AZUBUIKE v. STATE

CITATION: (2017) LPELR-42485(CA)

In the Court of Appeal
In the Owerri Judicial Division
Holden at Owerri

ON MONDAY, 22ND MAY, 2017
Suit No: CA/PH/432/2007

Before Their Lordships:

RAPHAEL CHIKWE AGBO	Justice, Court of Appeal
AYOBODE OLUJIMI LOKULO-SODIPE	Justice, Court of Appeal
ITA GEORGE MBABA	Justice, Court of Appeal

Between

P. J. N. AZUBUIKE ESQ - Appellant(s)

And

THE STATE - Respondent(s)

RATIO DECIDENDI

1. **COURT - CONTEMPT OF COURT:** Types of contempt of court and the general principles applicable to the prosecution of contemnors

"There are two types of contempt of Court, namely, contempt committed ex-facie curiae (outside the Court) and contempt committed in facie curiae (in the face of the Court). The former requires issuance of necessary forms (Forms 48 and 49), pursuant to Section 72 of the Sheriffs and Civil Process Act, and Order 9 Rule 13 of the Judgment Enforcement Rules, (where it involves enforcement of disobedience to Court orders/Rule). Where the contempt consists of disobedience of a Court process or obstruction of an official of Court in carrying out his lawful duties, it may be commenced by the procedure provided for by the High Court Civil Procedure Rules. See Nwawka Vs Ohazurike (2014) LPELR - 22558 CA; Dibia Vs Igwe (1998) 9 NWLR (pt.564) 78.

If it is contempt committed in the immediate view and presence of the Court, such as insulting language or acts of violence or something hear the presence of the Court as to obstruct or interrupt the due and orderly course of proceedings, it is dealt with by the Court summarily. See Nwawka Vs Ohazurike (2014) LPELR - 22558 (CA) (pp. 31 - 33); Odu Vs Jolaoso (2005) 16 NWLR (pt.950) 178, where contempt was said to:

"embrace such invidious acts as insult or unsavory comments with very sinister motives against a Court with a view to denigrating the Court and smear, besmirch its nobility, its majesty, its aura, its responsibility, or indulging in expressive sinister and offensive act or words that would lower the esteem of the Court in the eyes of the public."

And where the contempt is committed in the face of the Court, the offending party is asked to go into the dock, and a charge prepared by the Court, and the offence specifically and distinctly spelt out to him and the person asked (from the dock) to show cause why he should not be committed for contempt. See Nwawka Vs Ohazurike (Supra), Agbachom Vs State (1970) ALL NLR 71; Alake Vs A.G. Fed. (1982); Dibia Vs Igwe (1998) 9 NWLR (pt. 564) 78.

In that case of Nwawka Vs Ohazurike (Supra) my learned brother, Abiru JCA, held:

"Where the insulting language or acts of violence occurred outside the view of the Court i.e. ex facie curiae, the proceedings may be begun by presentation of criminal charges against the offender by the office of the Attorney General under the provisions of the Criminal Code or Penal Code."Per MBABA, J.C.A. (Pp. 12-14, Paras. C-B) - read in context

2. **COURT - CONTEMPT OF COURT:** Rationale for contempt

"The law relating to contempt of Court is a Common Law principle, which has been adopted in our Counts, and it is meant to help the Court regulate its proceedings, protect its integrity and observe/ensure effective administration of justice, impartially. It also applies to give Court orders/decision authority and force of law such that any disobedience is done at the pevil of the disobedient. See Odogwu Vs Odogwu (1992) NWLR (pt. 215); (1992) LPELR - 2229 (SC); Barnado Vs Ford (1892) AC 326; Awobokun Vs Adeyemi (1968) NWLR 259; Ezeji Vs Ike (1977) 2 NWLR (pt.486) 206."Per MBABA, J.C.A. (P. 8, Paras. B-E) - read in context

3. **LEGAL PRACTITIONER - APPEARANCE OF COUNSEL:** Whether a counsel can give evidence in the same case that he is acting as a counsel

"Of course, by law a Counsel cannot turn himself into a witness in a case he is representing a party as Counsel. See United Forms Products Nig Ltd Vs Opobiyi (2012) ALL FWLR (pt.645) 303 at 321, where this Court held:

"The practice requiring Counsel to withdraw as Counsel before appearing as a witness in the case is a rule of practice designed to ensure proper administration of practice. In the instant case, the SAN served as a Counsel and a witness, the trial Court rightly granted Plaintiff's application challenging his continued appearance in the Suit. (Elabanjo Vs Tijani (1986) 5 NWLR (pt.46) 977)...

I think it is absurd reasoning... to say that neither the Supreme Court nor the rules of Professional Conduct for Legal Practitioners prohibits or frowns at Counsel giving evidence in a case he is conducing as a witness, and thereafter continuing to do the case as Counsel (for any of the parties). I believe the whole essence of Rules 17(4), 20(3) (6) and 49(3) (among others) of the Rules of Professional Conduct for Legal Practitioners was meant to save a legal Practitioner from the embarrassing situation of acting in conflict of interests..."Per MBABA, J.C.A. (Pp. 14-15, Paras. D-D) - read in context

4. **PRACTICE AND PROCEDURE - CONTEMPT OF COURT/COMMITTAL PROCEEDINGS:** Principles guiding committal for contempt of Court

"Apart from the fact that Appellant as Counsel for Plaintiff in the case cannot abandon his role of Counsel and go to the witness box, in the case, there is also the constitutional provision that a person cannot be forced to give evidence, even in a criminal trial, to defend himself (Section 36(11) of the 1999 Constitution). In the case of Adeniyi Vs FRN (2012) ALL FWLR (pt.646) 575 at 590, it was held:

"No Court is allowed to impose a charge, suo motu, and proceed to convict an accused on it, without affording the accused opportunity to be heard first. (See Section 36(1) of the 1999 Constitution). That is never done, even in a situation of contempt of Court which can be said to be a charge by the Court, because the contemnor will be given opportunity to defend himself, if the offence is not one committed in the face of the Court. See Section 133 of the Criminal Code Act and Section 15 of the Criminal Procedure Act."Per MBABA, J.C.A. (Pp. 16-17, Paras. C-A) - read in context

5. **PRACTICE AND PROCEDURE - CONTEMPT OF COURT/COMMITTAL PROCEEDINGS:** Whether there must be strict compliance with procedural rules in contempt proceedings

"In the case of Shugaba Vs UBN Plc (1999) 11 NWLR (pt.627) 459; (1999) LPELR - 3068 (SC), the Supreme Court said:

"while I agree that it is not desirable for the Courts to make unbridled orders, and that Court should not do anything to put a clog in the wheel of justice, orders of the Court are to be respected and obeyed. The dignity and honour of Court cannot be maintained, if its orders are treated disdainfully and scornfully, without due respect..."

As hinted in the above Supreme Court decision (Shugaba Vs UBN Plc (Supra), contempt of Court was not meant to be wielded by the Court as an instrument of intimidation or a club of offence, to harass and subjugate and hew down litigants, lawyers and person within the precincts of the Court or outside. Contempt of Court is not meant to be used as a weapon or means of showing strength and power by the Judge. See Nwadike Vs The State (2015) LPELR - 24550 (CA); Ethel C. Chukwu & Ors Vs Lolo Stella C. Chukwu & Ors (2016) LPELR - 40553 (CA), where the need to comply strictly with procedural rules was stressed, since contempt proceedings affect the liberty of individuals, and the Court cannot afford to gamble with the liberty of persons appearing before it. See Akpan Vs Akpan (1996) NWLR (pt.462) 620; Nwadike Vs State (Supra); Onowu Vs Ogboko & Ors (2016) 1 CAR 167."

Per MBABA, J.C.A. (Pp. 8-10, Paras. F-A) - read in context

ITA GEORGE MBABA, J.C.A. (Delivering the Leading Judgment): The Appellant in this appeal is a legal practitioner in the Chambers of Tony Momoh & Co. 13A Sylvia Crescent, Anthony Village, Lagos, representing the Plaintiff in **Suit No. HOW/78/02 ANTHONY OPARA VS MORECAB FINANCE CO. LTD AND CHU & CHI LTD**, that pended before Hon. Justice A.O.H. Ukachukwu of Imo State High Court, Owerri Division. The said Chambers (Tony Momoh & Co.) had taken over the conduct of the said case in December, 2003 from the former Counsel to the Plaintiff, who was **Emmanuel C. Nwoye Esq,** and at the time the Plaintiff had given evidence as PW2, but had not concluded it. Appellant was the lawyer assigned by the Chambers to conduct the case for the Plaintiff.

Appellant alleged that before he took over the case, the Plaintiff had expressed doubts as to the impartiality of the presiding Judge, but he tried to allay his doubts; to allow him (Appellant) go into the case. He said that although the trial judge allowed the Plaintiff to change Counsel on 24/5/2004, the trial judge had become so much impatient and hostile to the Appellant and his client, that it became

difficult for him (Appellant) and the Plaintiff to put in the case of the Plaintiff before the Court; that the frustration and situation became worse, when the trial Judge decided to, wrongly, reject, vital and relevant document tendered by the Plaintiff, and yet, strangely, refused to make the document part of the Court's record, to enable Appellate Court have opportunity to review the Lower Court's decision on appeal. He said that it was when the trial Judge openly descended into the arena and started issuing very serious threats of personal bodily injury on Appellant, that Plaintiff was constrained to instruct his lawyers to apply to the Chief Judge for a possible transfer of the substantive suit to another Court. And in compliance with the instruction of the plaintiff, the Plaintiff's lawyers made a letter of transfer, dated 10/1/2006, to the Chief Judge, which letter was signed by the Appellant on behalf of the Chambers handling the Plaintiff's case; that based on this development, the Plaintiff brought before the lower Court, an application dated 20/1/2006, seeking for an order for stay of proceedings of the lower Court, pending

the outcome of the said application for transfer pending before the Chief Judge; that when the said motion for stay of proceedings came up before the Court on 24/1/06, the trial Court did not allow Appellant to move the application. Rather, he ordered Appellant who attended the Court, from Lagos, to be remanded in Prison Custody, Owerri.

Appellant said the proceedings that led to the remand of Appellant was brief; that the learned trial Court, after confirming from the defence Counsel that they were served the motion for stay of proceedings and that they were ready to argue the motion, asked Appellant of the whereabout of the deponent to the affidavit in support of the motion (Mrs. Confidence Opara) who was the wife of the Plaintiff, and when the Court was informed that the deponent was not in Court, the trial Judge told Appellant to remove his wig and gown and enter the witness box; that he told the Court that as Counsel for the Plaintiff he (Appellant) was not supposed to enter the witness box serve as witness in the case; that the trial Judge then made the ruling, ordering the remand of the Appellant.

Appellant said all the lawyers in Court rose

up in his defence and alerted the Chairman of the Nigerian Bar Association (NBA), Owerri **(Mr. N.H. Nwankwo),** who came and led other lawyer to plead with the Court to let Appellant go but the trial Court refused; that even the Administrative Judge of the Division intervened to persuade the trial Judge, but he rather quickly signed the remand warrant for the Appellant to be taken to prison; that upon the remand of Appellant, the Chairman of the Bar, **Mr. N.H. Nwankwo,** filed this appeal on behalf of Appellant. He referred us to the Notice of Appeal filed on 25/1/06 (Pages 39 – 41 of the Records). Also application for the bail of Appellant was filed on the 25/1/06 for the bail of Appellant (pages 25- 32 of the Records). And Appellant was granted bail on the said 25/1/06, by Hon Justice Duroha – Igwe.

Appellant filed his brief of argument on 4/5/12, upon the Records of Appeal being regularised on 21/3/12. Appellant distilled two issues for the determination of the appeal, namely:

(1) Whether the Appellant committed any act of contempt before the lower Court on 24/1/2006 that warranted the order of committal of the Appellant to prison

custody.

(2) Whether the lower Court had jurisdiction and competence to hear and determine the allegation of contempt that did not occur before it and/or to make the order for remand as it made?

Appellant did not relate the Issues directly to the grounds of the appeal, but a look at it shows the two Issues distilled from the two grounds of appeal serially.

The Respondent filed no brief, and when on 23/3/17, the parties were absent, and the Appellant's brief (which had been served on the Respondent on 7/5/12), was deemed duly argued **Mrs. K.A. Leweanya** (ACSC Imo State, MOJ) appeared for Respondent.

RESOLUTION OF ISSUES

I shall consider this appeal on the two Issues distilled by the Appellant and shall take them together.

Was the trial Judge right to commit the Appellant to Prison Custody, as he did, in the circumstances of this case?

In his brief, Appellant submitted that he did not commit any act of contempt before the Lower Court on 24/1/2006, to warrant the Order of his committal to prison.

Appellant reproduced the statements he made before the Lower Court on the said 24/1/06 and added that he did not say

anything that could be regarded contemptuous as to warrant the order for his remand. Counsel said the trial Court based its decision on the affidavit and exhibit attached to the affidavit in support of the motion for stay of proceedings which it said was ***"in bad taste and contemptuous of this Court".*** Counsel argued that the said affidavit was not deposed to by him. He added that there was nothing contemptuous in the said affidavit by **Mrs. Confidence Opara,** nor in the attached **Exhibit B1,** which was a letter to the Chief Judge of Imo State, who had administrative/supervisory role over the Lower Court, and the letter had complained about the manner the proceedings in the Lower Court was conducted.

Appellant further submitted that even if the affidavit and the exhibit were contemptuous as perceived by the Lower Court (which Appellant did not concede), that the same were not committed by Appellant; that the letter, though signed by Appellant, was signed on behalf of the law firm, engaged by the Plaintiff in the case. He also submitted that the letter was not made before the lower Court, but was made outside the Court, thus, it cannot be contempt

in the face of the Court! He relied on the case of **Ejembi Vs A.G. Benue State (2003) 16 NWLR (pt. 846) 337;** that contempt in the face of the Court can broadly be described as any word spoken or act done in the precincts of the Court, which obstructs or interferes with the due administration of justice, or is calculated to do so. He submitted that even if he did anything on that day (which he did not concede) that was contemptuous, the trial Court was still wrong in remanding him for ***"refusing to obey the order of Court to go into the witness box"***, saying, there was no such order and that the trial Court could not have made such order. He added that the procedure for summary trial for contempt committed in *facie curiae* (in the face of the Court) requires observation of certain requirements namely:

(1) Asking the alleged contemnor to go into the dock (not witness box).

(2) Stating his offence specially and distinctly to him, and

(3) Asking him to show cause (from the dock) why he should not be committed for contempt.

He relied on the case of **Dibia Vs Igwe (1998) 9 NWLR (pt.564) 78**. He added that the records of appeal did not

carry the alleged order that Appellant should go to the witness box; that the trial Court could not have made such order to compel a witness to give evidence, going by Section 36(1) of the 1999 Constitution. Counsel further submitted that the trial Court did not have jurisdiction to hear allegation of contempt, which did not occur in the face of the Court. He relied on **Dibia Vs Igwe (Supra**) and urged us to allow the Appeal.

The law relating to contempt of Court is a Common Law principle, which has been adopted in our Counts, and it is meant to help the Court regulate its proceedings, protect its integrity and observe/ensure effective administration of justice, impartially. It also applies to give Court orders/decision authority and force of law such that any disobedience is done at the pevil of the disobedient. See **Odogwu Vs Odogwu (1992) NWLR (pt. 215); (1992) LPELR – 2229 (SC); Barnado Vs Ford (1892) AC 326; Awobokun Vs Adeyemi (1968) NWLR 259; Ezeji Vs Ike (1977) 2 NWLR (pt.486) 206.**

In the case of **Shugaba Vs UBN Plc (1999) 11 NWLR (pt.627) 459; (1999) LPELR – 3068 (SC),** the Supreme Court said:

*"**while I agree that it is not***

desirable for the Courts to make unbridled orders, and that Court should not do anything to put a clog in the wheel of justice, orders of the Court are to be respected and obeyed. The dignity and honour of Court cannot be maintained, if its orders are treated disdainfully and scornfully, without due respect…"

As hinted in the above Supreme Court decision **(Shugaba Vs UBN Plc (Supra),** contempt of Court was not meant to be wielded by the Court as an instrument of intimidation or a club of offence, to harass and subjugate and hew down litigants, lawyers and person within the precincts of the Court or outside. Contempt of Court is not meant to be used as a weapon or means of showing strength and power by the Judge. See **Nwadike Vs The State (2015) LPELR – 24550 (CA); Ethel C. Chukwu & Ors Vs Lolo Stella C. Chukwu & Ors (2016) LPELR – 40553 (CA),** where the need to comply strictly with procedural rules was stressed, since contempt proceedings affect the liberty of individuals, and the Court cannot afford to gamble with the liberty of persons appearing before it. See **Akpan Vs Akpan (1996) NWLR (pt.462) 620; Nwadike Vs State**

(Supra); Onowu Vs Ogboko & Ors (2016) 1 CAR 167.

What transpired at the Lower Court on 24/1/06 are carried on page 28 and 29 of the Records of Appeal. After announcing appearances, the Lower Court was informed of the application for stay of proceedings, filed on 23/1/06. The Court enquired whether the Defendant had been served with the motion, which Counsel for the Defendant answered in the affirmative, and told the Court he was ready to argue to oppose the application.

The Court did not allow Applicant Counsel to take the motion, but went straight to make a Ruling, as follows:

"I have read the motion paper referred to by Counsel for the Plaintiff. I find the averments in the affidavit in support of the application and the document exhibited on the application as Exhibit 'B' as in bad taste and contemptuous of this Court. The Court is informed that Mrs. Confidence Opara, who deposed to the affidavit, is not in Court. She is in Lagos to attain interview with the American Embassy. But the Counsel P.J.N. Azubuike, who authored Exhibit 'B' is in Court. For 4 times Mr. Azubuike refused to obey the Order of Court to

go to the witness box. His answer – the authorities are clear that as Counsel I cannot go to the witness box. It is against the rule of professional conduct (sic) case is adjourned 21st February, 2006 for Continuation.

Meanwhile, Mr. P.J.N. Azubuike, Counsel for Plaintiff, is hereby remanded in Prison Custody till the adjournment date or till he purges himself of the contempt of this Court." See page 29 of the Records.

There is nothing in the printed record to show how and when the trial Court ordered Appellant to go into the witness box – 4 times – and he refused, and when Appellant answered that as Counsel, he cannot go to the witness box.

In my view, that was in-deed a very bizarre and frightful way to apply the power of contempt by a Court of law. It showed the trial Judge as a very intemperate person acting impulsively without regards to rules and procedure. If the trial Judge wanted to commit Appellant for contempt of his Court, he completely missed the procedure and was in my opinion rather abusing his powers with regards to contempt of Court which in my opinion cannot even be contemplated in the

circumstances of the case.

If the affidavit in support of the motion for stay of proceedings (a motion which the Court did even hear), and the **Exhibit B,** attached to it were ***in bad taste and contemptuous"*** of the Court, the Court had a duty to submit to the rules governing arraignment of contemnor and to subject the application of its powers to caution and acceptable norms.

There are two types of contempt of Court, namely, contempt committed ***ex-facie curiae*** (outside the Court) and contempt committed ***in facie curiae*** (in the face of the Court). The former requires issuance of necessary forms (Forms 48 and 49), pursuant to Section 72 of the Sheriffs and Civil Process Act, and Order 9 Rule 13 of the Judgment Enforcement Rules, (where it involves enforcement of disobedience to Court orders/Rule). Where the contempt consists of disobedience of a Court process or obstruction of an official of Court in carrying out his lawful duties, it may be commenced by the procedure provided for by the High Court Civil Procedure Rules. See **Nwawka Vs Ohazurike (2014) LPELR – 22558 CA; Dibia Vs Igwe (1998) 9 NWLR (pt.564) 78.**

If it is contempt committed

in the immediate view and presence of the Court, such as insulting language or acts of violence or something hear the presence of the Court as to obstruct or interrupt the due and orderly course of proceedings, it is dealt with by the Court summarily. See **Nwawka Vs Ohazurike (2014) LPELR – 22558 (CA) (pp. 31 – 33); Odu Vs Jolaoso (2005) 16 NWLR (pt.950) 178,** where contempt was said to:

"embrace such invidious acts as insult or unsavory comments with very sinister motives against a Court with a view to denigrating the Court and smear, besmirch its nobility, its majesty, its aura, its responsibility, or indulging in expressive sinister and offensive act or words that would lower the esteem of the Court in the eyes of the public."

And where the contempt is committed in the face of the Court, the offending party is asked to go into the dock, and a charge prepared by the Court, and the offence specifically and distinctly spelt out to him and the person asked (from the dock) to show cause why he should not be committed for contempt. See **Nwawka Vs Ohazurike (Supra), Agbachom Vs State (1970) ALL NLR 71; Alake Vs A.G. Fed. (1982);**

Dibia Vs Igwe (1998) 9 NWLR (pt. 564) 78.

In that case of **Nwawka Vs Ohazurike (Supra)** my learned brother, **Abiru JCA,** held:

"Where the insulting language or acts of violence occurred outside the view of the Court i.e. ex facie curiae, the proceedings may be begun by presentation of criminal charges against the offender by the office of the Attorney General under the provisions of the Criminal Code or Penal Code."

Sadly, the learned trial judge did not observe any of the above rules, in this case. He rather ordered the Appellant (a Counsel representing a party before him) to go to the witness box. There is nothing to show why the Judge ordered the Appellant to go to the witness box!

Of course, by law a Counsel cannot turn himself into a witness in a case he is representing a party as Counsel. See **United Forms Products Nig Ltd Vs Opobiyi (2012) ALL FWLR (pt.645) 303 at 321,** where this Court held:

"The practice requiring Counsel to withdraw as Counsel before appearing as a witness in the case is a rule of practice designed to ensure proper administration of practice. In the instant case, the SAN served as a Counsel and a

witness, the trial Court rightly granted Plaintiff's application challenging his continued appearance in the Suit. (Elabanjo Vs Tijani (1986) 5 NWLR (pt.46) 977)…

I think it is absurd reasoning… to say that neither the Supreme Court nor the rules of Professional Conduct for Legal Practitioners prohibits or frowns at Counsel giving evidence in a case he is conducing as a witness, and thereafter continuing to do the case as Counsel (for any of the parties). I believe the whole essence of Rules 17(4), 20(3) (6) and 49(3) (among others) of the Rules of Professional Conduct for Legal Practitioners was meant to save a legal Practitioner from the embarrassing situation of acting in conflict of interests…"

Sadly, the learned trial judge failed to consider and to heed the wise submission of Appellant, that he could not serve as witness in a case he was Counsel. The trial Judge viewed that submission as an affront, and summarily ordered the remand of Appellant without following the rules.

It is even difficult to know exactly why Appellant was remanded for alleged contempt of Court. Was it because he authored **Exhibit B**

(a letter sent to the Chief Judge seeking transfer of the case from the trial Judge)? Was it because Appellant refused (4 times) to go to the witness box as ordered by the Court?

If the former was the reason, the alleged contempt would be one *ex facie curiae,* in which the trial Court cannot punish Appellant, summarily, by invoking contempt of Court proceedings. And if the latter, the order was not lawful and irresponsible in my view. Apart from the fact that Appellant as Counsel for Plaintiff in the case cannot abandon his role of Counsel and go to the witness box, in the case, there is also the constitutional provision that a person cannot be forced to give evidence, even in a criminal trial, to defend himself (Section 36(11) of the 1999 Constitution). In the case of **Adeniyi Vs FRN (2012) ALL FWLR (pt.646) 575 at 590**, it was held:

"No Court is allowed to impose a charge, suo motu, and proceed to convict an accused on it, without affording the accused opportunity to be heard first. (See Section 36(1) of the 1999 Constitution). That is never done, even in a situation of contempt of Court which can be said to be a charge by the Court,

because the contemnor will be given opportunity to defend himself, if the offence is not one committed in the face of the Court. See Section 133 of the Criminal Code Act and Section 15 of the Criminal Procedure Act."

I cannot see anything Appellant said or did to warrant the order for his remand. I therefore see merit in this appeal as I resolve the issues for Appellant and allow the appeal. I hereby set aside the order of remand of the Appellant made by trial Court on 24/1/2006.

Parties shall bear their respective costs.

RAPHAEL CHIKWE AGBO, J.C.A.: I have read in draft the lead judgment of my learned brother Mbaba JCA and I agree completely with his reasoning and conclusions. Judges must refrain from wearing their pride on their sleeves. They must show self restraint even when they are uncomfortable with the language deployed by counsel or litigants appearing before them. It is however incumbent on them to uphold the dignity and authority of the Court. In the instant case, there was nothing before the Court to activate its jurisdiction to summarily convict for contempt. I also allow the appeal and abide the

consequential orders contained in the lead judgment.

AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A.: I have had the privilege of reading in draft the leading judgment prepared by my learned brother ITA G. MBABA, JCA. I am in complete agreement with the reasoning of his lordship in respect of his position that there is merit in the appeal.

According, I too hold that the appeal is meritorious and allow same. I also abide by the consequential orders contained in the leading judgment.