

order nisi as required by law which is the basis of its opposition to the garnishee proceedings.

On appeal, the lower Court affirmed the decision of the trial Court. The Appellant is further aggrieved, hence the present appeal before this Court. At the hearing of this appeal on the 4th of November, 2025, learned counsel for the parties adopted their briefs and respectively urged the Court to decide the appeal in their respective client's favour. However, it is pertinent to note that the Respondent raised a preliminary objection to this appeal.

The law is trite that where, in a suit or an appeal, a preliminary objection is raised, the Court is bound to hear and determine the preliminary objection before proceeding to the main suit or appeal if necessary. This position is well entrenched in our practice

and procedure and also firmly established by numerous decisions of the Courts . I am therefore obligated to

consider the Respondent's preliminary objection first.

PRELIMINARY OBJECTION

The Respondent's preliminary objection is premised on two grounds namely that grounds 1, 3 and 4 of the Appellant's notice of appeal are grounds of mixed law and fact. It is the Respondent's contention that these grounds require leave of the Court as a condition precedent to argue them but the Appellant failed to seek the requisite leave and therefore, the said grounds and issues

distilled therefrom are incompetent.

Secondly, the Respondent contended that the Appellant's ground 2 does not arise from the judgment of the Court of Appeal, therefore, leave is required to raise it as a ground of appeal; but the Appellant having not sought leave, the ground is incompetent. Reliance is placed on THOR LTD VS. FIRST CITY MERCHANT BANK LTD (2002) FWLR PT. 95 @ 276, NWAGBARA VS JADCOM LTD (2021) LPELR 55329 SC.

In reply, the Appellant contended that the Respondent's mode of raising the objection is improper and unacceptable in an appeal because the only purpose of the objection is to attack grounds 1, 2, 3, and 4. Appellant submitted that the position of the law is that where the



challenge is against a ground or some grounds of appeal and not against the competence of the entire appeal itself, a preliminary objection is not the way to go. Reference is made to UMANAH VS. NDIC (2016) LPELR 42556 (SC), OLAIYA VS LAWAL (2019) LPELR-48205(CA). In a nutshell, the Appellant urged this Court to discountenance the objection.

RESOLUTION OF THE PRELIMINARY OBJECTION

The principle governing the use of a preliminary objection in appellate proceedings is well-established in Nigerian jurisprudence. A preliminary objection is a procedural tool designed to challenge the competence or jurisdiction of the Court to hear an appeal, with the aim of terminating

the appeal in limine (at the threshold) without delving into its merits. It is a fundamental challenge to the validity of the appeal itself, rather than to the substance of the arguments raised within the appeal. The primary purpose of a preliminary objection is to strike out or dismiss an appeal where there is a fundamental defect that renders the appeal incompetent. Such defects often relate to jurisdictional issues, non-compliance with mandatory procedural rules for filing the appeal,

or the appeal being an abuse of Court process. For instance, if an appeal is filed out of time without leave of Court, or if the notice of appeal is fundamentally defective,