



Research Paper

An Appraisal of the Best Approach in Framing Issues for Determination in a Final Written Address in the Nigerian Superior Courts

Victor Nonso Enebeli, Ph. D*
David Chibuike Njoku, Esq**

Abstract

The framing of issues for determination in final written addresses in a general manner, such as: “whether the Plaintiff is entitled to Judgment or to the grant of the claims as sought”; without regards to the material fact in issue in the suit is a misconception of what issue for determinate actually means. Unfortunately, many senior Legal Practitioners and even Judges (with due respect) are guilty of this and it is becoming the norm in legal practice as the juniors are imbibing this bad practice. This trend must be discouraged. It may be pardonable to frame issues in that manner for written addresses in support of simple applications but not for final written addresses. If issues for determination cannot be framed in such a general manner for appellate brief, such as: “Whether the appeal is entitled to succeed or not”, then doing so in final written address is a wrong practice that must not be encouraged. This article therefore gives an insight with examples on the best approach to adopt in the framing of issues for determination in written addresses of both final and contentious applications. The article concludes that this bad practice is due to inexperience of some counsel and can also be due to a deliberate act by some experienced counsel who has a bad case on the facts. Thus, issues are deliberately framed in that manner in order to becloud the mind of a less experienced trial Judge from the main fact in issue since same is unfavorable to their case. The article recommends that trial Judges should be very wary of adopting such issues as badly framed for the purpose of the resolution of the material facts in issue between the parties and entering judgment one way or the other.

Keywords: Address, Appraisal, Framing, Final, Nigerian.

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I. Introduction

Final written addresses of counsel form part of the case and failure to hear the address of one party may vitiate the trial because in many cases, it is after the addresses that one finds the law on the issues sought, not in favour of the evidence adduced. It is not in doubt that addresses form part of the trial of a case because of the importance it assumes. It is at this stage that the issues canvassed are enumerated and the relevant law governing the issues is adverted to.¹ It is the law that counsel’s address is an integral and important part of a judicial proceedings and their absence can or is capable of vitiating the whole trial.²

As important as this subject is, it is unfortunate that there is no standard text that addresses this issue for the benefit of both the law school students who are aspirants to the Legal Profession or even for the benefit of Legal Practitioners to serve as a guide. This is unlike the subject of appellate brief of argument. The standard

* **Victor Nonso Enebeli**, Esq. LLB(Hons)(London Met), LLM & PhD(Coventry), B.L.,(Abuja), MC Arb (UK), Lecturer, Faculty of Law, Rivers State University, Port Harcourt, Rivers State. Email Address: victor.enebeli@yahoo.co.uk. Phone No: 09020176657

****David Chibuike Njoku**, Esq. LL.M (RSU) in view; BL (Abuja); LL.B (UK); Dip-in-Law (UK). ACI Arb (UK), Senior Associate Tuduru Ede, SAN & Co. Port Harcourt, Rivers State, Nigeria. Email address: david.chibuike22@yahoo.com Tel: 08065357894

¹See Per Katsina-Alu, JCA (as he then was) in Ugorji v. Onwuka (1994) 4 NWLR (Pt. 337) 226 at 239.

² See Ndu vs. State (1990) 7 NWLR (Pt. 164) 550 at 560.

Civil Litigation/Procedure text in Nigeria only discusses the order of filing of final written addresses by parties with limited attention on the content the final address. This is perhaps the reason for the new trend of framing issues for determination in addresses in a general manner without regards to the material fact in issue between the parties.

The issue for determination in a final written address or in an application before the Court should not be whether the party is entitled to Judgment or entitled to the grant of the reliefs as sought in the application. The issues for determination should be framed based on the material fact in issue between the parties in the suit. It is the Court's resolution of those material facts in issue one way or the other that determines whether a party will be entitled to Judgment or the grant of the application.

II. The Importance of Counsel's Address

The written address of Counsel is the only forum where the law is brought in to interpret the facts before the court and also to edify them in lucid and persuasive style of advocacy.³ The address of counsel is very important as same is designed to assist the Court. A very good address by counsel may make a good impression on the Judge as the Judge does not always know it all. It helps to direct the attention of the Court to the weakness or absence of quality in the opponent's case. It is an invitation to the Court to see the strength in the case of the party delivering the address as it helps the Court to focus its attention on the relevant principles of law involved in the matter.⁴ This notwithstanding, an address by counsel can neither be a substitute for pleadings nor make up for lack of evidence as cases are decided on credible evidence of pleaded facts.

This is perhaps the reason why the right to address the court by counsel is recognized as a constitutional right embedded under the fair hearing principle. Parties generally have a constitutional right to address the Court through their counsel but counsel has no legal duty in the sense of compulsion address the Court on every legal issue raised therein. This is an area where counsel has a wide and unfettered discretion as counsel may decide to either address or not address the Court on a particular issue. Counsel is said to be the master of his/her case and the Court cannot in any way question that discretion.⁵ The discretion not to address the Court is a risk that counsel must be very careful to exercise. This is because of the settled position of law that where a party to a suit fails or neglects to counter an argument or issue validly raised in a brief or final address of the other party, the argument or issue not so contested is deemed conceded by the defaulting party.⁶ What is important is that every counsel must be given the opportunity of presenting his address, and the Court's duty of adopting or pronouncing on every point or issue raised in the address cannot be over-emphasized.

The trial Judge also has the discretion to invite counsel for further address in a genuine effort at elucidation of obscure issues in the determination of the matter before the Court.⁷ This will usually involve issues not already covered in earlier addresses; although it may be allowed despite being covered by earlier addresses if such issues are still obscure and present difficulties to the Judge.⁸ This in recognition of the fact that issues which are clear to one person on first impression might not be so obvious to another. Much will therefore depend upon the Judge's comprehension of the arguments and his intellectual appreciation of the issues.⁹

III. The Issue for Determination in a Suit

To understand what an issue for determination is, we need to first understand what an issue is. The Supreme Court in *Eke vs. Okwaranyia*,¹⁰ has this to say:

*"I have no doubt that the Court below misconceived the purport, of 'an issue' and 'joinder of issues'. This is manifest in the contradictory posture of that Court. An 'issue' is a disputed point or question to which parties to an action have narrowed their several allegations and upon which they desire to obtain a decision of the Court. The issue may be that of law or fact. In one breath the Court below said that there was 'joinder of issues' and in another, it said that the defendants had evasive denial of the material issues. A 'joinder of issue' operates as a denial of every material allegation of fact in the statement of claim or in the preceding pleading which is not expressly admitted."*¹¹

³ See Per Tobi, JCA (as he then was) in *R.E.A.N. Ltd v. Aswani Textiles Ind.* (1991) 2 NWLR (Pt. 176) 639 at 672.

⁴ Per Oguntade, JCA (as he then was) in *Madagali L.G. v. N.P.C.* (1998) 11 NWLR (Pt. 572) 66 at 74.

⁵ *R.E.A.N. Ltd. v. Aswami Textiles Ind.* (supra)

⁶ *Nwankwo v. Yar'adua* (2010) 12 NWLR (Pt. 1209) 518 SC at 556 para C.

⁷ *Awoyale v. Ogunbiyi* (No. 1) (1985) 2 NWLR (Pt. 10) 861 SC at 872

⁸ Per Karibi Whyte, JSC in *Utih v. Onoyivwe* (1991) 1 NWLR (Pt. 166) 166 SC at 227

⁹ *Ibid.*

¹⁰ (2001) 12 NWLR (Pt. 726) 181

¹¹ *Ibid.*, at page 213-214

It is usually the fact in issue the law in issue that forms the issue for determination in a final written address. To properly understand this concept, one needs to understand the rules of brief writing in an appellate brief of argument. Under the rules of brief writing, the purpose of formulating questions/issues for determination is to enable parties to an appeal to narrow the issues contained in the grounds of appeal in the interest of accuracy, clarity and brevity.¹² Thus the issue for determination must be weighty and compelling. The issues as formulated by both appellant and respondent must be based on the grounds of appeal filed by the appellant. The grounds of appeal are the complaints raised by the appellant against the judgment.

It is against the rule of appellate practice to formulate issues for determination in a general or broad manner, such as: *“Whether or not the appeal is entitled to succeed.”* The Supreme Court in the case of *Aja vs. Okoro*¹³ gave insight on why issues should not be formulated in such a manner when it held thus:

“The only issue for determination as identified in the respondent’s brief reads:

‘Whether or not the Court of Appeal was right in confirming the judgment of the trial court having regard to the evidence before him and the findings of fact made by him’.

This issue as formulated to my mind is the broad issue which arises invariably in every appeal and has no specific relevance to the peculiar issues in this appeal. The issues for determination in any appeal must have a direct bearing on the grounds of appeal. They are to project succinctly and clearly the substance of the complaints contained in the grounds of appeal requiring resolution. There is no doubt that a number of grounds of appeal may raise a single issue but it is over simplification of the issues in an appeal to say that the issue is ‘whether or not the trial court or Court of Appeal was right in its judgment having regard to the evidence and the findings of fact made.’”¹⁴

The above issue for determination as framed in the brief of argument is similar to framing issue for determination in a final written address before the trial Court thus: *“Whether the plaintiff is entitled to the grant of the reliefs sought before this Court.”*

The issue for determination which the Court will resolve in its judgment is fixed in the pleadings. The formulation of issues for determination must have recourse to the issues joined in the pleadings in order to know the life wire and the bone of contention between the parties. The Court will then consider the evidence led by each party in proof of such issues and come to a decision by resolving the issues from the evidence led.¹⁵

The Court of Appeal in *Hassan vs. Maiduguri Mgt. Committee*,¹⁶ held that for it is well established principle and practice of procedure that parties are bound by issues formulated by themselves in their pleadings and a Court is not entitled to consider a case not pleaded by the parties. Definitely, the issue being referred to here on the pleadings is not an issue of whether the plaintiff is entitled to his claim or not.

The issue for determination as formulated in a final written address must be based on pleaded facts which may become either the facts in dispute¹⁷ or admitted facts¹⁸ as the case may be with the evidence in support thereof. The Supreme Court in *Buraimoh vs. Bamgbose*¹⁹ gave insight on this when it held that:

“The mistake of the learned trial Judge was that he allowed the non-issue of the identity of the land in dispute and its connection with the land partitioned to AlhajaFalohun to becloud the main issue. That issue was whether the land in dispute was rightly purchased by the respondent through Johnson and AlhajaFalohun to Alago-Asalu Family, or by the appellant at a public auction through Chief Bada to the same family under authority of the power of attorney. Exh. F. Both parties were in no doubt about the identity of the land in dispute and raised no issue on their pleadings which justified the learned trial Judge’s insistence on expert evidence.”²⁰

¹² Carlen (Nig.) Ltd. v. Unijos (1994) 1 NWLR (Pt. 323) p. 631 SC

¹³ (1991) 7 NWLR (Pt. 203) 260

¹⁴ Ibid, Per Akpata, JSC at pages 272-273, paras H-A

¹⁵ N.B.C. v. Okwejinor (1998) 8 NWLR (Pt. 561) 295 at 306

¹⁶ (1991) 8 NWLR (Pt. 212) 738 at 749

¹⁷ Lewis & Peat (NRI) Ltd v. A.E. Akhimien (1976) SC 157 Per Idigbe, JSC; Edosomwan v. Ogbeyfun (1996) 4 NWLR (Pt. 442) 266 at 275.

¹⁸ British Indian General Insurance Co. Nig. Ltd. v. Tharwadan (1878) 3 SC; Sabru Motors Ltd v. Rajab Ent. Ltd (2002) 7 NWLR (Pt. 766) 243 at 270-271.

¹⁹ (1989) 3 NWLR (Pt. 109) 352

²⁰ Ibid, at p. 365 paras D-E

IV. The Relationship between Grounds of Appeal at the Appellate Court and Pleadings at the trial Court.

A ground of appeal is said to be the soul of an appeal. It is the reason why the decision being appealed against considered wrong by the aggrieved party.²¹ Issues for determination in an appellate brief are usually distilled from the grounds of appeal as same must be tied to a ground of appeal. And as stated above, the issues for determination are meant to project succinctly and clearly the substance of the complaints contained in the grounds of appeal requiring resolution.²²

Pleadings on the other hand are meant primarily to let parties know each other's case. The purpose of pleadings is to state, accurately, the issues for trial in order not to take the other party by surprise. Pleadings help the parties settle issues so as to save the Court's time, by agreeing on those facts not in contest and leaving the Court to decide the ones in contest based on received evidence.

The Supreme Court in *U.B.N. Ltd. vs. Nwaokolo*²³ pronounced on the similarity between a ground of appeal and pleading when it held that grounds of appeal are akin to pleadings and that tri court has a duty to consider the case of the parties as pleaded as failure to do so amounts to a failure of justice.²⁴

The Supreme Court in *Ejindu vs. Obi*²⁵ equally gave a clear picture of that relationship when it held that:

*"Curious enough, the issue of tribute never arose in the pleading at the trial Court and was not an issue before the Court of Appeal. Matters should be decided on the pleadings and whatever is unpleaded will go to no issue. Similarly grounds of appeal decide what issues are formulated for the Court of Appeal to decide, but where neither grounds of appeal nor issues for determination allude to a point, Court of Appeal must be wary of advertising to such issues much less decide the appeal heavily relying on them."*²⁶

Instructively, a written address is a form of legal writing with the same form, essentials and content as a brief. The same principles that apply in brief writing are also applicable in written addresses as they serve the same purpose, namely to save time usually spent in oral arguments. However, unlike briefs in the appellate Courts, issues are not formulated from any ground of appeal in the case of written address, but from the pleadings. It is the written address that enables a party to identify issues which are in controversy, the determination of which will decide the case one way or the other.²⁷

Finally, it must be stressed that the same way and manner that grounds of appeal regulate the issues for determination in an appellate brief is the same way that pleadings regulate the formulation of issues for determination in final written addresses.

V. Material Facts in Dispute in the Pleadings

The issue for determination in a final written address should be framed around vital questions of fact in the suit since it is the resolution of this issue one way or the other that determines whether the party will be entitled to judgment or not. There is an advantage in the formulation of issue in this manner as it gives the trial Judge the opportunity to make a finding of fact on the material or important issues of fact. This is because the failure of the trial Judge in this regard will lead to the intervention of the appellate Court.²⁸

It is essential to note that it is not every issue of fact raised on the pleadings or in affidavit that is material and thus requires resolution one way or the other by the trial Judge. An issue properly so-called, is that which if decided in favour of the plaintiff, will itself give a right to a relief and, if decided in favour of the defendant will itself be a defence.²⁹ In every litigation, there are a number of issues of facts that may arise, but unless they have bearing on the principal question for determination, they do not by themselves or together form 'an issue'.³⁰ If the issue was vital to the resolution of the dispute between the parties, and the trial Court failed to resolve same, an appellate court would be expected to either order a retrial or resolve the issue upon evidence available if the question of credibility of witnesses would n arise.

²¹ *Azaatse v. Zegeor* (1994) 5 NWLR (Pt. 342) 76

²² *Aja v. Okoro* (1991) 7 NWLR (Pt. 203) 260 at 272-273 Per Akpata, JSC

²³ (1995) 6 NWLR (Pt. 400) 127

²⁴ *Ibid*, Per Onu, JSC at page 150, para. A

²⁵ (1997) 1 NWLR (Pt. 483) 505

²⁶ *Ibid*, at page 520, paras A-B

²⁷ See Philip Nnaemeka-Agu on *Manual of Brief Writing in the Court of Appeal and the Supreme Court of Nigeria* as revised by Chief tom Anyafulude, pages 2-3

²⁸ *Okene v. Orianwo* (1998) 9 NWLR (Pt. 566) 408 at 442; *Onyema-Oke & Ors. v. Amos Eke & Ors.* (1982) 12 SC 218.

²⁹ *Lewis & Peat (N.R.I) v. Akhimien* (supra)

³⁰ *Danfulani v. Shekari* (1996) 2 NWLR (Pt. 433) 723 at 740; *Nimpa v. Pyendang* (1994) 7 NWLR (Pt. 356) 346 at 369

It is also not a good practice to frame issues for determination in abstract without regards to the fact in issue. The Supreme Court in ***Brawal Shipping vs. Onwadike Ltd.***,³¹ commented on this, when the apex Court held thus:

“Besides, it seems to me that those issues were framed in the abstract without being related to the facts and circumstances of this case. For instance, the second issue asks: ‘What is an ‘endorsement’ for the purposes of the said enactment (i.e. the Bill of Lading Act).’ While the sixth issue is:- ‘Does compliance with the rules of Court on demurrer particularly relating to a party’s locus standi amount to technicalities?’ These are abstract issues, the answers to which can only be general and will not necessarily lead to a definite resolution of the complaints against the decision in question. They are indeed of no use in regards to the appeal:....”

VI. The Order of Arrangement of the Issues as Formulated

Where there are several issues for determination, the order of their arrangement must be given proper attention. There are instances in which the resolution of one of the issues one way or the other may influence the resolution of another issue or may totally make the consideration of another issue irrelevant and unnecessary. In such instances, that issue that has the tendency of influencing other issues must come first in the order of arrangement. This practical example below presents a perfect picture.

a) *Whether from the Affidavit and Exhibits attached, the Applicant has been able to establish its interest to the property known as No. Awosika Avenue, Ikeja Industrial Estate, Ikeja, Lagos as to entitle the Applicant to be joined and be heard in respect of the Interim Order granted against the said property;*

b) *Whether the Plaintiff/Respondent was able to establish before the Court that the property listed in the Plaintiff/Respondent’s documents/Exhibits as “Ikeja Industrial Estate, Ikeja Lagos State” which was used as Legal Mortgage/Deed of Debenture to secure a loan can be said to be the same as the property known as No....Awosika avenue, Ikeja Industrial Estate, Ikeja, Lagos State; listed as No. (iv), relief A of the plaintiff/Respondent’s Motion Ex-parte; Motion on Notice and Originating Summons dated and filed 4th September, 2019; and*

c) *If the answer to the above relief is in the negative; whether the Applicant is entitled to the reliefs as sought in the Motion.*

6.1 Practical Examples of Formulation of Issues for Determination in Final Written Addresses

In considering this sub-issue, the writer will use three Judgments that the writer was personally involved in as practical examples on the subject.

In the case of ***Mr. Godson Agughasi vs. Jubaili Agrotech Limited***,³² the Defendant formulated the following issues for determination:

i. *Whether the Claimant has been able to establish that the terms of his contract of employment includes the payment of either 2% or 5% incentive/commission of the total volume of sales on a yearly basis in addition to his monthly salary and whether he has ever received such payment from the Defendant; and*

ii. *Whether the Claimant have been able to establish through credible evidence his assertion that he was verbally suspended by the Defendant throughout the period of his criminal trial at the Magistrate Court.*

The Claimant on the other hand submitted the following issues for determination:

- i. Whether the Claimant has been able to prove his entitlement to his reliefs; and
- ii. Whether the Claimant is not entitle (sic) to sales incentives as agreed by both parties.

The learned trial Judge in resolving the issues reformulated the issues thus:

“Having done all this, I narrow the issues for the just determination of this case as follows:-

1. *Whether the Claimant has led credible and cogent evidence to be entitled to all or some of the reliefs sought in this case.*
2. *Whether the Defendant is also entitled to all or some of the reliefs counter claimed.”*

³¹ (2000) 11 NWLR (Pt. 678) 387 at 404

³² Unreported Judgment of the National Industrial Court of Nigeria in Suit No. NICN/IB/22/2016 delivered on the 4th of July, 2019.

In another case of **Champion Navigation S. A. vs. Obat Oil and Petroleum Limited & 2 Ors.**,³³ the Defendant's counsel formulated seven issues for determination in the final address; to wit:

1. *Whether the Plaintiff's cause of action on negligence as constituted in the Plaintiff's pleadings discloses any reasonable cause of action against the 1st Defendant.*
2. *Whether the Plaintiff has been able to prove negligence either against the 1st Defendant or against the 2nd Defendant;*
3. *Whether the 1st Defendant can be liable to the Plaintiff for an alleged damage to the Plaintiff's vessel which took place outside the premises of the 1st Defendant in respect of the charter party contract between the Plaintiff's brokers and the 2nd Defendant.*
4. *Whether Exhibits P4(13) and P4(14) which is the basis of the Plaintiff's cause of action against the Defendants for contract of indemnity is of any probative value of which the Court can attach any weight having not been executed according to law.*
5. *Whether the Plaintiff has been able to prove its claim for special damages and pre-judgment interest.*
6. *Whether the 1st Defendant was coerced into signing the Letter of Indemnity dated 6th September, 2013 [Exhibits P4(13) & (14)] as a result of duress, compulsion and improper pressure from the Plaintiff and its agent and brokers.*
7. *Whether the 1st Defendant has been able to prove its Counter-claim of special damages and general damages.*

The 3rd Defendant's counsel formulated two issues for determination to wit:

1. *Whether the 3rd Defendant is a proper party to the suit? And*
2. *Whether the Plaintiff has proved her case to entitle her to the reliefs sought?*

The Claimant's counsel in response formulated two issues for determination; to wit:

1. *Whether or not the Plaintiff has from its pleadings and evidence adduced at trial, established its entitlement to the reliefs sought against the Defendants herein;*
2. *Whether or not the 1st Defendant is entitled to the reliefs sought in its Counter-claim against the Plaintiff.*

In resolving the above issues as formulated by the parties, the learned trial Judge at page 147 of the judgment out of a total of 156 pages, reformulated the issues to suit his convenience by holding thus:

"The issues for determination are as follows:

1. *Whether the Plaintiff is entitled to the reliefs sought in the light of the evidence presented before this Court;*
2. *Whether the 1st Defendant is entitled to the reliefs sought in its Counter Claim against the plaintiff."*

The learned trial Judge granted the claim of the plaintiff based on the resolution of issues six and seven as formulated above by the 1st Defendant's counsel without consideration of all the other issues as argued by the 1st Defendant's counsel. This was done against the settled position of the Supreme Court in **Okonji & Ors. vs. Njokanna & Ors.**,³⁴ wherein the apex Court commented on the consequences of failure to pronounced on the issues as formulated by the parties for determination and held thus:

*"It is the duty of a Court, whether of first instance or appellate to consider all the issues that have been joined by parties and raised before it for determination. If the court failed to do so, without a valid reason, then it has certainly failed in its duty, for in our judicial system, it is a fundamental principle of administration of justice that every court has a duty to hear, determine and resolved such questions."*³⁵

Comparing the manner of the formulation of the issues for determination as adopted by the learned Justices in the above two cases with the case of **Mohammed Zubair vs. Keystone Bank Limited**,³⁶ will show a big difference. In the **Mohammed Zubair's case**, the Defendant's counsel formulated two issues for determination in the final address and argued that some of the Exhibits of the Claimant be expunged from the record of the Court. The issues as formulated are:

³³ Unreported Judgment of the Federal High Court in Suit No. FHC/L/CS/109/14 delivered on the 30th day of April, 2020.

³⁴ (1991) 7 NWLR (Pt. 202) 131

³⁵ Ibid. Per Uwise Ag. CJN (as he then was) at p. 150 para. G;

³⁶ Unreported Judgment of the National Industrial Court of Nigeria in Suit No. NICN/IB/54/2016 delivered on the 19th of November, 2018.

1. *Whether the offer of employment by the Defendant to the Claimant vide Exhibit C2 amounts to transfer, retransfer, re-employment or redeployment of the Claimant's erstwhile services in Bank PHB to the Defendant and; therefore, binding in determining the relationship between the parties;*
2. *Whether from the totality of evidence proffered by the parties, the Claimant's resignation from the Defendant's services vide Exhibit C4 was involuntary and amounted to termination of employment through declaration of redundancy.*

The Claimant's counsel in response formulated three issues for determination; to wit:

1. *Whether the Claimant's date of joining the Defendant's employment is February, 2006 or August 5, 2011;*
2. *Whether the Claimant's employment was terminated by the Defendant through a forced/involuntary resignation;*
3. *Whether the circumstances surrounding the Claimant's exit from the Defendant's employment amount to redundancy as contemplated in the contract of employment and recognized globally.*

The learned trial Judge in resolving the above issues as formulated by the parties, reformulated the issues to suit her convenience by holding thus:

"I have carefully read through the facts of this case, the issues as framed and argued by counsel to the parties and their cited authorities; from all of this, I am of the considered view that the followings are issues to be resolved in this case:

1. *Whether or not the claimant's documents objected to by the defendant are to be discarded/discountenanced and struck out in this judgment;*
2. *Whether or not the defendant inherited the liability on the claimant's employment with Bank PHB so as to make his employment with the defendant be with effect from February 15, 2006 or the employment is with effect from August 5, 2011;*
3. *Whether or not the exit of the Claimant from the Defendant's employment was on ground of redundancy as contemplated in his contract of employment or his resignation was involuntary or forced and amounts to wrongful determination of his employment;*
4. *Whether or not the claimant is entitled to payment of gratuity from the terms and conditions of his employment.*

The above issues as framed by the parties and the Court will leave no one in doubt as to the facts in issue/dispute between the parties.

VII. Practical Examples of Formulation of Issues for Determination in Written Address in Support of Application.

In a simple application, which is not likely to be contentious, it may be pardonable to formulate issues for determination in a general and broad manner, such as: *"Whether or not the Applicant is entitled to the grant of its application."* However, this may not be so pardonable in contentious interlocutory applications or preliminary objections. The disadvantage of not properly formulating the issues of determination in the best manner is that, it intends to make the counsel lose track of the necessary facts in his written submissions.

Every application seeking a relief, be it for extension of time; leave to amend; for joinder of parties; for re-opening a party's case; to set aside arbitral award; for interlocutory injunction; for stay of execution or proceedings; for injunction pending appeal; for summary judgment; preliminary objection etc, is subject to the satisfaction of certain conditions before the Court can grant same. They are neither granted as a matter course nor refused at the whims and caprices of the Judge, notwithstanding the Judge's discretion in respect of same. The conditions for their grant are stipulated in the Rules of Court and also entrenched in the rules of practice and procedure of the Court which have evolved over time with the support of judicial precedents. The issue of whether a party has satisfied the conditions for the grant of any application is an issue of fact which can only be deciphered from the affidavits filed in support of the application. Thus, the issue for determination to be formulated in the written addresses in support of the application must have regards to those facts.

The following practical examples illustrate a better way of formulating issues for determination in written addresses in respect of any kind of application:

- **Extension of Time:** *Whether the Claimant/Applicant having proffered reasons for the late filing and having duly paid the default fee; has satisfied the requirement to be granted an extension of time;*
- **Leave to Amend:** *Whether the Claimant/Applicant is entitled to be granted leave to amend its reliefs as sought in the Amended Statement of Claim in light of the facts and reasons adduced in the supporting affidavit to this application;*

- **Joinder of Parties:** *Whether from the Affidavit and Exhibits attached, the Applicant has been able to establish its interest to the property known as as to entitle the Applicant to be joined and be heard in respect of the Interim Order granted against the said property;*
- **Leave to Re-Open Case:** *Whether having regards to the facts deposed to in the affidavit in support of this application, this Honourable Court ought to exercise its discretion in favour of the Claimant/Applicant by granting the Applicant leave to re-open its case in order to adduce further evidence through a new witness.*
- **Setting Aside Arbitral Award:** *Whether or not there are errors of law on the face of the Award to qualify the Award to be set aside?*

Whether or not the Applicant has established misconduct on the part of the Arbitrator to make the Award liable to be set aside?

- **Interlocutory Injunction:** *“Whether considering the equitable interest of the Claimant/Applicant under a Contract of Sale Agreement of the property in dispute; it is in the interest of justice to restrain the Defendants/Respondents from selling the property or taking any steps thereof, pending the hearing and the determination of the substantive suit.*
- **Stay of Execution:** *Whether or not the Applicant has disclosed sufficient reason for a favourable exercise of the discretion of this Honourable Court in staying the execution of the Judgment of this Court;*
- **Stay of Proceedings:** *Whether considering the circumstances of this suit, the interest of justice will be better served if the proceeding of this suit is stayed.*
- **Summary Judgment:** *Whether considering the facts and circumstances of this case, the Claimant/Applicant has satisfied the requirement of the Rules of this Court, to be entitled to a summary judgment in respect of his claim as contained in the originating Court process.*

The above issues as formulated will keep the Court and the parties on alert as to the facts that are material in the determination of whether the application should be refused or granted.

In the case of a Preliminary Objection, a perfect example is found in the dissenting Judgment³⁷ delivered by Muhammed J. Sirajo on the 17th day of August 2020 in the case of *Advanced Nigeria Democratic Party (ANDP) v. Independent National Electoral Commission (INEC) & 2 Ors.*,³⁸ particularly as it relates to the preliminary objections filed by the Respondents. In the Preliminary Objection filed by the 1st Respondent by way of Motion on Notice, the 1st Respondent prayed for the following orders:

The said application was predicated on several grounds namely:

- 1) *The sole ground of the petition as presently constituted is incompetent and in gross violation of section 285 (9) and (14) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) same having been filed outside 14 days from the decision of the 1st Respondent.*
- 2) *Paragraph 14i-viii of the Petition and in fact all the paragraphs of the Petition are predicated on pre-election matter and on incompetent ground of petition.*
- 3) *The Petitioners did not participate in the election hence lack the locus standi to challenge the election.*
- 4) *The result of the election as declared by the 1st Respondent is not contained in the petition.*
- 5) *The main reliefs sought in the Petition are incongruous, illogical and un-grantable and the alternative reliefs sought are not within the powers of this Honourable Tribunal and thus incompetent.*
- 6) *Also, by virtue of Section 285 (9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the complaint relying to the sole ground of the Petition being a pre-election matter cannot be ventilated later than 14 days from the date of the occurrence of the event.*
- 7) *The Petition cannot survive after the striking out the sole ground of the petition.*
- 8) *The reliefs sought by the Petitioners at paragraph 15 of the Petition are not grantable.*
- 9) *The Application herein essentially concerns the competence or jurisdiction of this Honourable Tribunal to hear the Petition.*
- 10) *The Petition is not properly constituted hence it is incompetent and is liable to be struck out.*
- 11) *this Honourable Tribunal has the power to hear and determine this Application before, outside or within the pre-hearing session.*
- 12) *It is in the interest of justice to grant this Application.*

The 1st Respondent/Applicant filed an Affidavit in support of the Motion while the Petitioner/Respondent filed a Counter Affidavit in opposition. The parties also filed their respective addresses through their counsel. The learned SAN for the 1st Respondent/Applicant in his address formulated a sole issue for determination in his written address, which was couched thus:

³⁷ A Judgment that have now been affirmed by the Court of Appeal in its Judgment of 2nd October, 2020.

³⁸ Unreported Judgment of the Bayelsa State Governorship Election Petition Tribunal, sitting at Abuja in Petition No: EPT/BY/GOV/03/2020.

“Whether the prayers of the applicant in the present application should not be granted considering the circumstances and contents of the petition vis-à-vis the mandatory provision of the Electoral Act, 2010 (as amended), the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and established judicial decisions.”

The counsel on behalf of the Petitioner/Respondent, in his address formulated three issues for determination, to wit:

- (a) Whether the instant petition is a post-election matter filed within the period allowed by law.*
- (b) Whether by law, the petition is competent despite the alleged non-inclusion of the results of the election and the purported non-participation of the Petitioner in the said election.*
- (c) Whether the instant application is competent in the absence of valid affidavit and if answered in the affirmative, whether paragraphs 7(b), (e), (f) and (g), 8, 9, 10, 11, 12, 13, 14, 15, 17 and 18 of the affidavit in support of same are offensive to section 115 of the Evidence Act, 2011 as to be struck out.”*

Taking a look at the above issues as formulated by the parties, it is obvious that the issues as formulated by the counsel for the Petitioner/Respondent are more elaborate and encompassing of the grounds of the objection than the sole issue formulated by the learned SAN for the 1st Respondent/Applicant. The issue as formulated by the learned SAN is general in nature which is not the best practice with due respect to the learned SAN. The danger in formulating issue for determination in that manner is that there is a risk or likelihood that the learned trial Judge in resolving the sole issue may miss some of the points (grounds of objection). This is not in the best interest of the 1st Respondent/Applicant who filed the objection in the first place. The failure of the learned trial Judge to resolve any of the grounds of the objection may become an issue at the appellate Court in a situation where the objection is dismissed.

The learned trial Judge (Muhammed I. Sirajo) in order to resolve the above issues as formulated by the parties adopted the three issues formulated on behalf of the Petitioner/Respondent by stating that. *“I hereby adopt the three issues formulated on behalf of the Petitioner. I shall treat the issues in the reverse order as the 3rd issue challenges the competence of the application itself.”* In a nutshell, the learned trial Judge resolved the issues in the order of 3, 2 and 1.

In another Preliminary Objection filed by the 3rd Respondent/Applicant by way of Motion on Notice, the Applicant prayed the Tribunal for an order striking out/dismissing the petition for want of jurisdiction, want of locus standi, being incompetent, frivolous, vexatious, and unsustainable and disclosing no reasonable cause of action, and the grounds for the objection were as follows:

- 1. The Petitioners lack the locus standi to institute and maintain this petition, not having participated in the election sought to be challenged.*
- 2. The petition is statute-barred having been filed outside the statutory time provided by the law.*
- 3. The sole ground of the petition is predicated on a pre-election dispute which this Honourable Tribunal lacks the jurisdiction to entertain, and same has also been caught up by the limitation period.*
- 4. The Petition is incompetent, fatally defective and a gross abuse of Court process as the Petitioners by the instant petition are inviting this Honourable Tribunal to sit on appeal over and review the decision of the Supreme Court in SC/01/2020 – PEOPLES DEMOCRATIC PARTY VS. BIOBARAKUMA DEGI-EREMIENYO & 3 ORS.*
- 5. The petition is frivolous, vexatious, scandalous, unsustainable and ought to be dismissed with punitive costs.”*

The 3rd Respondent/Applicant filed an Affidavit in support of the Motion while the Petitioner/Respondent filed a Counter Affidavit in opposition. The parties also filed their respective addresses through their counsel. The learned SAN for the 3rd Respondent/Applicant in his address formulated a lone issue for determination; to wit: *“Whether having regard to all the defects, incompetence, lack of locus standi, statute barred, want of jurisdiction, this petition is not liable to be struck out/dismissed.”*

The counsel for the Petitioner/Respondent formulated 4 issues for determination; to wit:

- a. Whether the instant petition is a post-election matter filed within the period allowed by law.*
- b. Whether by the circumstances of the case and the declaration of the result of the Governorship election on the 14/12/2020 by the 1st Respondent the Petitioners are stopped from filing and maintaining the instant petition.*
- c. Whether 1st Petitioner is a body corporate with capacity to institute and maintain the instant petition.*
- d. Whether the instant petition constitute a review of the judgment of the Supreme Court in SC/01/2020. Peoples Democratic Party vs. BiobarakumaDegi-Eremienyo& 3 others.”*

The learned trial Judge (Muhammed I. Sirajo) in order to resolve the above issues as formulated by the parties adopted the four issues formulated on behalf of the Petitioner/Respondent by stating that: *“I have already reproduced the issues formulated by learned counsel for the 3rd Respondent/Applicant. Even though proliferated, I shall adopt the issues formulated on behalf of the Petitioner/Respondent in resolving this application. Like I did earlier on, I shall start the determination of the issues from the rear, i.e. issue (d) or (4) as referred to by learned counsel for the Petitioner.”*

VIII. Conclusion

In the formulation of issues for determination in written addresses by counsel to the parties, there is always the temptation from one of the parties to formulate issues in a general and broad sense without regards to the issues of facts as joined in the pleadings. This may be due to inexperience of counsel or over exposure of counsel to such a wrong practice overtime and having not had the opportunity of the right pupilage. The danger is that, counsel may get the learned trial Judge confused and consequently, the trial Judge may not be able to appreciate or make sense of the case as presented and argued for the party. On the other hand, it may be deliberate by counsel. The party who is most likely to formulate issues in this manner deliberately is one who is uncomfortable with the facts in issue as joined in the pleadings and the evidence led on same. Thus, formulating issues in that manner is a tactical ploy, with the aim of beclouding the mind of the learned trial Judge from the main fact in issues since same is unfavourable. At times, such a party succeeds in taking the attention of the learned trial Judge from the main issues to irrelevant issues. This will definitely mislead and confuse the learned trial Judge into delving on matters which are inconsequential and the end result will be a miscarriage of justice.

Recommendation

Judges must and should at all times resist the temptation of adopting issues for determination framed in a broad and general manner. Judges must be vigilant and be on the alert to their duties and responsibilities by sieving the chaff from the grains when considering the issues of fact as joined by the parties in their pleadings. Judges could also help to guide counsel on how to properly formulate issues for determination. Judges could also reformulate the issues for determination but must ensure that same is covered by the arguments of the parties. And whenever Judges are confronted with the temptation of badly framed issues for determination, they must be very wary of adopting same for the resolution of the material facts in issues between the parties and entering judgment thereof by going the extra mile of reformulating the issues.