMS INT. LTD. 1995 1 NWLR (pt. 370, 142 at 150 par. F; ADEHI supra 666 par. E – F.

(4) Main and Subsidiary Issues of Cogent and Substantial Import to be Formulated

Formulation of Too many Issues to be Avoided

The issues formulated for determination should be the main and subsidiary issues which are cogent, weighty and substantial enough to influence a decision in the appeal in favour of a party raising such issues. Certainly, it is inadvisable to frame an issue for determination in respect of every conceivable slip contained in the judgment appealed against, since otherwise, there will be far too many issues arising in the appeal. Thus in Ugo v. Obiekwe & Anor.,⁸ Nnaemeka – Agu, J.S.C., delivering the unanimous judgment of the Supreme Court advised:

“Apart from the fact that a multiplicity of issues tends to reduce most of them (i.e. the issues) to trifles, experience shows that most appeals are won on a few cogent and substantial issues, well -

5. (1988) 2 NWLR (pt. 78) 563.

6. (1989) 3 NWLR (pt. 111) 511 at pp. 543 - 4; (1989) 6 SCNJ (pt. 11) 193 at p. 218

7. (1989) 3 NWLR (pt. 108) 177 at p. 184; (1989) 5 SCNJ 59 at pp. 64-65.

8. (1989) 1 NWLR (pt. 99) 566; (1989) 2 SCNJ 95.

framed, researched and presented rather than on numerous trifling slips.”¹

(5) Respondent not to Adopt Blindly Appellant’s Formulation of Issues

Unless the issues arising in the appeal are clear-cut or fall within a narrow compass, the attitude of the Courts is against the practice of respondents adopting almost on a routine basis appellants’ formulation of issues arising in the appeals. Thus, in Standard Consolidation Dredging and Construction Company Ltd. & Anor v. Katonecrest Nigeria Ltd.,² the Court of Appeal queried the respondent who filed a brief in which he accepted the appellants’ formulation of the issues arising in the appeal:

“hook, line and sinker.”³

Similarly, in Fasoro & Anor v. Beyioku & Ors.,⁴ the Supreme Court frowned on the manner in which the respondents dealt with the appellants’ formulation of the lone issue arising in the appeal. Specifically, the respondents’ comment in their brief on the issue duly framed by the appellants in their brief ran thus:

“The issues that the appellants want the Supreme Court to determine have been set out in their brief of argument.”⁵

It is therefore desirable for the respondent to formulate his own issues arising in the appeal rather than adopt unquestioningly the issues for determination framed by the appellant. It must be borne in mind that the respondent must formulate his issues for determination with reference to the grounds of appeal filed by the appellant; and any issues for determination framed by him outside the grounds of appeal are misconceived and incompetent⁶ It is different if there is a cross-appeal or respondent’s notice to

1. (1989) 1 NWLR (pt. 99) 566 at p. 580 G. (1909) 2 SCNJ 95 at p. 103.
cf. Bankole & 3 Ors v. Pelu & 3 Ors. (1991) 8 NWLR (pt. 211) 523 at p. 536 H. (1991) 11 SCNJ 108 at p. 119.

2. (1986) 5 NWLR (pt. 44) 791.

3. At p. 799 F. cf. Akpan V. The State (1992) 6 NWLR (pt. 248) 439 at p. 459 B – D.

4. (1988) 2 NWLR (pt. 76) 263; (1988) 4 SCNJ 23.

5. At p. 276 B – C and p. 34 respectively

6. See the cases cited on this page, footnotes 2 to 5.

vary or affirm the judgment on other grounds, when the respondent must nevertheless base his formulation of issues for determination on his grounds of cross-appeal or respondent's notice.⁷

(6) Respondent not Formulating Issues Deemed to have Adopted Appellant's Issues.

It should be understood that a respondent not formulating issues for determination in his brief is deemed to have accepted the issues as formulated by the appellant.⁸

(7) Advantage of Respondent's Formulation of Issues for Determination

It is advantageous and helpful to the parties as well as the Court for the respondent to frame his issues for determination differently from the appellant's formulation of the issues arising in the appeal. In this connection, the advantage and assistance derivable from the respondent's different presentation materialize where the appellant fails either to formulate or formulates properly his issues for determination; in which case, the Court may adopt the respondent's formulation of the issues in the determination of the appeal.

Thus, in a good number of cases, the Courts had ignored the appellant's faulty or improper formulation of issues arising for determination, and had instead not only adopted the issues as presented by the respondents; but determined the appeals on the issues arising as formulated by the respondents. Some of the appeals concerned, to mention a few, are ---

(a) Bolaji v. Bamgbose¹

(b) Engineering Enterprise of Niger Contractor Co. of Nigeria v. Attorney – General of Kaduna State.²

7. See the authorities cited at page 13 footnote 1; and Idika & Ors v. Erisi & Ors (1988) 2 NWLR (pt. 78) 563 at p. 579 H.

8. Layinka & 6 Ors v. Gegele (1993) 3 NWLR (pt. 283) 518 at p. 529 G. (1993) 3 SCNJ 39 at p. 48.

1. (1966) 4 NWLR (pt. 37) 632 at p. 643 C - E

2. (1987) 2 NWLR (pt. 57) 381 at pp. 396 – 397 and (1987) 5 S.C. 27 at p. 52, 97 – 98.

- (c) Alao v Akano³
- (d) Adelumola v. State⁴
- (e) Ebueku v. Amola⁵
- (f) Famubo & Anor v. Adekunle & ors⁶
- (g) Madagwa v. State⁷

(8) COURT NOT BOUND TO ACCEPT ISSUES AS FORMULATED BY COUNSEL AND MAY ITSELF IDENTIFY OR MODIFY THE SAME IN THE INTEREST OF PROPER DETERMINATION OF THE APPEAL

Both the Supreme Court and the Court of Appeal have let it be known and have also decided that they are not bound to accept without scrutiny the issues formulated by the parties as arising in the appeal. Rather, the Courts possess the competence to identify or modify what in their views are the real issues raised by the grounds of appeal so as to facilitate proper determination and adjudication in the appeals before them.⁸

6. Arrangement and Exposition of Points in Argument

The importance of the argument section of the brief cannot be over-emphasized: for, it is here that the Court must be persuaded of the merits of the case, even if the Court could not unfortunately be convinced of the entire case in the end. Broadly speaking, the argument section of the brief can only be persuasive and appear convincing, if it is properly arranged and set out and also succinctly, forcefully and logically written and composed. Both aspects of the matter require a little enlargement.

(a) Arrangement of points in Argument

As suggested in respect of the order of sequence in the formulation of the issues arising in the appeal, unless other substantial issues relating to procedure and jurisdiction impinge on the landscape

3. (1988) 1 NWLR (pt. 71) 431 at p. 440 G. (1988) 2 SCNJ (pt. 11) 300 at p. 317
 4. (1988) 1 NWLR (pt. 73) 683 at p. 689 F. (1988) 3 SCNJ (pt. 1) 68 at p. 73.
 5. (1988) 2 NWLR (pt. 75) 128 at p. 139 G – H
 6. (1988) 2 NWLR (pt. 79) 723 at p. 729 C.
 7. (1988) 5 NWLR (pt. 92) 60 at p. 70 B – C. (1988) 12 SCNJ (pt. 1) 52 at p. 62.
 8. See; Titiloye & 4 Ors v Olupo & 4 Ors. (1991) 7 NWLR (pt. 205) 519 at p. 537 F – G. (1991) 9 -10 SCNJ 122 at p. 140.
Lekwot & 6 Ors v Judicial Tribunal on Civil and Communal Disturbances in Kaduna State & Anor. (1993) 2 NWLR (pt. 276) 410 at p. 441 E – F.

and compel priority of attention, the points in argument in the brief should be arranged in relative order of strength. This means that the argument should begin with the strongest point, and thereafter proceed to the exposition of the other points in their descending order of substance and importance. Undoubtedly, the whole idea of beginning the argument with the strongest point first is based on the postulates that the first blow is half the battle.

Again, in order to facilitate the court's analysis and comprehension of the brief, it is strongly recommended to organize the argument in headings and subheadings related to the formulation of the issues arising for determination in the appeal.

(b) Succinct, Forceful and Logical Argument of the Issues.

This aspect of the task requires a succinct, forceful and logical argument based on the issues for determination and containing the conclusions on these issues, fully supported by the relevant legal authorities. It should be emphasized that the appeal is substantially argued on the issues dealt with in the argument in the brief, and not on the grounds of appeal from which the issues are, so to speak, distilled. It therefore behoves the writers to present in the brief an argument which is at once concise, forceful, persuasive and convincing:

7. Conclusion and Reasons

The conclusion portion of the brief usually consists of a sentence or two specifying the relief that the appeal be allowed or the request that the judgment be affirmed.

As regards the giving of reasons upon which the argument in the brief is founded, there appears to be some divergence between Order 6 rule 3 (d) of the Court of Appeal (Amendment) Rules 1984 which requires that:

“All briefs should be concluded with a numbered summary of the points to be raised and the reasons upon which the argument is founded.”

and Order 6 Rule 5 (5) (b) of the Supreme Court Rules 1985 which provides simply that:

“All briefs shall be concluded with a numbered summary of the reasons upon which the argument is founded.”

From the foregoing, it is clear that while a brief filed in an appeal before the Court of Appeal shall be concluded with both a number summary of the points to be raised as well as the reasons upon which the argument is raised’ a brief filed in an appeal before the Supreme Court shall be concluded only with a numbered summary of the reasons upon which the argument is founded. So, the requirement in this regard at the Court of Appeal is obviously more demanding here than at the Supreme and apex Court of Nigeria:

One final word which need be said on the concluding reasons of the brief is that the reasons should, like the formulation of issues for determination and the arrangement of points in argument, be set out in the relative order of strength, substance and importance.

8. Neatness, Legibility and Accuracy

In order that the brief of argument may elicit the attention, interest and understanding of the courts, it should be neatly typed in legible character and above all, accurately produced. For one thing, neatness, like cleanliness likened to Godliness, is a virtue. For another, both the Court of Appeal and the Supreme Court are manned and presided over by justices who are afflicted by varying degrees of eye-strain and other ocular problems resulting from their ages as well as the copious amount of reading or perusal they have had to cope with in their judicial task. It

is confidently believed therefore that a neat and legible brief will be of immense assistance to their Lordships of both appellate courts.

On the question of the accuracy of the brief, the attention of the reader is drawn to page 17 of this paper where reference is made to the A.B.C, of all legal writings, that is, ACCURACY, BREVITY AND CHARITY. Nevertheless, attention must be drawn again to the accuracy of the brief because of the absolute necessity of that quality in brief writing. Consequently, it cannot be too strongly recommended that the brief should be proof-read and thoroughly checked before it is signed and filed. And the reasons for this is: although the brief writer may be one of the infallible mortals the typist is certainly not:

9. Mastery of Brief Writing

Mastery of the art of brief writing depends on several factors, such as adequate knowledge of not only the rules of court on the subject; but also the facts of the case and the applicable law in the appeal. In addition, the brief writer must possess the requisite degree of ability in legal writing to ensure that the facts of the case are deftly marshaled and the applicable law is persuasively presented in a concise, coherent and convincing manner to the court.

There are two basic ways of acquiring mastery of the subject of brief writing. The first is by a perusal and understanding of the applicable rules of court, coupled with a close study of legal works on the subject as well as the briefs of argument prepared by experienced counsel still actively practicing at the Court of Appeal and the Supreme Court of Nigeria.

And in order to assist in a practical way in this regard, the writer has annexed to this paper as Annexure 1, 11 and 111 three selected types

of briefs filed by him in appeals before the Court of Appeal and the Supreme Court from time to time. Annexure 1 is the brief filed by the writer as amicus curiae in Appeal No.SC. 169/87: Abioye & 4 Ors v. Yakubu& 5 Ors.¹ already discussed at page 12 of this paper.

Annexure 11 is the respondents' brief filed in Appeal No. SC. 217/86: Uwa Printers (Nig.) Ltd. v. Investment Trust Co. Ltd.² arising from breach of contract; while Annexure 111 is the appellants' brief in Appeal No. CA/B/159/92: Ejenavi (Omorovie) & 8 Ors v. Chief Oritsedere & 9 Ors.³ relating to Chieftaincy and Declaration and Traditional Ruler Title in Delta State of Nigeria.

The second way of acquiring mastery of the subject is by dint or actual practice in, and exposure to, the writing of briefs in the normal course of legal practice.

It is needless to say that of the two ways of achieving proficiency in brief writing highlighted above, the second way, involving actual practice in the writing of briefs, is to be preferred because as the old tested sayings go: practice makes perfect; and an ounce of practice is worth a pound of theory. After all, did the great poet, Alexander Pope, (1688 – 1744) not make the point nearly two and half centuries ago when he wrote in his book, *Essay on Criticism*, that:

“True ease in writing comes from art, not chance, As those move easiest who have learned to dance.”

CONCLUSION

This paper starts with a general but brief examination of the subject of brief writing as a result of which it was found that whereas brief writing is not a feature of the English practice and procedure; brief writing ranks as a national obsession in the United States where briefs are presented as advocacy or rhetoric papers and documents before tribunals,

-
1. (1991) 5 NWLR (pt. 190) 130 – 256.
(1991) 6 SCNJ 69 – 155.
 2. (1988) 5 NWLR (pt. 92) (1988) 12 SCNJ (pt. 1) 102.
 3. As yet unreported.

trial courts as well as appellate courts.

The account then deals with the introduction in September 1977 of the requirement of brief writing in respect of appeals before the Supreme Court by virtue of the Supreme Court Rules, 1977. Here, the view is taken that the idea of brief writing reached the country through the United States of America.

Of course, the requirement of brief writing in appeals before the court of Appeal was also considered. Mention was made of the temporary basis on which brief writing was first introduced in that court in 1983 to cope with the determination of appeals from decisions in numerous election petitions arising from the general elections held that year. Also mentioned was the subsequent formal introduction of brief writing in the Court that took place in September 1984 by virtue of the Court of Appeal (Amendment) Rules 1984.

It was also observed that the current rules applicable in appeals before the Supreme Court are partly the Supreme Court Rules 1985 which revoked and subsequently replaced the 1977 Rules of the Court; and partly the Supreme Court (Amendment) Rules 1991, with effect from 1st October, 1991. It was observed that although the Rules governing brief writing applicable in the Court of Appeal are a replica of the Supreme Court Rules, there are quite some differences between the Rules.

Yet there is agreement as to the purpose of the requirement of brief writing in respect of appeals before both appellants courts – to save time and costs involved in the former tedious and time-consuming practice of unlimited oral argument of appeals; and so, expedite the hearing of appeals substantially on written briefs of argument filed in court.

There is also included in the paper a discussion covering the several types of briefs, the significance and dominance of briefs in appeal proceedings, and the consequences of default in the filing of briefs.

The paper then ends with some practical hints on brief writing and refers to some of the briefs personally prepared by the writer in the normal course of his legal practice, which are included as Annexures 1, 11 and 111.

Finally, the writer wishes to express his appreciation for the opportunity given to him over the years to make his humble contribution towards the success of these advanced courses organized by the Institute. Indeed, the writer is firmly of the view that his papers on the subject have the beneficial effect of keeping him abreast of the rules and practice governing the art of brief writing, in the light of the relevant decisions of both the Court of Appeal and the Supreme Court of Nigeria.

DR. MUDIAGA ODJE, S.A.N., O.F.R.