

SUPREME COURT OF NIGERIA

3RD MARCH, 2000. SC.54/1994

**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, U. MOHAMMED,
A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC**

AKUNWATAJOE OGUEJIOFOR ANYAEGBUNAM APPELLANT

AND

PASTOR OKWUDILI OSAKA & 5 ORS. RESPONDENTS

COMPANY LAW - Legal Personality - Unincorporated association -
And an incorporated association - What distinguishes them.

EVIDENCE - Documents - Written agreement - Parties are bound by the
contents - Of any written agreement duly executed by them.

EVIDENCE - Pleadings - Issues - Parties are bound by their pleadings -
Which shall for all purposes dictate issues admitted - And issues dis-
puted.

LAND LAW - Ownership of land - Unincorporated association - Trust-
ees - Gift of land to the Trustees of an Unincorporated association - Is a
valid gift.

LAND LAW - Trustees - Unincorporated association - While the associa-
tion is not registered in law - Certain persons may be appointed trustees
who must act in that capacity.

LAND LAW - Unincorporated association - Capacity to own Property -
Condition Precedent for such property to vest.

FACTS

The Plaintiff/Appellant sued the Defendants/Respondents claiming against them jointly and severally inter alia: a declaration that the purported gift of the property in dispute to the non-existent Light of Christ Praying Band is ineffectual null and void and of no effect whatsoever, and a declaration that the continued use of the said property by the 1st defendant as his personal property under the guise of the non-existent Church Organization is unlawful and derogates from the grant. This action was taken by the Plaintiff against the defendants for themselves and as the Trustees of the Light of Christ Praying Band Onitsha. The religious Organization was unincorporated. The dispute is in respect of a Parcel of Land at Nkisi Ogbeozala Inland Town Onitsha of which the Plaintiff made a gift to the defendants as the named Trustees of the religious body and this was evidenced in writing on 4th February, 1978 (Exhibit H) The defendants were to hold the land absolutely free from all encumbrances only for the worship of God and in their capacity as trustees only. The 1st defendant was (is) the Pastor in charge. In the course of time a Church building was erected on the land. The plaintiff was a member of the religious body but later took Ozo title by virtue of which he became an Idol Priest. It was in October, 1985 that the Plaintiff filed this suit. He claimed that the defendant induced him to make a gratuitous gift of his land to the said Church Organization when in fact no such organization existed because it had not been incorporated. That being so he contended that the gift was invalid. At the conclusion of trial the learned trial judge in a reserved judgment found for the plaintiff. The defendants appealed to the Court of Appeal, Enugu Division. That Court allowed the appeal and dismissed the entire claim of the plaintiff. The plaintiff has now appealed to the Supreme Court raising five issues while the defendant raise three issues.

ISSUES FOR DETERMINATION

"i. Whether the Court of Appeal was right in holding that the gift made in Exhibit H was made to the named parties therein and not as was clearly in contemplation of the parties, to the purported Church organization called the Light of Christ Praying Band?"

ii. *Whether as held by the Court of Appeal Exhibit H created a Trust which settled the legal interest thereof on the named parties, inspite of the pleadings and evidence adduced in support thereof at the trial?*

iii. *Even if the Court of Appeal was right in the view it held that the named persons were duly constituted Trustees for the non existent organization, did such a trust not offend against morality, public policy and/or the provisions of an existing statute, as will render the said transaction invalid?*

HELD (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALU JSC**)

Land Law - Trustees

1. An unincorporated body or association of persons is a factual reality. The association, though unregistered, must appoint trustees or a trustee who will apply for registration. Thus the law takes into cognizance, the fact that before the application is made, i.e. while the association is not registered in law, certain persons may be appointed trustees who must act in that capacity. (p. 601 C)

Land Law - Ownership of land

2. Clearly, as the Act recognizes pre-incorporation ownership of land, Exhibit H does not conceivably violate same. A close examination of Exhibit H clearly establishes that the gift vested in the trustees in their capacity as trustees. *"I think the learned trial judge was also clearly in error to have held that the gift of the land made by the plaintiff to the defendants for the purposes of the worship of God as members of the unincorporated association of persons called The Light of Christ Praying Band, Onitsha was void. It was a valid gift which vested the legal estate in the defendants in trust for the said association of persons. It remains valid even if the only subsisting trustees were to be the 1st defendant as the Act permits of one trustee holding land in trust for an incorporated association of persons."* (pp. 601 H/ 603 F)

Evidence - Pleadings

3. It is settled law that parties are bound by their pleadings which shall for all purposes dictate issues admitted upon which evidence need not be led, and issues disputed, upon which credible evidence must necessarily be led - see Kano v. Oyelakin (1993) 3 NWLR (pt. 282) 399; Incar (Nig.) Ltd v. Benson Trans Ltd. (1975) 3 S.C. 117; Metal Construction (W.A.) Ltd. v. Migliore (1979) 6-9 S.C. 163. In the instant case the status of the defendants as trustees of Light of Christ Praying Band was settled by the pleadings. The pleadings further showed that the donation of the land was through the defendants in their capacity as trustees of the church, for the benefit of the organization. (p. 603 B)

Land Law - Unincorporated association

4. I must stress here that the Act permits pre-incorporation ownership of land - section 3. An unincorporated association can own property for its members. But for such property to vest, it must be made through persons who have been appointed trustees. This was the position in the present case - see the grant exhibit H. Exhibit H, it will be seen is very clear and unambiguous. (p. 604 E)

Evidence - Documents

5. Parties are bound by the contents of any written agreement duly executed by them. (p. 605 H)

Company law - Legal Personality

6. An unincorporated association does *not* legally exist and must of necessity act through its appointed representatives. On the other hand a corporate entity i.e. an association that has been incorporated, has legal personality. It can sue and be sued in its corporate name. It can and will enter into any agreement in its corporate name by virtue of section 2(3) of the Act. Exhibit H, in my view, discloses prima facie, that the religious organization was not incorporated as the donees were named. The donees as trustees were mandated to hold the property absolutely "Only for the worship of God and in their capacity as trustees only". (p. 605 H)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. Gift inter vivos - What it means

A gift inter-vivos is an act whereby something is voluntarily transferred B from the true possessor to another person, with full intention that the thing shall not return to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver. See Halsbury's Laws of England, 3rd Edition, Vol. 18, page C 364 at para 692. The essential thing to consider is that the gift is complete when the donee has accepted it. If that condition is satisfied the donor has no right to revoke the gift. See Dewar v. Dewar (1975) 2 All E.R. 728 at 732. (p. 609 C)

D

EJIWUNMI JSC

2. Circumstances when a gift may be revoked

There can be no doubt upon the facts disclosed in the printed record that the appellant made an absolute gift of his landed property to the persons E he identified as the trustees of the Church. It is also a self evident fact that his intention was to enable a Church to be built on the land for the use of the religious body known as THE LIGHT OF CHRIST PRAYING BAND, ONITSHA. That body had evidently pursued that goal. It is F now too late for the appellant to sing a different tune, no matter what changes had occurred in his personal life subsequent to the voluntary gift of the land for the building of a Church. Had he been able to establish fraud, mistake, misrepresentation, or perhaps total failure of the object G of the gift, then upon such evidence, the gift may be revoked. Vide Chief Johnson Imah & Anor v. Chief A. Okogbe & Ors (1993) 12 SCNJ. 57. As there is no such evidence in the instant case, I do not find any merit in this appeal. (p. 610 B)

H

REPRESENTATION

J.H.C. Okolo (SAN) & Co. for the Appellant.

Dr. Onyechi Ikepeazu for the Respondents.

CASES REFERRED TO

- Bookshop House Ltd. v. Stanley Consultants Ltd
 Kano v. Oyelakin (1993) 3 NWLR (pt. 282) 399
 B Incar (Nig.) Ltd v. Benson Trans Ltd. (1975) 3 S.C. 117
 Metal Construction (W.A.) Ltd. v. Migliore (1979) 6-9 S.C. 163
 Dewar v. Dewar (1975) 2 All E.R. 728 at 732
 Imah v. Okogbe (1993) 12 SCNJ. 57

C **STATUTE REFERRED TO**

Land (Perpetual Succession) Act, (Cap.98) Laws of the Federation of Nigeria, 1958 Vol.1V; ss. 2(1) and (3); and 3

D **LEAD JUDGMENT BY KATSINA-ALU JSC**

This appeal is from a judgment of the Court of Appeal, Enugu Division, delivered on 22 April, 1993. The dispute is in respect of a parcel of land at Nkisi Ogbeozala Inland Town Onitsha of which the plaintiff made a gift to the defendants as the named Trustees of a religious body known as The Light of Christ Praying Band Onitsha. Two years thereafter, the plaintiff sued the defendants claiming against them jointly and severally -

F *"(a) A declaration that the purported gift of the said property to the non-existent Light of Christ Praying Band is ineffectual null and void and of no effect whatsoever;*

(b) A declaration that the continued use of the said property by the 1st defendant as his personal property under the guise of the non-existent church organization is unlawful and derogates from the grant;

G *(c) An injunction restraining the defendants, their servants, agents, privies or as members of the aforesaid organization, from resorting to or using in any way the said property for whatever purpose connected with the said organization or purpose connected with the said organization or at all."*

In a reserved judgment the learned trial judge found for the plaintiff. He made the following declarations and order:

"1. The gift of the said property to the Light of Christ Praying Band is void for want of incorporation on the part of the Praying Band.

2. The continued use of the said property by 1st defendant as his personal property is unlawful and derogates from the grant.

3. A trust having been created by the gift to the 1st, 2nd, 3rd, 4th, 5th and 6th defendants, by operation of law, they are now constructive trustees of the donor's estate and are to hold the property for no other purpose other than that for which the grant was originally made and retained."

The defendants' appeal to the Court of Appeal was allowed. That Court set aside the three reliefs granted by the learned trial judge. The entire claim of the plaintiff was dismissed. This appeal is from that judgment.

The plaintiff/appellant has submitted five issues for determination, namely:

*" i. Whether the Court of Appeal was right in holding that the gift made in Exhibit H was made to the named parties therein and not as was clearly in contemplation of the parties, to the purported Church or-
ganization called the Light of Christ Praying Band?*

ii. Whether as held by the Court of Appeal Exhibit H created a Trust which settled the legal interest thereof on the named parties, inspite of the pleadings and evidence adduced in support thereof at the trial?

*iii. Even if the Court of Appeal was right in the view it held that the named persons were duly constituted Trustees for the non existent organization, did such a trust not offend against morality, public policy and/or the provisions of an existing statute, as will render the said trans-
action invalid?*

iv. Was the Court of Appeal right in dismissing the main appeal lodged by the appellant herein, after upholding his complaints on the appeal as well founded?

v. Was the Court of Appeal right in the view it took on the records of evidence that the 1st defendant/respondent in this appeal was not converting the use, occupation and ownership of the property forming the grant to his personal property, contrary to the parties expressed inten-

tions? Or was that Court justified in interfering with the findings of fact based on the evidence adduced at the trial in that regard?

In the Respondent's brief, the 1st defendant raised three issues which read:

B *"i. Whether the Court of Appeal was correct in holding that the gift of the Land made by the Plaintiff and confirmed in Exhibit H, vested in the Defendants in their capacity as Trustees of Light of Christ Praying Band. As subsidiary to the foregoing and for convenience:-*

C *(a) Whether the finding that the gift vested in the Defendants as trustees was supported by pleadings of the parties and evidence adduced before the court.*

D *(b) Whether the finding that the gift vested in the Defendants as trustees was correct, inspite of the fact that the religious organization was not registered under the relevant law.*

E *(ii) Whether in view of the conclusion reached by the Court of Appeal with respect to the cross-appeal, the said Court was right to have dismissed the main appeal in its entirety.*

F *(iii) Whether the Court of Appeal was correct in holding that based on the evidence adduced in Court, the 1st Defendant did not convert the subject matter of the suit to his personal use.*

The facts of this case are quite simple. I have already set out the claim. This action was taken by the plaintiff against the defendants "for themselves and as the Trustees of the Light of Christ Praying Band On-itsha." It is a Christian organization for the worship of God. The organization was unincorporated. If it had been incorporated, it would be able to sue and be sued in its corporate name.

G The plaintiff was a member of the organization. He had a parcel of land at Nkisi Ogbeozala Inland Town Onitsha. He made a layout of the land in 1978. The land in dispute forms part of the layout. The plaintiff made it an outright gift for the purposes of the organization and this was evidenced in writing on 4 February, 1978 (Exhibit H). The deed of gift was between the plaintiff as donor and the six defendants as donees "all being members of the Religious Organization known as and called THE LIGHT OF CHRIST PRAYING BAND, ONITSHA and who have been

appointed Trustees of the said religious organization," and they were to hold the land absolutely free from all encumbrances only for the worship of God and in their capacity as trustees only.

The 1st defendant was (is) the pastor in charge. In the course of time a church building was erected on the land. On 8 January, 1982 the plaintiff wrote a letter to the 1st defendant saying that he understood that there was a disagreement between members, elders and trustees of the organization. He therefore purported to instruct the 1st defendant to "suspend forthwith your entry into the new chapel until real settlement is made between you and the above members. " See exhibit C.

It was in October, 1985 that the plaintiff filed this suit. His case is that the defendants induced him to make a gratuitous gift of his land to the said church organization when in fact no such organization existed because it had not been incorporated. That being so, it was said that the gift was invalid.

The appellant argued issues 1 and 2 together. The summary of the appellant's submissions is this. It was said that it is clear from the pleadings that the defendants were being sued in the very capacity they arrogated to themselves as the trustees of the Church organization which was in law non existent. It was also crystal clear from the pleadings and evidence at the trial that the defence case never ever raised the contention that Exhibit H (Deed of grant) was intended to vest or did in fact vest the said property on the persons or anyone of the names therein contained as Trustees of the Church, either individually or collectively. The case was therefore fought at the trial on the common ground that the purported grant was made to the organization known as the Light of Christ Praying Band and certainly not to the Trustees of the church. It was contended that the court below could therefore be right in its conclusion that the grant was made to the trustees by the Donor to hold if for and on behalf of the church. Such a construction, it was argued, would run counter to the decision of the Supreme Court in Bookshop House Ltd. v. Stanley H Consultants Ltd. (1986) 3 NWLR (pt.26) 87 that interpreting the provisions of a contract document, no addition or subtraction is allowed.

The appellant contended that there was enough evidence on record

to show that the respondent and those other defendants had wrongly induced him to make a gratuitous grant of his land to a church organization that was not in existence. The respondent, it alleged, had unlawfully arrogated to himself the use, occupation, ownership and possession of the said property under the guise of a church organization. The appellant said that there was complete absence of voluntas in him as the donor in Exhibit 11. It was further said that even though Exhibit H constitutes a complete gift, on the authority of Chief Johnson Imah & Anor. v. Chief A.Okogbe & Ors. (1993) 12 S.C.N.J. 57 even where such a donor does not reserve the right to revoke, the gift can still be revoked on either proof of fraud, mistake, misrepresentation or other invalidating cause.

For his part, the respondent has submitted that the lower court rightly held that the gift of the land made by the appellant and subsequently confirmed in Exhibit H became vested in the respondent and other defendants in their capacity as trustees of light of Christ Praying Band. The respondent referred to paragraph 4 of the Statement of Claim and paragraph 5 of the statement of Defence and submitted that the status of the defendants as trustees of Light of Christ Praying Band was settled by the pleadings. The pleadings further established that the donation of the land was through the defendants in their capacity as trustees of the church for the benefit of the organization.

The two principal reliefs sought by the plaintiff/appellant in the pleadings were -

- (i) *A declaration that the purported gift of the said property to a non-existent Light of Christ Praying Band is ineffectual, null and void and of no effect.*
- (ii) *A declaration that the continued user of the said property by the 1st defendant (was the only respondent) as his personal property under the guise of the non existent church organization is unlawful and derogates from the grant.*

In view of these reliefs, it becomes imperative to decide the status of the said unincorporated church organization called The Light of Christ Praying Band, Onitsha in relation to the respondent and other defendants who were appointed its trustees. In this regard I refer to the provisions of the

land (perpetual Succession) Act, (Cap.98) Laws of the Federation of Nigeria, 1958 Vol. IV. Section 2 (1) thereof provides inter alia:

"2 (1) Trustees or a trustee may be appointed by any community of persons bound together by custom, religion, kinship or nationality or by any body or association of persons established for any religious, educational, literacy, scientific, social or charitable purposes, and such trustees, or trustee may apply..... to the Minister for a certificate of registration of the trustees or trustee of such community, body or association of persons as a corporate body."

It seems clear to me that the above provision shows that **an unincorporated body or association of persons is a factual reality. The association, though unregistered, must appoint trustees or a trustee who will apply for registration. Thus the law takes into cognizance, the fact that before the application is made, i.e. while the association is not registered in law, certain persons may be appointed trustees who must act in that capacity.**

The benefits conferred by incorporation are disclosed in sections 2(3) of the Act. By such incorporation the association becomes a body corporate by the name described in the certificate with perpetual succession, and a common seal, and power to sue and be sued in such a corporate name.

Also by section 2 (3) of the Act, at the date of incorporation, "any land or any interest therein now or hereafter belonging to, or held for the benefit of, such community, body or association of persons, in such and the like manner, and subject to such restrictions and provisions, as such trustees or trustee might, without such incorporation, hold or acquire, convey or assign, or demise the same for purposes of such community, body or association of persons." Sections 2(3) should be read alone will section 3 which reads:

"3. The certificate of incorporation shall vest in such body corporate all land or any interest therein, of what nature or tenure soever, belonging to or held by any person or persons in trust for such community, body or association of persons." (Emphasis added by me)

Clearly, as the Act recognizes pre-incorporation ownership of land,

Exhibit 11 does not conceivably violate same. A close examination of Exhibit 11 clearly establishes that the gift vested in the trustees in their capacity as trustees. The Recital to Exhibit H State:

"This Deed of gift is made the 4th of February 1978 BETWEEN
 B *OGUEJIOFOR AKUNWATA ANYAEGBUNAM Of Ogbendida Village Onitsha Town....*

(hereinafter called the DONOR) which term shall include his heirs, successors and assigns where the contest so admits of the one part AND

- C 1. *Pastor Okwudili Osaka of Onitsha*
2. *Emmaunel Nweke of Nteje*
3. *Nnaemeka Bosah of Onitsha*
4. *Pius Obah of Onitsha*
5. *Michael Okei of Odekpe and*
- D 6. *Stephen Obika of Uke*

being members of a religious organization known as and called THE LIGHT OF CHRIST PRAYING BAND, ONITSHA and who have been appointed Trustees of the said religious organization (hereafter called
 E *the Donees) which term shall include their successors in office where the context so admits of the OTHER PART"*

The parties are therefore, the appellant as Donor and the respondent and the other trustees as Donees in their capacity as trustees. A close scrutiny of the Habendum clause further simplifies the issue. It reads:

F *"..... the donor as beneficial owner hereby donates to the donees, namely the Trustees of LIGHT OF CHRIST PRAYING BAND, ONITSHA the piece and parcel of land..... TO HOLD the same absolutely and free of all encumbrances and only for the worship of God and*
 G *in their capacity as trustees only (emphasis supplied).*

The foregoing is supported by paragraph 4 of the Statement of Claim and paragraph 5 of the Statement of Defence. Paragraph 4 reads:

H *" Sometime in 1981, the plaintiff in the belief. That the said organization was properly constituted in law, gratuitously granted the said Light of Christ Praying Band through the defendants as trustees, the use and occupation of a portion of his aforesaid property... exclusively for the worship of God in their capacity as the Trustees thereof only.*

(emphasis Supplied).

Paragraph 5 of the respondent's Statement of Defence pleaded thus:

"5. A few days later the plaintiff took the Defendants and other members of the Church to the site where he showed them the extent of the land concerned and stated that from that moment he had donated the land to the defendants to hold it for the organization and use it for the worship of God" (emphasis supplied.) B

It is settled law that parties are bound by their pleadings which shall for all purposes dictate issues admitted upon which evidence need not be led, and issues disputed, upon which credible evidence must necessarily be led - see Kano v. Oyelakin (1993)3 NWLR (pt. 282) 399; Incar (Nig.) Ltd v. Benson Trans Ltd. (1975) 3 S.C. 117; Metal Construction (W.A.) Ltd. v. Migliore (1979) 6-9 S.C. 163. In the instant case the status of the defendants as trustees of Light of Christ Praying Band was settled by the pleadings. The pleadings further showed that the donation of the land was through the defendants in their capacity as trustees of the church, for the benefit of the organization. There really should not be any difficulty in appreciating this. The facts are clean and unambiguous. The lower court did not hold that the trustees became absolute owners of the land. That court held that the land became vested in the trustees as recipients of the land in favour of Light of Christ Praying Band. The court below at p.203 of the record held: C D E F

"I think the learned trial judge was also clearly in error to have held that the gift of the land made by the plaintiff to the defendants for the purposes of the worship of God as members of the unincorporated association of persons called The Light of Christ Praying Band, Onitsha was void. It was a valid gift which vested the legal estate in the defendants in trust for the said association of persons. It remains valid even if the only subsisting trustees were to be the 1st defendant as the Act permits of one trustee holding land in trust for an incorporated association of persons." G H

Earlier on in the course of its judgment at p. 202 the lower court said:

"It is beyond dispute, in my view, that upon a proper understanding, the relevant provisions of sections 2(1), 2(3) and 3 of the Act envisage and indeed permit the appointment of trustees or a trustee for an unincorporated community of persons bound together by some specified purpose, and for such trustees or trustee or any person or persons to hold any land or any interest therein for the benefit of or in trust for such community of persons pending incorporation. Any land or any interest therein so held or acquired validly passes the legal interest therein to such trustees or trustee or persons or person it is intended to benefit thereby. Such trustees or trustee can in due course transfer the legal title to the community of persons when incorporated."

I couldn't agree more. The provisions of sections 2(1), 2(3) and 3 of the Act which I have earlier on set out are so clear and unambiguous. This is why I experience some difficulty in appreciating the case of the appellant. And an examination of Exhibit H clearly establishes that the gift of the land made by the plaintiff to the defendants vested the legal estate in the defendants as trustees in trust for the said church organization. **I must stress here that the Act permits pre-incorporation ownership of land - section 3. An unincorporated association can own property for its members. But for such property to vest. It must be made through persons who have been appointed trustees. This was the position in the present case - see the grant exhibit H. Exhibit H, it will be seen is very clear and unambiguous.** In the case of Fawehinmi v. N.B.A. & Ors (No.2) (1989) 2 NWLR (Pt.105) 558 this court held at p.640 as follows:

"The most fundamental difference between a corporate and an unincorporated association are that the corporation has 'Perpetual Succession.' It maintains its identity and its personality not withstanding changes in its membership. But the property of an unincorporated association does belong to its members from time to time. "

This leads me to the issues as to whether the appellant was mistaken as to the legal status of the church organization. In paragraph 4 of the Statement of Claim the appellant as plaintiff pleaded thus:

"Sometimes in 1981, the plaintiff in the belief that the said or-

ganization was properly constituted in law, gratuitously granted the said Light of Christ Praying Band through the defendants as trustees, the use and occupation of a portion of his aforesaid property, exclusively for the worship of God in their capacity as the Trustees thereof only." (Emphasis supplied,)"

B

In his evidence, the appellant testified that:

"The defendants approached me as trustees of what I taught (sic) then was a Registered Religious Church Organization called the Light of Christ Praying Band....."

C

Looking at Exhibit H, it is plan that the plaintiff made the gift of the land to named trustees of the church organization. I think this belies his claim that he was under the belief that the church organization was incorporated. I should imagine that if he thought that the church organization was incorporated, he ought to have made the gift in the corporate name of the church by virtue of section 2(3) of the Land (Perpetual Succession) Act, 1958.

D

How did the court below react to these issues? At p.203 of the record the court held:

E

"I do not think the plaintiff could be heard to say that he thought the association was incorporated at the time he made the gift. The deed of Gift, Exhibit H, is quite plain as to the persons the gift was made and for what purpose. The intention is clear. That intention cannot be contradicted, altered, added to or varied by oral evidence. Section 131 (1) of the Evidence Act does not permit this. None of the circumstances stated in the proviso applies. To allow the plaintiff in the present case to give evidence that he thought that the association was incorporated would be inconsistent with the plain terms of the deed of gift, if he thought that the association was incorporated, he ought to have made the gift not by naming the six defendants as the donees but by making the gift in the corporate name of the association by virtue of section 2(3) of the Land (Perpetual Succession) Act, 1958."

F

G

H

I agree entirely. **Parties are bound by the contents of any written agreement duly executed by them. An unincorporated association does not legally exist and must of necessity act through**

its appointed representatives. On the other hand a corporate entity i.e. an association that has been incorporated, has legal personality. It can sue and be sued in its corporate name. It can and will enter into any agreement in its corporate name by virtue of section 2(3) of the Act. Exhibit H, in my view, discloses prima facie, that the religious organization was not incorporated as the donees were named. The donees as trustees were mandated to hold the property absolutely "Only for the worship of God and in their capacity as trustees only".

B
C Besides the foregoing, I think the appellant has been less than candid in this matter. A close look at his testimony will reveal his real motive for wishing to revoke the gift. Under cross-examination at p.22 of the record the appellant testified thus:

D *"I took the Ozo title on 11th October, 1978. As an ozo titled man I became an idol priest."*

He continued at p.24 thus:

E *"I am no more a member of the Church. I am opposed to the church because they abused the essence on which the land was given to them by making crisis among themselves. You don't serve God by creating crisis all about..... I wrote to them to come to me so that I could settle the dispute....."*

F At p.26 still under cross-examination the appellant testified as follows:

"I approached my lawyer and on the enquiries he made he confirmed that the church was not registered. That was the time I considered the issue of registration."

At p.28, the appellant again testified as follows:

G *"The truth is that when there was dispute - there was crisis for which both wrote me and I wrote withdrawing my land....."*

H It is clear from these pieces of evidence, that the first time the appellant considered the issue of registration was after he consulted his lawyer and after due enquiries the lawyer reported to him that the church organization was not incorporated. Secondly and more importantly, he took an Ozo title and became an idol priest. He naturally became disenchanted with the church. He left the church and by this time he was

totally opposed to it. Thirdly, there was crisis in the church.

It should be clear by now that the major reasons the appellant went to court to have the gift revoked were firstly because he took Ozo title by virtue of which he became an idol priest. Light and darkness, it is said, cannot live together. Secondly, as a result of the crisis in the church. B The appellant himself had testified that as a result of the dispute, he wrote the trustees withdrawing his land. At no stage did he say he was misled into believing that the church was incorporated.

The sum total of what I have said is that the appellant was not mistaken as to the status of the church organization at the time he donated his land to it. C

One last issue. This relates to the question as to whether the respondent converted the property to his own use. The appellant in his evidence under cross-examination at p.23 said as follows: D

"I am aware that after the transfer the defendants started clearing the land. They started fund raising ventures. They started the erection of a church building. It was on 4th August, 1985 that they forcibly entered the compound..... They are using the church now The 1st defendant runs the church" (Emphasis supplied) E

At p.26 he continued his evidence thus:

"There is a church on the land I gave the defendant. The church is an uncompleted storey building. The building is being used for worship....." (Emphasis supplied) F

The court below, in this connection held thus:

"Since sufficient evidence, uncontradicted and credible, was available to controvert the claim that the 1st defendant had converted the land in question to his personal use, or easier still, since the plaintiff led no evidence to support that claim, the learned judge had no basis whatever for making a declaration that the 1st defendant had unlawfully continued to use the said land as his personal property." G

It seems clear, that the evidence of the appellant quoted above falsified H this head of claim. The appellant donated his piece of land "for the worship of God" Only. He gave evidence that the church building "is being used for worship." This complaint unarguably has no substance

whatever.

In the result this appeal lacks merit and is dismissed. Accordingly I affirm the decision of the lower court delivered on 22 April, 1993. The appellant shall pay costs assessed at N10,000.00 to the respondents.

B _____

BELGORE JSC

C The appellant, when making his gift of the property was in his full faculty as to what he was doing. He certainly decided to make a gift to the religious organization he personally associated with. The gift to that association was without condition and his leaving that body has not vitiated the perfect gift. I agree therefore with the judgment of my learned brother, Katsina-Alu JSC that this appeal has no merit and for the reason D clearly set out in that judgment I also dismiss it with N10,000.00 to respondent.

KUTIGI JSC

E I read in advance the judgment just rendered by my learned brother Katsina-Alu, J.S.C. He has carefully considered all material issues in the appeal. I agree with his reasoning and conclusions. I will also F dismiss the appeal with N10,000 costs against the Appellant. The judgment of the Court of Appeal is affirmed.

MOHAMMED JSC

G In this case, the appellant wanted to revoke a gift of a piece of land which he gratuitously made to a church organization, by name, the Light of Christ Prying Band Onitsha. He made the gift to the 1st Respondent, Pastor Okwudili Osaka and five others being members of the religious organization who have been appointed trustees of the said organization. H

As has been shown by my learned brother, Katsina-Alu, in his judgment, with which I entirely agree, the appellant took Ozo title and

became an idol priest. He is no longer a church man and as such he decided to revoke the gift of the land. He went to court and sought for a declaration to declare the gift null and void because when he made the gift he did not know that the Light of Christ Praying Band of Onitsha was not a registered organization. But it is abundantly clear that the issue of registration of the church organization was not a precondition for the gift. The appellant, in the Deed of gift, donated the land to the respondent and five others in their own names as trustees of the church Organization. He took the members of the Church to the site where he showed them the extent of the land.

A gift inter-vivos is an act whereby something is voluntarily transferred from the true possessor to another person, with full intention that the thing shall not return to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver. See Halsbury's Laws of England, 3rd Edition, Vol. 18, page 364 at para 692. The essential thing to consider is that the gift is complete when the donee has accepted it. If that condition is satisfied the donor has no right to revoke the gift. See Dewar v. Dewar (1975) 2 All E.R. 728 at 732.

It is crystal clear from the facts of this case that the appellant was not in any doubt about the status of Light of Christ Praying Band of Onitsha. His motive for wanting to revoke the gift is clear. He has changed his religion and has become an idol worshipper for reasons best known to himself. He cannot however revoke a gift of land which he gratuitously made to a church organization. A church has since been built on the land and God is being worshipped there.

I therefore agree with my learned brother, Katsina-Alu, J.S.C., in his judgment that this appeal is without merit. It is also dismissed by me. I affirm the judgment of the Court below dismissing the claim of the plaintiff/appellant. I award N10,000.00 costs to the respondents.

H

EJIWUNMI.JSC

I was privileged to have read in advance the judgment just delivered by my learned brother Katsina-Alu JSC. And I find myself in total agreement with him for dismissing it upon the reasons so lucidly given in his judgment. There can be no doubt upon the facts disclosed in the printed record that the appellant made an absolute gift of his landed property to the persons he identified as the trustees of the Church. It is also a self evident fact that his intention was to enable a Church to be built on the land for the use of the religious body known as THE LIGHT OF CHRIST PRAYING BAND, ONITSHA. That body had evidently pursued that goal. It is now too late for the appellant to sing a different tune, no matter what changes had occurred in his personal life subsequent to the voluntary gift of the land for the building of a Church. Had he been able to establish fraud, mistake, misrepresentation, or perhaps total failure of the object of the gift, then upon such evidence, the gift may be revoked. Vide Chief Johnson Imah & Anor v. Chief A. Okogbe & Ors E (1993) 12 SCNJ. 57.

As there is no such evidence in the instant case, I do not find any merit in this appeal. I will therefore dismiss this appeal for this reason and the fuller reasons given in the lead judgment. I also award costs to the Respondents in the sum of N10,000.00 only.

G

H