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# POWER OF COURT TO REFRAME ISSUES FORMULATED BY PARTIES IN A CASE AS A *DICTUM*

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**Abstract**
*The power of court to reframe issues formulated by parties in a general manner has remained fluidic. The Supreme Court held that the law is indeed settled that an Appellate Court may, where it deems the issue or issues formulated for the determination of an appeal as incapable of serving the interest of justice or clumsily crafted, reframe or formulated the new issues for the determination of the appeal. The Court particularly in State v. Sani (2018) LPELR – 43598 (SC) held that it was entitled to reframe the issue or issues formulated by the parties; in order to give the issues precision and clarity, and in reframing the issue or issues different from issues formulated by the parties. This paper contents that the Court is tasked to ensure that the reframed or formulated issues are derived from the grounds of appeal filed by the parties. The paper further recommends that trial Judges are also entitled to reframe the issue or issues formulated by the parties in order to give the issues clarity and precision; as the Court is tasked with ensuring that the reframed or formulated issues are derived from the argument raised by the parties in their briefs.*

*Keywords*: **Formulating Briefs; Reframing Of Issues, Power Of Court, Litigation In Nigeria**

## 1.0 INTRODUCTION

There is contemporary reasoning on "*whether the act by the lower court in reformulating of not calling parties to address it, is a breach of any established principle of law sufficient to amount to any miscarriage of justice*". The power of Court to reframe issues formulated by Parties was clearly stated in the case of *Sanusi v. Ayoola & Ors*[1]. An Appellate Court has the power, in the interest of justice to reject, modify or reframe any issues formulated by the litigating parties. The power of Court has never been in doubt, as long as the issue reframed is anchored on the Grounds of Appeal filed by the party. The trend of framing issues for determination in addresses in general form without regards to the material fact in issue between the litigating parties.

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[1] (1992) LPELR - 3009

In an application before the Court should not be whether the party is entitled to Judgment or entitled to the grant of the reliefs as sought in the application. The issues for determination should be framed based on the material fact in issue between the parties in the suit. It is the Court's resolution of those material facts in issue one way or the other that determines whether a party will be entitled to the grant of the application or Judgement.

The Supreme Court of Nigeria in the case of *Sky Power Express Airways Ltd v. Ajuma Olima & Godwin Kpoji*[2] held that the Court found that the issues formulated by the Court of Appeal captured the real issues raised by the Appellant in his brief of argument, and were neatly tied to the grounds of Appeal for the purpose of clarity, and they were not fresh points raised suo motu, to necessitate the invitation of parties to address it on the same. The Apex Court distinguished that an issue is said to be raised suo motu when such an issue is not in the contemplation of the parties and is not before the Court, and this is the circumstance that would require the Court to invite parties to address it before making its decision thereon. The Court held that it was clear from the record of appeal that is reframing the issues for determination, the Court of Appeal did not raise any fresh point that would warrant inviting the parties to address it on the fresh point, but, merely reformulated the issues distilled by the Appellant which it viewed as clumsily couched, in order to give clarity on the real issues before it.

## 2.0 THE IMPORTANCE OF COUNSEL'S ARGUMENTS

Counsel for the Appellant submitted that the Court of Appeal was in grave error when it *suo motu* reformulated the Appellate issues submitted before it, and proceeded to determine the appeal on the basis of the reformulated issues without inviting the parties to address it on the reformulated issues. Counsel argued that the reformulation of issues changed the issue and substance of the arguments of the appellant before the Lower Court and led to a miscarriage of justice.

Arguing to the contrary, Counsel for the 1st Respondent submitted that the reformulation of the Appellant issues did not in any way whittle down the complaint of the Appellant before the Lower Court. Counsel submitted that it is not in all cases when a Court formulates an issue in an appeal that it must hear argument from Counsel, so long as the arguments already submitted by parties are in tandem with the issue formulated by the Court. Counsel further argued that the purpose of formulating an issue, most of the time, is to bring out the real issues in the appeal, and in this particular instance, the issue reformulated by the Court of Appeal essentially captured the issues distilled by the Appellant.

On their part, Counsel for the 2nd Respondent argued that the Lower Court acted rightly when it reformulated the issue distilled by the appellant for the purpose of clarity, having observed that the issues distilled by the Appellant were inelegantly couched. Counsel argued that the requirement to invite parties to address the Court applies only where the Court raises a point *suo motu*, and not when it reformulates an issue. See *Nwobike v. FRN*[3].

The trial Judge has the discretion to invite Counsel for further address in an effort at elucidation of obscure issues in determination of the matter before the Court[4]. This in recognition of the fact that issues which are clear to one person on first impression might not be obvious to

[2] (2025) SC/193/2005
[3] (2022) 6 NWLR (Pt. 1826) SC 239
[4] Awoyale V. Ogunbiyi (No. 1) (1985) 2 NWLR (Pt. 10) 861 Scat 872.

another. Much will therefore depend upon the Judge's comprehension of the arguments and his intellectual appreciation of the issues[5].

## 3.0 THE ISSUE FOR DETERMINATION IN A SUIT

To understand what an issue for determination is, we need to first understand what an issue is. For example, the Supreme Courts in *Eke v. Okwaranyia*[6], had opined:

> "I have no doubt that the Court below misconceived the purport, of 'an issue' and 'joinder of issues'. This is manifest in the contradictory posture of that Court. An 'Issue' is a disputed point or question to which parties to an action have narrowed their several allegations and upon which they desire to obtain a decision of the Courts. The issue may be that of Law or fact. In one breath the Court below said that there was joinder of Issues" and in another, it said that the defendant has evasive denial of the material issues. A 'joinder of issue' operates as a denial of every material allegation of fact in the statement of claim or in the preceding pleading which is not expressly admitted."

It is against the rule of appellate practice to formulate issues for determination in general or broad manner such as: "Whether or not the appeal is entitled to succeed"[7]. TheSupreme Court in the case of *Aja v. Okoro*[8] gave insight on why issues should not be formulated in such a vague manner when it held thus:

> "The only issue for determination as identified in the respondent's brief read:
> "Whether or not the Court of Appeal was right in confirming the Judgment of the trial Court having regard to the evidence before him and the findings of fact made by him".

This issue as formulated to my mind is the broad issue which arises invariably in every appeal and has no specific relevance to the peculiar issues in this appeal. The issues for determination in any appeal must have a direct bearing on the grounds of appeal. They are to project succinctly and clearly the substance of the complaints contained in the grounds of appeal requiring resolution. There is no doubt that a number of grounds of appeal may raise a single issue but it is over simplification of the issues in an appeal to say that the issue is "whether or not the trial Court or Court of Appeal was right in its Judgment having regard to the evidence and the findings of fact made"[9].

The Court of Appeal in *Hassan v Maiduguri Management Committee*[10], held that for it is well established principle and practice to procedure that parties are bound by issues formulated by themselves in their pleadings and a Court is not entitled to consider a case not pleaded by the parties. Definitely, the issue being referred to here on the pleadings is not an issue of whether the Plaintiff is entitled to his claim or not.

## 4.0 MATERIAL FACTS IN DISPUTE IN THE PLEADINGS

The issue for determination in a final written address should be framed around vital questions of fact in the suit since it is the resolution of this issue one way or the other that determines whether the party will be entitled to prayers being sought or not. There is an advantage in the

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[5] Per Karibi Whyte, JSC in Utih V. Onoyivwe (1991) 1 NWLR. (Pt. 166) 166 Scat 227
[6] (2001) 12 NWLR (Pt. 726) 181
[7] Ibid
[8] (1991) 7 NWLR (Pt 203) 260
[9] Ibid per Akpata, JSC at pages 272 – 273, Paras H - A
[10] (1991) 8 NWLR (Pt. 212) 738 at 749

formulation of issues in this manner as it gives the trial Judge the opportunity to make a finding of fact on the material. This is because the failure of trial Judge in this regard will lead to the intervention of the Appellate Court[11]. In every litigation, there are number of issues of facts that may arise, but unless they have bearing on the Principal question for determination, they do not by themselves or together form 'an issue'[12].

The Supreme Court in *Brawal Shipping v. Onwadike Ltd*[13] *stated thus:* It is also not a good practice to frame issues for determination in abstract without regards to the fact in issue.

## 5.0 THE ORDER OF ARRANGEMENT OF THE ISSUES AS FORMULATED

Where there are several issues for determination, the order of their arrangement must be given proper attention. There are instance in which the resolution of one of the issues one may or the other may influence the resolution of another issue or may make the consideration of another unnecessary. An example below:

a) Whether from the Affidavit and Exhibits attached, the Applicant has been able to establish its interest to the property known as No. 12 Panyam Avenue, Jos Industrial Layout, Jos, Plateau State as to entitle the Applicant to be joined and be heard in respect of the interim Order granted against the said property;

b) Whether the Plaintiff/Respondent was able to establish before the Court that the property listed in the Plaintiff/Respondent's documents/Exhibits as "Jos Industrial Layout, Jos, Plateau State which was used as Legal Mortgage/Deed of Debenture to secure a loan can be said to be the same as the property known as No. 12 Panyam Avenue, Jos Industrial Layout Jos, Plateau State, listed as No. (v), relief A of the Plaintiff/Respondent's Motion Ex-parte; Motion on Notice and Originating Summons dated and filed 10th August, 2025; and

c) If the answer to the above relief is in the negative; whether the applicant is entitled to the reliefs as sought in the Motion.

## 5.1 The Importance of Issue Formulation

The essence of the formulation of issues for determination in an appeal is to narrow the relevant points in issue. This has been remarked by many seasoned jurists and articulated in the case of *Leedo Presidential Hotel Ltd v. B.O.N Ltd*[14] Thus stated:

> "In that case it was also succinctly stated that issues for determination in an appeal must have direct bearing on the grounds of appeal.
>
> Issues are meant to project succinctly and clearly the substance of the complaint contained in the grounds of appeal requiring resolution".

In *Bepco v. Nasco Management Service Ltd*[15] the court contended that counsel are well advised to be brief and succinct in their Briefs. And such issues to be formulated must be concisely and precisely formulated giving no room for speculation or conjectures as to their exact legal or factual content. They must be short, definite in terms of context and content and non-argumentative.

## 5.2 Splitting of Issues

[11] Okene V. Orianwo (1998) 9 NWLR (Pt. 566) 408 at 442; Onyema Oke & Ors. V. Amos Eke & Ors. (1982) 12 SC 218.
[12] Danfulani V. Shekari (1996) 2 NWLR (Pt. 433) 723 at 740; Nimpa V. Pyendang (1994) 7 NWLR (Pt. 356) 346 at 369.
[13] (2000) 11 NWLR (Pt. 678) 387 at 404
[14] (1993) 1 NWLR (pt. 269) 334
[15] (1993) 7 NWLR (pt. 305) 369

The Supreme Court of Nigeria rebuked splitting or proliferation of issues, for instance in Agbetoba v. Lagos Stat Executive Council[16] per Karibi – Whyte J.S.C. had this to say: It should be noted that:

> "This Court has consistently and in several decisions advised Counsel formulating of issues for determination arising from grounds of appeal to avoid prolixity and keep closely within the confined of the grounds of appeal relied upon. The idea is to formulate an issue as encompassing more than one ground of appeal. It is not only undesirable, but also confusing to SPLIT a ground of appeal into more than one issue. The practice of splitting grounds of appeal is likely to confuse consideration of principal issues which are essential before the determination of the case, the subsidiary issues are formulations towards the elucidation of the principal issues. They cannot be justifiably regarded as issues for determination".

While an issue for determination is an appeal must not only arise from and relate to the grounds of appeal filed, it must also be such a proposition of law or of fact or both to cogent, weighty and compelling that a decision on it in favour of a party to the appeal will entitle him to the Judgment of the Court. Note that issues are intended to not only focus on the vital areas of conflict in the appeal but also serve as spring boards for arguments themselves.

And although, the issues formulated should be referred to the grounds filed what ought to be argued and stressed are those issues and not necessarily the grounds of appeal.
For example, one issue may comprehend many grounds, and it will be contrary to the letter and intendment of Order 6 Rule 5 (1) of the Supreme Court Rules[17] to start arguing the grounds one by one instead of the one issue arising out of these grounds.

### 5.3 Raising of New Issues on Appeal

The general Law is that issues not canvassed in the Lower Court which did not therefore reach a decision thereon will not be allowed on appeal, for such issues are incompetent. *Afu v. Ikewibe*[18] and *Atoyebi v. Governor*[19].
Also it was held that matters which ought to have been raised by way of preliminary objection before the Lower Court but which were neither so raised nor canvassed thereafter in the entire course of the trial will not be allowed. See *Adebayo V. Johnson*[20] and *Momodu & Ords. v. Momoh & Ors*[21].

## 6.0 SPECIFIC FINDINGS

In most final addresses filed at the lower court, issues were formulated by the parties. However, in some judgment, the learned trial judge rather than consider the issues formulated by the parties ignored all the issues formulated and refused to pronounce on any. This is wrong because it is settled that a court is bound to consider all issues properly placed before it by the parties and resolve the issues so raised one way or the other. See the decision of the Supreme Court in *Edem v. Canon Balls Ltd & Anor*[22], where the court held as thus:

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[16] Per Karibi in (1994) 4 NWLR (pt. 188) 664
[17] Asanya V. State 1994 3 LRCN 720 at 775
Ogbunyinya V. Okudo (No. 2) (1990) 4 NWLR (pt. 146) 551
Adeleja V. Fanoiki (1990) 2 NWLR (pt. 131) 137
Discussed above cases on proliferation or spitting of Issues.
[18] (1991) 3 NWLR (pt. 180) 385 at 403
[19] (1994) 5 SCNJ 62
[20] (1969) 1 ALL NLR 126 at pages 190 – 191
[21] (1991) 2 L.R.C.N 457 at pp 467 - 469
[22] (2005) (SC) 21701

It is the duty of a Court, whether of first instance or appellate to consider all the issues that have been joined by parties and raised before it for determination. If the Court failed to do so without a valid reason, then it has certainly failed in its duty, for in our judicial system, it is a fundamental principle of administration of justice that every Court has a duty to hear, determine and resolve such questions… See also *Ebamawo v. Fadiyo*[23] *and Okanji v. Njokamma*[24] *Per Oguntade JSC (p. 31, paras B-D).* Where the trial Court did not do justice to the matter. The Court of Appeal can invoke its powers under section 15 of the Court of Appeal Act and rehear the matter as if it were the trial Court. Thus the Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defend or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Courts of Appeal thinks fit to determine before final judgment in the appeal and any make an interim order or grant any injunction which the Court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as Court of first instance and may re-hear the case in whole or in part-or may remit it to the Court below for the purpose of such re-hearing or may give such other directions as to the manner in which the Court below shall deal with the case in accordance with the powers of that Court, or, in the case of an appeal from the Court below in that courts' appellate jurisdiction, order the case to be re-heard by a Court of competent jurisdiction.[25]

The term fair hearing has been given judicial pronouncement and it is settled as to what fair hearing means. In *Mekwunye v. Carnation Registrars Ltd*[26] the term fair hearing was analyzed as follows:

> 'Decidedly, the term 'fair hearing has been judicially interpreted to involve situation whether having regard to all the circumstances of a case, the hearing may be said to have been constructed in such a manner that an impartial observer, or the man in the Balogun market street Lagos, will come to the conclusion that the court or Tribunal was fair to all the parties to the proceedings. More so, to someone who was never part of the proceedings?
>
> It is a trial conducted according to all the legal rules formulated to ensure that justice is done to all the parties to a cause or matter'.

## 7.0 CONCLUSION

In the formulation of issues for determination by Counsel to the parties, there is already the temptation from one party to formulate issues in a general and broad sense without regards to the issues of facts as joined in the pleadings. The party who is most likely to formulate issues in this manner deliberately is one who is uncomfortable with the facts in issue as joined in the pleadings and the evidence led on same. This will definitely mislead and confuse the learned trial Judge into delving on matters which are inconsequential and the resulting end will be a

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[23] (1973) 1 ALL NLR (Pt. 11) 134

[24] (1991) 7 NWLR (Pt. 202) 131 at 134.

[25] See OBI v. INEC (2007) LPELR-2166(SC) 1 at 47-48 paras D-C; Falaye & ors v. Otapo & ors (1995) 3 NWLR (Pt. 381)1; Inakoju v. Adeleke (2007) 1 SC (Pt)1. (2007)4 NWLR (pt. 1025) 423; and Dapianlong & Ors v. Dariye (2007) 4 S.C. (pt. 111) 118, (2007) 8 NWLR (pt. 1036) 239.
See also the case of Ezeigwe V. Nwawulu (2010) 4 NWLR (pt. 183) 159 SC., NWOSU & Anor v. Ismaila & Ors (2017) LPELR-50861 (CA)
Bank of industry Ltd. v. Obeya (2021) LPELR-56881 (SC).

[26] (2021) 15 NWLR (pt. 1798)1

miscarriage of justice. In the case of *Hon. Justice Ya'u Ibrahim Dakwang vs. National Judicial Council & 3 Ors*[27], Court of Appeal stated thus:

i. Whether the entire decision of the lower court is not a nullity ab initio when it refused to consider and then determine all the issues place before it by the appellant. (Distilled from ground 1).
ii. Whether the lower court's act of refusing to apply the decision of this Honourable Court in Appeal Number CA/A/81/2008**:** *National Judicial Council & 4 Ors v. Hon. Mr. Justice C.P.N. Senlong & Ors* to the suit before it when the facts, issues and surrounding circumstances are the same in line with the doctrine of judicial precedent in our jurisprudence, does not amount to judicial impertinence capable of rendering the judgment a nullity. (Distilled from ground 2).
iii. Whether the lower court is not wrong in dismissing the suit of the Appellant (Distilled from grounds 3, 4, 5, 6 and 7).

A court is duty bound to consider all issues presented to it for consideration and determination, see *Honeywell Flour Mill PLC V. ECO Bank*[28] which held thus:

'There is every necessity for a tribunal to make findings and pronounce on material and fundament issues canvassed before it by the parties because failure to do so may result in a miscarriage of justice. See particularly page 1257 of Vol. iii of the record…It is now a settled matter that one issues are presented before a court, it has to attend to each and every one of them save for when any aspect is subsumed in the already considered issue that it can be taken a settled… In Okonji V. Njokanma[29], The Supreme Court, whether the court of first instance or appellate to consider all the issues that have been joined by parties and raised before it for determination. If the court fail to do so without a valid reason, then it has certainly failed in its duty, for in our judicial system, it is a fundamental principle of administration of justice that every Court has a duty to hear, determine and resolve such question.

The lower Court failed to consider and then pronounced thereon, established the violation of Appellants fundamental rights to fair hearing. The Supreme Court in the case of *Ukachukwu v. PDP*[30] held that:

> 'Fair hearing within the meaning of section 36 (1) of the 1999 Constitution means a trial conducted according to all legal rules formulated to ensure that justice is done to all parties. It encompassed not only the compliance with rules of natural justice, but also audi alteram partem. It also entails doing in the course of trials, whether civil or criminal trial, all the things which will make an impartial observer, leave the court room to believe that the trial has been balanced and fair on both sides to the trial. A fair hearing must involve a fair trial, and a fair trial. A fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing. The true test of a fair hearing, is the impression of reasonable person who was present at the trial whether from his observation, justice has been done in the case'.

The Supreme Court confirmed this position in the case of *Bola Omoniyi v. Jacob Adegboyega Alabi*[31] particularly at 593-594 that:

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[27] CA/J/3/179/2022
[28] (2018) LPELR-45127(SC), (2019) 2 NWLR (pt. 1655) 35
[29] (1991) 7NWLR (pt. 202) 131 at 150 paras, G-H
[30] (2014) 17 NWLR (pt. 1435) 134 at PP 163-164 Paras G-D
[31] (2015) 6 NWLR (pt. 1456) 572

'Once it is shown that a party's rights to fair hearing, guaranteed by section 36(6) of the constitution of the Federal Republic of Nigeria (1999) (as amended) has been breached, the decision reached, no matter how well considered, would be declared a nullity and is bound to be set aside'.

Also, in *Adesokan V. Adetunji*[32], the Supreme Court, *per Onu, JSC* referred to and adopted the dictum of *Oputa, JSC in Fawehinmi V. NBA*[33] and held thus:

"Our law is the law of the practitioner rather than the law of the philosopher. Decisions have drawn their inspiration and their strength from the very facts which framed the issues for decision. Once made, these decisions control future judgments of the courts in like or similar cases. The facts of two cases must either be the same or at least similar before the decision in the earlier case can be used in a later case, and even there, merely as a guide. What the earlier decision establishes is only a principle, not a rule. Rules operate in an all or nothing dimension. Principles do not. They merely incline decisions one way or the other. They form a principium or a starting point. Where one ultimately lands from that starting point will largely depend on the peculiar facts and circumstances of the case in hand'.

## 8.0 RECOMMENDATIONS

Judges could also formulate the issues for determination but must ensure that same is covered by the arguments of the parties. And whenever Judges are confronted with the temptation of badly frame issues for determination, they must be very wary of adopting same for the resolution of the material facts in issues between the parties and entering judgment thereof by going the extra mile of reformulating the issues.

In *Unity Bank & Anor v. Edward Bonari*[34], the Court had opined thus: "It is now firmly settled that the purpose of reframing issues is to lead to a more judicious and proper determination of an appeal. In other words, the purpose is to narrow the issue or issues in controversy in the interest of accuracy, clarity and brevity". See also**,** *Musa Sha (Jnr.) & Anor V. Da Ray Kwan & 4 Ors*[35].

In *Sha V. Kwan (supra) at 705* this Court has stated thus: "So long as it will not lead to injustice to the opposite side, appellate Courts possess the power and in the interest of justice, to reject, modify or reframe any or all issues formulated by the parties.

[32] (1994) 5 NWLR (pt. 346) 540 at 577

[33] (No. 2) (1989) 2 NWLR (pt. 1050 558 at 650

[34] (2008) 2 SCM 193 at 240

[35] (2000) 5 SCNJ 101; (2000) 8 NWLR (Pt. 670) 685.