

a preliminary objection would be the appropriate mechanism to challenge the appeal's competence .

A preliminary objection, when successfully raised, prevents the Court from considering the substantive issues of the appeal. While the Courts of first instance and intermediate appellate Courts, such as the High Courts and Court of Appeal, are enjoined to consider the issues in the substantive case or appeal, irrespective of whether the preliminary objection succeeds or fails, the Supreme Court, as the final Court, will only proceed to determine the substantive suit or appeal if the objection fails. Therefore, where a preliminary objection succeeds before the Supreme Court, then the business of the Court is over as there will be no need to proceed to determine the suit or appeal on the merit. See ALLANAH V KPOLOKWU (2016) LPELR-40724 (SC);

MAINASARA V FBN PLC. (2022) 6 NWLR (PT. 1827) 465; POLARIS BANK LTD V FORTE OIL PLC (2023) 5 NWLR (PT. 1876) 179; TOYIN V PDP (2019) 9 NWLR (PT. 1676) 50 ;

UTOO V APC (2018) 12 NWLR (PT. 1634) 507 .

However, many decisions of this Court have emphasized that a preliminary objection is only appropriate when it seeks to terminate the appeal in limine due to a fundamental defect. These decisions outlined the principles of law regarding preliminary objection, affirming its role in challenging the competence of an appeal. Conversely, a preliminary objection is inappropriate when a Respondent's intention is merely to

challenge some grounds of appeal or to argue that certain grounds are incompetent, academic, or irrelevant. Such challenges go to the merits of the appeal or the specific arguments raised by the Appellant, rather than the fundamental competence of the appeal itself.

The proper forum for addressing the validity or strength of individual grounds of appeal is within the Respondent's brief of argument, where the Respondent can fully articulate why those grounds should fail or be dismissed on their merits. Alternatively, the Respondent may file a motion on notice to challenge the specific grounds complained about but certainly not a preliminary objection. See NNPC VS. FAMFA OIL LTD (2012) ALL FWLR (PT 635) 204,



GENERAL ELECTRIC CO. VS. AKANDE (2011) 4 NSCQR 611, OBATOYINBO VS. OSHATOBA (1996) 5 NWLR (PT 450) 531, HABIB V. PRINCIPAL IMMIGRATION OFFICER (1958) 3 FSC 75 OR (1958) SCNLR 219; MOBIL OIL (NIG) PLC V. IAL 36 INC (2000) SCNJ 124; NWOSU V. IMO STATE ENVIRONMENTAL AUTHORITY (1990) 2 NWLR (PT. 135), ONI & ANOR VS. FAYEMI & ORS (2013) LPELR-20671(SC) .

Consequently, I agree with the learned Appellant's counsel that the preliminary objection in this instance ought to fail because the Respondent came by way of preliminary objection when its complaint is directed against only grounds 1- 4 leaving ground 5 unchallenged. Even if the Respondent's objection against grounds 1-4 is found to be meritorious, hearing of the

appeal will still proceed on ground 5 from which the Appellant distilled issue 3. Therefore, the preliminary objection in this instance is inappropriate. It fails and it is accordingly dismissed.

I will now proceed to the appeal.

APPELLANT'S ISSUES AND ARGUMENT

In the Appellants' Brief filed on the 12th July, 2018 and settled by CHIOMA I. M. OKWUANYI ESQ., the following issues are nominated for the determination of this appeal:

1.

