**APOSTLE PETER EKWEOZOR & ORS**

**v.**

**THE REGISTERED TRUSTEES OF THE SAVIOUR'S APOSTOLIC CHURCH OF NIGERIA**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 13TH DAY OF MARCH, 2020

SC.416/2014

**LEX (2020) - SC.416/2014**

**OTHER CITATIONS**

3PLR/2020/3 (SC)

(2020) LPELR-49568(SC)

**BEFORE THEIR LORDSHIPS**

OLABODE RHODES-VIVOUR, JSC

MARY UKAEGO PETER-ODILI, JSC

CHIMA CENTUS NWEZE, JSC

AMINA ADAMU AUGIE, JSC

EJEMBI EKO, JSC-end!

**BETWEEN**

1. APOSTLE PETER EKWEOZOR

2. REV. K. OYEMA

3. THE REGISTERED TRUSTEES OF THE SAVIOUR'S APOSTOLIC CHURCH - Appellant(s)

AND

THE REGISTERED TRUSTEES OF THE SAVIOUR'S APOSTOLIC CHURCH OF NIGERIA - Respondent(s)-end!

**ORIGINATING COURT(S)**

1. Lower Appellate Court: Court of Appeal, Enugu Division [Decision dated 30th June, 2014, Coram: Massoud Abdulrahman Oredola, Emmanuel Akomaye Agim, Misitura Omodere Bolaji-Yusuf J.C.A.]

2. Trial: High Court of Justice, Awka Judicial Division [in the then Anambra state of Nigeria vide a writ of summons dated 16th December, 1986. By the further Amended Statement of Claim dated 27th June, 2001]-end!

**REPRESENTATION**

Ogwu James Onoja, SAN, with him, Noah Abdul, Esq., M.A. Ebuke, Esq., and Mimi Ayua, Esq.For Appellant

AND

Ikechukwu Onuoma, Esq. with him, Daniel Aloh, Esq.For Respondent-end!

**ISSUE(S) FROM THE CAUSE(S) OF ACTION**

COMPANY LAW - INCORPORATION OF COMPANY: Proof of juristic personality – Burden of – How discharged - Whether the only way incorporation of a company can be established in any proceeding is by tendering the certificate of its incorporation

NONPROFIT LAW:- Court with jurisdiction over matters connected with entities registered under Part C of the Companies and Allied Matters Act (CAMA) 1990 – How determined – Duty of court to pay attention to pleadings and traverses of parties to the suit to discover the nature of issues joined

NONPROFIT LAW:- Proof of existence under Nigerian law – When necessary during court proceedings – Change of name and trustees of an incorporated nonprofit – Whether affects the holding of assets

REAL ESTATE AND PROPERTY LAW – LAND:- Title to land – Where plaintiff pleads possession of the land in dispute as his root title and the defendant admits possession but asserts that possession was obtained by way of pledge – Onus of proof – On whom lies - Section 133 (2) of the Evidence Act – Effect of failure to prove pledge

REAL ESTATE AND PROPERTY LAW – LAND:- Proof of title - Claim of exclusive ownership of the land in dispute by way of a gift – Onus of – On whom lies - Failure to prove the existence of the gift – Legal effect

RELIGION AND LAW:- Assets of a registered religious entity – Holding of – Role of the registered trustees thereto – Legal effect-end!

**PRACTICE AND PROCEDURE ISSUES**

ACTION - CLAIM(S)/RELIEF(S):- Where a claim falls within the jurisdiction of two Courts – Court deemed seised of jurisdiction – Whether it is the Court with jurisdiction over the main claim

ACTION - TECHNICALITIES:- Deployment of technicalities to defeat the essence of justice - Attitude of court thereto

APPEAL - INTERFERENCE WITH CONCURRENT FINDING(S) OF FACT(S): Instances where the Supreme Court will not interfere with concurrent findings of fact(s) made by Lower Courts

APPEAL - INTERFERENCE WITH FINDING(S) OF FACT(S): Invitation of an appellate court to interfere with findings of fact based on credibility of witnesses – Attitude of Court thereto

APPEAL - FRESH POINT(S) ON APPEAL: Case or issue not raised in the lower court – Attitude of appellate court thereto – Where leave is sought and granted to raise fresh issues – Whether leave extends to new issue which takes the contest outside the subject matter of the litigation or one that has effect of totally changing character of the dispute litigated between the parties

COURT - DUTY OF COURT:- Principle that a Court is a Court of both law and facts – Meaning – Legal implications

COURT - JURISDICTION:- Rule that the jurisdiction of a Court including the trial Court is determined by the plaintiff's claim as disclosed in the writ of summons and/or endorsed in the statement of claim - When evidence has been taken before the raising of the issue of jurisdiction – Whether the Court may refer to any part of the evidence it deems necessary

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF: Section 133 (2) of the Evidence Act - Effect on proceedings for proof of title to land where claimants possession is admitted by defendant

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF:- Changing nature of – When defendants pleaded issues would convert him to be a claimant/plaintiff on such issues - Sections 136 and 137 of the Evidence Act – Effect of failure to adduce evidence in proof of such issues

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF: Burden of proof in civil cases - Two facets of – How discharged

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF: Burden of proof on a claimant claiming ownership of land by gift - Effect of failure to discharge same

JURISDICTION - JURISDICTION OF THE STATE HIGH COURT: Jurisdiction of the High Court with respect to land - "Section 39 (1) and (2) of the Land Use Act, 1978 in review-end!

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Respondent as plaintiff commenced this action at the High Court of Justice, Awka Judicial Division, in the then Anambra state of Nigeria vide a writ of summons dated 16th December, 1986. By the further Amended Statement of Claim dated 27th June, 2001, the respondent claimed against the appellants as follows:-

i. A declaration that the plaintiffs are entitled to a Statutory Right of Occupancy over the said premises of Saviour's Apostolic Church of Nigeria situate at Awka, the annual value of which is about N10.00.

ii. General damages for trespass N2,000,000.00.

iii. Injunction restraining the defendants by their servants, agents or workmen from further interfering with the church premises aforesaid at Awka, or in any other manner inconsistent with the ownership and or possession of the said premises by the plaintiffs.

iv. Return of the properties of the church aforesaid named at paragraph 15 above or their estimated value thereof.

v. Account for all the monies found to be due to the plaintiffs which the defendants collected from S.A.C. Awka or accrued to them by virtue of remaining and or utilizing the church and/or by still holding out themselves as ministers of the said S.A.C. and payment to the plaintiffs or into the Court for plaintiffs' use, starting from the 29th of December, 1977 till judgment in this case.-end!

DECISION(S) APPEALED AGAINST

TRIAL COURT: The Trial Court entered judgment for the Plaintiff/Respondent and granted all the above reliefs, except the claim for return of various vehicles by the Appellants to the Respondent which was dismissed.

COURT OF APPEAL: The Court below affirmed the judgment of the Trial Court, dismissing the appeal for lacking in merit.-end!

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

On the 16th day of December, 2019 date of hearing, learned Senior Advocate, Ogwu James Onoja for the appellants adopted the amended appellants' brief of argument filed on 21/10/2015 and deemed filed on 26/4/2017 and in it distilled four questions for determination which are as follows:-

i. Whether the High Court of Anambra State has jurisdiction on matters pertaining to trusteeship, under Part C of the Companies & Allied Matters Act? (Distilled from Ground 1).

ii. Whether the Court below was right in holding that the replacement/change to Trustees of SAVIOUR'S CHURCH OF NIGERIA is tantamount to change of its name to the Respondent's name, to warrant the decision that Exhibit "C" is prima facie evidence that the requirements for change of name under Section 680 (1) - (a) and Section 682 of the CAMA, 1990 were complied with, when the respondent did not plead facts and lead evidence as to change of name. (Distilled from Grounds 2 & 3).

iii. Whether the Court below was right in holding that SAVIOUR'S CHURCH OF NIGERIA incorporated in 1961 is one and the same as the respondent which was incorporated in 1986, to warrant the decision that the respondent has the locus standi to institute and maintain this action, (Issue predicated on Grounds 4 & 5).

iv. Whether the respondent had proved by preponderance of evidence/their entitlement to the land in dispute. (Distilled from Ground 6).-end!

*BY RESPONDENTS*

Respondents formulated four issues for determination viz:

1. Whether the High Court of Anambra State had jurisdiction to entertain this suit. (Distilled from Ground 1 of the notice of appeal).

2. Whether the action was competent having been commenced by the respondent instead of "SAVIOUR'S CHURCH OF NIGERIA". (Distilled from Grounds 2 and 3 of the notice of appeal).

3. Whether the appellants challenged the pleadings/evidence and or rebutted the presumptions raised by Exhibits B and C and whether the Court below was right in holding that the suit was competently commenced by the respondent as "THE REGISTERED TRUSTEES OF SAVIOUR'S APOSTOLIC CHURCH OF NIGERIA" instead of "SAVIOUR'S CHURCH OF NIGERIA." (Distilled from Grounds 4 and 5 of the notice of appeal).

4. Whether the Court below was right when it held that the respondent discharged the burden of proof placed on it by law and was therefore entitled to judgment. (Distilled from Ground 6).-end!

*AS ADOPTED BY COURT*

The Supreme Court, in its lead judgment adopted Issues 1 and 4 of the respondent’s brief deeming them sufficient in the determination of the whole appeal viz:

1. Whether the action was competent having been commenced by the respondent instead of Saviour's Church of Nigeria.

2. Whether the respondent discharged the burden of proof placed on them in line with the provisions of The Evidence Act.-end!

**MAIN JUDGMENT**

MARY UKAEGO PETER-ODILI, J.S.C. (Delivering the Leading Judgment):

This is an appeal against the judgment of the Court of Appeal, Enugu Division or Lower Court or Court below dated 30th June, 2014, Coram: Massoud Abdulrahman Oredola, Emmanuel Akomaye Agim, Misitura Omodere Bolaji-Yusuf J.C.A.

The Appellants herein were the appellants in the Court below and defendants in the trial Court, while the respondent was respondent in the Lower Court and the plaintiff at the trial Court.

The appellants aggrieved with the decision of the Court below have come before the Supreme Court on six grounds of appeal vide a Notice of Appeal dated 11th day of July, 2014 and filed the same day.

FACTS RELEVANT TO THIS APPEAL:

The Respondent as plaintiff commenced this action at the High Court of Justice, Awka Judicial Division, in the then Anambra state of Nigeria vide a writ of summons dated 16th December, 1986. By the further Amended Statement of Claim dated 27th June, 2001, the respondent claimed against the appellants as follows:-

i. A declaration that the plaintiffs are entitled to a Statutory Right of Occupancy over the said premises of Saviour's Apostolic Church of Nigeria situate at Awka, the annual value of which is about N10.00.

ii. General damages for trespass N2,000,000.00.

iii. Injunction restraining the defendants by their servants, agents or workmen from further interfering with the church premises aforesaid at Awka, or in any other manner inconsistent with the ownership and or possession of the said premises by the plaintiffs.

iv. Return of the properties of the church aforesaid named at paragraph 15 above or their estimated value thereof.

v. Account for all the monies found to be due to the plaintiffs which the defendants collected from S.A.C. Awka or accrued to them by virtue of remaining and or utilizing the church and/or by still holding out themselves as ministers of the said S.A.C. and payment to the plaintiffs or into the Court for plaintiffs' use, starting from the 29th of December, 1977 till judgment in this case.

After considering the evidence of parties and the final submissions of respective counsel, the Trial Court entered judgment for the Respondent and granted all the above reliefs, except the claim for return of various vehicles by the Appellants to the Respondent which was dismissed.

Dissatisfied with the judgment of the Trial Court, the appellants filed a Notice of Appeal dated 25th September, 2007 and subsequently by leave of Court filed additional Grounds of Appeal dated 10th March, 2007.

On the 30th June, 2014, the Court below affirmed the judgment of the Trial Court, dismissing the appeal for lacking in merit hence the appeal to this Court as the appellant were dissatisfied.

On the 16th day of December, 2019 date of hearing, learned Senior Advocate, Ogwu James Onoja for the appellants adopted the amended appellants' brief of argument filed on 21/10/2015 and deemed filed on 26/4/2017 and in it distilled four questions for determination which are as follows:-

i. Whether the High Court of Anambra State has jurisdiction on matters pertaining to trusteeship, under Part C of the Companies & Allied Matters Act? (Distilled from Ground 1).

ii. Whether the Court below was right in holding that the replacement/change to Trustees of SAVIOUR'S CHURCH OF NIGERIA is tantamount to change of its name to the Respondent's name, to warrant the decision that Exhibit "C" is prima facie evidence that the requirements for change of name under Section 680 (1) - (a) and Section 682 of the CAMA, 1990 were complied with, when the respondent did not plead facts and lead evidence as to change of name. (Distilled from Grounds 2 & 3).

iii. Whether the Court below was right in holding that SAVIOUR'S CHURCH OF NIGERIA incorporated in 1961 is one and the same as the respondent which was incorporated in 1986, to warrant the decision that the respondent has the locus standi to institute and maintain this action, (Issue predicated on Grounds 4 & 5).

iv. Whether the respondent had proved by preponderance of evidence/their entitlement to the land in dispute. (Distilled from Ground 6).

Learned senior counsel for the appellants also adopted the reply brief of argument filed on 3/6/20.

For the respondent, learned counsel, Ikechukwu Onuoma adopted the brief of argument filed on 11/5/2016 and had been settled by Chief (Mrs.) A.J. Offiah SAN and in it formulated four issues for determination which are thus:-

1. Whether the High Court of Anambra State had jurisdiction to entertain this suit. (Distilled from Ground 1 of the notice of appeal).

2. Whether the action was competent having been commenced by the respondent instead of "SAVIOUR'S CHURCH OF NIGERIA". (Distilled from Grounds 2 and 3 of the notice of appeal).

3. Whether the appellants challenged the pleadings/evidence and or rebutted the presumptions raised by Exhibits B and C and whether the Court below was right in holding that the suit was competently commenced by the respondent as "THE REGISTERED TRUSTEES OF SAVIOUR'S APOSTOLIC CHURCH OF NIGERIA" instead of "SAVIOUR'S CHURCH OF NIGERIA." (Distilled from Grounds 4 and 5 of the notice of appeal).

4. Whether the Court below was right when it held that the respondent discharged the burden of proof placed on it by law and was therefore entitled to judgment. (Distilled from Ground 6).

I shall make use of Issues 1 and 4 of the respondent as they are sufficient in the determination of this appeal.

ISSUES 1 AND 4:

1. Whether the action was competent having been commenced by the respondent instead of Saviour's Church of Nigeria.

2. Whether the respondent discharged the burden of proof placed on them in line with the provisions of the Evidence Act.

Advancing the position of the appellants, Learned Senior Counsel contended that the action ought to have been heard and determined by the Federal High Court and not Anambra State High Court as the suit is not just a land matter or declaration of title to land but principally revolves around the operation of associations incorporated under Part C of the Companies and Allied Matters Act (CAMA) 1990, and the operation/application of the Companies and Allied Matters Act to the activities of the entities and associations.

That when an objection is raised, challenging the jurisdiction of the trial Court to hear and determine a suit before it, it is the nature of the plaintiffs claims that determines the jurisdiction of the Court. That the Court has a duty to consider the entire case of the plaintiff without limiting itself only to the prayers or reliefs contained in the writ of summons or statement of claim.

He stated that the Court has to go beyond the reliefs claimed by the plaintiff and consider the entire averments contained in the plaintiffs statement of claim. He cited A.S.T.C. v Quorum Consortium Ltd. (2009) 9 NWLR (pt. 1145) 25 - 26; NIKA Fishing Ltd v Lavina (2008) 11 M.J.S.C. 43 at 51 - 52; Oloruntoba-Oju v Dopamu (2008) 34 NSCQR (pt.1) 176) at 215.

For the appellants, it was submitted that a close and adroit examination would reveal that the action is about a religious association/church whose members have disagreed among themselves, gotten factionalized, each faction registered as separate association, but are still claiming ownership of the old church called Saviour's Church of Nigeria. That Section 7 (1) (c) of the Federal High Court Act, Cap 134, Laws of the Federation of Nigeria, 1990 confers exclusive jurisdiction on the Federal High Court in causes and matters arising from the operation of the companies and Allied Matters Act or any other enactment regulating the operation of companies incorporated under the companies and Allied Matters Act which exclusive jurisdiction of the Federal High Court is also reinforced in Section 152 (1) (e) of the 1999 Constitution (as Amended). He cited Sken Consult v Ukey (1981) 1 SC Page 1 at 14; Godwin v Okwey (2010) 16 NWLR (Pt. 1219) 309.

That it is clear that only the Federal High Court had the jurisdiction to hear and determine the matter and not the Anambra State High Court, Awka.

Learned Senior Advocate for the appellants stated that the entire issue of change of name from Saviour's Church of Nigeria to the respondent's name was the case made out for the respondent by the trial Court and affirmed by the Court below. That the re-constitution of Trustees of an incorporated Trustees is fundamentally different from change of name, each with distinct procedural requirements as it is necessary to effect a change of name of an existing incorporated Association, Section 597 (1) and (2) of the Companies and Allied Matters Act (CAMA) 1990 must be strictly complied with.

He stated that the respondent had a duty to lead evidence on pleaded facts in order to establish that the conditions in Sections 597 (1) & (2) and 599 (1) (2) (3) of CAMA were satisfied and these the respondent failed to do. He relied on Afolabi v W.S.W. Ltd. (2012) 17 NWLR (pt. 1329) 286; Obulor v Oboro (2001) 8 NWLR (Pt. 714) 25 at 32.

That the two Courts below imported the issues of change of name of Saviour's Church of Nigeria into the case, an issue that was not canvassed between the parties. He cited Calabar v Essien (1996) 10 NWLR (Pt. 477) 225 at 249.

He stated further that the appeal is against the concurrent findings of fact of the two Courts below and a lot has been shown as to why an interference by this Court should occur. He cited Ayanru v Mandilas (2008) 1 FWLR (Pt. 407) 439; Olaniyan v Fatoki (2013) 17 NWLR (Pt. 1384) 474 at 492 etc.

For the appellants, it was further canvassed that on the strength of facts pleaded by the respondent on the further Amended statement of claim and the evidence on record, the incorporated entity called Saviour's Church of Nigeria is not one and the same as Saviour's Apostolic Church of Nigeria as the two entities are separate and distinct and so as the subject matter of the dispute between the parties are vested in Saviour's Church of Nigeria, the instant action ought to have been commenced in that name and not the respondent who lack locus standi to institute and maintain the action in this appeal.

That having predicated their entitlement to the land in dispute on grant by Awka Local Government council and having gone further to aver in their Amended statement of claim that a document evidencing the said grant was issued to them, the only acceptable evidence to prove the grant or allocation is the production of a Certified True Copy of the document of grant or title in line with Sections 85 (1), 89 and 105 of the Evidence Act, Cap E.14 Laws of the Federation of Nigeria, 2004. He cited Ilona v Idakwo (2003) 11 NWLR (pt. 830) 53 at 84.

Learned Senior Advocate, Ogwu James Onoja stated that the failure to produce and tender the document of title in order to establish the claim to declaration of title to the disputed land, the respondent woefully failed to prove their entitlement to the disputed land and the premises of the church. That the production and tendering of the documents of title or grant would have afforded the two Courts below the opportunity to make enquiries as to whether the document is genuine and valid or the grantor has the capacity and authority to make the grant or whether the document has been duly executed or the grantor has in fact what he purported to grant and if the document had the effect claimed by the holder of the instrument. He relied on Atanda v Ifelagba (2003) 17 NWLR (Pt. 849) 274 at 285.

That there is no evidence of traditional history on the record of proceedings to support the relief of declaration of title and so the two Court's below erred in holding that respondent established title to the disputed land by evidence of traditional history. He cited Anyafulu v Meka (2014) 57 NSCQR 18 at 224.

Chief (Mrs.) A.J. Offiah SAN for the respondent submitted that the reliefs sought by the respondent at the trial Court are clearly within the jurisdiction of the High Court of Anambra state sitting at Awka, as the claim was essentially one for a declaration of title to land situate in Awka, damages for trespass into the said land and an injunctive order, return of property and accounts. That the issues joined by the parties are not companies and Allied Matters Petition subject to the jurisdiction of the Federal High Court which new angle the appellants are trying to set up cannot fly into the arena of this appeal. He cited Akuneziri v Okenwa (2000) 15 NWLR (pt. 691) 526; Ngige v Obi (2006) All FWLR (Pt. 330) 1041 etc.

That the issue of jurisdiction of the Anambra State High Court or the lack of it does not arise.

Learned Senior Counsel for the respondent stated that the validity or not of the registration or any company and allied matters was not part of the contest between the parties rather what is in issue is the ownership of the Church land situate at Awka. That the Court should uphold the concurrent findings of the two Courts below.

She contended that the respondent as plaintiff led evidence as to the pleaded fact of the change of name and the use of the said names interchangeably in general parlance.

That the appellants have not shown why this Court should interfere with the concurrent findings of the two Courts below. He relied on Umeanadu v A.G. Anambra State (2008) 9 NWLR (Pt. 1091) 175; Mobil Producing (Nig.) Limited v LASEPA (2002) 18 NWLR (pt.789) 1 etc.

For the respondent, it was submitted that the respondent as plaintiff discharged the burden of proof laid upon it by law and when the burden shifted to the appellants as defendants to prove their assertions on the issue of merger and their implicit denial of the fact that the land in dispute was held in trust. Also that DW1 contradicted himself on various other assertions thus making his testimonies totally unreliable in proof of their averments as severally found by the trial Court which an appellate Court would not be in the habit of disturbing as only the trial judge had the first hand opportunity of seeing and observing the witnesses. He cited Omisore v Anor. v Aregbesola & Ors. (2015) LPELR- 24803 (SC); Emiri v Imieyeh (1999) 4 NWLR (Pt. 599) 442.

Chief A.J. Offiah SAN contended that the respondent established by pleading and evidence the traditional history of the land and the unbroken chain of devolution from the original owners to their present ownership of the land in dispute.

In reply on points of law, the appellants submitted that the supreme Court is in as good a position as the trial Court as well as the Court of Appeal to examine documentary evidence placed before the lower Courts and draw its own inferences and come to its own conclusion. He cited Bunge v Government of Rivers State (2006) 10 MJSC 135 at 184; Yaro v AC Ltd. (2007) 10 MJSC 186 at 212.

In a nutshell, the foundation on which the appellant prays for the setting aside of what was done at the Court below are captured on the following pillars:-

i. The nature of the matter transcended beyond mere possessory rights but also on status of trustee, trust appointment and operations of Part C of the Companies and Allied Matters Act, therefore the Anambra State High Court has no jurisdiction to hear the matter.

ii. There are no facts or evidence on record that the name of Saviour's Church of Nigeria has been changed to the respondent's name and the application for re-constitution of the trustees of Saviour's Church of Nigeria is not tantamount to change of its name to the respondent's name.

iii. That Saviour's Church of Nigeria incorporated in 1961 has distinct and separate juristic personality from the respondent and consequently the respondent has no locus standi to institute and maintain this action as the subject-matter in dispute in this action is vested in Saviour's Church of Nigeria.

iv. The plaintiff/respondents did not by preponderance of evidence lead credible evidence in proof of declaration to title.

The other side of the coin taken by the respondent as reasons for this Court to dismiss the appeal for the following reasons:-

1. The plaintiff/respondent's case is purely one of a declaration of title to land, trespass, injunction, recovery of items of property and rendering accounts which had nothing to do with the Company and Allied Matters and the High Court of Anambra State sitting at Awka having jurisdiction to hear and determine the same.

2. That the respondent had discharged the onus placed on it by adducing credible evidence in proof of its case.

3. Respondent has the requisite locus standi to initiate this suit.

4. The pleadings and evidence, both oral and documentary, tendered in proof of the change of name of the respondent were not challenged by the appellants.

5. The appellants had not disclosed any reasonable or valid grounds to warrant the setting aside of the concurrent judgments of the Trial Court and the Court of Appeal in this case.

The appellants have brought up the issue of a lack of jurisdiction of the trial High Court of Anambra state holden at Awka contending that the matter resides properly with the Federal High Court as the matter is not just a land matter or declaration of title to land but principally revolves around the operation of associations within the Act, CAMA for short with this angle brought in into the jurisdictional discourse one is reminded that the jurisdiction of a Court including the trial Court is determined by the plaintiff's claim as disclosed in the writ of summons and/or endorsed in the statement of claim. However, when evidence has been taken before the raising of the issue of jurisdiction, the Court may refer to any part thereof necessary. In this instance a reference to the plaintiffs pleadings becomes necessary to clarify any grey areas. See Tukur v Government of Gongola State (NO. 2) (1989) 4 NWLR (Pt. 117) P. 517; Mustapha v Government Lagos State (1987) 2 NWLR (Pt.58) 539; Attorney General Kwara State v Olawale (1993) 1 NWLR (Pt. 272) 645; Adeyemi v Opeyori (1976) 9 - 10 SC 31.

In the point being stated above, I shall quote certain relevant portions of the Further Amended statement of claim as follows:-

"1. WHEREOF the plaintiffs claim from the defendants jointly and severally as follows:-

a. A declaration that the plaintiffs are entitled to a statutory right of occupancy over the said premises of Saviour's Apostolic Church of Nigeria situated at Awka the annual value of which is about N10.00.

b. Declaration that the plaintiffs are entitled to the statutory rights of occupancy of the land in dispute due to numerous and positive acts of possession and ownership, extending over sufficient length of time as to warrant the inference that the plaintiffs are the true owners of the land.

c. A declaration that the acts of possession and ownership by the Anambra State Government of connected land or adjacent lands (Stadiums, High Court Premises, police Station, Eke Market etc.) to the land in dispute are such as to render it probable that being the owners of such adjacent lands, they (The State Government) as owners of the land in dispute, granted same to the plaintiffs.

d. General damages for trespass N2,000,000.00 (two million naira).

e. Injunction restraining defendants by themselves, their servants, agents or workmen from further interfering with the Church Premises aforesaid at Awka, or in any other manner inconsistent with the ownership and or possession of the said premises by the plaintiffs.

f. Return of the properties of the Church aforesaid named at paragraph 15 above or their estimated value thereof.

g. Account for all the monies found to be due to the plaintiffs which the defendants collected from S.A.C. Awka or accrued to them by virtue of remaining and or utilising the church and or by still holding out themselves as a ministers of the said S.A.C. and payment of the same to the plaintiffs or into the Court for plaintiffs' use starting for from the 29th of December 1977 till judgment in this case."

Section 39 (1) and (2) of the Land Use Act, 1978 reads as follows:-

"39 (1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings:

a) Proceedings in respect of any land the subject of a statutory right of occupancy granted by the Military Governor or deemed to be granted by him under this Decree; and for the purpose of this paragraph proceedings includes proceedings for a declaration of title to a statutory right of occupancy.

b) Proceedings to determine any question as to the person entitled to compensation payable for improvements on land under this Decree.

(2) All laws, including rules of Court regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this Section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this Section."

Interestingly, the appellants joining issues with the respondents in their statement of defence at paragraphs 11 and 12 averred thus:-

Paragraph 11:

"The defendants vehemently deny paragraph 10 of the statement of claim and put the plaintiff to very strict proof of the same. In answer to the paragraph the defendants aver that the land on which the Saviour's Apostolic Church Awka stands today was a personal gift to the 1st defendant by the Ezi-Awka Elders through their Attorney Mr. W.N. Nwobu and B.N. Echeazu. The document entitled Memorandum and dated 13th June. 1972 by the said Attorneys giving the land to the first defendant will be founded upon at trial. The area is shown verged Brown on plan no NLS/AN1063/87.

Paragraph 12:

"In further answer to paragraph 10, the defendants aver that the allegation that a title document relating to the land in dispute made out in favour of the plaintiff ever existed is not true. The land, the subject matter of this action was never given to the plaintiff by the owners."

Furthermore, the learned Justices of the Court of Appeal made the same finding at page 478 of the records as follows:-

".... The case of the respondent as donated by the further amended statement of claim is that late apostle Peter Ekweozor, Reverend Onyema and 4 others who were ordained ministers in the respondents church resigned their membership and ministration of the church but refused to hand over the church's properties or quit the premises as demanded by the respondent. They alleged that they have broken away from the church and proceeded to register their alleged break away church as the Saviour's Apostolic Church, Awka claiming ownership of the land on which the respondent's church was built in Awka, which land was granted to the respondent free in the 1950s by Awka Local Government council. A thorough reading of the entire averments in the Further Amended Statement of Claim leaves me in no doubt that this dispute is simply about the ownership of the land on which the respondent's church in Awka was built ..."

I cannot but agree with learned Senior counsel for the respondent that neither by the pleadings of the respondent as plaintiff at the trial Court nor the traverse of the appellants as defendants or even by the issues joined in the contest was the suit or a petition within the Companies and Allied Matters Act which would take it to the domain of the Federal High Court. For a fact the parties had no difficulty in understanding the battle line which was one over the ownership of the Church land at Awka and the buildings thereon. The finding of the Court below well captured the scenario when it held thus:-

".... The argument of the appellants counsel that this case is about the operation of CAMA, the effect of a change of the respondent's name and the effect of the registration of the ministers from the church is also not supported by the pleadings and even evidence on record.

That is the case now being introduced by the appellants based on misinterpretation of the averments in the respondent's pleadings..."

The Court of Appeal's position was along the lines of the finding of the trial Court per Iguh J. who held thus:-

".... I must point out that this action is not an action against the plaintiffs and or the Corporate Affairs Commission who took over the legal duties of incorporation of companies, association, organisation, club etc. by the defendants challenging the competence or otherwise of the registration of the plaintiffs. It is not also shown in the pleadings filed in this suit or in evidence on record of this case that the plaintiffs were irregularly or improperly registered..."

Again, I agree with learned counsel for the respondent that, an appellant cannot under the guise of arguing his appeal set up a new case different from what was pursued at the trial Court. It is bad in law for a party to argue on appeal, a case alien to the case fought at the trial Court. An issue, new or alien to that argued during trial is incompetent for consideration on appeal. Even where leave is sought and obtained to argue a fresh issue on appeal, such fresh/new issue must be one which still resides within the general scope of the dispute between the parties and must be traceable to the pleadings and evidence. A new issue to be raised on appeal must not be one which takes the contest outside the subject matter of the litigation or one that has effect, as in the present instance, of totally changing character of the dispute between the parties. This will amount to changing the goal posts after the march has commenced. In the instant case, the issue of the registration of the respondent or the operation of the Company and Allied Matters Act were not in contest at the Trial Court and was not pronounced upon by the Trial Court because that was not the point of contest between the parties. It thus ought to be discountenanced. See Akuneziri v Okenwa (2000) 15 NWLR (Pt. 691) 526, (2001) FWLR (Pt. 35) 604; Abdulraheem v Olufeagba (2006) 17 NWLR (Pt. 1008) 265; Ngige v Obi (2006) All FWLR (Pt. 330) 1041; Julius Berger v (Nig. L) Plc v Nwagwu (2006) 12 NWLR (Pt. 995) 518; Oke v Oke (2006) 17 NWLR (Pt. 1008) 224.

I shall refer to another excerpt of the trial Court's decision on the jurisdiction throw up as follows:-

"...It is common ground between the parties and not in dispute that the late Rev. John Ekweozor was granted piece of land before incorporation in 1961 - Exhibit B, for the establishment of the church. The plaintiffs through PW1 stated the land granted to John Ekweozor before 1961 incorporation - Exhibit B, precisely in 1952, is the entire land now in dispute in this suit, and Akwa local government granted the land in dispute to him for the establishment of the church. The defendants through DW1 conceded that the land was granted to John Ekweozor before 1961 incorporation, but that it was in 1949 and that the land granted to John Ekweozor is a narrow piece of land which was granted to him by Ezi - Akwa community for the establishment of Apostolic Christian Church Mission. From the legendary on Exhibit V, this piece of land is shown verged green and it is stated therein to have been granted to John Ekweozor by the Awka Community..."

The learned Justices of the Court of Appeal again went further in their analysis to state as follows:-

"Even if there is any issue which calls for consideration of the provisions of CAMA in this case, it is ancillary to the issue of title to land which was the main claim of the respondents before the Lower Court."

In fact, in my humble view, what I see is the attempt by the appellants positing in a sophisticated maneuver to introduce into a simple land dispute or title thereof, an exotic issue of the Companies and Allied Matters Act (CAMA) through the use of the name of the respondent which variously is called "Saviour's Apostolic Church of Nigeria" or "The Saviours Apostolic Church" or Saviours Apostolic Church of "Nigeria Eastern States", each of which title was used interchangeably and none of the parties was in difficulty as to what or who was referred to and there remained at all times that the dispute was that of the ownership of the land and buildings thereon.

The situation is well showcased in the pleadings of the appellants who were defendants thus:-

Paragraph 21:-

"The defendants deny paragraphs 8 and 9 of the statement of claim and will at the trial, put the plaintiffs to the strictest proof of the same. The defendants in answer aver that the SAVIOUR'S APOSTOLIC CHURCH has been in possession of its Church premises situate at Awka. The defendants have no church answering Saviour's Apostolic Church of Nigeria in Awka. The premises of the SAVIOUR'S APOSTOLIC CHURCH Awka is properly delineated on a licensed survey plan No. NLS/AN1063/87 prepared by licensed survey C.P.C. Nwosu of Agbani Road Enugu. The area of SAVIOUR'S APOSTOLIC CHURCH Awka is shown verged RED thereon."

Indeed, the appellants joined issues with the respondent, not on the validity or invalidity of registration or any company and allied matters, but on the ownership of the church land situate at Awka. Furthermore, the validity of the replacement of some deceased trustees was not an issue in the case at the trial Court but was only averred to show that the respondent has properly constituted trustees to institute the action. In furtherance thereof, the respondent averred in the statement of claim at the trial Court;

"The plaintiffs could not bring any action against the defendants immediately because some of the previous registered trustees of the Church had died and although prompt steps were taken by the church to replace the dead trustees, yet it was a heavy task to get new members registered. Recently, some new trustees have been registered, and that has made this suit possible. The certificate of incorporation (NO. 558 of 18th March 1936) is hereby pleaded. The earlier certificate of incorporation of registered trustees dated 30/6/612 is hereby pleaded."

The learned trial judge was right when he held as follows based on the pleadings and evidence before the Court:

"On issue No. 1, PW1 testified that the plaintiff are incorporated. They were incorporated in 1986. Certificate of incorporation was tendered a Exhibit C. He further testified that their church was registered in 1961 as Saviour's church of Nigeria. Certificate of this registration was tendered as Exhibit B in these proceedings. He explained that before the incorporation, they answered Saviour's Apostolic Church of Nigeria, The Saviour's Apostolic Church of Nigeria, Saviour Church of Nigeria and Saviour's Apostolic Church...."

There is no faulting the contention of the respondent that it was wrong for the appellants to argue that there was no pleading or evidence that the name was ever changed when in fact there were ample averments of the interchangeable use of [different] names. However, and more importantly, that was not the issue in controversy. The appellants ought to have filed a counter claim if they perceived that it was important for the trial Court to make a declaration in that regard. The appellants did not allege in their pleading or in evidence that the respondent breached any conditions set out in Exhibit B.

A Court is a Court of both law and facts. It has no other source of generating its decision except from the facts of the case established before it. Chedi v Attorney General of Federation (2006) 3 NWLR (Pt. 997) 308. In rendering its decision over a particular dispute, the primary duty of the Court is to fully consider conscientiously the totality of the evidence of the parties based on the issues in dispute before handing down its decision. The facts of each case constituted in the evidence before the Court, are important in determining the issues and the outcome of the case: They guide the Court in the eventual outcome of the case. See A.G. Abia State v A.G. Federation (2006) 16 NWLR (Pt. 1005) 265. Having considered the totality of the facts pleaded, evidence led at trial, and the submissions of the appellants in their brief, the Lower Court rightly came to the conclusion vide pages 479 as follows:

"The entire claim and the case of the respondent is a case about title to land, therefore the Federal High Court has no jurisdiction to entertain the suit since it has nothing to do with the management of the respondent."

The above finding concurred with that of the Trial Court which also held thus:

"I must point out that this action is not an action against the plaintiff and or the Cooperate Affairs Commission who took over the legal duty of incorporation of companies,.."

Again at 313 of the records:

"....Suffice it to state therefore that the plaintiff in proof of their corporate existence tendered Exhibit C, which is the original of the certificate. The fact that the new certificate of incorporation - Exhibit C was issued to the plaintiffs in that name in place of the former name Saviours Church of Nigeria - Exhibit B shows that the Plaintiff were duly registered...

Therefore the Plaintiffs are competent to sue."

The concurrent findings of the two Courts below are well founded and grounded in the law and practice and a classic case where an appellate Court is well advised to keep off any persuasion to interfere.

The matter of jurisdiction ought not to be brought up at all since there was no basis for so raising it as it is a clear case of a desperate attempt by the appellants to get through the back door what is just not on from the regular legal channel.

I shall bend back a little further in respect of the matter of the Incorporation or Registered name of the Respondent at least to fully lay to rest whatever confusion any one would be nursing as to what to bring up to the debate. I shall refer to the relevant paragraphs of the plaintiff/respondent's pleadings as follows:-

"Paragraph 6A:

This Saviour's Apostolic Church of Nigeria were known as Saviour's Church of Nigeria and were incorporated in that name as shown in the said certificate of incorporation dated 30/6/61 and referred to at paragraph 6 above.

Paragraph 6B:

The plaintiffs are sometimes referred to merely as Saviour's Apostolic Church.

Paragraph 6C:

When the 1st defendant was ordained a priest, the plaintiffs church was known as Saviour's Church of Nigeria and incorporated as such as already stated but later incorporated as Apostolic Saviour's Church of Nigeria."

"Saviour's Apostolic Church of Nigeria are, at all material times to this case, owners and in possession of the Church and its premises at Awka...

Paragraph 9A:

In the 1970s until the registration of the church in 1986 as Saviour's Apostolic Church of Nigeria, the church was generally referred to as "The Saviour's Apostolic Church" and even sometimes as the "Saviour's Apostolic Church of Nigeria Eastern State (with or without 'THE'). All these names were used inter-changeably but referred to what is now known as "Saviour's Apostolic Church of Nigeria.'

Paragraph 9B:

In confirmation of paragraph 9A, the plaintiffs hereby plead a welcome address at the foundation laying ceremony written and signed by the defendants, Rev. S. O. Nnam and other pastors in 1975.

Paragraph 9D:

Even the letter of resignation aforesaid of the 1st and 2nd defendants is written with a letter-head headed: Saviour's Apostolic Church of Nigeria, Eastern States" (without "The" prefixing "Saviour's).

Paragraph 9E:

The letter of resignation admitted that the General President of Saviour's Apostolic Church of Nigeria is Apostle Ogundipe of the Church's Head Quarters at Ibadan and the Church at Awka was referred to in the letter of resignation as "Saviour's Apostolic Church at Awka, Head Quarters, Eastern States."

The appellants at that material time did not deny the above details, and stated thus:-

a. The registration at Corporate Affairs Commission was improper, or that

b. There was no proper change of name at the time some deceased trustees were replaced by new trustees, or that

c. The Saviour's Apostolic Church of Nigeria registered in 1986 with the same registration No. 558 was a different entity.

They did not contest these details because they knew fully well that the issue under contention in the case was, and is, title to the land in dispute, so they launched straight into the established battle line. They were quite aware that the respondent is one and the same entity as "Saviour's Apostolic Church." They therefore responded as follows:

"The defendants deny paragraphs 8 and 9 of the statement of claim and will at the trial put the plaintiffs to the strictest proof of the same. The defendants in answer aver that the SAVIOUR'S APOSTOLIC CHURCH, has been in possession of its Church premises situate at Awka. The plaintiff has no church answering Saviour's Apostolic Church of Nigeria in Awka, The premises of the SAVIOUR'S APOSTOLIC CHURCH Awka is properly delineated on a licensed survey plan No. NLS/AN1063/87 prepare by licensed survey C.P.C. Nwosu of Agbani Road Enugu. The area of SAVIOUR'S APOSTOLIC CHURCH Awka is shown verged RED thereon."

The Respondent as plaintiff led evidence as to the pleaded fact of the change of name (reproduced above) and the use of the said names interchangeably in general parlance. At pages 231 of the records PW1 gave evidence as follows:

"...Our church Saviour's Apostolic Church of Nigeria was incorporated in the year 1986 with the names of the trustees to the Church. Our Church before its incorporation answers Saviour's Apostolic church of Nigeria and The Saviour's Apostolic Church of Nigeria. We also answer Saviour's Church of Nigeria and Saviour's Apostolic Church. Before the year 1986, our church had been previously incorporated. In 1961 our church was incorporated as Saviour's Church of Nigeria ... The owners of the church and the church premises, the subject matter of this suit, is Saviour's Apostolic (sic) of Nigeria..."

Under cross-examination vide pages 236 of the records, PW1 confirmed again the pleaded facts and his evidence in chief in the following words:

"Our church was first registered as Saviour's Apostolic Church of Nigeria in the year 1961...."

It must be noted once more that the said document was admitted without objection and marked Exhibit B. Continuing his testimony, PW1 stated at page 237;

"We incorporated the name Saviour's Apostolic Church of Nigeria in the year 1986. We were issued with a certificate of incorporation of Saviour's Apostolic Church of Nigeria..."

The learned trial judge within the privileged position of watching and seeing and evaluating the demeanor of the witnesses stated thus:-

"On issue No. 1 PW1 testified that the plaintiffs are incorporated. They were incorporated in 1986. Certificate of incorporation was tendered in these proceedings as Exhibit C. He further testified that their church was registered in 1961 as Saviour's Church of Nigeria. Certificate of this registration was tendered as Exhibit B in these proceedings. He explained that before the incorporation they answered Saviour's Apostolic Church of Nigeria, The Saviour's Apostolic Church of Nigeria, Saviour's Church of Nigeria and Saviour's Apostolic Church...."

The Court below held thus:-

"...In this case the respondent tendered Exhibits B and C as evidence of the incorporation. Those certificates were issued under the lands (Perpetual Succession) Act Section 3 of which provides that a certificate of incorporation so issued shall be conclusive evidence that the preliminary requirements in respect of the incorporation has been complied with...”

The summary of the submissions of the appellants counsel is that the respondent has the onus to plead and prove in spite of tendering the certificates of incorporation, Exhibits B and C that the name of the respondent was changed and that the requirements for change of name were complied with. The respondent clearly pleaded the change of name in paragraph 6 of the Further Amended Statement of Claim reproduced above. In support of that averment, PW1 under cross-examination on page 249 of the record stated thus:

"....As at 30th June, 1961, a church was incorporated as Saviour's Church of Nigeria and Exhibit B was issues. The certificate No of the said incorporation/Registration is No. 558. It is the same church that was registered/incorporated on 18th March, 1986 as Saviour's Apostolic Church of Nigeria, it was given the same number i.e. 558. I commenced or instituted this suit in 1986 after I have changed the names of the deceased trustees in Saviour's Church of Nigeria. My application to the Ministry of Internal Affairs was in respect of the change of the deceased trustees of Saviour's Church of Nigeria. My name appeared as one of the trustees in 1986 following the change of the deceased trustees. It was after inclusion of my name as one of the trustee in 1986 that we instituted this suit. Apostle Peter Ekweozor resigned from the church in 1977. Apostle Peter Ekweozor and others that resigned from the church in 1977 did not set up another church after their resignation in 1977..."

Though PW1 stated that he applied for the change of trustees, it is clear on the face of Exhibit C that the name of the respondent was also changed...

"Throughout the pleadings, the evidence led and the submissions of the appellants counsel, the authenticity of Exhibits B and C was never challenged."

"In this case, there is no contrary evidence to Exhibits B and C and PW1's evidence that the association in Exhibit B is the same as the association in Exhibit C."

"The contention of the appellants counsel that this suit is incompetent because the suit should have instituted in the name of "Saviour's Church of Nigeria" instead of "Saviour's Apostolic Church of Nigeria" lacks merit...."

Assuming it were to be conceived that the appellants in their pleadings joined issues with respondent in respect of paragraphs 6A-6C, 8, 9A, 9B, 9D and 9E of the Further Amended Statement of Claim, it is submitted that the law would then require the respondent to produce proof of the juristic personality of the respondent. This burden would be discharged by the tendering of the certificate of incorporation, as rightly opined by Onnoghen, J.S.C. (as he then was) in NNPC v LUTIN INVESTMENT LTD. (2006) 2 NWLR (Pt. 965) 506 at 527 where his Lordship held thus:

"...That apart, it is trite law that the only way incorporation of a company can be established in any proceeding is by tendering the certificate of its incorporation..."

The facts on ground as borne out by the record is that the respondent conclusively discharged the burden of proof of tendering Exhibits B and C as evidence of incorporation and they pleaded in great details the change of name in Paragraphs 7, 6A to 6C, 9, 9A to 9E of the Further Amended Statement of Claim and PW1 gave evidence as to the said change of name which exhibits and evidence were not challenged. The next action called for, was for the appellants as defendants to lead evidence in rebuttal and as the Court below found and which the record of appeal have borne out, they failed to challenge. The next question is upon which would this Court disturb those findings of the Court below as the trial did.

The answer is that there is nothing on which this Court can hang an interference as there is no perversity in the findings nor a miscarriage of justice or a misapplication of the law, procedural or substantive. See Fatunbi v Olanloye (2004) 6-7 SC 68; Umeanadu v A.G. Anambra State (2008) 9 NWLR (Pt. 1091) 175 (SC); Mobil Producing (Nig.) Ltd v LASEPA (2002) 18 NWLR (Pt. 789) 1; Kofi v Kofi 1 WACA 284; Chinwendu v Mbamali & Anor. (1980) 3 - 4 SC (Reprint) 21; (1980) 3 - 4 SC 252; Balogun v Adejobi (1995) 2 NWLR (Pt. 370) 131; Okonkwo v Okonkwo (1998) 10 NWLR (pt. 571) 554.

ISSUE NO. 4:

This issue needs special treatment as it poses the question whether the respondent discharged the burden of proof placed on him in line with the provisions of the Evidence Act.

To untie the puzzle, it needs reiteration that the burden of proof in civil cases has two distinct facets; the first is the burden of proof as a matter of law and the pleadings normally termed as the legal burden or the burden of establishing a case; the second is the burden of proof in the sense of adducing evidence usually described as the evidential burden. While the legal burden of proof is always static and never shifting, the other type being evidential burden of proof shifts or oscillates constantly as the scale of evidence preponderates. In resolving the first question, the primary onus of proof in a civil case such as the present one lies on the plaintiff who happens to be the now respondent.

I rely on the following cases:

- KWAMINA KUMA v KOFI KUM (1934) WACA 178 AT p. 179;

- KODILINYE v MBENEFO ODU (1935) 2 WACA 336 AT P. 337;

- AYITEY COBBLAH v TETTEY GBEKE (1947) 12 WACA 294 AT P. 295;

- ANACHUNA NWOKAFOR AND ORS. v NWANKWO UDEGBE AND ORS. (1963) 1 ALL N.L.R. 107.

- NWANKWO UDEGBE AND ORS. V ANACHUMA NWOKAFOR AND ORS. (P.C.) (1963) N.L .R.P. 417 AT P. 418.

- MOGAJI & ORS. v ODOFIN & ANOR. (1978) 4 SC 91; BELLO v EWEKA (1981) 1 SC 101 AT 117 - 120.

It needs be said that the onus of proof does not exist in vacuo. The onus or burden of proof is the legal duty or obligation to prove or establish facts in relation to an issue. There cannot be any burden of proof where there are no issues in dispute between the parties. For example, if the plaintiff's claim is admitted, there will generally be no onus on the plaintiff to go into, in proof of his claim. Similarly, if a particular averment of the plaintiff is admitted, there will no longer be an onus to prove what has been admitted by the opposite party, therefore, to discover where the onus lies in any given case, the Court has to look critically at the pleadings.

Where for instance the plaintiff pleads possession of the land in dispute as his root of title and the defendant admits that possession but adds that the land was given to the plaintiff on pledge, then the onus shifts onto the defendant to prove that the plaintiff is not the owner of the land, his possession of which has been admitted. The defendant then also has the onus of proving the alleged pledge. Once the defendant admits the plaintiffs possession of the land in dispute in his Statement of Defence, there and then, the plaintiff has on the pleadings discharged the onus of proof cast on him and Section 133 (2) of the Evidence Act will impose a burden on the defendant to prove that the plaintiff is not an owner but rather a pledgee. See Lawrence Onyekaonwu & Ors. v Ekwubiri (1966) 1 All NLR 32 at P. 35. If at the close of his case, the said defendant fails to prove that the plaintiff is not an owner but a pledgee, the plaintiffs claim succeeds without the plaintiff giving any further evidence.

Getting back to the second question as to whether there was a misdirection in this case as to the onus of proof. In this case, the respondent briefly reviewed the pleadings and the evidence upon which the learned trial judge reached his decision which was affirmed by the lower Court.

The respondent pleaded as follows in Paragraph 10 of their Further Amended Statement of Claim:

"The land in dispute verged pink in the said survey plan is part of the property of the Awka Local Government Council which portion the Awka Local Government Council granted free, being a bad-bush, to the plaintiffs in the early 1950s. The 1st defendant's brother, Rev. John Ekweozor (now deceased) was one of the registered trustees of the Church in respect of all the lands of the plaintiff in Nigeria. This is apparent from the certificate of incorporation (NO. 558) of 30th June 1961 already pleaded at paragraph 6 above."

Some excerpts from the judgment of the learned trial judge run as follows:-

"He (PW1) also testified that it was in 1952 that the Local Government granted them a land for them to establish their church. The land was an evil forest where people who committed abomination were thrown into. This grant of land by Awka Local Government to them was in writing ... He further stated that it is not correct that the land on which their church is situate at Awka was granted to the defendants by Ezi-Awka elders in 1972. He explained that their church building at Awka is close to the sports stadium. Survey plan with No. ANK (A) 118 with tracing number ANS-K-115 dated 23rd February, 1995 was tendered in these proceedings as Exhibit M to show that the sports stadium at Awka is close to the plaintiffs' land where their church building is situated at Awka."

At page 324 of the records, the trial Court held thus:-

“It is clear from these testimonies which I find credible and reliable that the land in dispute was granted to the church free through late pastor John Ekweozor, who is one of the trustees of Saviour's Apostolic Church of Nigeria as can be seen from the testimonies of PW1 and Exhibit B... I also find as a fact that the Pastor John Ekweozor as a result of the merger in 1958 became a trustee of Saviour's Church of Nigeria. A mud house was build on the land in dispute where late Pastor John Ekweozor and PW1 were conducting services..."

At page 327, His Lordship held as follows:-

"I find the evidence of PW1 on how the plaintiffs came to own the land in dispute credible and reliable, and I believe him. I find the evidence of DW1 that before 1972, the premises or compound of the 3rd defendant where the church building of thatch house was built was a narrow piece of land granted to Rev. John Ekweozor by Ezi-Awka Community in 1949 as most untruthful. The 3rd defendant's church was not located on the land in dispute before 1977. The land granted to Rev. John Ekweozor was not a narrow piece of land. The land in dispute was not granted to him in 1949. It was not also Ezi-Awka community that granted him the land in dispute, but the Awka Local Government.

I find also the testimony of DW1 that in 1972, 1st defendant approached Ezi-Awka elders for additional land for their so-called growing church and they granted him his request, and granted him additional piece of land to the one they granted before as most untruthful and I disbelieve him. The original owners of the land in dispute has (sic) been established in evidence vide Exhibit P who granted the same to the Awka Community alongside with other parcels of land. Awka Community in turn granted the land in dispute together with other parcels of land to Awka County Council later called Awka Local Government. Awka Local Government in 1952 granted Rev. John Ekweozor the land in dispute for the establishment of a church which he held in trust as a trustee of the church .... the church later merged and was registered in 1961 as per Exhibit B, the original owners of the land were shown in Exhibit P from where the land in dispute devolved unto the plaintiffs.

I am satisfied that the plaintiffs have established the traditional history of the land in dispute, which they relied on as root of title."

Considering yet another method by which the respondent can prove title to the land in dispute and against the background of the pleadings, the learned trial judge based on the evidence on record stated as follows at pages 330 to 331 of the Record thus:-

"Another independent witness, PW4 - Benedict Afam Odinamkpa - a civil servant of the Ministry of Lands, Survey and Urban Planning of Anambra State and a Chief Surveyor and the officer in charge of mapping and research gave evidence.... He tendered the survey plan with plan number MEC/51B/61 as Exhibit S and survey plan with number MISC.(AS) 89 as Exhibit T. He also testified that Exhibit T is a composite survey plan showing High Court premises Awka, Sports Stadium Awka, Police Station Awka, Eke Market extension Awka and Saviour's Apostolic Church premises, Awka. All the parcels of land shown on Exhibit T are Anambra State government lands. Exhibit S shows the land claimed by the plaintiffs in Exhibit P. The names the plaintiffs called the various parcels of land in Exhibit P are also shown and reflected as such in Exhibit S. Exhibit S is also titled Suit No. AA/91/73 with the parties on Exhibit P shown thereon. Exhibit S also has plan number MEC/51B/61 ... It is clear from the evidence of PW4 that all the lands shown in Exhibit T are Anambra State Government Lands. There is also Exhibit L, which shows that the plaintiff's church is located on the state land at Awka. It is however common grounds between the parties and not in dispute that the land in dispute was granted.

The learned trial judge found that the respondent had discharged the burden of proof of the grant made to them, even though the respondent's document of title was lost. The lower Court found no reason to upset the above reproduced findings of fact by the trial Court, but rather upheld the same.

With the evidence proffered by the plaintiff/respondent which the learned trial judge accepted as full discharge of the burden of proof of land upon the plaintiff which logically moved the burden to the defendants/appellants in rebuttal and DW1 in that regard stated as follows:-

The agreement was oral. The name of John Ekweozor appears on Exhibit B as one of the trustees. I do not know whether John Ekweozor was alive as at the time of the application for registration of Saviour's Church of Nigeria was made.

Put: John Ekweozor was alive as at the time the application was made and that is why his name appeared on Exhibit B.

ANS: It is not correct.

Subsequently at page 287 of the records, the same DW1 stated:

"The application for registration of Saviour's Church of Nigeria was made when John Ekweozor had died. Based on the application made in the life time of John Ekweozor for the registration of Saviour's Church of Nigeria a certificate of registration was issued..."

The DW1 had also similarly contradicted himself on various other assertions, thus making his testimonies totally unreliable in proof of their averments, as severally found by the trial Court. For instance, a page 293 of the records DW1 stated thus:-

"I did not in my previous evidence in this suit before Onyiuke J., on the 7th June, 2001 testify that "I still belong to Saviours Apostolic Church. At Minna, I belong to new life winner's church. The new life winner's church pays me. I am their employee. The Saviour's Apostolic Church pays me. The two names are interchangeable."

The learned trial judge in reaction to the testimony of DW1 stated as follows:-

"Let me first of all point out that I carefully watched and observed DW1 testify in the witness box in this case and he appears to me not to be a witness of truth."

Taking along the finding of the learned trial judge in his exclusive preserve as the one judex with the privilege of seeing and observing the witness and buttressed by the records, it is clear that although late pastor John Ekweozor died in before Exhibit B was issued, it is clear from the testimonies of PW1 and subsequent admission of DW1 that the application for the incorporation of Saviours Church of Nigeria was made in his life time. It is established in evidence that some of the trustees in Exhibit B died and it took the plaintiffs time to re-organise and replace them. This led to Exhibit C.

Exhibits B and C show that they bear the same certificate number 558 which confirms continuity in the identity of the corporate personality therein. In addition, the status of late Pastor John Ekweozor (from whom the Defendants/Appellants claim they derive title to part of the land in dispute) as trustees of Saviour's Church of Nigeria was settled by the pleadings and established in evidence. The pleadings further show that the donation (grant) of land was for the benefit of the church. When Saviour's Church of Nigeria became registered as shown in Exhibit B, the land in dispute which was held in trust for the association before its incorporation became vested in the Church.

Of note is that the credibility of the witness has been brought to the fore and this Court, just like the Court below does not have the power to enter into that area since that is the exclusivity of the trial Court who had firsthand knowledge and sight of the witness whose credibility is central and so the hand of the Appellate Court such as the current is tied and the only option is to let the finding rest. See Omisore & Anor. v Aregbesola & Ors. (2016) LPELR-24803 (SC); Emiri v Imieyeh (1999) 4 NWLR (Pt. 599) 442.

At the risk of producing remark or comments that may be termed copious but really at the abundance of caution, I shall recast some excerpts of the two Courts below for elucidation.

The Court of Appeal as can be seen at page 497 of the Record stated thus:-

"...It is settled law that an Appellate Court would not interfere with the finding of fact of the Trial Court unless it is shown that the finding is perverse or not justified by the evidence on record or not right in law... from the entire evidence on record, the findings of the learned trial judge that the respondent established the root of its title as claimed cannot be faulted..."

PW1 explained in evidence at pages 233 - 234 of the records the circumstances that make it impossible for the Respondent to get a copy of the document and tender same before the Court. PW1 stated:-

"It was in 1952 that the Awka Local Government granted us i.e. the plaintiff, a land for use to establish our church. The land was an evil forest where people who committed abomination were thrown into. I know one John Ekweozor. He is now dead. Late John Ekweozor is related to the 1st defendant who is his brother. Late John Ekweozor was the then head of our church, Saviour's Apostolic Church of Nigeria in the Eastern State. Late John Ekweozor was one of the trustees of the Church when our church was incorporated in 1961. The Awka Local Government gave us a document that shows their grant of land to us in 1952. The said document was kept by Late Pastor John Ekweozor. I know reverend John Nwofor. He was the head of our church in Awka after the Nigerian Civil was following his transfer by Apostle J.A. Ogundipe. John Ekweozor died before the civil war and was replaced by pastor John Nwofor before the Nigerian civil war. We went to Awka Local Government secretariat to see whether we could get a copy of the title documents of our land at Awka granted to us by Awka Local Government in 1952 but we were told at the Awka Local government secretariat that the documents were plat of the documents consumed by fire. It was Awka community that gave the County Council now Awka Local Government the entire land they granted to us..."

The Court below stated thus:-

"....It will be unjust and inequitable to insist on the production of the title document and come to the conclusion that the respondent had failed to prove its title to the land in dispute for failure to produce the document of title. The worst conclusion that can be drawn is that the respondent failed to prove the land by document of title which is only one of the ways to prove title. In any case, I am of the view that failure to tender the document of grant which has been sufficiency explained is not fatal to the respondent's case. I say so because the respondent is entitled in law to plead and rely on more than one way of proving title but needs to prove only one to succeed. The law is settled that where a plaintiff establishes one of the five ways of proving title to land, it is sufficient proof of ownership of the land. See Balogun v Akanji (1988) 1 NWLR (pt. 70) p. 301.”

Again, the learned trial Judge had earlier captured it in his judgment at pages 322 when he held thus:

"....It is common ground between the parties and not in dispute that the late Rev. John Ekweozor was granted piece of land before incorporation in 1961 Exhibit B, for the establishment of the church. The plaintiffs through PW1 stated the land granted to John Ekweozor before 1961 incorporation Exhibit B, precisely in 1952, is the entire land now in dispute in this suit, the Awka local Government granted the land in dispute to him for the establishment of the church. The defendants through DW1 conceded that the land was granted to John Ekweozor before 1961 incorporation, but that it was in 1949 and that the land granted to John Ekweozor is a narrow piece of land which was granted to him by Ezi-Awka community for the establishment of Apostolic Christian Church Mission. From the legendary on Exhibit V, this piece of land is shown verged green and it is stated therein to have been granted to John Ekweozor by the Awka Community..."

Taking all I have been laboring to put across in context, it is to be said that the respondent established by pleading and evidence, the traditional history of the land. The original owners of the land in dispute were established in evidence (vide Exhibit P) who granted the same to the Awka community alongside with other parcels of land. Awka community in turn granted the land in dispute together with other parcels of land to Awka County Council later called Akwa Local Government. The Awka Local Government in 1952 granted the land in dispute to the trustees of the respondent, Rev. John Ekweozor, for the establishment of the church which he held in trust as a trustee of the church. The church later merged and was registered in 1961 as per Exhibit B. The original owners of the land in dispute were shown in Exhibit P from whom the land in dispute developed unto the Respondents.

The Respondent thus established an unbroken chain of devolution from the original owners to their present ownership of the land in dispute. In contrast the pleadings of the appellants at paragraph 11 of their statement of Defence, the evidence in chief of DW1 and his cross-examination were contradictory and at cross purposes. The learned trial Judge who had the opportunity of seeing and hearing the witnesses directly found as much and his findings were confirmed by the Lower Court in their judgment at pages 495-497 of the records.

The Trial Court was therefore right when having evaluated the evidence of the parties it held:-

"... I am satisfied that the plaintiffs have established the traditional history of the land in dispute, which they relied on as root of title ..."

These findings were also confirmed by the Lower Court at pages 496 to 498 of the record when it held:-

"...The finding of the trial Judge that DW1 is not a credible witness cannot be faulted.... It is settled law that an Appellate Court would not interfere with the finding of fact of a Trial Court unless it is shown that the finding is perverse or not justified by the evidence on record or not right in law. Where the Trial Court properly evaluated the evidence and came to a right conclusion as in this case, the Appellate Court will not interfere. From the entire evidence on record, the findings of the learned trial judge that the respondent established the root of its title as claimed cannot be faulted ..."

On the other hand, the respondent argues that the defendants/appellants averred as follows:-

"The Defendants vehemently deny paragraph 10 of the statement of claim and put the plaintiff to very strict proof of the same. In answer to the said paragraph, the defendants aver that the land on which the Saviour's Apostolic Church Awka stands today was a personal gift to the 1st defendant by the Ezi-Awka Elders through their Attorney Mr. W.N. Nwobu and B.N. Echeazu.

Therefore when the defendants introduced their pleadings, issues that would convert him to be a claimant/plaintiff on such issues, it is his duty to prove the existence of such facts in order to support what he claims or assets in his defence. Where he fails to do so, he will certainly be the loser on that issue. That of course is the tenor of Sections 136 and 137 of the Evidence Act. In this case, the appellants claim exclusive ownership of the land in dispute by a gift. They failed to adduce any evidence whatsoever to justify that claim. That assertion which by its nature is more than just a defence, and amounts to a claim, failed in the absence of any credible evidence to sustain the same. This leaves the plaintiff's claim (Respondent herein) and evidence led in support thereof to stand without any challenge.

The 1st appellant at the trial Court testifying as DW1 in his testimony said that before the grant made to him, Ezi-Awka community were the owner of the land in dispute. They had pleaded in paragraph 11 of their statement of Defence that the land on which the Saviour's Church Awka stands today was a personal gift to the 1st Defendant/Appellant by Ezi-Awka Elders through their Attorneys. They also pleaded therein a document titled "Memorandum dated 13th June, 1972" by the said attorneys allegedly giving the land therein described to the defendant/appellant. The Defendants did not tender in evidence this "Memorandum dated 13th June 1972."

Again, both in their pleadings and the evidence of DQ1, the appellants alleged that it is Ezi-Awka community that are the original owners of the land in dispute which they also unsuccessfully allege was a gift to 1st appellant. The land in dispute in this appeal is part of the land litigated upon in Suit No. AA/91/73 tendered as Exhibit P. The judgment therein is a product of an action in rem, which establishes the status of whoever won in the suit in respect of the land. It is not a personal action that dies with the parties concerned and so Exhibit P remains a subsisting and final judgment.

The Trial Court in view of the foregoing held at page 329 as follows:-

"I must point out that there is no evidence on record or even any fact in the pleadings filed in the suit to show that Exhibit P was appealed on. I find therefore that Exhibit P is still a subsisting judgment of Court till date. The Court at page 19 of Exhibit P held the "the Ezi-Awka has no title to the lands in dispute and therefore cannot be asked to give that which it had not: nemo dat quod none habet.

In view of Exhibit P, the Ezi-Awka elders whom the defendants claim that granted the land on which the new church building stands, which is part of the land in dispute in this suit, to the 1st defendant has no title to any part of the land in dispute and in fact did not make such grant."

In the face of the said documentary exhibits, including the judgment in Exhibit P, the above finding and conclusion of the learned trial judge are fully justified, and the confirmation thereof by the Lower Court at page 496 of the records stand irreproachable.

A recourse into a historical journey shows that his case has been fought by the Respondent since 1986. The suit arose in the first place simply because the Appellants who had resigned their ministration in the Respondent's church have refused to hand over the church premises and its properties.

After the judgment of the trial High Court in July 2007, the appellants defiantly continued to reside in the premises and refused to give up possession. They lasted from 2007 to 2014 when was judgment delivered again in favour of the respondent by the Court of Appeal. Thereafter the appellants still refused to leave the premises or release the respondent's properties in their possession, leaving the respondent with a last option of the coercive process of a writ of attachment [to] access the fruits of its judgment. These are disheartening but yet the true and sorry state of affairs of the nature of human relationship and our inter-existence. The attainment of justice is generally no longer allowed or tolerated to be controlled by adherence to technicalities or smart dexterity in Court but rather to adherence to substance. See Afolabi v Adekunle (2004) 2 SCNLR 1412 at 150 and Egolum v Obasanjo (2004) 1 WRN 87 at 164.

See Nneji v Chukwu (1988) 3 NWLR (Pt. 81) 184 per Oputa J.S.C. quoting with approval the dictum of Lord Penzance in Coombe v Edwards (1873) L.R. 3 P.D. 142 as follows:-

"The spirit of justice does not reside in formalities, or words, not in the triumph of its administration to be found in successfully picking way between the pitfalls of technicality. After all, the law is, or ought to be, the handmaid of justice, an inflexibility, which is the most becoming robe of law, often serves to render justice grotesque...... if the choice is between legal technicality and justice, one ought to cast one's lot with justice. But it is not all that simple for justice in our Courts is, or ought to be, justice according to law.... I will at anytime, anywhere case my lot for truth and justice...."

There is no beating about the bush as to which side the justice of this case anchors which is that the Respondent in its position as Plaintiff proved his case on the balance of probability in the wake of the Appellants as Defendants' inability to dent that proof or prove what the defence had put across as obstacle to frustrate the plaintiff.

From the foregoing being the fact that all questions raised are resolved against the Appellants and in favour of the Respondent leading to the appeal lacking in merit.

I therefore do not hesitate in dismissing this appeal as I affirm the decision of the Court of

Appeal which in turn had upheld the decision of the trial High Court.

Appeal is dismissed. I award the sum of N500,000.00 (Five Hundred Thousand Naira) costs to the Respondent to be paid by the Appellants.

**OLABODE RHODES-VIVOUR, J.S.C.:**

I had the advantage of reading a draft copy of the leading judgment prepared by my learned brother, PETER-ODILI J.S.C. I agree with it, and I am satisfied that the findings of the two Courts below are correct. It is for this reason that I too dismiss the appeal and endorse costs as ordered.

**CHIMA CENTUS NWEZE, J.S.C.:**

My Lord, Mary UKAEGO PETER-ODILI, J.S.C., obliged me a draft of the leading judgment delivered now. I agree with His Lordship that, being unmeritorious, this appeal deserves to be dismissed.

As His Lordship pointed out in the leading judgment, the appellants claimed exclusive ownership of the land in dispute by a gift. They failed to adduce any evidence whatsoever to justify that claim. I entirely agree with His Lordship.

The simple truth is that it was the said appellants who affirmed, positively, that there was such a gift. They, thus, had the burden, both on the pleadings and on the evidence, to prove their assertion, Imana v Robinson [1974] 6 SC 83; Elemo and Ors v Omolade and Ors (1968) NMLR 359, 361; Atane v Amu (1974) 10 SC 237; Fashanu v Adekoya (1974) 6 SC 83; Kate Enterprises Ltd v Daewoo Nig Ltd (1985) 2 NWLR (pt 5) 116; Onyenge and Ors v Ebere 18 NSCQR (pt II) 789 at 802; Vulcan Gases Ltd. v GESELLSCHAFT FUR Ind. (2001) 9 NWLR (pt. 719) 610 at 667; Phipson on Evidence, (11th Edition), Paragraph 92; Page 40: "Burden of proof on the pleadings." This, they failed to do.

In other words, whether or not there was such a gift, (as alleged), became a fact in issue, Barje v Gunduma [2001] 13 NWLR (pt 731) 673, 688; Ehimare and Anor v Emhonyon [1985] 1 NWLR (pt 2) 177, 183; Olufosoye v Olorunfemi [1989] 1 NWLR (pt 95) 26 that had to be proved if the averment was to be accepted as proved, J. H, Wigmore, A Treatise on the Anglo-American System of Evidence in Trials at Common Law (Third Edition) (Boston: Little, Brown and Company, 1940) 3; R. Cross, The Law of Evidence (London: Butterworths, 1979) 1.

Unfortunately, it would appear that the appellants underrated the nature of the burden they bore, in this regard, of marshalling evidence to substantiate their assertion, Olaniyan and Ors v Oyewole and Ors [2011] 14 NWLR (pt 1268) 421.

The consequence is that, that claim of gift failed in the absence of any credible evidence to sustain it, Imana v Robinson (supra); Elemo and Ors v Omolade and Ors (supra); Atane v Amu (supra); Fashanu v Adekoya (supra); Kate Enterprises Ltd v Daewoo Nig Ltd (supra); Onyenge and Ors v Ebere (supra); Vulcan Gases Ltd. v GESELLSCHAFT FUR Ind.(supra).

It is for these, and the more elaborate reasons in the leading judgment that I too hereby dismiss this appeal. I affirm the concurrent judgments of the Lower Courts in favour of the respondents, [plaintiffs, as they then were at the High Court]. I abide by the consequential orders in the leading judgment.

**AMINA ADAMU AUGIE, J.S.C.:**

I had a preview of the lead judgment just delivered by my learned brother, PETER-ODILI, J.S.C. He dealt extensively and decisively with the Issues raised in the Appeal and without any hesitation, I hereby adopt his reasoning and conclusion, which represent my views.

It is well settled that where there is a claim that falls within the jurisdiction of two Courts, the Court with jurisdiction over the main claim is the proper Court to determine the matter - seeTukur V. Govt., Taraba State & Ors (1997) 6 NWLR (Pt 510) 549 SC and Gafar V. Govt., Kwara State & Ors (2007) 4 NWLR (Pt. 1024) 375.

In this case, the Appellants merely wanted an ordinary land dispute, which falls within the jurisdiction of the Trial Court to look as if it were a dispute under the Companies and Allied Matters Act [CAMA], which falls within the exclusive jurisdiction of the Federal High Court. The concurrent findings of the two Lower Courts to the contrary cannot be faulted. The dispute between the Parties is only about the ownership of the Land on which the said Church in Awka was built, and that has nothing to do with the Federal High Court.

Thus, I also dismiss this Appeal, which lacks merit, and I abide by the consequential Orders in the lead judgment including costs.

**EJEMBI EKO, J.S.C.:**

I read in draft the judgment just delivered by my learned brother, MARY UKAEGO PETER-ODILI, JSC, in this appeal. I have nothing further to add to the comprehensive judgment. It represents my views in the appeal.

I will only add for emphasis that the Appellants desperately, albeit unsuccessfully, wanted to make an ordinary land dispute, within the jurisdiction of the Anambra State High Court, look as if it were a dispute under Companies and Allied Matters Act (CAMA) which by virtue of Section 251 (1) (e) of the Constitution and Section 7(1)(e) of the Federal High Court Act Cap. F12 LFN 2004 falls within the exclusive jurisdiction of the Federal High Court. The dispute was simply over the ownership of the disputed piece of land on which the Church in Awka is situate.

The undisputed facts of case are:

1. That the 1st & 2nd Appellants were once priest ordained in the Saviour's Church of Nigeria.

2. The 1961 Certificate of incorporation of the of registered trustees of the Church is Exhibit B.

3. The Appellants were ordained priest of the Church under Exhibit B.

4. In 1981, the church changed its name to Saviours Apostolic Church Nigeria and a new Certificate of Incorporation, Exhibit C, was issued to replace Exhibit B. Both Exhibits B & C carry the same number 558.

5. In 1977, the Appellants resigned their ministration and memberships of the Church at the time Exhibit B remained extant. They however continued to illegally operate in the Church property which they refused to handover to the Church. The cause of action is premised on this illegal holding over and trespass.

6. The Church did not factionalise, notwithstanding the exit from the Church of the Appellants. The Appellant never in their letter of resignation, Exhibit D, alleged that the Church had factionatised.

The two Courts below cannot be faulted in their findings of fact that the dispute is simply about the ownership of the land on which the Church in Awka was built and that it has nothing to do with the jurisdiction of the Federal High Court. The two Courts below found correctly in my view that DW1, the material defence witness, had contradicted himself on how the Azi-Awka community vested title on the Appellants, and that the failure of the Appellants to produce the alleged written agreement they had with the community raises unfavourable presumption against them. The Court under Section 167(d) of the Evidence Act 2011 (formerly Section 149(d) Evidence Act 1990), the Court may presume that the evidence which could be produced and which is not produced would, if produced, be unfavourable to the person who withholds it. The Appellants pleaded the agreement by which the Azi-Awka community vested and/or conveyed title over the disputed land to them. At trial, they however withheld the agreement. They never produced it.

The concurrent judgments of the two Courts below are unassailable. The findings of facts stand resolutely against the Appellants, whose avarice appears to contradict their purported vow as "men of God".

Appeal dismissed.-end!