In The Supreme Court of Nigeria

On Friday, the 27th day of January 2012

Before their Lordships

Christopher Mitchell Chukwuma-Eneh	……	Justice Supreme Court
John Afolabi Fabiyi	……	Justice Supreme Court
Bode Rhodes-Vivour	……	Justice Supreme Court
Nwali Sylvester Ngwuta	……	Justice Supreme Court
Mary Ukaego Peter-Odili	……	Justice Supreme Court

SC. 11/2003

Between

Mr. David I. Karinga Stowe Mr. Lawrence I. Stowe *(For themselves and on behalf of Stowe House, Associate House Bango House of Bonny in Bonny Local Government Area)*	……	Appellants

And

Godswill T. Benstowe Chief (Apostle) S.T.W. Wilcox *(For himself and on behalf of the Bonny Chiefs Council)*	……	Respondents

Judgement of the Court
Delivered By
Bode Rhodes-Vivour. JSC

This is an appeal from the judgment of the Court of Appeal, Port Harcourt Division delivered on the 11th of July 2000 wherein that court set aside the judgment of the High Court and struck out the suit for non-compliance with the provisions of Order 33 Rule 7 High Court (Civil Procedure) Rules Cap 61 Laws of Eastern Nigeria, 1963.

The facts are these:

The appellants as plaintiffs sued the respondents as defendants on a Writ of Summons and Statement of Claim. The endorsement on the Writ of Summons is as follows

"The plaintiffs claim as against the Defendants is for:

1. A declaration that

   (a) The installation of the 1st defendant as Chief Godswill Tamunobaraimi Ben Stowe without the knowledge and consent of the Banigo House of Bonny and the Stowe House of Bonny under the Bonny native Law and Custom is null and void.

   (b) No such sub-House as Ben Stowe House in the Stowe House of the Banigo group of Houses in Bonny exists under Bonny custom and tradition.

   (c) The creation of Ben Stowe Chieftaincy Unit and the recognition by the Bonny Chiefs Council of Godswill Tamunobaraimi Ben Stowe as Chief of Ben Stowe House on July 22nd 1978 are *ultra vires* and void.

   (d) The only associate Chieftaincy unit in the Banigo group of Houses of Bonny established in Bonny history with the relevant appellation is the Stowe House.

   (e) The incumbent of Stowe House is Chief Emmanuel Diepiri (Ihanifieresi) Stowe, the first plaintiff.

2. An injunction:

(a) Restraining the first defendant from parading himself as Chief Godswill Tamunobaraimi Benstowe House of the Banigo group of Houses of Bonny

(b) Restraining the second defendant and his successors in office as Secretary of the Bonny Chiefs Council from creating a Benstowe sub-house without the consent and initiative of the Stowe house and the Banigo House of Bonny

These reliefs were not endorsed in the Amended statement of Claim

Paragraph 19 of the Amended statement of claim reads:

19. wherefore the plaintiff claim as per writ.

The learned trial judge heard evidence and entered judgment for the plaintiff. On appeal the judgment of the trial court was set aside and the suit struck out. This appeal is against that judgment. In accordance with rules of this Court, briefs were filed and exchanged. The appellants brief was filed on the 3rcl of November 2004 while the respondents brief was deemed filed on the 29th of March 2006.

Two issues were formulated in the appellants brief.

1. Whether the learned justices of the Court of Appeal were right in striking out the plaintiffs claim when they came to the conclusion that reliefs 3, 4 and 7 (out of 7 reliefs granted by the Court) were granted *gratis* by the trial court because they were not claimed by the plaintiffs.

2. Whether the learned justices of the Court of Appeal were right when they held that by not repeating the reliefs endorsed on the Writ of Summons in the Amended Statement of Claim, the plaintiffs abandoned all reliefs without regard to the endorsement on the Writ, even though the Writ of Summons is referred to in paragraph 19 of the Amended Statement of claim.

And for the respondents, a lone issue was presented for determination of this appeal. It reads:

1. Whether the Court of Appeal rightly struck out the plaintiffs suit/claims having found that reliefs Nos. 3, 4 and 7 were granted gratis and in the absence of specific endorsement of the said substantive reliefs in the Amended Statement of Claim.

On a careful examination of the three issues in the briefs of argument I am of the firm view that the appellants' second issue is more than adequate for the consideration of this appeal.

At the hearing of the appeal or the 21st October 2011 learned counsel, for the appellants E. Peter Kio Esq. adopted his brief and urged us to set aside the judgment of the Court of Appeal and restore the judgment of the High Court. Learned counsel for the respondents A.B. Anachebe, SAN adopted his brief and urged us to dismiss the appeal.

Learned counsel for the appellant observed that the ideal thing is to state in the statement of claim all the reliefs sought but failure to do so does not make the action fail where the statement of claim refers to the Writ of Summons. Reliance was placed on *Kenshiro v Bakare 1967 1 All NLR p 280*. He further observed that in paragraph 19 of the Amended Statement of claim the plaintiff claimed as per writ, contending that the Writ of summons is not superseded.

Referring to *Owena Bank Ltd v N.S.C.C. Ltd 1993 4NWLR Pt 290 p698, Okonu Oil Palm Co Ltd v Isehienrehien 2001 6NWLR Pt 710 P660*, he submitted that striking out the plaintiffs' case on the issue of not pleading the reliefs *in extenso* in the statement of claim cannot be valid and this court is urged to allow the appeal.

Replying, learned counsel for the respondents observed that Order 33 rule 7 of the High Court (Civil Procedure) Rules of Eastern Nigeria is mandatory.

He submitted that if a plaintiff, as in the instant case, fails to endorse his reliefs in the statement of claim though endorsed on the Writ or particulars of claim, he is deemed to have abandoned such reliefs. Reliance was placed on: *Cargil v Bower 1879 10 Ch. D. p502; Lahan v Lajoyetan 1972 6 SC p190, Udechukwu v Onwuka 1956 IFSC p70*, Bullen and Leak and Jacobs Precedents 12th Edition at pages 62 and 63; Practice and Procedure of Supreme Court, Court of Appeal and High Court by Hon. T.A. Aguda (1980 Edition) at pages 247.

He urged this court to dismiss this appeal together with the Judgement of the trial judge. Order 33 rule 7 of the High Court Civil Procedure Rules applicable in Rivers State at the time the cause of action arose in this case reads:

> "Every statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative and may ask for general relief and the same shall apply to any counterclaim made or relief claimed by the defendant in his defence."

The above is a mandatory procedural requirement founded on the position of the Law that the Statement of Claim

supersedes the Writ of Summons

The learned authors of Bullen and Leak and Jacobs precedents of pleadings, an 'A' publication i.e. the final authority on how to draft pleadings says:

> "When all the material facts have been alleged, the statement of claim concludes with the relief or remedy claimed. The statement of claim must state specifically the relief or remedy which the plaintiff claims. This is called the prayer and the practice is for the prayer to set out separately and distinctly in numbered (or lettered) paragraphs each head of relief or remedy which is claimed. If the plaintiff omits to ask for any relief or remedy claimed in the writ he will be deemed to have abandoned that claim."

Hon. Justice T.A. Aguda in his book "Practice and Procedure of Supreme Court, Court of Appeal and High Court (1980) at page 247 said:

> "Apart from the statement of facts it must also state specifically the relief which the plaintiff claim either simply or in the alternative it may also ask for general relief"

It is important I examine the attitude of the Courts to this issue.

In *Enigbokan v A.I. I. Co Nig Ltd 1994 6 NWLR Pt 348 p1,* Iguh JSC said:

> "It seems to me plain from the plaintiff's fourth amended statement of claim that the first relief he originally claimed as per his writ of summons was subsequently abandoned. This is because the law is settled that a statement of claim supersedes the writ and any relief claimed on the writ but not contained in the statement of claim will be deemed to have been abandoned ….."

In *Lahan & Ors v Lajoyetan & Ors 1972 NSCC P 460*, The Supreme Court held that a statement of claim supersedes a writ and that if a special relief is deemed in the Writ which is not claimed the statement of claim, it will be deemed that the special relief has been abandoned.

See *Otanioku v Alli 1977 NSCC 452*

Order 13, Rule 7 of the relevant High Court (Civil Procedure) Rules provided that

> "Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may ask for general relief, and the same rule shall apply to any counterclaim made or relief claimed by the defendant in his defence"

Learned counsel for the respondent conceded that no reliefs were claimed in the amended statement of claim. The action was struck out. See also on these *Udechukwu v Okwuka 1956 IFSC p71, Ajagungbade III & Ors v Laniyi & Ors 1999 13 NWLR Pt 633 p92*

Having explained the settled principle that a statement of claim supersedes the Writ of summons, I must observe that the plaintiffs claims endorsed in the writ of summons were not repeated in the statement of claim: Paragraph 19 of the Amended statement of claim simply pleaded:

> "19 whereof the plaintiffs claim as per writ"

This is bad. Having not pleaded any relief or remedy in his pleadings, (statement of claim) the plaintiff has abandoned all his reliefs. The statement of claim is naked as regards reliefs claimed. Consequently there is no claim upon which the trial court could adjudicate or grant relief in this suit before it. The correct practice is to conclude the plaintiff's pleadings by making a claim on each item on the writ of summons. The statement of claim supersedes the Writ of Summons and if reliefs' claimed are only in the Writ of Summons and not in the statement of claim then the statement of claim no longer supersedes the Writ of Summons and the reliefs claimed are abandoned. I must observe that the Court of Appeal was correct to hear the appeal on its merits when it was aware that it had no jurisdiction to hear the appeal. When an appeal is pending before the Court of Appeal and issue of jurisdiction is raised and the Court of Appeal has no jurisdiction to hear the appeal, the Court of Appeal as the penultimate court should proceed to hear the appeal on its merits notwithstanding the fact that it has no jurisdiction. Hearing the appeal gives the Supreme Court the benefit of its opinion. The reasoning is simple, if the Supreme Court finds both courts below had jurisdiction, the suit would have to be sent back to the Court of Appeal with great costs to the litigant and waste of judicial time.

The Court of Appeal was correct to set aside the judgment and strike out the suit. There shall be costs of ₦50,000.00 in favour of the respondent

Judgment delivered by
Christopher Mitchel Chukwuma-Eneh. JSC

Having before now read in draft the lead judgement prepared by learned brother Rhodes Vivour JSC with which I agree, I make with respect the following contribution. In that regard I rely on the facts and the arguments of the parties as set out in the lead judgement.

The decision of the lower court in this appeal has been attacked on two main fronts to wit: that the lower court has struck out the plaintiff's case, having found that some of the reliefs as per the writ of summons have been granted *gratis* and that the substantive reliefs claimed as per the writ of summons not having been specifically endorsed in the Amended Statement of Claim are deemed abandoned and so the Statement of Claim is liable to be struck out as issues have not been joined between the parties.

It is trite law that the writ of summons is superceded by the Statement of Claim, this proposition of law is an important aspect of the law of pleadings as the parties are bound by their pleadings and the courts are also bound by the averments as contained in the statement of claim in the process of adjudication.

The arguments of the parties again, I must observe have been elaborately set out in the lead judgment which as I said above I adopt for purposes of this resume. The essence of the issue in this matter is whether the reliefs claimed by the plaintiff/appellant in the writ stand abandoned whereas here the amended statement of claim has claimed as per the relief sought, thus "as per the writ"; implying that the court has to have recourse to the writ of summons to ascertain the reliefs claimed in the suit.

There can be no doubt that a statement of claim in civil litigation is a critical court process and it is filed by the plaintiff to be served on the defendant. Its main aim being to allege all material facts of the case the plaintiff is to rely on in proving his case in court against the defendant. Ordinarily, the concluding part of a statement of claim otherwise called the "prayer" or the "relief sought" is where the plaintiff sets out the reliefs or remedies he claims in the action against the defendant. Without this part, a statement of claim contains bare assertions to no end and liable to be struck out as the parties are deemed not to have joined issues in the suit. Although, an action is commenced by a writ of summons to which is attached the particulars of claim, it is settled law that once a statement of claim is filed, it supercedes the writ of summons. *See: Cargil v. Bower (1879) 10 CHD.502 at 508. Lewis & Lewis v Duruford (1907) 24 TLR 65* and *Udechukwu v Onwuka (1956) 1 FSC 70 at 71;* again, implying that every material in the Writ not included in the Statement of Claim is deemed abandoned. See *A. Salami Kenshiro v H.B. Bakare (1967) 1 ANLR 280 at 781*

Having put the question in this matter in perspective, the appellant's contention is that any notion of general supercession by a statement of claim of the reliefs claimed *vis-à-vis* a writ in an action cannot stand whereas here the writ has been more or less incorporated by reference into the Amended Statement of claim as by stating in the instant paragraph 19 thereof in which the plaintiff has claimed thus "as per the writ" and he relies on *Owena Bank Ltd v NSCC Ltd (1993) 4 NWLR (Pt 290) 698 at 715A, Okumo Oil Palm Co. Ltd v Iserhierhien (2001) 6 NWLR (Pt,710) 660 at 681 C-F* and *Ajayi v Jolayenu (2001) 10 NWLR (Pt.722) 516 at 533 A-D and 535 C-E*. There can be no doubt that the principle upon which these cases are laid as being relied on by the appellant in this matter are profound

In the *Okomu Oil Palm Limited* case, this court has held that where the statement of Claim states that the plaintiff claims as per the writ of summons, the relief claimed in the writ of summons is deemed incorporated into the statement of claim and becomes part of it.

Once there is such incorporation, the statement of claim is taken to contain the reliefs as stated in the writ, which statement of claim would otherwise have been defective and contrary to Order 13 Rule 7 High Court of Bendel State (Civil Procedure) Rules 1976.

The case of *Ajayi v Jolayenu* (*supra*) is even more interesting as it has gone further to hold that even though the statement of claim be irregular in that the statement of claim has prayed thus "the plaintiff therefore claims as per writ of summons" it has held that where the defendant has reacted too late by having failed to take prompt and timely objection to such prayers before pleading to the statement of claim and going into full blown trial before belatedly raising an objection to the irregularity in the statement of claim at the address stage; and even then that the defendant is foreclosed from taking the objection as he has acquiesced in the irregularity and being a mere curable irregularity by amendment the objection has to be taken at the appropriate without taking any steps since noticing the irregularity. And also that having pleaded to the defect where this is so that the defendant cannot be allowed to raise the objection at that stage more so where there has been no miscarriage of justice.

By referring to the immediate above two cited cases I must say that the contemporary judicial opinion appears to conform as postulated in the above two cited cases as there is no longer any justification for technical justice. The courts have moved and firmly so out of the era of technical justice to the era of doing substantial justice based on the merits of the case. As can be seen, given the law and rule of as per Order 25 Rule 12(3) of the Kwara State High Court (Civil Procedure) Rules 1989 which the Rule has been construed as mandatory, although the defect is no more than an irregularity that a defendant must in the circumstances take the objection promptly before taking any steps with the irregularity staring him in the face. However, it also seems to me clear from the said cited cases that such irregularity would only lead to striking out the plaintiffs claim more so where there is a miscarriage of justice. Although it is trite that the Rules of Court must be obeyed it must not be lost to courts that they serve mainly as handmaids to courts in dispensing justice in our adjudicative system. They should not therefore serve as stumbling blocks in the courts way of doing substantial justice in a matter.

However in the instant case the applicable law and rule rest on the fact that the statement of claim must state specifically what is being claimed and that to state thus "as per the writ of summons" in the statement of claim as the prayer or as to the reliefs sought in the statement of claim is not permitted under the Rules. In other words that this requirement under the rules is mandatory. The plaintiff is required to state in full in the statement of claim what the plaintiff has claimed as per the writ otherwise the reliefs as contained in the writ will be deemed abandoned in that case the statement of claim stand without any reliefs sought as the reliefs as claimed in the writ is deemed abandoned. This view is supported by decision per Iguh JSC in *Enigbokan v American International Insurance Co. (Nig) Ltd. (1994) 4 NWLR (Pt 348) 1 at 20 paragraphs F-H w*here he said:

> "It seems to me plain from the plaintiff's fourth amended statement of claim that the first relief he originally claimed as per his writ of summons was subsequently abandoned. This is because the law is settled that a statement of claim supercedes the writ and any relief claimed on the writ but not contained in the statement of claim will be deemed to be abandoned"

This extract is clear and forthright in holding that where the law and rules are the same as per in the above cited case the plaintiff is enjoined to specifically set out in the statement of claim the reliefs claimed and not as per the writ as the reliefs are deemed as having been abandoned.

And so on the facts of this case there can be no equivocation in holding that the instant statement of claim being devoid of any reliefs as claimed by the plaintiff is defective *vis-à-vis* Order 33 Rule 7 and so must be struck out more so where, as here, there is no evidence of miscarriage of justice

On the question of granting some reliefs as per reliefs 3, 4, and 7 of the writ not at all claimed by the plaintiff, that is to say, granted as *gratis*, I entirely agree that they cannot properly be granted as consequential orders as such as they do not directly flow from the decision reached by the trial court. See *Dingyadi v INEC (2010) 7/12 SC. 105*. In this matter the court below rightly in my view has no other option than to vacate the three Orders as having been made without jurisdiction. Whereas here the said orders granted *gratis* have undermined the rest of the other reliefs claimed thus leaving the whole decision of the trial court with no basis on which to stand resulting in the decision being unsustainable, it must be struck out. It becomes even more so here coupled with a defective statement of claim. As can be seen the lower court has also rightly struck out the plaintiffs claim.

The appellants have heavily relied on the cases of *Makanjuola v Balogun (1989) 3 NWLR (Pt 108) 192 at 206 E-H* which is in regard to an order of the amendment of an accidental slip and *Ejiniyi v Adio (1993) 7 NWLR (Pt 305) 320 at 339 C-H to 340 AC* that is to say, where an order for sale as granted has not been claimed and *Fabumi v Agbe (1985) 1 NWLR (Pt.2) 299 at 321-322* where the relief of injunction not claimed has been granted and *Taiwo Okeowo & Ors v Delia A. Migliore & Ors. (1979) 11 SC.177 at 197* paragraph 26 - 201 paragraph 20 where the court has ordered for a meeting of the Company as against the Board of the Company, which has not been claimed. It is clear that the said orders as per the above cited cases have been predicated and justified as flowing from the evidence before the Court and on the justice of the matters. See *Registered Trustees Apostolic Church v Olowolani (1990) 9-10SC 174, (1990) 6 NWLR (pt 158) 514 at 531*. It is not the case in the instant matter and so they are not applicable. The said unsolicited orders in this case are not based on the evidence before the court nor are they necessary for settling the matter in controversy between the parties, they are at large and so I agree with the lower court on its decision to strike out the plaintiff's claim in its entirety.

For the above reasons and the reasons so cogently stated in the lead judgement I also agree with my Lord that there is no merit in this appeal and that it should be dismissed. I dismiss it and I abide by the orders contained in the lead judgement.

Judgement delivered by
John Afolabi Fabiyi. JSC

I have had a preview of the judgement just delivered by my learned brother Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

This is a Chieftaincy matter. The appellants as plaintiffs at the trial High Court, Port-Harcourt initiated their writ of Summons against the respondents as defendants. Therein, they claimed declaratory and injunctive orders. The reliefs in the writ of Summons were not endorsed in paragraph 19 of the Amended Statement of Claim which reads as follows:-

> "19 Wherefore the plaintiff claim as per writ"

The learned trial Judge garnered evidence of the parties and was duly addressed. In his judgment delivered on 10th October, 1990, the plaintiffs had the day. The defendants appealed to the Court of Appeal, Port-Harcourt Division ('the court below' for short). Thereat, the judgment of the trial court was set aside and the suit of the plaintiffs was struck out on 11th July, 2000.

The plaintiffs have decided to appeal to this court. When the appeal was heard on 31st October, 2011, learned counsel on each side of the divide adopted and relied on briefs of argument earlier filed on behalf of their clients. On behalf of the appellant the two issues formulated for determination read as follows:

1. Whether the learned justices of the Court of Appeal were right in striking out the plaintiffs claim when they came to the conclusion that reliefs 3, 4 and 7 (out of 7 reliefs granted by the Court) were granted *gratis* by the trial court because they were not claimed by the plaintiffs.

2. Whether the learned justices of the Court of Appeal were right when they held that by not repeating the reliefs endorsed on the Writ of Summons in the Amended Statement of Claim, the plaintiffs abandoned all reliefs without regard to the endorsement on the Writ, even though the Writ of Summons is referred to in paragraph 19 of the Amended Statement of claim.

On behalf of the respondents one (1) issue was distilled for determination. It reads as follows:-

> Whether the Court of Appeal rightly struck out the plaintiffs suit/claims having found that reliefs Nos. 3, 4 and 7 were granted *gratis* and in the absence of specific endorsement of the said substantive reliefs in the Amended Statement of Claim.

It is not in contest that the applicable Rules of Court as at 30th October, 1979 when the suit was filed at the trial court was the High Court Rules, Cap. 61Laws of Eastern Nigeria, 1963 wherein Order 33 Rule 7 provides as follow:

> "Every Statement of Claim shall state specifically the relief which the plaintiff claim either simply or in the alternative and may also ask for general relief and the same shall apply to any counter claim made or relief claimed by the defendant in his defence."

Let me at this stage make the point that the above rule which employs the use of the word shall points to mandatory realm. Rules of court are meant to guide the court for proper adjudication of cases as presented by the parties. It has been held by this court that rules of court are meant to be obeyed. See: *Afolabi v Adekunle (1983) 14 NSCC 398, 405; University of Lagos v Aigoro (1985) 1 NWLR (Pt.1) 143*.

It has been variously held that where a plaintiff, as in this case, fails to endorse his reliefs in the statement of claim, though endorsed in the writ of summons, he is deemed to have abandoned such reliefs. See: *Cargil v Bowler (1879) 10 Ch. D 502, Lahan v Lojoyetan (1972) 6 SC 190; Udechukwu v Onwuka (1956) 1 FSC 70. In Enigbokan v A. I. I. Co. Nig Ltd (1994) 6 NWLR (Pt. 348) 1 at 20*, this court per Iguh, JSC unequivocally pronounced as follows:-

> "It seems to me plain from the plaintiff's fourth amended statement of claim that the first relief he originally claimed as per his writ of summons was subsequently abandoned. This is because the law is settled that a statement of claim supersedes the writ and any relief claimed on the writ but not contained in the statement of claim will be deemed to have been abandoned ….."

The above stance of this court is fortified by the opinion of Hon. T. A. Aguda in his book *"Practice and Procedure of the Supreme Court, Court of Appeal and High Court"* (1980 Edition) at page 247 paragraph 19.09; as well as that of the learned authors of Bullen & Leak and Jacob's Precedents of pleadings, 12th Edition at pages 62-63.

Both maintain that a plaintiff's claim cannot be deduced by reference to the writ of summons. Same must be specifically and clearly stated in the statement of claim for avoidance of doubt; otherwise it will be deemed as having been abandoned.

Lastly, the court below found that the trial court granted reliefs that were not sought by the appellants. It was found that reliefs 3, 4 and 7 were granted *gratis* as they were not solicited by the appellants and liable to be struck out. It is clear that a court should not award that which was not claimed by a party as the court is not a charitable organisation and the Judge who personifies same is not a Father Christmas See: *Egonu v Egonu (1978) 11-12 SC 111, 133, Babatunde Ajayi v Texaco Nig. Ltd (1978) 9-10 SC 1 at 27; Etim Ekpenyong v Inyang Nyong (1975) 2 SC 71 at 80; Edebiri v Edebiri (1997) 4 SCNJ 177; (1996)4 NWLR (pt 498) 165; Adeye v Adesanya (2001) 6 NWLR (Pt 708) 1; Nigerian Air Force v Shekete (200) 18 NWLR (PT 798) 129*. I am of the opinion that the court below was on a firm ground in its decision.

For the above reasons and the fuller ones contained in the lead judgement, I too hereby affirm the judgement of the court below which set aside the judgement of the trial court and struck out the suit. The appeal is hereby dismissed. I abide by the order on costs as contained in the lead judgement.

Judgment delivered by
Nwali Sylvester Ngwuta. JSC

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, Rhodes-Vivour, JSC. The real issue in the appeal rests on the relationship between a Writ of Summons and a Statement of Claim. The issue was exhaustively treated in the lead judgment.

The Writ, an initiating process, states the cause of action and the relief sought. The Statement of Claim amplifies the concise statement in the Writ of Summons. Once the Statement of Claim is filed, the Writ of Summons fades out of the picture, as it were. The Statement of Claim supersedes the Writ. See *Udechukwu v Onwuka (1956) 1 FSC 70*. The verb

"to supersede"

means

"to make void, annul, repeal by replacing ....."

See Advanced Law Lexicon, 3rd Edition, Reprint 2007 page 4561.

Order 33 Rule 7 of The High Court (Civil Procedure) Rules, Cap 61, Laws of Eastern Nigeria 1963 then applicable in Rivers State provides:

"Every Statement of Claim shall state specifically the relief which the plaintiff claim ... "

A claim in the Writ which is not reflected in the Statement of Claim contravenes the above order and is deemed abandoned. In the same vein, a relief in the Statement of Claim which is outside the claim in the Writ is a new claim which can only come in by way of amendment.

In the amended Statement of Claim dated 4/2/80 and the latter one dated 25/4/89 at paragraph 19 of each process, the appellants stated:

"Wherefore the plaintiffs claim as per Writ. "

The Writ has been replaced by the Statement of Claim and the effect is that the appellants have not made any claim in their Statement of Claim.

The plea contravenes the applicable High Court Rules. It is a departure from the decisions of the apex Court discussed in the lead judgment.

Based on the above and the comprehensive reasoning in the lead judgment, I also dismiss the appeal. I adopt the order for costs.

Judgment delivered by
Mary Ukaego Peter-Odili. JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division delivered on Tuesday 11th day of July, 2000 wherein the judgment of the trial High Court dated the 10th day of October, 1990 granting the reliefs sought by the plaintiff/appellant was set aside and the appellants' suit struck out.

The facts briefly stated are that the plaintiff now appellants by their Particulars of claim inter alia claimed that the 1st appellant is by the native law and customs of Bonny the installed and recognized Chief of the Stowe House and acknowledged as such by the Bonny Council of Chiefs since 22nd July, 1969. That there is no junior house known as Benstowe House. The appellants averred that in 1971, when the 1st appellant sought for the inventory of the said house, he was met with the statement that he was not installed and acknowledged as chief of Benstowe sub-house and not Stowe. The parties submitted to arbitration, all of which the 1st respondent won culminating in the 1st appellant's dethronement and, the installation and recognition of the 1st respondent by the Bonny council of chefs, resulting in the action at the High Court.

The respondents on their part denied the claims of the appellants, averred that there has never been a Stowe house and that the 1st appellant herein was elected a chief of Benstowe house. Pleadings were averred, duly filed and exchanged. The appellants filed an amended statement of claim, whilst the respondents filed an amended statement of defence. Two witnesses testified for the respondents.

Many exhibits were tendered. At the conclusion of addresses by counsel, the learned trial judge gave judgment for the appellants and granted all the reliefs claimed

Aggrieved by the said judgement, the respondent herein filed an appeal to the Court of Appeal, Port Harcourt Division and by leave of court the respondent filed additional grounds of appeal. Briefs were filed and exchanged and the appeal was heard and on 11th July, 2000. The Court of Appeal in its considered judgment allowed the appeal and struck out the appellants claim with ₦6,000.00 costs to the respondents.

Being aggrieved by the judgment of the court below the appellants have appealed to this court on two grounds of appeal. From the grounds of appeal the appellant distilled two issues which are namely:

(i) Whether the learned Justices of the Court of Appeal were right in striking out the plaintiff claim) when they came to the conclusion that reliefs 3) 4 and 7 (out of 7 reliefs granted by the court) were granted gratis by the trial court because they were not claimed by the plaintiffs.

(ii) Whether the learned Justices of the Court of appeal were right when they held that by not repeating the reliefs endorsed on the writ of summons in the amended statement of claim, the plaintiffs abandoned all reliefs without regard to the endorsement on the writ} even though the writ of summons is referred to in paragraph 19 of the amended statement of claim, plaintiffs abandoned all reliefs without regard to the endorsement on the writ, even though the writ of summons is referred to in paragraph 19 of the amended statement of claim

The respondents in their brief framed a single issue viz:

> Whether the Court of Appeal rightly struck out the plaintiff's suit/claims, having found that relief Nos.3, 4, 7 were gratis and in the absence of specific endorsement of the said substantive reliefs in the Amended statement of Claim

The contest between the parties in this appeal is indeed very narrow and that is whether the Court of appeal was right in striking out the plaintiff's case on the ground that the reliefs were not pleaded in the Statement of Claim but rather as part of the particulars of claim in the writ of summons. While the appellants say the court below was wrong in striking out the suit of the plaintiffs contrary to what the trial court did, the respondents' position is that the omission to place those claims in the statement of claim vitiated the suit/claims.

The appellants' anchored their view and position on the case of *Keshinro v Bakare (1967) 1 ALL NLR 280* where just like the present case the plaintiff ended their statement of claim thus:

> "The plaintiffs therefore claim as per writ of summons"

In that case the Supreme Court had held that the rule of supercession does not apply and so the claims in the writ could be granted. Based on the authority of *Kenshiro v Bakare* (*supra*) the learned counsel for the appellant posit that the striking out of the plaintiffs case on the issue of not pleading the reliefs *in extenso* in the statement of claim cannot be valid as held by the Court of Appeal.

Mr. Ben Anachebe SAN for the respondent took a contrary position basing his position on the Rivers State High Court (Civil procedure) Rules 1987 which came into force on the 1st September} 1987 which did not to apply to the instant case which was filed on 30th. October 1979 and the operating rules being that of High Court Rules Cap 61 Laws of Eastern Nigeria} 1963} Order 33 Rule 7 thereof which provided as follows:

> "Every Statement of Claim shall state specifically the relief which the plaintiff claims either simply or in the alternative and may also ask for general relief and the same shall apply to any counterclaim made or relief claimed by the defendant in his defence".

That is the governing rule of procedure at the time the suit was initiated but even then, the principles in *Kenshiro v Bakare* (*supra*) has since been abandoned in that this court has laid down in no uncertain terms what the practice is and that was stated with authority in the case of *Enigbokan v American International Insurance Co (Nig.) Ltd (1994) 6 NWLR (Pt.348)1 at 20* per Iguh JSC as follows

> "It seems to me plain from the plaintiff's fourth amended statement of claim that the first relief he originally claimed as per his writ of summons was subsequently abandoned. This is because the law is settled that a statement of claim supersedes the writ and any relief claimed on the writ but not contained in the statement of claim will be deemed to have been abandoned ….."

That position underscored by this court was in total agreement with the learned author in the book "Practice and Procedure of Supreme Court, Court of appeal and High Court by Hon. T. A. Aguda (1980 Edition) at page 247 paragraph 19.09. I will like to quote him for emphasis:

> "At one time it was thought that it was sufficient to end up a statement of claim by making reference back to the action on the writ. But under the rules this will not be sufficient. Therefore the practice is to end the statement of claim by making specific claim in respect of each item on the writ. It is not permissible to state simply that whereof the plaintiff claim as per his writ of summons."

These authorities are logical if the rule of supercession of the statement of claim as against the writ of summons is to be properly situated. It would in my view be abnormal if on the filing of pleadings the writ of summons takes back bench to instead of looking forward to continue to take back ward glances to see if the writ and what it contains are following in the march to get at the dispute of the parties and in the resolution thereof. This apart from the fact that the defence would be in a great difficulty to know for a certainty what to plead against in their statement of defence.

It is therefore not difficult to agree with the Court of Appeal that the trial High Court erred when it took along the claims in the writ of summons not pleaded in the statement of claim and granted those reliefs for the plaintiff. See also *Udechukwu v Bower (1956) 1 FSC 70 at* 71; *Lahan v Lajoyetan (1972) 6 SC 190 at 192; A. G. Federation v A. G. Abia State (No 2) (2002) 5 NWLR {Pt.764} 542.*

From the above and the fuller reasons of my learned brother Bode Rhodes-Vivour JSC in the leading judgment I dismiss this appeal and affirm the judgment and striking out of the suit of the plaintiff/appellant by the Court of Appeal.

I abide by the consequential orders of my brother.

Counsels

E. B. Peter Kio *with him* B.E. Stowe	…….	Appellants
A.B. Anachebe SAN *with him* F.C. Anachebe C. Jibuaku S. Mohammed I. Benstowe A.O Chidinma	……..	Respondents