

IN THE COURT OF APPEAL HOLDEN AT ABUJA

APPEAL NO. CA/
SUIT NO: NICN/ABJ/263/2023

BETWEEN

1. ALH. NAJEEM USMAN YASIN
2. ALH. TAJUDEEN BADRU AGBEDE
3. ALH. ALIYU ISA ORE
4. KAYODE AGBEYANGI
5. ALH. ALHASAN HARUNA 313
6. ALIYU TANIMU
7. ALH. HAKEEM ADEOSUN

APPELLANTS



AND

1. TAJUDEEN IBIKUNLE BARUWA
2. BELLO ADAMU
3. EUGENE EZE JOB
4. DANJUMA SAIDU
5. PRINCE ISAH DAHIRU USMAN
6. SULEIMAN ADAMU
7. ODION OLAYE J.P
8. CHIEF HERBERT C. IWUJI
9. MUHAMMED BELLO MADUGANARI
10. OLAJIDE ABIDEEN ABIMBOLA
11. LEKAN SALAMI FOLORUNSHO
12. MONDAY ELEAZAR
13. COMRADE CHUKWUDI ASOGWA
14. NATIONAL UNION OF ROAD TRANSPORT WORKERS

RESPONDENTS

NOTICE OF APPEAL

TAKE NOTICE that the Appellants being dissatisfied with the decision of the National Industrial Court of Nigeria, Abuja Judicial Division more particularly contained in the Judgment of Hon. Justice O.O Oyewumi dated the 11th day of March 2024, more particularly stated in paragraph 2, doth hereby appeal to the Court of Appeal upon the grounds set out in paragraphs 3 and will at the hearing of the Appeal seek the reliefs set out in paragraph 4. And the Appellants further state that the names and addresses of the persons directly affected by the Appeal are those set out in paragraph 5.

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2. Part of the Decision of the Lower Court Complained of:

The Whole Decision.

3. Grounds of Appeal

- 1) The learned trial Judge erred in law when His Lordship overruled the Appellants' Notice of Preliminary Objection dated 21/11/2023 and filed on 22nd November 2023 and proceeded to hear and determine the suit on the basis of the Respondents' Originating Summons in the face of serious and unresolved dispute of facts in the Respondents' Affidavit evidence in support of the Originating Summons and thereby denied the Appellants the right to a fair trial and fair hearing, when -

Particulars of Errors

- a) the law is well settled that Originating Summons is only suited for cases relating to construction of Statutes, instrument and documents and where there are serious dispute of facts it is only appropriate that pleadings are ordered to afford parties a fair hearing;
- b) the facts and exhibits as put forward by the Respondents in the 21 paragraphs Affidavit in support of the Originating Summons as well as the 6 paragraph Further and Better Affidavit with copious sub-paragraphs relating to the schedule and holding of the zonal and Quadrennial Delegate Conference of the 14th Respondents and the proper manner for electing the National Administrative Council officer of the 14th Respondents, is such that cannot be resolved by affidavit evidence and it is necessary to afford parties a fair hearing by ordering of pleadings to test the veracity of the claims in the suit;

- c) the court ought reasonably to have called for pleadings in the suit to investigate the fact that Respondents have indeed complied with the steps

and procedure prescribed in the 14th Respondent's Constitution in the purported election of the 1st to 12th Respondents as the National Administrative Council officers of the 14th Respondents;

- d) the learned trial judge in determining the case on the Originating Summons without ordering pleadings in the face of obvious disputed facts denied the Appellants the opportunity to cross examine the Claimants/Respondents on the various allegations relied upon in the suit by the Claimants/Respondents.

- 2) The learned trial Judge erred in law when His Lordship held that the failure of the Appellants to file an Affidavit in support of the Notice of Preliminary Objection is fatal to the objections raised to the competent of the Suit.

Particulars of Errors

- a) the grounds of the Appellants' Objection to the Suit relates to the procedure adopted in the commencement of the Suit by the Respondents at the lower Court and same is a question of law;

- b) it is settled position of law that in the determination of the Appellants' Objection to the competence of the Suit the Court is mainly expected to consider the Claimants/Respondents' Originating Summons and the supporting Affidavit as placed before the Court. See *Dopah & Ors v. Reg'd Trustees of UMCN* (2017) LPELR-43624(CA);
- c) all the grounds of objection in the Appellants' Notice of Preliminary Objection relates to facts already pleaded and espoused in the Notice of Preliminary Objection to demonstrate the serious and contentious issues of facts in the Claimants/Respondents' case being made out before the Court;
- d) it is settled law that it is not the filing of an affidavit in support of a Notice of Preliminary Objection or even the Counter Affidavit of the

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Defendants/Appellants in this case that determines whether a suit raises serious dispute of fact. See *S.A.I. Ossai v. Isaac F. Wakwah & Ors.* (2006) 2 SCNJ 19;

- e) the learned trial judge misconstrued and failed to properly consider the Appellants' Notice of preliminary Objection and thereby breached the Appellants' right to fair trial and fair hearing.
- 3) Other Grounds of Appeal will be filed upon receipt of the judgment and the Record of Proceedings in the matter.

4. Reliefs Sought from the Court of Appeal

1. To allow the appeal and set aside the decision of the National Industrial Court contained in the Judgment of Hon. Justice O.O Oyewumi dated the 11th day of March 2024, for being a breach of the Appellants' right to fair hearing.
2. To order pleadings in the matter and remit the case back to the lower Court for re-hearing by another judge of the National Industrial Court in the interest of justice and fair hearing.

5. Persons Directly Affected by the Appeal

Names

Address

THE APPELLANTS

1. ALH. NAJEEM USMAN YASIN
2. ALH. TAJUDEEN BADRU AGBEDE
3. ALH. ALIYU ISA ORE
4. KAYODE AGBEYANGI
5. ALH. ALHASAN HARUNA 313
6. ALIYU TANIMU
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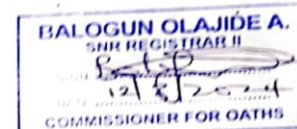
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THE RESPONDENTS

1. TAJUDEEN IBIKUNLE BARUWA
2. BELLO ADAMU
3. EUGENE EZE JOB
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Dated the 11th day of March 2024



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