IN THE CUSTOMARY COURT OF APPEAL
EDO STATE OF NIGERIA
HOLDEN AT BENIN CITY

ON THURSDAY, THE 23RD DAY OF JULY, 2009

BEFORE THEIR LORDSHIPS

MARY NEKPEN ASEMOTA - JUDGE (PRESIDED)

TIMOTHY UKPEBOR OBOH - JUDGE

PETER AKHIMIE AKHIHIERO - JUDGE

APPEAL NO: CCA/20A/2007
APPEAL NO: CCA/6A/2008

B E T W E E N:

T. E. IYEKOWA
(for and on behalf of Ekiadolor
Community) : : : : APPELLANT

A N D

1. MR. PETER OMOIGUI
2. AIGBOKHAE UHUMWANGHO } : : RESPONDENTS
3. ADAMS UWUIGBE
(for and on behalf of Iwu Community)

J U D G M E N T
DELIVERED BY MARY NEKPEN ASEMOTA (JCCA)

These are consolidated appeals against the judgment and the ruling on a committal proceeding of the Ovia South West Area Customary Court, Iguobazuwa in Suit No. OSWACCI/IT/2003 delivered on the 26th day of October, 2006 and 15th November, 2007 respectively. By an order of this Court dated the 3rd day of July, 2008, the two appeals i.e CCA/20A/2007 and

CCA/6A/2008 were consolidated.

As it is settled law that consolidated appeals retain their separate identities, these two appeals will be considered separately.

APPEAL NO: CCA/20A/2007

At the Ovia North East Area Customary Court, Okada, the respondents herein (as plaintiffs) in a representative capacity, claimed against the appellant and four others (as defendants) jointly and severally as follows:

ñ(1) That the plaintiffs are entitled to apply for the Customary right of occupancy of all that parcel of land starting from Rest House down to Benin Lagos Express Road to Iwu village.

(2) An order of this Honourable Court demarcating the boundary of the plaintiffs as traditionally demarcated as from Abebe River crossing Ekiadolor Town down to Rest House down to Benin Lagos Express Road, to Iwu village.

(3) ₦600,000.00 (SIX HUNDRED THOUSAND NAIRA ONLY) being damages caused by the acts of the defendants in trespassing (sic) the plaintiffsô parcel of land.

(4) Perpetual injunction restraining the defendants, their assigns, agents or privies from trespassing into the plaintiffsô parcel of land.ò

Following a ruling sometime in 2002 by this Court, the case was transferred to Ovia South West Area Customary Court, Iguobazuwa for hearing and determination.

The respondentsô case at the trial court was that their community, Iwu, does not share a common boundary with the appellantôs community, Ekiadolor, but rather shares common boundary with three communities namely Iyowa, Ovbiogie and Iguedaiken. The boundary between the communities is demarcated by a moat. The land in dispute measures about 500ft by 600ft and is situate where Iwu shares boundary with Iyowa and Iguedaiken villages.

Oba Adolor established a market on Iyowa land and invited all the neighbouring communities to patronize it. The persons who patronized the market later applied for and were allocated land to settle on by neighbouring villages such as Iwu and Ovbiogie. The settlers who make up the present day Ekiadolor farmed on land belonging to the respondentsô community and paid tribute to them. Later on, the appellantôs community encroached on the respondentsô community land by selling same. The matter was reported to the Oba of Benin by the appellant's community and the palace ruled in favour of the respondents. The appellantôs community continued the acts of trespass, hence this action.

The appellantôs communityôs case, on the other hand, was that the village Iguiko, now Ekiadolor, was founded by Princess Ogunizide who was known as

Aihe Evbonovbiko. Adolor, son of Oba Osemwende as the Edaiken, came to the shrine at Iguiko and made a pledge that if he became the Oba he would build a market there in appreciation. When he indeed ascended the throne as Oba, he built a market which he named after himself as Ekiadolor. Iguiko, now Ekiadolor, shares common boundary with the respondentsô community to the west, Iguedaiken to the north, Ovbiogie village to the south, and Iyowa as well as Iguekhimwin to the east.

In June 1994, the respondentsô community trespassed onto the land in dispute. The matter was reported at the palace of the Oba of Benin. As a result of the death of Prince Ekpen Akenzua, one of the two persons mandated by the Oba to mediate in the dispute, the matter was left unresolved. The appellant sold a part of the disputed land to one Elizabeth. The farms on the land in dispute belong to the appellant.

The trial court reviewed the evidence adduced by the parties. In a considered judgment, found in favour of the respondents and awarded the sum of ₦300,000.00 (Three hundred thousand naira) as damages against the appellantôs community for acts of trespass onto the respondentsô land.

Dissatisfied with the decision of the trial court, the appellant filed a Notice of Appeal with eight grounds of appeal. The grounds of appeal without their particulars are as follows:

ñ1) The President and Members of the Area Customary Court erred in

customary law in awarding ₦300,000.00 to the respondents for trespass when they did not prove exclusive possession to the land as required of them by the law thereby occasioning a very serious miscarriage of justice.

2. The President and Members of the Area Customary Court erred in customary law in awarding relief 1 to the defendants when the testimonies of P.Ws.1 ï 4 out of the six witnesses for the respondents in respect thereof and relied upon by the trial court was before another panel headed by Akhimien Esq. without complying with the conditions laid down in S. 34(1) of the Evidence Act thereby occasioning a very serious miscarriage of justice.

3. The President and Members of the Area Customary Court erred in customary law in granting relief 1 to the respondents when they have not proved same.

4. The President and Members of the Area Customary Court erred in customary law in awarding ₦300,000.00 for trespass when no evidence of its assessment was led before the court.

5. The President and Members of the Area Customary Court erred in customary law in placing the onus of proof on the appellants and granting the respondentsô claims when he had no counterclaim

before the court thereby occasioning a very serious miscarriage of justice.

6. The President and Members of the Area Customary Court erred in customary law in awarding to the respondents relief they never claimed before the court.

7. The President and Members of the Area Customary Court erred in customary law in granting title to the land in dispute to the respondents.

8. Judgment is against the weight of evidence.ò

Counsel for the parties filed their respective briefs in consonance with the rules of this Court.

The three issues formulated by the appellantôs counsel, M. O. Ukhuarobo Esq. are as follows:

ñ1. Whether the court below was right in awarding ₦300,000.00 (three hundred thousand naira) only to the respondents for trespass when they did not prove exclusive possession to the land and there was no evidence of its assessment before the court (Grounds 1 and 4)

2. Whether evidence given in a previous judicial proceeding is admissible in a case in which the conditions prescribed by Section 34 of the Evidence Act do not exist (Ground 2)

3. Whether the court below was right in placing the onus of proof on the appellant and granting title to the land in dispute to the respondents when they have not proved same (Grounds 3, 5,and 7).ò

The respondentsô counsel, U. Okungbowa Esq. did not formulate issues for determination but merely canvassed arguments in response to the issues as formulated by the appellantsô counsel. The issues as formulated by the appellant's counsel are deemed to have been tacitly accepted by the respondentsô counsel.

We have carefully considered the three issues formulated by the appellant's counsel. We observe that grounds 6 and 8 of the grounds of appeal are not covered by any issue. Those two grounds are therefore deemed to have been abandoned and are accordingly struck out.

On our part, we adopt the issues formulated by the appellantôs counsel with some slight modifications as follows:

1. Whether the court below was right in awarding ₦300,000.00 (three hundred thousand naira) only to the respondents for trespass when they did not prove exclusive possession to the land and when there was no evidence of its assessment before the court. (Grounds 1 & 4)
2. Whether the conditions precedent for the admissibility of a previous judicial proceeding under section 34 of the Evidence Act were met

in this case. (Ground 2)

3. Whether the court below was right in placing the onus of proof on the appellant and granting title to the land in dispute to the respondents when they have not proved same (Grounds 3, 5 and 7)

In our view, issue two raises a fundamental issue of law. It will therefore be considered first.

Arguing Issue two, learned counsel for the appellant submitted that the provisions of section 34 of the Evidence Act are stringent and exclusionary. He cited in support, the cases of Bayo v. Ahemba (1999) 7 KLR (part 88) 2249 at 2270 and Shanu v. Afribank PLC (2002) 17 NWLR (part 795) 185 at 222 paras. F ï H, 242 paras. a ï c rr. 6 & 9.

He contended that section 34 is a statutory exception to the rule against hearsay evidence as it makes evidence given in a previous proceeding relevant and admissible, even though the direct evidence of the parties was not heard by the court now determining the matter.

He added that this section is designed as a safeguard so that a court would not readily admit in evidence the testimony of a person who did not testify before it, except some conditions as spelt out under that section are fulfilled. He further submitted that to do otherwise would put the court at a disadvantage, as it would be difficult for it to assess the credibility of the witnesses.

Counsel referred to page 27, lines 7 ï 9 of the Record and contended that the P.W.1 and P.W.4 who testified before another court and whose evidence was admitted as Exhibit óAô were present when the matter started ***de novo*** before the trial court. He maintained that the P.W.4 was in court on the 9th of May, 2005 for further cross-examination before the new panel, and the trial court rather than take P.W.4ôs evidence afresh, commenced its proceedings with the cross-examination of this witness.

Counsel submitted that failure to comply with the conditions stipulated in section 34 of the Evidence Act made the evidence obtained inadmissible regardless of whether or not the parties consented to it.

He further submitted that where inadmissible evidence is wrongly admitted, it must be expunged from the record, because such evidence goes to no issue and the court cannot act on it. He cited the cases of Hasidu v. Goje (2005) 15 NWLR (part 843) 352 and Inyang v. Essiet (1990) 5 NWLR (part 149) 178.

Counsel cited the cases of Eghobamien v. F.M.B.N (2000) 17 NWLR (Part 797) at p. 488 at pages 500 ï 50; Menakaya v. Menakaya (2001) 16 NWLR (part 738) 203 at 252 paras D ï F, 236 paras B ï C rr. 5 and 6; Abdul v. Bensu (2006) 16 NWLR (part 846) 59 at page 76 paras C ï H; 81 ï 82 paras C ï D, 87 paras A ï F; rr 5 and 6 and submitted that it was immaterial that the appellantôs counsel did not object when the respondents sought to tender the said Exhibit

óAô, the record of the previous proceeding. He argued that courts have no discretion to act on evidence made inadmissible by the express provision of a statute even with the consent of the parties.

In the appellantôs reply brief dated 23rd February 2009, learned counsel for the appellant submitted that while he concedes that customary courts are not bound by the strict provisions of the Evidence Act, however where the court relies on the provision of the Evidence Act to do an act, it is bound to observe its provision.

Finally he urged this Court to hold that Exhibit óAô is inadmissible and expunge same from the records.

In his reply on issue two, learned counsel for the respondents submitted that the respondents complied with the provisions of section 34(1) of the Evidence Act by tendering a certified true copy of the previous record of proceedings before the panel hearing the case ***de novo***. He cited in support the case of Alabi v. Oloya (2006) 6 NWLR (Part 708) 37 ratio 6.

He contended that section 34(1) of the Evidence Act is expressly disjunctive and not cumulative and the mere fact that P.W.1 was also brought to court shows his strong personal attachment to the case and did not show his ability to give fresh evidence on grounds of age and ill health.

He argued that the appellantôs counsel neither objected to the admissibility of Exhibit óAô nor did he join issues with the respondents at the

trial court as to why the P.W.1 and P.W.4 were not called to testify afresh at the trial court. He submitted that the appellant raised this issue for the first time in their affidavit in support of their application for conditional stay of execution of judgment. He contended that the appellant cannot be allowed to do so at that stage as any issues joined at that stage would not go to the substance of the case as the trial court had become ***functus officio*** and to hold otherwise, would amount to technical justice more so when the respondents would not have been given a fair opportunity to join issues on P.W.1 and P.W.4 testifying afresh.

Counsel referred to the rules of this Court and submitted that issues not canvassed at the lower court cannot be raised at the appellate court except with leave of Court.

Furthermore, he submitted that the trial court rightly applied section 34(1) of the Evidence Act in admitting Exhibit óAô because the appellant had opportunity to cross-examine the respondents, the parties and issues are the same as in the previous proceedings. He added that the trial courtôs reliance on Exhibit óAô did not occasion a miscarriage of justice. He cited the case of Adawon v. Asogba (2008) All FWLR (Part 420) 742 at 745 ratio 5.

He submitted that the case of Eghobamien v. F.M.B.N (supra) cited by learned counsel for the appellant is distinguishable from the instant appeal. Counsel contended that in Eghobamienôs case (supra), counsel consented to the admission of the previous record of proceedings and the said certified true copy

of the record was not formally tendered before the new judge who started the case ***de novo***. Counsel stated that this was not what happened in the present appeal. He argued that once the certified true copy had been tendered as was done by the respondents herein, the trial court could admit it in evidence, if it is satisfied that it is relevant to the proceedings.

Counsel submitted that the appellant cannot be allowed to approbate and reprobate as they also relied on the testimony of P.W.1 and P.W.4 in buttressing their arguments on issue 3. He contended that where admission of inadmissible evidence is based on the satisfaction of certain conditions and the party seeking the admission meets the condition or the other party does not object to its admission, he will not be heard to argue that the evidence ought not to have been admitted. He cited in support the case of Eweka v. Rawson (2001) 10 NWLR (Part 722) 723

He submitted further that where a statute creates no exception or where the exceptions are not satisfied, it may become mandatory not to admit inadmissible evidence. He argued that the appeal under consideration is distinguishable from the cases of Menakaya v. Menakaya (2001) 16 NWLR (Part 738) 203 at 252 and Abdul v. Bensu (2005) 16 NWLR (Part 845) 59 cited by the appellantôs counsel. Continuing, he submitted that where the opposing party does not object to the admission of the statutorily inadmissible evidence, he cannot be heard to raise its inadmissibility on appeal. He relied on the case

of Ibori v. Agbi (2004) 6 NWLR (part 868) 78 SC and the case of Eweka v. Rawson (supra) ratio 4.

We have carefully considered the submissions of both counsel under this issue. The main thrust of learned counsel for the appellantôs argument under this issue is that the document, Exhibit óAô, which is a previous proceeding should not have been admitted as it did not comply with provisions of S. 34 of the Evidence Act.

It should be noted that in Edo State, the Evidence Act is applicable by virtue of a Legal Notice dated the 25th day of October, 2001.

It is settled law that before evidence given in a previous proceeding can be admitted in evidence, the conditions set out in section 34(1) of the Evidence Act must be complied with. For ease of reference, Section 34 (1) of the Evidence Act provides as follows:

> ñEvidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead, or cannot be found, or is incapable of giving evidence or is kept out of the way by the adverse party, or when his presence cannot be obtained without an amount of delay or expense, which, in the circumstances of the case, the court considers unreasonable provided:-

(a) that the proceeding was between the same parties or their representatives in interest;

(b) that the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) that the question in issue were substantially the same in the first as in the second proceeding.ò

In other words, before evidence of a witness given in judicial proceedings can be deemed relevant in a subsequent proceeding, it must have been given on oath and it will not be admissible where the witness is alive and present in court. See the case of Shanu v. Afribank Nig.) PLC (supra) at pages 236 ï 237 paras. H & A.

Learned counsel for the appellant had argued that when the matter started ***de novo*** before the trial court, P.W.1 and P.W.4 whose evidence form part of Exhibit óAô were present in court, yet the trial court went ahead and commenced its proceeding with the cross examination of the P.W.4.

On the other hand, learned counsel for the respondents submitted that the fact that P.W.1 was in court did not indicate his ability to give evidence afresh on grounds of age and ill health. Counsel further argued that since counsel did not object to the admissibility of Exhibit óAô he cannot now be heard to raise the matter on appeal.

A close examination of the record of appeal shows that P.W.1, Peter

Omoigui, was the plaintiff at the trial court, and the first respondent in this appeal. He testified on the 2nd of May, 2004. On the 9th of March, 2005 when the matter came up before a new panel, the record showed that all the parties were present including the P.W.1 who was the 1st plaintiff. The trial court took the cross-examination of P.W.4, Johnson Omozusi (J.P). The evidence of P.W.1 and the examination in chief of the P.W.4 which formed part of Exhibit óAô were admitted in evidence even though they were present in court.

It must be stated here that the position of the law is that compliance with the provisions of Section 34(1) is mandatory as the fact that counsel for the respondents did not object to its admissibility is irrelevant. A mandatory statutory provision cannot be waived. Compliance with the statutory requirement is mandatory in order to make such evidence in a previous proceeding legally admissible. See the following cases:

1. Shanu v. Afribank (Nig.) PLC (supra) ratio 6.
2. Eghobamien v. F.M.B.N (2002) (supra) ratio 1
3. Nahman v. Odutola (1953) 14 WACA 381

Furthermore, the onus of proof that any of the conditions stipulated in section 34(1) of the Evidence Act has been satisfied rests on the party who wishes to tender the evidence of such a witness. In this case, the respondents failed to prove or name those witnesses who were dead or could not be present in court to give evidence afresh.

Assuming that the evidence given by respondentsô witnesses in Exhibit óAô satisfied the conditions set out in section 34(1) which was not the case, why did the trial court not take the evidence of the P.W.1 and P.W.4 afresh when they were present in court. This was most inappropriate. See the case of Obawale v. Williams (1996) 10 NWLR (Part 477) 146. Uwaifo, JSC aptly puts it in Shanu v. Afribank (Nig.) PLC supra at pages 223 ï 224 as follows:

> ñI do not understand the purpose of section 34(1) of the Evidence Act to be the permit of a package of the evidence given by all the witnesses or a good number in a previous proceeding on obviously contentious issues and of conflicting nature of evidence to be placed before another Judge for a resolution and judgment. Section 34(1) is not to be used to avoid hearing ***de novo***. It is, in my view to fill in an unfortunate or unavoidable absence of a witness or two, as the case may be, who had earlier given evidence and were cross-examined, so that such evidence may be made available to complement other evidence that may be recorded in a later proceeding. It would be improper to put the integrity of a proper hearing of a case by a trial Judge in doubt by flooding it with evidence of witnesses in an earlier proceeding which would place the Judge in a disadvantage as to who and what to believe because of the nature of the evidence taken by another Judge ***viva voce***.ò

In this appeal, none of the conditions spelt out in S. 34(1) of the

Evidence Act was shown to apply to P.W.1 and P.W.4 who were in court when the matter started ***de novo*** as well as the other witnesses who testified in Exhibit óAô.

Counsel for the appellant has urged this Court to expunge Exhibit óAô from the Record for failure to comply with the provisions of Section 34(1) of the Evidence Act. We do not agree with counsel that this is the proper thing to do in the circumstance. A total of six witnesses testified for the respondents at the trial court. The first four witnesses did not testify fully before the new panel. If Exhibit óAô is expunged from the Record, material evidence would have been expunged and the evidence of the P.W.5 and P.W.6 alone may not sustain the respondentsô case.

In our considered view, the admission of Exhibit óAô in evidence by the trial court is a fundamental error which vitiates the proceedings. See the following cases:

1. Eghobamien v. F.M.B.N. (supra)
2. Shanu & anor v. Afribank Nigeria PLC (supra)

We therefore hold that Exhibit óAô was wrongfully admitted in evidence because it failed to meet the conditions precedent for the admissibility of a judicial proceeding under section 34(1) of the Evidence Act.

It is appropriate at this stage to make a brief remark about learned counsel for the respondentsô submission that Eghobamien v. F.M.B.N (supra) is

distinguishable from this present appeal in that in Eghobamienôs case, a certified true copy of the previous record of proceeding was not formally tendered in evidence before the court when it started ***de novo***. We have read Eghobamien v. F.M.B.N. (supra) and we are unable to see how counsel came to that conclusion. In Eghobamienôs case when the case started ***de novo*** before the new panel, both parties through their respective counsel gave their consent that a certified record of proceedings before the previous judge be admitted in evidence and should be relied upon by the new Judge in determining the case. That appeal was contested on ground of non compliance with section 34(1) of the Evidence Act and not on the basis of whether it was formally tendered or not.

It was also the argument of learned counsel for the respondents that the appellant did not seek leave of this Court before raising for the first time the issue of the admissibility of Exhibit óAô.

We have perused the Record and we note that learned counsel for the appellant raised it in his address before the trial court and the court in its judgment pronounced on it. We do not therefore agree with learned counsel that the issue was raised for the first time before this Court.

In the light of what we have said above, Issue two is answered in the negative.

Having held that Exhibit óAô was wrongfully admitted, and the trial vitiated, it becomes unnecessary to consider the other two issues as to do so

would be an exercise in futility and courts are known not to indulge in such exercise. This appeal succeeds. Accordingly, it is hereby ordered that Suit No. OSWACCI/IT/2003 be remitted to Oredo Area Customary Court 2, Benin City for hearing and determination ***de novo***.

We make no order as to costs.

APPEAL NO. CCA/6A/2008

This is an appeal against the ruling of the Ovia South West Area Customary Court, Iguobazuwa delivered on the 15th day of November, 2007 in favour of the respondents (as plaintiffs/applicants) in a committal proceedings brought against the appellant (as defendant/respondent). This appeal is a fall out from the judgment in the substantive case.

The trial court on the 26th day of October, 2006 gave judgment in the substantive suit in favour of the respondents. The appellant filed a motion on notice dated 18th day of December 2006 for an order for stay of execution which was granted with a condition that the appellant deposit the sum of ₦300,000.00 (three hundred thousand naira) in an interest yielding account in Zenith Bank in the name of the Registrar of the court. Thereafter, the respondents commenced committal proceedings against the appellant in the trial court on the 17th day of July, 2007 by filing a Motion on Notice. The appellant was alleged to be selling part of the land over which judgment had been delivered in favour of the respondents. The appellant filed a counter affidavit.

Both counsel made copious submissions and the trial court in a considered ruling delivered on the 15th day of November, 2007 found the appellant liable for contempt and made the following orders:

ñ1. That the respondent pays a fine of ₦25,000.00 to purge him for contempt of this court within 7 days and if such fine is not paid he will be committed to prison until payment is made.

2. That the respondent should publish in any news media of his choice an advert to warn trespassers/land speculators against entering the res until the determination of the appeal as regards its status.ò

Dissatisfied with this ruling, the appellant filed a Notice of appeal containing three grounds of appeal. The grounds of appeal without their particulars are as follows:

ñ(i) The President and members of the Area Customary Court erred in customary law in adjudging the appellant to pay ₦25,000.00 into court within 7 days (seven days) in the ruling on the committal proceedings by the respondents, which order was made without jurisdiction.

(ii) The President and members of the Area Customary Court erred in customary law in directing appellant to make a publication in a newspaper to the effect that the land in dispute is not for sale,

which order was made without jurisdiction.

(iii) Ruling is against the weight of evidence.ò

Briefs of arguments were filed in consonance with the rules of this Court. The appellantôs counsel, in the amended appellant brief dated 15th April, 2009 formulated three issues for determination as follows:

ñi. Whether the trial court had jurisdiction to hear the committal action against the appellant without prior issuance of forms 48 and 49 in line with Order 9 rule 13 Judgment (Enforcement) rule CAP 151 Laws of Bendel State 1976 applicable to Edo State.

ii. Whether the trial court has a discretion to order punishment for contempt beyond the limits set out in the Rules of Court.

iii. Whether in the absence of any evidence of violation of an Order of Court after the order was made only a party can be committed for contempt.ò

The respondentsô counsel on his part, formulated a single issue from the grounds of appeal as follows:

ñWhether or not the orders (that is order to pay ₦25,000.00 (Twenty five thousand naira) within 7 days and order to publish in any news media an advert to warn trespassers/land speculators) made by the lower court in the committal proceedings against the appellant were made without jurisdiction (distilled from Grounds 1 & 2.)ò

Both counsel proffered arguments in line with the issues as formulated by them. However, we do not see the wisdom in setting out their respective submissions as will be shown shortly.

In resolving this appeal on the committal order, it is necessary to restate that the order of retrial made in respect of the substantive appeal by this Court was based on the irregularity of the procedure adopted by the trial court when it admitted in evidence a previous proceeding without compliance with the express provisions of section 34(1) of the Evidence Act. We found that the procedure adopted by the trial court was so grave and fundamental that it amounted to or led to a miscarriage of justice which vitiated its proceedings and judgment.

It is trite law, that any proceeding taken or which has its root from the substantive matter including the committal for contempt becomes of no effect as the legal maxim ***ex nihilo nihil fit***, that is one cannot put something on nothing. See the case of Ayisa v. Akanji (1995) 7 N.W.L.R. (part 406) 129 at 131 r. 2.

The proceedings including the judgment in the substantive case has therefore been taken as if the entire proceedings never took place. Therefore, the contempt proceedings and committal for contempt, which is closely tied with it, is also held not to have taken place.

This appeal succeeds. Consequently, the trial courtôs order of committal

for contempt is of no effect. It is accordingly set aside.

We make no order as to costs.

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HON. JUSTICE. M. N. ASEMOTA

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HON. JUSTICE T. U. OBOH

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HON. JUSTICE P.A. AKHIHIERO

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