IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

ON FRIDAY THE DAY OF 23RD JANUARY, 2026
BEFORE THEIR LORDSHIPS: -

JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
ADAMU JAURO	**JUSTICE, SUPREME COURT**
OBANDE FESTUS OGBUINYA	**JUSTICE, SUPREME COURT**
STEPHEN JONAH ADAH	**JUSTICE, SUPREME COURT**
ABUBAKAR SADIQ UMAR	**JUSTICE, SUPREME COURT**

SC.322/2008

BETWEEN:

SAMUEL UDEAJA - - - - - - APPELLANT

VS.

ANDREW OSUMUO - - - - - RESPONDENT

JUDGMENT
(DELIVERED BY OBANDE FESTUS OGBUINYA, JSC)

This appeal probes into the rightness of the decision of the Court of Appeal, Enugu Division (hereunder addressed as the "lower court"). *Coram judice:* M. L. Tsamiya, S. Denton-West and J. O. Bada, JJCA, in Appeal No. CA/E/122/2006, delivered on the 9th April, 2008. In its judgment, the lower court set aside the decision of the High Court of

Anambra State (the trial court), in Suit No. HN/93/2001, delivered on the 20th January, 2004, wherein J. C. Nwadi, J. granted the respondent's counter-claim.

The precis of the essential facts of the case, which transfigured into the appeal, are disobedient to verbosity and complexity. The respondent, who succeeded one Dennis Ekezie Osumuo, alleged that by an indenture of lease, dated the 3rd April, 1953, one Igboatu Udeaja, the appellant's uncle, granted to his father, Dennis Ekezie Osumo, a parcel of land known as and called "Mbana" situate, being and lying at Umuisiedo Village, Umudim, Nnewi (No. 17 Onitsha – Owerri Road, Nnewi) in Anambra State for a term of 99 years at a reserved annual rent of £2 (two pounds) and subject to renewal on expiration. The grantee, late Dennis Ekezie Osumuo, took physical possession of the disputed "Mbana" land, erected shops thereon and paid his rents regularly. In the course of the lease, the grantor demanded for a lump sum consideration of ₦600,000 = and committed numerous acts of trespass on the disputed land. Sequel to that, the respondent beseeched the trial court, via a writ of summons, filed on the 4th July, 2001, and a statement of claim, filed on the 25th January, 2002, and tabled against the appellant the following reliefs:

a. A declaration that:

(i) The plaintiff is entitled to the possession and use of that certain piece or parcel of land

known as and called "MBANA" land otherwise known as No. 17 Onitsha – Owerri (or Oguta) Road, Nnewi within the jurisdiction of this Honourable Court.

(ii) The demand by the Defendant from tha Plaintiff of the sum of ₦600,000.00 (Six hundred thousand Naira) additional consideration on the said Mbana Land is unconscionable and wrong in law, and

(iii) The Plaintiff is entitled to a statutory right of Occupancy in respect of the said Mbana Land.

b. Relief from any forfeiture of the said Mbana Land on ground of non-payment of annual rent reserved on the said Mbana Land by the Plaintiff to the Defendant, or for any other cause or reason.

c. The sum of ₦500,000.00 (Five hundred thousand Naira) general damages for the various acts of trespass committed by the Defendant on the said Mbana Land without the consent of the Plaintiff.

The appellant, upon service of the originating process on him, joined issue with the respondent and denied liability. The appellant alleged that it was his uncle, Igboatu Udeaja, who purportedly leased the disputed land to the respondent's father without his knowledge and consent whilst he was living in Benin, Edo State. He further alleged that the respondent's father was irregular in payment of rents, owed arrears of rents for over twenty years and advertised the property for sale.

Consequently, the appellant counter-claimed against the respondent for the following reliefs:

(a) A declaration that the leasehold interest created by the Deeds of Lease had determined/ceased to be operative.

(b) A declaration that the re-entry into the demised land by the Defendant was proper.

(c) An Order of forfeiture against the Plaintiff over the said demised land.

(d) A declaration that the Plaintiff has grossly violated the terms and conditions of the said lease.

(e) An Order of Court compelling the Plaintiff to pay up the arrears of rent at the current (prevailing) value of pounds sterling to the naira.

(f) One Million Naira General Damages for breach of convenants and trespass by the Plaintiff.

Following the discordant claims of the contending parties, based on their divergent pleadings, the trial court, on the 16th June, 2003, adjourned the suit to 29th July, 2003 for hearing. On that date, the trial court, owing to the absence of the respondent and his counsel, struck out the suit for want of prosecution. It fixed the counter-claim for 19th November, 2003 for hearing. The counter-claim was heard on the 19th November, 2003 and 4th December, 2003 in the absence of the

respondent. In a considered judgment, delivered on the 20th January, 2004, captured at pages 34 – 42 of the record, the trial court granted the respondent's counter-claim.

The respondent, who was the plaintiff, was dissatisfied with the judgment. Hence, with the leave of the lower court, he launched, on the 8th December, 2005, a 3 – ground notice of appeal, located between pages 43 – 46 of the record, before the lower court. The lower court heard the appeal. In a considered unanimous judgment, delivered on the 9th April, 2008, documented between pages 87 – 102 of the record, the lower court allowed the appeal, set aside the decision of the trial court and ordered a retrial of the suit.

The appellant was peeved by the judgment. Consequently, on the 27th May, 2008, the appellant lodged, before this court, a 4 – ground notice of appeal, copied at pages 103 – 105 of the record, wherein he prayed this court:

(a) To Set Aside the judgment of the Court of Appeal.
(b) To Restore the judgment of the High Court.

Thereafter, the parties, through their counsel, filed and exchanged their respective briefs of argument in line with the procedure regulating the hearing of civil appeals in this court. The appeal was entertained on 27th October, 2025.

During its hearing, learned counsel for the appellant, Joy Etiaba, Esq., adopted the amended appellant's brief of argument, filed on the 24th October, 2025 and deemed properly filed on the 27th October, 2025, as representing his arguments for the appeal. He urged the court to allow it. Similarly, learned counsel for the respondent, Chijioke Udeogu, Esq., adopted the respondent's brief of argument, filed on the 18th May, 2015 and deemed properly filed on the 27th October, 2025, as constituting his submissions against the appeal. He urged the court to dismiss it.

In the appellant's brief of argument, learned counsel distilled three issues for determination, to wit:

a) **Whether in view of the provisions of Order 24 Rule 14 Anambra State High Court Rules the inflexible insistence of the Court of Appeal in voiding the judgment of the High Court on the ground that the Respondent was not served Hearing Notice was justified?**
b) **Whether the Court of Appeal was right in failing to consider the fundamental issues of the competence of the Appeal in view of the evident failure of the Respondent to apply first to the Trial High Court to set aside the default judgment before applying to the Court of appeal direct for extension of time to appeal out of time?**

c) **Whether the Court of Appeal rightly applied the principles enunciated by the Supreme Court of Nigeria in the case of N. A. Williams vs Hope Rising Voluntary Society 1982 1 All NLR 1 in granting the respondent the extension of time within which to appeal out of time?**

Admirably, learned respondent's counsel adopted the three issues crafted by the learned counsel for the appellant.

A careful scrutiny of the trinity issues shows that issue one is most relevant and determinative of the appeal. For this reason, I will handle the appeal on basis of issue one.

Arguments on the issue:

Appellant's submissions:

Learned appellant's counsel submitted that the finding of the trial court that the respondent lost interest in the suit was not appealed against and binding on him. He relied ***Dabup v. Kolo*** (1993) 9 NWLR (Pt. 317) 269; ***Zakari v. Alhassan*** (2002) 14 NWLR (Pt. 798) 52; ***Olanrewaju v. The Governor of Oyo State*** (1992) 11 – 12 SCNJ 92. He reasoned that the effect of that unappealed finding obviated the need to serve hearing notice on him. He asserted that by virtue of the provision of order 24 rule 14 of the Anambra State High Court Rules, 1988 (the 1988 Rules) it was not mandatory to service hearing notice on

the unserious respondent who reacted to the counter-claim. He cited ***Banna v. Telepower Nig. Ltd*** (2006) 15 NWLR (Pt. 1001) 198. He observed that it is the intention of the provision which the court has a duty to ascertain. He referred to ***Global Excellence Comm. Ltd v. Duke*** (2007) 7 SCNJ 377. He reproduced the proceedings of the 30th July, 2001, 25th February, 2002 and 20th June, 2002 and urged the court to resolve the issue in the appellant's favour.

Respondent's contentions

Learned respondent's counsel contended that by the provision of order 24 rule 14 of the 1988 Rules, the respondent was entitled to a hearing notice since the counter-claim was not heard immediately the main suit was struck out. He narrated the importance of service of hearing notice as noted in ***Auto Import v. Adebayo*** (2002) 12 SCNJ 124; ***Obe v. Gom*** (2006) FWLR (Pt. 303) 285. He added that the trial court wrongly relied on the assertion of the appellant's counsel and proof service of hearing notice on the respondent for proceeding of the 29th July, 2003 without making any observation as to service on the record. He cited ***Ogboh v. FRN*** (2002) 4 SCNJ 393; ***Mohammed v. Husseini*** (1998) 12 SCNJ 136. He insisted that neither the respondent nor his counsel was served with hearing notice for the 29th July, 2003, which accounted for their absence, which non-service vitiated the proceeding of that day. He referred to ***Ogundoyin v. Adeyemi*** (2001) 7 SCNJ 187; ***Saraki v. Alsthom*** (2005) 1 SCNJ 1. He stated that the counter-claim

was a separate and independent claim. He relied on ***Narindex Trust Ltd. V. Nigerian Inter-continental Merchant Bank Ltd.*** (2001) 4 SCNJ 208. He described the counter-claim as incompetent because no facts were pleaded to support it. He relied on ***Ishola v. UBN Ltd.*** (2005) 6 NWLR (Pt. 922) 422; ***Awara v. Alahbo*** (2002) 12 SCNJ 62. He maintained that the evidence proferred in support of the counter-claim went to no issue. He urged the court to quash the judgment on the counter-claim.

Resolution of the issue

A clinical examination of the divergent arguments of the feuding parties amply demonstrate that the marrow of the knotty issue is circumscribed within a narrow compass. It chastises the propriety *vel non* of the lower court's finding on the necessity of service of hearing notice on the respondent prior to the trial court's determination of the appellant's counter-claim. It is imperative, without much ado, to pluck out the alleged offensive finding of the lower court, warehoused in its judgment, which is in the heat of extermination. At pages 99 and 100 of the record, the spinal cord of the appeal, the lower court declared:

> **The counter-claim proceedings started on 19/11/2003 and then adjourned to 24/11/2003 and 4/12/2003 for continuation and address. The record did not show that there was any proceedings conducted on 24/11/2003 but on 4/12/2003 when the counter-claimant closed**

his case and his counsel on the same day addressed the trial court immediately after which the case was adjourned to 14/1/2004 for the judgment. The learned trial judge on 20/1/2004 delivered his judgment in favour of the counter-claimant/respondent, and against the appellant behind appellant's back as there was no order for service of hearing notice and infact there was no such service. As these events happened exper-te (sic) i.e. behind the back of the appellant as there was no hearing notice ordered to be served or infact served on the appellant, this in my view is clear violation of the appellant's right to fair hearing. Before a case is decided by a court of trial, each side must be given opportunity of a fair hearing.

To be given this opportunity the court must be satisfied that all the due processes of court have been served on all parties. In the present case, there was no proof that the appellant was served with any hearing notice before the learned trial judge proceeded to hear the case on counter-claim. This is a clear violation of the principle of *audi alteram partem* which has done injustice to the case of the defendant/appellant. A *fortiori* the judgment delivered by the learned trial judge on 20/1/2004 regarding the counter-claim is a miscarriage of justice and should be

declared a nullity. See *Yakubu Vs. Governor of Kogi State (1995) 8 NWLR (Pt. 414) 386,* and *U.B.N Ltd Vs. Nwaokolo (1995) 6 NWLR (Pt. 400) 127.* The judgment of the Anambra State High Court delivered on 20/1/2004 in suit No. HN/93/2001 is a nullity and I so hold.

The gravamen of the appellant's nursed grouse is that the elaborate finding, catalogued supra, is a defilement of the provision of order 24 rule 14 of the 1988 Rules. Since the interpretation of the provision is the pivot of the vexed issue and determinative of it, it is germane to mine it out, *verbatim ac litteratim,* whence it is ingrained quietly in the subsidiary enactment thusly:

Where the defendant in a case which has been struck out under rule 12 of this Order has a counter claim the court may proceed to hear the counter claim and give judgment on the evidence adduced by the defendant, or may postpone the hearing of the counter claim and direct notice of such postponement to be given to the Plaintiff.

It admits of no argument that the provision is rebellious to woolliness in its connotation. To this end, the law compels me to patronise the literal canon of interpretation of statutes in construing it. The ancient rule, which dates from antiquity, commands the court, where a provision of a law is comprehension – friendly, as here, to accord it its ordinary grammatical meaning without garnishing it with any atom of linguistic

beautification that has the tendency to belabour and befog its appreciation and obscure the intention of the legislature. I have an abiding obligation to honour this legal commandment *vis-à-vis* the interpretation of the provision.

It is gleanable from the phraseology of the provision that it owns binary arms. This because of the disjunctive conjunction "or" which the draftsman employed therein. The first arm grants the court, usually a trial court, the unbridled licence to proceed to entertain a counter-claim and a render judgment, on the footing of the evidence adduced by the defendant, after a plaintiff's suit is struck out. This arm presumes the presence of the plaintiff, the defendant's adversary, or, at least, his knowledge of the proceeding, during the gestation period of the counter-claim. The second arm equips the trial court with the *vires* to adjourn the determination of the counter-claim and issue notice of the postponement to plaintiff. This arm, in sharp contrast with the first arm, envisages a situation where the plaintiff was absent during the proceeding that aborted the lifespan of his suit, hence the necessity for a notice of adjournment. Thus, whilst under the first arm of the provision, notice of proceeding to the plaintiff may be unnecessary, if he is apprised of it, it is a *conditio sina qua non* for the second arm. Indisputably, flowing from the chequered trajectory of the counter-claim, which ultimately midwifed this appeal, its hearing/determination fell under the firmament of the second arm of the provision. The reason is not far-fetched. The

respondent, who was the plaintiff before the trial court, whose suit was struck out *in limine,* was not present before and during the proceeding of the 29th July, 2003 which terminated his suit in its embryo stage. In that wise, the trial court was under a bounden duty, as ordained by the provision, to issue hearing notice for service on the respondent upon its postponement of the hearing of the appellant's counter-claim.

It is a living proof that Nigeria, a legatee of the common law, operates an accusatorial system of adjudication, which it imported from Anglo-American legal system, in which service of court process on a party to proceeding is a fundamental right. It is service of court process that vests a court with the requisite jurisdiction to entertain a matter. By the same token, service of hearing notice, the means and procedure to compel a party to appear in court, is imperative for adjudication. Hearing notice is a document, which is issued from the court registry, which gives legal notification to parties in a suit and the dates on which it would be heard, see ***Darma v. Ecobank (Nig.) Ltd.*** (2017) 9 NWLR (Pt. 157) 480. Service of hearing notice on a truant party ignites the jurisdiction of a court over a matter. Where it is necessary to serve a hearing notice, but it is not effected on a party, the court will be robbed of the *vires* to try or continue to hear an action and any orders flowing from it will be enveloped in the dense of fog of nullity, see ***John Andy Sons & Co. Ltd v. Mfon*** (2007) 4 WRN 173; ***Mbadinuju v. Ezuku*** (1994) 10 SCNJ 109; ***Nasco Mgt. Service Ltd. v. A. N. Amaku Trans ltd.*** (2003) 2 NWLR

(Pt. 804) 290; ***Mpama v. FBN Plc.*** (2013) 5 WLR (Pt. 1346) 177; ***S & D Const. Ltd v. Ayoku*** (2011) 13 NWLR (Pt. 1265) 487; ***Apeh v. PDP*** (supra); ***NACB Ltd. v. Ozoemelam*** (2016) 9 NWLR (Pt. 1517) 376; ***Ugo v. Ummuna*** (2018) 2 NWLR (Pt. 1602) 102; ***Ezim v. Menakaya*** (supra); ***ENL Consortium Ltd. v. S.S. (Nig.) Ltd.*** (2018) 11 NWLR (Pt. 1630) 315; ***Achuzia v. Ogbomah*** (2016) 11 NWLR (Pt. 1527) 59; ***NUT, Taraba State v. Habu*** (2018) 15 NWLR (Pt. 1642)381. The settled position of the law is that a hearing notice must notify a party of the date and place of hearing of the proceeding for which it is being served. It must be against the date fixed/scheduled for hearing, see ***Darma v. Ecobank (Nig.) Ltd.*** (supra); ***Achuzia v. Ogbomah*** (supra); ***Mpama v. FBN Plc*** (2013) 5 NWLR (Pt. 1436) 176.

In due fidelity to the expectation of the law, I have consulted the record, the soul of the appeal. My port of visit is at the residence of the proceedings of the 29th July, 2003, 19th November, 2003 and 4th December, 2003 which colonise pages 27 – 33 of the record. I have given a microscopic examination to them with the finery of a toothcomb. Doxology, they do not harbour any ambiguity. Incidentally, I am unable to locate, even with the telescopic lens of the apex court, where the trial court ordered for hearing notice to issue on the respondent at the *terminus ad quem* of each day's proceedings *vis-à-vis* the determination of the appellant's counter-claim. It is an elementary law that it is incumbent on a court to order for the issuance and service of hearing

notice from day to today, inclusive of date of delivery of judgment, on an absent party, see ***Darma v. Ecobank (Nig.) Ltd*** (supra); ***Apeh v. PDP*** (supra). Curiously, the trial court, with due reverence, found it convenient not to order for the issuance of hearing notice to be served on the respondent at the end of each day's proceeding, including the penultimate proceeding of 4th December, 2003, which birthed the decision sought to be impugned and ostracised before the lower court, notwithstanding that the respondent was never a *particeps* in the proceeding. The failure, a costly faux pas, flagrantly fractured this hallowed principle of law which is designed and tailored towards ensuring fair hearing to parties in proceeding.

It cannot be gainsaid that in the face of the trial court's non-ordering/ direction of service of hearing notice on the respondent, its decision on the counter-claim, which was nullified by the lower court, was/is a *pessimi exempli* of a lopsided judgment. The constitutional doctrine of fair hearing, which traces its paternity to divinity, mandates the courts, on all the rungs of the judicial ladder, to willy – nilly create a congenial, egalitarian and hospitable milieu for parties to ventilate their perceived grievances in the temple of justice. It decrees, under pain of nullity of proceeding in default, that courts shall accord equal treatment, opportunity and consideration to the cases of a parties. This is encapsulated in the *maxim: Audi alteram partem.* In the determination of legal rights of parties, justice must not only be done but must be

manifestly and undoubtedly seen to be done. Indubitably, the trial court's proceeding, which was conducted under the umbrella of purported default proceeding, treated the principles of fair hearing with disdain and contempt.

Nota bene, this court, in ***Baba v. N.C.A.T.C.*** (1991) 5 NWLR (Pt. 192) 388 at 423, per Nnaemeka-Agu, JSC, invented and calibrated the parameters to guide the courts to ensure fair hearing in these illuminating words:

> **In a Judicial or quasi-Judicial body, a hearing, in order to be fair, must include the right of the person to be affected:**
>
> **(i) to be present all through the proceedings and hear all the evidence against him;**
>
> **(ii) to cross-examine or otherwise confront or contradict all the witnesses that testify against him;**
>
> **(iii) to have read before him all the documents tendered in evidence at the hearing;**
>
> **(iv) to have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to the party, save in recognized exceptions;**
>
> **(v) to know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence; and**

(vi) to give evidence by himself, call witnesses if he likes, and make oral submissions either personally or through a counsel of his choice.

See, also, ***S & D Const. Co. Ltd. v. Ayoka*** (2011) 13 NWLR (Pt. 1265) 487; ***JSC, Cross River State v. Young*** (2013) 11 NWLR (Pt. 1364) 1; ***Olayioye v. Oyelarin I*** (2019) 4 NWLR (Pt. 1662) 351; ***La Wari Furniture & Baths Ltd. v. FRN*** (2019) 9 NWLR (Pt. 1640) 395.

It is decipherable from the record of proceedings before the trial court, chronicled above, that from the cradle of the hearing of the counter-claim till when it berthed at the contentious decision thereon, which mothered this appeal, the respondent was not present to hear the evidence against him, cross-examine the appellant's witnesses, give evidence by himself or field a witness(es) to neutralise the effervescence of that offered by the appellant and to address the trial court either personally or through counsel. In the legal sphere, the respondent was entitled to address the trial court by summing up his case, see ***Mpama v. FBN Plc.*** (supra); ***Achuzia v. Ogbomah*** (supra).

There is a crying need to emphasise, perforce, that the glaring absence of service of hearing notice on the respondent, on none of the dates the proceeding of the trial court was conducted in respect of the counter-claim, the ensuing decision therefrom trampled, curtailed and eroded the appellant's sacrosanct right to fair hearing as enshrined in

the sacroscant provision of section 36 (1) of the Constitution, as amended, the *fons et origo* of all laws. Put simply, the respondent discharged the burden to prove a denial of fair hearing which the law has cast on him, see ***Maikyo v. Itolo*** (2007) 13 NWLR (Pt. 1265) 487. The law does not require the respondent to prove damages or losses he incurred consequent upon a breach of his right to fair hearing, see ***Oshiomole v. Airhiavbere*** (2013) 7 NWLR (Pt. 1353); ***Olayioye v. Oyelaran I*** (supra). A proof of breach of right to fair hearing, as happened in the case which parented the appeal, carries with it a miscarriage of justice. Put differently, a miscarriage of justice is inherent in a breach of a right to fair hearing, see ***Mpama v. FBN Plc.*** (supra) ***Eze v. Unijos*** (2017) 17 NWLR (Pt. 1593) 1; ***Thomas v. FJSC*** (2019) 7 NWLR (Pt. 1671) 284.

It the fixed posture of the law that where a party's inviolable right to fair hearing is flouted, as in this case, no matter the quantum of fair-mindedness, dexterity, artistry and objectivity injected into the proceeding hosting the breach, it will be trapped in the intractable web of nullity, see ***Nyeson v. Peterside*** (2016) 7 NWLR (Pt. 1512) 452; ***C. K & W. M. C. Ltd v. Akingbade*** (2016) 14 NWLR (Pt. 1533) 487; ***Eze v. Unijos*** (supra); ***Ezenwaji v. U.N.N*** (2017) 18 NWLR (Pt. 1598) 485; ***Poroye v. Makarfi*** (2018) 1 NWLR (Pt. 1599) 91; ***APC v. Nduul*** (2018) 2 NWLR (Pt. 1602) 1; ***S.A.P. Ltd. v. Min., Petroleum Resources*** (2018) 6 NWLR (Pt. 1616) 391; ***Zenith Plastics Ind. Ltd. v. Samotech Ltd.***

(2018) 8 NWLR (Pt. 1620) 165; ***Olayioye v. Oyelaran I*** (supra); ***La Wari Furniture & Baths Ltd. v. FRN*** (supra). This is a confluence point where want of fair hearing and jurisdiction embrace themselves to vitiate proceedings that give birth to a denial of fair hearing, see ***O.O.M.F Ltd v. NACB Ltd.*** (supra); ***Ovunwo v. Woko*** (2011) 17 NWLR (Pt. 1277) 522; ***Achuzia v. Ogbomah*** (supra); ***Apeh v. PDP*** (2016) 7 NWLR (Pt. 1510) 153; ***Aba v. Monday*** (2015) 14 NWLR (Pt. 1480) 569.

In the expansive legal landscape, nullity denotes: "Nothing; no proceeding; an act or proceeding in a case which the opposite party may treat as though it had not taken place; or which has absolutely no legal force or effect", see ***Lasisi v. State*** (2013) 12 NWLR (Pt.1367) 133 at 146, per Ngwuta JSC. Nullity bears the stigma of corrosive consequence in law. If a decision or proceeding is smeared with an tinge of nullity, it is void and taken as if it was never given or made, see ***Okoye v. Nigeria Const. & Furniture Co. Ltd.*** (1991) 6 NWLR (Pt. 199) 501; ***Bello v. INEC*** (2010) 8 NWLR (Pt. 1196) 342. According to the law, a null decision or proceeding does not shower any ounce of enforceable right on its beneficiary party, who is armed with it, nor does it impose any obligations on its victim party, see ***Ajibola v. Ishola*** (2006) 13 NWLR (Pt. 998) 628; ***Oyeneyin v. Akinkugbe*** (2010) 4 NWLR (Pt. 1184) 265. Hence, the bounden duty of a court is to set aside, a null decision in that it has no life in law, see ***Oyeyemi v. Owoeye*** (2017) 12 NWLR (Pt. 1580) 364.

My noble Lords, for the sake of completeness, the order to make when a person or authority breaches a party's unassailable right to fair hearing, as engraved in section 36(1) of the Constitution, as amended, is not a moot law. The settled position of the law is that "Once there is such a denial of the said right {right to fair hearing}, the only order that could be made on appeal is one for re-trial or re-hearing. This is to enable the appellant to be properly heard," see ***Kalu v. State*** (2017) 2 NWLR (Pt. 1442) 522 at 547, per Nweze, JSC; ***C.K & W.M.C Ltd. v. Akingbade*** (supra); ***Akingbola v. FRN*** (supra); ***Ahmed v. Read Trustees, AKRCC*** (2019) 5 NWLR (Pt. 1665) 300; ***Fapohunda v. R.C.C.N. Ltd.*** (2019) 3 NWLR (Pt. 1658) 163. Furthermore, once an appellate court intends to order, or orders for a *de novo* hearing, the law forbids it from treating any other issues in the appeal so as not to prejudice any point that may germinate for consideration during the rehearing proceedings, see ***C.K. & W.M.C Ltd. v. Akingbade*** (supra); ***Ovunwo v. Woko*** (2011) 17 NWLR (Pt. 1277) 522; ***Karaye v. Wike*** (2019) 17 NWLR (Pt. 1701) 355.

It stems from the foregoing juridical survey on the essentiality of service of hearing notice, conducted in due consultation with the law, that the trial court's decision, delivered on the 20th January, 2004, was mired in the quicksand of nullity with the toxic consequence attendant thereto. In so far as the decision was marooned in the murky ocean of nullity, on account of unwarranted infringement of the respondent's

inalienable right to fair hearing as entrenched and guaranteed under section 36 (1) of the Constitution, as amended, the *supremo* of all statutes, the lower court was entitled on the footing of the doctrine of *ex debito justitae,* to mow the null decision down with its unbiased judicial sword and supplant it with a deserved accompanying order of *de novo* trial of the counter-claim before the trial court. In effect, the lower court's decision was/is in total alignment with the tenets of our *corpus juris,* especially the provision of order 24 rule 14 of the 1988 Rules dissected supra. In the premises, all the diatribes, which the appellant rained against the lower court's decision, peter out into the dense fog of insignificance. It will smell of idolising judicial sacrilege to crucify the lower court's decision on the undeserved altar of improper/ misplaced interpretation of the provision of order 24 rule 14 of the 1988 Rules. I dishonour the appellant's salivating invitation to act to the contrary in order not to insult the law. In the end, I have no choice than resolve the sole issue against the appellant and in favour of the respondent.

On the whole, having resolved the solitary issue against the appellant, the destiny of the appeal is obvious. It is bereft of any iota of merit and deserves the reserved penalty of dismissal. Consequently, I dismiss the appeal. Accordingly, the judgment of the lower court, delivered on the 9th April, 2008, in Appeal No. CA/E/122/2006, which set aside the decision of the trial court, in suit No. HN/93/2000, delivered on the 20th January, 2004, is, hereby, affirmed. The parties shall bear the

respective costs which they incurred during the prosecution and defence of the doomed appeal.

Appeal dismissed.

OBANDE FESTUS OGBUINYA,
JUSTICE, SUPREME COURT.

COUNSEL:

Joy Etiaba, Esq. (with him, E. E Nnamani, Esq.) for the appellant.

Chijioke Udeogu, Esq. for the respondent.