

**APPEAL NO: CA/J/226/2010 BETWEEN MOSES EDIRU AND
FEDERAL ROAD SAFETY COMMISSION**

The Court of Appeal Makurdi Division delivered a judgment in the above suit. Justice GOK Oyewole JCA, Justice I Jombo-Ofo JCA and Justice Ogbuinya Festus Obande JCA sat over the case with the latter presiding over and giving the lead judgment.

This matter is an Appeal against the judgment of Hon. Justice Aisha M Mohammed delivered at the High Court of Nasarawa State holding at Lafia on the second day of October, 2009.

The Appellant (who was the applicant at the lower court) on September, 2007 instituted an action against the FRSC for the enforcement of his fundamental rights wherein he claimed the following reliefs;

- a. An order enforcing his fundamental rights to fair hearing;
- b. A declaration that the imposition of penalties for the alleged offences of SBV and UPD and confiscation of his driver's licence by the respondent to secure compliance without an opportunity to be heard was illegal and unconstitutional;
- c. A declaration that only the court can impose penalties for offences prescribed by the FRSC Act;
- d. An award of N5m;
- e. An order compelling FRSC to return his driver's licence to him.

The trial Judge delivered judgment in favour of FRSC. The applicant filed an Appeal at the Court of Appeal Makurdi Judicial Division.

GROUND OF APPEAL

- a. That the trial court erred when it held that his right to fair hearing was not infringed upon by the issuance of offence ticket to him by

FRSC and directing him to pay a fine without being given an opportunity to be heard.

- b. That the issuance of the notice of offence ticket and the imposition of fines by FRSC amounted to usurpation of the Judicial Powers of the Court.
- c. That the trial court erred when it failed to make pronouncement on all issues formulated for its determination.

The Court of Appeal determined all the issues against the appellant and held in favour of FRSC.

The court held inter-alia that the issuance of notice of offence ticket by FRSC is not conclusive of imposition of fines, that at best it is a mere notification to either pay the fines or face prosecution. On this note, the court stated that the appellant cannot be heard to say that his right to fair hearing was foreclosed, since evidence showed that he applied for a waiver of the offence to FRSC, and upon the refusal he proceeded to pay the fines.

On whether the fines statutorily imposed by FRSC derogate from judicial powers of the courts, the court of Appeal held that the fines which the law gives FRSC the nod to enforce as enshrined in section 10(7)-(9) of the FRSC ACT and paragraph 113 of the NRTR 2012, do not derogate from the juridical powers of the court. There is no confluence point where the powers of the FRSC and the courts meet. The powers of both are coterminous. They are mutually exclusive such that the respondents' power of enforcement is not a usurpation of the judicial power of the court.

The court further held that an enforcement agency like FRSC is only required by law to create an avenue for the exercise of the rights to be heard but like in the case of the appellant, the law is that once the avenue is created what the person that lays claim to the right does with the window is entirely a different thing.

He further stated that the FRSC does not by the issuance of a notice of offence ticket impose fines, rather, they are merely enforcing provisions of the law as they are charged with implementing the Law. And as such, the action of FRSC in issuing a notice of offence ticket does not amount to the usurpation of the powers of the court.

On the issue of not ruling on all issues before it at trial, the court of Appeal held that since suit was based on affidavit evidence, it would not order a retrial but proceeded to view the issues upon which it held that the slip of the trial court has not occasioned a miscarriage of justice against the appellant. The appeal was therefore, dismissed in its entirety.