AN X-RAY OF THE SUPREME COURT'S DECISION IN *ERIEBENE V. UGOH*: BY:

Prof Yusuf Ali SAN*
Raheemah Issa Esq*
A.O. Lawal Esq*
F. A. Alimi Esq*

Introduction

The Supreme Court's decision in ***Eribenne v. Ugoh***[1], delivered on 14th March 2025, is one of the most significant recent pronouncements on appellate jurisdiction under the **Constitution of the Federal Republic of Nigeria, 1999 (as amended).** Although the dispute before the Court originated as a land ownership matter, the enduring significance of the judgment lies not in the substantive issues relating to title to land but in the Court's interpretation of **Section 233(1) and (2) of the Constitution**, as amended by **Section 6 of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.**

In determining the appeal, the Supreme Court revisited and examined its earlier decisions in ***Shittu v. PAN Ltd.***[2] and ***Amadi & Anor v. Wopara & Ors.***,[3] particularly with respect to the scope of appeals that may competently lie before the apex court in civil proceedings. The Court undertook a detailed analysis of the constitutional framework governing appeals and the extent of its jurisdiction to entertain appeals founded on questions other than pure law.

The central issue arising from the decision is whether, following the constitutional amendments introduced by the **Second Alteration Act,** an appeal may still lie to the Supreme Court on grounds involving mixed law and fact or facts with the leave of the Court. Resolving this question, the Supreme Court held that a proper construction of **Section 233(1) and (2) of the Constitution** confines the right of appeal in civil matters to grounds of law alone. Consequently, the Court concluded that it no longer possesses constitutional jurisdiction to grant leave to appeal on grounds of mixed law and fact or facts in civil cases.

This decision marks a notable departure from the previously accepted understanding of the Supreme Court's appellate jurisdiction and raises important questions regarding access to the apex court, the finality of decisions of the Court of Appeal, and the future trajectory of civil appeals in Nigeria. This article examines the reasoning of the Supreme Court in *Eribenne v. Ugoh*, analyses its treatment of earlier authorities, and considers the implications of the decision for appellate practice in Nigeria.

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*LLD, FCIArb, FNIALS – Principal Partner, Yusuf O. Ali & Co
*Associate, Yusuf O. Ali & Co
*Junior Associate, Yusuf O. Ali & Co
* Junior Associate, Yusuf O. Ali & Co
[1](2026) 7 NWLR (Pt 2043).
[2] (2018) 15 NWLR (Pt. 1642)
[3] (2021) LPELR-58286(SC)

CONSIDERATION OF THE DECISION OF THE SUPREME COURT IN SHITTU V PEUGEOT AUTOMOBILE (NIG) LTD (SUPRA) –

In this case, the following pronouncements were made by his Lordship, Hon. Justice Olabode Rhodes-Vivour, JSC:

> **"Where the grounds of appeal is on facts or mixed law and fact, leave to appeal is mandatory. It must be applied for and obtained. If no leave is applied for, the Supreme Court would have no jurisdiction to hear the appeal. See Ault & Wiborg (Nig.) Ltd. v. Nibel Industries Ltd. (2010) 6-7 SC p. 1; (2010) 16 NWLR (Pt. 1220) 486; Akwiwu Motors Ltd. & v. Dr. B.O. Songonuga (1984) 5 SC p. 184; Irhabor v. Ogaiamien (1999) 6 SCNJ p. 22, (1999) 8 NWLR (Pt. 616) 517.**
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> **Put in another way, where the ground/s of appeal are not of law alone but are of mixed law and fact, the right of appeal from the penultimate Court to the top Court can be exercised where the appellant has sought and obtained the leave of either the penultimate Court or the top Court." Per OLABODE RHODES-VIVOUR, JSC (Pp 9 - 10 Paras D - A)"**

FACTS OF THE CASE:

The Appellant was an employee of the Respondent and in 1989, his employment was terminated. He commenced an action at the High Court challenging the termination of his employment. The Court eventually declared the termination of his employment wrongful and awarded him one month's salary in lieu of notice of damages. Damages were paid to the Appellant in **April 1995**. Not done with his former employers, the Appellant again took out a writ of summons on **9th April, 1996** against the Respondent. This was suit No. **KDH/KAD/226/96**. In that suit, he claimed the sum of **N2,201,351.10** (Two million, two hundred and one thousand, three hundred and fifty-one naira, ten kobo), being outstanding salaries, benefits, pension contribution and gratuity. The suit was adjourned on two occasions at the instance of the Appellant. The suit was struck out at the instance of defence counsel, due to the fact that the Appellant was absent and unrepresented. Consequently, the Appellant filed a motion seeking an order relisting the suit that was struck out among other prayers.

Affidavits were filed in support and against the motion. The learned trial Judge in its ruling dismissed the application, concluding that it was not appropriate for him to exercise his discretion in favour of the Appellant.

Dissatisfied, the Appellant filed an appeal at the Court of Appeal. The Court of Appeal (Kaduna Division) affirmed the ruling of the trial judge and subsequently, the appeal was dismissed.

Still dissatisfied, the Appellant further appealed to the Supreme Court. The Respondent filed a preliminary objection pursuant to **Order 2 Rule 9(1**) of the Supreme Court Rules contending that the three grounds of appeal are incompetent on the ground that they are mixed law and facts and leave was not obtained. The Supreme Court determined the merit of the preliminary objection.

The Court relied on several earlier authorities, including ***Ault & Wiborg (Nig.) Ltd. v. Nibel Industries Ltd.***, ***Akwiwu Motors Ltd. v. Songonuga*****, and** ***Irhabor v. Ogaiamien*****,** all of which affirmed the principle that leave is a condition precedent to the exercise of appellate jurisdiction where grounds of appeal involve factual issues or mixed law and fact.

The decision in *Shittu* therefore reinforced the long-standing principle that compliance with the constitutional requirements relating to appeals is fundamental and that jurisdiction cannot be assumed where the prescribed conditions have not been fulfilled.

CONSIDERATION OF THE SC IN AMADI & ANOR V WOPARA & ORS (SUPRA)

The decision of the Supreme Court in ***Amadi & Anor v. Wopara & Ors***[4] arose from an application seeking what is commonly referred to as the "trinity prayers", namely: extension of time to seek leave to appeal, leave to appeal, and extension of time within which to appeal against the judgment of the Court of Appeal. The proposed appeal was founded on grounds of mixed law and fact.

The respondents challenged the competence of the application on jurisdictional grounds. Relying on the Supreme Court's earlier decision in ***Shittu v. P.A.N. Ltd. (Supra)*****,** they argued that following the constitutional alterations of **2010, section 233(3) of the Constitution** had ceased to exist and that the Supreme Court no longer possessed jurisdiction to entertain appeals founded on mixed law and fact. According to the respondents, such appeals now terminate at the Court of Appeal.

The central question before the Court, therefore, became whether the Supreme Court retained jurisdiction to grant leave to appeal on grounds involving mixed law and fact. As **Augie, JSC** succinctly framed it:

"Does the Supreme Court have jurisdiction to grant leave to an aggrieved Party to appeal against a decision of the Court of Appeal?"

In resolving the issue, the Court undertook a detailed examination of the earlier decision in ***Shittu v. P.A.N. Ltd.*** The respondents had argued that *Shittu* conclusively established that the Supreme Court no longer possessed jurisdiction over appeals involving mixed law and fact. However, Augie, JSC rejected that proposition.

The Court drew a distinction between the ratio decidendi of a case and statements made by way of obiter dictum. After reviewing *Shittu*, the Court concluded that Rhodes-Vivour, JSC's

[4] (2021) LPELR-58286(SC).

pronouncement that appeals on mixed law and fact terminate at the Court of Appeal was not part of the **ratio decidendi** of the case. Rather, it was a comment made after the Court had already determined the issue before it and struck out the appeal for failure to obtain leave. Consequently, the observation was regarded as obiter dictum and therefore not binding.

The Court stated categorically:

> ***"In this case, the observation made by Rhodes-Vivour, JSC, in the case of Shittu v. PAN Ltd. is, no doubt, an obiter dictum."***

The Court further observed that after the decision in *Shittu*, the Supreme Court had continued to entertain applications for leave to appeal on grounds of facts and mixed law and fact, thereby demonstrating that the legal position asserted in *Shittu* had not been treated as binding authority.

Having rejected the jurisdictional objection, the Court held that the application was competent and proceeded to grant all the reliefs sought. Significantly, the Court expressly granted leave to appeal on grounds of mixed law and fact.

The practical effect of ***Amadi v. Wopara*** was therefore clear. The Supreme Court affirmed that, notwithstanding the constitutional alterations, it retained jurisdiction to grant leave to appeal on grounds involving mixed law and fact. For several years, *Amadi* stood as the leading authority on the issue and was widely understood as having settled the controversy generated by *Shittu*.

CONSIDERATION OF THE DECISION OF THE SUPREME COURT IN ERIBENNE V UGOH (SUPRA)

The decision of the Supreme Court in ***Eribenne* V Ugoh** arose from a preliminary Point raised by the Respondent challenging the competence of Grounds 2 and 4 of the Appellant's Notice of Appeal. The Preliminary Point was predicated on the ground that the Appeal was founded on grounds of mixed law and fact.

The Respondent Contended that Grounds 2 and 4 of the Appellant's Notice of Appeal were grounds of facts or at best, grounds of mixed law and facts which were no longer appealable to the Supreme Court. The Respondents relied on the Supreme Court's earlier decision in ***Shittu v. P.A.N. Ltd. (Supra)*****,** and argued that following the Constitutional Alterations of **2010, Section 233(3) of the Constitution** had ceased to exist and that the Supreme Court no longer possessed jurisdiction to entertain appeals founded on mixed law and fact.

The Central issue before the Supreme Court was therefore, whether the Court still possessed power to grant leave to appeal on grounds of mixed law and fact by virtue of the unequivocal provisions of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.

In resolving the issue, the Court took a detailed look at the provisions of Section 233 of the 1999 Constitution (as amended) alongside the newly introduced Section 233 of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.

Upon a careful review of the Constitutional Provisions and the cases of ***Shittu v. P.A.N. Ltd. (Supra)*****,** and ***Amadi & Anor v. Wopara & Ors (Supra)***, the Court concluded that by virtue of Section 233, Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010, the Supreme Court's power to grant leave to appeal on grounds of mixed law and fact has been removed. Consequently, appeals on grounds of mixed law and facts are bound to terminate at the Court of Appeal.

The Court emphatically stated:

> ***"In my considered view point, that this court has an onerous duty to take judicial notice of the fact that by the enactment of the Constitution of the Federal republic of Nigeria (second Alteration) Act, 2010(supra), the power to grant leave to appeal on grounds of mixed law and facts, has been effectively removed (abolished).***
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> ***Thus, the remark made by Rhodes-Vivour, JSC, in Shittu V P.A.N ltd. (supra), cannot by any stretch of imagination be said to have amounted to a sheer obiter dictum, with due deference to Augie, JSC's remark in Amadi v. Wopara (supra)."***

The court observed that it would amount to sheer judicial impunity and abdication of judicial responsibility for courts to ignore clear and mandatory Constitutional provisions.

Having satisfied itself that Grounds 2 and 4 of the Notice of Appeal raised questions of mixed law and facts, the Court held that the grounds were incompetent and proceeded to strike them out for being incompetent.

The decision in ***Eribenne v. Ugoh*** therefore represents a definite judicial pronouncement on the effect of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010, on the appellate jurisdiction of the Supreme Court. The Court unequivocally affirmed that it no longer possesses the constitutional authority to grant leave to appeal on grounds of mixed law and facts.

RELATIONSHIP BETWEEN *AMADI V. WOPARA* AND *ERIBENNE V. UGOH*

The significance of ***Eribenne v. Ugoh*** *(Supra)* can only be fully appreciated when viewed against the backdrop of ***Amadi v. Wopara*****.** The latter represented the Supreme Court's most direct pronouncement on the continuing viability of appeals founded on mixed law and fact, while the former fundamentally revisited that position.

At the heart of both decisions lies the interpretation of section 233 of the Constitution following the Second Alteration Act, 2010. In *Amadi*, the Court held that the pronouncement made in *Shittu v. P.A.N. Ltd.* regarding the abolition of appeals on mixed law and fact was

merely **obiter dictum** and therefore lacked binding force. On that basis, the Court proceeded to grant leave to appeal on mixed law and fact.

In *Eribenne*, however, the Supreme Court adopted a markedly different approach. The Court revisited the constitutional alterations and concluded that the power of the Supreme Court to grant leave to appeal on grounds of mixed law and fact had indeed been removed. The Court held that by virtue of Section 233 as amended, appeals involving mixed law and fact now terminate at the Court of Appeal.

More importantly, the Court directly confronted the reasoning in *Amadi*. Referring to Augie, JSC's conclusion that the statement in *Shittu* was obiter dictum, the Court in *Eribenne* disagreed and stated that the removal of the Supreme Court's jurisdiction over mixed law and fact appeals was "no longer in doubt." Further, the Court declared that the remarks of Rhodes-Vivour, JSC in *Shittu* could not "by any stretch of imagination" be regarded as a mere obiter dictum.

Thus, *Eribenne* represents a clear departure from the reasoning in *Amadi*. Whereas *Amadi* preserved access to the Supreme Court through leave applications on grounds of mixed law and fact, *Eribenne* restricts such appeals and effectively makes the Court of Appeal the final court in respect of those issues.

From a jurisprudential standpoint, *Eribenne* may be viewed as an implied overruling of *Amadi*. Although the Court did not expressly state that *Amadi* was overruled, its conclusions are irreconcilable with the earlier decision. A court cannot simultaneously possess and lack jurisdiction to grant leave to appeal on grounds of mixed law and fact. The two decisions, therefore, embody competing visions of appellate jurisdiction under Section 233 of the Constitution.

The ultimate significance of ***Eribenne v. Ugoh*** lies not merely in its interpretation of Section 233, but in its rejection of the constitutional understanding previously endorsed in ***Amadi v. Wopara.*** In that sense, *Eribenne* marks a major turning point in Nigerian appellate jurisprudence and reopens a debate that many practitioners believed had been settled by *Amadi*.

OUR POSITION

Having looked at the three cases, it would appear that Section 233 of the Constitution has been correctly interpreted. With due respect to the contrary view expressed in **Amadi v. Wopara,** we support the position of Saulawa JSC in **Eribenne v. Ugoh**, as the decision is both legally sound and constitutionally defensible. The judgment represents a faithful interpretation of the Constitution and reinforces the principle that courts must derive and exercise jurisdiction strictly within constitutional limits.

The position of Rhodes-vivour in ***Shittu v. PAN Ltd.*** cannot therefore be said to be an obiter as it placed emphasis on the wording of Section 233 of the Constitution as amended by the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.

Prior to the constitutional amendment, Section 233(3) expressly empowered the Supreme Court to entertain appeals on questions of facts or mixed law and facts with leave of either the Court of Appeal or the Supreme Court. However, the deletion of that subsection by the Second Alteration Act cannot be regarded as accidental or meaningless. It is a settled principle of constitutional interpretation that every amendment introduced by the legislature is presumed to have been made deliberately and for a purpose. To hold that the Supreme Court still retains jurisdiction over appeals involving mixed law and fact despite the removal of the constitutional provision authorising such appeals would amount to judicial legislation.

Furthermore, the decision in **Eribenne v. Ugoh**, promotes judicial efficiency and the principle of finality in litigation. Allowing appeals on mixed law and fact to proceed endlessly to the Supreme Court would undermine this objective and continue to burden the Court with matters of fact that have already been exhaustively considered by the trial court and the Court of Appeal.

Although concerns may be raised regarding reduced access to the Supreme Court, such concerns cannot override clear constitutional provisions. If broader appellate rights are considered desirable, the appropriate remedy lies in constitutional amendment rather than judicial expansion of jurisdiction.

Accordingly, the decision in **Eribenne v. Ugoh** should be welcomed as a reaffirmation of constitutional supremacy, judicial restraint, and the principle that courts must operate strictly within the limits prescribed by the Constitution.

However, the right to grant leave still resides with the Court of Appeal. The provisions for court of Appeal to grant leave to appeal should also be amended.

CONCLUSION

The decision of the Supreme Court in **Eribenne v. Ugoh** represents a landmark development in Nigerian appellate jurisprudence. By holding that appeals founded on mixed law and fact no longer lie to the Supreme Court, even with leave, the Court has provided a definitive interpretation on Section 233 of the Constitution following the Second Alteration Act, 2010.

One cascading effect of the decision is that appeals already pending before the Supreme Court and founded wholly or substantially on grounds of mixed law and fact cannot be heard or determined. Since jurisdiction is fundamental and can be raised at any stage of proceedings, a court lacking jurisdiction cannot validly entertain a matter regardless of when it was instituted. The general principle is that a court must possess jurisdiction not only at the commencement of proceedings but also at the time it delivers its decision. Consequently, where appeals involving mixed law and fact were filed before the decision in **Eribenne v. Ugoh** but remain undetermined, the Supreme Court may be compelled to decline jurisdiction and strike out such appeals. This outcome may appear harsh to litigants who instituted their appeals in reliance on the prevailing authority of **Amadi v. Wopara**. Nevertheless, hardship

cannot confer jurisdiction where the Constitution has withheld it. The judgment therefore carries profound practical consequences, as numerous pending appeals may be rendered incompetent, thereby bringing litigation to an end at the Court of Appeal. While this may generate concerns regarding fairness and legitimate expectations of litigants, it ultimately reflects the supremacy of constitutional provisions over judicial precedent and procedural convenience.

Ultimately, **Eribenne v. Ugoh** underscores the supremacy of the Constitution and serves as a reminder that the powers of every court, including the Supreme Court, must be exercised within the framework established by the grundnorm.

The case will undoubtedly remain a significant reference point in future discussions concerning appellate jurisdiction and constitutional interpretation in Nigeria.