

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

ON MONDAY THE 1ST DAY OF JUNE, 2026

BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA
TIJANI ABUBAKAR
CHIOMA EGONDU NWOSU-IHEME
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

APPEAL NO: SC/CV/1130/2025

BETWEEN:

NECONDE ENERGY LIMITED

== APPELLANT

AND

1. FBNQUEST MERCHANT BANK LTD
2. FIRST TRUSTEES LIMITED
3. NESTOIL LIMITED
4. ERNEST AZUDIALU-OBIEJESI
5. NNENNA OBIEJESI

== RESPONDENTS

JUDGMENT
[DELIVERED BY STEPHEN JONAH ADAH, JSC]

This is an appeal against the Orders made by the Lagos Division of the Court of Appeal, delivered on the 27th day of November, 2025, in **Appeal No. CA/LAG/PRE/ROA/CV/1283/MI/2025**.

The order was sought via a Motion Ex-parte filed on the 26th day of November, 2025 by the 1st and 2nd respondents in the instant appeal.

The application, from the record of the lower court, is captured at page 1185 to 1186 of the Record of Appeal. It was moved by Koku, SAN, at the lower court. The Motion was the one filed on 26/11/25. It is Ex-parte, seeking 2 Orders of Interim Injunction and stay of further proceedings on 12 grounds as listed on the motion paper. It was supported by an affidavit of 7 paragraphs and 18 Exhibits; an affidavit of urgency of 4 paragraphs; two further affidavits filed on the 26/11/25 with 3 Exhibits; and a second further affidavit filed on 27/11/25.

After hearing learned senior counsel, the lower court granted the application in the terms sought.

The consequence thereof was unmistakably reflected in the enrolled Order of Court appearing at page 1186 of the Record of Appeal.

The prayers granted by the lower court are three viz:

- 1. An Order of interim restorative injunction reversing all Steps taken by the respondents and/or persons purporting to act on the instructions of the Respondents and which steps or actions were taken pursuant to the order of the Federal High Court coram Osiagor, J., made on the 20th day of November 2025 pending the hearing and determination of the Appellants'**

Motion on Notice filed on the 26th day of November 2025.

- 2. An Order of interim injunction restraining the respondents. their agents, servants, affiliates, and privies from interfering with and interrupting the performance of his duties Receiver/Manager in the pending the hearing and determination of the Appellants' Motion on Notice filed on 26th November 2025.**
- 3. An Order staying further proceedings at the lower court pending the hearing and determination of the Appellants' Motion on Notice filed on the 26th November 2025.**

The parties through their respective counsel, filed briefs of argument in this appeal. The Appellant's Brief of Argument was settled and filed by Bode Olanipekun, SAN, of the Chambers of Wole Olanipekun & Co. Similarly, the Amended Brief of the 1st and 2nd respondents was settled and endorsed by Bucharest Ofulue, Esq., of the Chambers of Babajide Koku & Co., on 8/5/2026, and was subsequently deemed properly filed and served on 11/05/2026.

Also, before the court, is an Amended Notice of Preliminary Objection brought pursuant to Order 4 Rule 13 of the Rules of this Court, filed on 08/05/2026, by the same Buchi Ofulue, Esq., of Babajide Koku & Co.

The said objection was argued at pages 8 to 16 of the Brief of the 1st and 2nd respondents.

In response to the objection, the appellant filed its Reply Brief on the 11th day of May, 2026.

Let me first consider as required under our laws the preliminary objection filed by the 1st and 2nd respondents. There are three grounds of the said objection. The grounds are expressed thus:

- 1. The first ground of objection relates to the competence of the grounds of appeal filed by the Appellant herein.**
- 2. The second ground of objection relates to the arguments canvassed under the issues for determination in the Appellant's Brief of Arguments.**
- 3. The third ground of objection is that the decision subject of this appeal is an interlocutory appeal for which the prior leave ought to be sought and obtained before such an appeal can be filed.**

The objection was argued in the amended brief of the 1st and 2nd respondents.

The respondents/objectors contend that the appellants' grounds of appeal, though artfully drafted to appear as grounds of law, are in substance grounds of mixed law and fact. Counsel argued that the classification of a ground of

appeal is not determined by the ingenuity of counsel or the label attached thereto, but by the real substance of the complaint disclosed in the ground and its particulars. Reliance was placed on authorities such as the cases of **Allanah v. Kpolokwu (2016) 6 NWLR (Pt. 1507)1**; and **Barbedos Ventures Ltd. v. FBN Plc (2018) 4 NWLR (Pt.1642) 195**, where the courts held that the true nature of a ground must be discerned from its substance and surrounding particulars. It was further submitted that where a complaint alleges misapplication of law to admitted or proved facts, the issue may constitute a ground of law, as explained in **Shittu v. P.A.N. Ltd. (2018) 15 NWLR (Pt. 1642) 195**. However, the respondents maintained that the present appeal does not fall within that category because the appellants' complaints are directed at the exercise of judicial discretion in granting Ex-parte preservative orders. According to the respondents, the grounds challenge matters such as the existence of urgency, the breadth of the preservative orders, and the balance of convenience, all of which are essentially factual and discretionary considerations. Consequently, it was argued that the grounds cannot properly be classified as grounds of law alone, but are at best grounds of mixed law and fact requiring prior leave before appeal. He urged the court to

uphold the preliminary objection and strike out the appeal for being incompetent.

The appellant in his reply brief canvassed that by virtue of section 131 of the Evidence Act 2011, the burden rests on the party asserting a fact to establish same on the requisite standard of proof. Counsel argued that the objectors failed to discharge that burden and consequently urged the court to discountenance the objection.

It was further contended that the provisions of section 233(2)(a)–(e) of the Constitution of the Federal Republic of Nigeria 1999 sufficiently dispose of the respondents' arguments, in that the Constitution expressly confers rights of appeal as of right in matters involving questions of law alone, constitutional interpretation or application, and alleged contraventions of fundamental rights provisions. According to counsel, all nine grounds of appeal fall squarely within those constitutional categories.

Counsel argued that Grounds 1 and 2 of the grounds of appeal challenge the jurisdiction of the lower court to make the Ex-parte orders and also allege breaches of constitutional and procedural provisions, including sections 239–242 of the Constitution and relevant provisions of the Court of Appeal

Rules, 2021. Reliance was placed on authorities such as **A.I.C. Ltd. v. Technip (2023)4 NWLR (Pt1875) 537** and **Williams v. Adold Stamm Intl. (Nig.) Ltd. (2022)5 NWLR (Pt 1822)23**, to submit that where a ground of appeal involves the interpretation or application of constitutional, statutory, or procedural provisions, it constitutes a ground of law.

Similarly, that ground 3, which alleges lack of jurisdiction and breach of sections 36 and 240 of the Constitution, was said to raise pure questions of law, particularly as it complains of the lower court's failure to fulfil obligations imposed by law. Grounds 4 and 5, according to counsel, also qualify as grounds of law because they challenge the jurisdiction of the lower court to grant restorative ex parte orders and allege misapplication of legal principles. Reliance was placed on **Ecobank Nigeria Ltd. v. Honeywell Flour Mills Plc (2018) LPELR - 45124 (SC)**, where the Supreme Court held that a complaint of misunderstanding or misapplication of the law constitutes a ground of law.

Counsel further submitted that grounds 6 and 7, which complain of contravention of provisions of the Court of Appeal Rules, equally raise pure questions of law, while grounds 8 and 9, founded on the alleged breach of the constitutional right

to fair hearing under section 36(1) of the Constitution, are by settled authority grounds of law requiring no leave to appeal. Authorities cited include **General Electric Co. v. Akande (2010)18 NWLR (Pt 1225) 596** and **Newswatch Comm. Ltd. v. Atta (2006)12 NWLR (Pt 993) 144.**

Finally, counsel observed that the objection mirrors a similar unsuccessful challenge raised in ***Neconde v. FBNQuest & Ors.* Appeal No. SC/CV/48/2026**, where this Honourable Court held on the 10th day of April, 2026, that complaints involving constitutional interpretation, application of statutory provisions, and alleged misapplication of legal principles constitute grounds of law appealable as of right.

He urged the court to dismiss the preliminary objection for lacking in merit.

A preliminary objection to the hearing of an appeal is a threshold procedural device employed to challenge the competence, validity, or maintainability of the appeal before the Court proceeds to consider the merits. Its principal purpose is to terminate incompetent proceedings at the earliest opportunity, thereby preventing the court from expending judicial time and resources on an appeal which is fundamentally defective.

The essence of a preliminary objection is rooted in the settled principle that jurisdiction is the soul of adjudication. Once an appeal is incompetent, the court lacks the vires to entertain it, no matter how meritorious the substantive complaints may appear. Consequently, a successful preliminary objection ordinarily results in the striking out or dismissal of the appeal, wholly or in part.

In the instant case the crux of the objection is on the competence of the instant appeal. Competence is a forerunner of jurisdiction. In **Madukolum v. Nkemdilim (1962) LPELR-24023(SC)**, this court held and specified the determinant of jurisdiction thus:

"a Court is competent when (1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and (2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and (3) the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication."

The principle stated above represents one of the foundational canons of adjudication in Nigerian jurisprudence. It encapsulates the indispensable conditions that must coexist before a court can validly assume and exercise jurisdiction over a matter.

The competence of a court is therefore not presumed merely because a judicial body has embarked upon proceedings. A court becomes competent only where the essential conditions precedent recognized by law are fully satisfied. The most crucial element in the instant case is that dealing with compliance with mandatory procedural steps. Due process therefore constitutes the legal gateway through which the court's jurisdiction is activated. The key argument of the objectors in the instant case is that leave was necessary because their contention is that the grounds of appeal of the appellants are not on pure law. Under section 233(2) of the 1999 Constitution (as amended), appeal it is well laid out as follows:

- (2) An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases —**
 - (a) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal;**

- (b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- (c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;
- (d) decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed a sentence of death imposed by any other court;

An appeal “as of right” means an appeal which a party is entitled to bring without first seeking or obtaining the permission, leave, or consent of either the lower court or the appellate court.

The rationale for appeals as of right is rooted in the importance of certain categories of legal complaints. The law considers issues such as jurisdiction, constitutional interpretation, and pure questions of law sufficiently fundamental to warrant immediate appellate scrutiny without the additional hurdle of obtaining leave. To resolve the issue as to whether an appeal is of right the court has to look at the notice and grounds of appeal therein raised. The appellants’ notice of appeal in the instant case which is at pages 1187 to 1195 of the record of appeal, has 9 grounds.

I have carefully scrutinized the grounds of appeal and it is manifest that the complaints embodied therein are complaints bordering strictly on questions of law, constitutional interpretation, fair hearing, and jurisdiction. The gravamen of the appeal is the alleged failure of the lower court to properly interpret and apply the provisions of section 240 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), as well as Order 7 Rule 2 of the Court of Appeal Rules, 2021. The appeal further raises allegations of breach and non-observance of sections 239 to 242 of the Constitution, together with complaints relating to denial of the appellants constitutionally guaranteed right to fair hearing under section 36 of the Constitution. In addition, the grounds challenge the jurisdiction of the lower court to entertain and determine the matter in the manner it did.

These complaints, by their very nature, are not issues requiring the re-evaluation of disputed facts or reassessment of evidence. They are complaints directed at the correctness of the legal conclusions, constitutional interpretation, procedural competence, and jurisdictional validity of the proceedings before the lower court. Grounds complaining of wrongful interpretation or application of constitutional and statutory provisions are, in law, grounds of law simpliciter.

Likewise, issues touching on fair hearing and jurisdiction occupy a special and fundamental position in adjudication, as they strike at the competence and legality of the entire proceedings.

It is settled law that where grounds of appeal raise questions of law alone, particularly constitutional questions, issues of jurisdiction, or breach of fair hearing, an appeal lies as of right under the relevant constitutional provisions. Such appeals require no prior leave either of the lower court or of this Court. The right of appeal in such circumstances is donated directly by the Constitution itself and becomes exercisable upon the filing of a competent notice of appeal within time.

Indeed, jurisdiction and fair hearing are threshold issues. Once raised, the appellate court is duty-bound to examine them because any defect affecting either may render the entire proceedings a nullity irrespective of the merits of the substantive case. Similarly, where the complaint pertains to the interpretation and application of constitutional provisions regulating the powers and competence of the Court of Appeal, such complaint unquestionably falls within the category of appeals exercisable as of right.

I am therefore, unable to appreciate the basis upon which the Respondent contends that leave was required before the instant appeal could be initiated. The constitutional and legal character of the grounds of appeal clearly removes the appeal from the realm of mixed law and fact and situates it firmly within the category of appeals maintainable as of right.

In consequence, the preliminary objection challenging the competence of the appeal is misconceived, devoid of legal substance, and lacking in merit. It accordingly fails and is hereby dismissed.

I now consider the substantive appeal.

MAIN APPEAL:

The appellants in their Brief raised two issues for determination. These issues are couched as follows:

1. **Considering, amongst others, the stage of proceedings (inter parties) leading to the decision of the trial Court (appealed to the lower Court) and the stage of proceedings at the time of the lower Court's orders of 27% November, 2025 (ex-parte and without a Record of Appeal or processes filed at the trial Court as exhibits) vis-à-vis the provisions of Sections 239-242 of the**

Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN) and the Rules of the lower court, whether the lower court was correct and had the jurisdiction to make its Ex-parte orders of restorative and restraining injunction? (Grounds 1, 2, 3, 4, 5, 6, and 9 of the Notice of Appeal).

- 2. In view of the entire circumstances of the proceedings before the lower court, which culminated in its Ex-parte orders of 27th November, 2025, whether the said Ex-parte orders of the lower court, staying proceedings of the trial Court were rightly made. (Grounds 7 and 8 of the Notice of Appeal).**

These issues were adopted by the 1st and 2nd respondents. I will start with issue one.

Issue One (1):

The learned Senior counsel for the appellants submitted that the Ex-parte application before the lower Court which culminated in its Ex-parte proceedings and orders, were not initiated by due process of law. That the subject of its ex-parte orders were not jurisdictionally available to the Court as constituted, just as myriads of features ought to have

prevented the Court from exercising jurisdiction and also refusing the orders sought.

That a Court's jurisdiction to grant Ex-parte orders especially mandatory and prohibitive orders as done by the lower Court are exceptions to the general rule and regulated by a very strict regime within a limited jurisdictional phylum. That the orders of the lower Court could not have been accommodated within its jurisdiction to grant ex-parte orders even if it was imbued with vires to grant ex-parte orders.

That the lower Court was not exercising original jurisdiction pursuant to section 239(1) of the CFRN. As can be seen from the Notice of Appeal to the Court below, what was before it was a challenge to the decision of the trial Court delivered on 20th November, 2025. Hence, the lower Court was exercising appellate jurisdiction under section 240 of the CFRN.

Since the lower Court was exercising appellate jurisdiction, its jurisdiction is donated by that of the trial court. Hence, the appeal before it was a continuation of the hearing before the trial Court. Put differently, it was the jurisdiction of the trial Court that was transposed and invested in the lower Court. Consequently, since the proceedings at the trial court were inter parties proceedings, the lower court lacked jurisdiction to issue Ex-parte orders of injunction arising from the inter parties

proceedings especially when the lower court was without knowledge and visibility of the originating process showing the cause of action at the trial court. That the originating process is the basis for jurisdiction as established in **Adeyemi v. Opeyori (1916) 9-10 SC 31**.

The learned Senior counsel further argued that there was no appeal entered before the lower court and that the originating process and the ruling which was the basis for the appeal at the lower court was not before it before making the Ex-parte Order.

He contended that the Ex-parte Order was vague and academic. That the Receiver Manager a beneficiary of the order was not a party. He urged the court to resolve this issue in favour of the appellant.

The respondents in their brief contended that the lower court has the power to make injunctive orders where there is an appeal pending. That it would be absurd to say the lower court could not make orders to preserve the res where necessary. The senior counsel for the respondents cited the case of **Kigo (Nig) Ltd v. Holman bros (Nig) Ltd (1980) 5-7SC60** to say that the lower court being a court of record possesses inherent powers to make Such orders in the interest of justice.

He submitted that the fact that the 1st and 2nd respondents had previously filed a Motion on Notice at the Court of Appeal and thereafter withdrew it, substituting it with the Ex-parte Motion, cannot operate as a permanent waiver of their right to seek Ex-parte relief. That a withdrawal of an application is not an admission that the relief sought was improper or that the court lacked jurisdiction to grant it. He referred this court to **Alade v. Alic (Nig.) Ltd (2010) 19 WLR (Pt. 1226) 111**, where it was held that the withdrawal of an application is without prejudice to the right to bring a fresh application for the same or similar relief.

He submitted further that contrary to the contention of the appellant, an Ex-parte order has been recognized to be Constitutional by our superior courts and as such it can be made by a competent court where the occasion warrants it. He referred to the case of **Fawehinmi v. Akilu (1990) 1NWLRH (Pt127) 450**.

The learned senior counsel submitted further that the issue of record of appeal is not a legal basis to challenge an Ex-parte order and that the appellant has been unable to demonstrate or disclose any requirement or rule of law that fetters the right of an Appellate Court to make interim preservative orders until Records of Appeal are entered before it.

The learned counsel further argued that the provisions of Order 6 Rule 1(a) of the rules of the lower Court which states that every application to the court shall be by notice of motion does not fetter the statutory and inherent powers of the court to make preservative orders Ex-parte.

On this issue the counsel in addition submitted that the lower court was eminently competent to make such orders on the strength of the affidavit evidence filed in support of the preservative orders. He urged the court to discountenance the appellant's arguments and resolve the issue in favour of the respondents.

Having gone through the arguments of the parties on this issue let me say outrightly that the parties here and all other litigants need to appreciate the essence of filing an appeal.

Under our constitution the appellate system is not an avenue for endless litigation. Its purpose is to ensure that justice is done according to law, not to provide an indefinite succession of opportunities for dissatisfied litigants to postpone the consequences of lawful judgments.

A well-functioning appellate system must therefore strike a delicate balance: it must remain accessible to genuine litigants seeking redress for judicial error while firmly resisting every attempt to convert the right of appeal into an instrument of

delay, oppression, or abuse. The constitutional guarantee of a right of appeal is a shield against injustice, not a license for endless litigation. Where appellate procedures are employed for collateral purposes, the courts are duty-bound to protect the integrity of the judicial process by deploying their inherent powers to prevent abuse and ensure that litigation ultimately reaches finality.

The parties in the instant case were at the trial court. The 1st and 2nd respondents were the plaintiffs at the Federal High Court, Lagos, in a creditor's action in Suit No. FHC/L/CS/2127/2025, commenced in October 2025 seeking to recover huge sums amounting to approximately two billion United States Dollar, which was allegedly borrowed by the 3rd respondent from a consortium of lenders and guaranteed by the Appellant, 4th and 5th respondents. The plaintiffs obtained interim preservative orders pending the hearing and determination of the motion on notice against the Appellant, Nestoil Limited (3rd Respondent), Ernest Azudialu-Obiejesi (4th Respondent) and Nnenna Obiejesi (5th Respondent). Upon receipt of the originating processes and the Ex-parte orders, the appellant and the 3rd - 5th respondents filed an application to discharge the ex-parte orders and simultaneously caused a petition to be written to the Chief Judge of the Federal High

Court, accusing the trial Judge of bias and requesting for a transfer of the case to another Judge of the Court as they claimed to have lost confidence in the trial Judge. The Chief Judge intervened and directed the matter transferred to another judge. The 1st and 2nd respondents, aggrieved with the decision of the trial Judge appealed against that decision and furnished a copy of the Notice of Appeal to the office of the Hon. Chief Judge with a correspondence, requesting for a copy of the petition so that the 1st and 2nd respondents could make representations to the Chief Judge. The matter was re assigned to Osiagor, J.

On the 20th day of November, 2025, parties appeared before Hon. Justice Osiagor who was sitting over the matter for the first time and his attention was brought to the outstanding issues, including the pending Notice of Appeal and application seeking to stay proceedings pending before the Court of Appeal. The trial Judge discharged the Ex-parte preservative orders on the ground that they had lapsed by effluxion of time.

The 1st and 2nd respondents herein, dissatisfied with the orders of 20th November, 2025, filed a Notice of Appeal to the Court of Appeal on 21st November, 2025. They also filed a Motion on

Notice at the Court of Appeal on 21st November, 2025, seeking suspension of the trial Court's orders and injunctive relief.

The 1st and 2nd respondents filed a motion Ex-parte, and withdrew the Motion on Notice. It is the grant of the Motion Ex-parte that is now the fulcrum of the instant appeal. While the parties engage in these appellate gymnastics, the main suit is languishing at the trial court.

While the right of appeal is a constitutional right in many instances, it is not intended to be a tool for:

- **Frustrating successful litigants;**
- **Multiplying proceedings unnecessarily;**
- **Relitigating settled issues;**
- **Encouraging forum shopping; and**
- **Filing frivolous and vexatious appeals.**

It must always be borne in mind that the constitutional right of appeal was never designed to serve as an instrument for obstructing justice, frustrating successful litigants, or prolonging litigation. An appeal pursued, not for the genuine correction of judicial error, but solely to delay proceedings or secure an unfair procedural advantage, constitutes a grave abuse of the appellate process. The appellate jurisdiction of the courts exists to advance the cause of justice, not to impede it.

It is a matter of considerable judicial concern that the abuse of Ex-parte proceedings has, over time, become an unsettling phenomenon in some trial courts. Ex-parte Orders, by their very nature, constitute a narrowly circumscribed exception to the fundamental principle of fair hearing and are therefore reserved for situations of genuine urgency where the interests of justice would be defeated by delay. Their misuse undermines confidence in the judicial process and threatens the delicate balance between the competing rights of litigants.

The danger becomes even more profound where such practices are permitted to infiltrate the appellate process. It would be a grave misfortune, indeed a judicial tragedy, if the abuse of Ex-parte Orders, already a source of legitimate concern at the trial level, were allowed to ascend into the appellate courts. The consequences would be far-reaching, potentially occasioning a calamitous disruption of the orderly administration of justice and eroding public confidence in the integrity, impartiality, and transparency of judicial proceedings.

The appellate courts must therefore remain vigilant and resolute in ensuring that such tendencies are firmly checked at their inception. Judicial discretion, particularly in matters involving Ex-parte applications, must be exercised with the

utmost circumspection and only within the strict confines recognised by law.

The circumstances of the present case raise troubling questions. If, as the record reveals, there was already a pending Motion on Notice seeking interlocutory injunctive relief before the lower court, what necessitated its withdrawal and replacement with a Motion Ex-Parte? More importantly, what exceptional or emergent circumstances arose to justify dispensing with notice to the adverse parties and invoking the extraordinary jurisdiction of the court to proceed Ex-parte? Equally perplexing is the readiness with which the lower court entertained and granted the Ex-parte application notwithstanding the existence of a pending adversarial process capable of addressing the same subject matter.

These are questions which strike at the very root of procedural fairness and the proper exercise of judicial power. Ex-parte jurisdiction must never become a convenient procedural shortcut for obtaining, without opposition, reliefs that ought properly to be determined after hearing all parties. To permit such a practice would be to elevate expediency above justice and to substitute procedural ambush for the transparent adjudicatory process guaranteed by law.

Furthermore, the practice and procedure of the Court of Appeal is driven by the Court of Appeal Rules, 2021.

Order 6 rule 1(a) of the said Rules provide thus:

1. (a) Every application to the Court shall be by Notice of Motion, stating the Rule under which it is brought, the grounds for the reliefs sought and shall be supported by an affidavit and a Written Address:
Provided that the Respondents) shall have five (5) days within which to file processes in response (if any to the notice of motion and the Applicant shall have three
(3) days to file a reply (if any) to the processes of the Respondents).

The Rules of the lower court are unequivocal in their prescription that applications shall, as a general rule, be brought on notice to the adverse party. This requirement is not a mere procedural formality; it is a fundamental safeguard of the constitutional right to fair hearing and the adversarial character of judicial proceedings. The law recognizes only narrow and exceptional circumstances in which a Court may entertain an application Ex-parte, one of the most common being an application for substituted service where the very purpose of the application is to ensure processes filed in the case get to the knowledge of the respondent who could not be served directly. Outside such limited and clearly defined

exceptions, the jurisdiction to proceed Ex-parte must be exercised with utmost restraint and circumspection.

In the instant case, no exceptional circumstance existed to justify the invocation of the Ex-parte procedure. The application neither disclosed any urgency incapable of awaiting service on the opposing parties nor demonstrated any special circumstance warranting the denial of the Respondents' right to be heard before orders affecting their interests were made. The recourse to an Ex-parte application was therefore wholly unwarranted and constituted a clear departure from the Rules of Court and the settled principles governing the exercise of judicial discretion.

It is equally important to underscore that the matter before the lower court arose from an interlocutory appeal. By its very nature, an interlocutory appeal concerns only an incidental or preliminary aspect of the dispute and not the substantive rights of the parties in the main action. The principal controversy remained pending before the trial court for determination on its merits. In such circumstances, judicial prudence demanded that the lower Court exercise considerable restraint so as not to prejudge, undermine, or render nugatory the substantive proceedings still awaiting adjudication before the trial court.

It is therefore, startling that, while sitting in an interlocutory appellate capacity, the lower Court assumed jurisdiction to make far-reaching Ex-parte Orders capable of disrupting, prejudicing, and imperiling the hearing and determination of the substantive suit pending before the trial court. Such orders had the practical effect of extending the interlocutory proceedings beyond their legitimate confines and intruding into the domain of the substantive dispute. Courts of law must be vigilant to ensure that interlocutory proceedings remain ancillary to, and not destructive of, the principal action. To permit otherwise would be to allow a subsidiary contest to overwhelm the substantive litigation, thereby occasioning a grave distortion of the orderly administration of justice.

In the instant case, the injunction is said to be interim injunction. In the case of **A.I.C Ltd v. NNPC (2005) LPELR- 6 (SC)**, this court held thus:

"It is settled law that an order of interim injunction is a temporary form of injunction which remains in force until a named day and date. By its nature, it is expected to last for a very short period. see Okechukwu v. Okechukwu (1989) 3 NWLR (Pt. 108) 234; Kotoye v. CBN (1989) 1 NWLR (Pt. 98) 419; Enekwe v. I.M.B Ltd. (1997) 10 NWLR (Pt. 526) 633."

This court has maintained that interim injunctions are granted sparingly and are never intended to confer a perpetual advantage upon one party. Their purpose is limited: to hold the balance of convenience for a short period until the Court can properly inquire into the merits of the case. See Uwa, JSC, in the case of: **Mohammed v. Virgin Technologies Ltd & Anor (2026) LPELR-83068 (SC)**.

From the record before this court, the relief sought in the Ex-parte Motion is said to be an interim mandatory restorative injunction.

The Motion sought an order which has a mandatory and restorative character. It seeks not merely to preserve the status quo, but to compel the reversal or undoing of acts already carried out pursuant to an earlier order of court. It is a prohibitory injunction. Here, the applicants seek an order “reversing all steps taken” by the respondents. That is clearly coercive and mandatory in nature. Ordinary interim injunctions are usually preservative, aimed at maintaining the status quo. The relief in this case goes further by seeking to reverse completed acts already undertaken. Such relief substantially grants immediate affirmative relief before the determination of the substantive dispute. This relief no doubt cannot be said to be given Ex-parte by any court.

Furthermore, this court explained what an interim injunction is in the case of **Prov. Liquidator, Tapp Ind. Ltd v. Tapp Ind. Ltd & Ors. (1995) 5 NWLR (Pt393) 9** per Ogundare, JSC, as follows:

"An order of interim injunction is one granted to preserve the status quo and to last until a named date or definite date or further order or pending the hearing and determination of a motion on notice. It is for a situation of a real emergency to preserve and protect the rights of the parties, before the Court from destruction by either of the parties. Kotoye's case. supra. It merely leaves matters in status quo and the Court does not, at that stage, have to decide any contentious issues before granting it. It is the extent to which a Court can go, if at all, in the determination of contentious issues in the case when an application for an order of interim injunction or for an order of interlocutory injunction comes before it that constitutes one of the significant or decisive factors in the determination of whether all or any of them can be granted without hearing the other party or parties to the case in accordance with the provision of Section 33(1) (now section 36(1) of the Constitution."

From the foregoing, it is very clear that what the lower court granted was like a peremptory Perpetual Interlocutory Injunction which cannot be granted Ex-parte.

A careful examination of the Record reveals that the injunctive order complained of, was granted by the lower court at a time

when the appeal had not yet been entered. This fact is of considerable jurisdictional significance. While the grant of interim preservative reliefs before the entry of an appeal may not ordinarily generate substantial concern in a substantive appeal, the position is markedly different where, as in the instant case, the appeal is interlocutory in nature.

The Rules governing appellate procedure are clear that an appellate court becomes fully seised of an appeal only upon its entry. See the cases of: **Ezeokafor v. Emmanuel Ezeilo (1999) LPELR- 1209(SC)**, where Achike, JSC, held thus:

"What flows automatically from the appeal being entered is that the appellate court which has now received the record of appeal is said to be seised of the whole of the proceedings in the sense that the res in the appeal shall also automatically pass into the custody of the said appellate court seised of the whole proceedings."

In the case of **Abinde & Ors. v. Salako (2024) LPELR- 62842(SC)**, this court per Ogunwumiju, JSC, expatiated thus:

"...., an appeal is said to be entered once the court below transmits the record of appeal to the appellate court and until that is done the appellate court cannot be said to be seized of the matter. In Ezomo v. A-G, Bendel State (1986) LPELR-1215(SC) (PP. 40-41 Paras. E), the Court held thus: "However, the *ipsissima verba* of Order 3 R.18(1) clearly recognizes the two different circumstances that may arise (a)

where after a Notice of Appeal is given, regarded as when the appeal has been brought, and (b) where the appeal is called for hearing, in which case it has been entered. An appeal is "brought" when the notice has been properly filed in the Court below, and is only entered when the Appeal Court has received the Record of Appeal. See *Ogunremi v. Dada* (1962) 1 All NLR 663, *Adewoyin & Ors. v. Adeyeye* (1962) 2 All NLR. 108. Order 3 R. 5(1) states that- "An appeal shall be deemed to have been brought when the notice of appeal has been filed in the Registry of the court below." It is settled law that an appeal is entered when the record of appeal is received and entered. The giving of notice does not constitute the entering of appeal."

Until that stage is reached, the appeal remains in a transitional state and the trial court continues to retain control over the substantive proceedings. It is for this reason that the mere filing of a Notice of Appeal does not, and has never been intended to, operate as a stay of proceedings. The law is settled that proceedings before the trial court continue unabated unless and until a competent order of stay is granted or the appeal is entered in circumstances where the Rules so provide.

Particularly, in the case of interlocutory appeals, the trial court is not automatically divested of jurisdiction over the substantive suit merely because a Notice of Appeal has been filed. The trial court remains competent to proceed with the

hearing of the matter until the appeal is duly entered before the appellate court. It is only upon such entry that the appellate court assumes effective control over the interlocutory question brought before it and the corresponding limitations on the proceedings in the lower court become operative.

Against this backdrop, the application for an interim injunction filed before the lower court, at a stage when the Record of Appeal had not been transmitted and the appeal had not been entered, was fundamentally misconceived. At that point, the substantive action remained alive and active before the trial court. The lower court was therefore, invited to exercise powers over a matter which had not yet properly come within its appellate control. Such a procedure creates the unacceptable possibility of concurrent jurisdiction being exercised by two courts over the same subject matter at the same time.

The administration of justice does not permit a situation where the same dispute is simultaneously subjected to the supervisory authority of the appellate court and the adjudicatory authority of the trial court. The law abhors such jurisdictional overlap because it breeds confusion, encourages forum manipulation, and undermines the orderly progression of litigation. A litigant cannot, while the matter remains

pending before the trial court, seek interlocutory reliefs from the appellate court in a manner calculated to interfere with or pre-empt the proceedings below before the appeal has been properly entered.

In the circumstances, the application for interim injunctive relief before the lower court, prior to the transmission of the record and entry of the appeal, amounted to a misuse of the appellate process. It constituted an impermissible attempt to invoke the appellate jurisdiction of the court prematurely and thereby interfere with proceedings that were still properly pending before the trial court.

For these reasons, and having regard to the settled principles regulating appellate jurisdiction and interlocutory appeals, I have no hesitation in resolving this issue in favour of the appellant. Accordingly, this issue is hereby resolved in the appellant's favour.

Issue Two (2):

This issue is on the Ex-parte Order of the lower court staying proceedings of the trial court.

The learned senior counsel for the appellant submitted that in the instant case, the Ex-parte Orders made by the lower court were granted in three successive layers. First, the court

issued a restorative injunction; second, it granted an interim restraining injunction; and third, it ordered a stay of proceedings before the trial court. That the cumulative effect of these cascading orders was that equitable remedies were conferred upon parties who appeared unwilling to prosecute the very action they had instituted, as evidenced by their application for and procurement of a stay of proceedings in their own suit.

Counsel contended that the far-reaching orders were made in an Ex-parte proceeding without affording the appellant an opportunity to be heard. That such a procedure constituted a serious violation of the appellant's constitutional right to fair hearing within a reasonable time, as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

That the law is firmly settled that where proceedings are conducted in breach of the constitutional right to fair hearing, the entire proceedings become fundamentally defective and liable to be set aside. He cited **Wagbatsoma v. F.R.N. (2018) 8 NWLR (Pt. 1621) 199 at 218.**

He canvassed that any proceedings conducted in contravention of a party's right to fair hearing under Section 36

of the Constitution are rendered null and void. That in **Akingbola v. F.R.N. (2018) 14 NWLR (Pt. 1640) 395 at 414**, counsel explained that the rationale for this principle is simple and compelling that an unfair procedure can never yield a fair result. Accordingly, once a breach of fair hearing is established, the proper remedy is to nullify the proceedings. He urged the court to resolve this issue in favour of the appellant and ultimately allow the appeal.

The 1st and 2nd respondents in their brief submitted that the appellant misread both the facts and the law. The learned senior counsel for the respondents admitted that an order of injunction must be clear and precise but that the degree of precision must be proportional to the circumstances. That the contention that the Receiver Manager was a non-party to the appeal was an overstatement because the Receiver/Manager was an agent of the respondents.

With respect to the appellant's contention that the order of stay of proceedings made by the lower court was defective and made without Jurisdiction, given that no similar application was first made to the trial court, counsel submitted that this general principle admits of well-recognised exceptions, such as where it is impracticable to make such an application first to the trial court. That the courts allow injunction pending an appeal

under special circumstances. He relied on the case of **SPDC (Nig.) Ltd v. Amadi & Ors (2011) LPELR- 3204 (SC)**. Counsel concluded that the grant of the Ex-parte Order did not amount to a breach of the appellant's right to fair hearing. He urged the court to resolve this issue in their favour.

I have given anxious consideration to the Record of Appeal and the respective submissions of learned counsel for the parties. A careful examination of the proceedings reveals that the Ex-parte Orders procured by the respondents before the lower court went far beyond the recognized purpose of interim Ex-parte reliefs. The orders were not confined to the preservation of the *res* or the maintenance of the status quo pending the hearing of the parties. Neither were they limited to restorative injunctive measures intended to prevent an imminent threat to the subject matter of the litigation.

Most strikingly, the lower court proceeded to grant an order staying further proceedings in the substantive suit before the trial court. This aspect of the order raises a fundamental and troubling question: what conceivable justification existed for the respondents to seek, and for the court to grant, a stay of proceedings in a case initiated and actively prosecuted by the respondents themselves? A litigant who voluntarily invokes the jurisdiction of a court is ordinarily presumed to desire the

expeditious determination of his claims. It is therefore, difficult to reconcile the pursuit of substantive reliefs with a simultaneous attempt to halt the very proceedings through which those reliefs are to be obtained.

The circumstances surrounding the application strongly suggest that the order of stay was not sought in furtherance of the due administration of justice but for an ulterior purpose. The order effectively paralysed the proceedings before the trial Court without any demonstrable legal necessity. It served no legitimate adjudicatory objective and finds no support in the established principles governing the grant of Ex-parte reliefs. Ex-parte jurisdiction is an exceptional jurisdiction, to be exercised sparingly, cautiously and only in circumstances of real urgency. It is not a mechanism for obtaining strategic advantages or frustrating the orderly progress of judicial proceedings.

In the absence of any compelling justification for the order, and having regard to the totality of the circumstances disclosed in the record, I am unable to find any legal or equitable basis upon which the impugned order can be sustained. The conduct leading to its procurement bears the unmistakable imprint of bad faith and constitutes a misuse of judicial process.

Accordingly, this issue is resolved in favour of the appellant and against the respondents.

Having resolved both issues for determination in favour of the appellant, and against the respondents, I am satisfied that the appeal is meritorious. The appeal succeeds and is hereby allowed. The Ex-parte Orders of the lower court made on the 27th day of November, 2025, in **Appeal No: CA/LAG/PRE/ROA/CV/1283/MI/2025**, is accordingly set aside.

The parties are to bear their respective costs.

Appeal Allowed.


STEPHEN JONAH ADAH
JUSTICE, SUPREME COURT

APPEARANCES:

Chief Wole Olanipekun, SAN, Bode Olanipekun, SAN, Mofesomo Tayo-Oyetibo, SAN, with them are – Akintola Makinde, Esq., Raymond Nkannebe, Esq., Oluwasola Adesina, Esq., and B. Nelson, Esq., **for the Appellant.**

Babajide Koku, SAN, Victor Ogude, SAN, Omosanya Popoola, SAN, with them are – Buchi Ofulue, Esq., and Thomas Ojo, Esq., **for the 1st and 2nd Respondents.**

Dr. Muiz Banire, SAN, with him are – Oluwaseye Afolabi, Esq., Tolulope Osho, Esq., and M.O. Awosanya, Esq., **for the 3rd Respondent.**

Chinenye Edmund Obiagwu, SAN, with him are – Miriam N. Balogun, Esq., Chizitelu Ikwueme, Esq., Chinazo V. Emelumba, Esq., and Chibusonma Obiagwu, Esq., **for the 4th Respondent.**

Kehinde Ogunwumiju, SAN, Chikaosolu Ojukwu, SAN, Ademola Abimbola, SAN, with them are – Segun Fiki, Esq., Valentine Openupo Osunleli, Esq., C. Omokare, Esq., and Chetachi Mayor-Eze, Esq., **for the 5th Respondent.**