**DAUGHTERS OF DIVINE LOVE CONGREGATION AND OTHERS**

**V.**

**EKENE UGWU AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 6TH DAY OF DECEMBER, 2013

CA/E/271/2011

**LEX (2013) - CA/E/271/2011**

OTHER CITATIONS

2PLR/2013/44

(2013) LPELR-22896(CA)

**BEFORE THEIR LORDSHIPS**

ADRIZA GANA MSHELIA J.C.A

IGNATIUS IGWE AGUBE J.C.A

EMMANUEL AKOMAYE AGIM J.C.A

**BETWEEN**

1. DAUGHTERS OF DIVINE LOVE CONGREGATION

2. REV. SISTER JANE CHOIOKE

3. REV. SISTER ALPHONSUS [APPLICANTS/PARTIES AFFECTED AND HAVING INTEREST IN THE CASE] Appellant(s)

AND

EKENE UGWU (For himself and on behalf of Nkwubor Nike Community)

AND

1. FELIX UGWU

2. OKECHUKWU NNAMENE

3. JOSEPHAT ANIKE

4. FRANCIS NWAMENE

5. KENNETH AGBOWO

6. VENTRUS ABOYI

7. DONATUS ANIKE

8. LAZARUS OGBU - Respondent(s)

**ORIGINATING STATE**

ENUGU STATE HIGH COURT (R. N. Onuorah J., Presiding)

**REPRESENTATIONS**

B. C. OKOYE with NDUKWE OGBUJA Esq. - For Appellant

AND

OKO JENNIFER - for the 1st Set of Respondents

UBA OBINNA Esq. - for the 2nd Set of Respondents holding the brief of E. E. OFODEME Esq. - For Respondent

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

CONSTITUTIONAL AND PUBLIC LAW:- Locus standi - Meaning of - What the court considers in the determination of the locus standi of a party

CONSTITUTIONAL AND PUBLIC LAW:- Section 243(a) of the Constitution of the Federal Republic of Nigeria, 1999 - Right of a person interested in the outcome of a proceeding on which judgment had been given to seek leave to appeal or be joined personally in a pending appeal - Conditions precedent for the grant

NONPROFIT LAW – RELIGIOUS ORGANISATION:- Defence of interest in land – How treated

**PRACTICE AND PROCEDURE ISSUES**

ACTION - INTERVENER:- Meaning – “Person who was not originally a party in the suit but claims an interest in the subject matter and so comes into the case to protect his right – Discretion of court thereto

ACTION - LOCUS STANDI:- How determined – Need for the Court to look at the cause of action and the facts of the case and not necessarily whether the Claim is justiciable - Need for there to be a nexus between the Claimant and the disclosed cause of action concerning his rights or obligations – Need to examine only the statement of claim in determining same

APPEAL - APPEAL BY AN INTERESTED PARTY:- What an applicant seeking leave to appeal as an interested must party to succeed – Constitutional basis - Section 243(a) of the Constitution of the Federal Republic of Nigeria, 1999

APPEAL- APPLICATION FOR LEAVE TO APPEAL: Person interested – Whether proving a suit in which he had interest was pending but that he did not know and was not made a party thereto are facts which if proved will entitle an applicant for leave toappeal

APPEAL:- Grant of an application for enlargement of time - Conditions - What an applicant seeking leave to appeal against the decision of a Court as an interested party must demonstrate - What the court concerns itself with in an application for extension of time to appeal

COURT - ABUSE OF COURT PROCESS: Meaning – Inherent powers of Courts to strike out suits commenced in abuse of its process

INTERPRETATION OF STATUTES:- Section 243(b) of the 1999 Constitution- Order 7 rule 10(1) and (2) of the Court of Appeal Rules, 2011

INTERPRETATION OF STATUTE - Interpretation of Order 7 rule 10(1) and (2) of the Court of Appeal Rules, 2011 –

WORDS AND PHRASES-'abuse of Court Process’ -‘intervener’

**MAIN JUDGMENT**

IGNATIUS IGWE AGUBE, J.C.A. (DELIVERING THE LEAD RULING):

This is an Application by way of Motion on Notice brought pursuant to Order 7 Rules 1, 2 and 10 of the Court of Appeal Rules, 2011, Section 243 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and under the inherent jurisdiction of this Honourable Court, wherein the Applicants seek for the following Orders:

*"(a). Enlarging the time within which the Applicants may apply for leave to appeal from the decision of the Enugu State High Court sitting at Enugu in Suit No.E/663/2004. EKENE UGWU VS. FELIX UGWU & ORS, by His Lordship Hon. Justice R. N. Onuorah on the 29th day of April, 2008 as parties affected and having interest in the case.*

*"(b). Granting leave to the Applicants to appeal to this Honourable Court as parties affected and having an interest in the subject matter of Suit No.E/663/2004 - EKENE UGWU VS. FELIX UGWU & ORS in which judgment was delivered on 29th April, 2008 by His Lordship Hon. Justice R. N. Onuorah of the Enugu State High Court, sitting at Enugu.*

*"(c). Extending time within which the Applicant may appeal (file Notice and Grounds of Appeal) as parties interested/affected by the decision of the Enugu State High Court, sitting at Enugu in Suit No. E/663/2004 - EKENE UGWU V. FELIX UGWU & ORS delivered by His Lordship Hon. Justice, R. N. Onuorah on the 29th of April, 2008."*

The Application is predicated on eleven Grounds as stated in the unnumbered Pages/body of the motion Paper. In support of the Application is a thirty-nine paragraph Affidavit deposed to by the 3rd Applicant on Record (Reverend Sister Alphonsus) on behalf the other Applicants and annexed to the Affidavit in Support of the Motion are twelve Documentary Exhibits marked 'A, A1 and A2, B, C, D, E, F and F1; G, H, J and K respectively. For the avoidance of doubt, EXHIBIT 'A' is a Deed of Assignment entered into jointly by Elder NGWU NGWU IKPA and 5 others for themselves and as representing the Community of Nkwubor Nike, IGWE TITUS OKOLO and 3 Others for themselves and on behalf of the family of Umuezeoha-Nwikpa in Amorji Nike on the one hand and DAUGHTERS OF DIVINE LOVE CONGREGATION (the 1st Applicant herein) on the other in respect of a piece or parcel of land situate at Oguji/Iyaka land, Amorji/Nkwubor Nike all in Enugu East Local Government Area, Enugu State of Nigeria.

*EXHIBIT A1* is an IRREVOCABLE POWER OF ATTORNEY jointly executed by the said Elder NGWU NGWU IKPA and 5 Others, IGWE TITUS OKOLO and 3 Others and donated in favour of the DAUGHTERS OF DIVINE LOVE CONGREGATION/1ST APPLICANT.

*EXHIBIT A2* is the Survey Plan in respect of the land the subject of the Deed of Assignment and Power of Attorney.

*EXHIBIT B* is the Charge Sheet in charge No.169C/2005 between the Commissioner of Police Vs. Ikechukwu Ugwu and 2 Ors. now pending in the Magistrate's Court Enugu East Magisterial District, Holden at Nkwo Nike, upon the complaint of the Applicants herein that the three accused persons, conspired amongst themselves and others at large to unlawfully damage a four room house due completion and malicious damage of a GP tank; property valued N650,000.00 and N25,000.00 respectively belonging to the 1st Applicant.

*EXHIBIT C*, on the other hand, is the Statement of Claim in Suit Number E/680/2005 of which the Applicants/Persons Interested in the case seeking to appeal were sued by Ekene Ugwu and his late brothers.

*EXHIBIT D* is the Amended Statement of Defence and Counter Claim of the 1st - 3rd Defendants/Counter Claimants (now the Applicants in this Application) in Suit No.E/680/2005 wherein Louis Ugwu & 2 Ors for themselves and on behalf of the Nkwubor Nike Community sued the present Applicant, Elder Nwangwu Ikpa and 6 Ors. and Igwe Titus Okoro & 4 Ors. as representatives of Nkwubor Nike and Umuezeoha Nwikpa Family of Amorji Nike Communities as the 1st, 2nd and 3rd Sets of Defendants.

*EXHIBIT E* is another Statement of Claim in Suit No.E/663/2004 in which Louis Ugwu and 2 Ors. for themselves and on behalf of Nkwobor Nike Community sued Felix Ugwu and 9 Ors. is respect of the land the subject of the dispute and the Deed/Exhibit A.

*EXHIBIT F* is the Record of proceedings of the above suit wherein default judgment of Hon. Justice R. N. Onuorah in Suit No.E/663/2004 Louis Ugwu & 2 Ors. Vs. Felix Ugwu & 9 Ors. was entered and which is the subject of this Application; while EXHIBIT F1 is the Enrolled Order of the Learned trial Judge in respect of the Judgment sought to be appealed against.

*EXHIBIT G* on its part is the Record of Proceedings in respect of Suit No.E/680/2005 of 29th day of July, 2008 before His Lordship Hon. Justice L. O. Okereke while *EXHIBIT H* is the proposed Notice and Grounds of Appeal in Suit No. E/663/2004 which is the subject of this Application.

*EXHIBIT J* is yet another Deed of Lease in respect of a piece of land called ISI ANWURI LAND situated at Nkwubor Nike in Enugu East Local Government Area, Enugu State between Louis Ugwu and two others of Nwani Nwagu Family Nkwubor Nike (Lessor) and TONIFRANK ESTATE LIMITED (Lessee) while the last of the Exhibits (*EXHBIT K*) is a Photocopy of the Building Certificate of Occupancy Number 55 dated 4th June, 2010, and issued by the Land Registry at Enugu in favour of TONIFRANK Estate Limited.

Upon being served with the Motion on Notice the 1st Respondent (Ekene Ugwu) in opposition thereto deposed to a Counter Affidavit of twenty-eight Paragraphs to which he annexed Exhibits 1, 2, 3, 4 and 5 namely the following documents:

1. Survey Plan Showing Landed Property of Daughters of Divine Love congregation at oguji Nkwubor/Amorji, Nike, Enugu East Local Government Area.

2. Lease Agreement between Felix Ugwu & 3 Ottrers, Nichodemus Okoyo & 2 Others for themselves and on behalf of Nkwubor Nike Community and Umuezeoha Nwikpa Amorji Nike as Lessors and the Daughters of Divine Love Congregation (now Applicants) as Lessees,

3. Counter-Affidavit of Igwe Titus Okolo dated and filed in this Court on the 17th day of November, 2008 in respect of Suit No. E/663/2004.

4. The Ruling of His Lordship A.G. Mba (Chief Magistrate I) in Suit No.MNE/169C/2005 Commissioner of Police Vs. Ikechukwu Ugwu and 2 Ors wherein the Learned Chief Magistrate on the 11th day of June, 2007 refused to grant stay of proceedings against the Accused/Applicants, and

5. Motion on Notice dated and filed on the 8th of August by the said Ikechukwu Ugwu & 2 Ors for stay of proceedings of the Criminal Charge pending against the Accused persons which culminated in the above Ruling in *Exhibit 4*.

In reaction to the Counter-Affidavit of the 1st Respondent, the Applicants again filed a Further Affidavit in support dated 15th April, 2013 same day to which no Exhibit was annexed. Against this Further Affidavit, the 1st Respondent deposed to a Further Counter-Affidavit dated and filed on the 26th April 2013. In the said Further Counter-Affidavit, the 1st Respondent annexed two payment vouchers from the Daughters of Divine Love Congregation P. O. Box 546 Enugu which are jointly marked Exhibit 6, the Statement of Claim in Suit No. E/663/2004 between Louis Ugwu & 2 Ors. for themselves and on behalf of Nkwubor Nike Community against Felix Ugwu and 9 Ors together with Counter Claim and Certified Copies of the Statements on Oath of Messrs Jerome Aneke Snr. Of Umuozioko Family, Raymond Ugwu of Umukwa family, Paulinus Nnamani of Umuzioko, Simeon Agbowo of Umuozioko in Suit No E/680/2005 wherein Louis Ugwu & Ors with the present Applicants as the 1st set of Defendants; Elder Agwu Agwu Ikpa and 6 Ors as the 2nd set of Defendants and Igwe Titus Okoro & 4 Ors as the 3rd set of Defendants. Also annexed is the Statement On Oath of Edward Ugwu in the same Suit No E/680/2005 which three documents are jointly marked Exhibit 7.

Other Exhibits annexed to the Further Counter-Affidavit are Exhibit 8 Certified True Copies of the Proceeding of the High Court of Enugu State of Monday the 29th of November, 2004 in Suit No. E/663/04 before Hon. Justice R. O. Odugu, that of the 4th day of April, 2005, before the same Judge in the same Suit, that of the 5th day of May, 2005, the proceeding of 20th September, 2005, before R. N. Onuoha; J, that of 2nd day of November, 2006 before the same Onuorah J; 6th day of December, 2006, 3rd day of April, 2008, 14th April, 2008 and 29th April, 2008 wherein Judgment was entered in default against the ten Defendants.

Exhibit 9 is the Charge Sheet of Charge No.169c/2005 (Ikechukwu Ugwu and 2 Ors.) upon the complaint of the present Applicants. There is also the Record of Proceedings in the said Criminal Charge before His Worship E. A. Ngene (Chief Magistrate Grade II) where in the Learned Chief Magistrate overruled the objection of the learned counsel for the Accused persons to the amendment of the charge and the case was subsequently adjourned to 12/11/2008 for hearing.  
Finally Exhibit 10 is the Reply to Statement of Defence in Suit No.E/680/2005 Louis Ugovu & 2 Ors. against the Applicants and the other two sets of Defendants. Reacting to the Further Counter Affidavit of the 1st Respondent, the Applicants filed what they term a Further Further Affidavit in support of the Motion to which the Writ of Summons and Statement of Claim in Suit No.E/288/2011 brought by TONIFRANK ESTATE LIMITED against the present Applicants as defendants, is annexed and marked *Exhibit X*.

The gravamen of the Applicants' case as can be gleaned from their Affidavits and written Address, is that the two Communities of Nkwubor Nike and Umuezeoha Nwikpa family of Amorji Nike sold their jointly owned Communal land named and called Oguji/Iyaka which land is situate at Amorji/Nkwubor Nike in Enugu East Local Government Area of Enugu State to the Daughters of Divine Love Congregation who are the Applicants/Parties affected and having interest in suit No.E/663/2004.

The above Suit was at the instance of Louis Ugwu, Ikechukwu Ugwu (both now deceased) and Ekene Ugwu who is the only survivor for themselves and on behalf of Nkwubor Community against Felix Ugwu and 9 Others in their personal capacities, seeking for the following reliefs:-

1. A declaration that Nkwubor Nike Community represented by the Plaintiffs is entitled to the Customary/Statutory Right of Occupancy in respect of a piece of land which they called Isi Anwuri land situate at Nkwubor in Ujodo Local Government Area of Enugu State of Nigeria.

2. One Million Naira (N1,000,000.00) damages for trespass.

3. Perpetual injunction restraining the defendants, their agents servants, assigns, privies and whosoever acts for or on their behalf from selling, alienating, transferring, building, cultivating, or doing anything on the land which may be detrimental to the rights and interest of the Plaintiffs.

For reasons best known to them, the Defendants in the above suit failed to defend same and from the contents of Exhibit F, the Chambers of Chris Onyia who represented the Defendants were instructed and indeed informed the learned trial Judge R. N. Onuorah, J. on the 29th day of April, 2008 that they were withdrawing from the Suit. Consequently and in view of the failure, refusal and/or neglect of the Defendants therein to file their Statement of Defence in spite of several adjournments at their instance, the learned trial Judge on that 29th day of April, 2008 pursuant to a Motion for Judgment filed by the Plaintiffs which was duly argued on that day, entered Judgment in favour of the Plaintiffs (one of whom is Ekene Ugwu (the first set of Respondent in this Application). See Exhibit F (the Certified True Copy of the Record of Proceedings of Suit No.E/663/2004).

Having been adjudged owners of the said piece of land, the three brothers (Ekene Ugwu and his two late brothers) later proceeded in Suit No.E/680/2005 against the Daughters of Divine Love Congregation (the

Applicants/Parties affected by the Judgment in Suit Number E/663/2004) who by this Application are seeking to appeal against the judgment in that Suit. The Plaintiffs sought the same declaratory and injunctive reliefs as in Suit Number E/663/2004 except that the claim for damages was increased, to Two Million Naira (N2,000,000,00) for trespass in the said Suit No.E/680/2005.

Upon being served with the processes, the Daughters of Divine love Congregation applied for the Communities of Nkwubor and Umuezeoha Nwikpa of Amorji Nike to be joined as Co-Defendants and as necessary parties and they were so joined in their representative capacities. According to the Applicants, the three Sets of Defendants in the Suit were unaware of the pending Suit No.E/663/2004, whereby default judgment was entered in favour of Ekene Ugwu (now Respondent herein) and his late brothers.

The Applicants have also stated that three months after the default judgment, Ekene Ugwu and his late brothers entered the land which was hitherto sold to them (Daughters of Divine Love Congregation the Applicants herein) by the two communities, in execution of the default judgment in Suit No. E/663/2004 at which time, the High Court of Enugu State was already on vacation and the Applicants herein promptly reported the matter to the Police who apprehended the 1st Respondent herein and his late brother who then tendered the Default Judgment in Suit No.E/663/2004. It is also their case that, they (Applicants) promptly brought the judgment to the attention of their Lessor Communities and that whereas the Daughters of Divine Love Congregation and members are the Applicants/Parties affected and having interest in the case of which default judgment was given against which they seek the leave of this Court to appeal, the Nkwubor Nike and Umuezeoha Nwikpa Communities of Amorji Nike in their representative capacity are also Applicants/Parties affected and having an interest in the case, in another Application before this Honourable Court in CA/E/272M/2011.

Furthermore, they also state that the Applicants herein and the Communities who sold the land to them i.e. Nkwubor Nike and Umuezeoha Nwikpa, immediately on 11/9/08, filed similar Applications for extension of time to appeal before this Honourable Court in Suit No.CA/E/373M/2008, CA/E/374M/2008 and CA/E/375M/2008 which were subsequently withdrawn and struck out on 12/10/11 due to irregularities in them, before the present application was filed. It is also their case that while the various Applications for extension of time to appeal were still pending, Ekene Ugwu and his late brothers, relying on the default judgment in Suit No.E/663/2004 sold the land to TONIFRANK ESTATE LTD who has applied and obtained a Certificate of Occupancy to the disputed land.

Finally, TONIFRANK ESTATE LTD has also sued the Applicants herein in Suit No. E/288/2011 before the High Court of Enugu State (See Exhibit X (the Writ of Summons and Statement of Claim annexed to the Further Counter Affidavit in Support) Claiming a whopping N5,000,000,000.00 (Five Billion Naira) damages and perpetual injunction against the Applicants herein.

The case of the 1st Respondent on the other hand, as can be gleaned from the averments in the Counter-Affidavits filed by him that is what triggered off the Suit now sought to be appealed against by the Applicants is as stated in paragraphs 5, 7, 8, 10, 11, 12 and 15 of Exhibit 7 mentioned in paragraphs 13 and 14 of his Counter-Affidavit. According to him, pleadings were ordered to be filed by the learned trial Judge and accordingly exchanged by the 1st Respondent as well as the Statement on Oath of Witnesses and after several adjournments, the 2nd Set of Respondents through their Counsel informed the Court that they were no longer interested in the case and accordingly withdrew his representation at their instance.

Following this development, the Court below gave judgment on 29th April, 2008 in favour of the 1st Set of Respondents as per Exhibit 8 to the Counter-Affidavit. Meanwhile, as the Suit No E/663/2004 was still pending, the 1st Set of Respondents took action against the Applicants/Parties affected and having interest Daughters of Divine Love Congregation and 2 Others in CA/E/271/2011 in Suit No.E/680/2005 because the Applicants/Parties interested pulled down two buildings of the 1st Respondent which Suit is still pending in the High Court of Enugu State.

It is their further case that the 1st Set of Respondents took action against the Applicants/parties interested in the case because the Applicants demolished the houses of the 1st Set of Respondents on their (1st Set of Respondents' land called Isi-Awuri) which the Applicants claimed was sold to them by the representatives of Nkwubor and Umuezeoha Nwikpa of Amorji Nike Communities which is not true. The 1st Set of Respondents also confirmed that the Applicant sought for the joinder and indeed the 2nd and 3rd sets of Defendants were joined as representatives of the two Communities who sold Iyaka/Oguji land to the said Applicants and that the Applicants are presently prosecuting the 1st Set of Respondents in the Magistrate's Court in Suit No.MNE/169C/2005 for malicious damage. The 1st Set of Respondents also claim that a valid lease was granted to TONIFRANK ESTATE LTD when judgment was obtained by them on Isi-Awuri Land in Suit No.E/663/2004 and there was no Appeal or stay of execution in the lower court that gave judgment therein. They also confirm that TONIFRANK ESTATE LIMITED brought Suit E/680/2005 against the Applicants/Parties interested which is presently going on in the High Court.

Finally the 1st Set of Respondents Claim that the chronological analysis of the case would prove that the land bought by the Applicants/Parties interested i.e. Iyaka/Oguji is not the same as their 1st Respondent's Isi-Awuri Land which they sold to TONIFRANK ESTATE LIMITED and that at that time the said Applicants/Parties interested were not parties in Suit No. E/663/2004 so as to apply to be joined as interested parties.

Thus, it is their case that the land called Isi-Awuri is not part of the land originally sold to the Daughters of Divine Love Congregation as Iyaka/Oguji land and that the Applicants/Parties interested encroached on Isi-Awuri on the disguise that it was sold to them (the Applicants herein) after Rev. Father Edeh encroached on the one sold to the Applicants/Parties interested that is Iyaka/Oguji Land.

In the Written Address of the Applicants/Parties interested, they formulated three Issues for determination in the Application as follows:-

*"1. WHETHER THE DECISION (JUDGMENT) HAS AFFECTED THE RIGHTS OF THE APPLICANTS.*

*2. WHETHER THERE IS A GOOD AND SUBSTANTIAL REASON(S) FOR THE FAILURE TO APPEAL WITHIN TIME?"*

*3. WHETHER THE APPLICANTS' GROUNDS OF APPEAL PRIMA FACIE SHOW GOOD CAUSE WHY THE APPEAL SHOULD BE HEARD?"*

On the part of 1st Set of Respondents four Issues couched in the following terms were formulated thus;-

*"1. WHETHER THE APPLICANTS HAVE SATISFIED THE REQUIREMENTS BY LAW TO WARRANT THEIR APPLICATION BEING GRANTED?*

*2. WHETHER THE APPLICANTS BEING NOT PARTIES IN SUIT NO.E/663/2004 AND THE 2ND SET OF RESPONDENTS COULD HAVE CONSTITUTED ESTOPPEL?*

*3. WHETHER THE PRINCIPLE GUIDING THE LOCUS STANDI IS NOT AGAINST THE APPLICANTS PERTAINING TO THE CASE IN SUIT NO.E/663/2004?*

*4. WHETHER THE GROUNDS OF APPEAL CONTAIN SUBSTANTIAL GROUNDS TO BE CANVASSED ON APPEAL?"*

In the determination of the merit or demerit of this Application, I shall adopt the issues formulated by the learned Counsel for the Applicants in view of the principles laid down over the years by the apex Court and this Court for the grant of an Application of this nature. Besides Issues Number 1, 3 and 4 of the 1st Set of Respondents can be subsumed within the Issues formulated by the learned Counsel for the Applicants.

*ISSUE NUMBER 1: WHETHER THE DECISION (JUDGMENT) OF THE LOWER COURT HAS AFFECTED THE RIGHTS OF THE APPLICANTS?*

It would be recalled that before arguing the Issues the learned Counsel for the Applicants/Parties interested (hereinafter to be referred to as Applicants), has urged and drawn our attention to the fact that it is part of the land granted the Applicants by the 2nd and 3rd Sets of Respondent (that is Oguji/Iyaka Land) that the Specific references were made to Exhibit A2 and K the Survey Plan of the entire land granted to the Applicants by the two Communities and the Certificate of Occupancy granted to TONIFRANK ESTATE LTD based on the lease granted it by the 1st Set of Respondents after the judgment in Suit E/663/2004 which Certificate of Occupancy contains Exhibit K a careful perusal thereof which would reveal that it is part of the entire land covered by Exhibit A2.

Further references were made to paragraphs 20, 25, 26 and 27 of the Affidavit in support of the Application to submit that when the 1st Set of Respondents got Judgment in Suit No E/663 /2004, it was part of the land granted the Applicants by the 2nd and 3rd Respondents that was surveyed and while the various Applications for extension of time for leave to appeal were pending the 1st Set of Respondents proceeded to grant the lease Exhibit J to TONIFRANIK LTD. in 2009 and subsequently Exhibit K (the Certificate of Occupancy) in 2010 upon which grant TONIFRANK LTD. sued the Applicants.

Arguing Issue Number One (1) the learned Counsel for the Applicants cited the case of NIGERIA DEPOSIT INSURANCE CORPORATION VS. ENYIBROS FOOD PROCESSES COMPANY & ANOR (IN RE: CHARLES N. MMBAMALU) (2001) 18 NWLR (PT.744) 143 Particularly at 158 paras E - G, 159 Paras A - C 163 Para G, where this  Honourable Court laid down the conditions to be satisfied by an Applicant seeking leave to appeal as are interested party. Based on these conditions he referred us to *Exhibits A* and *AI* which show that they have an interest to protect in the land they had purchased, took possession and have made developments thereon and which TONIFRANK ESTATE LTD, has been granted Certificate of Occupation and is selling to innocent persons who do not know of the various Applications pending in this Court about the disputed land. Further references were made to *Exhibits C* and *E*, Paragraphs 16 - 17 of the Affidavit in Support and *Exhibit D* to the Motion Paper on how the Applicants joined the 2nd and 3rd Sets of Defendants in Suit No.E/680/2005 who sold the land in dispute to the Applicants whereas the 1st Set of Respondents did not obtain any authority from the Communities of Nkwubor to sue and have never represented the Community in land matter.

Again, the Learned Counsel to the Applicants alluded to Paragraphs 15 and 16 of the Supporting Affidavit, paragraphs 19 of Exhibit C and 16 of Exhibits E respectively which shows that the reliefs sought by Ekene Ugwu and his late brothers were the same in Suits Nos. E/663/2004 and E/680/2005 and on the same subject matter although the parties ascribe different names to the disputed land judgment having been entered in Suit No. E/663/2004 without the knowledge of the Applicants until the time to appeal had elapsed.

Learned Counsel for the Applicant again placed reliance on *Nwokorobia Vs Nwosu (2007) 10 NWLR (Pt.1150) 553* where it was emphasized that parties must be ad idem as to the same area of land claimed even though they may ascribe different names to the land in dispute. Our attention was further drawn to *Exhibits A2* and *K* to further submit on the authorities of *Alhaji B Yusuf & Anor Vs. Mrs. C. N. Ibekwe & 4 Ors. (In RE: F.R.A. Williams) (2001) 9 NWLR (Pt.718) at 329*; that since the subject matter in Suit No. E/680/2005 which is still pending in the Enugu High Court is the same in No.E/663/2004 in which Judgment was given against the representatives of Nkwubor Nike and Umuezeoha Nwikpa family of Amorji thus affecting the interest/right of the Applicants in the disputed land, Applicants should be given the opportunity to appeal against the judgment.

On the contention of the 1st Set of Respondents that it is only the other Respondents who have the right to bring the Application because the Applicants were not parties to the Suit sought to be appealed, he submitted that the refusal of this Application would lead to the judgment being unchallenged as the other Respondents are not interested in pursuing the Appeal while the Applicants would suffer loss, grief and disadvantage.

Rounding up his submission on the first Issue, he cited Suit No.CA/E/27M/2002 Ben Collins Ndu Vs. Umudike Property Ltd & Ors. granted by this Court on 21/01/2003 to submit that Section 243 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) does not state that there must be an Appeal pending by the Defendants/Respondents before leave could be granted to a party interested or is affected by the Judgment.

*ISSUE NUMBER 2: WHETHER THERE IS GOOD AND SUBSTANTIAL REASON FOR THE FAILURE TO APPEAL?*

Here the Learned Counsel for the Applicants has referred us to Paragraphs 25, 26, 27, 29, 30 and 31 of the Supporting Affidavit to the Application and Exhibits C and E annexed thereto, to insist that they were no parties and unaware of the Suit against which judgment they seek to appeal until the time had lapsed within which to appeal. He referred us to the multiplicity of Suits instituted in respect of the subject matter and the fact that the judgment in Suit No.E/663/2004 was delivered on 29th of April, 2008 while the Applicants only became aware of the judgment on the 29th of July, 2009 three months after delivery of the judgment when the 1st set of Respondents proceeded to execute same exactly the date the time within which to appeal expired knowing fully well that after that date the Applicants must seek leave of this Court to Appeal.

The Learned Counsel maintained that having not been aware of the judgment and not being parties to the Suit at the High Court, they could not have proceeded to the Court below to ask for the judgment to be set aside. Re: F.R.A. Williams (Supra) referred as well Order 10 Rule 9(1) of the High Court (Civil Procedure) Rules of Enugu State; in which are to the offer that not being parties in Suit No.E/663/2004 only an appeal to this Court under Section 243 of the Constitution of the Federal Republic of Nigeria (As Amended) is appropriate.

We were finally referred to paragraph 30 of the Supporting Affidavit wherein they (Applicants) disclosed that they had earlier upon becoming aware of the Judgment in 2008, filed a similar Application which was withdrawn and struck out in 2011 before filing the current one for which they have been in court since then. Accordingly, they submitted that the Applicants have good and substantial reasons for failure to appeal within time as they had briefed counsel since becoming aware of the Judgment and the inadvertence or mistake of Counsel should not be used against the Applicants.

*4. WHETHER THE APPLICANTS' GROUNDS OF APPEAL PRIMA FACIE SHOW GOOD CAUSE WHY THE APPEAL SHOULD BE HEARD?*

Arguing this Issue the learned Counsel alluded to Exhibit H to the Applicants' supporting Affidavit which is the Notice and Grounds of Appeal, Grounds 1, 3, 4 and in particular Ground 6 which raise issues of fair hearing and abuse of court process touching on the jurisdiction of the Court below. He pointed out that Suits No.E/663/04 and E/680/05 were in respect of the same subject matter, same reliefs and were pending in the same Judicial Division of the High Court at the same time which act in filing those suits according to learned Counsel to the Applicants is an abuse of Court process touching on the fundamental issue of jurisdiction of the trial Court. For the above submission he relied on the issue of *UKWU V BUNGE (1997) 8 NWLR (Pt.518) 527 at 541 Paras. H - A;* to further contend that the issue of jurisdiction as raised under their Ground 6 of the Proposed Grounds of Appeal is obvious.

Referring us again to the case of *Fagbenro V Orogun (1993) 3 NWLR (Pt.284) 662*, it was further submitted still on the vexed issue of jurisdiction that since Suits Nos.E/663/04 and 180/2005 were over the same land and reliefs and were pending at the same court at the same time, the issue of jurisdiction can be raised by the court suo motu and can be canvassed by any of the parties without further evidence. Learned Counsel referred us again to Exhibit E to the Affidavit in Support the Statement of Claim of Ekene Ugwu and his late brothers in Suit No.663/2004 which shows that although the Applicants were not made parties yet their interest in the disputed land was disclosed. This issue, according to the Learned Counsel to the Applicants, has been raised in their (Applicants') Exhibit H to the Supporting Affidavit (Ground 1 of the Proposed Notice and Grounds of Appeal), to the effect that the Necessary/Proper parties were not brought before the Honourable Court before Judgment was delivered although the Applicants' interest was disclosed.

It is therefore Learned Counsel for the Applicants contention herein that Applicants as necessary parties in the lower Court were not given opportunity to be heard which also touches on the jurisdiction of the trial court as proper/necessary parties were not brought before it *Madukolu V. Nkemdilim (1962) 1 ALR NLR 587 at 595 and (Ukwu V Bunge (Supra) at 542 Para C;* were finally relied upon in buttress the Applicants' contention that because of the several issues of jurisdiction raised in their proposed Grounds of Appeal which prima facie show good cause why their Appeal should be heard, this Honourable court should exercise its discretion in favour of the Applicants and grant their Application.

1ST SET OF RESPONDENTS' ARGUMENT.

In his argument of their first and second Issues together, the Learned Counsel for the Respondents posited per contra that the Applicants have not satisfied the requirements to warrant fair Application to be given the desired consideration. To buttress his position he relied on the ditto of Rhodes Vivour, JCA in *Alhaji Mohammed Waziri V. Ibrahim Tahi Gumel & Anor. (2012) LPELR SC.32/2005 and Owena Bank v. N.S.E. LTD. (1997) 8 NWLR 515, per Mohammed, JSC,* where the principles for the grant of an Application of this nature were laid down to further submit that none of the conditions laid down in the above cited cases are present in the Applicants' Affidavits, as according to Learned Counsel to the Respondents, the Applicants have prevaricated on the land in dispute and cannot categorically state with exactitude the land in dispute.

On the question of recognizable interest, the Learned Counsel to the 1st Set of respondents referred us to Exhibits 1, 2, 3, and 6 mentioned in paragraphs 3d, 4 and 5 of the Counter-Affidavit and Paragraph 6 of the Further Counter-Affidavit in opposition to the motion which are to the effect that Iyaka/Ogufi land was sold to the Daughters of Divine Love Congregation by the representatives of the two communities as against Isi-Amani Land which is exclusively owned by the 1st Set of Respondents.

Again, the Learned Counsel for the 1st Set of Respondents argued that the Applicants have not shown special circumstances why they should be allowed to appeal as both the 2nd Set of Respondents and Applicants were aware of the pending Suit No.E/663/04 as can be gleaned from Exhibits 4 and 5 mentioned in Paragraphs 14 and 15 of the Counter-Affidavit where the 1st Set of Respondents moved a Motion in Charge No. MNE/160c/2005 for stay of proceedings of which the Daughters of Divine Love Congregation were complainant prosecuting the 1st set of Respondents a malicious damage.

Moreover, in the view of learned counsel the Applicants/Parties interested, did not apply to be joined as interested parties nor did they and the second set of Respondents appeal in time against the judgment in Suit No. E/663/04, this judgment having been delivered on the 29th April, 2008 but they woke up on 4/9/2008 after five months to appeal rather than apply to the High Court to set aside the said Judgment. We were referred to the provisions of Enugu State High Court Rules 2006 which gave the Applicants the opportunity by Order 10 Rule 9(1) to ask for the setting aside of the judgment within reasonable time, Order 7 Rule 4 of the Court of Appeal rules and the case of *Waziri vs. Ibrahim Tahir Gumel (Supra)* to insist that there are no special circumstances warranting it impossible for the Applicants to apply to the Lower Court.

On the contention of the Applicants that both the High Court and Court of Appeal were on vacation is the reason for not bringing the Application to set aside, the learned counsel referred us to *Order 44 Rule 4 of the High Court (Civil Procedure) Rules of Enugu State, 2006* and the case of *United Nig. Co. Ltd v. Nahaman (2000) 9 NWLR (Pt.671) 182,* and submitted that the Applicants have not discharged the onus canton them to prove that they have satisfied the necessary requirements for the grant of their Application as according to him, they cannot feign ignorance of the pending Suit No.E/663/2004.

He emphasized on the authority of *Chief Emmanuel Bello v. Independent National Electoral Commission & 2 Ors. (2010) 2-3 SC (Pt.II) 128 at 130*; that it is trite that the Applicants ought to apply as parties interested to be joined in the lower Court but that even if proved that they were not aware of the pending Suit which would have entitled them to the grant of their Application yet the factors do not qualify as special circumstances to warrant their filing the Application first in the Court of Appeal rather than in the High Court as enjoined by Law.

Accordingly we were urged to hold as follows:

1. That the Applicants have no interest in the matter,

2. The Applicants have not shown any convincing reasons in their Affidavit as to why they were not made parties.

3. No cogent reasons were offered for the delay in filing the Application since 2008, and accordingly the Application should be dismissed.

*ISSUE 3: WHETHER THE PRINCIPLE GUIDING LOCUS STANDI IS NOT AGAINST THE APPLICANTS PERTAINING TO THE CASE IN SUIT NO.E/663/2004?*

On this issue the learned Counsel submitted and relied on the cases of *UNITED NIG. CO. LTD. V. NAHMAN (2000) 9 NWLR (Pt.671) 179* and *ILORI V BENSON (2000) 9 NWLR (Pt. 673) 523*; whereof the term 'Locus Standi' was defined and still emphasized with references to the Applicants in CA/E/271/2011(that is the Applicants herein and the 3rd - 4th Applicants CA/E/272M/2011) have no locus standi as they were not parties in Suit No. E/663/2004 more so when the subject matter in that suit sought to be appealed against is Isi-Awuri as against Oguji/Iyaka which the 2nd sets of Respondents sold to the Applicants. Further references were made to Exhibits 1, 2, and 3 of the 1st set of Respondent's Counter-Affidavit as well as Exhibit F1 mentioned in Paragraph 20 of the Applicants/Parties Affected and Having interest's Affidavit which show that the judgment was in respect of Isi-Awuri land situate at Nkwubor Nike in Ujodu Local Government Area of Enugu State as against the land sold by the 3rd and 4th Applicants in Suit No.CA/E/272M/2011 who are not members of the Nkwubor Nike but are rather from Umueze Oha Nwikpa of Amorji Nike Enugu East and as such the Applicants lack the capacity to stand in the Suit because the land is not theirs as well as not being commonly owned by the two Communities. Citing again the case of *Ojukwu v. Ojukwu (2000) 11 NWLR (Pt.677) 75* on the effect of absence of locus standi in a party, we were urged to strike out the Applicants Application on the ground of incapability (incapacity?) of the Applicants' locus standi which deprives this Honourable Court of its jurisdiction to entertain same.

*ISSUE NUMBER 4: WHETHER THE GROUNDS OF APPEAL CONTAIN SUBSTANTIAL GROUNDS TO BE CANVASSED ON APPEAL?*

The Learned Counsel to the 1st set of Respondents drew our attention to *Exhibit H* to the Applicants' Affidavit in support and enumerated all six Grounds of Appeal as contained therein and submitted that they lack substance. On Ground 1 of the proposed Grounds of Appeal, the Learned Counsel for the 1st set of Respondents noted that it is false because the Defendants in the Suit sought to be appealed against were given adequate time to defend themselves as the case lasted for almost four years (2004 - 2008) as can be gleaned from the Records.

As for Ground 2, the Learned Counsel also dismissed same as false as the Defendants in the Suit were represented by Counsel who withdrew their representation on the permission of Defendants who did not apply for the case to be relisted and having not so done, they cannot complain of fair hearing. On GROUND 3, Learned Counsel argued that it is a mere repetition of Ground 1 and as such there is no substantive issue for argument therein. GROUND 4, according to the Learned Counsel does not show any substantial point to be argued at the Appeal because Counsel for the Defendants withdrew on the ground of lack of interest not that they asked for adjournment.

GROUND 5, here the Learned Counsel also dismissed same as false as the 1st set of Respondents gave evidence on Oath which was enough for the Court below to have given the Respondents judgment in accordance with the Enugu State High Court (Civil Procedure) Rules, 2006 by Order 3 Rule 2 thereof.

Finally, on Ground 6, the Learned Counsel for the Respondents also described same as false as according to him the two Suits E/663/2004 and E/680/2005 were not the same in terms of parties. In support of the above stance, he referred us to Order 6 Rules 3 and 6 of the Court of Appeal Rules, 2011 to further submit that a good look at Exhibit 8 mentioned in Paragraph 13 of the 1st set of Respondents Further Counter-Affidavit will further buttress their contention that the parties in Suit Number E/663/2004 are different from the ones in E/680/2005.

In specific reply to the arguments of the Learned Counsel to the Applicants on the Issues formulated in the Applicants' written address, the learned counsel for the 1st set of Respondents submitted on the Applicants contention that the refusal of the Application would cause them grief, loss, disadvantage or affect their title to disputed land; that the Applicants have not stated these facts in their Affidavits to enable the 1st set of Respondents reply. According to the learned Counsel to the 1st set of Respondents, the Honourable Court should discountenance the contention of the Applicants for being extraneous as the rule of pleadings prevails. He was of further view that the principle of Estoppel and Resjudicata will avail the Applicants particularly the Daughters of Divine Love Congregation since they were not made a party in Suit No.E/663/2004 they have lost nothing.

For the above submission he placed reliance on *Oshodi v. Eyifunmi (2000) 13 NWLR (Pt.684) 298* on the conditions for the applicability of the doctrine of res judicata which do not exist herein because the parties and subject matter are not the same. Thus, in his view, *Nwokorobia v. Nwosu (2007) 10 NWLR (Pt 1150) 553* cited by the learned Counsel for the Applicants does not apply in this case as the land in dispute are not the same (Oguji/Iyaka not the same as Isi-Awuri).

In the same vien it was his submission that Suits No.E/663/2004 and E/680/2005 could not have been consolidated as they were pending in two different Courts at the same time and accordingly did not constitute an abuse of court process. For the above submission he placed reliance on *A.C.B. Plc v. Nwaigwe (2000) 1 NWLR (Pt.640) 203 - 4* on what constitutes abuse of court process. Still on abuse of court process he referred us further to *Shell Trustee Nig. Ltd. v. Imani & Sons Ltd. (2000) 6 NWLR (Pt.662) 647 para. 15.*

On the reliance placed on the case of *Ukwu v. Bunge (1997) 8 NWLR (Pt.518) 527* by the learned Counsel for the Applicants, the learned Counsel to the 1st set of Respondents took a contrary view that the Suits do not touch on the issue of jurisdiction as the two High Courts had jurisdiction to hear them because the Applicants herein could have applied to be joined when they become aware of E/663/2004 in the Magistrate's Court. Accordingly, we were urged to invoke the principle of standing by against the Applicants and hold that the jurisdiction of the High Court that gave judgment in E/663/2004 cannot be ousted just because the Applicants merely mentioned it and that the Applicants have misled the Court in this direction particularly on the authority of *Madukolu v. Nkemdilim (1962) SCNLR 341* on when a Court is said to have jurisdiction to determine a Suit.

On the whole we were urged not to invoke our discretionary powers in the circumstances of this case, on the authority of *Ekwenugo v. FRN (2001) FWLR (Pt.63) 99* but to dismiss the Application with costs for lacking in merit.

***RESOLUTION OF ISSUES***

I have been minded to reproduce copiously the submissions of Learned Counsel on the issues formulated and as said earlier, I shall adopt the three Issues formulated by the Learned Counsel for the Applicants and in so doing, I shall subsume the four Issues formulated by the Learned Counsel for the first set of Respondents within those of the Applicants' Counsel as ordinarily, the first Issue posed by the Learned Counsel for the 1st Set of Respondents on whether the Applicants have satisfied the requirements of the law for the grant of their Application would have sufficed to determine this Application one way or the other.

Be that as it may, I shall proceed to resolve the issues as formulated by the Learned Counsel for the Applicants.

***ISSUE NUMBER ONE (1): WHETHER THE DECISION (JUDGMENT) HAS AFFECTED THE RIGHTS OF THE APPLICANTS?***

Section 243(a) of the Constitution of the Federal Republic of Nigeria, 1999 (AS Amended), provides for and guarantees the right of a person interested in the outcome of a proceeding on which judgment had been given to seek leave to appeal or be joined personally in a pending appeal. That Section provides as follows: "Any right of appeal to the Court of Appeal from the decisions of Federal High Court or a High Court conferred by this by Constitution shall be - (a) exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having interest in the matter and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of the Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of the State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or person as may be prescribed"

It is pertinent to note that Section 243(b) of the 1999 Constitution also prescribes that the right to appeal may be exercised in accordance with any Act of the National Assembly and procedural rules for the time being regulating the powers, practice and procedure of the Court of Appeal. From the above provisions of the Constitution, both Learned Counsel for the Applicants and the 1st Set of Respondents were on very solid grounds when they cited the respective cases where the Supreme Court and indeed this Honourable Court laid down the necessary conditions precedent for the grant of Applications of this nature. Thus, in NDIC vs. Enyibros Food Processing Co, & Anor (IN RE: CHARLES N. MMBAMALU (2001) 18 NWLR (Pt.744) 143 at 158 Paras. E - G, 159 Paras A - C and 163 Para G; ably cited by the Learned Mrs. B. C. Okoye for the Applicants, this Honourable Court held that an Applicant seeking leave to appeal against the decision of a Court as an interested party must demonstrate to the satisfaction of the Appellate Court that:-

1. a right inured to him, in other words, that he has a right to/in the subject matter of the dispute in which case he would have been joined by the Plaintiffs or the Defendants or that he, upon being aware of such proceeding in which his interest or right was affected, could have suo motu applied to the trial court to be so joined as an interested party.

2. the decision sought to be appealed against has affected him negatively to the extent that his right to the subject matter has been jeopardized or is likely to be jeopardized if the Application is not positively considered. Such jeopardy may include a grief, loss, or obliteration of his title as in land matters like the one at hand.

3. The interest in the subject matter must be a legally recognizable interest. See Owena Bank v. N.S.E. Ltd (1997) 8 NWLR (Pt.515) Page?; Bala v. Dikko (2013) VOL. 218 LRCN (PT.2) 258 at 268 EEJJ; Yakubu v. Governor, Kogi State (1995) 8 NWLR (Pt.414) 386 at 404 and Ikonne v. Commissioner of Police (1986) 4 NWLR (Pt.36) 473.

There is also no doubt and it is now trite as re-emphasized by the Noble Lord of the Apex Court, Rhodes Vivour, JSC in Alhaji M Waziri V.I.T. Gumel & Anor (2012) LPELR - S.C.32/2005; that an Applicant seeking leave to appeal as an interested party ought to give detailed, cogent and convincing reason(s) why he was not a party at the trial Court and why he delayed in filing the Application apart from disclosing his interest in the matter.

Now, going by the principles enunciated in the above cited cases, it is therefore to the Affidavits of the Applicants and their respective annexures that we must turn to in determining whether or not the Applicants have fulfilled the necessary conditions for the grant of their Application for leave to appeal as interested parties. From my careful perusal of the Grounds for bringing this Application and the facts which have been so copiously deposed to first in the thirty-eight paragraph Affidavit in Support, Exhibits A, A1, A2, B, C, D, E, F and F1, G, H, J and K annexed to the motion paper; the Further Affidavit In Support and "the Further Further Affidavit in Support" to which Exhibit X is annexed, it is indubitable that the Applicants have demonstrated clearly that they have not only an interest in the subject matter of the dispute in Suit Number E/663/2004 (the judgment against which they seek to Appeal), but a legally cognizable interest which is not only likely to be jeopardized but has indeed been shown to have been jeopardized and is in continuation of being jeopardized by the acts of the 1st Set of Respondents and TONIFRANK ESTATE LIMITED who has acquired a lease and indeed Certificate of Occupancy to part of the land which was the subject of Exhibit A to the Affidavit in Support (the Deed of Assignment between Elder Ngwu Ngwu Ikpa and 4 Others of Nkwubor Nike, Igwe, Titus Okolo and three Others of Umuezeoha Nwikpa in Amorji Nike of the one part and Daughters of Divine Love Congregation; the Applicants herein on the other part).

Although the Applicants by their Deed of Assignment (Exhibit A) describe the land which was leased out to them as Oguji/Iyaka Land situate at Amorji/Nkwubor Nike, by Paragraphs 5, 7, 8, 9, 10, 11, 13 of their Statement of Claim the 1st Set of Respondents had in Suit No. E/663/2004 pleaded that they, as Plaintiffs and the 2nd Set of Respondents (Defendants) in that Suit are/were owners entitled to the Customary/Statutory Right of Occupancy over a piece of land called Isi-Anwuri, Nkwubor Nike in Ujodo Development Council Area of Enugu State.

The 1st Set of Respondents further claimed that the land leased out by the Defendants/2nd Set of Respondents to the Applicants is clearly demarcated from their Isi-Anwuri Nkwubor Nike land and their bone of contention in Suit No.E/663/2004 was that before the sale of the land to the Applicants, they (1st Set of Respondents) were and are still living and cultivating the Isi-Anwuri land the subject of dispute in that Suit sought to be appealed against by the Applicants. Upon the attempt by the Defendant/2nd Set of Respondents to survey the land on the 17th of July, 2004, as part of the land sold to the Applicants, the 1st Set of Respondents petitioned the Commissioner of Police Enugu Command who investigated the case and advised the parties to seek redress in Court.

Subsequently, the 1st set of Respondents apprised the Applicants of the fact that the land in question was not part of the land sold to them (Applicants) and the Applicants allegedly threw in the towel. According to the 1st set of Respondents, the Plan of the 2nd Set of Respondents was to scare the 1st Set of Respondents from the land in dispute and secretly turn round to sell same to buyers under the guise that it was the Daughters of Divine Love Congregation (the Applicants herein) who were doing it. The 1st Set of Respondents, maintained that the Applicants had then known the truth and were no more claiming to be entitled to any right of occupancy of the disputed land.

From the contents of Exhibit F to the Supporting Affidavit, Felix Ugwu & 9 Ors (2nd Set of Respondents) did not defend the suit and indeed withdrew from it without any statement of Defence, Counter-Claim or evidence in rebuttal of the 1st Set of Respondents' claim in the said Suit E/663/2004, thus culminating in the judgment of 29th April, 2008 against which the Applicants seek to appeal.

To further buttress the fact that the Applicants have a cognizable legal interest in the disputed land and therefore are parties interested and affected by the decision in Suit No. E/663/2004; the 1st Set of Respondents in Suit No.E/680/2005 (Exhibit G) to the Affidavit in support and Exhibit 13 of the Counter-Affidavit sued the Applicants who later joined the 2nd and 3rd Sets of Defendants in the Suit still on the same subject matter which they call Isi-Anwuri but which the Applicants call Oguji/Iyaka land with the 1st Set of Respondents seeking the same reliefs as in Suit No.E/663/2004.

Furthermore, while Suit Number E/663/2004 and E/680/2005 were pending simultaneously in the same Judicial Division but before different Judges, the 1st set of Respondents allegedly went into the disputed land and destroyed the Applicants four-room house which had been built to lintel level, as well as the Applicants GP Water tank thus culminating into the complaint by the Applicants and eventual prosecution of the 1st Set of Respondents in Charge Number 169c/2005 before the Magistrate's Court of Enugu East, Holden at Nkwo Nike.

Again, in further support of the assertion that the Applicants have a cognizable legal right which ought to be protected by this Court, the 1st set of Respondents pursuant to the Judgment in suit No.E/663/2004 of 29/4/08 (See the Recital of the Deed of Lease (Exhibit J to the Affidavit in Support) went ahead to sell part of the disputed land to one TONIFRANK ESTATE LIMITED who has acquired Exhibit K the Certificate of Occupancy in respect of the land.

Finally, as if the foregoing developments were not enough, the said TONIFRANK ESTATE LIMITED, instituted Suit No.E/288/2011 against the Applicants herein claiming as in Exhibit X a whopping sum of N5,000,000,000.00 (Five Billion Naira) being general damages for trespass committed by the Applicants on a piece of land called Isi-Anwuri which land is situate at Nkwubor Nike in Enugu East Local Government Area of Enugu State of Nigeria and perpetual injunction restraining the Applicants as Defendants therein from directly or indirectly stopping, interfering with it from working or selling or enjoyment, cultivating or peaceable possession of the Plaintiffs/TONIFRANK ESTATE LTD.

From all the foregoing pieces of evidence as elicited from the Affidavits and indeed the Counter-Affidavits of the parties in this Application, the Learned Counsel for the 1st Set of Respondents cannot seriously contend that the Applicants are not parties interested in the outcome of the judgment in Suit Number E/663/2004 which is the subject of this Application. No person or persons can be more qualified to be interested or possessed of a legally recognized right of appeal like the present Applicants taking into consideration the totality of the surrounding trajectory of this case . In fact, all the cases cited by the Learned Counsel to the 1st Set of Respondents are all in favour of the grant of this Application more so as the Applicants have also Counter-Claimed in Suit Number E/680/2005 against TONIFRANK ESTATES LTD. for a declaration that they (Applicants) are entitled to the Statutory Right of Occupancy over and in respect of the entire Iyaka land, Order of perpetual injunction restraining the said Plaintiffs (TONIFRANK Estate Ltd. and Chief Jonas Agu, their servants, privies etc. from interfering with their Applicants (as 3rd Defendants/Counter Claimants) right and interest in respect of the said disputed land. The Applicants as Counter-Claimants also sought for N10,000,000.00 (Ten million Naira) general damages against the Plaintiffs TONIFRANK ESTATE LTD. and Chief Jonas Agu the Company's alter ego.

Oko Jennifer Esq. had argued at page 14 of the 1st set of Respondents' Address citing *Chief Emmanuel Bello v. INEC & 2 ORS. (2010) 2 - 3 SC (Pt.11) 128 at 130* where it was rightly held that: *"where a person who is not a party in an action is interested in the outcome of any proceedings, and intends to initiate an action or process to protect or guarantee his interest, he should first apply to the court to be joined as a party in the proceedings"*, that the Applicants were not parties in Suit No.E/663/2004 as they were neither joined nor did they apply to be joined and as such they are not parties affected or interested since no special interest or relief were claimed. Such an argument falls flat in the face of the totality of the evidence before us, the provisions of Section 243(a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 as amended as well as the Rules of Court upon which this Application is predicated and indeed decided authorities on this vexed issue. The Applicants need not apply to the lower court to be joined where they were not aware of the proceedings and where the 1st Set of (Respondents) did not join them even when they (the Respondents) realized full well in 2005 upon their arrest and prosecution, that the Applicants claimed to have had a right or interest in the subject matter of the Suit but decided to institute piece meal actions against the 2nd set of Respondents and subsequently the Applicants as can be gleaned from the Applicants' averments in their Affidavits and annexed Exhibits.

It is because the Applicants were not joined in Suit No.E/663/2004 in which there could be collusion between the 1st Set of Respondents and the 2nd Set of Respondents who refused to defend the Suit thus warranting the default judgment that has in turn thrown up Suit No. E/680/2005 and E/288/2011 which actions the Applicants have claimed purportedly affected their right and thus they (Applicants) have applied as persons interested in accordance with the provisions of Section 243(a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 as well as the Rules of this Honourable Court, to ventilate their grievances.

The Supreme Court had cause to pronounce on a similar scenario as created herein, in the case of Taiwo v. Adegboro (2011) 11 NWLR (Pt.1259) 562 at pages 577 - 578 paras. G - B, and per Rhodes Vivour, J.S.C. characteristically succinctly and laconically held that one Mr. T. W. Omatsone who bought property from a successful litigant but was not joined in the trial Court which declared the sale as void and he applied to be joined in the Appeal thus:-

"He is the intervener in this appeal before us. An intervener is a person who was not originally a party in the suit but claims an interest in the subject matter, so comes into the case to protect his right. He usually comes in at the discretion of the Court...

"Mr. I. W. Omatsone clearly has a right to protect. His ownership of the house is at stake. He is thus, an intervener properly so called."

By extension, even though the Applicants herein are not interveners properly so called but are appealing as of right as interested parties, they have shown from the preponderance of evidence that their right to the land in dispute is at stake and this Court ought to exercise its discretion in their favour by going the whole hog to protect them. With the greatest respect, all the arguments of the learned Counsel for the 1st Set of Respondents go to the root of the Appeal and the Courts have been admonished to be circumspect in applications of this nature so as not to determine the substance of the appeal at this interlocutory stage. See *N.N.S.C. v. Sabina (1988) 2 NWLR 23 and Holman v Kigo Bros. Nig Ltd (1980) 8 - 10 S.C. 43 Per Udoma, JSC;* of blessed memory.

Before rounding up on this issue, it is necessary to comment albeit briefly on the contention of the Respondents that the principle of Locus Standi is against the Applicants as the judgment in Exhibit F1 to the Applicants' Affidavit in Support (that is Suit No. E/663/2004) was in respect of Isi-Anwuri whereas the Applicants only bought Iyaka/Oguji land. Nothing can be further from the truth as the Applicants have copiously shown that they have an interest in the case even though they were not joined at the trial Court, more so, as the judgment outcome has impinged on their right to the land which they call Iyaka/Oguji. It is left for this Court at the hearing of the substantive Appeal to determine who as between the parties is entitled to the disputed land more so as the 1st set of Respondents and indeed TONIFRANK ESTATES LTD. have initiated Suits Numbers E/280/2005 and E/288/2011 still pending in the High Court between the same parties on the selfsame subject matter Oguji/Iyaka or Isi-Anwuri.

Thus, even in terms of *locus standi*, the Applicants possess same and with their *Exhibit A* could have sued and have been sued to protect or relinquish ownership of same. See *Bala v. Dikko & Ors. (2013) 218 LRCN (Pt 2) 258 at 268 EEJJ; Yakubu v. Governor, Kogi State (1995) 8 NWLR (Pt.414) 386 at 406* and *Ikonne vs. C.O.P. (1986) 4 NWLR (Pt.36) 473* earlier cited.

There is no doubt that United Nigeria Co. Ltd v. Nahman (2009) NWLR (Pt. 671) 179, Ilori v. Benson (2000) 9 NWLR (Pt 673) at 573 and Ojukwu v. Ojukwu (2000) 11 NWLR (Pt.677) 73; cited by the learned Counsel for the 1st Set of Respondents, rightly decided that locus standi connotes the legal capacity to institute proceedings in a Court of law and that the issue of locus standi strikes at the very foundation of jurisdiction in that the incapacity of a party to initiate proceedings robs the Court of jurisdiction to entertain the suit.

Furthermore, it is now trite that in the determination of the locus standi of a party, the Court looks at the cause of action and the facts of the case and not necessarily whether the Claim is justiciable.

As sound as the legal principles enunciated in the above cited cases are, they were unfortunately cited out of context by the learned Counsel for the 1st Set of Respondents, with due reverence, in that from the background facts of this case as can be discerned from the Affidavits and Counter-Affidavits of the parties herein, as well or their annexed Exhibits, this Court cannot strike out the Application on the ground of want of *locus standi*.

To me the Applicants have copiously deposed to facts which point irresistibly to the fact that the judgment sought to be appealed against adversely affected their interest so as to leverage the grant of their Application. The Respondents on the other hand have not been able to dislodge the cast-iron and unassailable reasons advanced in the Applicants Affidavits and documentary Exhibits**.**

The Supreme Court had long reasoned in Akande v. General Electric (1979) 3 L.R.N. 187 which was followed in Kalu v. Odili (1992) 5 NWLR (Pt.240) 130 of 171 - 17 Paras. H - B that:

"The facts that a suit in which he had interest was pending but he did not know and was not made a party thereto are facts which if proved will entitle an applicant for leave to be let in to appeal as a person interested to appeal."

I am tempted to resort once more to the dictum of the erudite Rhodes Vivour, JSC, still in Taiwo v Adegbero (2011) 11 NWLR (Pt.1259) 562 at 574- 580; where the Learned Law Lord on the concept of locus standi placed reliance on the celebrated case of Senator Abraham Adesanya v. Senate of the Federal Republic of Nigeria (1981) 5 S.C. 112 (1981) NCLR 358 inter alia:-

"A Plaintiff satisfies the court that he has locus standi if he is able to show that his civil rights and obligations have been or are likely in danger of being infringed. There must be a nexus between the Claimant and the disclosed cause of action concerning his rights or obligations, and locus standi is determined by examining only the statement of claim. Furthermore, in determining whether a party had locus standi, the chances that the action may not succeed are an irrelevant consideration. See Ejiwunmi v. Costain (W.A) Plc. (1998) 12 NWLR (Pt.576) P.149; Williams V. Dawodu (1988) 4 NWLR (Pt.87) at P.189."

In the instant case, it is only the Affidavit of the Applicants that is worth examining in order to determine whether they are parties interested or with the locus to challenge the decision of the Court in Suit No. E/663/04 on appeal and having so perused the said Affidavits and their respective annexure, I am satisfied that their proprietary rights have been allegedly infringed or are in danger of being infringed. There is patently a nexus between the Applicants and the subject matter of Suit No. E/663/04 the judgment against which they seek to appeal.

Even going by the test laid down in *A - G Kaduna State vs. Hassan (1985) 2 NWLR (Pt.8) 483*; cited and relied upon by learned Counsel for the 1st set of Respondents, the Applicants having shown vividly by the averments in their respective Affidavits that their rights to Oguji/Iyaka land (call it even Isi-Anwuri land, or whatever name) have been threatened by the Judgment of the Court nor below in Suit No, E/663104; it would tantamount to a travesty of justice with disastrously monumental negative consequences should the Applicants be refused or barricaded from the threshold of justice to seek redress by way of Appeal.

3. "WHETHER GROUNDS OF APPEAL PRIMA FACIE SHOW GOOD CAUSE WHY THE APPEAL SHOULD BE HEARD".

In the resolution of this Issue, I am minded to resort to the provisions of Order 7 Rule 10(1) and (2) of the Court of Appeal Rules, 2011 which state thus:

"10(1) The Court may enlarge the time provided by these Rules for the doing of anything to which these Rules apply accept the filing of Notice of intention not to contest the application under Rule 1 above.

(2) Every application for an enlargement of time within which to appeal, shall be supported by an affidavit setting forth good and substantial reasons for failure to appeal within the prescribed period, and by grounds of appeal which prima facie show good cause why the appeal should be heard. When time is so enlarged a copy of the Order granting such enlargement shall be annexed to the notice of appeal".

The above provisions of our extant Rules on enlargement of time within which to appeal have been given judicial imprimatur in the cause celebre of Ibodo & Ors v. Enarofia (1980) N.S.C.C. 195 - 204 where Aniagolu, J.S.C. of blessed memory delivering the judgment of Supreme Court with whom Bello, Idigbe, Obaseki and Eso JSC were called upon to construe Order 7 Rule 4(2) of the Supreme Court Rules, 1977 which is in pari materia with Order 7 Rule 10(2) of the Court of Appeal Rules hereof.

That decision of their Lordships in the above locus classicus has been followed in a long line of decided cases both by the apex Court and this Court. See for instance University of Lagos & Anor v. Olaniyan & 2 Ors. (1985) 1 NWLR (Pt.1) 156, Ibrahim v. Balogun (1999) 7 NWLR (Pt.610) at 267, Paras. B - C, Owoniboys Technical Services Ltd v. John Holt (Nig) Ltd. (1991) 6 NWLR (Pt.199) 530 and Odofin v. Agu (1992) 3 NWLR (Pt. 229) 350 at 374 and Akeredolu v. Akinremi (1986) 2 NWLR (Pt 25) 710; to mention but a few.

Upon a comprehensive analysis of the above authorities, the bottom line comes to this: two conditions must exist and be fulfilled concurrently by an Applicant before a Court like ours can exercise its undoubted discretion sympathetically and favourably to grant Application of this nature.

These conditions are:

1. That there must be good and substantial reasons for failure of the Applicant to appeal within the time prescribed by the Constitution, the Court of Appeal Act and Rules and

2. That the Grounds of Appeal must prima facie show good cause why the Appeal should be heard.

In this wise, the learned Counsel for the 1st Set of Respondents has rightly submitted while relying on the authority of *United Nig. Co. Ltd. v. Nahaman (2006) 9 NWLR (Pt. 671)182;* that the duty of proving or satisfying the Court that these conditions exist, lies on the Applicants in line with the time honoured rule of evidence and pleadings in Civil cases that he who asserts must prove. Thus, from the foregoing, the onus is not only on the Applicants in this case to show that the delay in bringing their Application was neither willful nor inordinate but must go further to show that the proposed Grounds of Appeal sought to be argued peradventure their Application is granted, prima facie show good reasons why their Appeal should be heard. See *Okere v. Nlem (1992) 4 NWLR (Pt.234) 132 at 147 para C.*

In the instant Application, apart from the salient grounds upon which the Application is predicated (See the unnumbered pages of the Motion paper otherwise pages 2 - 4 containing the said Grounds and the enumerated documents exhibited in support of the averments in the Affidavit in Support and the Further Further Affidavit (Further and Better Affidavit?), our attention has been drawn by the learned Counsel to the Applicants to Paragraphs 25, 26, 27, 29, 30 and 31 of the Supporting Affidavit and Exhibits C and E annexed thereto, in arguing that the Applicants were not parties to Suit E/663/04 (the judgment thereof which they seek to be appealed against and were not aware that same was pending until the time within which to appeal against the said judgment had elapsed. The said Paragraphs of the Affidavit in Support from which this Court should determine whether good and substantial reasons for not appealing as at when due exist or not, aver as follows beginning from paragraph 20 thus:

*"20 That on the 29th April, 2008, the Plaintiff and his late brothers were given default judgment in Suit No.E/663/2004. The Judgment and Order are attached herewith and marked Exhibits F and F1 respectively.*

*"21 That we were not aware of the pendency of the Suit and the processes in the Suit were not served or made available to us.*

*"22. That on the 29th day of July, 2008, Suit No.E/68/2005 came up, all parties were in Court and represented by their respective Counsel. The Plaintiff/respondent and his late brothers nor their Counsel never mentioned the Suit or the fact that judgment had been entered in their favour in another case. The proceedings of the Honourable Court is herewith attached and marked Exhibit G.*

*"23. That in all the processes filed in Court by the Plaintiff and his late brothers in Suit No.E/680/2005, they never mentioned the pendency of Suit No. E/663/2004, and did not inform the Honourable Court about it.*

*"24. That Suit No.E/663/2004 and Suit No E/680/2005 were pending at the same High Court Judicial Division in respect of the same parcel of land and same reliefs. The parcel of land is part of the land sold to us.*

*"25. That when Suit No E/680/2005 was on 29th day of July, 2004 adjourned to 14/10/2008, the Plaintiff/respondent and his late brothers thereafter went into the land, surveying the land in dispute.*

*"26. That we consequently reported the Plaintiff and his late brothers to Emene Police Station, they were arrested and thereat they informed the Police that they have judgment in their favour in respect of the land.*

*"27. That it was the Police that gave us a copy of the judgment, as the judgment was not served on us or made known to us before the report to the Police.*

*"28 That the Plaintiff and his late brothers knew that we have an interest in the land (i.e. we brought and occupy the land) and is shown in the Statement of Claim in Suit No.E/663/2004.*

*"29. That on becoming aware of the judgment, we immediately made available to the representative of the two Communities who granted the land to us and we consulted our Counsel who advised us and I verily believe him that since our interest in affected we should take steps to protect same.*

*"30. That our Counsel Chief A. O. Mogboh, SAN has also advised us and we verily believe him that since we were not parties originally in the case at the High Court, we need leave of Court to appeal against the judgment of the Court. We immediately on 11/9/08. filed a Motion on Notice for extension of time to appeal etc. dated 4/9/08 which was withdrawn and struck out by the Honourable Court on 12/10/11.*

*"31. That it will serve the interest of justice if all the parties affected are allowed to proffer arguments in the Appeal, by granting us leave to appeal.* It may be also necessary to reproduce paragraphs 32, 33, 37 and 38 of the Supporting Affidavit which state inter alia:

*"32. That our proposed Notice and Grounds of Appeal are herewith attached and marked Exhibit H.*

*"33. That we are interested because the land was sold to us title document executed in our favour, houses built by us on the land which is in dispute and which has now been adjudged to the plaintiff due to judgment in default of pleadings.*

*37. That the Plaintiff/respondent and his late brother had by virtue of the judgment even when the former application which had been withdrawn, was pending before the Honourable Court granted a lease of the land in dispute to TONIFRANK ESTATE LTD. who is now partitioning and selling the land to innocent citizens who do not know about the pending of this application. The said lease is herewith attached as Exhibit K.”*

I am satisfied from the totality of the averments in the above enumerated paragraphs of the Affidavit of the Applicants that they have not only given good and substantial reason(s) why they failed to Appeal as at when due but the reasons advanced are cogent and compelling to warrant this Honourable Court to exercise its discretion in favour of the Applicants in that from the Statement of Claim of the 1st Set of Respondents in the Suit, the Applicants are seeking to Appeal against the judgment of which they (Applicant) were not only unaware of its pending in the lower court as they were no parties thereto but no effort was made by the Respondents to join the Applicants until the default judgment was entered against the second set of Respondents and the 1st Set of Respondents attempted to enter the disputed land thereafter.

Again, in the circumstances of this case and the explanations of deferred by the Applicants in bringing their Application. three months beyond the Statutory period is not inordinate as they only got wind of the judgment on the 29th of July 2008 exactly the day and time within which they were to Appeal had expired and when the 1st Set of Respondent entered the land in execution of the judgment which culminated in the arrest of the 1st Set of Respondents. Of course, the fact that the Respondents knew of the interest of the Applicants necessitated the initiation of suit No E/680/05 subsequently against the Applicant rather than join the Applicants in Suit No. E/663/2004 so that the Issues at stake would have been finally, and effectively and effectually determined once and for all between the parties.

Moreover, the Applicants had as far back as 2008 taken prompt steps to brief Counsel for the purpose of prosecuting the Appeal even though the Motion for extension of time which was filed by the learned Senior Counsel Chief A. O. Mogboh, SAN on 11/9/08 filed a Motion on Notice for extension of time to appeal dated 4/9/08 was withdrawn and struck out by the Honourable Court on 12/10/11. This development must have contributed to the delay in bringing this Application nay the Appeal as at when due but this is the mistake (call it inadvertence or negligence) on the part of Counsel which ordinarily should not be visited on an innocent litigant. See Iroegbu v. Okwordu (1990) 10 SCNJ 87; Amadi V. Achoo (2008) 12 NWLR (Pt.939) 386, cited in the recent case of Fidelity Bank Plc. V. Chief Andrew Monye & Anor (2012) MRSCJ vol.1 48 at 61 B.

I shall also resolve this Issue in favour of the Applicants.

**ISSUE 3**: WHETHER THE APPLICANTS GROUNDS OF APPEAL PRIMA FACIE SHOW GOOD CAUSE WHY THE APPEAL SHOULD BE HEARD.

The authorities are all agreed that Applications of this nature are not granted as a matter of course but upon the Applicant satisfying the conditions set out by the Rules of Court particularly under Order 7 Rule 10 of the Court of Appeal Rules, 2011. Apart from the salient facts which must support the Applicants prayers, the Grounds of Appeal must be substantial and not frivolous such that at a first glance and without any promptings, my reasonable Judge or Lawyer should be able to decipher that such a Ground or Grounds are arguable. See Ibodo v. Enarofia (1980) 5 - 7 S.C. 42 (1980) NSCC 196, Kwara Poly v. Ogurinde (2009) vol. 14 WRN 168 at 181 - 182 lines 24 - 25, 185 lines 45, and 148 lines 15 - 25.

In Okere & Ors. v. Titus Nlem & Ors. (1992) 4 NWLR (Pt.234) 132 at 147 Para C, Wali JSC, warned that:

"In an application for extension of time to appeal, the Court is not concerned and should not concern itself with the determination of the issues raised in the Grounds of Appeal. It is only concerned with the question whether the Appellant has shown good and substantial reasons for the delay in bringing the Application and secondly whether the grounds of appeal sought to be argued are not frivolous". Holman Brothers Nigeria Ltd v. Kigo (1980) 8-11 SC 43 refers:

Thus, the Applicants in this Application ought to and must demonstrate to the satisfaction of the Court, that Exhibit H which is annexed to the supporting Affidavit as the Grounds of Appeal are arguable although at this juncture it is not necessary to show that the Appeal is likely to succeed. See Iroegbu v Okwordu (1990) 10 SC NJ 87, University of Lagos v. Olaniyan (1985) 1 NWLR (Pt.1) 156, Yonwureh v Modern Signs Ltd. (1985) 1 NWLR (Pt.2) 24 and Mobile Oil (Nig) Ltd. v. Agadagaigho (1988) 1.

Taking a cursory look at the Grounds of Appeal annexed as Exhibit H to the Affidavit in support can it be safely concluded that the said Grounds are substantial and arguable so as to ground this Application? To answer that pertinent question, it is only proper to reproduce the Proposed Six Grounds of Appeal albeit without their respective particulars thus:

**"GROUND 1:** The Court erred in law in giving judgment in the case without giving the appellant a hearing.

**'GROUND 2:** The learned trial Judge erred in law in entering judgment for the Plaintiff and his brothers before the expiration of time granted the defendants to comply with the provisions of the Enugu State High Court Rules, 2006.

**"GROUND 3**: The learned trial Judge erred in law in entering judgment for the plaintiff and late brothers without giving the defendants hearing.

**'GROUND 4:** The learned trial Judge erred in law in hearing and determining the Motion on Notice before the expiration granted to the defendants to file a Counter-Affidavit, if they oppose the Application of the applicants.

**"GROUND 5:** The learned trial Judge erred in law in entering judgment in favour of the Plaintiff and his late brothers for declaratory reliefs without hearing evidence; and

**"GROUND 6:** The learned trial Judge erred in law in hearing and determining the Suit, when the Plaintiffs abused Court process and the Suit an abuse of Court process."

Upon a careful perusal and analysis of the Six Grounds of Appeal proposed to be argued by the Applicants assuming their Application is successful, I am satisfied that Grounds 1, 3, 4 and in particular Ground 6 and their respective particulars are grounds which prima facie show good cause why the Appeal should be heard. Those Grounds as rightly submitted by the learned Counsel for the Applicants, raise the fundamental issue of fair hearing and accordingly the jurisdiction of the lower Court more especially as the Applicants also complain of abuse of court process allegedly committed by the Plaintiff and his brothers in the Lower Court. See celebrated case of *Madukolu v. Nkemdilim (1962) 1 ALL NLR 587 at 597 and Fagbenro v. Orogun (1993) 3 NWLR (Pt.234) 662.* In *Ejike v. Ifeadi (1998) 6 SCNJ 87 at 101 per Iguh, JSC*; who relying on *Skenconsult (Nig) Ltd & Anor v. Godwin Ukey (1981) 1 S.C. 6, at 26. Management Enterprises Ltd. & Anor v. Jonathan Otusanya (1987) 2 NWLR (Pt.55) 179 and Obinnonure v. Erinosho & Anor (1966) 1 ALL 250*, posited while concurring with the lead Judgment of Ogundare, JSC; where the then Chief of Anambra State made an Order transferring a Suit from Customary Court without jurisdiction inter alia that:

*"While a simple irregularity in the course of proceedings that are competent and within the jurisdiction of a trial Court may be waived by a party to a Suit, an incurably defective and null and void one, thereby affecting the jurisdiction of the Court may not be waived. The simple reason for this is that acquiescence cannot confer jurisdiction. See Timitimi v. Amabebe 14 WACA 374; Mustapha v. Governor Lagos State (1987) 5 S.C.N.J. 14, Tukur v. Governor of Gongola State (1987) 4 NWLR (Pt.117) 547 at 545. Similarly any review, of a void judgment is itself void. See Nwankwo v. Akonuran 14 WACA. In my view, the irregularity complained of in the present case is fundamental and affected the jurisdiction of the learned Chief Judge to make the order in issue validly. Consequently, this renders the proceedings before the Otuocha Customary Court incompetent and null and void and this may not be waived".*

In the same vein and as noted earlier, most of the other Grounds complain of abuse of Court processes and lack of fair hearing. As for abuse of Court Process, the Courts have always reserved the inherent powers to strike out suits commenced in abuse of its process. The inimitable Oputa, JSC defined 'Abuse of Court Process' as a term used generally to describe a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. It has also been defined to include abuse of legal procedure, or improper use of legal process, a perversion of the process of Court after it has been issued to the extent that there is inherent malice on the part of the party to pervert a regularly issued Civil or Criminal process for a purpose and to obtain a result not lawfully warranted or properly attainable thereby. See Amaefule v. The State (1988) 2 NWLR 156 Banjo & Ors, Eternal Sacred Order of Cherubim & Seraphim (1975) 3 S.C 37 at 42 and Inyang Edet v. The State SC.16/1967 delivered on December, 2 1988 per Nnamani JSC of blessed memory Igwe (2000) 1 NWLR (Pt 640) 203. See also A.C.B. v. Nwaigwe (2000) 1 (NWLR (Pt.640) 203.

Going by all the allegations in the Grounds of Appeal, the Grounds are substantially arguable and not frivolous as purportedly submitted by the learned Counsel for the 1st Set of Respondents. I am therefore of the candid opinion that any or all of them if successfully argued can sustain the Applicants Appeal. I reiterate that all the submissions of the Respondents are on the substance of the Appeal which at this juncture are irrelevant and premature as the success or merit of the Grounds of Appeal are of no consequence at this junction.

Accordingly, this Application is meritorious and is hereby granted the Applicants as prayed.

It is hereby ordered as follows:

1. Time is hereby enlarged from today the 6th of November 2013 within which the Applicants may apply for leave to appeal from the decision of the Enugu State High Court, sitting at Enugu in Suit No. E/663/2004 - EKENE UGWU vs. FELIX UGWU & ORS by His Lordship HON. JUSTICE R. N. ONUORAH, on the 29th day of April, 2008 as parties affected and having an interest in the case.

2. Leave is hereby also granted today to the Applicants to appeal to this Honourable Court as parties affected and having an interest in the subject matter of Suit No.E/663/2004 EKENE UGWU v. FELIX UGWU & ORS. in which judgment was delivered on 29th April, 2008 by His Lordship R. N. ONUORAH of Enugu State Judiciary sitting at Enugu and

3. That time is hereby extended from today the 6th of November 2013 within which the Applicants may appeal (file Notice and Grounds of Appeal) as parties interested/affected by the decision of the Enugu State High Court, sitting at Enugu in Suit No. E/663/2004 EKENE UGWU v. FELIX UGWU & ORS delivered by his Lordship HON. JUSTICE R. N. ONUORAH on the 29th April, 2008.

No order as to costs.

**ADZIRA GANA MSHELIA, J.C.A.:**

I have had the opportunity of reading in draft the Ruling read by my learned brother **Agube, JCA** and I agree with the reasons and conclusion reached therein. The application is meritorious and same is granted as prayed.

I endorse all the orders made in the lead Ruling inclusive of costs.

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

I had a preview of the judgment just delivered by my Learned brother **IGNATIUS IGWE AGUBE JCA**. I am in complete agreement with the reasoning and conclusions therein. I also hold that the application has merit. It is hereby granted as prayed. I abide by all the orders in the lead ruling including the order as to costs.