**APOSTLE PETER EKWEOZOR**

**V.**

**THE REGISTERED TRUSTEES OF SAVIOURS APOSTOLIC CHURCH OF NIGERIA**

COURT OF APPEAL

30TH DAY OF JUNE, 2014

CA/E/431/2007

**LEX (2014) - CA/E/431/2007**

OTHER CITATIONS

2PLR/2014/19 (CA)

(2014) LPELR-23572(CA)

**BEFORE THEIR LORDSHIPS:**

MASSOUD ABDULRAHMAN OREDOLA, JCA

EMMANUEL AKOMAYE AGIM, JCA

MISITURA OMODERE BOLAJI-YUSUFF JCA

**BETWEEN**

1. APOSTLE PETER EKWEOZOR

2. REV. K. ONYEMA

3. THE REGISTERED TRUSTEES OF SAVIOUR'S APOSTOLIC CHURCH - Appellants

AND

THE REGISTERED TRUSTEES OF SAVIOURS APOSTOLIC CHURCH OF NIGERIA - Respondents

**ORIGINATING COURT(S)**

ANAMBRA STATE HIGH COURT, HOLDEN AT AWKA

**REPRESENTATION**

C. CHUMA OGUEJIOFOR with I. AROH, N. EZEMA, A. T. N. NWAKA and C. I. ULEOGARANYA for Appellant

OFFIAH, SAN with UCHECHUKWU ONYEKACHI Esq. for Respondent

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

COMPANY LAW – INCORPORATED TRUSTEES:- Proof of incorporation – Change of name - Onus to plead and prove same in spite of tendering the certificates of incorporation – Need to prove that the name was changed and that all the requirements for change of name were complied with - Section 680 (5) of CAMA – What is deemed prima facie evidence that the requirements and requisitions for change of name under sections 680 (1) - (4) and 682 of CAMA were complied with

COMPANY LAW – INCORPORATED TRUSTEES:- The effect of incorporation of trustees under 679 of CAMA – Distinction from section 6 of the Lands (Perpetual Succession) Act under which a certificate issued thereunder was a conclusive evidence that all requirements of the registration have been complied with – Whether a certificate issued under section 679 (3) of CAMA is a prime facie evidence that all the preliminary requirements for incorporation have been complied with

COMPANY LAW – LEGAL PERSONALITY:- Proof of – Whether the only way to prove the identity or juristic personality of a company or a registered association is by tendering the original or certified true copy of the certificate of incorporation

COMPANY LAW – MERGER OF INCORPORATED TRUSTEES:- Where merger culminated in the registration emergent entity under a new name but with number of one of the constitutive entities – Effect – Whether the amalgamation/merger is deemed complete and indivisible – Implication for holding of property of subsumed entities

NONPROFIT LAW – INCORPORATED TRUSTEES:- Property of a nonprofit or incorporated trustee – Proper way of transferring same - Section 679(2) of CAMA – Whether once a certificate of incorporation is issued, all the property or properties held in trust for the corporate body automatically vests in the body – Whether a member of an incorporated trustee is not required to do anything to transfer the property either orally or even in writing before the property or properties shall vest in the body

NONPROFIT LAW – INCORPORATED TRUSTEES:- Resignation of trustees of a nonprofit – Distinction from dissolution or factionalisation of body – Whether an incorporated trustees can only be dissolved under the provisions of section 691 of CAMA

NONPROFIT LAW – REGISTERED TRUSTEES:- Double registration – Where established that community, body or association of persons whose trustees were earlier incorporated is one and the same as community, body or association of persons whose trustees were again incorporated under a different name and with new or enlarged trustees but with the same Incorporation number– Section 679(2) of CAMA – Legal effect of the subsequent certificate of incorporation – Whether vests all properties and interests of whatever nature or tenure belonging to or held by any person in trust for such former community, body or association of persons in the community, body or association

NONPROFIT LAW – RELIGIOUS BODY:- Members of a religious body registered with the Corporate Affairs Commission of Nigeria – Resignation of membership of body by persons in control of properties of body – When refusal to quit premises of body and handover properties in their custody, control or possession is deemed a trespass

REAL ESTATE AND PROPERTY LAW – LAND – TITLE TO LAND:- Claim for declaration of title – Onus to establish entitlement to the declaration sought by cogent and credible evidence – On whom lies – Need for claimant to establish same on the strength of his own case and not on the weakness of the defendant's case

REAL ESTATE AND PROPERTY LAW – LAND – TITLE TO LAND:- Long possession - Section 35 of the Evidence Act, 2011 – When acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected with it by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land – When acts of possession can be deemed numerous and positive enough to warrant an inference of ownership of title

REAL ESTATE AND PROPERTY LAW – LAND - TITLE TO LAND:- Proof of - Five accepted ways of proving title to land as laid down in IDUNDUN VS OKUMAGBA

RELIGION AND LAW – RELIGIOUS BODY:- Church group - Effect of incorporation with the Corporate Affairs Commission – Merger of two different religious bodies – Whether irreversible – Implication for holding and ownership of property and Justice Administration

TORT AND PERSONAL INJURY - TRESPASS:- Continuing trespass – How arises – Whether as long as the alleged trespasser remains on the land, a fresh cause of action arises or accrues each day – Whether can come in aid of a claimant who alleges trespass and that trespass continues to prevent his claim from being statute barred

TORT AND PERSONAL INJURY - TRESPASS:- Person in lawful control and possession of property due to membership of an organization which has title over same property - Refusal to yield up control of property after resigning from its membership – When amounts to tort of trespass

TORT AND PERSONAL INJURY - TRESPASS:- Trespass as a special specie of an action in tort - Where a plaintiff claims damages for trespass and injunction - Whether title to land is automatically put in issue – Whether a claim for damages for trespass and injunction where both parties claim ownership of the land is not a simple claim in tort to which the provisions of section 20 (1) (a) of the Action Law of Anambra State can be applied

**PRACTICE AND PROCEDURE ISSUES**

ACTION - JURISDICTION:- Ancillary issue – Where a party's claim falls within the jurisdiction of two separate courts – Whether it is the court that has the jurisdiction to adjudicate on the principal claim that should be approached

ACTION:- Averments – Denial of – Onus of proof – On whom lies

COURT:- Reliance on wrong or repealed law to come to a conclusion – Where there is an existing law under which the same conclusion would have been reached – Whether the error is deemed not to have occasioned a miscarriage of justice – Whether it is not every error or slip in a judgment that must result in reversal of a judgment by an appellate court

EVIDENCE:- Where a witness gives contradictory evidence on the same issue- Whether the court is not in a position to choose one and reject the order – Duty of the court to reject the two pieces of evidence and such a witness deemed not capable of being believed - Section 167 [d] of the Evidence Act, 2011 - Evidence which could be and is not produced – Presumption that it would if produced be unfavourable to the person who withholds it – Effect of

PLEADINGS – STATUTE OF LIMITATION:-Rule that a defence of statute of limitation must be specifically pleaded to avoid the other party being taken by surprise – Whether leave can be granted to raise same on appeal where not raised at trial court

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

Late Apostle Peter Ekweozor, Reverend Onyema and 4 others who were ordained ministers in the respondent's Church resigned their membership and ministration of the Church but they refused to hand over the Church's properties or quit the Church 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.

DECISION APPEALED AGAINST

The case went to trial and both parties called witnesses. In a well considered judgment, the Lower Court entered judgment in favour of the respondent except the claim for return of vehicles which was "dismissed for not having been substantiated by evidence". The appellants being dissatisfied with the judgment have appealed.

**DECISION OF COURT OF APPEAL**

1. That a ground or grounds of appeal as well as issues distilled there-from must relate to or arise from the judgment being appealed against otherwise they will be incompetent and liable to be struck out. The only exception is when an issue of jurisdiction is being raised for the first time on appeal.

2. That where a party's claim falls within the jurisdiction of two separate courts, it is the court that has the jurisdiction to adjudicate on the principal claim that should be approached, hence, Anambra State High Court had jurisdiction to adjudicate on the respondent's claim.

3. That the only way to prove the identity or juristic personality of a company or a registered association is by tendering the original or certified true copy of the certificate of incorporation.

4. That in a claim for declaration of title, the onus is on the plaintiff to establish his entitlement to the declaration sought by cogent and credible evidence. He must do so on the strength of his own case and not on the weakness of the defendant's case.

5. That the plaintiff must establish one of the five accepted ways of proving title to land as laid down in IDUNDUN VS OKUMAGBA (1976) 9-10 S.C, 140.

6. That where a person who initially entered upon land lawfully or pursuant to an authority given by the true owner or person in possession subsequently abuses his position or that authority he becomes a trespasser ab initio.

7. That an appellate court would not interfere with the finding of fact by 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.

Appeal dismissed.

Judgment of the Lower Court hereby affirmed.

**MAIN JUDGMENT**

MISITURA OMODERE BOLAJI-YUSUFF, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This appeal emanated from the judgment of Anambra State High Court holden at Awka which was delivered in suit No. AA/120/86 on 31st July, 2007.

The respondent as the plaintiff before the Lower Court in the Further Amended Statement of Claim dated and filed on 17th June, 2001 inter alia claimed against the appellants as the defendants as follows:

"1) 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 N10,000.00

2). General damages for trespass N2,000,000.00

3). Injunction restraining the 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.

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

5). 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 of the same to the plaintiffs or into the Court for plaintiffs' use, starting from the 29th of December, 1977 till judgment in this case".

The case went to trial and both parties called witnesses. In a well considered judgment, the Lower Court entered judgment in favour of the respondent except the claim for return of vehicles which was "dismissed for not having been substantiated by evidence". The appellants being dissatisfied with the judgment initially filed only one ground of appeal. Twelve (12) additional grounds were filed on 10th March, 2009. The 13 grounds of appeal without their particulars are:-

(1) ERROR IN LAW

"The learned trial judge erred in law when he assumed jurisdiction, entertained and entered judgment in this suit even, as the State Court lacks the jurisdiction to entertain the suit as constituted.

(2) ERROR IN LAW

"The learned trial judge erred in law when he held "The plaintiffs therefore having tendered the original certificate of their Incorporation Exh."C" has satisfied the requirements of the law… An association that has been incorporated has legal personality. It can sue and be sued in its corporate name. I hold therefore that the plaintiffs are duly registered and as such are competent to sue".

(3) ERROR IN LAW

"The learned trial judge erred in law when he held "In the instant case, the application Exhibit 'R' was made in writing and signed by the person who made the application and it contains the several particulars applicable to the case. The Federal Ministry of Internal Affairs acted on it and granted Exhibit C. Exhibit C - a certificate of incorporation having been granted, is conclusive evidence by virtue of section 6 of the Land (Perpetual Succession Act Cap. 98) that all the preliminary requisitions contained therein and required in respect of such incorporation mentioned in the certificate - Exhibit C is deemed (sic) as the date at which incorporation of the plaintiffs took place. Therefore, the plaintiffs are duly registered and competent to sue".

(4) ERROR IN LAW

"The learned trial judge erred in law when he held "By virtue of this section, Exhibit 'B' vested in Saviour's Church of Nigeria the Land in dispute, which belongs to the association and was held in trust for the association before its incorporation. Upon the change of name, from Saviour's Church of Nigeria to Saviour's Apostolic Church of Nigeria on 18th March, 1986 Exhibit B ceased to exist and Exhibit C replaced it. Therefore by virtue of Exhibit C, the Land in dispute and interests therein vests in the plaintiffs. This is so because the plaintiffs being a corporate body have perpetual Succession".

(5) ERROR IN LAW

"The learned trial judge erred in law when he held "Awka Local Government in 1952 granted Rev. John Ekweozor the land in dispute for the establishment of Church (sic), which he held in trust as a trustee of the Church. I am satisfied that the plaintiffs have established the traditional history of the land in dispute which they relied on as root of title".

(6) ERROR IN LAW

"The learned trial judge erred in law when the held "I find the evidence of PW1 And PW4 on issue of various acts of ownership of the plaintiffs over the land in dispute, which are numerous and positive from 1952 when the land was granted to the plaintiffs until 1977 when the defendants started claiming the Church buildings, properties therein and the Church premises, which is the land in dispute credible and reliable and I believe and accept them. I find therefore that the plaintiffs have successfully proved title to the land in dispute by various acts of ownership on the land in dispute, numerous and positive and which extended over a length of time."

(7) ERROR IN LAW

"The learned trial judge erred in law when he had held "The defendants have not by evidence proved that they are owners of the land in dispute or that they have been in long possession of the land in dispute or done acts of long possession and enjoyment of the land".

(8) ERROR IN LAW

"The learned trial judge erred in law when he held "More also the land in dispute is owned by Saviour's Church of Nigeria which the plaintiffs succeeded and becomes the owner of the same".

(9) ERROR IN LAW

"The learned trial judge erred in law when he held "The plaintiffs' possession of the land in dispute is clear and exclusive from their trustees up to merger in 1958 and continued thereafter up to their registration in 1961 Exhibit B, and up till 1977, the point of trespass when the 1st and 2nd defendants resigned from the plaintiffs church and refused to hand over the plaintiff so properties to the PW1 as they were directed vide Exhibit E... The plaintiffs are therefore entitled to damages"

(10) ERROR IN LAW

The learned trial judge erred in law when he held "In view of all I have said above, it is clear therefore that Reliefs 4 and 5 of the plaintiffs succeeds in part and fail in part".

(11) ERROR IN LAW

The learned trial judge erred in law when he held "The obvious effect of the registration of the trustees of Saviour's Church of Nigeria - Exhibit B vests in the body corporate, all land or any interest therein of whatever nature and tenure formerly belonging to or held by any person or persons in trust for the body or association of persons before its registration. Therefore all lands or any interest therein of whatever nature and tenure formerly held by Rev. John Ekweozo or Apostle J. A Ogudipe or Saviour's Church of Nigeria before Exhibit B vest on the body corporate in Exhibit B from the date of the incorporation mentioned in Exhibit B, which is 30th June, 1961".

(12) ERROR IN LAW

"The learned trial judge erred in law in entering judgment in favour of the plaintiffs/respondents in this matter especially in declaring that they were entitled to the statutory right of occupancy over the disputed property, damages in their favour amounting to N500,000.00 against the appellants, perpetual injunction restraining them from trespassing on the property and that they render account for all monies collected by them since 1977 till date."

(13) ERROR IN LAW

“The learned trial judge erred in law when he held "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 Saviours Church of Nigeria as can be seen from the testimony of PWI and Exhibit "B"....... . I hold therefore that Late Pastor John Ekweozor being one of the trustees of Saviour's Church of Nigeria held the land in dispute in trust for the Church organization - Saviour's Church of Nigeria."

In his brief of argument dated 14th March, 2009 and filed on 16th March, 2009 which was adopted on 27th May, 2014, the appellants' Counsel distilled four (a) Issues for determination from the grounds of appeal. The issues are:

"1. Whether the State High Court i.e. the high Court of Anambra State Awka, had jurisdiction to have entertained the suit instead of the Federal High Court".

2. Whether the action was competent having been commenced by the plaintiffs/respondents instead of Saviour's Church of Nigeria which had been Incorporated since 1961 and with registration No. 558 especially as the same had not been dissolved in accordance with section 691(1) of CAMA 1990", nor was evidence of change of name of the said Saviour's Church of Nigeria to Savour's Apostolic Church of Nigeria pleaded or led at the trial".

3. "Whether the plaintiffs/respondents had discharged the onus of proof placed on them to show that title in the property in dispute vested on them in this matter and was the learned trial judge right in shifting the burden of proof of title to the property from the plaintiffs/respondents to the defendants/appellants who in any event had filed no counter claim in the matter".

4. "Whether the learned trial judge was right in holding that reliefs 4 and 5 of the plaintiffs/respondents had succeeded in part and failed in part and whether their claim for trespass, damages, injunction and accounts against the defendants/appellants was not statute barred in view of the provisions of the Actions Law, Cap 3 Laws of Anambra State of Nigeria 1986."

The respondent's Counsel identified five issues for determination. The issues are:-

“1. WHETHER THE HIGH COURT OF ANAMBRA STATE HAD JURISDICTION TO ENTERTAIN THIS SUIT. (Distilled from original ground and 11th additional ground)

2. WHETEHR THE ACTION WAS COMPETENT HAVING BEEN COMMENCED BY THE PLAINTIFFS/RESPONDENTS INSTEAD OF SAVIORS CHURCH OF NIGERIA. (distilled from 1st, 2nd and 3rd additional grounds).

3. WHETHER THE RESPONDENTS DISCHARGED THE BURDEN OF PROOF PLACED ON THEM IN LINE WITH THE PROVISIONS OF THE EVIDENCE ACT. (Distilled from 4th, 5th, 6th, 7th, 8th, 10th, 11th and 12th additional grounds).

4. WHETHER THE JUDGMENT OF THE TRIAL COURT WAS CLEAR AND UNAMBIGUOUS IN RELATION TO RELIEFS 4 AND 5 OF THE RESPONDENTS AT THE TRIAL COURT; AND WHETHER THE CLAIM FOR TRESPASS AND DAMAGES WERE VALID IN THE CIRCUMSTANCE. (distilled from 9th additional ground).

5. WHETHER GROUNDS 1, 2, 3, 7, 8, 10, 11 AND 12 ARE COMPETENT GROUNDS ARISING OUT OF THE SUIT AND THE JUDGMENT OF THE LOWER COURT.”

The 1st - 4th issues formulated by the respondent's counsel are the same as the 4 issues formulated for determination by the appellants' counsel. Issue 5 is challenging the competence of grounds 1, 2, 3, 7, 8, 10, 11, and 12 of the grounds of appeal.

I have perused the grounds of appeal and the issues identified by counsel to both parties, I have found that issues 1- 4 adequately covered issues raised by the grounds of appeal and hereby adopt them for the determination of this appeal.

Before I go into the issues, I find it appropriate to deal with the preliminary point raised by Issue No. 5 formulated by the respondent's counsel. The issue is whether grounds 1, 2, 3, 7, 8, 10, 11 and 12 of the appeal are competent grounds arising out of the suit and the judgment of the Lower Court. It is the law that a ground or grounds of appeal must relate to or arise from the judgment being appealed against. It must be based on the ratio decidendi of the judgment and not on a mere obiter dictum or an expression of opinion by the trial judge. The issues distilled from the grounds must also emanate from the judgment being appealed against. Any ground not traceable to the ratio or reasons for the judgment being appealed against and any issue distilled therefrom will be incompetent and is liable to be struck out. See GATEWAY SAYER PRODUCTS NIG. LTD & ANOR VS. I.B. PLC (2011) LPELR 189 (CA). There is an exception to that rule and that exception is when an issue of jurisdiction is being raised for the first time on appeal.

It is trite that an issue of jurisdiction can be raised at any stage of the proceedings even on appeal and without the leave of the Court, though it is desirable to raise it at the Lower Court to save costs and avoid waste of valuable judicial time. See IKE VS INEC [2010] LPELR 4293 (CA). In this appeal I have perused the grounds of appeal vis-a- vis the judgment being appealed against, there is no doubt that ground 1 which is the original ground of appeal is challenging the jurisdiction of the Lower Court to adjudicate on the claim before it. Ground 1 being an issue of jurisdiction can be raised at any stage of proceedings even in the Supreme Court and by any means including a ground of appeal. Grounds 1, 2 and 3 in the additional grounds of appeal are challenging the Lower Court's findings on the legal personality of the respondent, its right to sue and be sued and the effect of the new certificate of incorporation issued to the respondent in 1986 among other findings. Grounds 7, 8, 10, 11 and 12 are in respect of the learned trial judge's findings and decisions relating to title to the land and property in dispute. What I have found in respect of the grounds of appeal in this case is that the appellant has virtually made every finding by the learned trial judge a ground of appeal which led to multiple grounds in respect of only one issue. I am of the view that the proliferation of the grounds of appeal though is totally undesirable but it is not fatal to the appeal in this case particularly when both parties have rightly distilled only four issues which are relevant to the determination of this appeal from those grounds of appeal. Based on the foregoing I hereby resolve issue 5 formulated by the respondent's counsel in favour of the appellant.

Issue 1 is whether the Anambra State High Court had jurisdiction to entertain this suit. On this issue, the appellants' counsel submitted that the suit as constituted ought to have been entertained by the Federal High Court and not Anambra State High Court because the suit is not just a land matter but principally about the operation of the **COMPANIES AND ALLIED MATTERS ACT, (CAMA) (1990)** and its application to entities incorporated under Part C of the Act. He referred to paragraphs 1- 6, 8, 9 (C-E),10, 13, 14 and 16 of the Further Amended Statement of claim, he submitted that the facts pleaded in those paragraphs put it beyond any doubt that the suit relates to the affairs of a religious body registered under the Land (Perpetual Succession) Act, Cap 98 now CAMA which is now factionalized with each faction claiming superior pedigree or more authentic connection with the original Church and its property. He referred to Section 7 (1) (C) of the Federal High Court Act, Cap. 134, Laws of the Federation 1990, Section 25 ((i) (e) of the 1999 Constitution (as amended), **SKEN CONSULT VS UKEY, 1981 1 SC 6, OMISADE VS AKANDE & ORS (1987) 1 NALR PAGE 207.** It was argued that the respondent's claim is all about the property and assets of an entity registered under Part C of CAMA 1990, the manner the factions of that entity share its property and which faction gets what. He urged the Court to set aside the judgment of the trial Court and strike out the respondent's claim for want of jurisdiction because this case is not simply for declaration of title to property, it is about whether Saviour's Church of Nigeria has been dissolved or whether its name was merely changed to Saviour's Apostolic Church of Nigeria and if so changed, whether it translates to the property of the former devolving automatically on the latter which are questions that can only be adjudicated upon by the Federal High Court. He referred to **YALAJU-AMAYE vs AREC LTD, 1990 6 SC PAGE 157 AT 193, WINDIBIZIM & 2 ORS VS NJILA & 2 ORS 2002, FWLR [PT.132] PAGE 96 AET 127 AND 128.**

On this issue, the learned senior counsel for the respondent submitted that the jurisdiction of a Court to adjudicate on a case is determined by the plaintiff's claim as disclosed in the writ of summons and/or endorsed in the statement of claim. She referred to **N.I.M.R. VS AKIN-OLUGBADE (2008) 5 NWLR (PT.1079) AT 90, AMECHI VS INEC (2007) 9 NWLR (Pt.1040) PAGE 504 AT 533-534,** and numerous other cases. She further submitted that the reliefs sought by the respondents in the Court below was principally for a declaration of title to a Statutory Right of Occupancy, damages for trespass, injunction and an order to render account over which the Anambra State High Court has original jurisdiction by virtue of Sections 39 and 41 of the Land Use Act. She argued that the issue in contest was not the propriety or otherwise of the incorporation of the respondent as issues were not joined on Exhibits B and C (Certificates of Incorporation) and which were not challenged. She submitted that where the landed property of an incorporated trustee is in issue and the relief sought is a declaration of title to land as in this case, the proper court to assume jurisdiction is the High Court where the land is situate. She further submitted that what the appellant has unsuccessfully done in their brief of argument is to engage in a futile labour of setting up a case different from that which the respondent presented in the Lower Court and which formed the basis of the judgment now appealed against. Additionally, that the appellants cannot do that under the guise of arguing their appeal. She referred to **AMUDA Vs ADELODUN (1994) 8 NWLR PT.360 page 23 at 31.**

The settled principle of law guiding the determination of the issue of jurisdiction of the Lower Court to entertain this case is that it is the nature of the plaintiff's claim as endorsed on the writ of summons or statement of claim where one has been filed that determine the jurisdiction of the Court.

Where pleadings have been filed, it is the averments in the statement of claim that has to be examined and not the statement of defence. 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 respondent's Church resigned their membership and ministration of the Church but they refused to hand over the Church's properties or quit the Church 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 Saviours 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 ownership of the land on which the respondent's Church in Awka was built. 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 resignation of the ministers from the Church is not tenable. The alleged factionalisation of the Church in my view is also not supported by the pleadings and even the evidence on record. That is the case now being introduced by the appellants based on misinterpretation of the averments in the respondent's pleadings. It is settled by the authority of MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587 that the competence of a Court depends entirely on whether the subject matter of the case is within its jurisdiction, that there is no feature in the case which prevents the Court from exercising jurisdiction and that the case comes before the Court by due process of law. The entire claim and case of the respondent is 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. See AZAGBA VS NIGERIAN COLLEGE OF AVIATION TECHNOLOGY, ZARIA & ANOR (2013) LPELR-2074 (CA) ADETAYO & ORS VS ADEMOLA & ORS (2010) 15 NWLR (PT.1215) PAGE 169 where the Supreme Court held as follows:-

"The action or proceedings for a declaration injunction stipulated in section 251 (1) is that which affected the validity of and executive or administrative action or decision by the Federal Government or any of its agencies and this has no bearing with the declaration that any person is entitled to be issued with certificate of occupancy in respect of parcels of land at Yakoyo near Ojodu village".

Even if there is any issue which calls for the 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 respondent before the Lower Court.

The law is that where a party's claim falls within the jurisdiction of two separate courts, it is the court that has the jurisdiction to adjudicate on the principal claim that should be approached, See TUKUR VS GOVERNOR OF GONGOLA STATE [2011] 9 SCM PAGE 155 AT 187 where the Supreme Court held as follows:-

"If there is a Court with jurisdiction to determine all the issues raised in a matter including the principal issue, it is improper to approach a Court that is competent to determine only some of the issues.

The incompetence of the Court to entertain and determine the principal question is enough to nullify the whole proceedings and judgment as there is no room for half judgment in any matter brought before the Court." See also GAFAR VS KWARA STATE & ORS [2007] 4 SCM 110 - 126 -127

On the facts and circumstances disclosed by the averments of the respondent in the Further Amended Statement of Claim, issue I is resolved against the appellants. The Anambra State High Court had jurisdiction to adjudicate on the respondent's claim.

Issue 2 is whether this action is competent having been commenced by the respondent instead of Saviour's Church of Nigeria incorporated in 1961. On this issue, the learned appellants' counsel submitted that the name which was registered in 1961 with certificate No 558 is "saviour's Church of Nigeria, any proceedings in Court such as the present suit must be commenced in that name otherwise the action is incompetent by virtue of section 679 (1) of CAMA. He argued that a corporate body once formed remains alive in the eyes of the law, until it is dissolved under the provisions of section 691(1) of CAMA. He further argued that there is no evidence that "saviour's Church of Nigeria has been dissolved or that the provisions of Section 680 (1) of CAMA were complied with to change the name to Saviour's Apostolic Church of Nigeria. He referred to Section 683 of CAMA. He submitted that there is no nexus between the respondent and the subject matter of this suit. He urged the Court to hold that this suit is incompetent not having been commenced in the name of Saviour's Church Nigeria.

In response, the learned senior counsel for the respondent submitted that the issue of the change of the respondent's name was not the issue in controversy before the Lower Court and the appellant did not allege in their pleading or evidence that the respondent breached any condition set out in Exhibits B and C. I have perused the pleadings of both parties which are the Further Amended Statement of Claim dated 17th June, 2001 and the defendants Statement of defence dated 31st August, 2001. I cannot find any averment challenging the capacity of the respondent to institute this suit or the identity of the respondent, its existence or non existence. However in paragraphs 1 and 6 of the respondent's pleading, the legal personality of the respondent is pleaded as follows:-

"1. The plaintiffs are the registered trustees of a Christian religious Organization called Saviour's Apostolic Church of Nigeria registered as No. 558 under the Land (Perpetual Succession) Act, Cap.98.

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.

6B The plaintiffs are sometimes referred to merely as Saviour's Apostolic Church.

6C When the 1st defendant was ordained priest, the plaintiffs' church was known as Saviour's Church of Nigeria and incorporated as such as already stated, but later incorporated as Saviour's Apostolic Church of Nigeria."

The defendants by paragraphs 2 and 6 of their pleadings denied the above averments. Both paragraphs read as follows:

"2. The defendants strenuously deny paragraph 3 of the statement of claim and will at the trial put the plaintiff to the strictest proof of the same.

6. The defendants strenuously deny paragraph 6 of the statement of claim and put the plaintiff to very strict proof of the same. The defendants aver that the only property which was the subject of dispute was the property of the defendants Church known as "The SAVIOURS APOSTOLIC CHURCH' at Akwu Achi in Oji River Local Government Area of Anambra State. The plaintiff through their agent one Rev. S. O. Nnam instituted action at Oji Magistrate Court in Suit No MOR/4/79 Rev. S. O. Nnam Vs Rev. Peter Ekweozor and 10 others claiming N750.00 as general damages for trespass and injunction restraining the defendants from trespassing into the Church premises".

I am of the view that since the appellants denied paragraphs 1 and 6 of the respondent's pleading, the onus is on the respondent to prove its legal personality. The law is settled that the only way to prove the identity or juristic personality of a company or a registered association is by tendering the original or certified true copy of the certificate of incorporation, See REPTICO S. A. GEREVA VS FOIBANLR NIGERIA PLC (2013) LPELR 2066 (SC) where the Supreme Court held as follows:-

"On this land, Nigeria, the only acceptable and legally recognized way of establishing that a company is an incorporated limited liability company entitled to sue and be sued in particular when parties join issue on the matter, is by producing in evidence the certificate of incorporation. No other document will suffice".

In this case, the respondent tendered Exhibits B and C as evidence of incorporation. Those certificates were issued under the Lands (Perpetual Succession) Act, Section 3 of which provides that a certificate of incorporation so granted shall be conclusive evidence that all the preliminary requirements in respect of incorporation have been complied with. However, the Lands (Perpetual Succession) Act has been repealed by section 694 of the Companies and Allied Matters Act (CAMA). By virtue of section 695 of CAMA, all trustees duly registered as bodies corporate under the Land (Perpetual Succession) Act are deemed to be registered in accordance with Part C of CAMA and the provisions of that Part C shall apply in respect of such trustees. No doubt the respondent is one of such registered trustees, therefore the provisions of section 673 to 695 of CAMA applies to the respondent.

The effect of incorporation of trustees such as the respondent is stated in paragraph 679 of CAMA which reads:-

“1. From the date of registration, the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in its corporate name as such trustee or trustees and subject to section 685 of this PART of this Act to hold and acquire, and transfer, assign or otherwise dispose of any property or interests therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

2. The certificate of incorporation shall vest in the body corporate all property and interest of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.

3. A certificate of incorporation when granted shall be prima facie evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with and the date of incorporation mentioned in such certificate shall be deemed to be the date on which incorporation has taken place."

Unlike section 6 of the Lands (Perpetual Succession) Act under which a certificate issued thereunder was a conclusive evidence that all requirements of the registration have been complied with, a certificate issued under section 679 (3) of CAMA is a prime facie evidence that all the preliminary requirements for incorporation have 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 all 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 clearly stated thus:-

"As at 30th June, 1961 a Church was incorporated as Saviours' Church of Nigeria and Exhibit B was issued. 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 Saviours 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 Saviours Church of Nigeria. My application to the Ministry of Internal Affairs was in respect of the change of the deceased trustees of Saviours 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 trustees 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 change of trustees, it is clear on the face of Exhibit C that the name of the respondent was also changed. By virtue of section 680 (5) of CAMA (supra), the issuance of Exhibit C is a confirmation that the Corporate Affairs Commission gave its assent to the change of the respondent's name from Saviour's Church of Nigeria to Saviour's Apostolic Church of Nigeria. Section 680 (5) of CAMA reads:

"(5) If the Commission assents to the application the alterations shall be made and in the case of a change of name, the Commission shall issue a new certificate in the new name in place of the former certificate."

Exhibit C is a prima facie evidence that the requirements and requisitions for change of name under sections 680 (1) - (4) and 682 of CAMA were complied with. Throughout the pleadings, the evidence led and the submissions of the appellants' counsel, the authenticity of Exhibits B and C was never challenged.

The respondent by tendering Exhibits B and C established the following by prima facie evidence.

1. That the respondent was incorporated in 1961 under the name "Saviour's Church of Nigeria".

2. That the respondent's name was altered in 1981 from "Saviour's Church of Nigeria" to "Saviour's Apostolic Church Nigeria and a certificate was issued by the Corporate Affairs Commission as evidence of its assent to that change.

3. That the registered trustees of the Church were also changed.

I have earlier stated that the certificate of incorporation, Exhibit C is prima facie evidence which means the evidence is rebuttable. In law, the onus shifted on the appellants to lead evidence in rebuttal which they failed to do. The meaning of "Prima Facie" was stated in DURU & ANOR VS JONATHAN NWOSU (1989) 4 NWLR (PT.113) PAGE 24 AT 52-53 [H- B] where the Supreme Court per NNAEMEKA -AGU J S C stated thus

"What then is the meaning of the expression "prima facie case"? the expression "Prima facie" comes from two Latin words Primus (which means first) and facie (which means face). "Prima Facie" therefore literally means on the first appearance. Applied to the rule of onus of proof in the law of evidence, a "prima facie case" is a case supported by such a quantum of evidence on every material issue thereof that, if no evidence is called by the other side, or, if called, as often happens in civil cases, such contrary evidence is disregarded, the plaintiff (or the party on which the burden lies) will be entitled to the verdict of the court on the case or the particular issue, as the case may be. It is evidence which, viewed on the face of it alone, is sufficient to entitle the Court to proceed with the proceedings." See also S.S. GMBH VS JUNJI INDUSTRIES LTD (2010) 11 NWLR PT.1206 PAGE 589.

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. Though the learned trial judge erred when he relied on the Lands (Perpetual Succession) Act, which has been repealed by section 694 of CAMA to come to the conclusion that the respondent was duly registered and is competent to sue, that error is not enough to interfere with his findings. Under the existing law, the same conclusion would have been reached, the error has not occasioned a miscarriage of justice.

It is a settled principle of law that it is not every error or slip in a judgment that must result in reversal of a judgment by an appellate court. See ANYANWU VS MBARA [1992] NWLR (PT.242) PAGE 386 AT 400 [E] where the Supreme Court held as follows:-

"It is the law, however, that the fact that a party has established an error in the proceedings does not necessarily mean that the appeal must be allowed. Such an error will be a ground for allowing the appeal if and only if, it is substantial in the sense that if he had directed himself correctly he would have reached a different decision."

It is only when (1) the error is substantial (2) the error led to a wrong conclusion and (3) the wrong conclusion has led to a miscarriage of justice that an appellate court will intervene to set aside the judgment. None of the above conditions is present here. The contention of the appellants' counsel that this suit is incompetent because the suit should have been instituted in the name of **"Saviour's Church of Nigeria"** instead of "Saviour's Apostolic Church of Nigeria lacks merit. Issue 2 is resolved against the appellants.

Issue 3 is whether the respondent discharged the burden of proof placed on it by law. On this issue, the appellants' counsel submitted that in a claim for title to land, a plaintiff must lead credible evidence to prove one of the five accepted means of proving title. He submitted further that in this case, there was no evidence of traditional history and the respondent did not produce any document of title duly authenticated to prove their alleged title over the land in dispute in this case. He relied on **OLOKOTITIN VS SARUMI (2002) 7 SC (PT.1) PAGE 152.** He argued that according to the evidence of PW1 on page 234 of the record, the appellants are still unlawfully and wrongfully occupying and using the Church premises at Awka. He further argued that the respondent conceded that they were not in possession, and that the appellants have always been in possession and is still in possession. According to the learned counsel, the issue of long possession therefore does not arise. Counsel further argued that John Ekweozor the founder of the Church which merged with Ogundipe's Church in 1958 having died in 1960 and there being no evidence that he left a Will or that letters of administration was applied for and obtained in respect of his estate, he could not have transferred the land in dispute to the respondent. He argued that it was not possible for Rev. John Ekweozor to have been a trustee of the Saviour's Church of Nigeria in 1961 as shown in Exhibit B having died in 1960 and assuming that it was possible, no evidence was led to show how he transferred the land vested in him to the respondent. He referred to **Rtd. Trustees of the Diocese of ABA VS NKUME (2002) FWLR (Pt.80) page 270 at 1272.** She submitted that when the respondent failed to prove that root of title, it is not entitled to rely on any acts of long possession as those acts of possession go to no issue.

The learned senior counsel for the respondent referred to the evidence of PW1 and DW1 on pages 282, 293, 322-324 of the record of appeal. She submitted that it is clear that though **JOHN EKWEOZOR** died in 1960, the application for the incorporation of Saviour's Church of Nigeria was made in his life time. He further submitted that the status of late John Ekweozor as a trustee of Saviour's Apostolic Church of Nigeria was settled by the pleadings and established by evidence and it was further shown that the grant of the land was for the benefit of the Church. When Saviour's Apostolic 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. He submitted further that from the pieces of evidence on record, it is clear that the Court having considered the credibility of the witnesses and the evidence given on either side came to the right conclusion on the acquisition of the land in dispute by the respondent in 1950s from the Awka Local Government Council. He urged the Court to uphold the findings and judgment of the trial court.

It is clear by the averments of the respondent in the Further Amended Statement of Claim that the main claim of the respondent to which other claims are ancillary is essentially for declaration of title to land.

The law is trite that in a claim for declaration of title, the onus is on the plaintiff, in this case the respondent, to establish his entitlement to the declaration sought by cogent and credible evidence. He must do so on the strength of his own case and not on the weakness of the defendant's case. It is also trite that the plaintiff must establish one of the five accepted ways of proving title to land as laid down in IDUNDUN VS OKUMAGBA (1976) 9-10 S.C, 140 and a plethora of authorities. Those five accepted ways are:

a) By traditional evidence

b) By production of documents of title;

c) By the exercise of numerous and positive acts of ownership over a sufficient length of time to warrant the inference that the person is the true owner;

d) By act of long possession and enjoyment of the land; and

e) By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.

Before I go further, I need to state that the five ways of proving ownership or title to land listed above deals with the types of evidence that should be led by a plaintiff whereas there are several ways by which title to land can be acquired such as a grant, gift, outright purchase or lease for a long period of time, See ADISA VS OYINWOLA (2000) 10 NWLR PT. 674 PAGE 116 AT 178 (F-H) where the Supreme Court held as follows:-

"The several ways in which title in land can be acquired should not be confused with the several ways in which such acquisition can be proved. The much cited case of IDUNDUN & ORS V. OKUMAGBA & ORS [1976] VOL.10 NSCC 446 deals with "five ways in which ownership of land may be proved", and not the ways of acquiring title to land. In short IDUNDUN & ORS VS OKUMAGBA & ORS deals with matters of evidence rather than question of substantive law of acquisition of title. It is for this reason that acquisition of title by gift, grant, or purchase was not mentioned. Also, the principle in KOJO II VS BONSIE (supra) relates to facts which the Court should advert to in coming to a conclusion on the probability of evidence of tradition.

Where as in the present case, the plaintiffs rely on acquisition of title by grant, proof of such grant by traditional history arises only where the fact of grant was so ancient as to be beyond the memory of living witnesses. Facts which are within living memory are properly to be proved by evidence of living witnesses to the event and not by evidence of tradition permitted by Section 45 of the Evidence Act. (See COMMISSIONER OF LANDS VS KADIRI ADIGUN [1937] 3 WACA [2006]".

The respondent pleaded that the grant by Awka Local Government was in writing but did not tender the document of grant. PWI explained the circumstances which made it impossible for the respondent to get a copy of the document and tender same before the court. The evidence of PWI regarding those circumstances were not controverted or discredited. Though the law is that the contents of a document must be proved by tendering the document itself, on the facts and circumstances disclosed in this case, it will be unjust and inequitable to insist on the production of the document and came to the conclusion that the respondent has failed to prove its title to the land in dispute for failure to produce the document of grant. The worst conclusion that can be drawn is that the respondent failed to prove title to 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 sufficiently 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 ways of proving title to land 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 VS AKANJI (1988) 1 NWLR (Pt.70) PAGE 301.

The respondent also pleaded acts of long possession of the land extending over a long period of time. By virtue of Section 35 of the Evidence Act, 2011, acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected with it by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land. PW1's evidence is that they were worshipping in a private house before the grant of the land, that a mud house was built on the land after the grant and they were worshipping there, that they started the construction of the present Church building in 1974 and completed it in 1977, that the entire Church including the headquarters at Ibadan financed the building of the Church at Awka and that the foundation of the building was laid by himself and 1st defendant (see also exhibit J). Exhibit H, the speech delivered on the occasion of the foundation laying ceremony of the Church building on 27th September, 1975 is clear evidence that the Church building was part of and a branch of the Saviour's Apostolic Church. Acts of possession extending over a sufficient length of time is one of the accepted ways of proving title and ownership of land. From the entire evidence of PW1, it is clearly established that the respondent has been in possession of the land and exercising positive acts of possession extending from 1952 until 1977 When the 2nd appellant and some other ministers, not all the ministers in Awka Branch of the respondent, resigned their membership of the Church and refused to handover the premises and properties of the Church to the respondent. I am of the view that the acts of possession are numerous and positive enough to warrant an inference that the respondent is the true owner of the Church.

The refusal of the appellant.s to quit the premises cannot be a lawful possession because the law is that where a person who initially entered upon land lawfully or pursuant to an authority given by the true owner or person in possession subsequently abuses his position or that authority as the appellants have done in this case, he becomes a trespasser ab initio, See OMOTAYO VS CSA [2010] 16 NWLR (PT 1218) PAGE 1.

Apart from the acts of possession, the evidence of PWI that the entire land shown in Exhibit T is government land was not discredited. The Learned trial judge also found acts of ownership by the respondent namely the conduct of services in the Church building, their ministers living in the premises, posting different ministers to serve in the Church and ordination of ministers for that branch of the church were acts of ownership of the land in dispute. Evidence of acts of ownership numerous and positive and extending over a long period of time is also one of the accepted ways of proving ownership.

Based on the foregoing the onus shifted to the appellants to lead evidence in rebuttal because the burden of proof is never static in a civil case. See Section 145 of the Evidence Act and OYADARA VS KEJI & ANOR (2005) 1 NWLR (PT.925) PAGE 571 AT 590. Where the Supreme Court held as follows:-

"It is good law that a plaintiff who succeeds in proving acts of possession can obtain judgment claiming trespass. Acts of possession and enjoyment of land could be evidence of ownership or of right of occupancy. See OKECHUKWU V OKAFOR [1961] 1 ALL NLR 685. Where a plaintiff proves sufficient acts of possession, the burden is thrown on the defendant under section 145 of the Evidence Act to prove the contrary. In order to get judgment, the defendant has the onus to rebut the evidence of the plaintiff See ONYEKAONWU VS EKWUBIRI [1966] 1 ALL NLR 32, [1966] 2 SCNLR 369. See also ONYEYIOLA VS ADEOTI [1973] NNLR 10; ADEGBOLA VS OBALAJA [1978] 2 LRN 164. Acts of long possession and enjoyment of land can be prima facie evidence of ownership of the particular piece of land with reference to which such acts are done. See ODI vs. OSAFILE [1987] 2 NWLR [PT.57] 510."

The appellants pleaded in paragraph 11 of their statement of defence that the land in dispute was a personal gift to the 1st defendant (that is Peter Ekweozor Deceased) by the **EZI - AWKA** elders through their attorneys **MR. W. N. IYWOBU AND B. N. ECHEAZU** and it is evidenced by a memorandum dated 13th June, 1972. However, DW 1 in his evidence in chief said it was the founder of the Church who got a narrow piece of land on which the Church thatched roof building was built from Ezi -Awka Community in 1949 while, Peter Ekweozor approached the Ezi-Awka Elders for additional land in 1972 and he was granted. By this evidence DW1 wanted the Lower Court to believe that the land on which the Church is now standing was granted in two parts to two different persons at different times. The same DWI under cross-examination said he was present when Ezi-Awka Community granted land to the Church and the grant was in writing. DW1 further stated that the written agreement still exists. However the agreement was never tendered. DW1's evidence under cross-examination obviously contradicted his evidence in chief. Where a witness gives contradictory evidence on the same issue, the court is not in a position to choose one and reject the order, the two pieces of evidence must be rejected and such a witness is not capable of being believed.   Apart from the contradictory evidence, the law is settled that by virtue of section 167 [d] of the Evidence Act, 2011, evidence which could be and is not produced would if produced be unfavourable to the person who withholds it. See MOZIE & ORS MBAMALU & ORS [2006] 15 NWLR [PT 1003] PAGE 466. The Lower Court by virtue of the above authorities was entitled to presume that such an agreement does not exist or if it exists it is against the appellants, in any case I do not believe that such an agreement exists. I do not believe that any grant was made to Peter Ekweozor or John Ekweozor by Ezi-Awka Community.

Exhibit P is the judgment delivered in suit No AA/91/73 between **BERNARD ECHEAZU & ORS** [For themselves and on behalf of **Ezi-Awka Community of AWKA VS AWKA COMMUNITY COUNCIL AWKA, & 2 ORS (For themselves and on behalf of Awka Community)** **Ezi-Awka Community** wherein the alleged grantor (EZI-AWKA COMMUNITY) of the appellants claimed ownership of a land referred to as **EKPE- EGBU, OFIA OWELLE, ANA-OJI, IGU-MKPIIME AND AGUOCHA IN AWKA** which according to PWI included the land in dispute in this case. **Ezi-Awka Community's** claim in that case was dismissed. PW4's evidence that the entire land in Exhibit T is Government land was not discredited under cross - examination and Exhibit T clearly showed that the respondent's Church is within the said Government land. The effect of that judgment is that the community which the appellants claimed granted the land in dispute to John Ekweozor Peter Ekweozor or the Church never had title to the land. **NEMO DAT QUOD NON HABET**, The (Ezi-Awka Community) could not have granted the land they never owned.

DW1 confirmed the registration of Saviour's Church of Nigeria and the merger between John Ekwerozor's and OGUNDIPE'S Churches to form the Church registered in Exhibit B. The finding of the learned trial judge that DWI is not a credible witness cannot be faulted because still under cross- examination in Chief, the same DWI said that as at 30th June, 1961, the merger between John Ekewozor and Ogundipe's Churches had ceased. It was the same DWI who signed Exhibit 'O', the welcome address read at the occasion of a foundation laying ceremony of the Saviour's Apostolic Church, Awka in 1975 wherein it is stated that the mother headquarters of the Church is at Ibadan. Under cross-examination, he said that all the activities of Saviour's Church of Nigeria were authorized by J. A. Ogundipe of Ibadan headquarters. DWI did not tender the Memorandum pleaded as evidence of the grant to Peter Ekweozor. The same DW1 was one of those who as ministers and members resigned from the Church they referred to as Saviour's Apostolic Church. They never stated in their resignation letter (Exhibit D) that they had any faction or that any faction was breaking away from the Church, they resigned simply as ministers and members of the Church. From the entire evidence on record, it is clear that the merger between John Ekweozor's Church and Ogundipe's Church culminated in the registration of Saviour's Church of Nigeria which later became Saviour's Apostolic Church of Nigeria. The learned trial judge was perfectly right when he held that Rev. John Ekweozor's Church subsumed into Apostle J. A. Ogundipe's Church and that the amalgamation/merger was complete and indivisible.

The Lower Court was also right in finding that the Church whose trustees were registered in 1961 (Exhibit B) is one and the same Church whose trustees were registered in 1986 (Exhibit C) in that the name and the trustees merely changed for obvious reasons. By virtue of section 679(2) of CAMA, the certificate of incorporation shall vest all properties and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons in the community, body or association The evidence on record clearly established the fact that since the incorporation of the respondent in 1961, the Church has remained one entity; the appellants merely resigned their membership. The resignation of the ministers has not in law dissolved the respondent. The respondent can only be dissolved under the provisions of section 691 of CAMA. The appellants' counsel argued that there is no evidence of transfer of the land in dispute by John Ekweozor. That submission clearly ignores the provisions of section 679(2) of CAMA stated earlier in this judgment. By the provision of section 679(2) of CAMA, once a certificate of incorporation is issued, all the property or properties held in trust for the corporate body automatically vests in the body. There is nothing to suggest even remotely that a member of an incorporated trustee such as John Ekweozor must transfer the property either orally or even in writing before the property or properties shall vest in the body.

It is settled law that an appellate court would not interfere with the finding of fact by 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 come 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. Accordingly Issue 3 is resolved against the appellants.

Issue 4 is whether the judgment of the trial Court was clear and unambiguous in relation to reliefs 4 and 5 sought by the respondent and whether the claim for trespass and damages is valid and not statute barred.

On this issue, the appellants' counsel submitted that the respondent's reliefs as contained in the Further Amended Statement of Claim is 17 (i) - (v) and nothing at all like reliefs 4 and 5, the order that reliefs 4 and 5 succeeds in part can only lead to absurdity and utter ambiguity as there are no such reliefs. He argued that even if there were such reliefs, the trial Court did not specify or set out which parts succeeded or failed, he referred to **JOEGOLDAY CO. LTD vs COOP. DEV. BARTH PLC, 2003 2 SC page 1 at 14- 15**. He also submitted that the Court having found that the trespass by the appellants commenced in 1977, this suit filed on 16/12/86 about 9 years after the cause of action arose is statute barred by virtue of sections 12 (c) and 20 of the Actions Law, Cap 3, Laws of Anambra State 1986. He referred to **TEXACO & ANAMA INCORP VS. SHELL (2002) 2 SC (PT 2) PAGE 1 AT 25**. He argued that the 3rd appellant that came into existence in 1984 could not have committed acts of trespass alleged against her between 1977 - 1983. He referred to **Rtd Trustees Diocese of ABA VS NKUME (2002) FWLR (PT.80) PAGE 1270**, he urged the court to set aside the judgment.

On this issue, the respondent's counsel submitted that the judgment of the Lower Court contains all the constituent parts of a good judgment as enumerated in **IDAKWO VS NIGERIAN ARMY (2004) 2 NWLR (PT.857) PAGE 268.**

He referred to pages 341-344 of the record, he submitted that the Lower Court gave cogent and lucid reasons why reliefs 4 and 5 succeeded in part and the decision is clear, unambiguous and admits no further controversy. On the issue of statute of limitation, counsel submitted that the acts of the appellants constitute a continuing trespass and statute of limitation does not apply. He referred to **ONAGORUWA VS AKINREMI (2001) 13 NWLR (PT.729) PAGE, ONUAH VS ONYIA (1989) 1 NWLR (PT.99) PAGE 514, ADEPOJU VS OKE (1999) 3 NWLR (PT.594), PAGE 154.** He urged the Court to resolve the issue in favour of the respondent.

The first aspect of this issue is whether the respondent's action is statute barred by virtue of section 22 (2) of the Actions Law of Anambra State. The law is settled that a defence of statute of limitation must be specifically pleaded and this is to avoid the other party being taken by surprise. The defence was not pleaded by the appellants and was not raised in any way before the Lower Court. However, the appellants were granted leave by this court on 10th March, 2009 to raise the issue of jurisdiction and statute of limitation.

The main claim of the respondent in essence, is for recovery of land. By virtue of section 22 (2) of the Actions Law, Cap 3 Volume 1 Revised Laws of Anambra State, no action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or if accrued to some person through whom he claims, to that person. The appellants' counsel has not attacked relief 1 of the claim. The grievance of the appellants' counsel is in respect of damages for trespass, injunction and account. Section 20 (1) (a) and (2) of the Actions Law of Anambra State on which he predicated his contention reads:-

“(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-

(2) Actions founded on simple contract or on tort;

(3) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.”

The 2nd appellant and others resigned their membership of the respondent by Exhibit D dated 20th December, 1977. By Exhibit E dated 3rd February, 1978, they were instructed to quit the respondent's premises and handover all the Church properties in their custody or possession, which they have failed to do till today. Trespass is specie of an action in tort but in my view, it is special specie of tort. I say so because where a plaintiff claims damages for trespass and injunction, the law is that title to land is put in issue. In essence, a claim for damages for trespass and injunction where both parties claim ownership of the land is not a simple claim in tort to which the provisions of section 20 (1) (a) of the Action Law of Anambra State can be applied. This is more so because as long as the alleged trespasser remains on the land, a fresh cause of action arises or accrues each day. The principle of continuing trespass will therefore come in aid of a claimant who alleges trespass and that trespass continues to prevent his claim from being statute barred. I call in aid the authorities of ONAGORUWA VS AKINREMI (2001) 13 NWLR (PT.729) PAGE 38 AT 61 (D-E) where the Supreme Court explained what constitutes continuing trespass as follows:

"It is trite law that it is a continuing tort of trespass for a person to remain in another's land without that other's authority or consent, so that barring defences properly raised and sustained which defeat the right of the owner of such land to complain of the continuing trespass, the land owner is always entitled to protection as appropriate: See ADEPOJU VS OKE [1999] 3 NWLR [PT.594] 154 AT 163-164".

See also CHRISTOPHER OBUEKE & ORS VS N. N. NNAMCHI & ORS (2012) LPLER 7810 (SC) where the Supreme Court considered the doctrine of continuity of trespass and whether it can be defeated by a plea of limitation of time and held as follows:-

"It is settled law that trespass, however long it remains in existence with reference to a portion/parcel of land does not ripen or translate to title to the land in question. See ONIAH VS ONYIA [1989] 1 NWLR [PT.99] 514

Also settled is the principle of continuity of trespass or successive acts of trespass constituting separate and independent actionable wrongs in trespass. It follows that where there is continuity of acts of trespass, successive actions can be maintained by a plaintiff from time to time in respect of the continuance of trespass - See ADEPOJU VS OKE [1999] 2 NWLR [PT.594] 154 AT 169.

It is from a combination of the above principles that emerged the doctrine of continuing trespass giving rise to actions from day to day as long as the wrong lasts. In such a situation/circumstance an action for trespass cannot be defeated by a plea of limitation of time - in this case the assertion that the trespass has been on for more than six years". Per PETER ODILI, J.S.C.

The 3rd appellant became a party to this suit by an order of the Lower Court made on 14th June, 2001. Unlike the case of DIOCESE OF ABA vs NKUME the 3rd appellants are still on the land in dispute and will certainly be most affected by the outcome of this case. Certainly as at the date the 3rd appellant was joined as a co-defendant in 2001, the 3rd appellant was a trespasser on the land in dispute, the trespass still continues. The cause of action for account is also a continuous one, so long as the appellants continue to operate on the respondent's land and premises, a fresh cause of action continues to accrue each day.

I have perused the claim of the respondent on page 141 of the record of appeal, the respondent numbered its reliefs in Roman numerals while the learned trial judge referred to the reliefs in English numerals, there is nothing ambiguous or vague in the judgment. The concluding part of the judgment of the learned trial judge is clearly stated on pages 349- 351. Thus the complaint of the appellants' counsel that the judgment is ambiguous is not weighty and is unwarranted. Issue 4 is resolved against the appellant. This appeal totally lacks merit and it is hereby dismissed by me. The judgment of the Lower Court is hereby affirmed. The sum of N50,000.00 costs is awarded against the appellants and in favour of the respondent.

**MASSOUD ABDULRAHMAN OREDOLA, J.C.A.**:

I have had the opportunity of reading before now the lead judgment of my learned brother, **Misitura Omodere Bolaji-Yusuff, JCA** just delivered. I am in entire agreement with my learned brother thereon. Indeed, I have closely and diligently followed the reasons and conclusions arrived at with regard to the instant appeal matter. I find them agreeable and in tandem with my viewpoints thereon. I therefore most respectfully adopt them as mine. In this vein, I also find that the instant appeal is bereft and or devoid of merit and it should be dismissed. It is accordingly dismissed by me. The judgment of the Lower Court was right and the same is hereby upheld by me. I abide by the consequential orders made in the said lead judgment inclusive of the one on costs.

**EMMANUEL AKOMAYE AGIM, J.C.A**.:

I had a preview of the judgment just delivered by my Learned Sister, **MISITURA OMODERE BOLAJI-YUSUF, J.C.A.** I am in complete agreement with the reasoning and conclusions therein.

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