

SUPREME COURT OF NIGERIA
16TH JUNE, 2000. SC. 217/1994
CORAM:- S. M. A. BELGORE, E. O. OGWUEGBU,
S. U. ONU, O. ACHIKE, U. A. KALGO, JJSC

MA'AJI GALADIMA APPELLANT
AND
ALHAJI ADAMU TAMBAL & 11 ORS. RESPONDENTS

***APPEALS** - Nullity - Setting aside - Preliminary objection - Where the trial is a nullity because the trial court lacked the jurisdiction - To adjudicate on the subject matter in dispute - The appellate court can entertain the question - Even though it was raised by way of preliminary objection*

***COURTS** - Area Courts - Action - Commencement - There is no strict procedure for filing a complaint - It is enough for the complainant to verbally tell the court what his grouse is*

***COURTS** - Upper Area Court - Appeal - Filing of appeal to an Upper Area Court does not follow any formula - What is important is for the appellant to clearly state his grievance - Either in writing or orally*

***JURISDICTION** - Issue of - How to raise - Where the matter of jurisdiction is novel - The leave of court must be sought - Before it could be argued*

FACTS

In the Area Court No. 1 Zaria City, Kaduna State, the plaintiff/appellant claimed for the return of the farmland loaned to the defendants/respondents' respective fathers. The land in dispute is situate at Kunkumi Makarfi of the then Ikara Local Government. The defendants contended that they inherited the land in dispute from their various fathers. The trial court found for the plaintiff. The defendants appealed against the decision to the Upper Area Court, Ikara. One of the grounds of appeal argued

by their counsel in that court was that the Zaria City Area Court lacked jurisdiction to hear and determine the claim in that the land in dispute is situate in Ikara Local Government Area. The Upper Area Court allowed their appeal on the merit and did not pronounce on the issue of jurisdiction. The plaintiff in turn appealed to the High Court, Kaduna wherein, inter alia, failure to hear some of the defendants' witnesses at the trial was raised. The learned presiding judge of the Kaduna High Court ordered a retrial without advertng to the issue of jurisdiction.

Dissatisfied the plaintiff appealed to the Court of Appeal, Kaduna Division. In that court, learned counsel for the defendants neither cross-appealed nor filed respondents' notice of appeal but raised the issue of jurisdiction by way of preliminary objection. The Court of Appeal ordered both parties to file brief on the preliminary objection which was done. In the unanimous ruling, which turned out to be the judgment of the court, the preliminary objection was upheld. The Court of Appeal held that the trial court lacked jurisdiction to entertain the suit and therefore the retrial ordered by the High Court was void and amounted to a nullity, so also the proceedings leading to the appeal before it. Accordingly, it dismissed the appeal. The plaintiff has appealed against this order to the Supreme Court.

ISSUE FOR DETERMINATION

"1. Whether the respondents in this instant appeal, in their effort to set aside all the judgments of the High Court, Upper Area Court and trial Zaria City Area Court can in their capacity as respondents in the Court of Appeal, employ the avenue of a notice of preliminary objection to achieve its desire and cause (as it eventually succeeded in doing) the Court of Appeal to dismiss the appeal and set aside all the judgments of the lower courts?.

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

Courts - Area Courts

1. The Area Courts are not bound by strict procedure peculiar to English Common Law Courts. Thus the complainant before them needs even

not lodge his complaint in writing; it is enough for him to verbally tell the Court what his grouse is but this *must be recorded by the judge or court clerk in writing*. *There is no strict formula for filing a complaint*. The Area Courts are what one may call grassroots Courts, with cheap procedure and expeditious hearing of the matters before them thus making them not only the nearest courts to the people (or Common Man) but also cheapest fora for litigants. (p. 2169 B)

Jurisdiction - Issue of

2. Unlike the situation in *Jon v Dom* 7 SC 1, 3 the issue of jurisdiction had clearly reared its head at Upper Area Court Ikara before High Court and Court of Appeal. The form is not of importance, it is the substance. In cases where the matter of jurisdiction is entirely novel the leave of Court must be sought in a proper application before it could be argued so that the other side will not be taken by surprise or be embarrassed. (p. 2170 F)

Courts - Upper Area Court

3. The appeal to Upper Area Court, just like filing the suit in the lower Area Court, will not follow any formula; what is important is the litigant or appellant clearly stating his grievance to Court either in writing, or orally so that Court will record it. (p. 2170 H)

Appeals - Nullity

4. Thus the High Court in its appellate jurisdiction never adverted to issue of jurisdiction of the court of trial (Area Court 1, Zaria City) even though it was by way of preliminary objection the issue of jurisdiction was raised. Thus there is no way the appellants were surprised or embarrassed. I find no merit in this appeal and I dismiss it. The only option is to have a trial not a nullity. What took place at Zaria Area Court 1 was a nullity as that Court lacked jurisdiction (See Kaduna State Area Courts (Jurisdiction) Notice 1977 and position of the Area Courts and their Area of jurisdiction). (p.2171 H)

NOTABLE POINTS OF INTEREST

OGWUEGBU JSC

1. The use of notice of preliminary objection to dispose of an appeal

It was submitted by the appellant's counsel that the defendant/respon-
 B dents should have cross-appealed and that Order 3 Rule 15(1) of the
 Court of Appeal Rules did not avail them because the notice of prelimi-
 nary objection contemplated by Rule 15(1) of Order 3 can only affect
 the hearing of the appeal and cannot constitute the means by which the
 C appeal can be heard and disposed of. I do not agree with the contention
 of Mr. Daudu, Senior Advocate of Nigeria who is appearing for the ap-
 pellant that the above rule applies only where a respondent intends to
 challenge the competence of an appeal. In a situation where the trial is a
 nullity because the trial court lacked jurisdiction to adjudicate on the sub-
 D ject-matter in dispute, I have no doubt that an appellate court which can
 raise the point Suo motu if the parties failed to do so, will decline to
 entertain the question when raised in a notice of preliminary objection.
 The learned Senior Advocate of Nigeria further submitted that the re-
 E spondents would have filed a cross-appeal. It would have been neater if
 they did so. However since the issue raised in the notice of preliminary
 objection was based on lack of jurisdiction of the trial court, I do not
 think that this court will object to the manner the question was brought
 F before the court below since none of the parties was wronged by the
 order made by that court declaring the proceedings a nullity. Further-
 more, the appellant is not contending that the Area Court No. 1, Zaria
 City had jurisdiction to hear and determine the suit. His quarrel is as to
 the procedure adopted by the respondents to get rid of the invalid pro-
 G ceedings. (p. 2174 E)

ACHIKE JSC

2. When and how to raise the issue of jurisdiction

H Issue on the court's jurisdiction is very pivotal and fundamental. Be-
 cause of its fundamental nature, on the authorities, it can be raised at any
stage of the trial or even on appeal, and even before the apex court. The
 reason for this latitude to jurisdiction issue is obvious. A court that lacked

jurisdiction to entertain a suit, either as a trial or appellate court, is incompetent to pronounce a judgment in respect of any aspect of the matter in controversy before it. Time never runs against a court to decide on the issue of jurisdiction. The consequence of a court continuing a case where it lacks jurisdiction is, as it were, like the court embarking on a B frolic which would indisputably result in a nullity for which an appellate court, so invited, would have no compunction whatsoever to declare null and void. Jurisdictional question, be it in criminal or civil matter, has this same devastating consequence. An attack or question as to jurisdiction C cannot be properly glossed over by any court once it is raised by the defendant or the respondent. The procedure by which such a fundamental issue is raised may not be in consonance with the stipulated rules of court for questioning a decision of the court, nevertheless, that will never be allowed to defeat the right to question the jurisdictional defect. D To do so is unwittingly to postpone the doom's-day. See Owoniboy Technical Services Ltd v John Holt Ltd (1991) 6 NWLR (pt. 199) 550. (p. 2179 F)

E

3. *The proper way for a respondent to question a judgment*

No doubt, the proper way for the respondents to question any aspect of a judgment that is substantially in his favour is to file a cross-appeal or file a respondent's notice with regard to that complaint. (p. 2180 E)

F

4. *The use of preliminary objection*

A preliminary objection to the hearing of an appeal is a special procedure whereby a respondent may contend the competence of the appeal which, if upheld, has the effect of striking out the appeal. Such is the intend- G ment of Order 2 Rule 9(1) of the Supreme Court Rules (as amended in 1999). (p. 2180 F)

REPRESENTATION

H

J. B. Daudu, SAN with Miss U. N. Agomoh for the appellant

J. Abbas-Ibrahim for the respondents

CASES REFERRED TO

- Madukolu v. Nkemdilim (1962) 2 SCNLR 341, (1962) 1 ALL NLR (pt. 4) 587
- Matari v. Dangaladima (1993) 3 N.W.L.R. (pt. 281) 266
- B Macfoy v. U. A. C. Ltd. (1961) 3 ALL E.R. 1172
- Orji v Zaria Industries Ltd (1992) 1 NWLR (pt. 216) 146
- Owoniboy Technical Services Ltd v John Holt Ltd (1991) 6 NWLR (pt. 199) 550
- Ezomo v Oyakhime (1985) 1 NWLR (pt. 2) 195
- C State v. Onagoruwa (1992) 2 NWLR (pt. 221) 33
- Okafor v. A-G Anambra State (1991) 6 NWLR (pt. 200) 659
- Barclays Bank Ltd v Central Bank of Nigeria (1976) 6 SC 175
- Bronik Motors Ltd v Wema Bank Ltd (1983) 1 SCNLR 296
- D Ejiofodomi v Okonkwo (1982) 11 SC 74
- Osadebay v A.G. Bendel State (1991) 1 NWLR (pt. 169) 525
- Owoniboy Technical Services Ltd v. John Holt Ltd (1991) 6 NWLR (pt. 199) 550
- E Okesuji v Lawal (1991) 1 NWLR (pt. 170) 661
- Kato v. C.B.N (1991) 9 NWLR (pt. 214) 126
- Ezomo v. Oyakhire (1985) 1 NWLR (pt. 2) 195
- Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508

F
STATUTE & RULES REFERRED TO

Kaduna State Area Courts (Jurisdiction) Notice 1977
Court of Appeal Rules, 1981 as amended, Ord 3 r. 15

G
LEAD JUDGMENT BY BELGORE JSC

This is a land dispute. The case looked ordinary but on further evidence evolving during the trial a new and fundamental dimension crept into it. The case was initiated by the appellant, Ma'aji Galadima, the son of Galadima Cino (deceased) claiming that a farmland which his late father cleared and later loaned to the respondents had not on demand been returned to him. It was before Area Court No. 1 in Zaria City. The thirteen defendants, now respondents denied any loan of the farmland

and claimed that they inherited the land from their various parents. In his evidence in Court the plaintiff claimed that he Mato, Kakumi Doki Kakumi, Dan Mallam Kakumi, Wada Kakumi Makarfi and Wada Makeri who were alive were neighbours on the land and that they cleared their portions of land at about the same time with Galadima Cino. The appellant's claim, in reality is that his father gave the disputed land to Sarkin Gwanki, Haruna, on loan so as to in turn allocate to the thirteen defendants. **The Area Courts are not bound by strict procedure peculiar to English Common Law Courts. Thus the complainant before them needs even not lodge his complaint in writing; it is enough for him to verbally tell the Court what his grouse is but this must be recorded by the judge or court clerk in writing. There is no strict formula for filing a complaint. The Area Courts are what one may call grassroots Courts, with cheap procedure and expeditious hearing of the matters before them thus making them not only the nearest courts to the people (or Common Man) but also cheapest fora for litigants.**

The thirteen defendants admit they farm the land and was in their possession, but claimed it was Sarkin Gwanki Haruna that gave them some forty seven years ago when it was bush, and that they cleared it. They disputed the plaintiff's claim that it was only seventeen years ago Sarkin Gwanki Haruna had died, and it was his son Usman that gave evidence in Court, as DW1. In the end the Area Court gave judgment for the plaintiff.

Against this decision an appeal was lodged at the Upper Area Court, Ikara. It must be explained that the plaintiff had once sued successfully the Sarkin Gwanki, who was the village head, on the same land. This probably influenced the Area Court Grade 1's decision. The Ikara Upper Area Court set aside the decision of Area Court 1, Zaria City on seven reasons proposed by it including the failure of trial Court to allow the defendants' witnesses to testify. Against this the plaintiff appeal was lodged at the High Court.

Coomassie J. (as he then was) set out admirably the facts of the case in the trial Court and what took place at the Upper Area Court, Ikara. Some of the defendants claimed Sarkin Gwanki Haruna gave them

the land to clear and farm; others claimed inheritance through their fathers. The High Court came to the conclusion that failure to hear evidence from some witnesses for defendants and the manner of administering oath under Muslem Law which he held was flawed, he therefore
 B ordered retrial. An appeal was lodged to Court of Appeal, Kaduna Division. It must however be pointed out that the Upper Area court at Ikara never adverted to the issue of jurisdiction raised by the respondents Counsel before it but merely set aside the judgment of trial Area Court 1 of
 C Zaria City.

What is obvious is that the land in dispute is not within Zaria City but at Ikara which has its own Local Government and Area Court with jurisdiction to hear and try the case. More confusion crept in when on
 D Zaria, went before Upper Area Court, Ikara which has no jurisdiction to hear the appeal from Area Court of Zaria City. Right from outset the Counsel for the respondents raised the issue of jurisdiction in the Upper Area Court at Ikara. The Area Courts, it must be emphasized, are not
 E bound by procedural technicalities, jurisdiction was a matter raised at Ikara Upper Area Court. Ikara Upper Area Court, though having the land in dispute within its jurisdiction was unlawfully hearing appeal from an area court of trial in whose jurisdiction the land in dispute was not situated.
 F

**Unlike the situation in Jon v Dom 7 SC 1, 3 the issue of jurisdiction had clearly reared its head at Upper Area Court Ikara before High Court and Court of Appeal. The form is not of importance, it is the substance. In cases where the matter of jurisdiction
 G is entirely novel the leave of Court must be sought in a proper application before it could be argued so that the other side will not be taken by surprise or be embarrassed.** Thus when the issue first surfaced at Ikara Upper Area Court that Court never adverted to it in its
 H judgment; similarly the appellate High Court which, with great respect raised new issues but not that of jurisdiction. The Court of Appeal has the rigidity of Superior Courts of record as to procedure. **The appeal to Upper Area Court, just like filing the suit in the lower Area Court,**

will not follow any formula; what is important is the litigant or appellant clearly stating his grievance to Court either in writing, or orally so that Court will record it. The counsel for the appellant at Ikara Upper Area Court raised at the outset the question of jurisdiction. In its judgment that Court never adverted to this issue of jurisdiction even though Counsel appeared for both sides. B

However, on appeal to the High Court of Kaduna State, that court ordered retrial by concluding as follows:

"Failure of the trial Area Court to evaluate the evidence properly and to make findings of facts on these allegation vitiates its judgment and rendered the witnesses called by the Appellant un-qualified to give evidence in favour of the plaintiff/appellant. Having therefore considered the circumstances of this appeal together with the submissions of both counsel I hold that the transaction between the parties was not a loan transaction and cannot therefore say that the Appellants father granted the land in dispute to the Respondents on loan. There is no evidence of such transaction. The trial court should have considered the allegations made against the witnesses called by the plaintiff before the trial Area Court with a view of impeaching them as he did the defendants with cases. Judgment of the Upper Area Court Ikara is formidable and therefore upheld pending the out come of the retrial to be conducted by the Upper Area Court No. 1 Zaria. This is done in the interest of justice. The issue of impeachment of the witnesses called by the plaintiff/appellant in the trial Area Court and the decision of the trial Area Court on discrediting the witnesses of the defendants/respondents be thoroughly looked into. Finally the issue of Oath taking canvassed by the trial Area Court shall be the third point to be examined by the Upper Area Court. For the avoidance of any doubt the question of possession does not arise. Both parties agreed that the land in dispute is firmly in the possession of the respondents and shall remain so pending the determination of the matter on retrial". C D E F G H

Thus the High Court in its appellate jurisdiction never adverted to issue of jurisdiction of the court of trial (Area Court 1, Zaria City) even though it was by way of preliminary objection the issue of

jurisdiction was raised. Thus there is no way the appellants were surprised or embarrassed. I find no merit in this appeal and I dismiss it. The only option is to have a trial not a nullity. What took place at Zaria Area Court 1 was a nullity as that Court lacked jurisdiction (See Kaduna State Area Courts (Jurisdiction) Notice 1977 and position of the Area Courts and their Area of jurisdiction).

I therefore find no substance in this appeal and I dismiss it. The decision of Court of Appeal is hereby affirmed. There will be no order as to costs.

OGWUEGBU JSC

I have had the advantage of reading in draft the judgment just delivered by my learned brother Belgore, J.S.C and I agree with him.

The proceedings leading to this appeal was commenced in the Area Court No. 1, Zaria City. The claim of the plaintiff is in respect of farmland. The Zaria City Area court No. 1 granted the plaintiff's reliefs and the defendants being dissatisfied appealed to the Upper Area Court, Ikara. One of the grounds of appeal argued by their counsel in that court was that the Zaria City Area Court lacked jurisdiction to hear and determine the claim in that the piece of land the subject matter of the claim is situate in Ikara Local Government Area. The Upper Area Court allowed their appeal on the merits and did not pronounce on the issue of jurisdiction.

The plaintiff was dissatisfied and appealed to the High Court Zaria. The High Court sitting in its appellate jurisdiction upheld the decision of the Upper Area Court, Ikara and made certain consequential orders. The issue of jurisdiction was not raised in the High Court. On a further appeal by the plaintiff to the Court of Appeal, Kaduna Division, the defendants filed a notice of preliminary objection to the appeal pursuant to Order 3 Rule 15 of the Court of Appeal Rules, 1981 as amended. The court below ordered the parties to file briefs of argument in respect of the preliminary objection and briefs were accordingly filed and served.

In their brief of argument, the respondents/applicants submitted one issue for the determination of the court below, namely:

"Whether having regard to the provisions of sections 19(3) of the Area Courts Law No. 2 of 1967 together with the Area Courts (Jurisdiction) Notice 1977 of Kaduna State vis-a-vis the Supreme Court of Nigeria decision in Alhaji Hashima Garba Matari And 6 Others vs. Ahamadu Dangaladima And 1 Other (1993) 2 SCNJ 122 at 137, the Area Court No. 1 Zaria City has jurisdiction to hear and determine the Plaintiff/Appellant's claim, to wit being some parcel of farmlands situate at Tashan Filani, Anguwan Bakutaje Kunkumi Gwanki at Makkafi in Ikara Local Government."

In a considered judgment, the court below concluded thus:

"In the light of the foregoing authorities I am of the considered view that having regard to the provisions of S. 19 (3) of the Area Courts Law No. 2 of 1967 together with the Area Courts (Jurisdiction) Notice 1977 Kaduna State vis-a-vis the Supreme Court decision in Alhaji Hashim Garba Matari & 6 Ors. v. Ahmadu Dangaladima & Or. (supra) at p. 137, the Area Court No. 1 Zaria City has no jurisdiction to hear and determine the plaintiff/appellant's claim, to it being the same parcel of farmland situate at Tashan Filani, Anguan Bakutaje Gwanki at Makarfi in Ikara Local Government. Thus taking a cue from the authorities reviewed above, this court is empowered by S. 73 (1) of the Evidence Act to take judicial Notice of the Area Courts (Jurisdiction) Notice 1977. That being the case the jurisdiction of Zaria City Area Court No. 1 is limited within Zaria Local Government hence the court is not competent to adjudicate on farmland situated in Kunkumi in Makarfi District in the then Ikara Local Government In sum, the preliminary objection is allowed. Since the trial court and the proceedings and judgment based on same in the High Court have been declared a nullity, the present appeal being another proceeding resulting from invalid exercise (sic) jurisdiction, is also a nullity. Consequently the appeal is dismissed"

The plaintiff has further appealed to this court against the decision of the court below. From the grounds of appeal filed, three issues for determination are identified. They are as follows:

"1. Whether the respondents in this instant appeal, in their effort to set aside all the judgments of the High Court, Upper Area Court and trial Zaria City Area Court can in their capacity as respondents in the Court of Appeal, employ the avenue of a notice of preliminary objection to achieve its desire and cause (as it eventually succeeded in doing) the Court of Appeal to Dismiss the appeal and set aside all the judgments of the lower courts?"

2. Whether in the peculiar circumstances of this appeal, the issue of the jurisdiction of the trial court which one way or the other would have an effect on the judgments of all the other courts could completely be raised after the same issue had been raised inter-alia before the Upper Area Court which discountenanced same and decided the appeal on the merits and the respondent failed to appeal against such a treatment by the Upper Area Court?

3. Whether the issue of jurisdiction raised herein can be taken suo-motu by the Court of Appeal and if answered in the affirmative, what is the appropriate consequential order to make in the circumstances?"

The sum total of the complaint of the plaintiff/appellant is that the defendants could not by way of preliminary objection attack the judgments of the courts below.

It was submitted by the appellant's counsel that the defendant/respondents should have cross-appealed and that Order 3 Rule 15(1) of the Court of Appeal Rules did not avail them because the notice of preliminary objection contemplated by Rule 15(1) of Order 3 can only affect the hearing of the appeal and cannot constitute the means by which the appeal can be heard and disposed of.

Order 3 Rule 15(1) under which the notice of preliminary objection was filed provides:

"15(1) A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing setting out the grounds of objection, and shall file such notice together with seven copies thereof with the Registrar within the same time."

I do not agree with the contention of Mr. Daudu, Senior Advo-

cate of Nigeria who is appearing for the appellant that the above rule applies only where a respondent intends to challenge the competence of an appeal. In a situation where the trial is a nullity because the trial court lacked jurisdiction to adjudicate on the subject-matter in dispute, I have no doubt that an appellate court which can raise the point Suo motu if the parties failed to do so, will decline to entertain the question when raised in a notice of preliminary objection. B

The learned Senior Advocate of Nigeria further submitted that the respondents would have filed a cross-appeal. It would have been neater if they did so. However since the issue raised in the notice of preliminary objection was based on lack of jurisdiction of the trial court, I do not think that this court will object to the manner the question was brought before the court below since none of the parties was wronged by the order made by that court declaring the proceedings a nullity. Furthermore, the appellant is not contending that the Area Court No. 1, Zaria City had jurisdiction to hear and determine the suit. His quarrel is as to the procedure adopted by the respondents to get rid of the invalid proceedings. D E

It is well settled in many decisions of this court that a court is competent when the subject matter of the case is within jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. See Madukolu & Ors. v. Nkemdilim (1962) 2 SCNLR 341, (1962) 1 ALL NLR (pt. 4) 587. F

As the land in dispute is outside the jurisdiction of Area Court No. 1, Zaria City which has no power to hear and determine the suit or exercise any judicial power over it, the decision reached by it is a nullity. G

The respondents relied on sections 3(1)(2)(4) (6) and 19 of the Area Courts Law No. 2 of Kaduna State and the Area Courts (Jurisdiction) Notice, 1977 of Kaduna State. Reliance was also placed by the respondents on the case of Matari & Ors. v. Dangaladima & Ors. (1993) 3 N.W.L.R. (pt. 281) 266 which was decided by this court. The facts of that case are practically on all fours with those of the present proceedings. In that case, the land in dispute is in Matari in Soba District which is within the jurisdiction of Soba Area court. The Zaria City Area H

Court heard and determined the suit as was done in the present proceedings. This court interpreted the provisions of the Area Courts Law, 1967 of Kaduna State and the Area Courts (Jurisdiction) Notice, 1977 made by the Chief Judge of Kaduna State by virtue of the powers conferred on him by the said Area Courts Law and came to the conclusion that the Zaria City Area Court had no jurisdiction to adjudicate on the land dispute and declared the decision of the Zaria City Area Court a nullity. I do not intend to interpret those provisions again. I fully endorse that decision. The point of law raised in the notice of preliminary objection being an issue of jurisdiction, can be raised at any stage of the proceedings including on appeal.

In conclusion, the proceedings of the Area Court No. 1, Zaria City and all subsequent proceedings based on the decision of the said court are a nullity. See Macfoy v. U. A. C. Ltd. (1961) 3 ALL E.R. 1172.

For the reasons I have given in this judgment and the fuller reasons in the lead judgment of my learned brother Belgore, J.S.C., I also dismiss this appeal. I subscribe to the order as to costs made by him in the lead judgment.

ONU JSC

Having been privileged to read in draft the leading judgment of my learned brother Belgore, JSC just read, I entirely agree with him that this appeal has no merit and must therefore fail. The High Court (per Coomasie, J. as he then was) in its appellate jurisdiction indeed never adverted to issue of jurisdiction of the trial Court - the Zaria City Area Court 1, albeit that it was by way of preliminary objection the issue of jurisdiction was raised. As I associate with the view my learned brother Belgore, JSC holds that the appellants were in no way surprised or embarrassed, I too dismiss this appeal and make no order as to costs.

H

ACHIKE JSC

This is a straightforward appeal in the sense that although its subject-matter is land, the issue before us is manifestly shorn of the complexities, such as traditional history and the like, which generally characterize litigations involving land. The suit is a high-filler making its B
unevitable journey through the gamut of our judicial hierarchical system: from Area Court No. 1 in Zaria City, then on appeal to Ikara Upper Area Court, and on further appeal, undauntedly, it arrived at the superior court of record, i.e. the High Court of Justice, Kaduna State in exercise of its C
appellate jurisdiction. One of the parties remained thoroughly dissatisfied with the judgment of the High Court and hence a further appeal to the Court of Appeal. The controversy regrettably was not put to rest there hence the further appeal to the Supreme Court - the court of last resort in the land. By and large, the only issue that exercised various courts that D
entertained this case was purely jurisdictional as to whether the land suit was properly the trial court. It is against this background that this appeal would be cursorily disposed of.

As earlier stated, this case was initiated at the Area Court No. 1 E
Zaria City. There could be no doubt whatsoever that the land in dispute is situate at Kunkumi in Makarfi District of the then Ikara Local Government. The real issue before the trial Area Court, according to the plaintiff/appellant, was a claim for the return of the farmland loaned to the F
respondents' respective fathers whereas the defendants/respondents contended that they inherited the said land in dispute from their various fathers. The trial court found for the plaintiff.

The defendants appealed against this decision to the Upper Area G
court, Ikara. This court set aside the decision of the trial court without attending to the issue of jurisdiction of the trial court raised at the appeal.

The plaintiff in turn appealed to the High Court, Kaduna wherein, inter alia, failure to hear some of the defendants' witnesses at the trial was raised. The learned presiding Judge of the Kaduna High Court found H
no difficulty in ordering a retrial without adverting completely to the issue of jurisdiction. Dissatisfied, the plaintiff appealed to the Court of Appeal, Kaduna Division. In that court, learned counsel for the respon-

dents neither cross-appealed nor filed respondents' notice of appeal but raised the issue of jurisdiction by way of preliminary objection. Consequent to this, the Court of Appeal ordered both parties to file and exchange briefs of argument. This they did. In the unanimous ruling, the court upheld the preliminary objection and held that the trial court lacked jurisdiction to entertain the suit and therefore the retrial ordered by the High Court was void and amounted to a nullity, so also the proceedings leading to the appeal before it. Accordingly, it dismissed the appeal.

The appellant has appealed against this order of the lower court to this Court. Both counsel filed and exchanged briefs of argument. Appellant postulated the following issues for determination, to wit,

"1. Whether the respondents in this instant appeal, in their effort to set aside all the judgments of the High Court, Upper Area Court and trial Zaria City Area Court can in their capacity as respondents in the Court of Appeal, employ the avenue of a notice of preliminary objection to achieve its desire and cause (as it eventually succeeded in doing) the Court of Appeal to dismiss the appeal and set aside all the judgments of the lower courts?.

2. Whether in the peculiar circumstances of this appeal, the issue of the jurisdiction of the trial court which one way or the other would have an effect on the judgments of all the other courts could completely be raised after the same issues (sic) had been raised inter-alia before the Upper Area Court which discountenanced same and decided the appeal on the merits and the respondent failed to appeal against such a treatment by the Upper Area Court?.

3. Whether the issue of jurisdiction raised herein can be taken suo-motu by the Court of Appeal and if answered in the affirmative, what is the appropriate consequential order to make in the circumstances?."

The respondents, on their part, identified a lone issue for determination:

"Whether the Court of Appeal pursuant to the cumulative effects of section 16 of the Court of Appeal Act together with order 1 rule 20 (5) and order 3 rule 23 of the Court of Appeal Rules 1981 had the power and jurisdiction to dismiss the Appellants appeal on the basis of the respondents preliminary objection alone without a cross-appeal".

It is manifest that the issue of jurisdiction was raised at the Ikara Upper Area Court. Even though that court found for the respondents as appellants, in its judgment, it made no pronouncement of the issue of jurisdiction. Similarly, the Kaduna High Court reached its own decision without reference whatsoever to the question of jurisdiction. But, as B already observed, the matter was not squarely raised on appeal, not even by a cross-appeal not by respondents' notice of appeal; it was contested by way of a preliminary objection. Appellant's learned counsel, Mr. J. B. Daudu, SAN while appearing not to have questioned the belated raising C of the issue of jurisdiction, nevertheless he forcefully submitted it was erroneous for the respondents to have raised the issue of jurisdiction by way of preliminary objection rather than by filing a cross-appeal or filing a respondents' notice. To counsel, in his submission, an appeal cannot D be summarily disposed of by a preliminary objection except by either of the other two modes urged by him. Counsel strongly relied on Orji v Zaria Industries Ltd (1992) 1 NWLR (pt. 216) 146. On the contrary, Mr. J. Abbas-Ibrahim, learned respondents' counsel, with no less force, submitted that since the matter of in controversy related to the jurisdiction of E the trial court it could be properly and rightly raised at any stage of the trial and even by way of a preliminary objection.

The crux of the complaint in this appeal is that the trial Area court No. 1 in Zaria City was the wrong venue for commencing the land F suit. Clearly, it is a jurisdictional issue. Issue on the court's jurisdiction is very pivotal and fundamental. Because of its fundamental nature, on the authorities, it can be raised at any stage of the trial or even on appeal, and even before the apex court. The reason for this latitude to jurisdiction G issue is obvious. A court that lacked jurisdiction to entertain a suit, either as a trial or appellate court, is incompetent to pronounce a judgment in respect of any aspect of the matter in controversy before it. Time never runs against a court to decide on the issue of jurisdiction. The consequence of a court continuing a case where it lacks jurisdiction H is, as it were, like the court embarking on a frolic which would indisputably result in a nullity for which an appellate court, so invited, would have no compunction whatsoever to declare null and void. Jurisdictional

question, be it in criminal or civil matter, has this same devastating consequence. An attack or question as to jurisdiction cannot be properly glossed over by any court once it is raised by the defendant or the respondent. The procedure by which such a fundamental issue is raised may not be in consonance with the stipulated rules of court for questioning a decision of the court, nevertheless, that will never be allowed to defeat the right to question the jurisdictional defect. To do so is unwittingly to postpone the doom's-day. See Owoniboy Technical Services Ltd v John Holt Ltd (1991) 6 NWLR (pt. 199) 550, Ezomo v Oyakhime (1985) 1 NWLR (pt. 2) 195, State v. Onagoruba (1992) 2 NWLR (pt. 221) 33, Madukolu v. Nkemdilim (1962) 1 ALL NLR 589 and Okafor v. A-G Anambra State (1991) 6 NWLR (pt. 200) 659.

It is necessary to caution that whenever there is a challenge to jurisdiction the court should expeditiously attend to it in limine, particularly if the case is at the trial stage and even if the case is at the appeal stage, as is the case in the appeal in hand. Finally, it is important to state that jurisdictional issue being so pivotal can be raised suo motu by the court so long as the parties are accorded the opportunity to react to the issue.

No doubt, the proper way for the respondents to question any aspect of a judgment that is substantially in his favour is to file a cross-appeal or file a respondent's notice with regard to that complaint. A preliminary objection to the hearing of an appeal is a special procedure whereby a respondent may contend the competence of the appeal which, if upheld, has the effect of striking out the appeal. Such is the intentment of Order 2 Rule 9(1) of the Supreme Court Rules (as amended in 1999). Be that as it may, it seems quite clear that a challenge to the court's jurisdiction is, as earlier noted, pivotally fundamental and can pass as sui generis in terms of the procedure adopted to raise it. In the instant case, the trial court's jurisdiction was raised at the Court of Appeal rather irregularly by a preliminary objection. The Court of Appeal appreciating the enormity of the jurisdictional issue raised, and did not allow it to be treated with such levity. Rather, the court ordered that the parties should file briefs of argument so that the serious issue of jurisdiction

tion of the trial court would be copiously ventilated and adequately considered by virtue of its expansive power under section 16 of the Court of Appeal, Act, 1976 as well as Order 3 Rule 23 of the Court of Appeal Rules, 1981 as amended.

In the circumstances I am of opinion that the Court of Appeal B reached the right decision in dismissing the appeal before it. And from what I have said about the fate of this case when it wrongly originated at the Area Court No. 1, Zaria City, it is also clear to me that the court lacked jurisdiction to entertain the suit. Consequently, all the proceedings C in this case throughout its journey in the various courts were a mere exercise in futility.

It is for the foregoing reasons, and those of my learned brother Belgore, JSC, contained in the leading judgment that I, also would dismiss this appeal. I also abide by the order as to costs as contained in the D leading judgment.

KALGO JSC

I have had the privilege of reading in draft the judgment of my learned brother Belgore JSC just delivered. I agree with the reasoning and conclusions reached therein and dismiss this appeal as being without merit. I however wish to emphasize the following points. E

This appeal once again brings into focus the question of when F and how to raise an issue of jurisdiction before an appeal court.

In this appeal the respondents raised the issue of jurisdiction of trial court in the Court of Appeal by way of Notice of Preliminary Objection. They neither filed a cross-appeal nor filed respondents' notice on the issue. The Court of Appeal ordered both parties to file brief on the preliminary objection which was done and it heard arguments and adjourned for a ruling. In the ruling, which turned out to be the judgment of the court, per Okunola JCA concurred by Opene and Oduwole JJCA, H the Court of Appeal held:-

"In consequence, I agree with the learned counsel to the respondents that the trial as well as the judgment of Zaria City Area Court No.

I delivered on 7/4/90 in respect of the aforesaid farm land situated in Kunkumi in Makarfi District of the then Ikara Local Government amount to a nullity. In consequence thereof the order of retrial by the High Court is also void. In sum, the preliminary objection is also allowed. Since the trial court and the proceedings and judgment based on same in the High Court have been declared a nullity, the present appeal being another proceeding resulting from invalid exercise (sic) jurisdiction is also a nullity. Consequently the appeal is dismissed with N500.00 costs".

The appellant appealed against this order to this court on 4 grounds, and in his brief of argument raised the following issues for the determination of this court:-

"1. Whether the respondents in this instant appeal, in their effort to set aside all the judgments of the High Court, Upper Area Court and trial Zaria City Area Court can in their capacity as respondents in the Court of Appeal, employ the avenue of a notice of preliminary objection to achieve its desire and cause (as it eventually succeeded in doing the Court of Appeal to dismiss the appeal and set aside all the judgments of the lower courts?.

2. Whether in the peculiar circumstances of this appeal, the issue of the jurisdiction of the trial court which one way or the other would have an effect on the judgments of all the other courts could completely be raised after the same issues had been raised inter alia before the Upper Area Court which discountenanced same and decided the appeal on the merits and the respondent failed to appeal against such a treatment by the Upper Area Court?.

3. Whether the issue of jurisdiction raised herein can be taken suo-motu by the Court of Appeal and if answered in the affirmative, what is the appropriate consequential order to make in the circumstances?".

The respondent formulated only one issue which reads:-

"Whether the Court of Appeal pursuant to the cumulative effects of section 16 of the Court of Appeal Act together with order 1 rule 20 (5) and order 3 rule 23 of the Court of Appeal Rules 1981 had the power and jurisdiction to dismiss the Appellants appeal on the basis of the respondents preliminary objection alone without a cross-appeal".

I prefer to consider the issues set out by the appellant in the determination of this appeal. But in view of the fact that the main contention in this appeal is that the Court of Appeal dealt with the appeal before it through the avenue of preliminary objection, I shall take issues 1 and 2 together.

There is no dispute from the record of appeal and the history of the case as set out in the leading judgment, that the issue of jurisdiction of the trial Area Court was not raised in or considered by the High Court on appeal. The issue was only raised on appeal in the Upper Area Court, Ikara, but that court failed to adjudicate on that issue. In other words, the Ikara Upper Area Court said nothing about jurisdiction in its final judgment even though it reversed the decision of the trial Area Court.

In the Court of Appeal the appellant as respondent did not raise the issue of jurisdiction of the trial Area Court by way of cross-appeal or respondent's notice. He only raised the issue by way of preliminary objection to the effect that "the appeal is incompetent in that the trial was a nullity and void".

It is trite law that the issue of jurisdiction can be taken up in the Supreme Court, or before the Court of Appeal or the High Court at any stage of the proceedings, even for the first time on appeal. See Barclays Bank Ltd v Central Bank of Nigeria (1976) 6 SC 175; Bronik Motors Ltd v Wema Bank Ltd (1983) 1 SCNLR 296; Ejiofodomi v Okonkwo (1982) 11 SC 74; Swissair Transport Co. Ltd v African Continental Bank Ltd (1991) 1 ALL NLR 37. It can also be raised by the court Suo motu see Osadebay v A.G. Bendel State (1991) 1 NWLR (pt. 169) 525; Owoniboy Technical Services Ltd v. John Holt Ltd (1991) 6 NWLR (pt. 199) 550; Okesuji v Lawal (1991) 1 NWLR (pt. 170) 661; Kato v. C.B.N (1991) 9 NWLR (pt. 214) 126; Ezomo v. Oyakhire (1985) 1 NWLR (pt. 2) 195; Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508.

The fundamental nature of the issue of jurisdiction in court proceedings has been echoed in many cases in this court. In the case of State v. Onagoruwa (1992) 2 NWLR (pt. 221) 33 at page 48, Uwais JSC (as he then was) said:-

"It has been said times without number that the issue of jurisdic-

tion of a court is fundamental. Its being raised in the course of proceedings can neither be too early or premature nor be too late. For if there is want of jurisdiction; the proceedings of the court will be affected by a fundamental vice and would be a nullity however well conducted the proceedings might otherwise be. See Oredoyin v. Arowolo (1989) 4 NWLR (pt. 114) 172 at 187 and Onyema v. Oputa (1987) 3 NWLR (pt. 60) 259".

In a similar mood, in the case of Funduk Engineering Ltd v. McArthur (1995) 4 NWLR (pt. 392) 640 at page 651, this Court held:

"The issue of jurisdiction is so fundamental that if the court below eventually found that the trial court after all lacked jurisdiction, then the whole judgment which is the by-product of such a trial becomes a nullity, no matter how well conducted. See Madukolu & Sons v. Nkemdilim (1962) 1 ALL NLR 587; (1962) 2 SCNLR 341".

This therefore makes it obvious that whenever the jurisdiction of a court is challenged or objected to in any proceedings and at any stage, it is the duty of that court to deal timeously with the challenge or objection before deciding on the next course of action. See Okafor v. A. G. Anambra State (1991) 6 NWLR (pt. 200) 659; Olaniyi v. Aroyehun (1991) 5 NWLR (pt. 194) 652; Obikoya v. Registrar of Companies (1975) 4 SC 31; State v. Onagoruwa (supra).

In this appeal the main contention of the learned counsel for the appellant if I understand him properly, is that while he has no objection to the respondent raising the issue of jurisdiction at that stage, his submission was that it was wrong to do so by way of preliminary objection instead of filing a cross-appeal or respondent's notice on the matter. He argued that since the Court of Appeal, being a creature of statute, can only hear appeals filed before it, it cannot dispose of an appeal before it through the avenue of a preliminary objection. He cited the case of Orji v. Zaria Industries Ltd (1992) 1 NWLR (pt. 216) at 146. It would appear to me that his objection was on the procedure followed in filing the objection or challenge to the jurisdiction. There is therefore a technical mistake in bringing the issue of jurisdiction to the Court of Appeal by way of preliminary objection.

The substance of the preliminary objection filed by the respondent in the Court of Appeal, in my respectful view, is that since the trial court (Zaria City Area Court 1) lacks jurisdiction to entertain the matter, the Court of Appeal is not competent to entertain it. It is clearly a challenge to the jurisdiction of the Court of Appeal to hear the appeal. B

In the case of State v. Onagoruwa (supra) Mr. Onagoruwa was indicated and prosecuted in the Lagos State High Court for stealing contrary to Section 390 of the Criminal Code. At the close of the prosecution case, he made a no-case submission which was overruled by the learned trial judge. He appealed against the ruling to the Court of Appeal and applied to the High Court for stay of the proceedings pending the determination of his appeal. The High Court refused the stay. He then filed the same application in the Court of Appeal. At the hearing of the application in the Court of Appeal, the learned counsel for the State raised a preliminary objection to the right of Mr. Onagoruwa to appeal against the ruling of the High Court, and submitted that the court had no jurisdiction to entertain the appeal and could not therefore grant any stay. The learned counsel for Mr. Onagoruwa submitted that the preliminary objection was premature and the matter ought not to be decided on preliminary objection. The Court of Appeal ruled that the objection of the State was premature at that stage and that it ought to be raised when the briefs of argument were filed. The State appealed to this court. C D E F

This court heard and allowed the appeal. It also held that due to the fundamental nature of the issue of jurisdiction raised in the preliminary objection and the fact that the Court of Appeal ordered stay of proceedings without hearing the parties on the motion, the Court of Appeal must hear both the motion and the preliminary objection on its jurisdiction to entertain the appeal. Uwais JSC (as he then was) on page 48 of the report said:- G

"With respect, the Court of Appeal was therefore wrong when it held the view that the preliminary objection raised by the appellant on its jurisdiction to hear the appeal brought before it by the respondent was premature. The notice was to save it the trouble of toiling in futility should it indeed be without jurisdiction". (underlining mine) H

The above would appear to me to be saying that a respondent in an appeal can properly raised an issue of jurisdiction of the appeal court to entertain the appeal before it and the court must hear the objection 'to save it from toiling in futility". That is what the Court of Appeal did in the instant appeal after giving the parties the opportunity of filing a brief each on the objection itself. It is my respectful view that in any case where the challenge to the decision of the court is founded on lack of jurisdiction, the court is bound to consider such challenge which goes to the root of the matter showing that the court has acted without jurisdiction. See Adeigbe v. Kushimo (1965) 1 ALL NLR 248. And a party to a litigation cannot in my view be shut out and the court precluded from entertaining a matter on "technical ground" particularly where the issue of jurisdiction is concerned. I do not however find the case of Orji v. Zaria Industries Ltd (supra) of any relevance to the issue under consideration.

From the record of appeal, I am of the opinion that the Court of Appeal has come to the correct decision in dismissing the appeal before it. I therefore answer issues 1 and 2 in the affirmative.

In view of what I have said above, I am clearly of the view that any issue which challenges the jurisdiction of a court can be raised by the court suo motu. Afortiori, the Court of Appeal could in this case, raise the issue articulated in the preliminary objection by itself and order as it did by virtue of the provisions of Section 16 of the Court of Appeal Act 1976, and 0.3 rule 23 of the Court of Appeal Rules 1981 as amended.

For the above reasons, and those ably set out by my learned brother Belgore JSC in the leading judgment, I also dismiss this appeal and abide by the consequential orders made therein including the order as to costs.

H