In the Supreme Court of Nigeria

On Friday, the 23rd day of March 2012

Before their Lordships

Walter Samuel Nkanu Onnoghen	.....	Justice Supreme Court
Ibrahim Tanko Muhammad	.....	Justice Supreme Court
Olufunlola Oyelola Adekeye	.....	Justice Supreme Court
Bode Rhodes-Vivour	.....	Justice Supreme Court
Mary Ukaego Perter-Odili	.....	Justice Supreme Court

SC.263/2005

Between

Fidelity Bank Plc	.....	Appellant

And

Chief Andrew Monye Presidential Task force on Trade Malpractices Attorney-General of the Federation	.....	Respondents

Judgment of the Court

Delivered by

Ibrahim Tanko Muhammad. JSC

In the Federal High Court, (trial court) Holden at Lagos, in the Lagos judicial Division, the 1st respondent, herein, as applicant, filed an Ex-parte motion, pursuant to Order 1 Rules 2(2) and 2(3) and Order 4 of the Fundamental Rights (Enforcement Procedure) Rules 1979 asking for the following reliefs:

i. An order granting leave to Chief Andrew Monye, the applicant to enforce his fundamental rights

ii. An order restraining the Presidential Task Force on Trade Malpractices and FSB International Bank Plc, from arresting, detaining, threatening with arrest, harassment and or arrest, and detention of the applicant pending the determination of the application to be filed pursuant to leave of the court.

The 1st respondent in compliance with the requirements of the Fundamental Rights (Enforcement Procedure) Rules 1979 also filed a statement wherein he sought for the following reliefs:

I. "Declaration that the arrest and false imprisonment of Chief Andrew Monye on 8th March, 1996 by the Presidential Task Force on Trade Malpractices at the instance of FSB International Bank Plc is illegal and unconstitutional and a breach of the applicant's liberty.

II. An order of injunction, restraining the Presidential Task Force on Trade Malpractices from arresting or detaining Chief Andrew Monye on the complaint of FSB International Bank Plc on a case of debt recovery.

III. ₦5 Million damages against FSB International Bank Plc for unlawful arrest and false imprisonment of Chief Andrew Monye on 8th March, 1996."

Motion Ex-parte was moved on the 2/4/96. The Learned trial Judge, Nwaogwugwu J. granted the reliefs sought and granted the 1st respondent leave to enforce his fundamental rights. A further order was granted that the Motion on Notice was adjourned to the 17th of April, 1996.

On the 27th of May, 1996, pursuant to 1st respondent's application, the Attorney-General of the Federation was joined as 3rd respondent by order of the trial court.

On the 20th of May, 1997 the motion on notice was heard and a ruling delivered. In the said ruling the learned trial judge, Gumel. J. decided that the whole proceedings was a nullity based on the fact that after having granted leave to the 1st respondent to enforce his fundamental rights, the motion on notice was adjourned to 17th day of April, 1996, that is to say, a day more than the 14 day period provided for in the Rules. Gumel J. held that it was unnecessary to consider the 1st respondent's

complaint in the motion on notice i.e. whether the 1st respondent's right under section 32 of the Constitution had been infringed upon by the appellant, 2nd and 3rd respondents. His Lordship accordingly struck out the suit in its entirety.

Dissatisfied, the 1st respondent lodged an appeal to the Court of Appeal (court below) Lagos Division. The court below, after having considered the whole appeal, allowed the appeal and directed, as a result, that the 1st respondent's motion on notice be heard by another judge of the Federal High Court.

The appellant herein, dissatisfied with the court below's decision filed his Notice of Appeal to this court.

Briefs of argument were filed and exchanged. Each of the parties adopted its/his respective brief on the hearing date.

Learned counsel for the appellant distilled the following issue for determination, viz:

> "Whether the Court of Appeal is right in holding that the provisions of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 cannot be interpreted as mandatory in this case as such interpretation will lead to injustice."

Learned counsel for the 1st respondent formulated one issue which reads as follows

> "Whether the Court of Appeal is right in holding that the provisions of Order 2 Rule 2 of the Fundamental Right (Enforcement Procedure) Rules 1979 (which requires the return date for Motion on Notice to be fixed within fourteen days after leave has been granted) cannot be so interpreted in mandatory terms in this case as such interpretation will lead to injustice."

Learned counsel for the 2nd and 3rd respondents formulated one issue, thus:

> "in the peculiar circumstance of this case, whether the court of appeal was not right in holding that the provision of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 cannot be interpreted in mandatory terms which will lead to injustice. (Grounds 1 & 2)"

In his submission in the brief filed, the learned counsel for the appellant argued that in an action for the enforcement of fundamental rights brought pursuant to the Fundamental Right (Enforcement Procedure) Rules 1979 the return date for the hearing of the Motion on Notice is crucial. It must be within 14 days from the date the leave to enforce the fundamental right was granted. This is provided by Order 2 Rule (2) of the Rules. Anything more than the statutory stipulation of 14 days invalidates the whole proceedings. Learned counsel reproduced the provision of Order 2 Rule (2) of the Fundamental Right (Enforcement Procedure) Rules 1979

Learned counsel argued further that the motion *ex-parte* in the instant case was argued before the trial court on the 2nd of April, 1996 and leave was granted to the 1st respondent on that day to enforce his fundamental right. The return date for the motion on notice to be heard was fixed for the 17th of April, 1996, a period of more than the 14 days of the Fundamental Right (Enforcement Procedure) Rules 1979. He submitted that it was out of time and the proceedings were held to be a nullity on the authority of *Ogwuche v Mba (1994) 4 NWLR (Part 336) 75*. Learned counsel submitted further that the word "must" used in Order 2 Rule 2 is to the effect that the motion or summons must be entered for hearing within 14 days after leave has been granted, is mandatory and effect must be given to it. It is not merely directory. It admits of no discretion. He cited Odger's Construction of Deeds and Statutes, 5th Edition Page 377; Black's Law Dictionary 6th Edition; *Okorie v Udom (1960) SCNLR 326; Atuyeye v Ashamu (1987) 1 NWLR (Part 49) 267 at 279; Anibi v Shotimehin (1993) 3 NWLR (Part 282) 461 at 47*3 - Further submissions for the appellant are that: the provisions of Order 2 Rule 2 of Fundamental Right (Enforcement Procedure) Rules 1979 are unambiguous, clear and plain, requiring no any (other) rule of construction, relying on the case of *Kanada v Governor of Kaduna State (1986) 4 NWLR (Part 35) 365*; that the period or number of days in excess of the 14 days as required by Order 2 Rule 2 of the Fundamental Right (Enforcement Procedure) Rules 1979, is immaterial and once there is a failure to comply with the requirement of that statute, it is a fundamental vice and not a mere irregularity. The case of *Kolawole v Alberto (1989) NWLR (Part 98) 382; Ibrahim v INEC (1999) 8 NWLR (Par .614) 334*; were cited. Finally, this court is urged to allow the appeal.

On his part, learned counsel for the 1st respondent after having quoted the provision of Order 2 of Fundamental Right (Enforcement Procedure) Rules 1979 submitted (summarised): that the operative word in Order 2 Rule 2 of Fundamental Right (Enforcement Procedure) Rules 1979 are "Must Be Entered". Learned counsel quoted further, the relevant parts of the decisions on the subject matter as held by the trial and the Appeal Courts. That the approach adopted by the court below conforms to all known rules of interpretation of statutes and rules of court.

That the Fundamental Right (Enforcement Procedure) Rules 1979 is a special rule made to guide the courts in the expeditious disposal of matters touching on fundamental rights. To stick to the interpretation of the word "must" as mandatory as submitted

by the learned counsel for the appellant is an invitation to this court to toe a line that would defeat and stultify the delivery of justice which would occasion grave injustice to the 1st respondent.

The main submissions of learned counsel for the 2nd and 3rd respondents, after having set out the provisions of Order 2 Rules (2) of Fundamental Right (Enforcement Procedure) Rules 1979 are that in construing the rule, it is imperative to consider the purpose of the provision and the mischief it seeks to prevent. He cited the case of *Agbetoba v Lagos State Exco (1991) 6 SCNJ at page 22; Mobil v F. B. I. R. (1977) 3 SC 53*. Learned counsel argued that in this case, the mischief sought to be cured is the delay normally caused by the common law rules as to ensure that all proceedings touching on the enforcement of fundamental rights are expeditiously heard and disposed of. By this line of thought, he argued, the word "must" ought to have been given an interpretation of mandatoriness, hence, the trial court ought to have entered the case for hearing within (14) days after the grant of the leave for the 1st respondent to enforce his fundamental right. The adjournment for hearing the Motion on Notice by the trial court on 2/4/96 has satisfied the provisions of Order 2 Rule (2) of Fundamental Right (Enforcement Procedure) Rules 1979 and that would mean that the trial court was prevented from granting the leave and put away the file without fixing the application for hearing. The lower court, he argued further, was right in its decision to have set aside the judgment of the trial court. Learned counsel submitted further that although allowing the appellant's appeal would be in the best interest of the 2nd and 3rd respondents but, that would not be in the interest of justice to the society and it will not be justice in accordance with law upon due consideration of the peculiar circumstance of this case where there was no fault on the part of the applicant. It is trite, learned counsel submitted, that once a litigant has properly filed his claim as required by law and fully paid his fees, his responsibility, ceases. The omission of the Judge or court officials to play their part is not his business and will not affect his case. Learned counsel cited several cases in support, including *Famfa Oil Ltd. v A-G Federation (2003) 18 NWLR (Part 852) 453 at 467 A-C*. Learned counsel urged that this is a proper case to dismiss the appeal.

The provision of Order 2 R (2) of the FERER, 79 states as follows:

> "The motion or summons must be entered for hearing within fourteen days after such leave has been granted."

Before invoking the above Order of Fundamental Right (Enforcement Procedure) Rules 1979, the applicant pursuant to order 1 Rules (2), (3) and (4) of the Fundamental Right (Enforcement Procedure) Rules 1979, filed his application *ex-parte*, before the trial court praying for the following reliefs:

1. "An Order granting leave to Chief Andrew Monye the applicant to enforce his Fundamental Rights

2. An Order restraining the Presidential Task force on Trade Malpractices and FSB International Bank Plc from arresting , detaining, threatening with arrest, harassment and or the arrest and detention of the applicant pending the determination of the application to be filed pursuant to leave of this court"

After having the motion *ex-parte* move before his court, the learned trial judge Nwaogwugwu, J. granted on the 2nd day of April 1996, the reliefs sought by the applicant. He subsequently adjourned on same date the motion on notice to the 17th day of April 1996 for hearing. From the 2nd of April 1996 to 17th April 1996 was a period of fifteen (15) days after the grant of leave i.e reckoning from 3rd to 17th but including 17th day. Thus, from the outset, the learned trial judge Nwaogwugwu, J. did not fix the motion on notice for hearing within the fourteen (14) days laid down by Order 2 Rule 2 of the Fundamental Right (Enforcement Procedure) Rules 1979. That was the reason why the ruling of the trial court of 15th September 1997 declared the entire proceedings that had been conducted after leave was granted, a nullity and the suit was accordingly struck out. Reliance was placed on the case of *Ogwuche v Mba (1994) 4 NWLR (Part 336) 75 at 85*

Now, what is the best interpretation to be given to the provision of Order 2 R (2) of Fundamental Right (Enforcement Procedure) Rules?

Learned counsel for the appellant is on the side of mandatoriness equating the word "must" used in the provision to the word "shall" as in any legislation. He supported his submission with decided cases. Learned counsel for the 1st respondent argued that the word "must" in Order 2 R (2) of the Fundamental Right (Enforcement Procedure) Rules ought to be construed as directory and not mandatory

The trial court as pointed out above and as per the decision delivered by Gumel, J, (as he then was) following the decision in the case of *Ogwuche v Mba (supra)* interpreted the word "must" used in the provision of Order 2 (i) of ought to be construed as directory and not mandatory as follows:

> "The word "must" appearing in the provision is a word of absolute obligation and occurs in a section which is concerned with a fundamental principle of justice …. it admits of no discretion."

The court below, per Oguntade, JCA (as he then was), posed the following view:

"There is no doubt that it is not always that a court of law would interpret the word 'shall' or 'must' as mandatory. The court must look at the context in which the word is used to arrive at an interpretation which best meets the intention of the legislature or the law giver …..

In the interpretation of a rule of court, the necessity to interpret the word 'shall' or 'must' as mandatory is not often compelling. This is because Rules of Court are made as an aid to the dispensation of Justice. The Court should not readily adopt an interpretation which defeats or stultifies the delivery of Justice in the interpretation of court rules"

I think I will go along with Oguntade, JCA (as he then was), a former Justice of this court, in his views as expressed and quoted above. We already have seen the genesis of this case by way of introduction. It is however desirable, at the risk of repetition, but for clarity sake to re-state in bold the findings of the learned trial judge, Nwaogwugwu, J, when he considered the motion ex-parte brought by the applicant/1st respondent:

"I have heard the submission of the learned counsel for the applicant in respect of this application. I have also perused the two affidavits in support of this application as well as the three exhibits attached thereto.

The affidavit is cogent enough and it disclosed a prima facie evidence of a threat to the applicants fundamental rights to liberty .....

I am satisfied that the applicant has complied with all the procedural requirements for bringing application under this rule. I am also satisfied that his affidavit has disclosed a prima facie evidence of infringement or threat to his fundamental rights to liberty such that requires this court to intervene."

The grounds upon which the motion Ex-parte was brought to the trial court are contained in a statement in support of the application for leave to enforce fundamental right. The grounds read as follows:

4. "By a letter dated 1st March, 1996 the applicant was invited to appear on 8th March, 1996 before Presidential Task Force on Trade Malpractices to answer charges of trade malpractices.

5. The applicant appeared before the Presidential Task Force on Trade Malpractices on 8th March, 1996 at 10.00 O'clock in the morning.

6. The applicant appeared before the officers of the Task Force at their office situate at No 1 Ozumba Mbadiwe Street, Victoria Island, Lagos who asked him to write a statement.

7. That applicant insisted he was not going to write a statement as he was not involved in Trade Malpractices.

8. The applicant insisted that he will not make a statement until he sees his lawyer but the officers threatened him that he will not be allowed to go home.

9. After the threat by the officers of the Task Force who are military officers he decided to make a statement.

10. At 11.30 a.m on 8th March, 1996 he was permitted by the officers to go to FSB International Bank Plc to sort things out.

11. The applicant was informed that FSB International Bank Plc laid a complaint against him before the Task Force.

12. The applicant went to FSB International Bank Plc and was asked to pay outstanding debt of Bellview Nigeria Limited a Company which the applicant is the Managing Director.

13. The applicant does not owe FSB International Bank Plc and he is not involved in any trade malpractices.

14. Bellview Nigeria Limited was granted a loan facility of ₦1.5 Million by a letter dated 9th November, 1994.

15. The applicant has deposited his Certificate of Occupancy registered as No 67, on page 67, in Volume 364 (Certificate of Occupancy of Land Registry at Abeokuta valued over ₦6Million) with FSB International Bank Plc.

16. When the applicant went to FSB International Bank Plc the bank officials were intimidating him to settle the indebtedness of Bellview Nigeria Limited.

17. At one o'clock in the afternoon on 8th March, 1996 the applicant reported again before the Task Force and they prevented him from going home till 3.00pm when an official told him to settle the outstanding debt before 31st March, 1996 or face detention or seizure of his property.

18. The arrest and false imprisonment of the applicant for 4½ hours on a purely civil matter is an infringement of his liberty."

After having granted all the reliefs in the ex-parte application, the learned trial judge, Nwaogwugwu, J, then ordered that the Motion on Notice would be heard on the 17th day of April, 1996.

The trial court presided over thereafter by Yahaya, J. and subsequently by Gumel, J. (as he then was) delivered a ruling in which he concluded as follows:

> "From the records of the court, leave was granted to the applicant in the instant case to enforce his fundamental rights to personal liberty on the 2nd day of April, 1996.
>
> By the same order, the case was adjourned to the 17th day of April for hearing of the Motion on Notice. By a simple arithmetical calculation there is clearly a period in excess of 14 days as required by Rule 2 of the Fundamental Rights Enforcement Procedure Rules 1979 which does (sic) not permit for denegation of the period stipulated therein. Consequently on the authority of *Ogwuche v Mba (supra)* the entire proceedings that had been conducted in this suit after leave was granted is a nullity and I so hold.
>
> In view of the conclusion I have reached in this suit, it is not necessary for the court to consider the second issue-
>
> Accordingly the present suit is hereby struck out for the reason stated above."

Considering the whole scenario, who is at fault? Is it the appellant, who, according to the learned trial judge, Nwaogwugwu, as applicant before him had complied with "all the procedural requirements for bringing this application under this rule", or the same trial judge who fixed the hearing of the Motion on Notice on the 17th day of April, 1996?

The normal and acceptable practice of the courts is that it is not the habit of courts to punish or penalize a party/litigant because of the error/omission committed by the party's/litigant's counsel, the judge or even the court officials. See: *Amadi v Acho (2008) 12 NWLR (Part 939) 386.* In this matter and indeed in all other matters pending before a court of law, it is entirely and absolutely the duty of the court to fix or give date(s) for hearing the matter. The party, in this case, the 1st respondent had no control over it. It is thus, quite clear that the error or mistake in fixing the return date for the hearing of the Motion on Notice a day after the 14 days have lapsed/expired as presented by Order 2 Rule (2) of the Fundamental Right (Enforcement Procedure) Rules was that of the learned trial judge for which the 1st respondent ought not be punished.

It would certainly amount to manifest travesty of justice to penalize/punish the 1st respondent for an error which he could not have done anything as same is attributable to the trial court and more so, when the said error/mistake (just a day after lapse of the 14 day period), cannot, in my view, occasion any miscarriage of justice to the appellant. The trial court presided over later by Gumel, J. (as he then was) which nullified the proceedings that had been conducted in the suit after the grant of leave and upon which the suit was consequently struck out, unduly placed heavy reliance on the case of *Ogwuche v Mba* (supra). I have studied this *Ogwuche* case and having compared it with the present case, I am inclined to agree with the submission of learned counsel for 1st respondent that *Ogwuche*'s case cannot serve as an authority or precedence to the present case as *Ogwuche*'s case was primarily predicated and decided on the issue of the court lacking competence to hear the case as the suit was not properly constituted and initiated as required by law to confer jurisdiction on the court. Secondly, the claim and issue before the court were not on proper interpretation of Order 2 R (2) of Fundamental Right (Enforcement Procedure) Rules, 1979. Thirdly, where as the return date in *Ogwuche*'s case was 40 days (in excess) after leave was granted, the return date in the instant case was only one day in excess of the 14 day period. Thus, *Oguche*'s case in my view is quite distinguishable from the instant case.

I agree with Oguntade, JCA (as he then was) further, that is not always that a court of law would interpret the word 'must' or 'shall' as mandatory. The court must examine the context within which the word is used. The word "must" is often, interchangeable with the word 'shall' and both can mean "may" where the context so admits. The authors of the Black's Law Dictionary are of the view that:

> "This word (must), like the word "shall", is primarily of mandatory effect and in that sense is used in antithesis to "may". But this meaning of the word is not the only one and it is often used in a merely directory sense and consequently is a synonym for the word, "may", not only in the permissive sense of that word, but also in the mandatory sense which it sometimes has."

In the case of *Amadi v N. N. P. C. (2000) 10 NWLR (Part 674) 76 at 97*, this court had the opportunity of clarifying the matter further, where Uwais, JSC, (as he then was) stated, inter alia:

> "it is settled that the word "shall" when used in an enactment is capable of bearing many meanings. It may be implying futurity or implying a mandate or direction or giving permission. See: *ifezue v Mbadugha (1984) 1 SCNLR 427 at page 456-7....* if used in a mandatory sense then the action to be taken must obey or fulfill the mandate exactly; but if used in a directory sense then the action to be taken is to obey or fulfill the directive substantially. See *Woodward v Sarsons (1875) LR 10 CP 733 at page 746; Pope v Clarke (1953) 1 WLR 1060; Julius v Lord Bishop of Oxford (1881) 5 AC (H.L.) 214 at page 222 and 235 and State v lIori (1983) 1 SCNLR 94 at 110*. In *Liverpool Borough Bank v Turner (1861) 30 L.J. Ch. 379 at page 657*, it was held –
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> > No universal Rule can be laid down for the construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try and get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."

From the scenario of this case, again, there appeared to be substantial compliance with the requirement of Order 2 Rule (2) by the 1st respondent when he did all he was required to do and the day in excess of the period provided was only one day which was erroneously arrived at by the trial court. Could that occasion a miscarriage of justice to the appellant? I do not think so.

Further, it is my humble belief that the mischief which Order 2 Rule (2) seeks to cure is the delay in attending to matters having to do with enforcement of fundamental rights. That is why a period of 14 days is stipulated within which a Motion on Notice for the enforcement of such rights must be fixed for hearing after the grant of leave. The purpose, or the necessary intendment of the order, thus, is laying a procedure which ensures that the liberty of the individual, who approaches the court for leave to enforce his fundamental right which is at stake, should be given paramount attention and determination such that the hearing and determination of the Motion should not be delayed or prolonged unreasonably. See: *Agbetoba v Lagos State Exco (1991) 6 SCNJ 1 at 22; Mobil v F. B. I. R. (1977) 3 SC 53; Savanah Bank v. Ajilo (1989) 1 NWLR (Part 97) 305.*

This notwithstanding, however, it will become an engine of injustice and will encourage high handedness where an applicant is prevented from having his Motion on Notice (which was filed within time) heard on merit, just on the account of a simple human error/mistake by the learned trial judge in fixing the return date just a day beyond the 14 day limit. In any case, Order 2 R (2) of Fundamental Right (Enforcement Procedure) Rules is a procedural Rule which is meant to be of aid to the court. These are some of the expressions used by Belgore, JSC (as he then was), in the case of *U. T. C. v Pamotei (1989) 2 NWLR (Part 103) 244 at page 296, viz:*

> "Rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the course of justice and not to defeat justice. The rules are therefore, aids to the court and not masters of the court. For courts to read rules in the absolute without recourse to the justice of the cause, to my mind will be making the courts slavish to the Rules. This certainly is not *raison d' etre* of Rules of Court."

It is the law and practice also that a rule of court stands to guide the court in the conduct of its business and not to hold as a 'mistress' but as a handmaid. See further*: Chrisdon Ind. Co. Ltd. v AIS Ltd. (2002) 8 NWLR (Part 768) 152; Chime v Chime (2001) 3 NWLR (Part 701) 527; Odua Investment Co. Ltd. v Talabi (1997) 10 NWLR (Part 523) 1.*

It is my candid view that grave injustice would be occasioned to the 1st respondent if the entire proceedings is nullified for the simple reason of fixing the hearing date of the Motion on Notice a day in excess of the 14 day time limit as held by Gumel, J.

In the final result, I find no merit in this appeal and same is dismissed by me. I affirm the decision of the court below which directed that the Motion on Notice by the 1st respondent be heard *de novo* before another judge of the Federal High Court Lagos. And, in view of the time spent in litigation, it is directed that the Motion should be heard most expeditiously. 1st respondent is entitled to N50,000.00 costs from the appellant.

Judgment delivered by
Walter Samuel Nkanu Onnoghen. JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother Muhammad, JSC just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

I therefore order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs

Judgment delivered by
Olufunlola Oyelola Adekeye. JSC

Chief Andrew Monye the 1st respondent in this appeal, commenced an action to redress a wrong done to him by the 2nd respondent, Presidential Task Force on Trade Malpractices acting as agent of FSB International Bank Plc the appellant, by filing a motion ex-parte pursuant to Order 1 Rule 2 (2) and 2 (3) and Order 4 of the Fundamental Rights (Enforcement Procedure) Rules 1979 for

1. An order granting leave to Chief Andrew Monye the applicant to enforce his fundamental rights.

2. An order restraining the Presidential Task Force on Trade Malpractices and FSB International Bank Pic from arresting, detaining, threatening with arrest, harassment and or the arrest and detention of the applicant pending the determination of application to be filed pursuant to leave of Federal High Court.

He claimed reliefs as follows -

i. Declaration that the arrest and false imprisonment of Chief Monye on 8th of March 1996 by the Presidential Task Force on Trade Malpractices at the instance of FSB International Bank Plc is illegal and unconstitutional.

ii. An order of injunction restraining the Presidential Task Force on Trade Malpractices from arresting, detaining Chief Andrew Monye on the complaint of FSB International Bank Plc on a case of debt recovery.

iii. ₦5 million damages against the FSB International Bank Plc for unlawful arrest and false imprisonment of Chief Andrew Monye on 8th March 1996.

He attached to the motion ex-parte an affidavit verifying the facts he relied upon and attached three exhibits. The application ex-parte was argued before Hon. Justice C.C. Nwaogwugwu who consequently ruled as follows:

It is hereby ordered that:

1. Leave is hereby granted to the applicant to apply to this court for the enforcement of his fundamental rights in terms of the reliefs set out in the statement.

2. The respondents are hereby restrained from arresting, detaining, threatening with arrest, harassment and or arrest and detention of the applicant pending the determination of the Motion on Notice.

3. The respondents are to be served with the Motion on Notice to be filed by the applicant.

4. The applicant is to enter into an undertaking should this order turn out to be wrongly obtained.

5. The Motion on Notice is hereby adjourned to 17th day of April 1996 for hearing.

The 1st respondent filed the Motion on Notice and the affidavit in support on the 8th of April 1996. When the matter came up for hearing according to the previous order of court on the 17th of April 1996, the motion was adjourned to the 13th of May 1996 to enable the appellant's counsel to file the counter affidavit and any other processes relevant to the application.

The Attorney-General of the Federation was joined as a necessary party on the 27th of May 1996. The 2nd and 3rd respondents did not file any process. The Federal High Court heard the arguments of the parties on the 20th day of May 1997. On the 15th of September 1997, the learned judge of Federal High Court struck out the 1st respondent's application on ground that it was a nullity.

The learned judge gave his reasons as follows –

> "From the record of the court, leave was granted to the applicant in the instant case to enforce his fundamental right to personal liberty on the 2nd of April 1996. By the same order, the case was adjourned to the 17th day of April for the hearing of the Motion on Notice. By a simple arithmetical calculation, there is clearly a period in excess of 14 days as required by Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 which does not permit for denegation of the period stipulated therein. Consequently on the authority of *Ogwuche v Mba (supra)* the entire proceedings that had been conducted in this suit after leave was granted is a nullity and I so hold."

The 1st respondent being dissatisfied with the ruling of the trial court filed an appeal before the Court of Appeal, Lagos Division on 26/9/97. In the judgment delivered on the 28th of March 2002, the Court of Appeal, Lagos unanimously allowed the appeal

of the 1st respondent and directed that his application on notice be heard *de novo* before another judge of the Federal High Court Lagos.

The 2nd appellant, as 2nd respondent before the Court of Appeal being dissatisfied with the judgment of the lower court filed this appeal to Supreme Court.

The sole issue raised for determination by the appellant the Fidelity Bank Plc reads:-

> "Whether the Court of Appeal is right in holding that the provisions of Order 2 Rule 2 of the Fundamental Right (Enforcement Procedure) Rules 1979 which requires the return date for Motion on Notice to be fixed within fourteen days after leave has been granted cannot be so interpreted in mandatory terms in this case as such interpretation will lead to injustice."

The 1st respondent, like the appellant, settled a single issue for determination which reads:

> "Whether the Court of Appeal is right in holding that the provisions of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 cannot be interpreted as mandatory in this case as such interpretation will lead to injustice."

The single issue conceived for determination by the 2nd and 3rd respondent is

> "Whether in the peculiar circumstance of this case, the Court of Appeal was not right in holding that the provision of Order 2 Rule 2 of the Fundamental Rights Enforcement Rules 1979 cannot be interpreted in mandatory terms of which will lead to injustice."

There is no gainsaying that the central issue for consideration both at the lower court and in this appeal is the interpretation of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 vis-a-vis the facts of this case. Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 provides that-

> "The motion or summons must be entered for hearing within 14 days after leave has been granted"

The parties in their respective briefs aired their view on the operative word "must" in the statute. Parties are *ad idem* on the background facts of the case that the 1st respondent did not falter in compliance with the procedure for the enforcement of his fundamental right. He promptly filed his processes both in the *ex-parte* motion and the Motion on Notice. The learned trial judge, who granted the leave on the *ex-parte* application on the 2nd of April 1996, fixed the hearing of the Motion on Notice for the 17th of April 1996 a day longer than the 14 day period allowed by Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979. The applicant complied with the condition precedent required to invoke the jurisdiction of the Federal High Court. The error of omission was that of the learned trial judge who fixed the return date outside the time prescribed by the rules for an applicant.

The question that arises is who bears the brunt of the mistake? The reason for fixing that date for the litigant by the learned trial judge is still shrouded in mystery but the error remains indelible on the record. This error rendered the proceedings in the application of the 1st respondent null and void.

The appellant argued and submitted that where a precondition for the doing of an act has not been complied with, no act subsequent thereto can be regarded as valid. The reason being that the act to which it is subject has not been done. On the authority of *Ogwuche v Mba* any proceedings that take place more than 14 days after leave has been granted to enforce fundamental rights amounts to a nullity. The word "must" as contained in Order 2 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 is naturally prima facie imperative and admits of no direction. The failure to comply with the provision of Order 2 Rule 2 makes it impossible for the lower court to proceed further with the case because there was nothing that could be waived, acquiesced in or decided upon.

The appellant cited cases in support of the foregoing submission. *Ogwuche v Mba (1994) 4 NWLR (Part336) page 75; Okorie v Udom (1960) SCNLR page 326; Kanada v Government of Kaduna State (1986) 4 NWLR (Part 35) page 365; Ibrahim v INEC (1999) 8 NWLR (Part 614) page 334; Ben Obi Nwabueze v Justice Obi Okoye (1988) 4 NWLR (Part 91) page 664 at 668.*

The 1st respondent tried to prevail on this court to dismiss the appeal and affirm the judgment of the lower court. By the fact of the circumstance of this case, the word "must" in Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 ought not to be construed as mandatory but directory. The error or mistake of fixing the return date for the hearing of the Motion on Notice after leave is granted is the mistake of the trial court, in that circumstance the 1st respondent cannot do anything thereof. Since the 1st respondent complied with the provisions of Order 2 Rule 2, it will be inappropriate to punish him for any error or mistake of the trial court. If the provision of Order 2 Rule 2 is interpreted in its mandatory terms it would occasion grave injustice and defeat the intention of the law makers of the Fundamental Rights (Enforcement Procedure) Rules

1979. The 1st respondent cited cases: *Ogwuche v Mba (1994) 4 NWLR (Part 336) page 75; Savannah bank of Nigeria v Ajilo (1987) (Part 57) page 421; Ojokolomo v Alamu (187) 3 NWLR (Part 61) page 37; Ifezue v Mbadugha (1984) 5 SC 79;Ezomo v A-G Bendel State (1986) 4 NWLR (Part 36) page 448; Ogunremi v Dada (1962) 1 All NLR page 663.*

The 2nd and 3rd respondents contended that in the circumstance of this case, the 1st respondent had done all he was required to do in law in having his case heard by the court, therefore he cannot be denied access or be punished for the mistake and omission of the trial judge or the court officials. If the provision of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 is interpreted as mandatory, it will lead to injustice. Fundamental Rights (Enforcement Procedure) Rules is not made to defeat justice which is guaranteed by the Constitution. The respondents cited cases in support of the foregoing like *Ezomo v A-G Bendel State (1996) 4 NWLR (Part 36) pg.448; Ogunremi v Dada (1962) All NLR page 663; Abioye v Yakubu (1991) 6 SCNJ 69 page 94; Ifezue v Mbadugha (1984) NSCC at page 325; Savannah Bank v Ajilo (1989) 1 NWLR (Part 97) page 305.*

The emphasis in this appeal is on the interpretation of the Fundamental Rights (Enforcement Procedure) Rules 1979 particularly Order 2 Rule 2. It is a cardinal principle of interpretation of statute that where the provisions are clear and unambiguous, effect must be given to them in their plain and ordinary meaning without the court resorting to any aid internal or external. It is the duty of the court to interpret the words of the law maker as used. The court should adhere to the purposes of a provision where the history of the legislation indicates to the court the object of the legislature in enacting the provision. See *Bronik Motors v Wema Bank (1983) 1 SCNLR 296; Attorney-General of Bendel State v Attorney-General of the Federation (1982) 3 NCLR page 2; Awolowo v Shagari (1979) 6-9 SC 73; Adejumo v Governor of Lagos State (1972) 3 SC 45; Tukur v Governor of Gongola State (1989) 4 NWLR*

This is now the mischief Rule. It enjoins the court to trace the mischief or defect which the old law did not cater for and the lope hole or remedy the act or law intended to cure. The lower court aptly amplified on the mischief Order 2 Rule 2 of the fundamental Rights (Enforcement Procedure) Rules 1979 is meant to curb.

The judgment of the lower court at pg.1 05 of the Record reads-

> "I observe here that the issues for determination touch upon the proper approach to the interpretation of Order 2 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979. There is no doubt that the intendment or rationale behind the stipulation in the relevant rule that the Motion on Notice filed for the enforcement of a fundamental right must be fixed for hearing within 14 days after the grant of leave is to ensure that all proceedings touching on the enforcement of fundamental rights are expeditiously heard and disposed of. Viewed from that angle it is not difficult to appreciate why this court in *Ogwuche v Mba (supra)* interpreted the word "must" in Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 as mandatory. If the High Court were left free to treat proceedings for enforcement of fundamental rights in the same manner as other matters or proceedings, an unduly long period would be spent in the disposal of such cases and the prompt enforcement of fundamental rights made unattainable."

It is not disputed in the circumstance of this case that the 1st respondent complied with the provisions of the Rules as required by law. The big question now is whether the court will close its eye and allow him to suffer injustice for the mistake of the trial judge and the court officials. I have to explain further that in this scenario, the 1st respondent has a constitutional right to access court pursuant to Section 17 (2) (e) of the 1999 Constitution and to enforce his fundamental Rights under Chapter IV of the same Constitution.

It is trite law that the courts have not made it a practice to punish the litigant for the mistake of the court or their counsel. See *Amadi v Acho (2008) 12 NWLR (Part 939) page 386.*

The court will not allow the provisions of an enactment to be read in such a way as to deny access to court to a citizen pursuant to Section 6 (6) and 36 (1) of the 1999 Constitution.

Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 is a rule of court. Rules of court touch upon the administration of Justice. They are promulgated to regulate matters in court and to assist parties in the presentation of their case within a procedure made for the purpose of a fair and quick dispensation of justice. The courts have leaned heavily on the side of doing justice. Strict compliance with the rules makes for quicker administration of justice. The rules must be understood as made with that fundamental principle at the background. Whatever the case may be in the court proceedings, the rules are no more than an adjunct to the course of justice. The court must never interpret a rule of court to defeat access to justice which is guaranteed by the Constitution. I agree with the reasoning and conclusion of the court below that occasions may arise when Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 ought to be interpreted as mandatory, but it cannot be accorded that interpretation in the circumstance of this case as it will lead to injustice and the case of *Ogwuche v Mba (1994) 4 NWLR (Part 336) page 75 at page 85* was wrongly applied without considering the peculiar circumstance of this case.

With fuller reasons given in the lead judgment of my learned brother I.T. Muhammad. JSC, I also dismiss this appeal. I abide the consequential orders made in the lead judgment as mine.

Judgment Delivered by
Bode Rhodes-Vivour. JSC

Pursuant to Order 1 Rules 2(2) and 2(3) and Order of the Fundamental Rights (Enforcement Procedure) Rules, 1979 the 1st respondent by way of *ex-parte* motion asked for the following reliefs

1. An order granting to Chief Andrew Monye the applicant to enforce his fundamental rights,

2. An order to restraining the Presidential Task Force on Trade Malpractices and FSB International Bank Plc, from arresting, detaining, threatening with arrest harassment and or arrest and detention of the applicant pending the determination of the application to be filed pursuant to leave of the court.

Nwaogwugwu, J. of the Federal High Court Lagos, presided and on the 2nd of April 1996, his Lordship granted leave to the 1st respondent to enforce his fundamental rights, His Lordship fixed the hearing of the Motion on Notice for the 17th of April 1996, The Motion on Notice was not heard on the 17th of April, 1996, It was heard on the 20th of May 1997 by Gumel. J. (as he then was), His Lordship held that the proceedings were a nullity, relying on *Ogwuche v Mba (1994) 4 NWLR (Part 336) page 75* and Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 1979 the suit was struck out. The Court of Appeal Lagos Division thought differently. That court allowed the appeal and directed that the Motion on Notice by the appellant (the 1st respondent) be heard *de novo* by another judge of the Federal High Court, Lagos. The court further directed that the application is to be heard most expeditiously. Dissatisfied with the orders made by the Court of Appeal this appeal was filed by Fidelity Bank Ltd, the 2nd respondent in the Court of Appeal.

The learned trial judge relied on the provisions of Order 2 Rule (2) of the Fundamental Rights (Enforcement Procedure) Rules 1979 and *Ogwuche v Mba (supra)* to declare the entire proceedings before him a nullity. Order 2 Rule (2) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 states that:

> "The motion or summons must be entered for hearing within fourteen days after such leave has been granted"

In terminating further hearing of the 1st respondent's application to enforce his fundamental rights the learned trial judge said:

> "From the records of the court, leave was granted to the applicant in the instant case to enforce his fundamental rights to personal liberty on the 2nd day of April. 1996. By the same order, the case was adjourned to the 17th day of April for hearing of the Motion in Notice. By a simple arithmetical calculation there is clearly a period in excess of 14 days as required by Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 which does not permit for denegation of the period stipulated therein. Consequently on the authority of *Ogwuche v Mba (supra)* the entire proceedings that had been conducted in this suit after leave was granted is a nullity and I so held. In view of the conclusion I have reached in this suit, it is not necessary for the court to consider the second issue. Accordingly the present suit is hereby struck out for the reason stated above."

The learned trial judge who took over the case struck out the suit because the date fixed by the learned trial judge for the hearing of the motion of Notice was made more than fourteen days by one day. In *Ogwuches*'s case the return date was fixed more than 40 days after leave was granted. My learned brother Muhammad, JSC distinguished *Ogwuche*'s case from this case. Agreeing with the Court of Appeal, Muhammad. JSC concluded that it is not always that the courts would interpret the word "must" (in Order 2 Rule (2) *supra*) or "shall" as mandatory, both words are interchangeable and can both mean "may" where the context so admits. I am in complete agreement with his Lordship. What the trial court is saying is this: If an applicant brings a suit under the Fundamental Rights (Enforcement Procedure) Rules 1979 and the hearing of his Motion on Notice is fixed for a date contrary to the provisions of Order 2 Rules 2 supra the applicant should abandon his suit. To my mind that is not justice. That is punishing the litigant for the mistake of the judge.

In *U.T.C (Nig) Ltd v Pamotei (1989) 2 NWLR (Part 103) page 244*. Belgore, JSC (as he then was) observed:

> "Rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not to defeat justice. The Rules therefore aids to the court and not muslers of the court. For courts to read rules in the absolute without recourse to the justice of the cause to my mind will be making the courts slavish to the Rules. This certainly is not the *raison d'etre* of rules of courts."

If the learned trial judge was aware of *UTC Nig Ltd v Pamotei (Supra)* and several other similar cases that enjoined judges always to do substantial justice by interpreting rules to prevent undue adherence to technicalities he would most certainly have allowed the applicant/1st respondent to move his motion and thereafter deliver a judgment that addresses his grievances, notwithstanding that it was fixed for hearing on the 15th day after leave was granted. Similar cases are: *Nneji v Chuckwu (1988)*

6 SCNJ Page 132; Bello v A.G. Oyo State (1986) 12 SC page 1; Nishizawa v Jethwani (1984) 12 SC page 235; Ogunbi v Kosoko (1991) 8 NWLR (Part 210) page 511; Ezegbu v F.A.T.B. (1992) 1 NWLR (Part 220) page 709.

Rules of court and indeed the Fundamental Rights (Enforcement Procedure) Rules 1979 are never to be interpreted to defeat the cause of justice or unfairly deny the applicant the right to enforce his fundamental rights. Failure to fix the hearing of the Motion on Notice within 14 days after leave was granted was not the fault of the applicant/1st respondent. It was the fault of the learned judge. It is unthinkable that the 1st respondent would be made to suffer for the mistakes of the judge. In such a situation a judge should not act as a robot slavishly applying rules to the detriment of the litigant. A judge must at all times prevent undue adherence to technicalities and do substantial justice that would be seen to have been done. After all our courts are also courts of equity. Justice is all about being fair. Striking out the 1st respondents fundamental rights application was not fair.

In fundamental rights matters decisions should be delivered if possible immediately after hearing arguments of the parties. The 1st respondent obtained leave on the 2nd of April 1996 to enforce his fundamental rights. It is now over fifteen years from that day, and he has been unable to get a hearing in a suit that could easily have been resolved within a month. Matters that affect or concern inalienable rights of man must at all times be treated with dispatch and rules must never be a stumbling block in achieving that purpose. Rules must never be interpreted to defeat the course of justice.

For the reasons given above and more particularly those given by my learned brother Muhammad. JSC, I confirm the decision of the Court of Appeal and make the orders he proposes,

Judgment delivered by
Mary Ukaego Peter-Odili. JSC

The 1st respondent herein filed a motion Ex parte pursuant to Order 1 Rule 2 (2) and 2(3) and Order 4 of the Fundamental Rights Enforcement Rules 1979 for:

(1) An order granting leave to Chief Andrew Monye the applicant to enforce his fundamental rights.

(2) An order restraining the Presidential Task Force on Trade Malpractices and FSB International Bank Plc from arresting, detaining, threatening with arrest, harassment and or the arrest and detention of the applicant pending the determination of application to be filed pursuant to leave of Federal High Court.

The 1st respondent's application was accompanied by a statement where he sought the following reliefs to wit:

(i) "Declaration that the arrest and false imprisonment of Chief Andrew Monye on 8th March 1996 by the Presidential Task force on Trade Malpractices at the instance of FSB International bank Plc is illegal, unconstitutional and a breach of the applicant's liberty.

(ii) An Order of injunction restraining the Presidential Task Force on Trade Malpractices from arresting, detaining Chief Andrew Monye on the complaint of FSB International Bank Plc on a case of debt recovery.

(iii) ₦5 Million damages against the FSB International Bank Plc for unlawful arrest and false imprisonment of Chief Andrew Monye on 8th March, 1996"

Attached to the motion ex-parte was an affidavit verifying the facts relied on by the 1st respondent and three exhibits.

On the 2nd day of April 1996, the motion was moved by the learned counsel for the 1st respondent and the learned trial judge ruled as follows:

"It is hereby ordered that

1. Leave is hereby granted to the applicant to apply to this court for the enforcement of his fundamental rights in terms of the reliefs set out in the statement.

2. The respondents are hereby restrained from arresting, detaining, and threatening with arrest, harassment and or arrest and detention of the applicant pending the determination of the motion on notice.

3. The respondents are to be served with the motion on notice to be filed by the applicant.

4. The applicant is to enter into an undertaking should this order turn out to be wrongly obtained.

5. The motion on notice is hereby adjourned to the 17th day of April, 1996 for hearing."

The 1st respondent filed the necessary papers as to damages as ordered by the court and filed on 8th April, 1996 the motion on notice dated 2nd April, 1996 together with supporting affidavit, statement and exhibits. When the matter came up on 17th April 1996, it was adjourned to 13th May, 2001 to enable the appellant's counsel file the necessary papers which he did by way of a counter affidavit on 13th May, 1996. In it were averred thus:

1. That the loan of ₦1.5 million advanced to Bellview Nigeria Limited and guaranteed by the applicant was for a specific purpose or better still for importation of items of coking (sic) coal and cement etc.

2. That the loan facility was not for a working capital or for building purposes but was for trading activities.

3. That when Bellview Nigeria Limited and the applicant refused, failed and neglected to repay the loan several months after the expiration of the tenure (sic) in spite of demands by the 2nd respondent, the 1st respondent or better still Presidential Task Force on Trade Malpractices was invited to investigate whether or not the loan of ₦1.5 million was utilized for the purpose for which it was meant.

4. That I was informed by the Legal Adviser of the 2nd respondent Bank and I verily believe that the 2nd respondent did not authorize or instruct the arrest of the applicant by the 1st respondent but merely made a complaint to the 1st defendant/respondent.

5. That 1st respondent has not reported back to the Bank on the outcome of its investigation or finding.

6. That the Presidential Task Force on Trade Malpractices is a creation of law and has powers to investigate Trade Malpractices.

Sequel to the application of the 1st respondent which was not opposed by the counsel to the appellant, the Attorney General of the Federation was joined as a party to the suit on 27th May, 1996.

Considering the arguments on this motion of the 1st respondent, the Honourable Justice Gumel (as he then was) delivered his ruling and held that the proceedings were a nullity on the authority of *Ogwuche v Mba (1994) 4 NWLR (Part 336) 75* because the motion on notice was adjourned for hearing to a date, 17th April 1996 more than 14 days after leave was granted to the 1st respondent on the 2nd April, 1996 to enforce his fundamental rights. The learned trial court struck out the suit without considering whether the appellant's rights under Section 32 of the 1979 Constitution had been breached by the respondents.

Being dissatisfied with that decision the 1st respondent filed a Notice of Appeal to the Court of Appeal which notice was later amended by leave of court. The Court of Appeal delivered its judgment after hearing arguments from counsel and directed that the application on notice by the 1st respondent be heard *de novo* before another Judge of the Federal High Court, Lagos. Being dissatisfied with that decision the appellant has come before this court.

On the 24/1/12 date of hearing, the appellant adopted their Amended Brief filed on 4/3/2011 settled by Johnson Odionu Esq. in which brief was formulated a single issue, viz:

> Whether the Court of Appeal is right in holding that the provisions of Order 2 Rule 2 of the Fundamental Right (Enforcement Procedure) Rules 1979 (which require the return date for motion on notice to be fixed within fourteen days after leave has been granted) cannot be interpreted in mandatory terms in this case as such interpretation will lead to injustice.

The learned counsel for the respondent, Mr. Adewunmi Ogunsanya adopted 1st respondent's amended brief of argument filed on 17/8/11 and deemed filed on 19/9/11. In the brief was distilled one issue for determination as follows:

> Whether the Court of Appeal is right in holding that the provisions of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 cannot be interpreted as mandatory in this case as such interpretation will lead to injustice.

Dr. J. O. Olatoke settled the brief of the 2nd and 3rd respondents which was filed on 3/11/10 and deemed filed on 19/9/11. In it was framed a single issue which is:

> In the peculiar circumstance of this case, whether the Court of Appeal was right in holding that the provision of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 cannot be interpreted in mandatory terms of which will lead to injustice.

Clearly each of the sole issues formulated by the appellant on one hand the 1st respondent on the second part and the 3rd respondent basically asked the same question begging for answer. Therefore an answer to one clears the air on the other.

Arguing the appeal, learned counsel for the appellant contended that in an action for the enforcement of fundamental rights brought pursuant to the Fundamental Rights (Enforcement Procedure) Rules 1979, the return date for the hearing of the motion on notice is crucial and that is within fourteen (14) days from the date the leave to enforce the fundamental right was granted.

He cited Order 2 Rule 2 of the Rules. That anything more than the statutory stipulation of fourteen days invalidates the whole proceedings. That in this case the motion *ex-parte* at the Federal High Court, Lagos was argued on 2nd April, 1996 and leave granted to the 1st respondent on that day to enforce his fundamental right. The return date for the motion on notice to be heard was fixed for the 17th April, 1996, a period of more than fourteen days after leave was granted to the 1st respondent contrary to Order 2 rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 and so was out of time. That the consequence was that the proceedings were a nullity. Learned counsel said this is because the word 'must' in that order and rule is mandatory and effect had to be given to it without fail. That the word 'must' used in that provision is imperative admitting of no discretion and not carrying out the mandate rendered whatever is done contrary to the enactment as invalid and altogether void. He cited *Okorie v Udom (1960) SCNLR 326; Atuyeye v Ashamu (1987) 1 NWLR (Part 49) 267 at 279; Anuibi v Shotimehim (1993) 3 NWLR (Pt.282) 461 at 473.*

Mr. Odionu of counsel stated further that the provisions of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 are unambiguous, clear and plain and should be so construed. He referred to the case of *Kanada v Governor of Kaduna State (1986) 4 NWLR (Part 35) 365 at 364.*

He went on to say that once there is a failure to comply with the requirement of the statute, it is not a mere irregularity. That failure made it impossible for the Federal High Court to proceed further with the case because there was nothing that could be waived, acquiesced in or decided upon. He cited *Ben Obi Nwabueze v Justice Obi Okoye (1988) 4 NWLR (Part 91) 664 at 668.* He concluded by urging the court to allow the appeal.

For the 1st respondent was canvassed by Mr. Ogunsaya of counsel that the approach adopted by the Court of Appeal conforms to all known rules of interpreting statutes and indeed rules of court. That the primary concern of courts in the construction of statutes is to ascertain the intention of law makers as deducible from the language of the statute being constructed. He referred to *Savannah Bank of Nigeria v Ajilo (1987) 2 NWLR (Part 57) 421; Ojokolobo v Alamu (1987) 3 NWLR (Part 61)37; Ifezueu v Mbadugha (1984) 5 SC 79 at 135; A-G.Federation v Abubakar & Ors (2007) 10 NWLR (Part 1041).*

Mr. Ogunsaya stated that there is the need as emphasized by the courts to shift from the technical approach to justice and to pursue the course of substantial justice. He cited *Chime v Chime (2001) 3 NWLR (Part 701) 527 at 553; Gwonto v State (1983) 1 SCNLR 142; Odua Invest Co. ltd v Talabi (1997) 10 NWLR (Part 523) 1 at 51; U.T.C. (Nig) v Pamotei (1989) 2 NWLR (Part l03) 244.*

He said in the construction of the word 'must' and 'shall' often times used interchangeably, the courts have interpreted the words not to be mandatory at all times but could be directory as the occasion warrants. He said in a situation like the present when the fixing of the date of hearing of cases which is not under the respondent but at the absolute discretion of the court, therefore the respondent cannot be held responsible for something it had no control over. That punishing the respondent for no fault of his and over a matter that is not in his control would be a travesty of justice. He cited *Ezomo v A-G. Bendel State (1986) 4 NWLR (Part 36) 448; Ogunremi & Anor v Dada (1962) 1 All NLR 663.*

In respect of the 2nd and 3rd respondents, Dr. Olatoke on their behalf stated that it is imperative to consider the purpose of the provision and the mischief it sought to prevent thus the word should be construed to give effect to such purpose. In that regard it is relevant to consider what was the law before the enactment of the Act or Law to be construed. What was the mischief or defect in which the old law did not provide and what remedy the Act or the Law intended to cure? *Atuyeye v Ashamu (1987) 1 NWLR (Part 49) 267 at 279; Agbetoba v Lagos State ExCo (1991) 6 SCNJ 1 at 22; Mobil v F.B.I.R. (1977) 3 SC 53; Abioye v Yakubu (1991) 6 SCNJ 69 at 94; Ifezue v Mbadugha (1984) NSCC 314 at 325. ;* That the requirement of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules is that the Application must be entered for hearing within 14 days after leave must have been granted to enforce Fundamental Human Right. That the issue is whether the Trial Court did not enter the application for hearing within 14 days after the grant of the leave on 2nd April 1996. That the word 'entered' simply means filing and fixing the case for hearing within 14 days after the leave has been granted and not concluding the trial within 14 days after the leave was granted. That the word within includes the day of the grant of the leave i.e. 2nd April, 1996 hence adjourning the case for hearing on 2/4/96 has satisfied the provisions of Order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules

Dr. Olatoke said the Rules are to prevent the trial Court from granting the leave and put away the file without fixing the application for hearing. That the lower Court was therefore right in its decision to have set aside the judgment of the trial court. He said the rules did not place any further obligation on the Applicant but the obligation to enter the Application for hearing within 14 days after the grant of the leave to enforce the 1st Respondent's Fundamental Human Rights was/is that of the trial

Court. That once a litigant has properly filed his claim as required by law and fully paid his fees, his responsibility ceases and so the omission of the judge or court officials to play their part is not his business and will not affect his case. He concluded by saying that a court of law will not punish a litigant for the mistake of the court or their counsel. He referred to *Famfa Oil ltd v A.G. Federation (2003) 18 NWLR (Part 852) 453 at 467; Alawode v Smith (1959) SCNLR 91; Amadi v Acho (2008) 12 NWLR (Part 939) 386 at 405.*

That a rule of court stands to guide the court in the conduct of its business and it must not hold it as a 'mistress' but as a handmaid. He cited *Chrisdon Ind. Co ltd v A.I.B. ltd (2002) 8 NWLR (Part 768) 152 at 178; U.T.C. (Nig) v Pamotei (1989) 2 NWLR (Part l03) 244; Chime v Chime (2001) 3 NWLR (Part 701) 527 at 553;*

The areas of contest in this appeal and even in the two lower courts are very narrow and that is the appropriate interpretation of Order 2 Rule 2 of the Fundamental Right 1976 in relation to this case. That Order and rule are as stated hereunder:

> "The Motion or Summons must be entered for hearing within fourteen days after such leave has been granted"

The learned Justice of the High Court had granted the leave to enforce the 1st respondent's fundamental right on 2nd April 1996 and had fixed the hearing of the motion on 17th day of April 1996, a day longer than the 14 days period stipulated in order 2 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1976. This the learned trial judge Gumel. J. in his ruling of 15th September 1997 interpreted to be mandatory and basing it on the decision in *Ogwuche v Mba (1994) 4 NWLR (Part 336) 75.* This decision of Gumel. J. (as he then was) was rejected by the Court of Appeal per Oguntade JCA (as he then was) who held as follows:

> "There is no doubt that the intendment or the rationale behind the stipulation in the relevant rule that the motion on notice fixed for the enforcement of a fundamental right must be fixed for hearing within 14 days after the grant of leave is to ensure that all proceedings touching on the enforcement of fundamental rights are expeditiously heard and disposed of. Viewed from that angle, it is difficult to appreciate why this court in *Ogwuche v Mba (supra)* interpreted the word 'must' in Order 2 Rule 2 of the Fundamental Rights Enforcement Procedure Rules, 1979 as mandatory. If the high court were left free to treat proceedings for enforcement of fundamental rights in the same manner as other matters or proceedings, an unduly long period would be spent in the disposal of such cases and the prompt enforcement of fundamental right made unattainable."

What the Court of Appeal did and said are the correct channel through which the interpretation of that order and rule are to be made. That is that the stipulation is directory and directed to the court and the party or parties in need of the enforcement of rights taking a cue from that. Since a litigant has no power to give dates of hearing or even to suggest at the filing stage it goes without saying that the provision is meant for the court from where the litigant would clearly understand the urgency necessary in the hearing and determination of the application he had brought before Court. This situation captures the fact that such matters must be dealt with expeditiously and in the circumstances within which that rule is to be operated, the justice of the matter dictates that the word 'must' just like 'shall' when the occasion warrants is taken to be directory and not mandatory which on the face, the word would have suggested. This is all the more poignant when taken along with the fact that it was the court that made the error and the question that arises, if taken differently is what has put the applicant in the disadvantage and unfortunate position of taking a punishment for doing no wrong especially here when the applicant had no blame in coming to the court through due process without any tardiness. I rely on *Ifezue v Mbadugha (1984) NSCC 314 at 325; Amadi v N.N.P.C. (2000) 10 NWLR (Part 674) at 97.*

From the above and the fuller reasons in the lead judgment just delivered by my learned brother Ibrahim Tanko Muhammad JSC, I too dismiss the appeal and affirm the decision and orders of the Court below.

I abide by the consequential orders in the leading judgment.

Counsel

John Odion	……	For the Appellant
Adewunmi Ogunseye *with him* Mahmud Adesina	……	For the 1st Respondent
Dr. J. O. Olatoke *with him* S. Z. Michael	……	For the 2nd and 3rd Respondents