CONTEMPORARY ISSUES IN APPELLATE LITIGATION IN NIGERIA

JONATHAN EKPERUSI*

Abstract

Appellate litigation provides a legal practitioner with the opportunity to contribute to the development of the law by questioning precedents and testing the decisions of lower courts on appeal before superior courts in the hierarchy. While trial litigation may provide some form of fulfillment, it is only legal practitioners engaged in appellate litigation who will have their names etched in the Law Reports as decisions of appellate courts are regularly reported. To maximize the opportunities provided by appellate litigation, a legal practitioner engaged in appellate litigation in Nigeria must make the requisite sacrifice to master the rudiments of appellate litigation, beginning with a proper understanding of the appeal process, followed by an understanding of how to draft a valid notice of appeal and how to formulate issues for determination from the grounds of appeal. The appellate litigation lawyer must understand when to seek leave to appeal, when to seek the trinity prayers, and how to properly draft the reliefs in those prayers. The appellate litigation lawyer should understand the rules relating to proliferation of issues, the difference between the omnibus ground of appeal in civil and criminal appeals and how a respondent's notice is different from a cross-appeal.

Key-Words: Judiciary; Trial Court; Appeal; Appellate Litigation; Alternative Dispute Resolution; Nigeria.

*PhD (Law, IMSU); LLM, LLB (Benin); BL; CLWSLP (NIALS, Lagos); CLMPS (Calgary, Canada); Acting Dean of Law, Southern Delta University, Ozoro, Delta State; Secretary, Nigerian Bar Association (NBA) National Legal Education Committee, August 2024 till date; Member, NBA National Executive Council (NEC), 2018 - 2024; formerly, Lecturer, Faculty of Law, Edwin Clark University, Kiagbodo, Delta State, April 2022 – May 2023; Chairman, NBA Effurun Branch, June 2020-June 2022; Member, Delta State Government Human Rights Committee, 2021 - 2023; Special Assistant to the Attorney-General & Commissioner for Justice, Delta State, 2008 - 2011; formerly, Representative Member, Federal Government Amnesty Committee for Niger Delta Militants; Member, Delta State Local Government Election Tribunal, 2021;

1.**Introduction**

Litigation is a very arduous aspect of law practice in Nigeria and across the common law jurisdictions. Litigation, as distinct from other forms of dispute resolution, involves the formal submission of a dispute to courts of law for adjudication or resolution. It is the process of taking a case to a court of law so that judgment can be given.[1] Litigation is the act, process or practice of settling a dispute in a court of law.[2] While Alternative Dispute Resolution (ADR) methods are gaining significant traction for their touted advantages of speed, confidentiality and client-centeredness, litigation remains the major dispute resolution mechanism mainly because of its direct State-enforcement paraphernalia. Whereas the outcome of ADR methods may require additional steps for enforcement, such as the registration of a Memorandum of Settlement in a court of law,[3] a court judgment is enforceable immediate and without further ado. Litigation is therefore the traditional method of resolving disputes where traditional or informal ADR methods have failed.[4] In some instances, disputants do not bother to explore any ADR method before commencing litigation.

The two layers of litigation are trial and appellate litigation. While trial litigation or advocacy is good for the legal practitioner, appellate litigation or practice is much better for a variety of reasons. First, it is only the judgments of the Court of Appeal and Supreme Court of Nigeria that are usually reported. Thus, it is only lawyers engaged in appellate litigation who will find their names in the Law Reports. Secondly, elevation at the Bar and on the Bench requires judgments and processes from appeals conducted by the affected legal practitioner. Thirdly, it is only through appeals that the law is developed. When a decision is considered unfavourable or manifestly wrong, rather than the parties and their Counsel complaining about the *judex* – whether Justices, Judges, Magistrates, Customary Court Chairmen or Revenue Court Judges – the proper thing is to test the decision on appeal. It is usually by way of

---

[1] C McIntosh *et al* (eds)., *Cambridge Dictionary* (Cambridge: Cambridge University Press, 2005).

[2] FC Mish *et al* (eds), *Merriam Webster Dictionary* (*11th edn,* Springfield: Merriam-Webster Inc., 2003).

[3] The ADR system in many States in Nigeria, especially through the Multi-Door Courts, require the registration of their outcomes before they become enforceable. It is only where the parties voluntarily comply with the determination or award that the ADR method of dispute resolution becomes self-enforcing.

[4] JO Orojo & MA Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Lagos: Mbeyi & Associates, 1999) 2.

appeals that lawyers and litigants challenge existing precedents, contribute to the development of judicial policy and help to set new precedents. Every lawyer is therefore encouraged to engage in appellate litigation for professional development

2.**What is an Appeal?**

In judicial proceedings, an appeal is a request made to a higher court in the judicial hierarchy, for a review of the decision of a lower court. An appeal calls upon a higher court to review a case.[5] It seeks review of a lower court's decision by a higher court.[6] An appeal is an invitation to a higher court to review the decision of a lower court to find out whether, on a proper consideration of the facts and applicable law placed before it, the court arrived at a correct decision.[7]

In *Adeosun v. Governor, Ekiti State*,[8] the Supreme Court stated the position of the law that an appeal invites a higher court to examine the correctness or otherwise of a decision of a lower court, based on the issues raised at the lower court. In the language of the Supreme Court:

> An appeal is an invitation to a higher court to find out whether on proper consideration of the facts placed before it and the applicable law, the lower Court arrived at a correct decision …. An appellate Court is not in a position to determine in the correctness or otherwise of an issue not raised and determined in the Court below.

In *Abubakar v Nasamu* (*No. 1*),[9] the Supreme Court explained that an appeal is generally regarded as a continuation of an original case rather than an inception of a new case, and that an appeal must be a complaint against the decision of the lower court from which the appeal emanated. In *Akeredolu v Mimiko*,[10] Alagoa JSC quoted with approval, the decision of Karibi-Whyte JSCin*Saraki v Kotoye*,[11]thus:

---

[5] S Anderson, *et al* (eds), *The Chambers Dictionary*, (new edn, Edinburgh: Chambers Harrap Publishers, 2002).
[6] BA Garner *et al* (eds), *Black's Law Dictionary* (9th edn, St. Paul: West Publishing Co., 2004).
[7] B Momodu, *Modern Appellate Procedures: Court of Appeal and Supreme Court of Nigeria* (Benin City: Momodu B Law Publishing, 2020) 1; C Anyafulude, *Principles of Formulation and Classification of Grounds of Appeal* (Tomnelo Law Publications, 2021) 2. See generally, T Anyafulude (ed), *P Nnaemeka-AguManual of Brief Writing in the Court of Appeal and the Supreme Court of Nigeria* (rev edn, Enugu: Syon Prints Ventures, 2010).
[8](2012) 24 WRN 1 at 35,Ngwuta JSC.
[9] (2012) 17 NWLR (pt 1330) 407.
[10](2014) 1 WRN 1, 70 – 71.
[11](1992) 9 WNLR (pt 264) 156.

> It is a well settled proposition of law in respect of which there can hardly be a departure that the grounds of appeal against a decision must relate to the decision and should constitute a challenge to the ratio of the decision …. Grounds of appeal are not formulated *in nubibus*. They must be firma terra, namely arise from a judgment.

In *Olufeagba v Abdur-Raheem*,[12] the Supreme Court espoused the principles further:

> A ground of appeal can only be competent if the particulars and the nature of the alleged misdirection or error is clearly stated. The ground must not be argumentative, vague or general in terms. It must disclose reasonable complaint against a ratio decidendi in the decision as opposed to an obiter dictum. A ground of appeal must be directed at the decision of the Court below.

Still on the matter, the Supreme Court in *Saraki v Kotoye*[13]held as follows: It is a cardinal principle in adjudicating in appeal cases to consider the grounds of appeal in relation to the portion or part of the decision complained of." Where a lower Court has not rendered a decision, there cannot be an appeal from that court.[14] The purpose of an appeal is therefore to test the correctness of the decision appealed against. Under the various Rules of Court, an appeal is usually by re-hearing, and subject to the Rules of the particular Court, an appeal is based almost entirely on the *Records of Appeal* transmitted from the trial court to the appellate Court. Where an appeal does not directly challenge any part of the decision of the trial or lower Court, the appeal is incompetent and liable to be struck out as incompetent.[15] This principle is founded on the rule that an appellate court does not exercise the jurisdiction conferred on the trial court. Thus, there must be a complaint from the decision of a trial court before the appellate jurisdiction of a higher court can be properly invoked. In *Kente v Ishaku*[16]theSupreme Court held:

> The jurisdiction vested in the Court of Appeal to hear and determine appeals from High Courts by section 240 of the

[12](2010) 17 WRN 23, 50 – 51,Fabiyi JSC.
[13](1990) 21 NSCC (pt II) 361, 376, Obaseki JSC.
[14]*Oredoyin v Arowolo* (1989) 4 NWLR (pt 114) 172; *Babalola v State* (1989) 4 NWLR (pt 115) 264.
[15]*Odunze v Nwosu* (2007) 31 NSCQR 1, 28.
[16](2017) 27 WRN 36, 55, Eko JSC.

> 1999 Constitution is only in respect of decisions of those Courts. The phraseology of sections 240, 241, 242 and 243 of the Constitution connotes that the valid notice of appeal is the notice of appeal against a specific decision and existing decision of the High Court.

In the above case[17] the Supreme Court further held that:

> Once a notice of appeal as in the instant appeal, was held as in this respect by the lower court, to be defective and therefore incompetent, there was nothing left for it to consider in the appeal other than to strike out the appeal in its entirety.

It is therefore imperative that in appellate litigation, lawyers and litigants must ensure that the appeal is directed against some complaint in the decision from which the appeal emanates. Where there is no direct complaint against the decision, an appeal is unfounded.

3. **Appeal Distinguished from Judicial Review**

Strictly speaking, an appeal is different from judicial review. Judicial review may involve taking out the prerogative writs of certiorari, habeas corpus, or mandamus. The procedure for taking out an appeal is different from judicial review. Judicial review involves invoking the supervisory jurisdiction of the High Court over courts lower in the judicial hierarchy, in line with the provisions of the enabling statute and the Rules of Court;[18] whereas, an appeal invokes the appellate jurisdiction of superior courts, and is commenced with the filing of a Notice of Appeal, where the appeal is of right, judicial review does not involve the filing of a Notice of Appeal. Rather, judicial review is by way of an application made to the High Court, in accordance with the provisions of the Rules of Court, for the exercise of the supervisory jurisdiction of the High Court, over other courts lower than the High Court, in the judicial hierarchy. A notable feature of judicial review is that the grant of leave to apply for judicial review often operates to stay further proceedings at the lower court,[19] whereas an appeal does not automatically operate as a stay of further proceedings.[20] In criminal matters, an appeal against a conviction or the

[17](2017) 27 WRN 36, 57, Bage JSC.
[18] See generally, Federal High Court CPR 2019, O 34; High Court of Delta State CPR 2009, O 40; Edo State High Court CPR 2018, O 41; Bayelsa State High Court Rules 2010, O 40; High Court Rules of Enugu State 2006, O 40. Similar provisions exist in the Rules of the various other States High Courts.
[19] Federal High Court CPR 2019, O 34 (3) (6); High Court of Delta State CPR 2009, O 40 (3) (10).
[20] CAR 2021, O 4 (11) (2).

grant of leave or extension of time to appeal against a criminal conviction usually operates as stay of further proceedings with respect to the execution of the judgment appealed against.[21]

4.The Right of Appeal

The right of appeal is usually conferred by statute. Thus, an appeal may be as of right, or it may be with leave of court. The statute conferring the right of appeal may also prescribe where, when and how to obtain leave, where an appeal is not as of right. For instance, generally, an appeal against a finaldecision of a High Court, sitting in its original jurisdiction is as of right.

The Constitution[22] of the Federal Republic of Nigeria 1999 (as amended) provides for appeals as of right from the decisions of the High Court, in the following cases:

(a) appeal against final decisions of the High Court in any civil or criminal matter sitting at first instance (original jurisdiction);
(b) where the ground of appeal involves questions of law alone, appeal against any decision in any civil or criminal matter;
(c) decisions in any civil or criminal matter on questions as to the interpretation or application of the Constitution;
(d) decisions in any civil or criminal matter on questions as to whether any of the provisions of Chapter IV of the Constitution has been, is being or is likely to be contravened in relation to any person;
(e) decisions in any criminal matter in which the High Court imposed a death sentence;
(f) decisions made or given by the High Court-
    (i) where the liberty of a person or the custody of an infant is concerned,
    (ii) where an injunction or the appointment of a receiver is granted or refused,
    (iii) in cases of decisions determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of malfeasance or otherwise,
    (iv) in the case of a decree nisi in a matrimonial case or admiralty action determining liability, and
    (v) in any other case as may be prescribed by an Act of the National Assembly.

The Constitution[23] provides that there shall be no right of appeal:

[21] CAR 2021, O 18 (5).
[22] CFRN 1999, s 241 (1).

(a) from a decision of the High Court granting unconditional leave to defend an action (usually in Summary Judgment proceedings);
(b) from a *decree absolute* for the dissolution or nullity of marriage, after the period of the *decree nisi*has lapsed; and
(c) from a consent Judgment, except with leave of Court.

The Constitution[24] provides that subject to the provisions of section 241 of the Constitution, every appeal shall be with leave. Where leave is so required, filing a Notice of Appeal without first obtaining leave of Court renders the appeal incompetent and liable to be struck out. It is therefore important to seek the leave of Court before filing an appeal where the appeal is not one as of right.

5.**Leave to Appeal/Extension of Time to Seek Leave to Appeal**
In practice, leave to appeal may be granted by either the High Court or the Court of appeal (in an appeal from the High Court to the Court of Appeal), where the application for leave to appeal is filed within the time limited for the filing of the appeal. However, where the time limited for the filing of the appeal has elapsed, only the Court of Appeal can grant *extension or enlargement of time to seek leave to appeal*, *leave to appeal* and *extension of time to appeal*, in what is usually referred to as the *Trinity Prayers*. Similarly, both the Court of Appeal and the Supreme Court can grant leave to appeal (in an appeal from the Court of Appeal to the Supreme Court), where the application for leave to appeal is filed within the time limited for the filing of the appeal. However, where the time limited for the filing of the appeal has elapsed, only the Supreme Court can grant the *Trinity Prayers*.
A typical example of the *Trinity Prayers* is as follows:
1. *AN ORDER* for extension of time within which the Applicants are to seek leave to appeal against the Judgment of the Court of Appeal, Asaba Division delivered on the 13th day of March, 2023 in Appeal No. 123 between ABC VS. XYZ on grounds involving or which may involve questions/issues of mixed law and facts and/or facts alone.
2. *AN ORDER granting Applicants, leave to appeal against the* Judgment of the Court of Appeal, Asaba Division delivered on the 13th day of March, 2023 in Appeal No. 123 between ABC VS. XYZ on grounds involving or which may involve questions/issues of mixed law and facts and/or facts alone.

[23] CFRN 1999, s 241 (2).
[24] CFRN 1999, s 242 (1).

3. *AN ORDER for extension of time within which the Applicants are to appeal against the* Judgment of the Court of Appeal, Asaba Division delivered on the 13th day of March, 2023 in Appeal No. 123 between ABC VS. XYZ on grounds involving or which may involve questions/issues of mixed law and facts and/or facts alone.

The implication of the foregoing is that the *Trinity Prayers* are only sought where the appeal requires *leave* and the *time* to *seek leave to appeal* has elapsed. Where the application for leave to appeal is made within time, the prayer should be limited to *leave to appeal*. Similarly, where an appeal is as of right and the appeal was not filed within time, the Trinity Prayers do not arise. The Applicant only needs to apply for enlargement or extension of time to appeal. At the stage of seeking extension of time to seek leave to appeal, or leave to appeal, or extension of time to appeal, as the case may be, the Applicant does not need to include a prayer for a deeming order. The reason is that the Notice of Appeal to be filed pursuant to the grant of the application, is the originating process in the appeal. There cannot be a prayer for a deeming order when the appeal has not been properly initiated. The prayer for a deeming order is only included after the appeal has been initiated. Thus, where a party to an appeal is seeking extension of time to take steps after the appeal has properly commenced, such a party, as applicant, may include a prayer for a deeming order. For instance, in an application for extension of time to transmit Records of Appeal, the Appellant may include a prayer to deem the Record of Appeal as properly transmitted. Similarly, in an application for extension of time to file Brief of Argument, the Applicant may include a prayer for an order to deem the Brief of Argument as properly filed and served.

It is advisable or desirable to seek leave to appeal where the appeal is a further appeal from the decision of an appellate court, except where the *further appeal* is against a *death sentence* or purely on points of law, or in instances where appeal is statutorily allowed as of right. Where leave is required to appeal, the filing of the *Notice of Appeal* without first obtaining leave of Court renders the appeal incompetent. In *NIMASA v Odey*,[25] the Court of Appealheld as follows:

> Leave of Court where it is required is a condition precedent to the exercise of the right of appeal. Thus, failure to obtain leave where it is required will render any appeal filed incompetent as no jurisdiction can be conferred on the appellate Court.

[25] (2012) 52 WRN 108, 125 – 126, Ndukwe-Anyanwu JCA.

In *Barigha v PDP*,[26]the Supreme Courtheld that an appeal is brought where the Notice of Appeal has been filed (for an appeal without leave) or where the Notice of Appeal is filed after leave has been granted (in the case of an appeal with *leave*). In the same *Barigha v PDP*[27]the Supreme Court further held that the 'mere filing of a notice of appeal without more, does not, in my view, constitute an appeal in the real sense of the word.'

Any Notice of Appeal filed before obtaining leave to appeal in a matter where leave is required renders the *Notice of Appeal* filed without leave invalid.[28] An application for leave to appeal or extension of time to appeal, calls for the exercise of the discretion of the Court. It is not granted as a matter of course but upon sufficient materials being placed before the Court.[29] Counsel must therefore ensure that the affidavit in support of such application discloses sufficient materials that would sway the Court to grant same. The Constitution[30]provides for an appeal from the Court of Appeal to the Supreme Court, as of right, and for appeals with leave of the Court of Appeal or the Supreme Court.[31] Usually, where an appeal from the Court of Appeal to the Supreme Court contains grounds of mixed law and fact and/or of facts alone, leave of Court is required. Failure to obtain leave where a ground of appeal contains complaints of *mixed law and facts*, or complaints of *facts alone*, is fatal to such ground.[32] Thus, an appeal to the Supreme Court cannot be entertained once the grounds are of facts or mixed law and fact and leave was not first sought and obtained.

The Court of Appeal Act[33]makes provision for a period of ninety (90) days to appeal against a final decision of the Court of Appeal and/or to apply for leave to appeal against such decision and a period of fourteen (14) daysfor an interlocutory decision. Where applicant is out of time to seek leave to appeal, the application for leave to appeal must contain the trinity prayers and the Applicant must by his affidavit evidence, show good and substantial reason(s) for failure to obtain leave within the

[26] (2013) 17 WRN 1, 27, Muhammad JSC.
[27] (2013) 17 WRN 1, 28, Muhammad JSC.
[28]*Oshianie v Erhumwunse* (1993) 3 NWLR (pt 283) 603, 607; *Creekview Property Development Co. Ltd v Ebun-Olu Adegboruwa* (2011) 3 NWLR (pt 1234) 239, 246.
[29]*Braithwaite v Dalhatu* (2016) 13 NWLR (pt 1528) 32, 51 paras. E-F.
[30] CFRN 1999, s 233 (2).
[31] CFRN 1999, s 233 (3).
[32]*Opuiyo v Omoniwari*(2007)16 NWLR (pt 1060) 415, 431, para. D (SC).
[33] Court of Appeal Act 2004 as amended 2005, s 27 (1), (2).

prescribed time and the grounds must *prima facie*, show good cause why the appeal should be heard.[34]
Every application for leave or extension of time to appeal must contain the following:

1. The name of the court that delivered the decision, e.g., the High Court of Delta State, the Federal High Court, the National Industrial Court, or the Court of Appeal. It is wrong for instance, to say, the High Court, Effurun. That is not a Court established by the Constitution. You may either say, the High Court of Delta State, sitting at Effurun or simply say the High Court of Delta State.
2. The date of the decision appealed against.
3. The suit number or charge number.
4. The names of the parties.
5. The name or names of the Judges that delivered the decision. This is not compulsory.

Where the application for leave or extension of time to appeal does not contain numbers 1 to 4 above, it is incompetent and liable to be struck out. It is highly desirable for appellate practitioners endeavor to seek out precedent court processes before filing their processes in court to avoid waste of time.

Again, the application for extension of time to appeal or leave to appeal, must include as Exhibits to the supporting affidavit, certified true copy (CTC) of the Judgment or Ruling being appealed against and the proposed Notice of Appeal. Where it contains the Trinity Prayers, it may be necessary to show that similar application was filed at the lower Court which could not be taken before the time allowed for appeal expired, hence the filing of the application at the appellate Court.

6. **Notice of Appeal**
The Notice of Appeal is the originating process in every appeal. It must be signed and filed at the appropriate venue. Generally, the Notice of Appeal is filed at the Registry of the Court where the appeal is emanating from. This is so because upon filing the Notice of Appeal, the Registrar of the Court from where the appeal is emanating or the Appellant is required to compile and transmit the Records of Appeal to the appellate Court within the time prescribed by the Rules of Court.

[34]*Braithwaite v Dalhatu*(2016) 13 NWLR (pt 1528) 32, 51 paras. F-H; *University of Lagos v Olaniyan* (1985) 1 NWLR (pt 1) 156, 175.

In *Ndukwe v Ndukwe*,[35] the Court of Appeal quoted with approval, the decision in *Okonkwo v INEC*[36] which held as follows:

> A notice of appeal is the fulcrum, foundation, substratum and alpha of any appeal. It is so foundational that where it is lacking or structurally deficient, the entire appeal becomes grounded and remains on the runway like an aircraft without wings and speed to take to air for flight to its destination.

7. **Contents of the Notice of Appeal**

A valid Notice of Appeal must contain an introductory part, which introduces the appeal, identifies who is appealing and the decision being appealed against. The Notice of Appeal must state whether it is the *whole* or only a *part* of the decision that is being appealed against. Where the appeal is against only a part of the decision, the Notice of Appeal must state the part or parts of the decision being appealed against.

After the introductory part, the Notice of Appeal must contain *Grounds of Appeal* with their particulars succinctly spelt out. The Grounds of Appeal are the complaints against the decision being appealed against. After the Grounds of Appeal, the Notice of Appeal must contain the *Reliefs* being sought from the appellate Court. It must also contain the names and addresses of the persons affected by the appeal.

7.1 The Parties to an Appeal

As a general rule, an appellant does not have the liberty to alter the parties to an appeal. In other words, the Notice of Appeal must contain all the names of the parties to the Judgment or Ruling, as contained in the Judgment or Ruling appealed against. The Appellant does not have the liberty to leave out some of the parties contained in the Judgment or Ruling. Where a Notice of Appeal omits some of the parties as contained in the Judgment or Ruling, it may be struck out for being incompetent.

Furthermore, it must be noted that irrespective of his designation at the Court of first instance, the party appealing is called the Appellant and his name should appear first in the Notice of Appeal, before the names of all other parties to the appeal. All other parties to an appeal other than the Appellant or Appellants are the Respondents.

At the stage of applying for leave to appeal or extension of time to appeal, the parties are designated as Applicant and Respondent. It is only

[35](2015) 28 WRN 77, 89, Mbaba JCA.
[36](2003) 33 WRN 93, Oredola JCA.

after leave has been obtained or time extended that the parties are designated as Appellant and Respondent.

7.2 Grounds of Appeal

The Court of Appeal and Supreme Court Rules contain provisions that define the contents of grounds of appeal. Every Notice of Appeal shall contain grounds of appeal stating whether the whole or part only of the decision of the Court below is complained of, and such grounds shall not be vague or general in terms. Where a ground of appeal offends the above rule, it is liable to be struck out. In a long line of cases, the Court of Appeal and the Supreme Court have held that where a ground of appeal is vague or imprecise, it must be struck out.[37]

The ground of appeal must be a complaint against the *ratio decidendi*of the decision appealed against and not a complaint against an *obiter dictum*. The rule is that it is not everything a Judge says in a decision that can be appealed against. The corollary of this rule is that any *ratio decidendi* in a decision not appealed against in the Notice of Appeal is deemed to have been conceded. Thus, an Appellant must be careful to ensure that every *ratio decidendi* in the decision is challenged by an appropriate Ground of Appeal.

A ground of appeal is vague or imprecise where it fails to address a specific issue of law or fact but is rather expressed in general terms of both law and fact. As has been explained earlier in this work, where the ground of appeal does not directly complain against any part of the decision appealed against, it is incompetent and liable to be struck out.

7.3 The Omnibus Ground of Appeal

The omnibus ground of appeal in a civil appeal, alleges that the judgment is against the weight of evidence. In a criminal appeal, the omnibus ground alleges that the Judgment is unreasonable, unwarranted and cannot be supported having regard to the evidence before the court. Care must be taken not to mix them up. In *Ibeto v Aminu*,[38] the Court of Appeal held that an omnibus ground that 'the Judgment is unreasonable, unwarranted and cannot be supported having regard to the evidence before the Court', is only suitable in criminal cases and does not apply to civil cases. Such an omnibus ground of appeal wrongly used in a civil appeal renders it incompetent and liable to be struck out.

[37]*Laah v Opaluwa*(2004) 9 NWLR (pt 879) 558;*Amadi v Okoli*(1977) 7 SC 57;*Metal Construction (WA) Ltd v Migliore*(1979) 6 – 9 SC 163.
[38] (2007) 5 NWLR (pt 1028) 446, 450, ratio 6.

The *omnibus ground* of appeal is a complaint directed against the *evaluation of evidence* by a trial court. It is therefore not suitable in an interlocutory appeal where evidence was not evaluated. It invites the appellate court to re-evaluate the evidence on record and come to its own findings. While it is the primary duty of a trial court to evaluate evidence, where a complaint is properly made against the evaluation of evidence by a trial court, the appellate court may undertake the evaluation of evidence.

7.4 Particulars of Error in Grounds of Appeal

Each ground of appeal should contain the *Particulars of Error* so as to help the Court identify the purport or essence of the complaint in the Ground of Appeal. The Particulars of Error must be directed at the Ground of Appeal as it is not a separate ground of appeal on its own. The Particulars of Error must be consistent with the complaint in the Ground of Appeal. The particulars of error of a ground of appeal must not be an independent complaint apart from the ground of appeal but should be ancillary to it. Where the Particulars of Error are not connected to the Ground of Appeal, or are inconsistent with the Ground of Appeal, they will be held to be defective and liable to be struck out.

In *Frederick Agbonifo v Pastor Faith Irikefe & Ors*[39] the Court of Appeal held as follows:

> Yes, it is true appellant in his Particulars of Error Numbers 7, 8 and 9 in support of Grounds 1 and 3 of his appeal mentioned that 1st respondent did not pay default fees/cost to him so the order of the Court renewing his writ of summons was incompetent, but those particulars have no connection whatsoever to his sole complaint in the said two grounds of appeal that the same Writ of Summons having been already served on him, it cannot be renewed again. His said particulars of error of non-payment to him of penalties and the lower Court's failure to rule on that point having caused lack of fair hearing being inconsistent with his complaints in his three grounds of appeal, must be discountenance and struck out. In *Egbirika v. State* (2014) LPELR-22009 (SC) the apex Court (Kekere-Ekun,JSC, in lead judgment), following *Globe Fishing Co. Ltd v. Coker* (1990) 7 NWLR (PT 162) 265; *Honika Sawmill (Nig.) Ltd v. Hoff* (1994) 2 NWLR (PT 326) 252, *Briggs v. C.L.O.R.S.N.* (2005) 12 NWLR (PT 938) 59, stated the position on this point thus at p.14 that: "The law is settled that the particulars of error of a ground of appeal must not

[39] (2022) LPELR-57869(CA) at pp. 9-11, paras. F-A, Boloukuromo Moses Ugo, JCA.

> be an independent complaint from the ground of appeal but should be ancillary to it. Where the particulars of a ground are inconsistent with the main complaint in the ground, the particulars must be discountenanced." Their Lordships in *Egbirika's case* proceeded to strike out the said hanging particular of the ground of appeal (see p.14 para E-F.).

It is therefore imperative that the particulars in support of each ground of appeal must be consistent with the complaint contained in the ground of appeal. The particulars of error must not be an independent complaint. It should espouse or clarify the complaint contained in the ground of appeal. Where the particulars of error are inconsistent or independent of the ground of appeal, they are incompetent and liable to be struck out.

8.Briefs of Argument

There are generally, three (3) types of Appellate Briefs. First is the Appellant's Brief of Argument. This is followed by the Respondent's Brief of Argument. Where there are new issues raised in the Respondent's Brief that an Appellant seeks to respond to, the Appellant is required to file a Reply Brief.[40] The law is settled that parties and their Counsel are bound by the arguments in their Brief of Argument and arguments not contained in the Brief will go to no issue, unless canvassed in open Court during the hearing of the appeal, with leave of Court.[41] Every Brief of Argument should contain a Title Page, Table of Contents, Introduction or Preliminary Statement or Statement of Facts, Issues for Determination, Argument on the Issues, Conclusion, List of Authorities (both statutory and judicial), date, signature, name and address of Counsel and address for service on the other party or his Counsel. The Brief of Argument should be well planned, properly broken into its component units and executed in stages,[42] in order to properly argue in a comprehensible way, the complaints against the decision appealed against, as agitated in the Notice of Appeal or Cross-Appeal. The other details as to the format, font size, line spacing and timelines for filing of Briefs are as prescribed by the Rules of each Court.[43] It is important for Counsel to be familiar with the Rules of Court in order to ensure compliance with the provisions thereof.

The Appellant's Brief of Argument is aimed at urging the appellate Court to allow the appeal and to set aside the decision appealed against. The Appellant's Brief of Argument must carefully distil issues for

[40] SCR 2024, O 16 (5); CAR 2021, O 19 (5).
[41] *Cappa & D'Alberto Ltd v Akintola*(2003) 9 NWLR (pt 824) 49, 59.
[42] BA Garner (ed), *The Winning Brief* (3rd edn, Oxford: Oxford University Press, 2012) 11.
[43] SCR 2024, O 16; CAR 2021, O 19.

determination from the Grounds of Appeal and marshal arguments in support of the issues for determination. In *Imonikhe v AG Bendel State*,[44] the Court held that an issue for determination in an appeal is a substantial question of law or of fact or both arising from the grounds of appeal filed in the appeal, which, when resolved one way or the other, will affect the result of the appeal. While issues for determination are usually formulated by the parties, the Court is at liberty to re-formulate issues for determination in appeal.[45] In formulating issues for determination, the issues must be related to the grounds of appeal.

The law is that the Respondent's Brief of Argument must answer all the material points of substance raised in the Appellant's Brief of Argument. The Respondent's Brief shall contain all points raised in the Appellant's Brief that the Respondent intends to concede. Failure of a Respondent to respond to an issue in an appellant brief is deemed to be a concession to that issue.[46]The main purpose of the Respondent's Brief is to urge the appellate Court to affirm the decision of the lower Court. It may contain arguments in respect of a Cross-Appeal. A Respondent who did not cross-appeal is not permitted to formulate issues outside the Grounds of Appeal contained in the Notice of Appeal. The Respondent may modify the issues to give them a slant favourable to the Respondent's perspective in the appeal, without departing from the complaints in the Grounds of Appeal.

In *Atanda v Ajani*,[47] the Supreme Courtheld as follows:

> Indeed none of the four issues for determination as formulated by the respondents has any relevance to the grounds of appeal before the court. This court has stated a number of times that a respondent's primary duty is to support the judgment appealed against by showing that the contentions of the appellant as to the grounds of error are without merit. Also, as they have not cross-appealed, they cannot formulate issues as it were, *in nubibus* – hanging in the skies. They can only either adopt the issues as formulated by the appellants based on the grounds of appeal before the court or, at best, recast them by giving them a slant favourable to the respondents' point of view, but without departing from the complaints raised by the grounds of appeal.

[44] (1992) 6 NWLR (pt 248) 396.
[45]*Sha (Jnr) v Kwan*(2000) 8 NWLR (pt 670) 685, 691 (SC).
[46]*Arowolo v Akaiyejo*(2012) 4 NWLR (pt 1290) 286;*Inakoju v Adeleke*(2007) 4 NWLR (pt 1025) 423.
[47](1998) 3 NWLR (pt 111) 511,Nnaemeka-Agu JSC.

8.1 Appellant's Reply Brief

The Reply Brief is to answer new issues raised in the Respondent's Brief. A Reply Brief is not meant to further duplicate the contents of the Appellant's Brief.[48] A Reply Brief is also deployed to respond to arguments in respect of a Preliminary Objection argued by the Respondent in the Respondent's Brief of Argument. The practice usually is for a Respondent who intends to challenge the competence of an appeal, to file a Notice of Preliminary Objection[49] as a separate process, and to argue the grounds of the Preliminary Objection in the Respondent's Brief of Argument. Where a Respondent has filed a Notice of Preliminary Objection and argued same in the Respondent's Brief of Argument, it is incumbent on the Appellant to respond to the Preliminary Objection in the Appellant's Reply Brief of Argument.

8.2 The Rule Against Proliferation of Issues

The rule against proliferation of issues is to the effect that an issue for determination may be formulated from more than one ground of appeal but not more than one issue for determination can be formulated from a ground of appeal. Where more than one issue is formulated from a ground of appeal, it amounts to proliferation of issues and the issues so formulated are liable to be struck out.

In *Olaide Ibrahim v S. A. Ojomo & Ors*,[50]the Supreme Courtadmonished thus:

> Issues for determination in an appeal should be formulated in general practical terms and tailored to the real issues in controversy in the case

In *Yadis Nigeria Limited v Great Nigeria Insurance Company Limited*,[51]the Supreme Court stated as follows:

> It is settled law that a party is not allowed to formulate more than one issue for determination out of a ground of appeal even though he can combine two or more grounds of appeal in formulating an issue for determination. This is the principle against proliferation of issues for determination.

In *Chibuike Charles Amadi v The State*,[52]the Court of Appeal elucidated on the point as follows:

---

[48]*Okonji v Njokanma*(1999) 14 NWLR (pt 638) 250.
[49] CAR 2021, O 10 (1).
[50](2004) LPELR-1410(SC), Dennis Onyejife Edozie, JSC at pp. 11-12, paras. F-A
[51](2007) LPELR-3507(SC), Walter Samuel Nkanu Onnoghen, JSC (as he then was) at pp. 30-31, paras. F-A.

> The principle of law against proliferation of issues in an appeal was captured by this Court in the case of *ATTAHIRU V. STATE* (2020) LPELR-51092 (CA) per YAHAYA, JCA thus: So, two issues have been raised from ground 1 of the appeal. The question arises, whether I have jurisdiction to entertain them or not. An issue can only be distilled or arise from one or more grounds of appeal. More than one issue cannot arise from one ground of appeal. When that happens, it is said to amount to proliferation of issues.... Here, the Appellant has partaken in the proliferation of issues No. 1 and 2... Onu JSC in *AYISA V. AKANJI* (1995) 7 SCNJ 245 AT 253 stated that:- "...issues for determination... must not be so prolific and proliferate as to be more in number than the grounds on which they are based, I regard the multiple issues submitted..... as being of no avail, they are accordingly discountenanced in my consideration." In *OKONOBOR V. D.E.& S.T. CO. LTD*. (2010) 17 NWLR (PT. 1221) 181, Onnoghen JSC (as he then was), held:- "It is settled law that proliferation of issues is unaccepted in our Appellate Courts... The issues are therefore incompetent and liable to be struck out."... Similarly, in *OLUSOLA ADEYEMI VS. THE STATE* (2014) LPELR - 23062, the Supreme Court per Odili, JSC held that proliferation of issues:- "Produces no room for maneuver as the issues so formulated come to naught." That a proliferated issue is "dead and unusable as the abnormality is incurable.

In the same vein, in *Engineer Hussaini Usman v Saddiqa Abubakar*,[53]the Court of Appeal held thus:

> It has been held in plethora of cases that it is wrong for counsel to formulate more than one issue for determination from one ground of appeal. Three issues formulated from only two grounds of appeal, as done by the Appellant in the instant case, was therefore tantamount to proliferation of issues. Counsel may raise one issue from one or more grounds of appeal but not otherwise. The Appellant's issues having not been tied to any particular ground of appeal are all affected by the virus of proliferation and rendered void.

Still on the point, in *Olaide Ibrahim v S. A. Ojomo & Ors*,[54] the Supreme Court point out as follows:

---

[52](2023) LPELR-59907(CA), Balkisu Bello Aliyu, JCA at pp. 8-9, paras. A-B.
[53](2021) LPELR-53471(CA), Hussein Mukhtar, JCA at p. 6, paras. D-G.
[54](2004) LPELR-1410(SC), Dennis Onyejife Edozie, JSC at p. 12, paras. A-B.

> Prolixity or proliferation of issues is not ideal as it tends to obscure the core issue to be determined and tends to reduce the issue to trifles. Appeals are not won on large number or quantity of grounds of appeal but on the quality of the content of the grounds of appeal and issues.

In *Folorunsho Olusanya v Adebanjo Osinleye*,[55] the Supreme Court admonished thus:

> In *Dokun Ajayi Labiyi v. Alhaji Mustaphar Moberuagba Anretiola & Ors* (1992)10 SCNJ 1 this Court viewed with disfavor the proliferation of issues for determination formulated from the grounds of appeal. It is better for a number of grounds where appropriate to be formulated into a single issue running through them.

8.3 The Rule Against Formulating an Issue from Competent and Incompetent Grounds of Appeal

While it is good practice to formulate an issue for determination from more than one ground of appeal, it is advisable to guard against the danger of lumping together both competent and incompetent grounds of appeal in an issue for determination. The rule forbids lumping together a competent ground of appeal with an incompetent ground of appeal when formulating an issue for determination. The rule is that where an issue for determination is formulated from both a competent and incompetent ground of appeal, the vice in the incompetent ground of appeal lumped together with the competent ground of appeal vitiates the entire issue so formulated and renders it incompetent and liable to be struck out.

In *C.G.C. Nigeria Limited v Alh. Mustapha Isa*,[56] the Supreme Court stated the principle of law as follows:

> The Respondent herein basically lumped arguments in respect of an incompetent issue together with those on a competent issue. Where this is done, the arguments cannot be considered by the Court as it is not for the Court to conduct a surgical operation on the arguments and start sifting the chaff from the grain by separating arguments canvassed in respect of the competent issue from those in respect of the incompetent issue.

Similarly, in *Barrister Orker Jev & Anor v Sekav Dzua Iyortyom & Ors*,[57] the Supreme Court explained the principle further:

---

[55](2013) LPELR-20641(SC), Stanley Shenko Alagoa, JSC at p. 7, paras. D-E.
[56](2023) LPELR-60350(SC), Adamu Jauro, JSC at p. 10, paras. E-F.
[57](2014) LPELR-23000(SC), John Inyang Okoro, JSC at pp. 34-35, paras. F-D.

> ...I wish to say that this Court has, in a plethora of decisions held that though one can validly lump several related grounds of appeal into one issue and argue same together, if any of the grounds so lumped together is found to be incompetent, then it contaminates the whole issue and renders it incompetent as the Court cannot delve into the said issue on behalf of the litigant and excise the argument in respect of the competent grounds from those of the incompetent grounds in the issue. The law is no doubt settled that any issue or issues formulated for the determination of an appeal must be distilled from, or must arise or flow from a competent ground or grounds of appeal. Again, issues distilled from either incompetent grounds of appeal or a combination of competent and incompetent grounds of appeal are in themselves not competent and are liable to be struck out. An incompetent ground of appeal cannot give birth to a competent issue for determination.

In the same *Barrister Orker Jev & Anor* v *Sekav Dzua Iyortyom & Ors,*[58]the Supreme Court concluded thus:

> ...The Court below concluded thus on page 949 of the record:- "The position of the law is that issues distilled from other incompetent grounds or from a combination of competent grounds and incompetent grounds of appeal are in themselves not competent and liable to be struck out. See *Ogundipe v. Adenuga* (2006) All FWLR (Pt. 330) 206." I agree completely with this conclusion. The doctrine of severance argued by the learned senior counsel for the Appellants has no place here. Accordingly, I agree with the Court below which struck out the incompetent issue which derived its life from a combination of incompetent and competent grounds of appeal.

8.4 How to Decipher Grounds of Law from Grounds of Facts or of Mixed Law and Facts in Appeals Requiring Leave

The issue of deciphering grounds of law from those of facts or of mixed law and facts is only required where the appeal requires leave. Where the appeal requires leave to appeal on grounds of fact or of mixed law and facts, failure to obtain leave where the grounds of appeal are of facts or of mixed law and facts will render the appeal incompetent and liable to be struck out.

[58](2014) LPELR-23000(SC), John Inyang Okoro, JSC at pp. 36-37, paras. F-B.

In *B. A. S. F. Nigeria Limited v Faith Enterprises Limited*,[59] the Supreme Court defined a ground of law as follows:

A ground of law has the under mentioned meanings:

a. A question in which the court has no discretion to exercise because it has to be answered in accordance with a principle of law. It is already predetermined and resolved by law.
b. A question which calls for the argument and determination of what the true position is in law. Such a question usually arises out of the uncertainty of the law.
c. Interpretation of documents which is a question of fact but is strictly within the duty of a court.

The *locus classicus* on the classification of grounds of appeal is the Supreme Court decision in *Ogbechie v Onochie*,[60] where the Court held as follows:

> There is no doubt that it is always difficult to distinguish a ground of law from a ground of fact but what is required is to examine thoroughly the grounds of appeal in the case concerned to see whether the grounds reveal a misunderstanding by the lower tribunal of the law or a misapplication of the law to the facts already proved or admitted, in which case is would be question of law, or one that would require questioning the evaluation of facts by the lower tribunal before the application of the law in which case, it would amount to question of mixed law and fact. The issue of pure fact is easier to determine.

In an article titled 'Error of Law in Administrative Law' by C. T. Emery, a lecturer in Law in Durham University and Professor B. Smythe of the same University, contained in volume 100 of the October 1984 issue of the Law Quarterly Review, to which Mr. Sofola had kindly directed our attention the learned authors made the following postulations:

(i) If the tribunal purports to find that particular event occurred although it is seised of no admissible evidence that the events did in fact occur, it is a question of law. But where admissible evidence has been led, its assessment is entirely for the tribunal: in order words, it is a question of fact.

[59](2010) 4 NWLR (pt 1183) 104, 132 – 133.
[60](1986) 2 NWLR (pt 23) 484, 491 – 492, Kayode Eso, JSC.

(ii) If the tribunal approached the construction of a legal term of art in a statute on the erroneous basis that the statutory wording bears its ordinary meaning – it is a question of law.

(iii) If the tribunal approaches the construction of a statutory word or phrase bearing an ordinary meaning on the erroneous basis that it is a legal term of art - it is a question of law.

(iv) If the tribunal though correctly treating a statutory word or phrase as a legal term of art errs in elucidation of the word or phrase - it is a question of law.

(v) If the tribunal errs in its conclusion (that is, in applying the law to the facts) in a case where this process requires the skill of trained lawyer, it is error in law.

(vi) If, in a case where a conclusion can as well be drawn by a lawman (properly instructed on the law) as by a lawyer, the tribunal reaches a conclusion which cannot reasonably be drawn from the facts as found, in that event, the superior court has no option but to assume that there has been some misconception of the law. But the issue may admit of more than one possible resolution. The inferior tribunal's conclusion may be one of the possible resolutions; yet it may be a conclusion which the superior court (had it been seised of the issue) would not have reached. Nevertheless, the inferior tribunal does not err in the law. The matter is one of degree; and a superior court with jurisdiction to correct only errors of law will not intervene.'I think these postulates are illuminating. They accord with the previous practice of this court in examining the thorny issues of law and fact and I will accept them.

8.5 Respondent's Notice of Contention

A Respondent's Notice of Contention is filed by a Respondent who intends to urge the appellate Court to affirm the decision of the lower Court on grounds other than those contained in the body of the decision. A Respondent's Notice is not appropriate for seeking a fresh relief on appeal or to make out a case different from that canvassed at the trial Court.[61] A Respondent's Notice may invite the appellate court to vary[62]

[61] *Ogunbadejo v Owoyemi*(1993) 1 NWLR (pt 271) 517;*Ibe v Onuorah*(1999) 14 NWLR (pt 638) 340.

[62] CAR 2021, O 9 (1).

the decision of the trial court, or to affirm[63] it. Where a Respondent intends to seek fresh reliefs from the appellate Court, it is advisable to file a cross-appeal.[64]

Where a Respondent's Notice seeks a relief which is not part of the proceedings at the lower Court, the Respondent does not only need to cross-appeal but must first seek leave of the Court to raise the issue of such relief as a fresh issue on appeal, failing which it would be incompetent.[65]

8.6 Cross Appeal

A cross appeal is an appeal by a Respondent in the same case.[66] A cross appeal is filed by a party who gets a favourable judgment but is dissatisfied with some aspect of the judgment and intends to challenge those aspects on appeal.[67] For instance, a party may ask for several reliefs and the trial court grants only some of the reliefs sought. Where the winning party intends to further pursue the reliefs not granted by the trial court, the appropriate approach is to file a cross appeal where the losing party has filed an appeal. A cross appeal therefore arises where both sides to a judgment are dissatisfied with it and each accordingly appeals against it.[68]

Generally, the rationale for filing a cross appeal is the rule that whatever finding or decision made by a trial court, which is not challenged on appeal, is deemed accepted.[69] Thus, a party may win a case at the trial court but there may be findings or decisions that are unfavourable to the winning party. In such a situation, the winning party may challenge the unfavourable finding or decision by way of a cross-appeal, where the losing party files an appeal. The necessity for filing a cross appeal is that such an unfavourable finding or decision within the judgment may constitute *issue estoppel* which can be used against the winning party in subsequent dispute relating to the subject matter or parties in the case. In *Ikeni v Efamo*,[70] the concept of *issue estoppel* was explained thus:

---

[63] *ibid*.

[64] *L.C.C. v Ajayi*(1970) 1 All NLR 291;*Adekeye v Akin-Olugbade*(1987) 3 NWLR (pt 60) 214;*Ogunlade v Adeleye*(1992) 8 NWLR (pt 260) 409, 424-425.

[65] *Shoshai Gambo v Zindul Turdam*(1993) 6 NWLR (pt 300) 500;*Fadare v A.G. Oyo State* (1982) 4 SC 1, 16-17.

[66] *Fadeyibi v. L.H. (Beverages) Ltd* (2013) 4 NWLR (pt 1344) 353.

[67] T Anyafulude, *Manual of Appellate Proceedings and Brief Writing* (Mercele Press Nig., 2015).

[68] S Evivie, *et al* (ed), *Nigerian Case Law Dictionary* (Lagos: Nigerian Law Publications Ltd, 2025) 305.

[69] *Lewis Opara v Dowel Schlumberger (Nigeria) Ltd & Anor* (2006) LPELR 2746(SC); *Dangote Cement Plc v Peter Asom Ager & Anor* (2024) LPELR-61800(SC).

[70] (2001) 23 WRN 126.

> However, where a plea of *cause of actionestoppel* cannot be raised because the causes of action in the two proceedings are not the same, a party can still plead that the other party is precluded from contending the contrary of any precise point; provided that the point in question (i) has been distinctly put in issue and (ii) has been necessarily determined directly and with certainty in the first action. The principle is stated thus in volume 16 Halsburys Laws of England (4th Edition) paragraph 977*:*
> *'*A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second actions are different, the findings on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive between the same parties and their privies.[71]

In *Cole v Jibunoh*,[72] the concept was explained further:

> It has now become well entrenched in our civil jurisprudence that once a matter has been finally and judicially pronounced upon or determined by a court of competent jurisdiction, neither the parties thereto nor their privies can subsequently be allowed to re-litigate such matter in court. A judicial decision properly handed down is conclusive until reversed by a superior court and its veracity is not open to a challenge nor can it be contradicted. The term derives its force from good public policy which says there must be an end to litigation. The maxim is *interest rei publicae ut sit finis litium*.[73]

In the above case of *Cole v Jibunoh*, the Supreme Court explained the concept of *issue estoppel* more clearly in the following words:

> There is a second class of *estoppel* which is *issue estoppel*. Within a cause of action, several issues may come into question, which are necessary for the determination of the whole case. The rule is that once one or more of such issues have been distinctly raised in a cause of action and

[71] Ayoola JSC at 135.
[72] (2016) 31 WRN 47.
[73] Kekere – Ekun, JSC (as she then was) at 75, quoting with approval, Aderemi JSC in *Yusuf v Adegoke* (2007) 11 NWLR (pt 1045) 332, 361 – 362.

> appropriately resolved or determined between the same parties in a court of competent jurisdiction, as a general rule, neither party nor his servant, agent or privy is allowed to re-open or re-litigate that or those decided issues all over again in another action between the same parties or their agents or privies on the same issues….
> Issue estoppel may arise where a plea of res judicata could not be established because the cause of action is not the same.[74]

It is to avoid being caught by the doctrine of *issue estoppel* or the general need to upturn an unfavourable finding or decision by the trial court that the winning party in a case files a cross appeal. The cross appeal is a separate and independent appeal, even though both the appeal and the cross appeal are heard together.[75] The withdrawal of the main appeal by the Appellant does not terminate the cross appeal, the same way a counter-claimant may continue with a case after the claimant has withdrawn his own action.[76] The court may decline jurisdiction over the main appeal and proceed to entertain the cross appeal.[77]

9.**Conclusion**

To get the best of the legal profession, a legal practitioner must learn the best of appellate litigation. Legal practitioners must therefore commit to continuous learning of the rapidly changing appellate litigation landscape in Nigeria. Legal practitioners should take advantage of the opportunities provided by the appeal process to contribute to the development of the law by challenging precedents and testing the decisions of trial courts on appeal either at the Court of Appeal, the Supreme Court or other appellate courts. Legal practitioners need to conduct appeals to have their names etched in Law Reports for posterity. The sacrifice in pursuing appeals is a worthwhile endeavour. The appellate practitioner should master how to draft valid notices of appeal; how to formulate issues for determination from the grounds of appeal and how to argue the issues in briefs of argument. The appellate litigation lawyer should appreciate when to seek leave to appeal, when to seek the trinity prayers, and how to properly draft the reliefs in those applications. The appellate litigation lawyer should understand the rules relating to proliferation of issues, the difference between the omnibus ground of appeal in civil and criminal appeals and how a respondent's notice is different from a cross-

[74] Kekere – Ekun, JSC 75 - 76, again quoted with approval, the decision of the Supreme Court in *Oshodi v Eyifunmi* (2000) 13 NWLR (pt 684) 298, 326.
[75] *A.T.E. Co. Ltd v Military Governor of Ogun State* (2009) 15 NWLR (pt 1163) 26.
[76] *Efuribe v Ugban* (2010) 14 NWLR (pt 1213) 257.
[77] *GTB Plc v Obosi Micro Finance Bank Ltd* (2022) 4 NWLR (pt 1821) 453.

appeal. There are no shortcuts. Lawyers must get copies of the current Rules of Court to practice profitably.