Keynote Address at the Public Presentation of the Book Titled, *Ukala's Manual on Appellate Practice*, which held on 29 April 2026 at Bola Ahmed Tinubu International Conference Centre, Abuja (Formerly Abuja International Conference Centre)

By

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AND
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1. Courtesies

2. It was on 13 April 2026 that my office received the letter dated 9 April 2026 inviting me to today's public presentation of the book titled, *Ukala's Manual on Appellate Practice*. The invitation did not say that I was to deliver the keynote address. It was on 22 April 2026 that the Coordinator of the Planning Committee, Dr Ogwu James Onoja, SAN, FCArb, sent to me a WhatsApp text intimating me that I am to deliver a keynote address. I worried as to what to talk on more so as I am yet to be privy to the book being presented today, and so cannot say what the exact contents are.

3. The letter of letter of invitation to me merely stated that "the book is a practical guide on appellate advocacy and procedure, designed to assist legal practitioners, scholars, and judges in navigating the complexities of appellate jurisdiction". Given the caveat of not knowing the exact contents of the book in issue, I have elected to talk generally on few issues pertaining to appellate practice — just so that the book can also be considered in that light.

4. As we all know, appellate practice focuses on getting a higher court to review and reverse decisions made by lower courts. The lower court's decision may at the end be affirmed if found to have been correctly decided. This no doubt requires specialized skills in legal research, brief writing, and oral advocacy. The point is that appellate lawyers often look for legal errors (whether as to procedural or substantive law) that lower courts make, make out issues for appeal, and argue them before appellate courts. Note must thus

be made that the duty of the respondent(s) to an appeal is to defend the judgment appealed against, not argue against it, as was pointed out by His Lordship Jauro, JSC in *Oluremo Obasanjo & anor v. Wuro Bogga Nig. Ltd & ors*[1]. His Lordship Tijjani Abubakar, JSC in *APGA & anor v. Oye & ors*[2] deprecated this conduct, and pointed out that "the proper course of action is to file a cross-appeal or in appropriate circumstance a respondent's notice, as stipulated by law".

5. The essence is to identify a reversible error i.e. an error made by the lower court that may have affected the case's outcome[3]. Where the appellate court finds such an error, the decision of the lower court can be overturned, a new decision entered or a new trial ordered. It is key, therefore, that for an effective appellate strategy, understanding reversible error is essential[4].

6. The search for reversible errors in order to enter an appeal does not make the appeal any easier. Y. Srinivasa Rao[5] identifies the following as not making an appeal any easier as it may sound:

- Appeal is expensive, except you have the special dispensation of being treated as an indigent litigant.
- Findings of trial courts are not disturbed slightly. "It is not the practice of an appellate Court to disturb the trial Court's findings of fact except where the findings are at variance with the evidence and are therefore perverse", so held by His Lordship Belgore, JSC (as he then was) in *Ibeh v. The State*[6].
- Appeal makes you linger around the court much longer than you may have expected.
- In criminal matters, convicted defendants are not necessarily entitled to bails simply because an appeal has been entered.

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[1] [2022] LPELR-58486(SC).

[2] [2024] LPELR-63086(SC). See also *NITEL Trustees Ltd & anor v. Syndicated Investment Holdings Ltd* [2022] LPELR-58842(SC) and *CBN v. Ochife & ors* [2025] LPELR-80220(SC).

[3] See https://www.conradscherer.com/resources/understanding-the-basics-of-appellate-practice/ as accessed on 22 April 2026.

[4] *Ibid*.

[5] Y. Srinivasa Rao - "Trial Judge: His Power", available at https://www.manupatra.com/roundup/379/Articles/Trial Judge.pdf as accessed on 28 April 2026.

[6] [1997] LPELR-1389(SC).

- Unless there is miscarriage of justice or grave procedural irregularity, appellate courts do not readily set aside judgments of trial courts. As pointed out by His Lordship Eko, JSC in *Ogar & ors v. Igbe & ors*[7], "not every error allegedly committed by the Lower Court entitles the appellant to a judgment allowing the appeal; and that only errors occasioning miscarriage of justice entitle the appellant to a judgment setting the decision appealed".

7. And so His Lordship Abang, JCA cautioned in *The Consulate of the Republic of Yemen v. Avastone Global Services Ltd & ors*[8] thus:

> Appellate practice is not a sentimental or emotional issue. Even though the trial Court delivered a judgment that is fundamentally defective and flawed, the notice of appeal challenging the said perverse judgment should be competent. Where a notice of appeal is incompetent there is nothing the appellate Court can do to save the appeal. This is so because it is only a competent appeal that will vest judicial powers on the appellate Court to ascertain whether or not the said judgment was rightly entered. Where there is no valid appeal filed affecting a subsisting judgment of a Court of law, the judgment that appears to be a nullity will still subsist because the appellate Court will lack jurisdiction to set it aside. Therefore, a valid appeal is the only needed instrument that confers jurisdiction on the appellate Court to review and set aside a judgment that was entered in want of jurisdiction. There is no harm in an upcoming counsel that does not know what to do, consulting counsel that is seised of appellate practice and procedure than for that counsel taking a risk of filing a notice of appeal that appears to be incompetent.
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> …in the light of the above, …a ground of appeal which is vague or general in terms and discloses no reasonable ground of appeal is incompetent…

8. A bad, faulty and/or in elegant Brief of argument may be adversely commented on by the court, but may not be sufficient to make an appeal

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[7] [2019] LPELR-48998(SC).

[8] [2024] LPELR-62245(CA).

incompetent. In the words of His Lordship Augie, JSC in *Lt. Colonel P. Y. Awusa v. Nigerian Army*[9]:

> …in the interest of the Court and the client's case, counsel should appreciate that presentation of a good brief is an indispensable asset to successful appellate legal practice. Be that as it may, there are numerous authorities on the principle that despite the inelegance or flaws in a Party's brief of argument, an appellate Court has a duty to examine the arguments therein, and decide the case on its merit…

9. In searching for reversible errors, it is not uncommon for counsel to proliferate issues, something that has been deprecated by His Lordship Jauro, JSC in *Ishayaku Habibu v. The State*[10]. Litigating in piecemeal, noticeable in appellate practice, has also been deprecated by His Lordship Dimgba, JCA in *Ibrahim Yusuf Zakari Dan-Bauchi v. Nigeria National Petroleum Corporation Limited*[11], relying on *Shuaibu & anor v. Mailaya*[12] and *Igoin & ors v. Ajoke*[13].

10. The filing of unmerited appeals was recently denounced by His Lordship Hon. Justice Abiru, JSC in *Dikio v. NSITF*[14]. The rule is that counsel should have confidence in the success of a case before accepting it[15]. In *Ezekiel Okoli v. Morecab Finance (Nig.) Ltd*[16], it was expressed that it is the duty of counsel to advise his client on the impropriety of pursuing a hopeless appeal. I often find it curious that even with cases like *Ngige v. INEC*[17], where the

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[9] [2018] LPELR-44377(SC). See *Ekpemupolo v. Edremoda* [2009] 8 NWLR (Pt. 1142) 166 SC, *Akpan v. The State* [1992] 6 NWLR (Pt. 248) 439 SC and *Obiora v. Osele* [1989] 1 NWLR (Pt. 97) 279, which were relied on.

[10] [2023] LPELR-60351(SC).

[11] [2024] LPELR-63071(CA).

[12] [2017] LPELR-43192(CA).

[13] [2021] LPELR-58334(SC).

[14] [2025] 14 NWLR (Pt. 2004) 129 at pages 166 - 167.

[15] *Kallamu v. Gurin* [2003] 16 NWLR (Pt. 847) 493; *Textile Allied Products Ltd v. Henry Stephens Shipping Co. Ltd* [1989] 1 NWLR (Pt. 95) 115; and *Ojo v. Philips* [1993] 5 NWLR (Pt. 296) 751.

[16] [2007] 4 – 5 SC 116. See also *K. R. Textile Allied Products Ltd v. Henry Stephens Shipping Co. Ltd & 2 ors* [1989] 1 NWLR (Pt. 95) 115 CA.

[17] [2015] 1 NWLR (Pt. 1440) 281 at 313.

Supreme Court acknowledged the difficulty of the burden of proof placed on the petitioner in an election petition, and then cautioned the petitioner to decide whether he wants to embark on this herculean task, you still find virtually all elections petitions that can travelling up to the Supreme Court. By now, we ought to know that that it is easier for a camel to enter the eye of a needle than for a petitioner to succeed in an election petition where the petitioner is contesting the outcome of an election result; as election petitions are skewed against petitioners[18].

11. The appellate process (and hence appellate decisions) plays a crucial role in shaping legal precedent, interpreting laws, and resolving conflicting lower court decisions[19]. In contributing to the body of case law, each appellate decision guides future cases and ensures consistency in legal interpretations. There is also the utility of appellate courts influencing legislative action by highlighting gaps in existing laws, which can prompt legislative amendments[20].

12. The generally held view, therefore, is that justice is upheld through appellate practice[21]. In this sense, appellate practice becomes fundamental to ensuring justice, providing a platform for correcting errors and safeguarding litigants' rights. The appellate process accordingly strengthens the rule of law, promotes fairness, consistency, and transparency throughout the legal system.

13. But is this always the case? In other words, what assurance do we have that an appellate process will produce just outcomes? This is the question I intend to harp on as my keynote address. I must point out that it is one

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[18] Benedict Bakwaph Kanyip - "Election Petitions: the problematic of proof and the quest for electoral justice under the 2010 Electoral Act, as amended" (2015) *The Nigerian Electoral Journal* Vol. 7 No. 1 at pages 1 - 38.

[19] *Supra* note 3.

[20] *Ibid*.

[21] *Ibid*.

question that I previously harped on[22], a harping that I sincerely think is worth repeating as it does not seems to be that the question is one that has been given serious thought to.

14. The question whether the appellate process produces just outcomes in *all* cases is one that goes to the *quality* of the appellate process itself. Since most cases are contentious and so have the tendency not to end at the court of first instance, invariably they end on appeal to the Court of Appeal and then ultimately the Supreme Court. It is accordingly the decisions of the appellate courts that become judicial precedent. So, implicit in the theory of judicial precedent and hence *stare decisis*, is the assumption that the decision of especially an appellate court is necessarily a just one.

15. I acknowledged earlier that the appellate process is intended to cure errors in judicial decisions; and it has indeed been shown to have done just that. However, is there any guarantee that the appellate process itself will or can even cure *all* errors and so produce just outcomes? This remains the key question.

16. A rule of law that typifies the point I seek to make is that relating to *allocutus*, that plea in mitigation of sentence in criminal trials, which is normally made after conviction but before sentence is passed. We all were taught in criminal law that *allocutus* is to sentencing, not conviction. Yet His Lordship Rhodes-Vivour, JSC in his concurring judgment in *Yakubu Ahmed Audu v. The State*[23] would hold that the non-recording of *allocutus* by the trial judge amounts to "a further grave irregularity which renders the entire trial a nullity". Is this representative of the law (since *allocutus* is to sentencing, not

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[22] I first raised this issue in 2014 in B. B. Kanyip - "The Finality of the Jurisdiction of the National Industrial Court", a paper presented at the 2014 Nigerian Bar Association (NBA) Conference which held in Owerri in August 2014. The paper was presented at Civil Litigation Committee (CLC) of the Section on Legal Practice Session. It has been published as Chapter 17 of Omoruyi Augustine Omonuwa and Ikponmwonsa Osahon Omoruyi (Ed) - *On Judicial Integrity: Legal Essays and Materials in Honour of His Lordship, The Honourable Justice S. O. Nwaifo* (Mindex Publishing Company Limited: Benin), 2014 pages 312 - 362.

See also B. B. Kanyip - Keynote Address at the Nigerian Bar Association - Section on Legal Practice (NBA-SLP) 2024 Annual General Conference themed, *Administration of Justice Delivery in Nigeria: Challenges and Reforms*, and which held at Amani Event Centre, Kano, Nigeria from 2 to 5 June 2024 especially at paragraphs 67 to 80.

[23] [2015] LPELR-40839(SC).

conviction) as to produce a just outcome? In any event, a just verdict from an appellate court may not be worth anything if cases like *Obiuweubi v. CBN*[24] are anything to go by.

17. In *Obiuweubi v. CBN*, it took 23 years to decide, as between the Lagos State High Court and the Federal High Court, which has jurisdiction over an employment termination case — and when it was done (the Supreme Court holding that it is the Federal High Court that had jurisdiction), neither the State High Court nor the Federal High Court had jurisdiction, since with the coming of the Third Alteration to the 1999 Constitution, it was now the NICN that had jurisdiction. The matter was ultimately transferred to the NICN when both the counsel to the claimant and the claimant himself were way over 70 years old. I was made to understand that the claimant died before the conclusion of the case. In effect, the claimant died without even knowing whether the termination of his employment by the Central Bank of Nigeria (CBN) — what took him to court in first place — was right or wrong. It is cases like this that make labour dispute adjudication to be guided by this principle: it is better to have a bad judgment quickly than a good one too late. His Lordship Kenneth I. Amadi, JCA delivering the leading judgment in *Mr Victor Adegboyu v. United Bank for Africa*[25] affirmed this.

18. *The Governor of Kogi State & anor v. Elder Achuba Simon*[26] is a case that typifies the point I am making, even though it also compounds issues given that the dispute arose from a 2020 judgment of the NICN in Suit No. NICN/ABJ/244/2019, which affirmed Elder Achuba Simon's entitlement to statutory benefits as Deputy Governor between 2017 and 2019. As no specific sum was claimed by the claimant in this regard, no specific sum was awarded by the NICN as representing the claim for statutory benefits. The NICN judgment was appealed against and the Court of Appeal, in an earlier decision on 29 April 2024 (Appeal No. CA/ABJ/CV/30/2021), upheld aspects

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[24] [2011] LPELR-2185(SC); [2012] 28 NLLR (Pt. 79) 1 SC.

[25] [2022] LPELR-58778(CA). In the words of His Lordship:

> Globally, the resolution of labour disputes is guided, among others, by this principle that: it is better to have a bad decision quickly than a good decision too later. See B. B. Kanyip- National Industrial Court Jurisdiction: "How Narrow is Narrow" (Hybrid Consult: Lagos) 2021, paragraph 13 page 7.

[26] Unreported Appeal No. CA/ABJ/PRE/ROA/C1/630M1/2025, the ruling of which was delivered on 19 August 2025.

of the trial court's ruling as to the caiman for statutory benefits but set aside a ₦200 million security vote award and dismissed claims for imprest and personal expenses as lacking merit. Once again, the Court of Appeal did not specify any sum as the claim for statutory benefits. In essence, the relief as to statutory benefits granted to Elder Achuba Simon by the NICN and affirmed by the Court of Appeal remained declaratory.

19. However, on 25 April 2025, in a motion for enforcement (Appeal No. CA/ABJ/PRE/ROA/C1/630M1/2025) a panel of the Court of Appeal presided over by Justices Joseph Oyewole, Peter Obiorah, and Okon Abang granted Elder Achuba Simon's enforcement application, awarding him N1,070,860,138 in unpaid salaries, travel allowances, and statutory allocations — an amount the Kogi State Government argues was not part of any prior judgment and was unilaterally calculated.

20. The Court of Appeal, *inter alia*. hinged their award of N1,070,860,138 in favour of Elder Achuba Simon on budgetary allocations of 2017 and 2018. By definition, budgetary allocations are mere estimates, which may or may not be met.

21. A number of questions/issues arise here. Firstly, when did budgetary allocations become sources of entitlements for special damages?

22. Secondly, as a declaratory relief (remember that Elder Achuba Simon did not specify any figure in his claim for unpaid salaries, travel allowances, and statutory allocations), why did the Court of Appeal not tell him to go back to the court of first instance and prove his claims since the burden of proof is on him? After all, "It is the practice of appellate courts to send back to a trial court for making pronouncement[s] upon any issue/issues that was/were not pronounced upon by that court when it first treated the case, provided the trial court has jurisdiction over the issue/issues"[27].

23. Thirdly, by hearing the enforcement motion and granting a sum not prayed for an proved in the main suit, did the Court of Appeal not assist Elder Achuba Simon to short-circuit/side-track the burden of proof placed on

[27] *Onyero & anor v. Nwadike* [2011] LPELR-8147(SC), per His Lordship Ibrahim Tanko Muhammad, JSC.

him to prove his claim for special damages with specific and compelling evidence to the satisfaction of the court?

24. Fourthly, as Deputy Governor, Elder Achuba Simon's entitlements were provided for under the Certain Political, Public and Judicial Office Holders (Salaries and Allowances, etc) (Amendment) Act 2008, which amended the Certain Political, Public and Judicial Office Holders (Salaries and Allowances, etc) Act, 2002. So, even if the Court of Appeal felt that it should take the position of the trial court as may be permitted by the law and rules governing the Court of Appeal, why did the Court of Appeal not use this Act to determine the exact entitlements of Elder Achuba Simon?

25. Given all this, can it be said that the appellate process in *The Governor of Kogi State & anor v. Elder Achuba Simon* produced a just outcome?

26. I understand that Kogi State Government has appealed against this award at the Supreme Court[28]. Given section 243(4) of the 1999 Constitution, and *Skye Bank Plc v. Iwu*[29] and *CBN v. Lt. Cdr Isaac I. Okpanachi & 2 ors*[30], under which the Court of Appeal is the final court regarding appeals arising from the civil jurisdiction of the NICN, is the appeal to the Supreme Court actually competent?

27. Because appellate courts are precedent-setting courts, the question of the *quality* of the right of appeal itself is of great significance. The question must thus be stressed as to whether the fact of an appeal necessarily means or approximates to justice. Alternatively put, is there any assurance that the appellate process can and would produce a just outcome? *All Progressives Congress v. Bashir Sheriff & 2 ors*[31] illustrates the point I seek to make here. — a case commenced vide an originating summons at the Federal High Court. The 1st respondent got judgment in that court, which judgment was

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[28] See Yekini Jimoh's "Kogi govt appeals to Supreme Court over N1.07bn award to ex-deputy gov", available at https://tribuneonlineng.com/kogi-govt-appeals-to-supreme-court-over-n1-07bn-award-to-ex-deputy-gov/?sfnsn=scwspwa as accessed on 24 April 2026.

[29] [2017] LPELR-42595(SC); [2017] 16 NWLR (Pt. 1590) 24.

[30] [2022] LPELR-59627(SC).

[31] [2023] LPELR-59953(SC). Nweze, JSC (of blessed memory) delivered the leading judgment; Garba and Ogunwumiju, JJSC concurred; while Jauro and Agim, JJSC dissented.

affirmed by the Court of Appeal. The Supreme Court, however, upturned and set aside both judgments on the basis that the suit was commenced vide an inappropriate process, the originating summons, instead of the more appropriate process, the writ of summons.

28. I am not here concerned with rightness of otherwise of the decision, which set aside the suit because the suit was commenced vide an originating summons instead of a writ of summons. Even on that, a lot can actually be said given recent Supreme Court authorities that state that where an originating process is used to commence a suit, instead of writ of summons, courts are not to strike out the suit but ask parties to file pleadings[32]. The learned senior lawyer who filed the suit vide an originating summons did so because the Practice Directions issued by the Federal High Court did not give him any choice. He had to file the suit vide an originating summons. Yet he and his client got penalised for obeying the Federal High Court Practice Directions. In as much as I am entitled to thereby ask whether this decision in *All Progressives Congress v. Bashir Sheriff & 2 ors* is a just outcome, this angle is not even what concerns me at the moment.

29. What concerns me is a not too noticeable fact, something that we often do not even address, or we simply gloss over. It is something that questions the very basis of a strict adherence to precedent and *stare decisis*. It is *the very appellate process itself*, which I clearly acknowledge is constitutional. In *All Progressives Congress v. Bashir Sheriff & 2 ors*, the Federal High Court as the trial court (1 judge) heard and decided the matter. A panel of 3 Justices of the Court of Appeal sat over the matter on appeal and agreed with the trial court. What we now have are 4 Justices agreeing on a position. Now, the matter went to the Supreme Court and a panel of 5 Justices sat over it and by

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[32] See, for instance, *Ekanem & ors v. The Registered Trustees of the Church of Christ the Good Shepherd & ors* [2022] LPELR-59173(SC), where His Lordship Garba, JSC, who delivered the leading judgment, and relying on *Emezi v. Osuagwu* [2005] 12 NWLR (Pt. 939) 340 at 367, held thus:

> I should however restate the trite position of the law that the use or employment of a wrong procedure or mode of commencement of action, does not, ipso facto, make or render the action incompetent or liable to be struck out. For instance where a suit was initiated or commenced by way of originating summons when the material facts involved are in serious and material dispute from the Affidavit evidence placed before a Court by the parties or likely to be in such dispute, the proper order to be made is not one striking out the suit on ground of improper mode of the commencement, but one for the parties to file pleadings in the matter for the requisite resolution of the dispute.

See further *NEPA v. Ugbaja* [1998] 5 NWLR (Pt. 548) 106.

a majority of 3 to 2 the Supreme Court overruled both the Federal High Court and the Court of Appeal.

30. So, what do we actually have? The 2 dissenting Justices of the Supreme Court plus the 3 Justices of the Court of Appeal and the trial Judge means that 6 Justices in all are agreed on a common position, which position is, however, not the law. The law is as agreed to and stated by the 3 majority Justices of the Supreme Court. So the verdict of 3 Justices becomes the law even when 6 Justices (including 2 Supreme Court Justices) do not think so. Can this appellate process be said or held to be just? Would we be absolutely certain of the justness of the outcome of this appellate process if it is, for instance, known that the 3 Justices of the Court of Appeal have been recommended for elevation to the Supreme Court?

31. There is another variant of the attack on the appellate process, which I credit to Hon. Justice Peter Oyin Affen, JCA[33]. In His Lordship's words:

> The Nigerian Constitution contains generous provisions on 'appeal as of right' from decisions of the Court of Appeal to the Supreme Court and from decisions of the Federal High Court, High Court, Sharia Court of Appeal, Customary Court of Appeal, Court Martial, Code of Conduct Tribunal and other tribunals to the Court of Appeal. By conferring an untrammeled right of appeal against every final decision (as well as all interlocutory decisions involving points of law, etc,) the Nigerian Constitution gives the disturbing impression that the lower courts and tribunals created by it are incapable of delivering justice without being interposed by an appeal.

[33] Peter Affen - "Judicialism in Nigeria: Gasping for Breath Under Our Watch", a public lecture delivered under the auspices of Christian Lawyers Fellowship of Nigeria (CLASFON) Enugu Chapter in Honour of Hon. Justice Pearl Ifeyinwa Obiageli Enejere at Hon. Justice I. A. Umezulike Auditorium High Court Complex, Enugu on 20 May 2015. This paper was delivered when His Lordship was still a judge of the High Court of the Federal Capital Territory, Abuja.

32. We have variously heard the phrase, "we got judgment but not justice"[34]. The phrase "judgment, not justice" is said to describe a scenario where legal procedures (judgments) are followed, but the outcome fails to deliver fairness or equity; and is often used to argue that a verdict is technically legal but morally or practically unfair, often resulting in disillusionment with the rule of law. So when especially politicians talk of getting judgment, not justice, it comes with an attitude and sometimes statements as to not obeying a lower court's order until the Supreme Court speaks. Here, we see a euphemism for undermining lower courts and the appellate process itself.

33. So, while His Lordship Affen, JCA (rightly to my mind) sees the constitutionally enjoined appellate processes as in the main burdensome, less appealing and may be superficial, His Lordship Ayobode Olujimi Sodipe, JCA instead sees them more as a means of "testing" on appeal the decision of a lower court. In *Coca-Cola Nigeria Limited & ors v. Mrs. Titilayo Akisanya*[35], His Lordship Sodipe, JCA remarked that the National Industrial Court of Nigeria (NICN) "is clearly the only superior court of record created by the Constitution and whose decisions can never be tested on appeal in the Supreme Court".

34. I must make a quick clarification here. By *Skye Bank Plc v. Iwu*[36], decisions of the NICN regarding fundamental rights and criminal matters can go up to the Supreme Court. However, given that fundamental rights cases are civil actions, and are heard by the NICN in its civil jurisdiction as can be seen in section 254C(1)(d) of the 1999 Constitution, I have doubts if in this regard *Skye Bank Plc v. Iwu* appropriately interpreted section 243(4) of the 1999 Constitution, which provides that:

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[34] See, for instance, Jeph Ajobaju's "We got 'judgement, not justice', Atiku laments. Heads to Supreme Court", available at https://thenicheng.com/we-got-judgement-not-justice-atiku-laments-heads-to-supreme-court/ as accessed on 24 April 2026, where it was reported thus:

> Atiku Abubakar, presidential candidate of the Peoples Democratic Party (PDP), says he is heading to the Supreme Court to overturn the election of President Bola Tinubu which was affirmed by the Presidential Election Petition Court (PEPC).
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> Atiku expressed dissatisfaction with the verdict, dismissing it as "judgement, [not] justice" when he spoke through his lead counsel Chris Uche, SAN in Abuja.

[35] [2013] 18 NWLR (Pt. 1386) 255; [2013] 1 ACELR 28; [2013] 36 NLLR (Pt. 109) 338 CA.

[36] [2017] LPELR-42595(SC); [2017] 16 NWLR (Pt. 1590) 24.

> Without prejudice to the provisions of section 254C(5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

35. With due respect, I wish to ask whether all decisions must be tested on appeal; the very thing that Affen, JCA complained about. At a time the Supreme Court Justices themselves are complaining about their workload, it may not be of service to them to complain that some decisions are being left out of their appellate scrutiny. Thankfully, *CBN v. Lt. Cdr Isaac I. Okpanachi & 2 ors*[37] following *Skye Bank Plc v. Iwu* refused to hear an appeal from the Court of Appeal against a decision emanating from the NICN, holding that by section 243(4) of the 1999 Constitution, appeals emanating from the National Industrial Court cannot find their way to the Supreme Court under any guise, not even vide garnishee proceedings. This is as it should be.

36. If we understand the proper function of the Supreme Court then the talk of testing a decision on appeal in the Supreme Court will not arise. Given that we follow in the common law tradition, the Supreme Court of Nigeria, like its United Kingdom (UK) counterpart, should not concern itself with doing justice in individual cases for the benefit of individual parties, or to correct any errors which may have been made by lower courts, this being the summary description of the role of the Court of Appeal. As Lord Neuberger, Past President of the UK Supreme Court, puts it[38], the role of the Supreme Court is to take an appeal only if it raises one or more points of general public importance. In that connection, the functions can be summarised in six words, namely: "to clarify, correct, declare and develop".

37. Expanding on these functions, Lord Neuberger explained that traditionally, the function of the Supreme Court should be:

> (i) To clarify the law when it may have become unclear. Clarification is needed when decisions in the lower courts have left the law in a state of uncertainty or doubt.

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[37] [2022] LPELR-59627(SC).

[38] See Lord Neuberger – "UK Supreme Court decisions on private and commercial law: The role of public policy and public interest", presented on 4th December 2015 at the Centre for Commercial Law Studies Conference 2015; and Lord Neuberger – "Justice Innovation Programme Lecture for the Northern Ireland Assembly Committee for Justice" delivered on 3rd March 2016 and available at https://www.supremecourt.uk/docs/speech-160303.pdf as accessed on 7 March 2023.

(ii) To correct the law when it appears to have gone wrong. Correction is required where the courts below have gone wrong on an issue of law of significance. If the Supreme Court hears the appeal in respect of *The Governor of Kogi State & anor v. Elder Achuba Simon* and overturns the award of N1,070,860,138 in favour of Elder Achuba Simon, it will be on this ground.
(iii) To reconcile and resolve inconsistent decisions of different courts. Declaring the law arises when a new and significant point of law comes to light – often in relation to a new statutory provision. Only recently, the Supreme Court in *Elegbe & anor v. HP International Schools Ltd & ors*[39], the decision of which was delivered on 20 February 2026 (Hon. Justice Adah, JSC delivering the leading judgment), had to rule in a case stated made to as to the extent to which the NICN may have jurisdiction over defamation arising from an employment or the workplace given section 254C(1) of the 1999 Constitution.
(iv) To modernise and develop the law when it has become out-dated or out of touch. Development is appropriate where, although the law is clear, it has become outdated and needs to be changed.

38. Jeffrey Toobin[40] agrees with Lord Neuberger when he asserted that "The proper business of the Supreme Court is to take cases that establish principles of general application". Back home, His Lordship Oputa, JSC in *Nwadike v. Ibekwe*[41] held thus:

> The Supreme Court should really not be bothered with messy issues of fact. It should be given ample time and opportunity to concentrate on, and shape, the law of this country and also interpret the Constitution. These two functions are those that rightly belong to any country's court of last resort.

39. The quality of the appellate process, aside from the fact that it is susceptible to yielding unjust outcomes, is sometimes used by lawyers for other than the cause of justice. Here, one noticeable trend is the filing of all sorts of appellate cases by lawyers simply because they are looking for cases

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[39] [2026] LPELR-83245(SC).

[40] Jeffrey Toobin - *The Nine: Inside the Secret World of the Supreme Court* (Anchor Books: New York), 2007/2008 at page 203

[41] [1987] LPELR-2087(SC).

to make up the requirements for the conferment of the rank of Senior Advocate of Nigeria (SAN). This being the case, some questions may thus be asked: why shouldn't a lawyer become an SAN simply for cases done at courts of first instance? Indeed, why should lawyers not restrict their practice to particular courts? In order not to bog down the appellate process with flimsy appeals, it may be that we need to rethink the use of appellate judgments as part of the requirements for the conferment of the rank of SAN. Here, I suggest that only cases fought on merit should qualify, not the interlocutory and other flimsy matters that are daily filed at the Court of Appeal and Supreme Court. Even the cases fought on merit must reveal recondite points of law canvassed to qualify for consideration.

40. The quality of the appellate process (trial processes are by no means excluded) is also bogged down by the huge problem of theory deficit in our jurisprudence. His Lordship Affen, JCA defined theory deficit as the "disturbing inconsistencies and/or incoherencies neatly tucked away in the corpus of several decisions handed down by the [courts yielding] the legal space to confusing and subversive precedent"[42]. Uncritical citation, or citations out of context, of case law authority by lawyers and courts remains a cause for serious concern.

41. His Lordship Affen, JCA (writing extra-judicially as Judge of the High Court of the Federal Capital Territory) decried this where, for instance, election cases are cited as authority for normal civil cases. Hear His Lordship:

> …case law is replete with citation of decisions in election cases as binding precedent in non-election cases. It would seem therefore that we have, by this singular act, diluted the quality of justice available in the generality of civil cases being resolved daily by the courts. This work submits that the insidious consequence of uncritical reliance on election cases [which are *sui generis*] in normal civil proceedings is that Nigerian jurisprudence is steadily, if not systematically, being rendered grotesque and unrecognisable. The point being made here is

[42] Peter Affen - "Judicialism in Nigeria: Gasping for Breath Under Our Watch", a public lecture delivered under the auspices of Christian Lawyers Fellowship of Nigeria (CLASFON) Enugu Chapter in Honour of Hon. Justice Pearl Ifeyinwa Obiageli Enejere at Hon. Justice I. A. Umezulike Auditorium High Court Complex, Enugu on 20 May 2015. This paper was delivered when His Lordship was still a judge of the High Court of the Federal Capital Territory, Abuja.

that whilst it is not out of place to cite and rely on decisions in ordinary civil proceedings to augment election cases where appropriate, there is everything wrong with the uncritical use of election cases in normal civil proceedings[43].

42. Given that election cases are *sui generis* i.e. they are in a class of their own, independent of other civil or criminal cases, why would lawyers and the courts use decisions in election cases as precedent for other types of cases?

43. To end this short keynote address, I must acknowledge that as humans we are fallible, and so not perfect. Our laws and institutions cannot, therefore, be perfect either. This means that the judicial decisions that come from us cannot meet the aspirations of all, as they cannot meet the perfection yearned for by especially the unlearned and undiscerning. Yet, one major problem with us is our general inability to accept and live with the outcomes of court decisions, howsoever they come. This, of course, does not imply that we should not strive or aspire for perfection even if we cannot attain it.

44. I am not unaware of the generally held view that it is the fundamental duty of the court to ascertain the truth and do justice on the basis of the truth[44]. Yet, statements making the rounds on social media like "in the Court of Justice, both parties know the truth, it is instead the Judge who is on trial", throw up scruples; given that the statement belies the truism that the court is not for truth, it is for proof. No matter the truth, if proof according to the law is not provided, there is nothing the judge can do. Yet still, because a trial court's decision is appealable, it can appropriately be said that "THE TRIAL JUDGE IS REALLY ON TRIAL"[45]. Do all of these sound contradictory (or even heretical)?

45. I thank you all for your attention.

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[43] Peter Affen - "Electoral Justice vs. Legal Justice in Nigeria: Do the Waters Mix?" (2020 - 2021) *Nigerian Current Law Review* 24 at page 45.

[44] See the Indian case of *Ved Parkash Kharbanda v. Vimal Bindal* 198 (2013) DLT 555, available at https://judicialacademy.nic.in/sites/default/files/Judgment-VedParkash.pdf as accessed on 28 April 2026.

[45] See Y. Srinivasa Rao - "Trial Judge: His Power", available at https://www.manupatra.com/roundup/379/Articles/Trial Judge.pdf as accessed on 28 April 2026.