

**SUPREME COURT OF NIGERIA**  
18TH DECEMBER, 1998. SC. 280/1989  
**CORAM:- S. M. A. BELGORE, A. B. WALI, M. E. OGUNDARE,**  
**E. O. OGWUEGBU, S. U. ONU, JJSC.**

OGBONNAYA GODWIN ..... DEFENDANT/APPELLANT  
AND  
THE CHRIST APOSTOLIC CHURCH ..... PLAINTIFFS/  
RESPONDENTS

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***APPEALS** - Concurrent findings - Where not appealed against - And there is no proof of miscarriage of justice - Supreme Court will not disturb the findings.*

***APPEALS** - Grounds of appeal - Leave - Grounds that deal with questions of fact - Instead of law alone as they were framed - Will be struck out for failure to obtain leave.*

***APPEALS** - Issue - Newly raised before the Supreme Court - Without leave - Will be struck out for being incompetent.*

***APPEALS** - Issues - That were not related to any ground of appeal - Will be struck out though the issues were argued.*

***AGENCY** - Account - Agent is to keep his principal's money separate from his - An accounting party is to be constantly ready with his accounts.*

***PLEADINGS** - Sufficiency - Issue of defendant's accountability - Was sufficiently pleading and established by evidence.*

**FACTS**

The defendant/appellant was a pastor in the plaintiffs'/respondents' church. He was also the Assistant General Superintendent of the

church and in that position supervised all the churches in the then Anambra and Imo States. Defendant occupied property of the church at No. 92 Agbani Road Enugu as his parsonage. Following his refusal to go on transfer to Kano, he was dismissed by the plaintiffs by a letter Exhibit "G". Defendant refused to vacate the parsonage until he was evicted through court action. He subsequently established his own church called Christ Ascension church with branches in the former Anambra and Imo States. The plaintiffs then instituted an action against the defendant before the High Court Enugu claiming inter alia, an order compelling the defendant to render an account and hand over to the plaintiffs all the property of the church which came into his possession by virtue of his employment in the church and an account of all monies standing to the credit of the Church.

The defendant denied being an employee of the plaintiffs and in possession of any of their property. He contended that he is not an accounting party. The trial court dismissed the plaintiffs' claims in their entirety. Their appeal to the Court of Appeal succeeded to the extent that the defendant was ordered to render account to the plaintiffs in respect of the two bank accounts at the ACB Uwani and CCB Okpara Avenue Enugu, respectively. Being dissatisfied, the defendant has appealed to the Supreme Court raising 3 issues.

#### **ISSUES FOR DETERMINATION**

*(1) Whether the plaintiffs had made out a case against the defendant for account and whether the defendant had ever failed in his duty to render an account of the two Bank accounts at African Continental Bank and Co-operative and Commerce Bank Ltd. Uwani Enugu.*

*(2) Whether the case is properly constituted when all the signatories to the two Bank accounts were not made parties in the case.*

*(3) Whether it is competent for the Court of Appeal to order the defendant alone to render an account at the African Continental Bank Ltd. Uwani Enugu and Co-operative and Commerce Bank Ltd., Okpara Avenue, Enugu when all the signatories to the two accounts including the Area Treasurer of the Christ Apostolic Church were not before the Court of Appeal.*

**HELD** (Unanimously dismissing the appeal per lead judgment of OGWUEGBU JSC)

***Appeals - Concurrent findings***

1. These are concurrent findings of the two lower courts. The defendant did not appeal against those findings of the learned trial judge in the court below. As a general rule, this court will not disturb those findings in the absence of proof of some miscarriage of justice. We will not depart from the practice as there is no justification to do so. (p. 2474 A)

***Pleadings - Sufficiency***

2. I am satisfied that the plaintiffs pleaded sufficient facts showing that they are entitled to account and that the defendant is an accounting party. See Levy v. Goldhill (1917)2 Ch. 297 and Cramb v. Godwin (1919)35 T.L.R.447. They led evidence in support of the averments and the courts below found in their favour. (p. 2475 B)

***Agency - Account***

3. It is the duty of every agent to keep the money and property of his principal separate from his own and from that of any other person. The right of the principal to have such an account rests upon the fiduciary relationship existing between him and his agent which term includes any person who acts for another in the capacity of deputy, steward, rent collector or any other agent or trustee. See Clarke v. Tipping (1884) 50 E.R. 352 and Makepeace v. Regers (1865) 46 E.R. 1850. It is the first duty of an accounting party to be constantly ready with his accounts. The defendant has not shown any willingness to do so and I am satisfied that he neglected to do so. (p. 2477 D)

***Appeals - Grounds of appeal***

4. I have examined the three grounds of appeal and the question to be decided is whether they are caught by the objections raised by learned counsel for the plaintiffs. Are they grounds outside the provisions of section 213(2) (a) which require leave under section 213(3) of the Constitution? Grounds (i) and (ii) do not involve questions of law alone.

They deal with the consideration of the evidence and involve questions of fact i.e. whether there should have been a finding that the defendant should not have been ordered to render account. The two grounds of appeal do not involve questions of law alone although they were so framed.

B See Akwiwu Motors Ltd. v. Songonuga (supra). I will therefore strike out the first two grounds of appeal which were filed without leave of this Court of Appeal. Additionally, no issue was formulated in respect of ground two. It would have been deemed abandoned if it were a competent ground of appeal. (p. 2478 G)

***Issue - Newly raised before the Supreme Court***

D 5. The issue of joinder of the co-signatories of the Bank Accounts was not raised by the Court of Appeal. The parties did not also raise it in the proceedings. The defendant even denied being a signatory to the various Bank Accounts. It was his witness (D.W.1) who testified that the defendant was one of the four signatories. Ground three of the grounds of appeal which was raised for the first time in this court and without the E leave of this court or the court below is incompetent and is accordingly struck out. The preliminary objection is well taken and it is upheld. See Popoola & Ors. v. Adeyemi & Or. (supra). (p. 2479 C)

F ***Issues - That were not related to any ground***

G 6. The defendant argued the questions of lapse of time and waiver in his brief of argument. The points were not related to any of the grounds of appeal. They go to no issue and are therefore discountenanced. See Bamgboye & Ors. v. Olanrewaju (1991) 4 N.W.L.R. (pt. 184)132 at 152 (p. 2479 F)

**REPRESENTATION**

G U. E. Peter-Okoye (Mrs.) for the Defendant/Appellant  
H Kola Awodein for the Plaintiffs/Respondents

**CASES REFERRED TO**

Oke v. Eke (1982)12 S.C. 228

Akpasubi v. Unweni (1982) II S.C. 132.

Levy v. Goldhill (1917)2 ch. 297

Cramb v. Godwin (1919)35 T.L.R.447

B

Clarke v. Tipping (1884) 50 E.R. 352

Makepeace v. Regers (1865) 46 E.R. 1850.

Bamgboye v. Olanrewaju (1991) 4 N.W.L.R. (pt. 184)132 at 152

Fadiora v. Gbadebo (1978) 3 S.C. 219

C

Abinabina v. Enyimadu 12 W.A.C.A. 171

Monodu v. Momoh (1991) 1 N.W.L.R. (Pt. 169) 608 at 620 - 621

Ekpere v. Aforije (1972) 1 All NLR (part 1) 220

Green v. Green (1987) 3 NWLR (part 61) 480 at 497

D

**LEAD JUDGMENT BY OGWUEGBU JSC**

The plaintiffs sued the defendant in the Enugu High Court claiming -

(a) an order of court compelling the defendant to render an account and hand over to the plaintiff all the property of the Church which came into his possession by virtue of his employment in the church including the official seal of the church, motor vehicles, office equipment, files, books records, electric generating plant, loud speakers, et cetera, a list of which was filed with the plaintiffs' statement of claim dated 5th September,. 1980.

(b) An account of all monies standing to the credit of the church both in the bank and in the personal custody of the defendant and/or his treasurer as at the 29th of November, 1979 and payment over to the plaintiffs of the balance so found.

(c) an injunction restraining the defendant by himself or through his servants, agents and privies from molesting the members of the Christ Apostolic Church on any of their churches and parsonages in Anambra State or in any other manner whatsoever interfering with the worship of the said members of the church in the plaintiffs' church houses at Abakaliki, Enugu and throughout Anambra State.

Pleading were ordered, filed and exchange, filed and exchanged. The case proceeded to trial before Okadigbo, J. At the close of hearing he dismissed the claims of the plaintiffs in their entirety. They appealed to the Court of Appeal and the appeal succeeded to the extent that the defendant was ordered to render account to the plaintiffs in respect of the two bank accounts at the African Continental Bank Ltd., Uwani, and Co-Operative and Commerce Bank Ltd., Okpara Avenue, Enugu respectively. Aggrieved by that decision, the defendant has appealed to this court.

Briefs of argument were filed in compliance with the rules of this court. From the three grounds of appeal filed, the defendant submitted the following issues for determination in the appeal:-

(1) Whether the plaintiffs had made out a case against the defendant for account and whether the defendant had ever failed in his duty to render an account of the two Bank accounts at African Continental Bank and Co-operative and Commerce Bank Ltd. Uwani Enugu.

(2) Whether the case is properly constituted when all the signatories to the two Bank accounts were not made parties in the case.

(3) Whether it is competent for the Court of Appeal to order the defendant alone to render an account at the African Continental Bank Ltd. Uwani Enugu and Co-operative and Commerce Bank Ltd., Okpara Avenue, Enugu when all the signatories to the two accounts including the Area Treasurer of the Christ Apostolic Church were not before the Court of Appeal.

The plaintiffs identified two issues as arising for determination in the appeal. The plaintiffs' issue number two covers issue numbers two and three formulated by the defendant and I will consider the defendant's last two issues in the manner formulated in the plaintiffs' second issue. The plaintiffs' issues for determination read:

*"(1) Whether the lower court was on the evidence right in ordering the defendant to render account in respect of the two bank accounts at African Continental Bank Ltd. and co-operative and commerce Bank Ltd.*

*(ii) Whether the case was properly constituted in the absence of*

*the joinder of the other signatories to the action."*

A brief statement of the facts is desirable for the purpose of this judgment. The defendant was a pastor in the plaintiffs' church (Christ Apostolic Church of Nigeria). He was also the Assistant General Superintendent of the said church based in Enugu. He was ordained a pastor of the church in 1962. In his position as the Assistant General Superintendent, he supervised all the churches in the then Anambra and Imo States and occupied the property of the church at No. 92, Agbani Road, Enugu as his parsonage. As the Assistant General Superintendent of the plaintiffs' church, he had custody and possession of the church properties, documents of title, files and record books. Following his refusal to go transfer to Kano, he was dismissed by the plaintiffs with effect from 30th November, 1979 by a letter Exhibit "G". He also refused to vacate the parsonage at No. 92, Agbani Street, Enugu until he was evicted through court process. He established his own church called Christ Ascension Church thereafter with branches in the former Anambra and Imo States. Subsequently, the plaintiffs instituted the action giving rise to the present appeal and claimed the reliefs set out above. The defendant denied being an employee of the plaintiffs and in possession of any of the properties of the plaintiffs. It was also his contention all along that he is not an accounting Party.

It was submitted in the defendant/appellants' pleadings brief that it is not enough in a case for account for the plaintiffs' pleadings to allege merely that the defendant is an accounting party, that the pleadings must also allege that the defendant had been asked to render an account and that the defendant had been asked to render an account and that he defaulted. It was further submitted that the two ingredients must be shown in the plaintiffs' pleadings and proved before the court can order the defendant to render any account. The court was referred to paragraphs 17 and 18 of the further Amended Statement of Claim, the evidence of P.W.1 (Nelson Eku Udofia - the General Secretary of Christ Apostolic Church), P.W. 2 (Pastor Osita Collins Chukwuezie - Area Secretary), P.W. 3 (Abraham Onasanya Adebajo Olutimehin - General Superintendent), P.W.7 (Charles Okafor- a Supervisor at the A.C.B. Ltd., Uwani

branch, Enugu and D.W.1 (Pastor Samuel Orji - Area Treasurer). We were also referred to Bullen and Leake and Jacob's Precedents of pleadings, 12th edition at page 183 under the heading - ACCOUNT, Levy v. Goldhill (1917)2 Ch.297 and Cramb v. Goodwin (1919)35 T.L.R. 447.

B It was further submitted that the claim must show that the defendant failed in his duty in that he has not rendered proper accounts and that in this case no allegation was made in the pleadings that any account was demanded and that the defendant defaulted or neglected to render the same. We were again referred to the evidence of P.W. 1 where he testified that the plaintiffs did not write to the defendant for a settlement of account from 1962 to 1979 because there was no cause for that.

C It was also submitted that the plaintiffs having led the defendant for eighteen years to believe that there was no cause for them to demand settlement of account, they cannot now be heard to demand it from the defendant because they had waived it.

It was submitted in the plaintiff/respondents' brief that the plaintiffs' pleading was sufficient. The court was referred to paragraphs E 8,9,17 and 18 of the Further Amended Statement of Claim. It was submitted in the plaintiffs/respondents' brief that the averment in paragraphs 8,9,17 and 18 of the further Amended Statement of Claim to the effect that the defendant was dismissed in 1979 and he refused to hand over the properties of the plaintiffs in his custody implied that there was a demand for account and the default which led to the institution of the action. It was further submitted that the failure of the plaintiffs to demand an account for eighteen years did not discharge the defendant from his liability to account and since he did not rely on waiver as a defence in the courts below, he cannot raise it here without the leave of this court. F The case of Burdick v. Garrick (1870) L.R. 5 Ch. App 233 at 243 was cited and relied upon. G

This appeal revolves on the broad question of whether the defendant was an accounting party and if so, whether he rendered the accounts at the two named banks. There is a subsidiary issue of the constitution of the suit.

Both the court of Appeal and the trial court found that the defen-

dant was an employee of the plaintiffs and therefore an accounting party. The learned trial judge found as follows:-

*"The learned counsel for the defendant further submitted that the defendant was not a servant of the plaintiffs. I am satisfied that this issue was one of the issues decided in the judgment of P.K. Nwokedi. J. (as he then was) in Suit No.E/357/79 (See Exhibit C). I refer particularly to page 15 in the said exhibit C where P.K. Nwokedi, J, observed inter alia as follows:-*

*"Finally as to the cobwebs above referred to. The question remains to be resolved whether the defendant is an employee of the Church. The defendant categorically denied being an employee of the church because according to him, he was not paid any salary. He admitted that he is doing the work of the church. That the defendant is an employee of the church and does his work under the authority of the headquarters is evidenced by Exhs.1,4,6, 14. .... I am satisfied that he is an employee of the Christ Apostolic Church."*

*I am satisfied that the issue whether the defendant was an employee of the plaintiffs between his ordination in 1962 and his dismissal in 1979 is, therefore, res judicata. I have already held that the defendant was an employee of the plaintiffs. What is now left to be determined was an accounting party and therefore accountable to the plaintiffs for the properties that came into his possession by virtue of his position as an employee of the plaintiffs..... I am therefore satisfied that the defendant was an accounting party who ought to account to his employer i.e. the plaintiffs in respect of his stewardship which of course includes accounting for all the properties and money that came into his possession while he was an employee of the plaintiffs"*

The court below affirmed the findings of the learned trial judge as follows:

*"The other issue for determination is the duty of the respondent to account to the appellants for all monies in his possession and the two bank accounts as a result of his administration as Assistant General Superintendent. .... As the trial judge rightly found that the respondent was an accounting party, I think there is merit in the appellants'*

complain (*sic*).

**These are concurrent findings of the two lower courts. The defendant did not appeal against those findings of the learned trial judge in the court below. As a general rule, this court will not disturb those findings in the absence of proof of some miscarriage of justice. We will not depart from the practice as there is no justification to do so.**

As to whether the plaintiffs made out a case against the defendant for account which he failed to render, I will refer to the averments in paragraphs 8,9,17 and 18 of the further Amended Statement of claim which read:-

*"8. On the dismissal of the defendant on the 29th of November 1979 he refused to hand over all the property of the church which came to his possession as the Assistant General Superintendent of the church in Anambra State to his successor, Pastor J.A. Ogunlade. The letter of dismissal is hereby pleaded and the defendant is hereby given notice to produce it at the hearing.*

*9. The defendant also refused to quit the parsonage whereupon the plaintiff sued him in Suit No. E/357/79 for possession of the premises and obtained judgment.*

*17. In addition to being possession of various church property the defendant was also the chief accounting officer for the revenues of the church derived from various sources, as examples, from donations, payment of tithes, harvest offerings, etc.*

*(18). The defendant also operated bank accounts for the funds of the church in the African Continental Bank Limited, Uwani, Enugu, and in the Co-operative and commerce Bank Limited, Okpara Avenue, Enugu. These accounts have on the application of the members of the church in Enugu been frozen by the bank until the determination of this case."*

In the above paragraphs of the Further Amended Statement of claim, it was averred that the defendant refused to hand over all the properties of the church in his custody as the Assistant General Superintendent to his successor, refused to vacate parsonage and as the chief

accounting officer for the revenues of the church derived from various sources, he operated bank accounts for those funds in African Continental Bank Ltd., Uwani, Enugu and Co-operative and commerce Bank Ltd. Okpara Avenue, Enugu. The learned counsel for the plaintiffs submitted in their brief that the word "refusal" in paragraph 8 of the Further Statement of claim implied that there was a demand. B

**I am satisfied that the plaintiffs pleaded sufficient facts showing that they are entitled to account and that the defendant is an accounting party. See Levy v. Goldhill (1917)2 ch. 297 and Cramb v. Godwin (1919)35 T.L.R.447. They led evidence in support of the averments and the courts below found in their favour.** D.W.1 (Pastor Samuel Orji) who was the Area Treasurer of the plaintiffs between 1972 and 1979 testified as follows: C

*"My duties as the Area Treasurer of Christ Apostolic Church from 1972 - 1979 included receiving salaries from the pastors in the Eastern District which included Anambra, Imo and Cross River States. .... This money represented the balance held by all the pastors from all the money collected from their respective branch churches in the District after they had spent part of the money collected in payment of their workers. The pastors paid the money to me at the end of every month when they attended the Pastors meeting at Enugu or elsewhere. I kept a book in which I recorded all these payments. .... From 1977 - 1979 I never failed at the end of every month to submit my statement of account in respect of the preceding month to the Area Secretary. I was ordained pastor by the defendant on 10-7-77 and in that capacity I attended all the monthly meetings of the pastors of the church."* D E F

Under cross-examination, the witness testified: G

*"As the Financial Secretary and also the Area Treasurer of the Church in the Eastern District I was responsible to the defendant and the Board of Pastors. .... Before I left the Christ Apostolic Church in October 1979, I handed over my duties, documents and Bank books to the defendant."* H

P.W. 2 (Pastor Osita Collins Chukwuezie) - the Area Secretary to the Eastern District testified as follows:-

"..... At the time that I was the Area Secretary of the plaintiff's churches in Enugu I served under the defendant. .... The defendant is the Assistant General Superintendent of the plaintiffs in Imo and Anambra. .... At the end of every month all pastors serving under the plaintiffs  
 B in Imo and Anambra would meet at the plaintiff's church in Enugu bringing with them all the money collected by them from the plaintiff's branch churches under their control. They then rendered an account of all the money they collected to the defendant. From all the money so collected and accounted for, the defendant paid all the Pastors including myself  
 C and other workers employed by the plaintiffs. The defendant also paid himself from that money. .... The defendant opened 2 bank accounts in the A.C.B. Ltd. and the Co-operative and Commerce Bank Ltd., Enugu with the money collected from the plaintiffs' pastors in the Eastern Dis-  
 D trict. The defendant was one of the signatories to these 2 bank accounts. .... I circulated at each of such meetings the minutes of the previous month's meeting. The statement of account in each month was prepared and submitted to me by the defendant. .... It was the defendant who  
 E ordained me as a Pastor in the plaintiffs' church in 1977. I was responsible to the defendant as the Area Secretary of the plaintiffs' and to nobody else."

It is clear that all the pastors in the Eastern District rendered  
 F accounts to the defendant who was the head of the plaintiffs' church in the Eastern District. Both P.W. 2 and D.W.1 (Area Secretary and Area Treasurer respectively) were responsible to the defendant and to no other person. The monthly statements of account which were attached to the minutes of the monthly meetings and circulated to the pastors in the  
 G Eastern District were internal arrangement between the defendant as the head of the District and his pastors. The D.W.1 only paid money into the two Bank Accounts which were operated by the Board of Pastors headed by the defendant. The defendant was one of the four signatories to the  
 H two accounts. Throughout the proceedings, there was no evidence as to what happened to the monies paid into the two accounts by the D.W.1. In paragraphs 11 and 12 of his Amended Statement of Defence, the defendant denied the averments in paragraphs 17 and 18 of the Further

Amended Statement of Claim and averred that he was never one of the signatories to the Bank Accounts of the church. The evidence of D.W. 1 exposed the untruthfulness of the defendant and the court below came to the right conclusion when it found as follows:

*"Why should the respondent deny being a signatory to the appellants' bank accounts other than to evade rendering an account. It is established by D.W.1's evidence that money came into the custody of the respondent on account of his office for and on behalf of the appellants. Once there is such evidence and the respondent being an accounting party must account to the appellants in respect of the money in the bank accounts and documents handed to him by D.W.1. He was the chairman of the Board of Pastors and therefore the person at the head of the signatories to those accounts in the two banks. Incidentally all the other signatories left Christ Apostolic Church to join the respondent in his Christ Ascension Church."*

**It is the duty of every agent to keep the money and property of his principal separate from his own and from that of any other person. The right of the principal to have such an account rests upon the fiduciary relationship existing between him and his agent which term includes any person who acts for another in the capacity of deputy, steward, rent collector or any other agent or trustee. See Clarke v. Tipping (1884) 50 E.R. 352 and Makepeace v. Regers (1865) 46 E.R. 1850. It is the first duty of an accounting party to be constantly ready with his accounts. The defendant has not shown any willingness to do so and I am satisfied that he neglected to do so.**

On the constitution of the suit when the other signatories to the bank accounts were not made parties, learned counsel for the plaintiffs raised a preliminary objection to issue number two which was formulated from ground three of the defendant's grounds of appeal. Notice of the objection was given in the plaintiffs' brief. It was contended in the plaintiffs' brief that the question of non-joinder of other signatories to the bank accounts is a fresh point not raised in the courts below, that such an issue cannot be raised for the first time in this court without the leave of

the court and since no leave was obtained, the issue should be struck out.

Objection was also raised in respect of the first and second grounds of appeal. It was submitted that the two grounds of appeal raised issues of mixed law and facts and the defendant not having obtained the leave of  
 B either the Court of Appeal or this court before filing the appeal as required by section 213(3) of the constitution of the Federal Republic of Nigeria, 1979, they are incompetent and should be struck out. The learned counsel for the plaintiffs referred us to the cases of Akwivu Motors Ltd. v. Sangonuga (1984) 5 S.C. 184, Ojeme & Ors. v. Momodu 111 & Ors.  
 C (1983) 3 S.C. 173, Ajuwon v. Adeoti (1990) 2 N.W.L.R. (pt. 132) 171 at 384-385, Carlen Nigeria Ltd. v. Unijos (1994) 1 N.W.L.R. (Pt. 323) 831 at 665 and Olu of Warri v. Kperegbeyi (1994) 4 N.W.L.R. (Pt. 339) 416.

It was submitted in the defendant's reply brief that grounds (1)  
 D and (ii) of the grounds of appeal were based on allegation of errors deduced from conclusions on undisputed facts and that they were centered on the conclusions of the court below as deduced from the evidence and facts available to the trial judge. We were urged to hold that they were  
 E grounds of law. The court was referred to the cases of Ogbechie v. Orochie (1986) 2 N.W.L.R. (Pt. 23) 487 and Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Pt. 67) 718.

As to ground (iii) of the grounds of appeal it was submitted that  
 F where the new point sought to be raised for the first time in the Supreme Court arose from the judgment of the Court of Appeal, a party is entitled to argue the point without leave of the Supreme Court. Learned counsel referred us to the case of Popoola v. Adeyemi (1992) 8 N.W.L.R. (pt. 257) 1 at 22. We were urged to dismiss the objection and consider the  
 G appeal on its merits.

**I have examined the three grounds of appeal and the question to be decided is whether they are caught by the objections raised by learned counsel for the plaintiffs. Are they grounds outside the  
 H provisions of section 213(2) (a) which require leave under section 213(3) of the constitution? Grounds (i) and (ii) do not involve questions of law alone. They deal with the consideration of the evidence and involve questions of fact i.e. whether there should have been a**

finding that the defendant should not have been ordered to render account. The two grounds of appeal do not involve questions of law alone although they were so framed. See Akwiwu Motors Ltd. v. Songonuga (supra). Ojeme & Ors. v. Momodu iii & Ors. (supra), Oke v. Eke (1982)12 S.C. 228 and Akpasubi v. Unweni (1982) ii S.C. 132. B

I will therefore strike out the first two grounds of appeal which were filed without leave of this Court of Appeal. Additionally, no issue was formulated in respect of ground two. It would have been deemed abandoned if it were a competent ground of appeal. C

The issue of joinder of the co-signatories of the Bank Accounts was not raised by the Court of Appeal. The parties did not also raise it in the proceedings. The defendant even denied being a signatory to the various Bank Accounts. It was his witness (D.W.1) D who testified that the defendant was one of the four signatories. Ground three of the grounds of appeal which was raised for the first time in this court and without the leave of this court or the court below is incompetent and is accordingly struck out. The preliminary objection is well taken and it is upheld. See Popoola & Ors. v. Adeyemi & Or. (supra), Fadiora v. Gbadebo (1978) 3 S.C. 219, Abinabina v. Enyimadu 12 W.A.C.A. 171 and Carlen Nigeria Ltd. v. Unijos & Or. (supra). E

The defendant argued the questions of lapse of time and waiver in his brief of argument. The points were not related to any of the grounds of appeal. They go to no issue and are therefore discountenanced. See Bamgboye & Ors. v. Olanrewaju (1991) 4 N.W.L.R. (pt. 184)132 at 152 and Monodu & Ors. v. Momoh & Or. G (1991) 1 N.W.L.R. (Pt. 169) 608 at 620 - 621.

The appeal fails both on the merits and on the preliminary objection. It is accordingly dismissed with N10,000.00 costs to the plaintiffs. H

**BELGORE JSC**

The entire Eastern District of the Church was under the defendant; all monies for the District passed through him and he was responsible for paying all the pastors in that District. All these are evidenced by the minutes and monthly statements of account he monthly circulated. Defendant was one of the four signatories of the District Account.

The issue of joinder of other signatories, to my mind, is irrelevant here as it was not made an issue all along the journey of this case. It was raised in this Court, without leave, for the first time and therefore it is incompetent. (*Fadiora v. Gbadebo* (1998) 3 SC. 219; *Popoola v. Adeyemo* (1992) 8 N.W.L.R. (pt. 257) 1, 22). Question of waiver and lapse of time surfaced in this appeal like a bird from the whirlwind because no ground of appeal supports it. They are non-issue and incompetent in this appeal (*Momodu v. Momoh* (1991) 1 N.W.L.R. (pt. 169) 608, 620, 621).

I find no merit in this appeal and for the fuller reasons in the judgment of my learned brother, Ogwuegbu, J.S.C. I dismiss it with N10,000.00 costs to respondents.

E \_\_\_\_\_

**WALI JSC**

I have had a preview of the lead judgment of my learned brother Ogwuegbu, JSC and I subscribe to the reasons stated therein for dismissing the appeal.

My learned brother has exhaustively dealt with all the issues raised in this appeal and I have nothing more useful to contribute. I adopt the reasoning and conclusion as mine. I dismiss the appeal with N10,000.00 costs to the plaintiffs against the respondent.

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**OGUNDARE JSC**

I had before now a preview of the judgment of my learned brother, Ogwuegbu JSC just delivered. I agree entirely with him. I have nothing more to add. I too, dismiss the appeal with N10,000.00 costs to the plaintiffs/Respondents.

### ONUJSC

I have had a preview of the judgment of my learned brother Ogwuegbu, JSC just read and with it I am in entire agreement that the appeal lacks merit and ought therefore to fail.

In expatiating thereon, I wish to say that my learned brother has, in his leading judgment, so ably and lucidly set out the facts therein, that I deem it unnecessary to repeat them here. Suffice it to add, that my consideration of all three issues proffered at the appellant's instance (two similar and overlapping ones which the respondents would appear to adopt in their brief of argument) are enough, in my opinion, to dispose of this appeal. The three issues encompassing the appellant's argument in his brief state as follows:-

(1) Whether the plaintiff had made out a case against the defendant for an account and whether the defendant had ever failed in his duty to render an account of the two Bank accounts at African Continental Bank and Co-operative and Commerce Bank Ltd., Uwani Enugu.

(2) Whether the case is properly constituted when all the signatories to the Bank accounts were not made parties in the case.

(3) Whether it is competent or the Court of Appeal to order the defendant alone to render an account at the African Continental Bank Limited, Uwani Enugu and Co-operative and Commerce Bank Limited, Okpara Avenue, Enugu when all the signatories to the two Bank Accounts including the Area Treasurer of the Christ Apostolic Church were not before the Court of Appeal.

I consider it pertinent to commence the treatment of these issues collectively by first stressing that what brings them into clear focus are to be found in ancillary reliefs (a) and (b) of paragraph 19 of the Further Amended Statement of Claim, backed up by reliefs contained in paragraphs 17, 18 and of course relief is therefore, where the plaintiffs pleaded as follows:-

*"17. In addition to being in possession of various church property the defendant was also the chief accounting officer for the revenues of the Church derived from various sources, as examples, from donations, payment of tithes, harvest offerings, etc.*

18. *The defendant also operated bank accounts for the funds of the church in the African Continental Bank Limited, Uwani, Enugu, and in the Co-operative and Commerce Bank Limited, Okpara Avenue, Enugu. These accounts have on the application of the members of the church in*  
 B *Enugu been frozen by the Bank until determination of this case.*

19. *Wherefore the plaintiff claims against the defendant.*

(a) *An order of the court compelling the defendant to render an account and hand over to the plaintiff all the property of the church which cam into his possession by virtue of his employment in the church*  
 C *including the official seal of the church, motor vehicles, office equipment, files, books, records, electric generating plant, loud speakers, et cetera, a list of which as far as can be ascertained by the plaintiff was filed with the plaintiff's statement of claim dated 5th September, 1980.*

D (b) *An account of all monies standing to the credit of the church both in the bank and the personal custody of the defendant and/or his treasurer as at the 29th November, 1979 and payment over to the plaintiff of the balances so found.*

E (c) *An injunction restraining the defendant by himself or through his servants, agents and privies from molesting the members of the Christ Apostolic Church in any of their Churches and parsonages in Anambra State of in any other manner whatsoever interfering with the worship of*  
 F *the said members of the Church in the plaintiff's church houses at Abakaliki, Enugu and throughout the Anambra State."*

In allowing the appeal of the respondents, who were the appellants before the Court of Appeal (hereinafter in this judgment referred to as the court below), that court (per Uwaifo, JCA delivering the leading  
 G judgment) held, inter alia, as follows:-

"..... that the respondent are (sic) to render account to the appellants in respect of the two bank accounts at the African Continental Bank Limited, Uwani, Enugu and Co-operative and Commerce Bank  
 H Limited, Okpara Avenue, Enugu respectively together with the relevant books of account and documents."

Expatiating further on the point the learned Justice said:-

*"The law on the respondent's duty to account is clear. It is the*

*duty of every agent to keep the money and property of his principal separate from his own and from that of other persons. See Clarke v. Tipping (1846) 9 Beav. 284; 50 E.R 352. He should be ready with correct accounts of all his dealings and transactions in the course of his agency: See Lord Chelmsford L.C in Turner v. Burkinshaw (1867) 2 B L.R. Ch. App. 488 at 491-494; In re Leo, *ex parte* Neville (1868) 4 L.R. Ch. App. 43 at 45 per Wood L.J. The agent also has a duty to produce to the principal or a person appointed by him, all books and documents in his hands relating to the principal's affairs: See Dadwell v. Jacobs (1867) C 34 Ch. D 278.*

*It follows that the respondent must render account to the appellants in respect of the two bank accounts at the African Continental Bank Limited respective (sic) and produce all relevant books and documents in support. The Evidence relevant to this duty as already pointed D out prima facie justifies an order to that effect. ...."*

At the hearing of this appeal on 28th September, 1998, the learned counsel for the appellant, Mrs. G. U. E. Peter-Okoye, elaborating on her Brief and Reply Brief which she adopted, submitted that in relation to the signatories to the two bank accounts, it was not the appellant who raised E the point in the trial court. Rather, she contended, since they were never found liable to account to the respondents by the trial court, it was the court below that raised the point suo motu. F

On the two issues of non-joinder, the learned counsel after ad- F verting our attention to pages 95 and 100 of the Record, pointed out that the respondents acknowledged in their evidence that there was no need to make the appellant to account, moreso that there were two signatories G to the account instead of four.

Replying, Mr. Awodein, learned counsel for the respondents, while also adopting their brief of argument, submitted as follows:- That in so far as no point was earlier taken in the two courts below but presently raised as a new point in this court, it was not the court below H that raised it suo motu. Rather, he argued, the point was no non-joinder of the signatories which was always available to be taken in the two courts below. The point, he further contended, can no longer be taken

here without the leave of this court vide Popoola v. Adeyemo (1992) 8 NWLR (Part 257) 1 at 2. After stressing that the appellant missed the point by not seeking leave of court to argue it, he contended that if he had not been able to convince this court with his argument, he would in the alternative submit as follows:-

1. that this case was fought on whether or not the appellant was an accounting party but not on the basis that appellant had defaulted in accounting. This first question, learned counsel pointed out, was found against the appellant who did not appeal against the point. In this regard, learned counsel submitted that (i) paragraphs 1.04 - 1.07 of the appellant's brief are of no moment, because they are issues not made part of his case, and (ii) it is a new point. Our attention was thereafter adverted to the findings of facts made by the learned trial Judge at pages 137-138 of the Record.

2. On the issue raised in relation to joinder, learned counsel submitted that the authorities relied on by the appellant, to wit:

(i) Alhaji D.S. Adegbenro v. The Attorney-General of the Federation and 2 others (1962) 1 ALL NLR 431;

(ii) Chief J.S. Ekpere & Ors. v. Chief Odaka Aforije & Ors. (1972) 1 All NLR (part 1) 220, are distinguishable. The case of Green v. Green (1987) 3 NWLR (part 61) 480 at 497 was therefore cited in support thereof to buttress his contention.

I see the force in learned counsel for respondents' objection. In the first place, this case was fought on whether or not the appellant was an accounting party; it was not fought on the basis that the appellant had defaulted in accounting. The learned trial Judge in confirmation of the point had the following to say in his judgment:-

*"I have already held that the defendant was an employee of the plaintiffs. What is now left to be determined in this case is whether the defendant was an accounting party and therefore accountable to the plaintiffs for the properties that came into his possession by virtue of his position as an employee of the plaintiffs.*

*I am satisfied that once the defendant was an employee of the plaintiffs that he came into possession of some properties by virtue of his*

*position as a servant of the plaintiffs. I am also satisfied that these properties were the properties made use of by the defendant in the execution of his duties as a Pastor in the employment of the plaintiffs. I am therefore satisfied that the defendant was an accounting party who ought to account to his employer i.e. the plaintiffs in respect of his stewardship which of course includes accounting for all the properties and money that came into his possession while he was an employee of the plaintiffs.* B

*Having held that the defendant was an accounting party, it is my view that he should account to the plaintiffs, only in respect of properties satisfactorily proved to have come into his possession as an employee of the plaintiffs and which he had in his possession at the of his dismissal."* C  
(Underlining is mine for emphasis).

Besides, there has been no appeal on the point. Significantly, the findings above accord with the requirements of the law as to what constitutes accounting or when it lies. See Job Eme & Ors. v. Chief D. O. Wamuoh & Ors. (1991) 7 NWLR (Part 203) 375 at 389 where Jacks JCA alluding to the Supreme Court decision of Messrs. Misr (Nig.) Ltd. v. Mallam Yusufu Ibrahim (1974) 5 SC. 55 quoted Coker, JSC at page 61 of the Report thus: D E

*"An action for account lies in respect of a claim which may be unascertained at the time of the institution of the proceedings and indeed can only be ascertained after the filing of such an account."* F  
See also Bullen and Leake and Jacobs Precedents of Pleadings, Twelfth Edition by I. H. Jacobs at page 183 where the learned authors stated inter alia as follows:-

*"..... Thus, if a rent collector, a commercial traveller, or any other agent or trustee, has received money or property on behalf of the plaintiff, he is an "accounting party", that is he is bound within a reasonable time after demand to render a detailed account of all monies or property received by him in that capacity, showing how much he has paid over to the plaintiff or expended on his behalf and how much he still has in hand (Kemp v. Goldberge (1887) 36 Ch.D 505) ....."* (Underlining above is mine for emphasis). G H

The findings on the point being concurrent ought not to be re-opened

here. See Ebba v. Ogodo (1984) 4 SC. 84. as no miscarriage of justice has been pointed out to have been occasioned.

In the case in hand, the contention therefore that there was no evidence whatsoever that the appellant was at any time keeping any money for or on behalf of the respondents would be incorrect and of no avail to him. Nor indeed would the assertion by P.W. 3 (Pastor Olutimehin) and General Superintendent of the respondents to the effect that "it is the Treasurer of the defendant's District who kept all the money collected by the Anambra/Imo Zone/District." Nor further still would the evidence given by the Area Treasurer (DW 3) Pastor Samuel Orji, when he said while being examined in chief that, "my duties as the Area Treasurer of the Apostolic Church from 1972 - 1979 included receiving salaries from the Pastors in the Eastern District which included Anambra, Imo and Cross River States. .... This money represented the balances held by all the pastors from all the money collected from their respective branch churches in all the districts after they had spent part of the money collected in payment of their workers." Nor furtherstill would what DW1 said to the effect that "The pastors paid the money to me at the end of every month when they attended the pastors meeting at Enugu or elsewhere; I kept a book in which I recorded all these payment. I used the money so collected in paying the area workers in the area office at Enugu. I always prepared and presented to the Area Secretary the Statement of Account of every preceding month: have, in my opinion, any direct relevance to the duty the appellant owed to account for the money and/or property that came into his possession. Thus, what PW2 (Pastor Osita Collins Chukukezie) as Area Secretary said, that "The Statement of Account in each month was prepared and submitted to me by the defendant. What I merely did thereafter was to attach the said statement of account to my minutes," can only be attributable to what he (PW2) did in relation to the appellant and not what appellant did in relation to the respondents to whom he owed a duty to account. Much therefore, as Order 4 Rule 5 of the High Court Rules empowers Court to join as defendants all those who may likely be affected by the result (see Green v. Green (1987) 3 NWLR (Part 61) 480), the joinder of all signatories to the

two bank accounts would not have the effect, in my respectful view, of wholly discharging the appellant from his duty/responsibility to render an account to the respondents. It is in this wise that the cases of Alhaji D.S. Adegbenro v. The Attorney General of the Federation & 2 ors. (supra) and Chief J.S. Ekpere & ors. v. Chief Odaka Aforije & Ors. (supra) B called in aid by learned counsel for the appellant, are, in my humble view, inapposite and a fortiori distinguishable. In the Adegbenro case (supra), it was held that the court could not, in that action decide the issue of the validity of the plaintiff's appointment as premier of Western Nigeria since C

*"the plaintiff failed to make all the parties necessary for its determination parties to the action."*

And in the Aforije's case (supra), this court held that individual interests of separate communities which together form a clan are not necessarily the interest of the clan as such, and where the representatives of one of D such communities sue for a declaration that the clan are not necessarily the interest of the clan as such, and where the representatives of one of such communities sue for a declaration that the clan as such has no interest in the land in dispute, the action is not properly constituted unless E the clan itself other than the plaintiff community is made defendant through its representatives. See also Green v. Green (supra).

The question of there being four signatories to the two accounts maintained in the two separate banks and the need to join them as parties F in the action culminating in the appeal herein is therefore of no consequence.

Thus, in relation to Ground 3 from which issue No. 3 is distilled and to which the learned counsel for the respondents objects as raising a new issue, it has been laid down by this court that where such fresh G issues are raised for that first time at the Supreme Court which are based on errors in the Court of Appeal's decision, the party raising the objection has a constitutional right of appeal to raise them. In the instant case where the appellant was under an obligation to seek leave to raise the H point of default in accounting, leave of this court ought generally to have been sought and obtained since the point was not always before the court. See Olu Ogunsola v. National Insurance Corporation of Nigeria (1996) 1

NWLR (part 423) 126 at 146. The appellant not having sought and obtained the necessary leave in respect of ground 3, that ground be and in accordingly struck out and with it issue 3.

For these reasons and those elaborately set out in the leading  
B judgment of my learned brother Ogwuegbu, J.S.C. I too dismiss this appeal. I accordingly affirm the decision of the court below and make similar consequential orders inclusive of those as to costs contained in the leading judgment.

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