

IN THE COURT OF APPEAL OF NIGERIA
HOLDEN AT ENUGU

BETWEEN:

APPEAL NO: CA/E/454/2017
SUIT NO. NICN/EN/751/2014

1. DELTA STATE UNIVERSITY, (DELSU) ABRAKA
2. THE GOVERNING COUNCIL, DELTA STATE UNIVERSITY,
ABRAKA
3. THE VICE CHANCELLOR DELTA STATE UNIVERSITY,
ABRAKA

APPELLANTS

AND

1. SIR JOSEPH E. UBOGU
2. PROFESSOR UVIE A. IGUN
3. DEACON EMMANUEL. O. EJIKO



RESPONDENTS

RESPONDENTS' BRIEF OF ARGUMENT

**THIS BRIEF DATED THIS 4TH DAY OF JUNE, 2018,
WAS SETTLED BY:**

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Respondents Brief

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1.0 INTRODUCTION:

- 1.1 This is an appeal filed by the Appellants against the judgment delivered by Honourable Justice Waziri Abali on the **4th day of May, 2017** which said judgment can be found at **pages 414 -421** of the Record of Appeal.
- 1.2 The claims of the Respondents as per their amended statement of claim at the lower court are as follows:
 1. *A declaration that the salaries/ pension package/ entitlement applicable to Claimants is that which was discussed and approved by the 2nd Defendant at the 47th Regular meeting of 2nd Defendant held sometime in 2003.*
 2. *A declaration that the alleged White Paper Report of the Committee on Personnel Audit and Development of the Integrated and Automated Payroll and Personnel Information System for Staff of Delta State University did not set aside or affect the salaries/pensions of Claimants in any way whatsoever based on the approved package of 2003.*
 3. *A declaration that Defendants haven implemented the said decision on the salaries/pension package/entitlements taken at 2nd Defendant's 47th Regular meeting in 2003 and Claimants upon their retirement haven enjoyed the approved pension package for years, the Defendants lacked the powers and competence to review the said package whereby they drastically reduced and removed some of the approved package aforesaid.*
 4. *A declaration that the acts of the Defendants in slashing, altering or tampering with the approved pension benefits of Claimants and reducing same drastically without any complaint, investigation, consultation, query or Claimants being given any opportunity to be heard by the defendants was done with malice and with no semblance of legal justification, same amounts to a breach of the Claimants fundamental human rights to fair hearing as guaranteed under the 1999 constitution and therefore null and void and of no effect whatsoever.*

5. *An order of Court compelling the Defendants to pay to the 1st Claimant the sum of N10395616.25 (Ten Million Three Hundred and Ninety Five Thousand Six Hundred and Sixteen Naira Twenty Five Kobo) being the total outstanding pension due to the 1st Claimant as at June, 2014 when this suit was instituted and subsequently at the monthly rate of N363,468.89 (Three Hundred and Sixty Three Thousand Four Hundred and Sixty Eighty Naira Eight Nine Kobo).*
6. *An order of Court compelling the Defendants to pay every other amount due to the 2nd and 3rd Claimants to be calculated as per their accurate monthly pension/salaries which the Defendants have deprived them in accordance with the 2003 salary package of the Delta State University.*
- 6.(sic) *An order of perpetual injunction restraining the Defendants by themselves, agents, privies and by whomsoever from reviewing, tempering, slashing, cutting and interfering in any manner whatsoever with Claimants pension package/ entitlement which was duly approved by Defendants sometime in 2003 and implemented in favour of Claimants after they retired from 1st Defendant.*
7. *A mandatory order of this Honourable Court compelling Defendants to pay the balance of all arrears of Claimants' unpaid pension entitlements which Defendants have illegally reduced against that approved in 2003 without legal justification from August 2010 till June 2014 when this suit was instituted and thereafter maintain the said 2003 approved pension package without any interruption whatsoever.*
8. *Payment of 10% compound interest on the accumulated arrears of the unpaid pension/ salary package of Claimants.*
9. *Payment of N50,000,000 (Fifty Million Naira) to Claimants jointly being general damages suffered by Claimants for the stress they have gone through in managing their families since 2010 with the inadequate pension package based on the illegal reduction and/or interference.*

See pages 256 - 268 of the Record of Appeal

- 1.3 At the end of the trial, the learned trial Judge entered judgment in favour of the Respondents, granting only reliefs 1, 2, 5, 6 and 7, in the following terms:

"I consequently make order as follow:

A declaration that the salaries/pension package/ entitlement applicable to the claimants is that which was discussed and approved by the 2nd defendant at the 47th Regular meeting of the 2nd Defendant held sometime in 2003;

A declaration that the alleged White Paper Report of the Committee of Personnel Audit and Development of the Integrated and Automated Payroll and Personnel Information System for Staff of Delta State University did not recommending the setting aside or affect the salary/pensions of the claimants in any way whatsoever based on the approved package of 2003;

An Order compelling the defendants to pay to the 1st claimant the sum of N10,395,616.25 (ten Million, Three Hundred and Ninety-Five Thousand, Six Hundred and Sixteen Naira, Twenty-Five Kobo) being the total outstanding pension due to the 1st claimant as at May, 2014 and subsequently at the monthly rate of N363,468,89 (Three Hundred and Sixty-three Thousand, Four Hundred and Sixty-eight Naira, eighty-nine Kobo);

An Order compelling the defendants to pay every other amount due to the 2nd and 3rd claimants to be calculated as per their accurate monthly pension/salaries which the defendants have deprived them in accordance with the 2003 salary package of the Delta State university;

A mandatory Order compelling the defendants to pay the balance of all arrears of claimants' unpaid pension entitlements which the defendant have illegally reduced against that approved in 2003 without legal justification from May 2010 till the date of this judgement (sic), and hereafter, maintain the said 2003 approved pension package without any interruption whatsoever.

Judgement (sic) is entered accordingly"

See pages 420 – 421 of the Record of Appeal

- 1.4 Dissatisfied with the judgment of the lower court aforesaid, the Appellants appealed against the judgment to this Honourable Court vide their Notice of Appeal dated and filed 23rd day of May, 2017 and which is at **pages 422 – 426** of the Record of Appeal.

BACKGROUND/STATEMENT OF FACTS:

- 1.5 The facts of this Appeal are straight forward. The Respondents were principal officers (i.e. Registrar, Vice-Chancellor and Librarian respectively) of the Delta State University, Abraka (1st Appellant). Following a circular dated 17th January, 2003 from the Committee of Pro-Chancellor and Vice-Chancellor of Nigeria to all Nigerian Universities (**found at pages 46 - 53 of the Record of Appeal**), the Appellants, at its 47th Regular meeting of Council adopted a new remuneration package adopting the circular aforesaid for serving and retired principal officers of the 1st Appellant and members of the Governing Council (2nd Appellant).

- 1.6 This new remuneration package was to take effect from February, 2003 and we crave the Honourable Court's indulgence to hereinafter refer to same as the 2003 Remuneration package.
- 1.7 The 1st and 3rd Respondents retired sometime in 2005, while 2nd Respondent successfully completed his tenure as Vice-Chancellor in November, 2004 but continued as Professor until his retirement in June 2011. 1st and 3rd Respondents immediately upon retirement enjoyed the remuneration package of 2003 as pension up till April 2010 when Appellants started tinkering and slashing their monthly pensions.
- 1.8 The 2nd Respondents also enjoyed the said remuneration package of 2003 even as a serving professor until the Appellants started tinkering and slashing his salary/pension package before he then retired in 2011. Despite series of appeal and solicitor's letter, the Appellants refused to revert to the 2003 remuneration package as such the Respondents filed the suit at the trial court.
- 1.9 At the trial Court the parties filed and exchanged pleadings. On the side of the Respondents, the case was fought based on the amended statement of claim filed on 30th October, 2015 vide a motion for amendment which was granted on 9th day of November, 2015 (**see page 395 of record of appeal**) and Reply to Defendants' Statement of Defense found at **pages 176 - 177 of the record of appeal**. On the Appellants side, the case was fought based on the amended statement of defense filed vide a motion for amendment dated and filed 17th June, 2015.
- 1.10 It is pertinent to point out that from the state of the pleadings exchanged and evidence led, the Appellants admitted the claim of the Respondents to the effect that the Respondents retired and were being paid salaries/pensions for several years in line with the remuneration package of 2003 approved at 47th Regular meetings the Governing Council in 2003. However, they claimed, howbeit unsuccessfully, that the 2003 remuneration package was overturned by the Government White Paper on Report of the Personnel Audit of Delta State University, Abraka, 2010; that the Governing Council reversed itself on its decision of 2003 at its 74th regular meeting; and finally that the 2003 package was stopped because it did not receive the approval of Governor of Delta State, who was the Visitor to the University.

1.11 In the course of his judgment, the trial Court made the following crucial and specific findings:

1. *That it is not true and indeed there is nothing in the Delta State University Law to suggest that decision of the Governing Council (2nd Appellant) requires the approval of the University Visitor before it becomes effective. Thus the Appellants cannot be heard to contend that the said 2003 special salary and pension package was suspended/discontinued because the Visitor failed to give approval.*
2. *There was no recommendation in the report of the Personnel Audit and Development of Integrated and Automated Payment and Personnel Information System using Biometric for staff of Delta State University recommending stoppage of payment of the approved package in 2003. The reversal preceded the White Paper which is dated 12th November, 2010 but the Appellants started tinkering with the pension of the Respondents as far back as in April, 2010, hence the White Paper cannot by any stretch of imagination be accepted as the basis for the alleged reversal.*
3. *That there is nothing in the 74th regular meeting of the 2nd Appellant which reversed the special package of salary/pension approved in its 47th regular meeting of 2003. (See minutes of 74th Regular Meeting at pages 245-250 of the record of appeal)*

For findings of Court see pages 420 – 421 of the record of appeal.

1.12 Suffice to point out that from the minutes of 74th Regular Meeting, it was another special package that was approved in 2009 at the 67th Regular meeting of Council (herein after called remuneration package of 2009) that was deprecated by the Government White Paper and indeed the perpetrators indicted and the amounts to be refunded were specifically mentioned in the white paper, there was no mention of any of the Respondents therein. There was no mention in the said White Paper of the 2003 remuneration package at all.

1.13 As will be shown later, Appellants did not challenge these findings of fact in the Notice & Grounds of Appeal filed on 23rd May, 2017 which is at pages 422 – 426 of the Record of Appeal. Appellants filed their brief of Argument wherein they raised two issues for determination, to wit:

1. *Whether in view of the combined effects of Exhibit DW A2C, Exhibit DE 1 and Section 9 (ix) of Exhibit A1C tendered by the appellant and admitted in evidence, was it right for the learned trial judge to hold that the Appellants have no justification to stop the payment of the special remuneration package approved for principal officers at its 47th regular meeting of 2003?*

2. *Whether in view of Section 49 (1) and (2) of the Delta State University Law, (Exhibit DWA3C) and Government Accepted Recommendation 9 (iv) of the Government White Paper (Exhibit DW A1C), was it right for the trial Judge to hold that decision of the 2nd Appellant on financial matters of salaries and pensions do not require the approval of the University Visitor to become effective?*

1.14 In response and in opposition to the Appellant's brief of argument, Respondents settle their brief as follows.

2.0 **NOTICE OF PRELIMINARY OBJECTION/ARGUMENT:**

2.01 Pursuant to Order 10 rules 1 of the Court of Appeal rules, 2016, the Respondents shall before or during the hearing of this Appeal, raise preliminary objection to the Notice and Grounds of Appeal and urge that same be struck-out/dismissed on the following grounds:

A. **FAILURE TO SEEK LEAVE TO APPEAL:**

Ground 2 of the Notice of Appeal requires the leave of this Honourable Court before Appellant can file same and canvass argument in support of same based on the following:

i. The ground of appeal complains of the failure of the Learned Trial Court to give effect to Section 49 (1) & (2) of Delta State University Law which is mandatory on the Governing Council of the Delta State University and relied exclusively on the powers of the Governing Council of the Delta State University as provided in the Delta State University Law.

- ii. Section 243(2) of the Constitution of the Federal Republic of Nigeria (As Amended) 2011 prescribes that appeal from decisions of the National Industrial Court shall only lie as of right in respect of appeals relating to questions of fundamental rights as contained in Chapter IV of the Constitution.
- iii. The ground 2 not being on question of fundamental right is incompetent having been filed without the leave of this Honourable Court. See **Skye Bank Plc vs. Iwu (2017) 16 NWLR (Pt. 1590) 24 at 105 – 106, paras. G-C.**

“In all, then on a holistic interpretation of section 240 and 243(1) of the 1999 Constitution, appeals lie from the trial Court to the lower Court; that is, all decisions of the trial court are appealable to the lower court; as of right in criminal matters (section 254(c)(5) and (6)) and fundamental rights cases, (Section 243(2)); and with leave of the lower court, in all other civil matters where the trial court has exercised its jurisdiction, Section 240 read conjunctively with S. 243(1) and (4).”

B. ISSUES AT VARIANCE WITH GROUNDS OF APPEAL AND THEREFORE INCOMPETENT:

Subject to the granting of grounds A of this objection, the issues raised in the Appellants' Brief of argument are completely at variance with the only surviving ground 1 on the Notice and Grounds of Appeal based on the following reasons:

- i. Ground 1 complains of the **procedure followed by the learned trial Judge** in arriving at the decision that the reversal of the special package for principal officers by the 2nd Appellant did not extend to that approved at its 47th regular meeting of 2003, **was in breach of the fundamental rights of the Defendants/Appellants to fair hearing.**
- ii. Issues framed/raised in Appellants Brief of argument has nothing do with the procedure resorted to by the trial Judge breaching Appellants' fundamental right.

iii. Appellant is duty bound to frame and tie his issues to the grounds of appeal as contained in the Notice & Grounds of Appeal filed in Court. The issues formulated do not relate to any competent ground of appeal before this Honourable Court and the remaining competent ground can be deemed as abandoned. See **Unity Bank Plc v. Bouari (2008) 7 NWLR (Pt. 1086) 372 at 400, per Ogbuagu JSC:**

“As it stands, there is no valid ground of appeal which this issue 2 is related to or formulated from and the said issue, being at variance with the said ground 2 of the grounds of appeal, is deemed in law, as having been abandoned as rightly submitted in the respondent’s brief”

iv. We therefore urge that the Appeal be struck out following the reasoning and decision of the Court in **S.P.D.C.N. Ltd v. Amadi (2010) 13 NWLR (Pt. 1210) Page 82 at 119 – 120**, where it was held thus:

“An issue that is at variance with a ground of appeal it purports to sprout from is incompetent and must be discountenanced. Where an issue for determination is at variance with the ground of appeal it purports to be formulated, the said ground of appeal is deemed in law to have been abandoned. See Fasoro v. Beyioku (1988) 2 NWLR (Pt. 76) 263; A.G. Bendel State v. Aideyan (1989) 4 NWLR (Pt. 118) 646; Jatau v. Ahmed (2003) 4 NWLR (Pt. 811) 498; Unity Bank Plc v. Bouari (2008) 7 NWLR (Pt. 1086) 372. In the result both the issue no 10 formulated by the appellant and the ground of appeal no. 22 on which it is based, both being incompetent are hereby struck out”

ISSUES FOR DETERMINATION

3.00 Without prejudice to the Preliminary Objection, the Respondents humbly submit the following issues for determination:

1. ***Whether Appellants’ fundamental right to fair hearing was breached by the procedure followed by the trial judge in reaching a decision that the reversal of the special package for principal officers by the 2nd Appellant did not extend to that approved at its 47th regular meeting of 2003?***

(Ground 1 of Notice of Appeal)

2. Whether the trial Court was right in placing reliance on the exclusive powers of the Governing Council as provided for in the Delta State University law and not section 49 (1) and (2) of the same law in deciding the dispute in favour of the Respondents?

(Ground 2 of the Notice of Appeal)

ARGUMENT IN SUPPORT OF ISSUE 1 FOR DETERMINATION:

[Whether Appellants' fundamental right to fair hearing was breached by the procedure followed by the trial judge in reaching a decision that the reversal of the special package for principal officers by the 2nd Appellant did not extend to that approved at its 47th regular meeting of 2003?]

- 3.01 We submit most humbly that the trial Court never violated Appellants' right to fair hearing by the procedure it adopted in holding that the reversal of the special package for principal officers by the 2nd Appellant did not extend to that approved at its 47th regular meeting of 2003 or in any other way whatsoever. We submit that this appeal is another classic example of when the fair hearing mantra is wrongly resorted to and we urge this Honourable Court to so hold.
- 3.02 From the particulars in support of ground 1, it is clear that Appellants' complaint of breach of fair hearing is hinged on the fact that the trial Court allegedly did not consider exhibit DE.1 (minutes of the 87th Regular meeting of the Governing Council) before reaching a finding that the reversal at the 74th Regular meeting did not extend to the special salary/pension package approved at the 47th Regular meeting in 2003. They further alleged that the trial Court did not also consider the evidence of DW 2 elicited under cross-examination when he stated that the directive of the Delta State Government that the indicted beneficiaries of the 2009 remuneration package should make refunds extended to the Respondents.
- 3.03 We submit most humbly that Appellants' contentions are misplaced and indeed the trial Court did not violate the Appellants right to fair hearing. Contrary to Appellant's contention, the trial Court duly and correctly considered the relevant evidence, documents and arguments in the case before reaching his decision in favour of the Respondents.

3.04 In the first place the trial Court ably took all of Appellants contentions including the part nor forming the plank of this appeal into cognizance before reaching a decision. For ease of reference we reproduce these portions of the judgment as follows:

"In addressing issue No.1, counsel submitted that the 2nd defendant has the inherent powers to reverse itself on its earlier decision when it sees the need to do so and whenever it does some such reversal is valid and not ultra vires. Counsel maintained that the said special remuneration package principal officers was implemented the defendants without referring same to the Visitor for approval in contravention of financial regulation existing in Delta State University Law.

Counsel contended that by Section 8 of the Delta State University Law, the power of the 2nd Defendant are subject to the provision of the law relating to the Visitor. Counsel maintained that the powers of 2nd defendant in financial matters is subordinate to the Visitor. Counsel contended that following exhibit DW A1C (Government White Paper dated 12th Nov., 2010), recommendation 9(iv), the University Governing Council was advised to limit itself to the formulation of policies and programmes and general administration of the University, while salary matters should be referred to the Visitor.

Counsel also referred to section 49 of the Delta State University law, and contended that the Visitor is superior to the 2nd defendant as far as financial obligations of the University is concerned. Citing a plethora of cases, counsel maintained that 2nd defendant rightly reversed itself on the approved special remuneration package.

On issue No.II, counsel submitted since the Visitor, who is responsible for the payment of salary and pension of members of staff of the 1st defendant has validly rejected he Principal Officers special Remuneration; and the 2nd defendant had taken future step to reverse itself on the decision, then the claimant cannot be heard claiming through the said reversed package or contending that the reversal was ultra vires...

I havestudied and examined all the processes filed in this suit and considered the submission of counsel to claimant; I will proceed to addressing the issue raised by the by counsel..."

3.4b It is not the law that simply because the trial Court did not believe or was not swayed by all the arguments of the Appellants then their fundamental rights to fair hearing has been breached. In **U.I.T.H.M.B. v. Abdulrahaman (2017) 15 NWLR (Pt. 1589) 397, pp. 429, paragraph D – H**, Ugo JCA, while delivering the lead judgment held thus:

“...Indeed all they have tried to do and succeeded in doing in their grounds of appeal is to scream ‘denial of fair hearing’ wherever the trial Judge did not share their view in any of their contentions with the respondent. They seem not to understand, even as I believe they actually do but are pretending not to, that it is the province of the trial Judge as an adjudicator to agree or disagree with contentions of disputant before as he appreciates them. To them ‘fair hearing’ only means a hearing where the court agrees with all their arguments regardless of their merit, anything else is ‘unfair hearing’ within their understanding of Section 36(1) of the 1999 constitution for which a right of appeal lies to this court under section 243(2) of the same Constitution. I am sorry they don’t have me with them in that sort of thinking and interpretation of fair hearing. I hold the view that their complaints shorn of the fine embroidery of ‘breach of fair hearing’ they have sown around them have nothing to do with breach of fair hearing...”

(Highlights are supplied for emphasis)

3.05 It is also not the law that the trial Court must specifically respond and make a pronouncement on all the points raised in Appellants’ written address in the spirit of fair hearing so long the area not mentioned specifically is not material to the issues submitted for determination and does not lead to miscarriage of justice. In **Joseph Akole v. Joshua Alonge & Anor (2013) LPELR – 21129**, the Court of Appeal, per Onyemenam, J.C.A., pp. 23 – 24, paras. G-A, held thus:

“...I am mindful of the fact that a Court is not bound to consider all arguments raised by parties in a trial but the Court are bound to pronounce on submissions that border on material issues which are pertinent to the resolution of the real controversy of the case...”

- 3.06 The relevant question which should be asked at this stage is: ***is exhibit DE.1 (minutes of the 87th Regular meeting of the Governing Council) material to the defense of the Appellants' at the trial Court? Is the part of DW2 evidence alleged not to have been considered material to the defense of the Appellants and did the non-mentioning of this pieces of written and oral evidence lead to miscarriage of justice?*** We submit that the answers to these questions are in the negative as will be shown hereafter. Besides no argument was canvassed in respect of the second question which clearly means it is abandoned.
- 3.07 We submit that **exhibit DE.1** is not material to the defense put up by the Appellants at the trial Court rather same was ancillary to contention of the Appellants that the 2nd Appellant had reversed its decision reached at the 47th regular meeting during its 74th Regular meeting following and adopting recommendations contained in the Government White Paper. Appellants only introduced **exhibit DE.1** (minutes of the 87th Regular meeting of the Governing Council) to buttress this point by suggesting that following the purported reversal of the 2003 package, 2nd Respondents and a former Bursar of the Institution appealed to the 2nd Appellant and the appeal was dismissed. The relevant portions of the Appellants' pleadings that made reference to **exhibit DE.1** are paragraphs 10, 14, and 15 reproduced as follows:

"10. In response to paragraph 16(a-i) of the statement of claim, the Defendants state that the 2nd Defendant [Governing Council] at its 87th Regular Meeting held on 19th December 2013, considered the appeal by the former Bursar and the 2nd Defendant (sic) for restoration of the 2003 package for principal officers. The governing council rejected the appeal and stated the Council has endorsed the government white paper on the matter and it must be guided by it."

The above paragraph was reproduced in paragraphs 14 and 15 of the Amended Statement of Defense.

- 3.08 We submit that it was never the case of the Appellants that the decision reached by the 2nd Appellant at its 47th Regular meeting approving the 2003 remuneration package was set aside or reversed at its 87th Regular meeting rather that the appeal by 2nd Appellant against the reversal was considered at the 87th Regular meeting where 2nd Appellant directed that its decision relating to one Mr. Ugoji (who was indicted by the Government White Paper) should apply having adopted the recommendation of the Government White Paper at its 74th Regular meeting (howbeit erroneously) it is therefore functus officio to hear any appeal (howbeit erroneously).
- 3.09 Put in other words, the primary piece of evidence in support of the defense are the Government White Paper (**Exhibit DW A1C**) and the Minutes of 74th Regular meeting (**Exhibit DW A2C**) approving same. Every other pieces of evidence rested squarely on these two documents.
- 3.10 So the Appellants' contentions of breach of fair hearing in the appeal relating to the 87th Regular meeting decision must of necessity rise or fall with the decision of the Council at its 74th Regular meeting where it adopted the recommendation of the Government White Paper. As stated earlier, **the Appellant did not challenge the finding of the Honourable trial Court to the effect that there was no decision of council setting aside the special salary/pension package of 2003 rather it was a new salary structure approved in the 67th Regular meeting that was setaside.** For the avoidance of doubt we reproduce relevant portion of the decision of Council at its 74th Regular meeting (tendered by the Defense and admitted as Exhibit DW A2C) for ease of reference as follows:

*"(i) Minute 1979- **Re: Report/Recommendation of the Ad-hoc Committee on Principal Officers' Emoluments-Reversal of Approval.***

Council recalled that the report/recommendations of the above mentioned Ad-hoc Committee was presented at its 73rd Regular meeting held on May, 1, 2010, but the matter, was deferred. The matter was listed for consideration in the 74th Regular Meeting of Council.

In considering the matter, **Council recalled that at its 67th Regular meeting held on 27th and 28th February, 2009 approval was given for the implementation of the New Salary Structure for the Vice-Chancellor** in line with the Federal Republic of Nigeria Official Gazette No. 42, Vol. 95. Council also recalled that it approved payment of Principal Officer's Emoluments to the other Principal Officers of the University as follows:

(a) Vice - Chancellor ...

(b) Other Principal Officers

...

Council had after due consideration noted that relevant/appropriate information was not made available to it when the approval was given.

Council accordingly reversed itself on the matter and decided that the status quo ante be maintained"

Found at **lines 3 -26, and 1-13 at pages 173 - 174** of the Record of Appeal

3.11 From the clear wordings of the above extract of the minute at the 74th Regular meeting, the learned trial Judge was therefore right to have held thus:

"On the claim of the defendants that in the 74th regular meeting of the 2nd defendant, it reversed its decision in its 47th regular meeting in 2003, wherein it approved a special salary and pension package in contention. Here again, as rightly contended by the learned counsel for the claimants, there is nothing in the said minutes of the 74th regular meeting of the 2nd defendant to show that there is a reversal of the special package of salary and pension approved in its 47th regular meeting of 2003..."

3.12 We submit that in view of the above, Appellants contention that the trial Court breached their right to fair hearing by not considering exhibit DE.1 (minutes of the 87th Regular meeting of the Governing Council) is without any legal or factual basis. Making an express pronouncement on exhibit DE.1 would at best be cosmetic and peripheral to the judgment in question. Having found that during the 74th Regular meeting the Council never set aside the decision reached at the 47th Regular meeting, the trial Court only fell short of saying that in exhibit DE.1 the 2nd Appellant erroneously declined the appeal by the 2nd Respondent.

- 3.13 We submit further that Counsel to Appellants owe a duty to this Honourable Court to make submissions that will aid the Honourable Court to reach a just resolution of the appeal bearing in mind that this Honourable Court and the apex Court have severally held that litigation is not a game of hide and seek where one party deploys any means possible to outwit the other party.
- 3.14 We submit that Appellants have attempted (howbeit unsuccessfully) to pull a wool across the eyes of this Honourable Court by referring to only a part of the minute of the 74th Regular meeting in contending that Council reversed the special package of 2003 alongside that of 2009 without showing or reading the entire minutes. Fortunately, in the minute now before this Honourable Court, it is patently stated that what was considered and reversed was the decision of Council "**...that at its 67th Regular meeting held on 27th and 28th February, 2009 approval was given for the implementation of the New Salary Structure ...**"not that reached at the 47th Regular meeting in 2003.
- 3.15 Aside the fact that Appellants did not challenge this finding, they owe this Honourable Court the duty to say there was no mention of the 2003 package in Minute of 74th Regular meeting of 2nd Appellant than to deliberately attempt to mislead this Honourable Court as was done in the Appellants' Brief, particularly paragraphs 3.03-3.07, by insinuating that the Council's decision in the 47th Regular meeting was reversed.
- 3.16 What is more, Appellants have a duty to also inform this Honourable Court, in line with the unchallenged part of the findings of the trial Court, that a look at the Government White Paper clearly shows that there was absolutely nowhere in the Government white paper where it was recommended that the special salary/pension package approved by Council in 2003 at its 47th Regular Meeting should be set aside. Rather, it was only those officers who benefitted from the 2009 approval that were indicted and indeed asked to refund the monies overpaid them.

- 3.17 What is more, the said Mr. U. Ugoji who Council at the 87th Meeting refused his appeal on grounds that Council is now functus officio over its decision in 74th Regular meeting was amongst those specifically indicted as having benefited from the disapproved 2009 special salary package. The Council was therefore clearly in error when they directed that appeal of 2nd Respondent should follow its decision in Mr. U. Ugoji appeal.
- 3.18 In any case, it is now firmly established that the decision of Council in the 47th Regular meeting was never setaside/reversed so even if the trial Court was to specifically comment on the effect of exhibit DE. 1, it would not have changed the findings and ultimate judgment of the trial Court. We urge on this Honourable Court to so hold.
- 3.19 Assuming but without conceding to Appellants contentions, the Appeal in question which was erroneously overruled by the Governing Council at the 87th Regular meeting was for only 2nd Respondents. What about the other Respondents who did not appeal, would the judgment of the trial Court be setaside where there was no consideration of any appeal from them as canvassed by the Appellant. Clearly the answer is in the negative.
- 3.20 We submit that indeed, the trial Court was therefore right when he held:

“Defendants also attempted to justify the stoppage of the special salary and pension package of 2003 on the basis that the report of the Personnel Audit and Development of Integrated and Automated Payment and Personnel Information System using Biometric for staff of Delta State University recommended stoppage of payment of the approved package in 2003. Without much ado, I adopt the argument of learned counsel to the claimants to find and hold that no such recommendation is contained in the said Audit Report and such, that Report cannot be for the stoppage of the claimants’ pension as approved in 2003, even before they retire from service. Curiously, the said White paper is exhibit DW A1C is dated 12th November, 2010. This clearly indicates that the said reversal precedes the issuance of the White Paper; hence the White Paper cannot by any stretch of imagination be accepted as the basis for the alleged reversal.”

- 3.21 We submit further that, by adopting the argument of learned counsel to the claimants as stated above, the trial judge made the arguments of claimants in response to the arguments of counsel at the trial court part of its judgment saving much judicial time and energy in reproducing the said arguments in the written judgment.
- 3.22 We submit that part of the argument adopted by the trial judge therefore was that the terms of the reference of the Audit Committee set up by the Government had nothing to do with the 2003 remuneration package; going by Appellants' contention it follows logically the monies paid to the Respondents since their retirement in 2005 would have been excess payment which the White Paper ought to order them to refund, fortunately there was nothing like that in the White Paper.
- 3.23 The entire appeal is contrary and inconsistent with the evidence and pleading of the Appellants at the trial Court. While the Appellants in their brief of argument have submitted that the 2003 and 2009 remuneration packages were set aside/reversed at the 74th Regular meeting they however pleaded the opposite in paragraph 18 of the amended state of defense reproduced as follows:
- "The defendants in answer to paragraph 23, 24, and 25 of the Statement of claim, aver that 2nd Defendant can make laws and at the same time reverse the laws when prevailing circumstances demand. **This was the case at the 74th Regular meeting of the Governing Council where in considering the Report/Recommendations of the Ad-hoc committee on Principal Officers Emoluments it recalled that at the 67th Regular meeting held on 27th and 28th February, 2009, it approved the implementation of a New Salary Structure for the Vice Chancellor in line with the Federal Republic of Nigeria Official Gazzette NO. 42 Vol. 95 and also approved payment of Principal Officers' Emoluments to the other Principal officer of the 1st Defendant but Council reversed itself on the matter and decided that the status quo be maintained"***
- 3.24 We submit further that the findings of the trial Court in this wise is also in line with the admission of Appellants' witnesses who testified before the Honourable trial Court. In particular, is the evidence of DW 2, the Chief Account of the University and Acting Bursar, under cross-examination:

"Counsel to Claimant:- What Council did in A2c is to revise its defendant (sic) on their decision of 28/27 2009 what (sic) they gave another package approval

DW2:- Yes, but in 74th meeting was re-emphasised in 87th meeting if (sic) council, where council consider special appeal by 2nd claimant to revise (sic) to old salary, council decision was that they have reverted to old salary as directed by visitor.

Counsel to Claimant;- So in 74th meeting, there is no mention of 2003 package?

DW2:- 2003 was not specifically mentioned.

Counsel to Claimant:- What was mentioned in 74th was 2009 package?

DW2:- Yes..."

See Page 407 of the record of appeal.

3.25 The Appellants do not have the discretion to plead a different case in their pleadings, lead a contrary evidence at trial and on appeal turn a blind eye to same in a bid to win at all cost. We urge on this Honourable Court to follow the reasoning and decision of the apex Court in the locus classicus case of **Ajide vs. Kelani (1985) 3 NWLR (Pt. 12)** page 248, where Oputa JSC had this to say:

"A party should be consistent in stating his case and consistent in proving it. He will not be allowed to take one stance in his pleadings, then turn summersault during trial; then assume non-challant attitude in the Court of Appeal, only to revert to his case as pleaded in the Supreme Court. Justice is much more than a game of hide and seek... Justice will never decree anything thing in favour of such a slippery customer as the present defendant/appellant"

3.26 If one may ask what injustice has the Appellants suffered by the trial Court not specifically referring to exhibit DE.1? None to say the least. The Appellants have not been able to show the miscarriage or injustice they have suffered by the trial Court not specifically mentioning the effect of exhibit DE.1. We urge on this Honourable Court to resolve this issue in favour of the Respondents and uphold the judgment of the trial Court there being no basis to interfere with the said judgment.

3.27 We urge on this Honourable Court to follow the reasoning and decision of the apex court in **Oleksandr v. Lonestar Drilling Co. Ltd (2015) 9 NWLR (Pt. 1464) 337** at 375, paras. B-E; 391, paras. A-D, Kekere-Ekun JSC, held thus:

“...It is settled law that an appellate court would not interfere with the judgment of a lower court unless it is shown that the decision is perverse; or that it is not based on proper appraisal of the evidence; or there is a misapplication of the law to findings of fact properly made; or that there has been a miscarriage of justice occasioned by an error in procedural or substantive law...In the instant case, I am satisfied that the conclusion reached by the lower court was based on a proper appraisal of the evidence before it. No cogent reason has been advanced by the appellant to warrant interference with those findings in this regard.”

- 3.28 We submit that from all the above Appellants were not correct when they contended at paragraph 3.03 of the Appellants brief that when Exhibit DW A2C, Exhibit DE.1 and Section 9(ix) of Exhibit DW A1C are read together, it is conclusive without doubt that the reversal of the Principal Officers’ package by the 2nd Appellant at the 74th regular meeting is applicable to both principal officers in the 2009 approval and 2003 approval. We submit that this contention is most misleading and indeed is not borne out of the evidence being sought to be relied on.
- 3.29 Moreover, Exhibit DW A2C (the Government White Paper) from the terms of reference was to audit the enhanced emolument granted in 2009; the report spelt out those over paid and how much they were to refund, there was no mention of the 2003 package and indeed none of the Respondents were asked to refund money not being among those who benefitted from the new salary scale in 2009. The personnel mentioned in Recommendation 9 (ix) is not any of the Respondents but the then retired Vice-Chancellor who was of the beneficiaries of the 2009 disapproved special package.
- 3.30 Appellants’ submissions in paragraph 3.07 –3.29 of the Appellant’s brief cannot take the place of evidence and we urge this Honourable Court to so hold. The solid and unchallenged evidence before this Honourable Court is that it was only the decision taken at 67th Regular meeting in 2009 to increase salaries that was reversed by the Governing Council of the University at its 74th Regular Meeting, leaving the decision at the 47th Regular Meeting creating the 2003 package intact and indeed as the status quo to be maintained.

- 3.31 The Government White Paper, basis of the decision in 74th Regular Meeting, reviewed only the 2009 special package and recommended only officers enjoying that package to refund same with no mention of any of the Respondents, the Appellants witnesses admitted under cross-examination all these facts, therefore the trial Court only fell short to hold that in the 87th Regular meeting the Governing Council was in error to have directed that the 2nd Respondent appeal should follow the fate of the indicted U. Ugoji as retired Bursar who benefited from the deprecated 2009 package.
- 3.32 We submit therefore that the Appellants rights to fair hearing has not been breached in anyway and the contentions of the Appellants to the effect that the trial Court closed his eyes completely to Exhibit DE 1 and the relevant pieces of evidence in Exhibit DW A2C tendered by the Appellants in reaching the decision that Appellants have no justification to stop the payment of the 2003 package, is misconceived and indeed misplaced. As shown earlier the trial Court considered these exhibits and did not blind his eyes to them.
- 3.33 Had the trial court made a specific finding on the exhibit it would not have changed the outcome of the judgment and indeed the cry of breach of fair hearing was completely uncalled for. In **Adegbesin v. The State (2014) 9 NWLR (Pt. 1413) 609**, pp. 641, paras. G-H, the apex Court held thus:
- "There can be no doubt from the foregoing resume that 'fair hearing' has become the whipping principle for counsel trying to catch at a straw to sustain a modicum of standing in a hopeless case where the case is already dead as a dodo. This approach of counsel, in general is deprecated. Fair hearing should, from what it is and represents in our adjudicative process before the courts, be invoked with every sense of seriousness and in appropriate settings..."*
- 3.34 Suffice to submit that the Appellants have only resorted to brandishing the fair hearing mantra in this appeal without any legal or factual basis for same. Clearly there is no iota of breach of the rights to fair hearing and we urge on this Honourable to follow the reasoning and decision of this Honourable Court, per Ugo JCA, in **U.I.T.H.M.B. v. Abdulrahman (2017) 15 NWLR (Pt. 1589) 397**, pp. 429-430, paragraph B - H,D-H, where the Court held thus on when not to raise fair hearing:

"...Indeed all they have tried to do and succeeded in doing in their grounds of appeal is to scream 'denial of fair hearing' wherever the trial Judge did not share their view in any of their contentions with the respondent...

In any event, to upturn a judgment on appeal on a complaint of breach of the fair hearing provisions of the Constitution, fair hearing must form the very foundation of that person's case and not merely a decoy let alone as the key to open the doors of the appellate court to hear other non-fair hearing complaints ..."

3.35 We respectfully urge on this Honourable Court to resolve issue 1 in favour of the Respondents and discountenance the submission of the Appellants in this regard. Their right to fair hearing was never violated and indeed the trial Court gave all the parties ample opportunity to present their cases, considered all the submissions and came to the decisions which remain unchallenged and undisturbed.

4.0 **ARGUMENT IN SUPPORT OF ISSUE 2:**

Whether the trial Court was right in placing reliance on the exclusive powers of the Governing Council as provided for in the Delta State University law and not section 49 (1) and (2) of the same law in deciding the dispute in favour of the Respondents?

4.01 Subject to our contention that this issue not being one based on fundamental rights requires the leave of this Honourable Court to entertain same, we submit that the trial Court was right in placing reliance on the exclusive powers conferred on the Governing Council of the Delta State University to hold that from the provisions of the Delta State University Law, it is not true and indeed there is nothing therein to suggest that decision of the Governing Council, require the approval of the University Visitor before it becomes effective. Appellants' contention that the justification for stopping and/or tinkering with Respondents' pension/salaries under the 2003 package on grounds of failure to secure the Visitor's consent was therefore unjustified.

- 4.02 Appellants have made heavy weather in their contention that the Visitor did not approve the salaries/pension package of 2003 that was why it was stopped by them. The first relevant question is where is the document from the Visitor saying it did not approve the 2003 package? Other than the bare oral submissions of their Counsel, the Appellants did not produce any such document at the trial Court and have not shown before this Honourable Court any document saying the Visitor did not approve the 2003 package therefore it should be stopped.
- 4.03 What is more, Section 49(1) & (2) of the Delta State University law under review clearly relates to submission of budget estimates for purposes of appropriation. As contended at the trial Court, it is not the Visitor that is vested with the powers to appropriate finances in the state but the House of Assembly. One big gap which the Appellants have consistently but tactfully avoided to fill is, where is the Appropriation laws in Delta State for 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 when the Appellants started tinkering with Respondents pension unjustifiably? It is not enough for the Appellants to just submit in their brief that the Visitor did not approve, or that Delta State University cannot exceed the limit approved in the Appropriation Law when the law or other relevant documents were not brought to the trial Court for examination. The Appellants are only inviting the Honourable Court to speculate in the whole of their submissions in regard to issue 2. We therefore urge on this Honourable Court to discountenance same in its entirety.
- 4.04 The other documents before the trial Court were Exhibit DW A1C (Implementation of Government White Paper on the Report on Personnel Audit of the Delta State University, Abraka) and the Delta State University Law (Exhibit DW1 A3C). In the Course of hearing, DW 1, Mr. Justice Eshare, admitted under cross-examination that the 2nd Appellant has exclusive powers to make laws for the finance in the University contrary to his earlier denial of the fact and that these powers are not subject to the approval of any other person. This is an extract of his evidence:
"Counsel to Claimant:- DW 1, by professional calling and position you hold, you agree that University edict dictates all that happens in university (sic)?
DW1:-
Not totally.

Counsel to Claimant;- It is University edict that will tell you to refer to any other law apart from the University edict?

DW1:- Yes.

Counsel to Claimant:- From your knowledge, Governing Council is the highest, ruling body in the University?

DW1:- Yes in terms of admin.

Counsel to Claimant:- **University Governing Council is the highest body of the 1st Defendant?**

DW1:- **Yes**

Counsel to Claimant:- Under the edict 1st Defendant, powers to make laws, regulations relating to finance and other activities are conferred exclusively on the University?

DW1:- **Governing Council by edict has powers to make only regulation including finances**

Counsel to Claimant:- Paragraph 8 of written deposition you said 'The power to make laws regulating finance and other activities of Council etc' Am I correct?

DW1:- Yes.

Counsel to Claimant:- There is no provision in University edict, as powers to relate finance activity is subject to power of anybody, it is there show us?

DW1:- The powers of the Governing Council as in this edict is to make laws governing Admin of 1st Defendant

Counsel to Claimant:- If there is show us?

DW1:- Governing Council power to make laws regulating finances, is not in the edict but, so your question is yes"

(Highlights supplied for emphasis)

See Page 400 - 401 of the record of appeal.

4.05 What is more, the Visitor by Section of 7 of the Delta' State University Law is only empowered to constitute or dissolve the Governing Council and nothing more. Once constituted the Council exercises its powers and functions independently. On the powers and functions of the Governing Council Sections 8 of the Delta State University law provides thus:

Section 8(1) subject to the provisions of this law relating to the Visitor, the Council shall be the Governing body of the University and shall be charged with the general control and superintendence of the policy, finance and property of University.

The Governing Council is also empowered to make laws for the University pursuant to Section 8(3), 60, & 61 of the Delta State University law.

- 4.06 From the above, only one body is 'in charge' of the general control and superintendence of the policy and finance and property of the University. The law did not put any other body/person in charge of institution and if the Visitor decides to treat the Institution as an appendage of his office, by reason of having constituted the Governing Council, he must be doing so ultra vires his roles and duties. Besides, the role of the Visitor and rules of engagement are well captured in Section 41 of the Delta State University Law.
- 4.07 What is more, from the composition of the board, the Government has two powerful representatives from the executive cabinet, in person of the Commissioner for Education and Commissioner for Finance who take part in deliberations and decisions in the Governing Council. Suffice to say that any decision approved with the participation of these key persons carries the blessing of the executive and there is absolutely no basis for insisting that the Visitor must rubber stamp the decisions of the Governing Council before they become effective.
- 4.08 More damning is the fact that, whilst the Appellants have claimed on the one hand that decisions of the Governing Council requires the approval of the Visitor, they however destroyed this assertion by tendering exhibit DW A2C (Minutes of the 74th Regular Meeting of the Governing Council held on Thursday, 22nd July, 2010). In the said exhibit, it was the Council which had the final say in deciding to implement the Government White Paper which deprecated the 2009 salary/pension package. This simply means that the Visitor can at best make recommendations/suggestions which the Governing Council may decide to implement or abandon. We therefore urge on this Honourable Court to discountenance the arguments of Counsel to the Appellants in this wise and resolve issue 2 in favour of the Respondents.

- 4.09 A further damning point is that though the Appellants by their written submissions and pleadings are saying the reason why the 2003 remuneration package was stopped is because there was no approval of the Visitor, the evidence led showed that that was not the case at all. In particular is exhibit DW A2C (Minutes of the 74th Regular meeting) clearly indicates that the reason for the reversal of the 67th Regular Meeting decision (which in any case does not relate to the Respondents as per the 2003 remuneration package) is "**that relevant/appropriate information was not made available to it when the approval was given**".
- 4.10 We submit therefore that the above reason with no further reason cannot be read to mean that it was because the Visitor of the University did not give approval to the decision as canvassed by Appellants counsel. The words are plain and should be given their plain interpretation. As stated earlier, the Appellants have not produced any other documents saying the Visitor did not approve the 2003 remuneration package that was why it was reversed.
- 4.11 The contention of the Appellants that they were denied fair hearing as captured in paragraph 4.14 - 4.16 is obviously inapplicable to the appeal before this Honourable Court. Appellants' complaint is over the fact that the trial Court did not properly evaluate the evidence and not necessarily one that relates to breach of fair hearing. The Appellants only introduced fair hearing as a ruse to confer jurisdiction on this Honourable Court and to deliberately avoid the constitutional duty imposed on them by **Section 243 (2) & (3) 1999 Constitution** as amended.
- 4.12 Suffice to point out that the trial Court duly considered all the provisions in the Delta State University law before reaching the judgment in favour of the Respondents. This is the finding of the Court:
- "The 2nd defendant as its 74th Regular Meeting reversed itself on the matter decided that status quo ante be maintained.*
- From the provisions of the Delta State University Law, it is not true and I find nothing in it to suggest that such decision of the 2nd defendant requires the approval of the University Visitor before it become effective..."*** (Underlining supplied for emphasis)

- 4.13 The clause "***From the provisions of the Delta State University Law, it is not true and I find nothing in it...***" clearly shows that the trial Court had taken ample time to go through the Delta State University law, including the sections allegedly claimed by the Appellants that the Court blinded his eyes to. It is therefore not correct as suggested by the Appellants in 4.14 that the trial Court did not consider same thereby displacing the allegation of breach of fair hearing. The trial Court's findings and decisions in the end were in line with the established facts correctly married with the applicable laws. It should be upheld and we urge on this Honourable Court to so hold.
- 4.14 The trial Court should be commended for deploying high level of juridical dexterity and acumen as demonstrated in the judgment in severing irrelevant areas in the submission of the Appellants and decisively determining the main issues between the parties. The judgment is apt and sufficiently dealt with all the relevant issues before the trial Court and should not be disturbed especially as the Appellants have not challenge the primary findings of the Court as outlined in paragraphs 1.11 of this brief.
- 4.15 Before concluding, we further submit there is no basis for the Appellants to place reliance on the case of **Enterprise Bank Limited v. Aroso (2015) ALL FWLR (Pt. 795) 314**, to support the assertion that the Governing Council's decision though final can be set aside just like decisions of Supreme Court. The authority is most inapplicable in relation to determining when decisions of the Governing Council may be reversed or varied being an institution created and regulated by statute. The Appellants have not been able to show any provision of the statute that provides for reversal of previous decisions. Even at that, this will only open up the argument to whether the Governing Council has powers to make retroactive legislations to reverse her decision taken in 2003 which was implemented for several years in favour of the Respondents.
- 4.16 Further to that, assuming but without conceded that the decision of Council are subject to the approval of the Visitor, we submit that there is implied or constructive approval as the Visitor for several years the Respondents enjoyed the package of 2003, the Visitor submitted the budget of the University to the State House of Assembly for passage hence Respondents were duly paid from 2005 - 2010.

4.17 We urge the Honourable Court not to be drawn into this line of argument of the Appellants as it will at best be academic as the trial Court did not make any finding to this end and there is no ground of appeal in this wise.

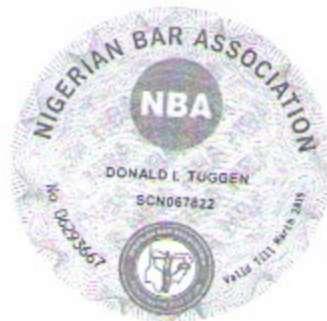
5.0 **CONCLUSION:**

5.01 On the whole, we urge on this Honourable Court to dismiss the Appeal and uphold the judgment of the lower Court.

LIST OF AUTHORITIES CITED

- i. **Skye Bank Plc vs. Iwu (2017) 16 NWLR (Pt. 1590) 24**
- ii. **Unity Bank Plc v. Bouari (2008) 7 NWLR (Pt. 1086) 372**
- iii. **S.P.D.C.N. Ltd v. Amadi (2010) 13 NWLR (Pt. 1210) Page 82**
- iv. **U.I.T.H.M.B. v. Abdulrahaman (2017) 15 NWLR (Pt. 1589) 3**
- v. **Joseph Akole v. Joshua Alonge & Anor (2013) LPELR - 2112**
- vi. **Ajide vs. Kelani (1985) 3 NWLR (Pt. 12) page 248**
- vii. **Oleksandr v. Lonestar Drilling Co. Ltd (2015) 9 NWLR (Pt. 1464) 337**
- viii. **In Adegbesin v. The State (2014) 9 NWLR (Pt. 1413) 609**

DATED THIS 4TH DAY OF JUNE, 2018.



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