

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

Per **ABUBAKAR SADIQ UMAR ,JSC** (Pp. 5-6, paras. C-B)

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PRACTICE AND PROCEDURE - PRELIMINARY OBJECTION - Attitude of the Supreme Court to preliminary objection filed in cases that come to the Court as the Court of first instance and last resort

"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) S NWLR (PT. 1876) 179; TOYIN V PDP (2019) 9 NWLR (PT. 1676) 50; UTOO V APC (2018) 12 NWLR (PT. 1634) 507."

Per **ABUBAKAR SADIQ UMAR ,JSC** (Pp. 6-7, paras. B-A)

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PRACTICE AND PROCEDURE - PRELIMINARY OBJECTION - When a Preliminary objection should be filed and when a Motion on notice would suffice

"...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)."

Per **ABUBAKAR SADIQ UMAR ,JSC** (Pp. 7-8, paras. A-B)

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EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF - On whom lies the burden to prove relief(s) sought

"It is an elementary principle of law that a party who seeks the intervention of the Court to grant a relief must adduce credible and cogent evidence to support his prayer. This principle is deeply entrenched in our jurisprudence and finds its basis in both statutory provisions, particularly the Evidence

Act, and a plethora of judicial pronouncements. To this end Section 131(1) of the Evidence Act, 2023 (AS AMENDED BY THE EVIDENCE (AMENDMENT) ACT, 2023) provides: "Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist." Similarly, Section 136(1) of the Evidence Act, specifies the burden of proof as to a particular fact: "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other." In other words, the burden of proof rests on the party who asserts a fact and wishes the Court to act upon it. If a party makes a claim or seeks a relief, he must prove the underlying facts that entitle him to that claim or relief, failing which the Court is entitled to dismiss such a claim or refuse such a prayer as the Court cannot grant reliefs without proof. With specific reference to a claim, relief or prayer based on affidavit, the affidavit in support must contain cogent and credible averments and where necessary relevant documentary evidence to convince the Court. The Court cannot speculate or assume facts; they must be proven through evidence. It is the quality and weight of the affidavit evidence that determines the merit of the relief. See BAKARE V. ACB LTD (1986) LPELR-708(SC) P. 22, PARAS. E-F), OKALA V. UDAH (2019) LPELR-55269(SC) PP. 29-30, PARAS. F-B), OGBEBOR V. IHASEE (2024) LPELR-62380(SC)."

Per **ABUBAKAR SADIQ UMAR, JSC** (Pp. 18-20, paras. F-D)

READ IN CONTEXT

VIEW ANALYTICS

PRACTICE AND PROCEDURE - GARNISHEE PROCEEDINGS - Position of the law where a judgment debtor alleges non-service of the garnishee order nisi; duty of the judgment debtor to depose to any fact in its affidavit to support its contention that it was not served the order nisi

"The major grouse of the Appellant against the garnishee proceedings is that after the grant of the garnishee order nisi the order was not served on it as the judgment debtor, which service is a condition precedent to the proceedings for garnishee to show cause, pursuant to Section 83(2) of the Sheriff and Civil Process Act. It is pertinent to note that the Appellant filed an application dated the 23rd December, 2014 to set aside the said order nisi but did not raise the issue of non-service of the said order nisi on it. In the affidavit filed in support of the application to set aside the garnishee order nisi, the Appellant merely stated thus: "That the attempt to make the order absolute is in violation of the Sheriff and Civil Process Act which renders the whole process void". The Appellant has argued vehemently that by the foregoing averment in its affidavit, it has raised the issue of non- service of the order nisi. But I am of the firm view that the averment quoted above is at large; it neither conveys the meaning that the Appellant was not served the order nisi, as required by the Sheriff and Civil Process Act nor gives impression of infraction of any specific provision of the Sheriff and Civil Process Act. I