

SUPREME COURT OF NIGERIA
28TH JANUARY, 1994. SC. 74/1994.
CORAM:- M. L. UWAIS, I. L. KUTIGI, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, JJSC.

CARLEN (NIG.) LIMITED PLAINTIFF/APPELLANT

AND

1. UNIVERSITY OF JOS DEFENDANTS/RESPONDENTS
2. COUNCIL OF THE UNIVERSITY

AGENCY - Finding of the trial court - that the vice Chancellor and Registrar are agents of the University and the University Council - whether correct

APPEALS - Court of Appeal - incompetent single ground of appeal - where issues formulated in appellant's brief did not arise out of that ground - whether the appeal should have been entertained

APPEALS - Argument of issues not raised at trial - entertained by the Court of Appeal - whether proper

CONTRACTS - Where contract is not required by law to be under seal - whether void - merely because the University seal was not affixed thereto

LEGISLATION - Provisions of the University of Jos Act - whether the Council of the university and the vice Chancellor are legal persons thereunder - that can be sued under those names

SEAL - No seal affixed upon a contractual document - contract not required by law to be under seal - whether that contract is void

FACTS

The Plaintiff/Appellant filed an action against the Defendants/Respondents before High Court of Jos for the sum of N1,358,000.00 being damages for breach of a construction contract. After the close of the Plaintiffs case and opening of the defence, the Defendants filed a motion seeking to strike out Plaintiffs claim as being premature and/or incompetent. The trial court in refusing the motion held that, the action was competent notwithstanding the arbitration clause in the contract and that the two Defendants were juristic persons who were properly sued.

The Defendants' appeal to the Court of Appeal was upheld by that court which held that both the Vice Chancellor and the Council of the University are not legal persons and decided a few other issues that were not properly before it. The Plaintiff being dissatisfied has now appealed to the Supreme Court to determine inter alia, whether the striking out of names of the Defendants as parties to this suit is wrong in law.

HELD (unanimously allowing the appeal)

1. The Court of Appeal was in serious error to entertain the appeal seeing that not only was the single ground of appeal raised before it incompetent, the issues formulated in the appellant's brief did not arise out of that incompetent ground. (P. 104 L34)
2. The Defendants in their Appellants' Brief in the court below argued issues not raised in the trial court, and the Court of Appeal was wrong to have entertained argument on those issues. (P. 104 L39)
3. Upon the reading of the University of Jos Act as a whole, the Council of the University and the Vice-Chancellor by implication, are given the juridical personality that enables each of them to sue and be liable to be sued in nomine - under that name. Thus, the trial court's decision that the second defendant (the University Council)" can be sued and is a proper party to this action" is correct whilst the Court of Appeal's finding to the contrary is unacceptable. (P. 113 L25)
4. Both the Vice-Chancellor and the Registrar were in respect of the contract with the Plaintiff agents of the Defendants as was rightly found by the learned trial Judge. (P. 114 L24)

5. As the contract between the parties is not one that is required by law to be under seal, it is not void for the reason that the seal of the University was not affixed thereto, as was erroneously held by the court below. (P. 114 L26)

REPRESENTATION

P.O Jimoh-Lasisi Esq. with B.U. Ihediohanma for the Plaintiff/Appellant.
M.A. Toyin Keshinro Esq. with S.A Lawal & S.E. Umoh for Brown-Peterside SAN, for the Defendants/Respondents.

CASES REFERRED TO

1. Okoye and Ors. v. Nigerian Construction & Furniture Co. Ltd. & Ors. (1991) 6 NWLR 501
2. Egbe v. Yusuf (1992) 6 NWLR (pt. 245) 1
3. Popoola v. Adeyemo (1992) 8 NWLR (pt. 257) 1
4. Enigwe v. Akaigwe (1992) 2 NWLR 505
5. Biruwa v. The State (1992) 1 NWLR 633
6. Thomas v. Local Government Service Board (1965) NMLR 310; (1965) 1 All NLR 174
7. Willis & Anor v. Association of Universities of the British Commonwealth (1964)
8. Knight and Searle v. Dove (1964) 2 All E.R. 307
9. Kpebimoh v. The Board of Governors, Western Ijaw Teachers Training College (1966) NMLR 130
10. Fawehinmi v. N.B.A. & Ors. (No.2) (1989) 2 NWLR 558
11. Taff Vale Ry Co. v. Amalgamated Society of Railway Servants (1901) AC 426, 436
12. Provost, Alvan Ikoku College of Education v. Amuneke (1991) 9 NWLR 49, 58
13. Odivo v. Obor (1974) 2 SC 23, 31
14. Adigun v. Ayinde & Ors (1993) 8 NWLR 516
15. Dipcharima & Anor. v. Ali & Anor. (1974) 1 All NLR (part 2) 420 & 422
16. Awojobi v. Ogbemudia (1983) 8 SC. 92 at 95
17. U.B.A v. Nwora (1978) 2 L.R.N. 149 at 155
18. Ariori v. Elemo (1983) 1 SC. 20
19. Ogbuanyinya v. Okudo (No. 2) (1990) 4 NWLR (part 146) 551
20. Ebba v. Ogodo & Anor (1984) 4 SC. 84 at 112
21. Osinupebi v. Saibu (1982) 7 SC. 104
22. Western Steel Works v. Iron & Steel Workers Union (1987) 1 NWLR (Part

23. *Idika v. Erisi* (1988) 3 NWLR (part 78) 568
24. *Ijale v. Leventis* (1959) 4 FSC. 108;
25. *Ejowhomu v. Edoketer Limited* (1986) 5 NWLR (part 39) 1 at 16
26. *Nasumal & Sons v. N.B.T.C. Limited* (1988) 2 NWLR (part 106) 730 at 742-755
27. *Ojibah v. Ojibah* (1991) 5 NWLR (part 191) 296 at pages 310-311
28. *Dobadina Family v. Ambrose Family* (1969) NMLR 25
29. *Ekpenyong & Ors v. Nyong* (1975) 2 SC. 71 at 80
30. *Green v. Green* (1987) 3 NWLR (part 61) 480 at 493
31. *Peenok v. Hotel Presidential* (1983) 4 NCLR 122
32. *Eastwood v. Kenyon* (1849) 11 A.D. & E. 438
33. *Hovil v. Pack* (1806) East 164
34. *Bank Melli Iran v. Barclays Bank D.C.O.* (1959) T.L.R. 1057 at 1063
35. *Bolton Partners v. Lambert* (1899) 41 Ch.D. 295
36. *Anyia v. Iyayi* (1993) 7 NWLR (part 305) 290
37. *Commissioner of Works, Benue State v. Development Consultants Ltd.* (1988) 3 NWLR (part 83) 407 at 405 and 420
38. *Umar v. Bayero University, Kano* (1988) 4 NWLR (part 86) 85, 87
39. *Ugo v. Obiekwe* (1989) 1 NWLR (part 99) 566 at 569 and 582
40. *Seismographic Ltd v. Ogbeni* (1976) 4 SC. 85 at 101
41. *Overseas Construction Ltd. v. Creek Enterprises Ltd* (1985) 3 NWLR 407
42. *First National Securities Ltd. v. Jones* (1978) WLR 475 at page 484
43. *Bolton Engineering Company Ltd. v. Graham & Sons* (1957) Q.B 159
44. *Lennads Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd.* (1915) A.C. 713

STATUTES AND RULES REFERRED TO

1. *University of Jos. Act Cap 456 Laws of the Federation of Nigeria 1990. ss. 2(1) & (2), 3(1) & (2), 5 (1), 7(2), 22(2) & (3), para. 5 (1) of 1st Schedule.*
2. *Halsbury's Laws of England 4th Ed. vol. 9 para. 1201*
3. *Plateau State High Court Civil Procedure Rules 1987, O.28 r. 6, O.11 rr. 3, 5 (1) & 16*
4. *Evidence; Act ss. 99, 126*

LEAD JUDGMENT BY OGUNDARE JSC

The plaintiff, a limited liability company on 19th April, 1982 entered into a contract with the Vice-Chancellor of the University of Jos for the construction of faculties of Environmental Sciences and Education at the permanent site of the University in Jos at a total cost of N2.8 million. It was the Registrar of the University that signed the contract, presumably on behalf of the Vice-Chancellor. The contract contained an arbitration clause in the event of a dispute between the parties to it. The contract was partly executed and some payments made by the University to the plaintiff before a dispute arose between the parties leading to the termination of the contract by the Vice-Chancellor by a letter dated 16th April, 1984. The plaintiff instituted an action at the High Court of Plateau State (Jos Judicial Division) in 1986 against the University of Jos and the council of the University as defendants claiming by its amended statement of claim a total sum of N11,358,000.00. The defendant's entered appearance and filed and served an amended statement of defence. At the subsequent trial the plaintiff called witness in support of its case and at the close of the plaintiff's case the defence opened. Whilst the case for the defence was still on, learned leading counsel for the defendants Mr. Brown-Peterside, SAN filed a motion praying for an order or orders.

"1. directing the plaintiff to give security for costs in this matter,

2. striking out this action or dismissing it on the ground that it is premature and/or incompetent."

This motion was supported by an affidavit and a further affidavit both sworn to by junior counsel in the Chambers of the learned Senior Advocate. At the hearing of the motion, the learned trial Judge took arguments from learned counsel for the parties and in a reserved ruling held that the two defendants were juristic persons and that the action was properly brought against them. He also held that both the Vice-Chancellor and the Registrar of the University could properly have been made parties to the action and that the Vice-Chancellor was an agent of the council and a legal person. On the question of incompetence of the action and the jurisdiction to try the matter and that the defendants having taken steps in the matter, the action was competent notwithstanding the arbitration clause in the contract. The first prayer was abandoned at the hearing and was consequently struck out.

Being dissatisfied with the decision, the defendants appealed to the Court of Appeal upon one ground of appeal which, because of issues raised before us, in this appeal, I quote hereunder. It reads:

"1. The learned trial Judge erred in law in ruling as he did that the suit before him is competent and/or that he had jurisdiction to hear the same, and this error occasioned miscarriage of justice.

PARTICULARS OF ERROR

1. Para 3163(3) - payment after forfeiture of exhibit 1, which is the contract on which the suit is based, (which is hereunder reproduced), is clear and unambiguous and the learned trial Judge ought to have given effect to it by holding otherwise. If he had done so, he would have come to a different conclusion:

'Payment after forfeiture: If the employer shall enter and expel the contractor under this clause he shall account (sic) of the contract until the expiration of the period of maintenance and thereafter until the costs of completion and maintenance damages for delay in completion (if any) and all other expenses incurred by the employer have been ascertained and the amount thereof certified by the engineer. The contractor shall then be entitled to receive only such sum or sums (if any) as the engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the contractor shall upon demand pay to the employer the amount of such excess and it shall be deemed a debt due by the contractor to the employer and shall be recoverable accordingly.'

(II) By paragraph 3201 of the same Exhibit 1, the employer is, simply defined as 'The Vice-Chancellor'. That being so, neither of University of Jos nor the council of the University and Jos is a party to the said contract and therefore ought not to have been sued. If the learned trial Judge had properly adverted his mind to the foregoing, having regard particularly to the University of Jos Act, 1979 inter alia, he would have come to the conclusion that he had no jurisdiction to hear the suit and/or that the suit before him is incompetent."

Briefs having been filed and exchanged the appeal was argued before the Court of Appeal holden at Jos and that court in a reserved judgment allowed the appeal and set aside the judgment of the trial High Court. The

Court of Appeal held:

*1. that the contract was not executed by the parties to the action
moreso as the seal of the University was not affixed thereto;*

5 *2. that as the contract agreement was signed by the Registrar and
not the Vice Chancellor, it was not executed by the parties to the suit; it was
wrongly admitted in evidence;*

10 *3. that both the council of the University and the Vice Chancellor
are not legal persons;*

The court, per Katsina-Alu, J.C.A., further held:

*The only person who can be an agent must be a legal person who
can enter into contract agreement. In the context of this suit the Registrar
cannot be an agent of the University. In my judgment the contract agreement
15 is null and void since one of the parties thereto is not a legal person and in
consequence that contract cannot be binding on the University. This is so
because under the University of Jos Act No. 82 of 1979, it is only the said
University which can sue and be sued, not even the council."*

20 It finally struck out the names of the defendants from the suit. Being
dissatisfied with this judgment the plaintiff, with leave of the Court of Appeal,
appealed to this court upon 8 grounds of appeal. And pursuant to the rules of
this court, the parties filed and exchanged their respective Briefs of Argument.
In its Brief of Argument the plaintiff set out the following eight questions as
25 calling for determination:

*"1. Whether the Court of Appeal had the jurisdiction to determine
the issue of execution of Exhibit 1 or 15 by the Vice Chancellor or the Regis-
trar having regard to the only ground of appeal before them?*

30 *2. Even if the issue of execution of Exhibit 1 or 15 arose for the
determination in the appeal before the Court of Appeal (which is not con-
ceded is it not an issue which properly belonged to the determination in the
High Court at the end of the trial after the whole evidence is considered?*

*3. Whether the decision of the Court of Appeal to determine the
35 existence or non-existence of the contract the subject matter of this case
between the parties on affidavit evidence and without the issue set down as
a preliminary issue for trial is wrong in law.*

4. Whether the decision of the learned Justices of Appeal to strike

out the names of the defendants as parties to this suit is not wrong in law?

5. Whether the admission by the 1st defendant in paragraph 8 of the Further Amended Statement of Defence that it paid total sum of N5,868.80.00 to the plaintiff for work certified done under the contract document Exhibit 1 or 15 estops it on the doctrine of ratification from denying the existence or enforceability of a contract between it and the plaintiff. 5

6. Whether the 2nd defendant is a juristic person who can sue or be sued in the performance of the statutory functions conferred on it by the University of Jos Act, 1979.

7. Whether the decision of the Court of Appeal was not wrong in law when they held that the Vice Chancellor and the Registrar cannot be agents of the University. 10

8. Whether the Court of Appeal has the jurisdiction to determine that Exhibit 1 or 15 was inadmissible in law and irrelevant when no ground of appeal complaining about the admissibility of the contract document was before them." 15

The defendants for their part set out what, in effect, is a lone issue, to wit:

"Were the learned trial Justices of the Court of Appeal right in holding as they did that the suit before the High Court was incompetent, having regard to the fact that the contract the subject-matter of these proceedings was not executed by the parties in the manner required by the University of Jos Act, 1979 by virtue whereof the said Court lacked jurisdiction to entertain the same?" 20

That only issue however cannot, in my judgment encompass the 8 grounds of appeal. I shall, therefore, adopt the issues as contained in the appellant's brief in my determination of this appeal. The 8 questions raised by the plaintiff can, however, be grouped into two compartments, that is, (a) Questions 1, 2, 3 and 8 put in issues raised and determined by it having regard to the only ground of appeal; and (b) Questions 4, 5, 6 and 7 which dispute the correctness of the various findings made by that court. 25 30

Questions 1, 2, 3 & 8:

It is contended in plaintiff/appellant's brief that the issues pronounced upon by the court below are issues not arising out of the lone ground of appeal before it or not raised in the High Court. The defendants in their respondents' brief proffered no answer to this submission. 35

I have already in this judgment set out the only ground of appeal contained in the defendants' Notice of Appeal to the Court of Appeal. This ground, in the manner it was framed, was not without difficulties. This is more

so when read along with its two particulars. Particular (I) raised an issue not touched upon at all at the trial court nor arising from the defendants' motion papers. It is not, therefore, surprising that it was abandoned in their Reply Brief at the Court of Appeal. Particular (II) raised issues not canvassed at the court of trial and not arising from the decision of that court appealed against.

5 However, the two particulars could not be said to complement each other and should have constituted separate grounds of appeal. The lone ground of appeal could not by any stretch of imagination be described as a complaint against anything decided by the learned trial Judge. For these reasons alone, the court below should have struck it out.

10 In their Brief of Argument in the court below the defendants posed the following two questions:

*"(1) Was the learned trial Judge right in holding as he did in his ruling, that the respondent was correct in suing the University of Jos, when
15 the contract the subject-matter of these proceedings was not executed by the University of Jos as required by law?*

*2. Is the Council of the University of Jos a legal person, either by virtue of the University of Jos Act, 1979 or by other Federal Statute which
20 can sue and be sued in its name?"*

Neither question, in my respectful view, could be said to arise from the lone ground of appeal before the court below. Indeed the plaintiff, in its respondent's Brief in that court submitted that *"Issue No.1 formulated by the
25 defendants/appellants does not arise in this appeal."* This submission was not considered, let alone pronounced upon, by the learned Justices of the court below.

It is trite that issues for determination formulated in a Brief must arise out of and be related to the grounds of appeal relied upon in support of the
30 appeal and any issue not encompassed by nor relating to the ground(s) must be struck out - See: Okoye and ors. v. Nigerian Construction & Furniture Co. Ltd. & ors. (1991) 6 NWLR (part 199) 501; Egbe v. Yusufu (1992) 6 NWLR (Pt.245) 1. In the case on hand not only was the only ground of appeal raised in the appeal to the Court of Appeal incompetent, the issues formulated in the
35 appellant's brief did not arise out of that ground, incompetent as it was. The court below was therefore, in serious error to entertain the appeal to it.

But that is not all. The defendants in their appellants' brief in the court below argued issues not raised in the court of trial. Such issues included

execution of the contract the subject matter of the action and the admissibility of the contract document. No leave of the Court of Appeal was sought nor obtained to raise these new issues. The court below was therefore wrong to have entertained arguments on them. See: Popoola v. Aderemo (1992) 8 NWLR (Pt.257) 1; Enigwe v. Akaigwe (1992) 2 NWLR 505; Biruwa v. The State (1992) 1 NWLR (Pt.220) 633. 5

It is significant but not surprising, that the defendants in their respondent's brief before this court offered no answer to the aspect of the appeal. There is simply no answer to those submissions. The Issues pronounced upon by the court below not arising out of the lone ground of appeal before it and not being issues raised and decided upon by the court of trial and leave of the court below not having obtained to raise such issues (if properly covered by the ground of appeal), the learned Justices of the court below, with profound respect to them, were in error to consider those issues. On this premise alone, this appeal ought to succeed. 10 15

Questions 4, 5, 6 & 7:

The questions in this group attack the correctness of the various findings of law made by the court below. These, in summary are:

1. That the 2nd defendant, the council of the University of Jos is not a juristic person that can sue or be sued. 20

2. That the Vice-Chancellor of the University of Jos is not a legal person.

3. That the Registrar of the University not being a legal person cannot be an agent of the University 25

4. That the contract, the subject-matter of the action between the parties was not executed by the defendants and the seal of the University was not affixed thereto; it is therefore null and void.

5. That the contract agreement is inadmissible in evidence since it was not executed by one of the parties (that is, the defendants) to the proceedings. 30

I shall begin with the first three of the above findings. In coming to the conclusion it reached, the court below, per Katsina-Alu, J.C.A. reasoned thus:

"The Vice-Chancellor of the University of Jos is like a Managing Director or a General Manager of a Public Liability Company who is not a legal person. See Agbonmagbe Bank Ltd. v. General Manager G.B. Olivant Ltd,Chancellor of the University of Jos nor the council is a legal person. According to the University of Jos Act, only the University is a legal 35

Later in the lead judgment of Katsina-Alu, J.C.A., he observed:

"It was contended on behalf of the respondent that by the combined
5 effect of section 1 and 5(1) the 2nd defendant, can be sued in relation to its
functions. For this submission counsel relied on the case of Chief Andrew
Thomas v. Local Government of Services Board (1965) 1 All NLR 168 at 171-
172, which had to deal with the Local Government Law 1965. In that case
the Supreme Court held that it was necessary in every case to look at the
10 instrument by or under which the association was established, and that the
Local Government Law did not expressly empower the Board to sue and be
sued."

He concluded:

15 "As to the second defendant in law it is non-existent. To bring an
action against it was like suing a dead person who had ceased to exist. In
other words it was never alive to sue and be sued. Any such action will in law
be incompetent."

20 With profound respect to the learned justices of the court below the
reasoning and conclusions in the passages above are manifestly wrong.

The University of Jos was established by the University of Jos Act
Cap. 456 Laws of the Federation of Nigeria (1990 Edition). Subsections 1 and
2 of Section 1 of the Act provide as follows:

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"1(1) There is hereby established a University to be known as the
University of Jos (hereafter in this Act referred to as "the University") which
shall be a body corporate with perpetual succession and a common seal.

(2) The University may sue or be sued in its corporate name."

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Section 2(1) creates a council for the University and the office of the
Vice-Chancellor among the bodies and offices constituting the University.
Section 3(2) which provides for the exercise of the powers conferred on the
University by S.3(1) reads thus:

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"3(2) Subject to the provisions of this Act and of the statutes and
without prejudice to section 7(2) of this Act, the powers conferred on the
University by subsection (1) of this section shall be exercisable on behalf of
the University by the council or by the senate or in any other manner which

may be authorised by statute."

Section 5(1) sets out the functions of the Council of the University in these words:

"5(1) Subject to the provisions of this Act relating to the visitor, the council shall be the governing body of the University and shall be charged 5 with the general control and superintendence of the policy, finances and property of the University, including its public relations."

Those of the Vice-Chancellor of the University are spelt out in section 7 of the Act, subsection (2) of which provides:

"7(2) Subject to section 5, 6 and 13 of this Act, the Vice-Chancellor shall have the general function, in addition to any other functions confer- 10 ring on him by this Act or otherwise, or directing the activities of the University, and shall to the exclusion of any other person or authority be the Chief executive and academic officer of the University and ex-officio chairman of 15 the senate."

Paragraph 5(1) of the First Schedule to the Act creates the office of the Registrar of the University and sets out his functions. It reads:

"5(1) There shall be a registrar, who shall be the Chief administra- 20 tive officer of the University and shall be responsible to the Vice-Chancellor for the day-to-day administrative work of the University except as regards matters for which the bursar is responsible in accordance with sub-para- 25 graph (3) of this paragraph."

It is clear from the above provisions of the Act that the council, the Vice-Chancellor and the Registrar are creation of the University of Jos Act and each is assigned specific functions as provided for in the Act and in the exercise of such functions, rights of other persons will most certainly be af- 30 fected. If in the exercise of their functions the right of anyone is infringed can it be said that any of these functionaries cannot be sued simply because the Act has not expressly stated that they can sue or be sued? This question was answered in *Thomas v. Local Government Service Board* (1965) NMLR 310; (1965) 1 All NLR 174 (new edition) where this court (per Brett, J.S.C.) observed 35 at pages 176-178 of the latter report:

"The Local Government Service Board is created by section 93 of the Local Government Law, which reads as follows:-

(1) *There shall be a Local Government Service Board which shall consist of a Chairman and three other members who shall be appointed by the Governor.*

(2) *A member of the Local Government Service Board shall, unless he resigns or is removed, hold office for a period of five years from the date of his appointment.*

(3) *The Governor may remove any member of the Local Government Service Board from his office.*

(4) *A member of the Local Government Service Board shall be paid such salary or allowance as the Governor in council may determine.*

The Law does not expressly empower the Board to sue or be sued, and the only provisions relating to legal proceedings are contained in section 97, which provides for a claim of privilege for the records of the Board, and section 95, which protects the individual members from proceedings in respect of their official actions. Dr. Aguda, for the Board, drew our attention to the judgment of Mocatta, J., in Knight & Searle v. Dove (1964) 2 All E.R. 307, where the liability in tort of a Trustee Savings Bank was in issue, and in particular to the passage at page 309, where the Judge says that it was common ground between counsel that no action can be brought by or against any party other than a natural person or persons unless such a party has been given by statute, expressly or impliedly, or by the common law, either (a) a legal persona under the name by which it sues or is sued or (b) a right to sue or be sued by that name As to (b), namely parties which are not legal personae, but have a right to sue or be sued by a particular name, these may be sub-divided into (i) partnerships: see R.S.C. Ord. 81; (ii) Trade Unions and friendly societies, both of which types have a membership; and (iii) foreign institutions authorised by their law to sue and be sued. It was further common ground that no statute expressly conferred the right to sue and be sued in nominee on any trustee savings bank or on the bank the fifth named defendant. If in this case there be such right or obligation, it must, therefore, be derived by implication from the relevant statutes. Mocatta, J., then proceeded to examine the relevant statutes and in holding that the bank was liable to be sued in tort he attached some importance, as Dr. Aguda has pointed out, to the fact that it was capable of owning and did own property, which is a characteristic not possessed by the Board in this case.

It is to be observed that Moratta, J., was summarising the matters on which counsel were agreed and that neither he nor counsel had occasion to consider the position of a body created by statute for the discharge of particular public functions, or the possibility of distinguishing between liability in tort, which is what he had to decide on, and liability to be sued for a declaration. In England an action for a declaration has been held to lie against the National Dock Labour Board: Vine v. National Dock Labour Board (1957) A.C 488; and tribunals of all kinds are proper defendants to actions for the prerogative writs, though it has never been suggested that they are liable in tort. We reject the submission that a Local Government Service Board is not liable to be sued for a declaration, and we do so more readily since the statutory provisions relating to the appellant's office are such that injustice might result if the Board could not be made a defendant to any kind of proceedings."

The issue was also exhaustively discussed by this court in *Fawehinmi v. N.B.A. & Ors. (No.2) (1989) 2 NWLR (Pt.105) 558*. The general law, of course, is that any person, natural or artificial, may sue and be sued in court. There can be no difficulty in determining who a natural person is. The difficulty that has often arisen is as regards who is an artificial person that can sue and be sued. An artificial person is generally referred to as a corporation. A corporation is defined by the learned authors of Halsbury's Laws of England paragraph 1201 vol.9 (4th edition) in these words:

"A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question. There are many associations and bodies of persons that are not corporations. Some of these, such as registered friendly societies, may be regarded as quasi corporations, as they have some of the usual attributes of corporations, such as the possession of a name in which they may sue and be sued, and the power (independently of any contract between the members) to hold property for the purposes defined by their objects and constitutions. Partnerships are not usually regarded as quasi corporations, although, if carrying on business in England or Wales, they may sue and be sued in the firm's name. Subject to the exceptions mentioned above, unincorporated associations cannot sue or be sued in their own name nor (unless their purposes are charitable) can property be held for their purposes otherwise than by virtue of a contract be-

Going by the above definition and the provisions of the University of Jos Act, particularly section 1 thereof, the University of Jos (1st defendant in these proceedings) is a corporation aggregate having power to sue and
5 liable to be sued, in its corporate name. But it is not only a corporation (aggregate or sole) apart from a natural person, that has the attribute to sue and be sued. There are bodies generally regarded as quasi or near corporations on whom statutes expressly or impliedly confer a right to sue or be sued though
unincorporated. They are not legal personae strictu sensu but have a right to
10 sue or be sued by a particular name. Examples of these are partnerships, trade unions, friendly societies and foreign institutions authorised by their own law to sue and be sued, though not incorporated.

Whether a quasi corporation has the right to sue or be sued in nomine
15 depends on whether the statute creating it expressly or by implication gives it such power. The University of Jos Act has not expressly conferred on the council of the University nor the Vice-Chancellor such a right to sue or be sued in nomine. If there be such right or obligation, it can only be derived by
implication from the Act.

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I have earlier in this judgment set out some provisions of the Act whereby functions are conferred on the council and the Vice-Chancellor. Considering the nature of these functions and other powers, duties and responsibilities conferred by other sections of the Act, e.g. the power of discipline over
25 staff and students, it cannot be doubted that in their exercise of these functions and powers rights of third parties would necessarily be affected and it will amount to injustice if such third parties cannot seek redress for any wrong done to them. This is the rationale behind the decision of this court in *Thomas v. Local Government Service Board* (supra). See also: *Willis & Anor. v. Association of Universities of the British Commonwealth* (1964) 2 All E.R. 39, 42 per
30 Lord Denning M.R. where he accords juridical personality to a body unincorporated that is given expressly or impliedly by statute the right and obligation to sue and be sued. See also *Knight and Searle v. Dove* (1964) 2 All E.R. 307 per
Mocatta, J. where after a detailed examination of relevant statutes the learned
35 Judge came to the conclusion that, by implication, the London Trustees Savings Bank, a defendant in the case, could be sued in tort. I refer also to *Kpebimoh v. The Board of Governors, Western Ijaw Teachers Training College* (1966) NMLR 130, a case cited with approval by *Obaseki, Karibi-Whyte and Agbaje, JJ.S.C.* in *Fawehinmi v. N.B.A. & Ors.* (No.2) (supra); the board was estab-

lished by the Education Law of Western Nigeria (applicable to Mid-Western Nigeria) and conferred with statutory functions including the management of educational institutions. The Law, however, did not expressly give it the right and obligation to sue and be sued. The plaintiff complained of the breach by the Board of his contract with the Board. Arthur Prest, J. after referring to the dictum of Lord Halsbury in *Taff Vale Ry Co, v. Amalgamated Society of Railway Servants* (1901) A.C.426, 436 observed at page 133 of the Report, and quite rightly in my view:

"Although in the Taff Vale Case emphasis was laid on an unincorporated body owning property, in my view that decision did not lay down the rule that an unincorporated body without property cannot sue or be sued for injury done to others. I think the sum total of that decision is that an unincorporated body which is empowered by the Legislature to do certain things which can result in injury to others must be taken to have impliedly the power to sue and be sued in a court of law."

Applying that law to the facts of the case before him, the learned Judge went on to say:

"The question I have to consider in this case therefore appears to me on all fours with the issues raised in the Taff Vale's Case, i.e. what, according to the true interpretation of section 53 of the Education Law, Cap.34 has the Legislature enabled the Board of Governors of the Western Ijaw Teacher Training College to do, and what, if any, liability does the Board incur for wrongs done to others in the exercise of their authorised powers under the Instrument of Management granted to them?"

The Instrument of Management empowers the Board to do, amongst other things, the following to wit:

1. Be responsible for the general financial management of the institution;
2. Prepare estimates revenue and expenditure;
3. Incur expenditure within the limits of the estimates without the previous consent of the minister;
4. Arrange for the collection of fees and other revenues and administer the disbursement of expenditure approved by the minister.

From the statutory functions of the Board therefore, I am of the opinion that the Board, though it is not an incorporated body, is capable of being sued as a legal entity distinct from its members. I am further fortified in

this view by the decision of the Federal Supreme Court in the case of Chief Thomas v. Local Government Service Board (supra) in which that court held that -

"The submission that a statutory body with functions like those of the Local Government Service Board is not liable to be sued for a declaration must be rejected."

In the Taff Vale case, Farwell, J. had in the court of trial set the law thus:

"Now, although a corporation and an individual or individuals may be the only entity known to the common law who can sue or be sued, it is competent to the Legislature to give to an association of individuals which is neither a corporation nor a partnership nor an individual a capacity for owning property and acting by agents, and such capacity in the absence of express enactment to the contrary involves the necessary correlative of liability to the extent of such property for the acts and defaults of such agents. It is besides the mark to say of such an association that it is unknown to the common law. The legislature has legalised it, and it must be dealt with by the courts according to the intention of the legislature."

This statement of law was rejected by the Court of Appeal. On further appeal to the House of Lords Farwell, J's judgment was restored. Lord Halsbury said:

"My Lords, in this case I am content to adopt the judgment of Farwell, J., with which I entirely concur; and I cannot find any satisfactory answer to that judgment in the judgment of the Court of Appeal which overruled it. If the Legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken, I think, to have impliedly given the power to make it suable in a court of law for injuries purposely done by its authority and procurement."

Another case I will refer to is the decision of our Court of Appeal in Provost, Alvan Ikoku College of Education v. Amuneke (1991) 9 NWLR 49, 58 where it was contended that the provost, Registrar and Academic Board of the Alvan Ikoku College of Education could not be sued. Kolawole, J.C.A. delivering the ruling of the court (with which I was in full agreement) observed:

"I shall now examine the complaint which is the basis for the proposed appeal. It is that the learned trial Judge erred in holding that the

defendants are legal persons and proper defendants who can be sued.

Section 3(1) of the Alvan Ikoku College of Education Edict, 1973 (Edict No.II of 1973) provides that the College shall be a body corporate name. Section 20 established the Academic Board; section 24 as amended by Edict No. 16 of 1974 provides for the duties of the provost of the college who shall be the academic and executive head of college, and shall be responsible for the day to day administration of the college. Section 5A of Edict No. 16 of 1974 which amended the principal Edict provides for the office of the Registrar of the college; it provides as follows:-

'There shall be a Registrar of the College who shall be the Secretary to the council and shall conduct the correspondence and record all the proceedings of the council and perform such other duties as the council may from time to time direct.'

It is clear that section 20 and section 24 of Edict No. II of 1973 as amended by Edict No.16 of 1974 which established the offices of the Provost, the Registrar and the Academic Board listed various functions which the various offices are empowered to discharge though they are incorporated. It is therefore reasonable to imply that these bodies in the discharge of these functions will exercise the rights of legal persons, and will, if the nature of the duty discharged so involved, be suable in the courts, i.e. possess juristic personality. Fawehinmi v. Nigerian & ors Association & Ors. (No.2) (1989) 2 NWLR (Pt.105) 558 at 639 per Karibi-Whyte, J.S.C."

From all I have been saying above, I hold the view that upon the reading of the University of Jos Act as a whole, both the council of the University and the Vice-Chancellor, are by implication, given juridical personality that enables each of them to sue and be liable to be sued eo nomine. The learned trial Judge had held that the second defendant, that is, the council of the University "can be sued and is a proper party to this action." I entirely agree with this judgment of Ahinche, J. and find myself unable to accept the judgment of the Court of Appeal which held to the contrary.

Having concluded as above, I must necessarily disagree with the decision of the court below which held that the two defendants were not proper parties to the present proceedings. The court, per Katsina-Alu, J.C.A. held at page 101 of the record:

"The only person who can be an agent must be a legal person who can enter into contract agreement. In the context of this suit the Registrar

cannot be an agent of the University. In my judgment the contract agreement is null and void and since one of the parties thereto is not a legal person and in consequence that contract cannot be binding on the University. This is so because under the University of Jos Act No. 82 of 1979, it is only the said University which can sue and be sued, not even the council."

To hold as that court did that the Vice-Chancellor and the Registrar were not agents of the University when executing the contract with the plaintiff would be to overlook the clear provisions of the Act which, on a reading as whole, would leave one in no doubt that both of them were and remain agents of the University in the discharge of their official duties. The relevant provisions of the Act have already been set out in the earlier part of this judgment. I need not repeat them here. The general law is that a contract made by an agent, acting within the scope of his authority for a disclosed principal is, in law, the contract of the principal, and the principal and not the agent is the proper person to sue and be sued upon such contract. The exceptions to this general law do not apply here and therefore need not be discussed. The power to enter into contracts and to erect, provide, equip and maintain libraries, laboratories, lecture halls, halls of residence, etc. is made among the powers conferred on the University by section 3(1) of the Act. In the exercise of its powers the University must, of necessity, act through its officials who are its agents. Suffice it to say, therefore, that I agree with the finding of the learned trial Judge that both the Vice-Chancellor and the Registrar were, in respect of the contract with the plaintiff, agents of the defendants. As the contract is not one that is required by law to be under seal, it is not void for the reason that the seal of the University was not affixed thereto, as was erroneously held by the court below.

In view of the conclusions I have just reached it goes without saying that the finding that the contract with the plaintiff was not executed by the defendants and that it is consequently null and void is erroneous and must be set aside.

I must not end this judgment without making some observations on the conduct of the defendants in this case. Parties filed and exchanged their respective pleadings and subsequently amended same. The case eventually proceeded to trial and plaintiff, after calling its witnesses, closed its case. The defence opened. It was at this stage that the defendants brought their application praying the trial court to dismiss or strike out the action for lack of competence. At the hearing of their application they raised issues clearly out of the

purview of their prayer. The learned trial Judge should not have entertained that application but should have proceeded with the trial to conclusion. See: Odivo v. Obar (1974) 2 S.C.23 31 where Elias, C.J.N. delivering the judgment of this court said:

"We think that the learned trial Judge was clearly in the wrong when he decided to uphold the preliminary objection of counsel for the defendants at the particular stage in the proceedings when the Statement of Defence had already been filed and the issues joined between the two parties. The learned trial Judge should have pointed out to counsel for the defendants that the preliminary objection should have been made after the delivery to him of the Statement of Claim and before filing his Statement of Defence. Another important point in this appeal is that, once issues had been joined between the parties including an allegation by the 1st defendant that the marriage between him and 2nd defendant had been made under customary law, it was wrong to entertain a preliminary objection without any further evidence on the merits."

They failed in their application and went on appeal to the court of appeal where they repeated their delay tactics by raising issues completely out of the range of the only ground of appeal filed by them and on issues not even covered by the pleadings. The court of appeal in turn did not help matters by going on a voyage of its own in considering issues not joined by the parties on their pleadings such as the admissibility of the contract document. The total effect of all these is that a case that could have been concluded by the end of 1986 or early 1987 remains to be concluded in January. The proper stage at which the defendants ought to have raised objection to their being sued was at the very early stage. They could have entered a conditional appearance and contest the issue before pleadings were filed and trial commenced. See: Adigun v. Ayinde & Ors. (1993) 8 NWLR 516. The main issues raised by them both in the trial court and in the Court of Appeal are not issues to be tried on the motion brought by them but issues essentially for trial on the pleadings. To have waited up to the stage they raised their objection is a tactic employed to delay the conclusion of the trial and this, in my respectful view, is an abuse of the process of the court. They should not have been allowed to use the court's process to stultify the early adjudication of the action. As it is now, the case will have to be remitted to the court of first instance for the completion of the trial. I rather say no more on it.

In conclusion, I allow this appeal, set aside the judgment of the court below and restore the ruling of the trial court dismissing defendants' application to strike out or dismiss the suit. The case is remitted to the trial court for trial to be completed and I direct that the concluding part of trial be embark

upon with utmost despatch.

I award to the plaintiff N1,000.00 costs of this appeal and N800.00 costs of the proceedings in the Court of Appeal.

5 **UWAIS JSC**

I had the privilege of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree with the reasoning and conclusion therein. I do not wish to add anything more.

10 The appeal is hereby allowed. The decision of the Court of Appeal is set aside. The cases hereby remitted to the High Court for Ahinche J to conclude the hearing before him. I award costs of N1,000.00 against the respondents.

15 **KUTIGI JSC**

I read in advance the judgment delivered by my learned brother Ogundare J.S.C. I agree with his reasoning and conclusions. I will also allow the appeal and make the same consequential order as contained in the lead judgment.

I endorse the order for costs.

25 **MOHAMMED JSC**

For the reasons set out in the judgment of my learned brother, Ogundare, JSC., and the concurring judgments of my learned brothers which I have had the advantage of reading, in draft, I entirely agree that this appeal ought to be allowed.

35 Reading through the University of Jos Act, 1979, one needs no magnifying glass to establish that the Court of Appeal was in error to hold that the University of Jos and Council of the University of Jos are not proper necessary parties to this suit. It is patently clear that both defendants to this suit are juristic persons. See S.2(1) (b) and 5(1) of the Act.

Another erroneous decision of the court below is where, in the lead judgment, the learned trial Justice of the Court of Appeal, Katsina-Alu said:

"The only person who can be agent must be a legal person who can enter into contract agreement. In the context of this suit the Registrar cannot be agent of the University. In my judgment the Contract Agreement is null and void since one of the parties thereto is not a legal person and in consequence that contract cannot be binding on the University."

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Under section 2(1)(h) of the University of Jos Act, persons holding the offices constituted by the First Schedule to the Act had been legally defined as Principal Officers of the University. Under paragraph 5(1) of the First Schedule the Registrar has been mentioned to the Chief Administrative Officers of the University and shall be responsible to the Vice Chancellors for the day to day administrative work of the University. He is the Secretary to the Council, the Senate, Congregation and convocation. It is an erroneous decision therefore to say that the Registrar of a University is not a legal person and cannot be agent of the University.

15

For the fuller reasons in the lead judgment, I will allow this appeal and abide by all the consequential orders made in the lead judgment, including assessment and award of costs.

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ONUJSC

In the High Court of Plateau State in the Jos Judicial Division holden at Jos, the plaintiff, appellant herein, claimed jointly against the defendants now respondents N1,358,000.00 being general damages for breach of contract, overhead costs for delay in payment, current value of machines and equipment, unpaid money for work done etc. Pleadings were ordered, filed and exchanged and the case went to trial. After the appellant had called five witnesses and closed its case, the respondents called two witnesses. At that point in time, learned counsel for the respondents brought a motion asking inter alia to have the case struck out and/or dismissed. It was eventually refused. An appraisal of the facts of the cases, however imperative for a better appreciation.

35

Briefly stated, the facts of the case which took root way back in 1982 reveal that the Vice-Chancellor of the 1st defendant University (originally not a party to the agreement) entered into contract with the appellant, a limited liability company, for the construction of the Faculties of Environmental Sci-

ences and Education at 1st respondent's permanent site. It was a job of a magnitude for which a mobilization fee to the tune of N2.8 million was paid to the appellant and for which one of its contract terms made provision for arbitration as a precondition for the settlement of any dispute arising therefrom.

5 No sooner had appellant's workers commenced work on the work site than the customary owners thereof overran the area, man-handled and chased them out. Because it became unsafe to work at the site therefore, work in consequence was delayed for over six months, resulting in financial loss arising from the nonpayment of compensation, coupled with failure on the
10 part of the respondents to make interim payments for work already done. The appellant finding the situation unbearable to cope with, instituted an action against both respondents initially for the sum of N2.8 million but sub-sequentially for N1.4 million in the trial court inter alia, breach of the contract.

At the trial before Ahinche, J., after the appellant had closed its case,
15 the respondents called two witness and thereafter filed a motion pursuant to order 28 Rule of the Plateau State Court Civil Procedure Rules praying for the following reliefs:

"(a) Directing the Plaintiff to give security for cost in the matter.
20 (b) Striking out this action and/or dismissing on the ground that it is premature and/or incompetent"

At the hearing of the motion learned counsel for the respondents abandoned relief(A) while he argued relief (B) to conclusion.

25 The learned trial judge in his Ruling refused the application, said that he had jurisdiction to hear the suit which was competent and ordered the respondents to proceed with their defence.

Being dissatisfied with the decision, the respondents appealed to
30 the Court of Appeal (hereinafter referred to as the court below) on a long ground of appeal challenging the Ruling that the suit was competent and that the learned trial judge had jurisdiction to hear the action.

The Court below held, overturning the Ruling, that the case is incompetent, adding gratuitously and unsolicitedly among other things:

- 35 (1) that the contract was not executed by the parties to the action moreso as the seal of the University was not affixed thereto;
(2) that as the contract agreement was signed by the Registrar and not the Vice Chancellor, it was not executed by the parties to the suit;
(3) it was wrongly admitted in evidence that the both the Council of

the University and Vice-Chancellor are not legal persons.

The appellant was aggrieved by the decision of the court below and so appealed to this court on eight grounds. The parties thereafter filed and exchanged briefs of argument in accordance with the rules of this court. The eight issues, overlapping the eight grounds, submitted on behalf of the appellant by its learned counsel are:-

1. Whether the Court of Appeal had the jurisdiction to determine the issue of execution of Exhibit 1 or 15 by the Vice-Chancellor or the Registrar having regard to the only ground of appeal before them? 10
2. Even if the issue of execution of EXHIBIT 1 or 15 arose for determination in the appeal before the Court of Appeal (which is conceded) is not an issue which properly belonged to the determination in the High Court at the end of the trial after the whole evidence is considered? 15
3. Whether the decision of the Court of Appeal to determine the existence or non-existence of the contract the subject matter of this case between the parties on affidavit evidence and without the issue 1 set down as a preliminary issue for trial is wrong in law.
4. Whether the decision of the learned Justice of Appeal to strike out the names of the Defendants to this Suit is not wrong in law? 20
5. Whether the admissions by the 1st Defendant in paragraph 8 of the Further Amended Statement of the Defence that it paid to (sic) total sum of N5,678,868.80 to the plaintiff for work certified done under the contract document EXHIBIT 1 or 15 estops it on the doctrine of ratification from denying the existence or enforceability of a contract between it and the plaintiff. 25
6. Whether the 2nd Defendant is a juristic person who can sue or be sued in the performance of the statutory functions conferred on it by the University of Jos Act 1979. 30
7. Whether the decision of the Court of Appeal was not wrong in law when they held that the Vice-Chancellor and the Registrar cannot be agents of the University.
8. Whether the Court of Appeal has the jurisdiction to determine that Exhibit 1 or 15 was inadmissible in law and irrelevant when no ground of appeal complaining about the admissibility of the contract document was before them. 35

On behalf of the respondents, two issues only have been formulated

for determination, viz.

1. Were the learned trial Justice of the Court of Appeal right in holding as they did that the suit before the High Court was incompetent, having regard to the fact that the contract the subject matter of these proceedings
5 was not executed by the parties in the manner required by the University of Jos Act 1979 by virtue whereof the said court lack jurisdiction to entertain in the same?

2. If the answer to the foregoing is in the affirmative, then does it not
10 behove Your Lordship to dismiss this appeal as lacking in merit and/or substance in its entirety by affirming the decision of the Court of Appeal as aforesaid?

Before embarking on the consideration of this appeal I deem it pertinent to make brief comments on the conduct of learned counsel for the respondents. As a minister in the temple of justice the conduct of the learned counsel for the respondents who ought always to assist the court to arrive at a fair and just decision but not to thwart that aim has, in the instant case, not helped matters a little bit. This is because by the procedure he adopted in his
20 application to strike out or dismiss the suit as being incompetent, while at the same time not oblivious of the fact that the case was over half way through its life span. His action at that stage clearly amounted to an abuse of the process of court. This is the moreso when the proper stage for raising such a legitimate or judicious objection should have been either at the inception or early stages
25 of the proceedings, namely, by the respondents entering a conditional appearance and contesting the issue before even the pleadings were filed and trial commenced, not certainly when five witnesses for the appellant had been called and its case closed while two defence witnesses had been called on respondent's behalf. In order word, the issue raised in the motion stricto sensu
30 were not issues to have been raised to be tried at that stage but rather those trial in the substantive suit based on those issues strictly on the pleadings. See *Dipchairma & Anor. v. Ali & Anor.* (1974) 1 All NLR (part 2) 420 at 422. Furthermore, the learned trial judge ought initially to have realised that not only was the application to strike out and/or dismiss the suit vexatious (See
35 *Awojobi v. Ogbemudia* (1983) 8 SC 92 at 85) and giving it the treatment it legally deserved, but nothing more than a subtle attempt to delay the hearing thereof.

The preparedness of the trial court to hear the motion on notice at all,

even though in fairness to it, it had in its considered Ruling refused the application, coupled with the court below's setting of that decision on appeal, rather than accelerating the hearing of the case, has unfortunately ended up delaying it unjustifiably for many years. Even with regard to arbitration, the stage for insisting on its terms in Exhibit 1 or 15, in my view, had been surpassed and deemed to have been waived by the respondents. See *Ariori v. Elemo* (1983) 1 SC.20. The only option left for the learned Counsel for the respondents was to have gone on with the trial in the trial court to conclusion but not to circumvent its progress by an application of the type that has led to the appeal herein which has been time-wasting.

In the argument of this appeal which we heard on 1st and 2nd November, 1983, I prefer the issues raised and answered by the appellant in their brief to the two formulated and answered by the respondents. I wish to remark at this juncture, however, that the issues submitted on behalf of the appellant could have been contracted to between two and at most three instead of the eight proffered. As the purpose of issues for determination is to enable the parties narrow the issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity, a proliferation of issues ought not to be encouraged. See *Ogbuanyinya v. Okudo* (No.2) (1990) 4 NWLR (part 146) 551. In the instant case, as there are eight grounds of appeal to which each issue is apparently related, even though in the quest for brevity they could be fewer, no offence is meant in the eight issues formulated, except to say that a comprehensive and neater consideration of the eight issues herein, I will group 1, 2, 3, and 8 together; then issues 4, 5 and 6 together while issues 7 standing alone will be considered last. I will however proceed to mention in the course or dealing with these issues, instances which abound in this case of the court below dealing with issues which not placed before it and over which it had no business whatsoever considering in as much as such consideration clearly amount to a misdirection. See *Chief Frank Ebba v. Chief Ogoto & Anor* (1984) 4 SC.84 at 112.

ISSUES 1, 2, 3 and 8

I will begin the consideration of the above issues together by stating that Exhibit 1 or 15 refers to one and the same document, the contract document or the agreement between the appellant and the respondents and which by and large has given rise to the case herein on appeal. In the application of the respondents for striking out/or dismissing the case founded upon affidavit evidence, the issue whether Exhibit 1 or 15 (the contract document) was not executed by 1st respondent but rather the Registrar, with utmost due respect, was not raised by the respondents in the trial High Court. That being so, leave of the court below is necessary to canvass the point on appeal.

Similarly, the issue of whether the Vice-Chancellor or the Registrar signed Exhibit 1 or 15 was not before the court below; hence that court clearly lacked jurisdiction to entertain the Limited none of the grounds of appeal was filed raising that issue. Thus, in *Osinupei v. Saihu* (1982) 7 S.C.104; *Western Steel Works Ltd. v. Iron & Steel Workers Union* (1987) 1 NWLR (Pt.49) 289; *Government of Gongola State v. Tukur* (No.2) (1987)2 NWLR (Pt. 56) 308 and *Idike v. Erisi No.2* (1988) 3 NWLR (Pt.78) 568 to mention but a few, it has been established that issues or questions for determination in an appeal are framed from the grounds of appeal; consequently, any issue, argument or other part of a brief which has no ground of appeal for which no leave has been sought and obtained is not only incompetent but completely valueless in the appeal. It is strike law that an appellant court must confine itself to adjudicating upon questions raised (1959) SCNLR 255 by the parties to the exclusive of other questions which they do not advance. See *Ijale v. Leventis* (1959) 4 FSC.108; *Ejowhomu v. Edoketer Limited* (1986)5 NWLR (Pt.39) 1 at 16 and *Nasumal & 15 Sons v. N.B.T.C. Limited* (1989) 2 NWLR (Pt.106) 730 at 742-755.

As I pointed out herein before in this judgment, the application to strike out/dismiss this action was brought by the respondents after trial in the trial court commenced, the appellant called five witnesses and closed its case while the respondents opened their defence and called two witnesses. The issue of execution of Exhibit 1 or 15 irrespective of whether or not it was raised in the court below is a matter which, in my view, belonged to the determination of the High Court at the end of the trial after the whole evidence would have been considered by the trial judge. It is not in my opinion, a proper exercise of judicial discretion to isolate one issue after the appellant had closed his case and the respondents had commenced their defence, for the trial court as happened in the instant case, to determine that issue on affidavit evidence and for the court below to decide that point on to finality to appeal; thus brushing aside all the evidence hitherto adduced at the hearing of the unconcluded substantive suit. The only situation I can conceive of that the High Court is permitted to isolate such an issue for trial is upon a party applying to set down that point of law as a preliminary issue for determination. Even then, such an application can only be granted if the point sought to be set down will be decisive of legation between the parties. Furthermore, as there was no application before the trial court to set down the issue of the existence or non-existence of Exhibit 1 or 15 as a preliminary point of law, the court below had no jurisdiction to determine the point. In order to prove the execution or non-execution of Exhibit 1 or 15, the issue in the instant case can only be determined by the High Court after taking oral evidence. To successfully impugn

Exhibit 1 or 15, the court below for its part must have been in possession of evidence led at the trial court establishing or confirming its execution or non-execution while seized of the appeal for it to be able to pronounce on it. See Ojibah v. Ojibah. (1991) 5 NWLR (Pt.191) 296 at page 310-311. See also section 99 of the Evidence Act. In the instant case, the duty imposed by the provision of Section 99 (ibid) which enjoins that -

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"99 If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's hand-writing must be proved to be in his hand-writing"

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has not been discharged to make Exhibit 1 or 15 subject of evaluation or even comment. Thus, the court below grossly erred to have said that:

"It is clear from Exhibit 1 or 15 the contract agreement the subject-matter of these proceedings was not executed by the parties to this action as pleaded in paragraph 5 of the Amended Statement of Claim. The contract was therefore irrelevant and should not have been admitted in evidence".

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Moreover, since the lone ground of appeal attacking the decision of the trial court and argued in the court below did not complain about the admissibility otherwise of Exhibit 1 or 15, the court below had no jurisdiction to entertain the issue which was clearly not before it. See Ejowhumu v. Edo Ltd. (supra). Besides, since Exhibit 1 or 15 had been received in evidence at the trial of the substantive case in the trial court without objection, the case of Dobadina Family v. Ambrose Family (1969) NMLR 25 relied upon by the court below to prop its case, is with due respect, distinguishable and inapposite to the case in hand.

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ISSUES 4, 5 and 6

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True it is, as pointed out herein before, that Exhibit 1 or 15 was not executed by the parties to this suit; neither is the seal of the 1st respondent affixed to it. Albeit, Rules of the High Court of Plateau State, 1987 (hereinafter referred to as the Rule) make provisions for Parties Joinder, Non-joinder and misjoinder. For instance, Order 11 Rule 3 of those Rules provides:

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"3. All persons may be joined as defendants against whom the right to any relief is alleged to exists, whether jointly, severally or in alternative. And

any judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.

Order 11 Rule 5(2) of the Rules states:

5 *"The court may, at any stage of the proceedings, and on such terms as appear to the court to be just, order that the names of any party or parties whether as plaintiffs or defendants, improperly joined, be struck out."*

Order 11 Rule 16 of the Rules provides:

10 *"Any application to add to or strike out or substitute a plaintiff or defendant may be made to the court or a judge in Chambers at any time before the trial by motion or summons, or in a summary manner at the trial of the action."*

15 Now, the combined effect of the Rules set out above is that a party seeking to strike out the name of another party or parties can only be made by a court on an application filed by the party seeking that prayer or suo motu by the court after both parties have been heard, In the instant case, no prayer was sought by the respondents in the trial court to strike out their names as parties
20 on the grounds of joinder or misjoinder. Thus, the order made by the court below striking out the names of the respondents as parties when no such point arose in the appeal is, with due respect, wrong in law. The Rules of court do not envisage a situation where after a plaintiff has closed its case and the defendants, have opened their defence, as in the instant case, that the name of
25 a party will be struck out. See order 11 Rule 5(1) and order 11 Rule 16 (ibid) and Ekpenyong & Ors. v. Nyong (1975) 2 SC.71 at 80.

The court below, while in fairness to it rightly found that the 1st respondent is a juristic person and so can sue and be sued vide section 1(1)
30 and (2) of the University of Jos Act, No.82 of 1979, went to hold, wrongly in my view, that since nowhere was the seal of 1st respondent affixed to Exhibit 1 or 15, the parties to the action were not proper parties before the court. As to who is "proper party", the settled principle of law relating thereto has been re-stated in Green v. Green (1987) 3 NWLR (Pt 61) 480 at 493 following Peenok
35 Hotel Presidential (1983) 4 NCL R 122 that what determines it is the subject-matter of the action.

Now, in the cases in hand, the appellant in its amended Statement of Claim (See pages 1-11 of the Record) claims against both respondents as

defendants damages for breach of contract. The respondents in paragraph 9 of their Further Amended Statement of Defence admitted paying the sum of N5,678,868.80 for mobilisation fees, advance payments and fees for work certified completed by the consultants. See page 13 of the Record. These set of pleadings show conclusively the existence of a contract exemplified in Exhibit 1 or 15 between the 1st respondent, whose organ and part as I shall seek to demonstrate shortly hereunder 2nd respondent is. Even if Exhibit 1 or 15 was not properly executed (which is not conceded) the subsequent payment of N5,678,868.80 by the 1st respondent to the appellant as mobilisation fees, advance payments and fees for work certified completed, the 1st respondent had ratified the contract between it and the appellant. See *Eastwood v. Kenyon* (1849) 11 A.D. & E. 438,451. Indeed, in the law of agency, ratification will be implied from any act showing an intention to adopt the transaction, even silence or mere acquiescence and if an act is adopted at all, it will be held to have been adopted throughout. See *Hovib v. Pack* (1806) 7 East 164; *Bank Mell Iran v. Barclays Bank D.C.O* (1959) T.L.R. 1057 at 1063 and *Chitty on Contracts*, 23rd Edition, Volume 2, paragraph 18, page 17. It is trite law that an effective ratification, as herein demonstrated, places all the parties in a position similar to that which they have occupied at the material time if the agent had had actual authority to perform the acts ratified. See *Bolton Partners v. Lambert* (1899) 41 Ch.D 295 and *Hon. Justice Kalu Anya v. Dr. Festus Iyayi* (1993) 7 NWLR (part 3(5)) 290. From the foregoing, I am of the firm view that the failure of the court below to consider the effect of the admission by the respondents and averments in the pleadings before the trial court led them to an erroneous conclusion that the respondents are not only proper parties but also necessary parties to the action giving rise to the appeal herein. See *Green v. Green* (supra).

With regard to the position of the 2nd respondent by the combined effect of sections 2(1) and 5(1) of the University of Jos Act, the council is a juristic person who can be sued in relation to its functions conferred on it by the Act. The two sections provide:

Section 2(1) The university shall consist of:-

(a) A Chancellor-

(b) A pro-Chancellor and a Council

(c) A Vice -Chancellor and Senate and others."

Section 5(1):-Subject to the provisions of this Decree (now Act) relating to the visitor; the Council shall be the governing body of the University and shall be charged with the general control and superintendence of

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the policy, finances and poverty of the University including its Public rela-
tions."

(Italics above is mine).

See *Thomas v. Local Government Service Board* (1965) NMLR 310 at
5 312 where, in an analogue situation, this court (per Brett, JSC) said:

*"We reject the submission that a statutory body with functions like
those of Local Government Service Board is not labial to be sued for decla-
ration and we do so more readily since the statutory provisions relating to
10 the appellant's office are such that injustice might result if the board could
not be made a defendant to any kind of proceedings"*

It is in my view inconceivable that the 2nd respondent being the gov-
erning body of the University charged with the general control and superin-
15 tendence of policy, finance and property of the University by virtue of Section
5(1) (ibidi) is not amenable to suit. It is in that regard that I hold that the 2nd
respondent is not only a proper but a necessary party, its juristic position
having been defined by statute. The cases relied on by the court below in
holding that the 2nd respondent is not a juristic person are distinguishable
20 from the instant case.

On the effect of absence of a seal on Exhibit 1 or 15, since this as an
issue was not raised in the trial court but it was the court below that suo motu
raised and considered it when no leave to canvass it as a new point was
25 sought by the respondents (See *Commissioner of Works, Benue State v.*
Devcon Development Consultants Ltd. (1988) 3 NWLR (Pt 83) 407 at 405 and
420: *Umar v. Bayero University, Kano* (1988) 4 NWLR (Pt. 86) 85, at 87 and *Ugo*
v. Obiekwe (1989) 1 NWLR (Pt.99) 566 at 569 and 582) it was at most specula-
tive. The court, it must be stressed, is only entitled to rely on the evidence
30 before it and not to speculate. See *Seismographic Ltd v. Ogheni* (1976) 4 SC.85
at 101 and *Overseas Construction Ltd v. Creek Enterprises Ltd.* (1985) 3 NWLR
407. Indeed, as the issue of seal of the University being affixed to Exhibit 1 or
15 was clearly not before the court below because no ground of appeal was
filed raising the point, the finding thereon was the grant of a relief to the
35 respondents which they never sought. See *Ekpeyong v. Nyong* (supra) at
page 80 and *Makanjuola v. Balogun* (1989)3 NWLR 192 at 206.

Besides, when it is realised that in modern times the absence of a seal

(usually red wafer, wax or an impression or a stamp embossed on a document) is no longer rendered sine qua non the absence of a seal in the instant case does not render Exh. 1 or 15 invalid. For Sir David Cairns in First National Securities Ltd v. Jones (1978)2 WLR 475 at page 484 put it:

"Moreover while in 1888 the printed indication of a locus sigilli was regarded as being merely the place where a seal was to be affixed, I have no doubt that it is now regarded by most business people and ordinary members of the public as constituting the seal itself. I am sure that hand documents intended by all parties to the deed are executed without any further formality than the signature opposite the words signed and delivered usually in the presence of a witness, and I think it would be lamentable if the validity of documents so executed would be successfully challenged."

In addition to the above are the statutory provisions enriched in sections 22(2) and (3) of the University of Jos Act 1979 read together with section 126 of the Evidence Act which do not make the affixing of a seal to a document such as Exhibit 1 or 15 mandatory. Section 22(2) of the Act (ibid) states:

"Any document purporting to be the copy of the document under the seal of the University shall be received in evidence and shall unless the contrary is proved be deemed to be so executed"

Section 22(3) of the Act Provides:

"Any contract or instrument which, if made or executed by a person not being a body corporate would not be required to be made or executed on behalf of the University by any person generally or specially authorised to do so by the council."

Besides, the testimonium clause of Exhibit 1 or 15 at page 18 of the Record more or less makes the affixing of a seal a foregone, conclusive and unquestionable issue thus:

"In witness whereof the parties hereto have caused their respective Common Seals to be hereunto affixed (or have hereunto set to their respective hands and seals) the day and year first above written."

The sum total of the read along with the provisions of section 126 of the Evidence Act, which provides that -

"When any document purporting to be, and stamped as deed, appears or is proved to be or to have been signed and duly attested, it is presumed to have been sealed and delivered although no impression of a seal appears thereon".

Puts to rest any further controversy relating to the absence of 1st respondent's seal on Exhibit 1 or 15 to need any more argument.

Issue 7

This is the issue which pass the question as to whether the Vice-
5 Chancellor or the Registrar could be agent of the University.

The University of Jos being an artificial legal entity can only enter into a contract through its human agents, namely officers and servants. See Bolton Engineering Company Ltd v. Grahams and Sons. (1957) Q.B. 159 and 10 Lennards Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. The conclusion arrived at the court below to effect that

*"The only person who can be agent must be a legal person who can enter into contract agreement. In the context of this suit the Registrar cannot
15 be agent of the University. In my judgment the Contract Agreement is null and void since one of the parties thereto is not a legal person and in consequence that contract cannot be binding on the University."*

Is not only erroneous but constitutes a misdirection. The University of Jos being an artificial legal entity can only enter into contracts through its
20 agents, namely its officers and servants. This established principle of law is given statutory efficacy by section 3(1) of the University of Jos Act, 1979 which stipulates that-

*"The University shall have power to enter into contracts, establish
25 trust, act as trustees solely or jointly with any other person and employ and act through agents"*

(Italics is mine for emphasis)

From the above, it is glaring that the Vice-Chancellor, and the Registrar
30 as principal officers of the University acted in their official capacities. It needs to be emphasised that were Exhibit 1 or 15 to be held to be defectively executed, which is not conceded, the contract cannot under any guise be held to be null and void but rather voidable at the instance of the respondents who chose to ratify same by making payments of N5,678,868.80 for work certified to
35 have been completed by the respondents' consultants on the basis of a quantum meruit .

The result is that Issue 7 is unanswered in the negative.

Having before now been privileged to read in draft, the lead judg-

ment of my learned brother Ogundare, J.S.C., just delivered with which I am in entire agreement and for the fuller reasons set out therein, this appeal succeeds and it is allowed by me. I subscribe to all the consequential orders set out therein inclusive of those as to costs.

Appeal Allowed.

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