

SUPREME COURT OF NIGERIA

18TH MAY, 2001. SC.13/1997

**CORAM:- A. G. KARIBI WHYTE, S. M. A. BELGORE, M. E.
OGUNDARE, E. O. OGWUEGBU, U. A. KALGO, JJSC.**

P. N. UDDOH TRADING COMPANY LTD. APPELLANT
AND

1. SUNDAY ABERE

2. ATTORNEY-GENERAL OF RIVERS STATE DEFENDANTS/
RESPONDENTS

ACTIONS - Cause of action - Definition - How properly defined and explained (H 3)

ACTIONS - Cause of action - In the present case - When it arose - With a view to determining the limitation period (H 4)

ACTIONS - Limitation of action - Statute bar - Where the action was filed - After the period limited by law had expired - The action is statute barred - As in the present case (H 5)

ACTIONS - Statute bar - Effect - A statute barred action - Cannot be maintained - Or properly instituted - And should be struck out from the trial court (H 6)

APPEALS - Grounds of appeal - In determining whether it alleges an error of law or fact - It is always relevant and crucial - To construe the ground together with its particulars (H 1)

APPEALS - Competence - Leave to appeal - Grounds of appeal - Where some of the grounds are of pure law - The appeal is competent without leave of court (H 2)

FACTS

The appellant who was the plaintiff at the trial Rivers State High Court Port Harcourt claimed against the respondents jointly and severally, certain reliefs which included a declaration that the re-acquisition by the Rivers State government and resale to the 1st defendant of a property situate at Port Harcourt of which he was the purported legal representative is illegal and null. He further claimed for a cancellation of the Deed of assignment to the 1st defendant by the government and for damages and injunction amongst others.

The parties called their witness and led evidence in accordance with their pleadings. After address by the counsel for the parties, the learned trial judge in a considered judgment dismissed the whole case of the plaintiff/appellant on the basis of its being statute barred. The plaintiff appealed to the Court of Appeal which dismissed his appeal. He has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

(i) Whether having regard to the state of the pleadings and the evidence adduced at the trial, the Court of Appeal was right when it affirmed the judgment of the Court of first instance to the effect that the Appellant's suit was statute-barred.

(ii) Whether the Court (of Appeal) below was right when it affirmed the decision of the Court of first instance to the effect that the property in question was an abandoned property within the context and intendment of section 2 of the Abandoned Property (Custody and Management) Edict No. 8 of 1969 of Rivers State of Nigeria. (Etc. see p. 2222)

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

Grounds of Appeal - Determination

1. This court has in many decided cases classified the category of grounds of law or fact and although the line of distinction between law simpliciter and mixed law and fact is very thin, an appellant cannot convert a ground of mixed law and fact into one of law by christening it as such. See Nwadike

v Ibekwe (1987) 4 NWLR (pt. 67) 718 at 729. However in determining whether a ground of appeal alleges an error of law or fact, it is always relevant and crucial to construe the ground of appeal together with the particulars of error alleged. See Metal Construction (W.A.) Ltd V Migliore (1990) 1 NWLR (pt. 126) 299. (p. 1723 H)

Competence - Leave to appeal

2. In the light of the principles enunciated in the above decided cases of this court, I have examined the ground of appeal filed by the appellant in this case and find that grounds 2, 5 and 6 cannot be classified as grounds of law. This is so, because in my respectful view, all of them, read with their respective particulars, cannot properly be determined on the construction of any statutory provisions. But grounds 1, 3, and 4 can all be answered by relevant law or rule of law, and they are in my view, pure grounds of law. Therefore grounds 2, 5 and 6 which were filed without leave are hereby struck out together with issues 5 and 6 which related to them. The appeal is competent as no leave is required to file grounds 1, 3 and 4. I so hold. (p. 1724 C)

Cause of action - Definition

3. What then is the cause of action and when does it arise. Cause of action has been defined by courts to mean a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy. It includes all those things which are necessary to give a right of action and every material fact which is material to be proved to entitle the plaintiff to succeed. See Patkun Industries Ltd v Niger Shoes Ltd (1988) 5 NWLR (pt. 93) 138; Ibrahim V Osim (1987) 4 NWLR (pt. 67) 965; Bellow V. A.G.A Oyo State (1985) 5 NWLR (pt. 45) 828. The cause of action arises as soon as the combination of the circumstances mentioned above accrued or happened, and it is the act on the part of the defendant which gives the plaintiff his cause of complaint. (p. 1725 G)

Cause of action - When it arose

4. In this case, the cancellation of the lease by the Rivers State Govern-

ment in 1972, was in my respectful view, the act which gives the appellant his cause of action since by such act the deed of lease of the appellant ceased to be effective and the appellant's interest in the property was terminated. This means that his cause of action arose in 1972, and he was
B presumed to know this by virtue of the Gazette notice Exhibit 'N'. I entirely agree with these observations and findings and adopt them for the purpose of this appeal. I therefore find that the appellant's cause of action must have arisen in 1972 for the purpose of limitation of action. See Egbe
C V Adefarasin (1987) 1 NWLR (pt. 47) 1 SC. (p. 1726 B)

Limitation of action - Statute bar

5. It is on record that the appellant took out his writ of summons in the trial court and filed his statement of claim in this case on the 10th of November 1988. According to Section 15(2) of the Limitation Act 1966
D which applied to the Rivers State, the appellant had 12 years within which to file his action from 1972 when the cause of action arose. And 12 years from 1972 in 1984; but the appellant filed the action in 1988. This means
E that the action was filed 4 years after the period limited by law had expired. The appellant's action is therefore statute-barred and I find accordingly. I answer issue 1 in the affirmative. (p. 1727 B)

F ***Statute bar effect***

6. I wholly agree with the legal principles enunciated above. It appears to me therefore that if an action which is statute-barred cannot be maintained, and cannot be properly and validly instituted, then it must be struck out as
G not being properly before the court. This should have been the fate of this action from the trial court. In the result, I find that there is no need at all for me to consider any more issues in the appellant's brief, issue 1 having determined the appeal as indicated above. (p. 1727 H)

H **NOTABLE POINTS OF INTEREST**

KALGO JSC

1. Pleading law in the pleadings

It is not necessary in my view, to plead any particular law in the pleading,

though it may be desirable. It is sufficient if evidence was given of the particular law relied upon during the trial. (p. 1725 A)

KARIBI-WHYTE JSC

2. Plea of statute bar in pleading

A defence founded on the statute of limitations is a defence that the Plaintiff has no cause of action. It is a defence of law which can be raised *in limine*, and without any evidence in support. It is sufficient if *prima facie* the dates taking the cause of action outside the prescribed period is disclosed on the writ of summons and statement of claim. Appellants have relied on the dictum of Oputa JSC in Savannah Bank of Nigeria Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd. (1987) 1 NWLR (pt.49) 212 at p.225 where the learned Justice of the Supreme Court stated that it is the Defendant who ought to plead and prove that the action is statute-barred. He went on to state that since the onus is on the Defendant to show when the cause of action accrued to the Plaintiff, it is not enough to plead a particular date unless that date is admitted by the Plaintiff in his reply. The dictum did not support the contention. (p. 1733 C)

3. The effects of a judgment relates only to rights of parties and is not universal

The Supreme Court judgment in Peenock Investment Ltd. v. Hotel Presidential Ltd. (*supra*) not being legislation is limited to the rights of the parties in the case and the situation in that case and was not concerned with the situation of other parties or facts not before that court. It had no universal effect. It is well settled that although a judgment creates law, such law is only as between the parties to the litigation and their privies. It does not bind any parties outside this group even if the same issues arise. (p. 1735 E)

OGUNDARE JSC

4. The effect of a decision on a statute

The decision of a court does not repeal a statute, it only pronounces on

the validity or otherwise of that statute. Anyone adversely affected by the statute would still need to institute an action to have a declaration in his favour. (p. 1748 D)

B OGWUEGBU JSC

5. The effect of the operation of a limitation act or law

Generally, the operation of the Limitation Act or law does not extinguish the cause of action but merely bars the remedy of bringing the action after the lapse of the specified time from the date when the cause of action arose. There are, however, instances where the operation of legislation is not only to bar the remedy, but operates to extinguish the right or title to the property or claim in question. For example, the Limitation Act, 1966 which is applicable in this case makes the following provisions in its sections 15(2)(a) and 20:

"15(2) The following provisions shall apply to actions by a person to recover land –

(a) subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person;

"20" On the expiration of the period fixed by this Decree for any person to bring an action to recover land, the title of that person to the land shall be extinguished."

In addition, the Rivers State Limitation Edict No. 7 of 1988 which is equally applicable to the case fixed the period for bringing an action to recover land at ten years from the date the right of action accrued. (p. 1750 E)

REPRESENTATION

Chief U.N. Udechukwu, SAN with T.O.S. Okolo Esq. for the appellant. O. Mudiaga Odje Esq. with S.A. Abere Esq. and Abdulmumini Hanafi for the 1st respondent.

Mrs. A.A. Cookey-Gam Attorney General Rivers State with A.I. Chikere (Mrs.) D.C.L. for the 2nd respondent.

CASES REFERRED TO

Peenok Investments Ltd. vs. Hotel Presidential Ltd. (1982)1 SC 1
Nwadike v. Ibekwe (1987)4 NWLR (Pt.67) 718 at 729
Ojemen v. Momodu 11 (1983)1 SCNLR 188 at 211
Metal Construction (W.A.) Ltd. v. Migliore (1990)1 NWLR (Pt.126) 299 B
NNSC v. Establishment Sigma of Vadus (1990)7 NWLR (Pt.164) 526
Patkun Industries Ltd. v. Niger Shoes Ltd. (1988)5 NWLR (Pt.93) 138
Ibrahim v. Osim (1987)4 NWLR (Pt.67) 965
Bello v. A.G. Oyo State (1985)5 NWLR (Pt.45) 828
Egbe v. Adefarasin (1987)1 NWLR (Pt.47) 1 SC C
Adimora v. Ajufo (1988)3 NWLR (Pt.80) 1
Eboigbe v. N.N.P.C. (1994)5 NWLR (Pt.346) 649 at 659
Odubeko v. Fowler (1993)7 NWLR (Pt.308) 637
Ekeogu v. Aliri (1991)3 NWLR (Pt.179) 258 D
Sanda v. Kukawa Local Govt.(1991)2 NWLR (Pt. 174) 379

STATUTES REFERRED TO

State Lands (Cancellation of Leases) Edict 1972 E
Limitation Act 1966 s. 15(2)

LEAD JUDGMENT BY KALGO JSC

The appellant who was the plaintiff at the trial court (Rivers F
State High Court, Port Harcourt) claimed against the respondents jointly
and severally the following reliefs:-

1. A declaration that the reacquisition by the Government of the
Rivers State of Nigeria of which the 2nd defendant is the legal Represen- G
tative, and resale to the 1st defendant of the plaintiff's property known as
plot 3 within Station Road Layout otherwise and called Number 3 Station
Road, Port Harcourt the subject-matter of the Deed dated the 8th day of
September, 1958 and registered as No. 56 at page 56 in volume 181 of
the Deeds Registry in the office at Enugu now at Port Harcourt is illegal, H
null and void and of no effect whatsoever.

2. 100,000.00 (One hundred thousand Naira) damages for tres-
pass in that in March 1986 and on diverse other dates, the defendants by

themselves, their servants and/or agents forcibly broke and entered the plaintiff's said property called Number 3 station Road, Port Harcourt and disturbed the plaintiff's possession thereof against its wish.

B 3. A perpetual Injunction restraining the defendants, their servants and/or agents from further trespass to the plaintiff's property known as plot 3 within Station Road layout otherwise called Number 3 Station Road, Port Harcourt.

C 4. An order setting aside and/or bringing forward for cancellation the Deed dated the 17th day of July, 1978 registered as No. 78 at page 78 in volume 72 of the Deeds Registry in the office at Port Harcourt by which the Government of Rivers State of Nigeria purported to have sold number 3 Station Road to the 1st defendant.

D 5. A declaration that the plaintiff is entitled to Statutory Certificate of Occupancy in respect of the property known as plot 3 within Station Road Layout otherwise called number 3 Station Road, Port Harcourt the subject-matter of a Deed dated the 8th day of September, 1958 registered as No. 56 at page 56 in Volume 181 of the Deeds Registry now at E Port Harcourt.

F 6. As against the 1st defendant only: an account of all rents and moneys collected by the 1st defendant from the Plaintiff's tenants living in the property Number 3 Station Road, Port Harcourt without the plaintiff's consent and payment of such rents and moneys to the plaintiff.

G 7. As against the 2nd defendant: an Order of the honourable Court compelling the Government of Rivers State of Nigeria to execute all relevant Title Deeds and/or Statutory Certificate of Occupancy in respect of or touching Number 3 Station Road, Port Harcourt.

H Pleadings were ordered, filed and exchanged between the parties. Parties then called witnesses at the trial to prove their respective cases in accordance with their pleadings. At the end of the trial, counsel for the parties addressed the Court and the case was adjourned for judgment. On the 20th of July 1992, the learned trial judge Ichoku J. delivered a considered judgment in which he dismissed the whole claim of the plaintiff/appellant. Dissatisfied with this decision, he appealed to the Court of Appeal which after hearing the appeal also dismissed it. He now ap-

pealed to this court.

In this court, the appellant formulated the following issues for determination:-

(i) *Whether having regard to the state of the pleadings and the evidence adduced at the trial, the Court of Appeal was right when it affirmed the judgment of the Court of first instance to the effect that the Appellant's suit was statute-barred.* B

(ii) *Whether the Court (of Appeal) below was right when it affirmed the decision of the Court of first instance to the effect that the property in question was an abandoned property within the context and intendment of section 2 of the Abandoned Property (Custody and Management) Edict No. 8 of 1969 of Rivers State of Nigeria.* C

(iii) *Whether, even if the property in question was an abandoned property, there was a valid sale of it to the First Respondent under the provisions of the Abandoned Property Decree No. 90 of 1970 so as to invoke the ouster clause contained in the said Decree.* D

(iv) *Whether the Court of Appeal was right when it held that the Supreme Court's decision in PEENOK INVESTMENTS LTD. VS HOTEL PRESIDENTIAL LTD. (1982) 1 SC 1 notwithstanding, the purported cancellation of the Appellant's Deed of Lease under the provisions of the State lands (Cancellation of Lease) Edict No. 15 of 1972, as Amended, was in the circumstance of this case valid.* E

(v) *Whether the Court (of Appeal) below was right when it held that the Appellant, as Plaintiff at the Court of first instance, did not challenge cancellation of its Lease at the trial and did not appeal against the finding of the Court of first instance on the question of such non-challenge.* F G

(vi) *Assuming the purported sale of the property in question and the purported cancellation of the appellant's Lease to be valid, whether the Court of Appeal was right in holding that the appellant had a duty to apply to a Court to set aside the sale or the cancellation.* H

The 1st respondent also raised 6 issues which read:-

ISSUE I

WHETHER THE ACTION IS STATUTE BARRED

ISSUE II

WHETHER THE SALE OF AN ABANDONED PROPERTY
I.E. THE LAND IN DISPUTE BY THE ABANDONED PROPERTY
IMPLEMENTATION COMMITTEE PURSUANT TO DECREE NO. 90
OF 1979 NOW CAP. 1 LAWS OF THE FEDERATION OF NIGERIA
B 1990, CAN BE INQUIRED INTO AND/OR IMPUGNED BY ANY
COURT OF LAW.

ISSUE III

WHETHER THE COURT OF APPEAL WAS RIGHT IN
C HOLDING THAT THE PROPERTY IN QUESTION WAS AN ABAN-
DONED PROPERTY WITHIN THE CONTEXT AND MEANING OF
THE ABANDONED PROPERTY (CUSTODY AND MANAGEMENT)
EDICT NO. 8 OF 1969, RIVERS STATE OF NIGERIA.

D ISSUE IV

WHETHER THE COURT OF APPEAL WAS RIGHT IN NOT
AFFIRMING THE DECISION OF THE TRIAL COURT THAT THE
APPELLANT DID NOT CHALLENGE THE CANCELLATION OF ITS
E LEASE IN 1972 AND THAT THE APPELLANT FAILED TO APPEAL
AGAINST SAME.

ISSUE V

WHETHER THE COURT OF APPEAL WAS RIGHT IN NOT
APPLYING THE DECISION OF THIS HONOURABLE COURT IN
F PEENOK INVESTMENTS LIMITED V. HOTEL PRESIDENTIAL LIM-
ITED, (1982) 1 SC. 1 TO THIS PRESENT ACTION

ISSUE VI

WHETHER THE COURT OF APPEAL WAS RIGHT IN
G HOLDING THAT THE APPELLANT OUGHT TO HAVE APPLIED
TO THE TRIAL COURT TO SET ASIDE THE CANCELLATION OF
THE APPELLANT'S LEASE IN 1972 AND SUBSEQUENT SALE
THEREOF TO THE RESPONDENT.

H The 2nd respondent's issue for determination also read thus:-

(i) Whether the Court of Appeal was right in affirming the Deci-
sion of the Trial Court that the action is Statute Barred.

(ii) Whether the Trial Court and the Court of Appeal were Right

in holding that the property in question was an abandoned property within the intendment and context of the Abandoned property (Custody and Management) Edict No. 8 of 1969 Rivers State of Nigeria.

(iii) Whether the Court of Appeal was Right in affirming the decision of the Trial Court that the Appellant did not challenge the validity of the State Lands (Cancellation of leases) Edict No. 15 of 1972 of the Rivers State as amended by Edict No. 17 of 1972. B

(iv) Whether the Court of Appeal was Right in not Applying the decision of this honourable Court in the Case of PEENOK INVESTMENTS LIMITED VS. HOTEL PRESIDENTIAL LIMITED, (1982 1 SC. 1 to this present action. C

I have carefully examined all the issues for determination set out by the counsel for the parties enumerated above and I find that the appellant's issues are more in lien with the grounds of appeal. I adopt them for the purpose of this appeal. D

Before discussing the appellants' issues, I shall first of all deal with the preliminary objection of the 2nd respondent to the effect that the appeal is incompetent and should be struck out. E

The learned counsel for the 2nd respondent submitted both in her brief and orally in this court that since the appeal was on the concurrent findings of the 2 Courts below, the appeal should only be valid if leave to file it was obtained prior to filing it. Learned counsel pointed out that there was no such leave in this case as required by Section 213 of the 1979 Constitution, now S. 232 of the 1999 Constitution. Counsel therefore submitted that the appeal is incurably defective and incompetent and should be struck out. Learned counsel for the 1st respondent also adopted the submissions of the counsel for the 2nd respondent. F G

The learned counsel for the appellant did not file a reply brief in an attempt to answer the preliminary objection raised in the 2nd respondent's brief. However, in his oral reply in court, he submitted that all the 6 grounds of appeal filed on 16/8/96 which were more or less repeated in notice of appeal filed on 22-8-96 are all grounds of law and so his appeal was competent. H

This court has in many decided cases classified the category

of grounds of law or fact and although the line of distinction between law simpliciter and mixed law and fact is very thin, an appellant cannot convert a ground of mixed law and fact into one of law by christening it as such. See Nwadike v Ibekwe (1987) 4 NWLR (pt. 67) 718 at 729; Ojemen v Momodu II 91983) 1 SCNLR 188 AT 211. However in determining whether a ground of appeal alleges an error of law or fact, it is always relevant and crucial to construe the ground of appeal together with the particulars of error alleged. See Metal Construction (W.A.) Ltd V Migliore (1990) 1 NWLR (pt. 126) 299 NNSC v Establishment Sigma of Vadus (1990) 7 NWLR (pt. 164) 526.

In the light of the principles enunciated in the above decided cases of this court, I have examined the ground of appeal filed by the appellant in this case and find that grounds 2, 5 and 6 cannot be classified as grounds of law. This is so, because in my respectful view, all of them, read with their respective particulars, cannot properly be determined on the construction of any statutory provisions. But grounds 1, 3, and 4 can all be answered by relevant law or rule of law, and they are in my view, pure grounds of law. Therefore grounds 2, 5 and 6 which were filed without leave are hereby struck out together with issues 5 and 6 which related to them. The appeal is competent as no leave is required to file grounds 1, 3 and 4. I so hold.

I shall now consider the remaining 4 issues set out by the appellant in his brief. I start with issue (i) which reads:-

“Whether having regard to the state of the pleadings and the evidence at the trial, the Court of Appeal was right when it affirmed the judgment of the Court of first instance to the effect that the Appellant’s suit was statute – barred.”

The 2nd defendant/respondent in his amended Statement of Defence paragraph 9 averred:-

“9. In further answer to the matters denied in paragraph 8 above, the 2nd defendant avers as follows:

(a)

(b)

(c) *The plaintiff’s claim is statute-barred, having regard to the*

provisions of statute of limitation."

Therefore it is not correct to say as submitted orally by learned appellant's counsel that statute of limitation was not pleaded. It is not necessary in my view, to plead any particular law in the pleading, though it may be desirable. It is sufficient if evidence was given of the particular law relied upon during the trial. B

In the trial court, one Rowland Okujiagwu, a principal land officer of the Ministry of Lands and Housing, Port Harcourt as DW2, testified that in 1972 the lease of the property to the appellant was cancelled by the Rivers State Government under the State Lands (Cancellation of Leases) Edict 1972 and this was published in the State Gazette No. 56 Vol. 4 of 1972. It was admitted in evidence as Exhibit 'N'. Also the 1st respondent as DW1, testified at the trial, that he bought the property in dispute from the Abandoned Property Implementation Committee in 1978 and paid the price in the Central Bank of Nigeria, Port Harcourt, where he collected his receipts Exhibits H and H1. He was subsequently given the deed of lease of the property in dispute Exhibit 'L' as the owner thereof. The learned counsel for the 2nd respondent addressed the trial court on the action being statute-barred on pages 123 and 124 of the record. D E

These pieces of evidence have shown that the possession or ownership of the property in dispute has been completely and substantially interfered with in 1972 when the appellant's lease on the property was cancelled and in 1978 when the property itself was sold to the 1st respondent. The cancellation was even published in the Rivers State Official Gazette (Exhibit 'N') which took effect from the 1st of November 1972 and which was notice to the whole world. The appellant's cause of action must therefore have arisen in 1972 or at the latest in 1978. F G

What then is the cause of action and when does it arise. Cause of action has been defined by courts to mean a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy. It includes all those things which are necessary to give a right of action and every material fact which is material to be proved to entitle the plaintiff to succeed. See Patkun Industries Ltd v Niger Shoes Ltd (1988) 5 NWLR (pt. 93) 138; Ibrahim V Osim (1987) 4 H

NWLR (pt. 67) 965; Bellow V. A.G.A Oyo State (1985) 5 NWLR (pt. 45) 828. The cause of action arises as soon as the combination of the circumstances mentioned above accrued or happened, and it is the act on the part of the defendant which gives the plaintiff his cause of
B complaint.

In this case, the cancellation of the lease by the Rivers State Government in 1972, was in my respectful view, the act which gives the appellant his cause of action since by such act the deed of lease of
C the appellant ceased to be effective and the appellant's interest in the property was terminated. This means that his cause of action arose in 1972, and he was presumed to know this by virtue of the Gazette notice Exhibit 'N'.

The learned trial judge in reviewing the evidence before him had
D this to say on p. 161 of the record:-

*"Thus I accept the unchallenged evidence of DW2 that the lease of the plaintiff was cancelled in 1972 by Rivers State Government. This cancellation was published in the Official Gazette i.e. Exhibit 'N'. Under Section 117 (a) (sic) 87 of the Evidence Act, the Gazette is a notice of
E its publication to the whole world and the plaintiff is inclusive. With the cancellation of the lease in 1972 and the action taken out in 1988 it has taken the plaintiff 16 years after whatever action that was accrued to
F them to take this action.*

Then Section 15 (2) (a) of the Limitation Act of 1966 the plaintiff has 12 years within which to bring this action... This action is thus statute – barred."

And the Court of Appeal per Katsina – Alu JCA (as he then was)
G on pages 160 & 161 of the record said:-

*"When the lease of the property in question was cancelled in 1972, the property reverted to the State Government. The plaintiff's interest in the property was taken away from that date, that is to say, 1972.
H In other words the cause of action arose in 1972. The Government of Rivers State was for upwards of 16 years in possession of the land when the Plaintiff commenced this action in the Port Harcourt High Court."*

I entirely agree with these observations and findings and adopt

them for the purpose of this appeal. I therefore find that the appellant's cause of action must have arisen in 1972 for the purpose of limitation of action. See Egbe V Adefarasin (1987) 1 NWLR (pt. 47) 1 SC; Adimora V Ajufo (1988) 3 NWLR (pt. 80) 1; Jallco Ltd V Owoniboys Technical Services Ltd (1995) 4 NWLR (pt. 391) 534. B

It is on record that the appellant took out his writ of summons in the trial court and filed his statement of claim in this case on the 10th of November 1988. According to Section 15(2) of the Limitation Act 1966 which applied to the Rivers State, the appellant had 12 years within which to file his action from 1972 when the cause of action arose. And 12 years from 1972 in 1984; but the appellant filed the action in 1988. This means that the action was filed 4 years after the period limited by law had expired. The appellant's action is therefore statute-barred and I find accordingly. I answer issue 1 in the affirmative. C D

What then is the position or effect of finding that an action is statute-barred? In the case of Eboigbe V N.N.P.C. (1994) 5 NWLR (pt. 346) 649 at p. 659 this court held that:- E

"Where an action is statute – barred a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of limitation laid down by the limitation law for instituting such an action has elapsed. See Odubeko V Fowler (1993) 7 NWLR (pt. 308) 637. An action commenced after the expiration of the period, within which an action must be brought, stipulated in statute of limitation is not maintainable. See Ekeogu V Aliri (1991) 3 NWLR (pt. 179) 258. In short when the statute of limitation in question prescribes a period, within which an action must be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. See Sanda V Kukawa Local Govt. (1991) 2 NWLR (pt. 174) 379." (Underlining mine) F G

I wholly agree with the legal principles enunciated above. It appears to me therefore that if an action which is statute-barred cannot be maintained, and cannot be properly and validly instituted, then it must be struck out as not being properly before the court. H

This should have been the fate of this action from the trial court. In the result, I find that there is no need at all for me to consider any more issues in the appellant's brief, issue 1 having determined the appeal as indicated above.

B In the light of my findings that the appellant's action in the trial court was statute – barred, this appeal lacks merit and I dismiss it. The action in the trial court is hereby stuck out. I award to each respondent N10,000.00 costs against the appellant.

C _____

KARIBI-WHYTE JSC

I have had the privilege of reading the leading judgment in this appeal of my learned brother Kalgo JSC. I agree entirely with the reasoning and conclusion dismissing the appeal. I too will and hereby accordingly dismiss this appeal. I only wish to make some contribution in elaboration of the reasons.

The determination of this appeal rests upon the very narrow point but crucial, fundamental issue whether the action of the Plaintiff/Appellant was statute barred? This was the main ground on which the learned trial Judge decided against the claim of the Plaintiff in the High Court. The Court below also affirmed the learned trial Judge on the same ground. It is the first of the issues for determination formulated from the grounds of appeal. The issues for determination have been fully set out in the lead judgment.

The subject matter of issue 1, relates to the decision of the Court of Appeal affirming the judgment of the court of first instance that the Appellant's action was statute-barred. It is hereunder reproduced as follows

“Whether having regard to the state of the pleadings and the evidence adduced at the trial, the Court of Appeal was right when it affirmed the judgment of the court of first instance to the effect that the Appellants suit was statute barred.”

In his brief of argument, which he adopted in his oral expatiation before us at the hearing, Mr. Udechukwu, SAN arguing the issue submit-

ted that the bare averment in paragraph 9(c) of the Amended Statement of defence of the 2nd Defendant that “Plaintiff’s claim is statute-barred having regard to the provisions of the statute of limitation” cannot be regarded as proper pleading of limitation of time. Learned Counsel argued that since there was no evidence at the hearing in support of the pleading it should be deemed to have been abandoned. Counsel relied on Savannah Bank of Nigeria Ltd. vs. Pan Atlantic Shipping & Transport Agencies Ltd. (1987) 1 NWLR (pt..49) 212; Salami & ors v. Oke (1987) 4 NWLR (pt.63) 1 at p.8 for this submission. Learned Counsel to the Appellants cited Gbagundu v. Ishola & ors. (1981) 6 CA (pt.11) 217 and submitted that in order to sufficiently raise the defence that an action was statute-barred the statute relied upon must be stated and particularised in the statement of defence. Respondents in this case having not adopted this procedure, the Court of Appeal ought to have held that there was no proper pleading of the statute.

Appellant filed an amended reply to the second defendant’s amended statement of defence, specifically denying paragraph 9(c) of the amended statement of defence. It was further submitted relying on the dictum of Coker JSC in Savannah Bank of Nigeria Ltd. vs. Pan Atlantic Shipping & Transport Agencies Ltd. (supra), that it was not right to make any finding of a disputed fact in the absence of evidence in support. Learned Counsel quoted from the dictum of Oputa JSC in the same decision to support the submission of the procedure to be followed in pleadings in a defence relying on limitation of statute.

It was accordingly submitted that since the second Respondent did not adduce evidence in support of the amended statement of defence in paragraph 9(c) that averment was not pursued and must be deemed to have been abandoned, counsel’s submission notwithstanding. Again, the averment in paragraph 9(c) of the amended statement of defence did not plead the relevant dates enabling the computation of when time should begin to run. It was therefore not right for the court to make any finding on the disputed fact in the absence of evidence and in disregard of paragraphs 9, 10, 11 and 13 of Appellant’s statement of claim.

The first Respondent did not plead limitation of action, and did

not give any evidence relating thereto. His counsel addressed the court of trial on the issue where he submitted that the Plaintiff's cause of action arose in 1972 being the year when the Rivers State, State Lands (Cancellation of Leases) Edict No.15 of 1972 was promulgated. The address of learned counsel in a trial cannot be regarded as evidence.

However, the two Courts below have held that the period for the computation of when the cause of action arose was either 1972 when Appellant's lease was allegedly cancelled, or 1978 when Appellant's property was allegedly sold to the First Respondent.

Learned Counsel to the Appellant submitted that the State Lands (Cancellation of Leases) Edict No.15 of 1972 having been held to be null and void, by the Supreme Court, it cannot be relied upon to define or determine the period of limitation. *Ex nihilo nihil fit.*

Again the Rivers State Abandoned Property Authority set up under the Rivers State Abandoned Property Authority (Custody and Management) Edict No.8 of 1969 is merely a trustee and holds property as trustee for real owners. Time for purposes of limitation of action does not run between a trustee and *cestui que* trust. It was submitted that the courts below relied for their computation of the period for limitation of action on facts outside the statement of claim, statement of defence and the writ of summons.

Learned Counsel for the Appellant relying on the Supreme Court decision in Egbe v. Adefarasin (1987) 1 NWLR (pt.47) 1, submitted that whether or not an action was statute-barred is to be determined by the Plaintiff's claim and not by the pleading of the defence. Time begins to run from the day when the cause of action endorsed on the writ and in the statement of claim is complete. A cause of action accrues when every fact which it would be necessary for the Plaintiff to prove if traversed in order to support his right to judgment has arisen – See Adimora v. Ajufo & ors. (1988) 3 NWLR (pt. 80) 1. Relying on the averments in paragraphs 9, 10, 11, 12, 13 and 16 of the statement of claim, it was submitted that Appellant's right of action accrued in 1985 and not 1972 or 1978 as was held by the Court of Appeal.

The Respondents in their briefs of argument which they adopted

in their oral argument before us supported the judgment of the Court below. They argued that there were uncontradicted and unchallenged documentary and cogent oral evidence establishing the dates on which the Appellant's cause of action arose. The plot of land in dispute was acquired by the Rivers State Government on the 1st November, 1972, thereby B
revoking the lease granted Appellant. Again, in 1978, the Abandoned Property Authority sold the plot of land to the 1st Respondent by way of public auction. Appellant issued his writ of summons against the Respondent on the 7th November, 1988.

The Respondents relied on the provisions of the High Court Law, C
Section 15(1) Cap. 51, Laws of Eastern Region 1963 and the Rivers State Limitation Edict No.7 of 1988 Section 1 for the contention that the Appellant having lost his right of action, which was statute-barred at the time the writ of summons was issued, had no cause of action. It was submitted D
that the action ought to be struck out.

Respondents submitted that the date of the issue of the writ of summons and the statement of claim alleging when the wrong was committed as to when the cause of action arose are the guide to computation E
when the action became statute-barred. Once it was established that the writ of summons was filed outside the period prescribed by the Limitation Law, the action is statute-barred. See Mrs. Sosan & 2 ors. v. Dr. Ademuyiwa (1985) 3 NWLR (pt.2) 241.

It was pointed out referring to the dictum of Oputa JSC in Egbe v. Adefarasin (1987) 1 NWLR (pt.47) at p.1, that the determination whether F
action was statute-barred can be made without taking oral evidence from witnesses. It was therefore submitted that the contention by learned Counsel to Appellant that oral evidence was essential to the determination whether G
an action is statute-barred is misconceived.

Respondents' Counsel relied upon and cited the findings of the courts below to support their contention that the Appellant's right of action accrued since 1972. It was submitted citing Eboigbe v. NNPC (1994) H
5 NWLR (pt.347) 649 that time begins to run from the date the cause of action accrued. Since this action was commenced in November, 1988, that is 16 years after the cause of action accrued, it was clearly statute-

barred. The right of action was accordingly extinguished – In Odekilekun v. Hassan (1997) 12 NWLR (pt.531) 56. Iguh JSC reading the judgment of this Court construed section 4(3) of the Limitation Law Cap.64 of the former Western Nigeria in *pari materia* with the provisions of section 15(1) of the High Court Law, Cap.61 Vol. IV Laws of Eastern Nigeria similarly. In the instant case Katsina-Alu JCA (as he then was) delivering the lead judgment held as follows –

“After the period prescribed has expired, the title of the person whose action has been statute-barred is extinguished.”

Finally, it was submitted that these are concurrent findings of fact of two lower courts, which this court is urged not to interfere with as Appellants have not shown cause why the findings should be disturbed. The action of the Appellant is undoubtedly statute-barred.

I have set out comprehensively the essential arguments of the issue by the parties. The essence of Appellant’s Counsel’s submission is that the provision of the statute of limitation relied upon by Respondent is to deny Appellant the right of a cause of action. The statute having not been pleaded, and particularised in the statement of defence cannot be relied upon. It was also contended that there was no evidence by the Respondents of the facts relied upon to enable computation of the period prescribed in the law. In fact it was submitted that only the pleading of the Plaintiff was material in the computation.

In their brief of argument Respondents rejecting these criticism of the judgments of the Courts below have relied on the findings of fact of the learned trial Judge and affirmed by the Court below that there was the unchallenged evidence of DW2, that the lease of the Plaintiff was cancelled in 1972 by the Rivers State Government, and published in the official Gazette-Exhibit N in these proceedings. This was notice of publication to the whole world. This finding was affirmed by the Court below.

Learned Counsel to the Appellant has relied on what he regarded as lack of proper pleading of the facts relied upon for the defence that the action was statute-barred.

In Egbe v. Adefarasin (1987) 1 NWLR (pt.47) 1, Oputa JSC considering how the period of limitation prescribed by statute can be determined stated

that it could be done by

“...looking at the writ of summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date with the date on which the writ of summons was filed.”

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The learned Justice of the Supreme Court stated, that

“This can be done without taking oral evidence from witnesses.”

It seems to me therefore that all that is necessary for the pleading of the defence of statute of limitation is to plead facts enabling the Court to hold that the action is statute-barred. Otherwise the statement of defence will be pleading evidence contrary to the rules of pleading. What is to be pleaded are facts and not the law relied upon – See *Peenok Investments Ltd. v. Hotel Presidential Ltd.* (1982) 12 SC.1. A defence founded on the statute of limitations is a defence that the Plaintiff has no cause of action. It is a defence of law which can be raised *in limine*, and without any evidence in support. It is sufficient if *prima facie* the dates taking the cause of action outside the prescribed period is disclosed on the writ of summons and statement of claim. Appellants have relied on the dictum of Oputa JSC in *Savannah Bank of Nigeria Ltd. v. Pan Atlantic Shipping & Transport Agencies Ltd.* (1987) 1 NWLR (pt.49) 212 at p.225 where the learned Justice of the Supreme Court stated that it is the Defendant who ought to plead and prove that the action is statute-barred. He went on to state that since the onus is on the Defendant to show when the cause of action accrued to the Plaintiff, it is not enough to plead a particular date unless that date is admitted by the Plaintiff in his reply. The dictum did not support the contention.

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It is pertinent to state that Respondent relied on the pleading in paragraph 9(c) of the statement of defence where it was averred that

“(c) The Plaintiff’s claim is statute-barred, having regard to the provisions of the statute of limitation.”

Plaintiff joined issue in paragraph 8 of his amended reply to 2nd Respondent’s statement of defence as follows –

“8. In reply to paragraph 8 of the statement of Defence, the Plaintiff avers that the purported sale of the property was wrongful and

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that the Plaintiff's action is not statute barred."

Plaintiff was clearly not embarrassed or taken by surprise by the pleading of the Defendant, since he did not even ask for the particulars of the facts relied upon. The pleadings did not refer to fraud, misrepresentation or breach of trust, performance release, etc. The Defendant relied for their pleading on the provisions of Order 25 Rules 5(1) to 6(1) of the High Court which provides.

"5(1) In all cases in which a party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary particulars (with dates and items if necessary) shall be stated in the pleadings"

6(1) A party shall plead specifically any matter (for example, performance, release, any relevant statute of limitation, fraud, or any fact showing illegality) which if not specifically pleaded might take the opposite party by surprise."

I am satisfied that the learned trial Judge was right in holding that the pleading by the 2nd Respondent of the Statute of Limitation was right and the court below correctly affirmed the decision.

The contention of learned Counsel to Appellant was that since no evidence was adduced in support of the averments in paragraph 9(c) relating to the statute of limitation, that pleading and the defence should have been deemed abandoned.

It is difficult to appreciate the merit of this submission in the light of the evidence of Rowland M. Okujiagu DW2, who testified at the trial that the lease of the property in dispute was cancelled by the Rivers State Government by the publication in Gazette No. 56 volume 4 of 1972. This witness was cross-examined by learned Counsel to the Plaintiff. The Gazette was also admitted in evidence as Exhibit N. On the basis of this evidence, the learned trial Judge was able to find, and correctly held that the lease of the Plaintiff was validly cancelled in 1972 by the Rivers State Government. The cancellation of the lease in 1972, and the action commenced in 1988, was a period of sixteen years after the cause of action accrued to Plaintiff. The action was outside the period for commencing action prescribed, and accordingly statute-barred.

The two Courts below have held that the period for the computation of the period of Limitation was either in 1972 when the lease of Appellant was cancelled, or in 1978 when Appellant's property was sold to 1st Respondent by the Abandoned Property Implementation Committee. In either case, Appellant has brought his action outside the period prescribed by the statute. Appellant's Counsel has submitted that the State (Cancellation of Leases) Edict No.15 of 1972 having been adjudged null and void by the Supreme Court cannot define the period of limitation. This to me is a misunderstanding of the rules of judicial precedent, and the binding nature of judicial decisions. C

It is convenient in considering this contention, first to determine the validity of the submission that in view of the decision in Peenock Investments Ltd. v. Hotel Presidential Ltd. (supra) the State (Cancellation of Leases) Edict No.15 of 1972 was at the material time no longer valid. The learned trial Judge has found, and this was affirmed by the Court below, that the evidence of DW2 on the cancellation of Appellant's lease was not challenged. Again, paragraph 20 of Appellant's amended statement of claim did not challenge the validity of the State Lands (Revocation of Leases) (Amendment) Edict No.17 of 1972 as well as the cancellation of its lease by the Rivers State Government. The Supreme Court judgment in Peenock Investment Ltd. v. Hotel Presidential Ltd. (supra) not being legislation is limited to the rights of the parties in the case and the situation in that case and was not concerned with the situation of other parties or facts not before that court. It had no universal effect. It is well settled that although a judgment creates law, such law is only as between the parties to the litigation and their privies. It does not bind any parties outside this group even if the same issues arise. D E F G

Furthermore, Appellant has not appealed against the findings in this case that there has been a failure or neglect to challenge the findings that the validity of the cancellation of the leases has not been challenged. It cannot now be challenged before this Court – Yesufu v. Kupper International NV1 (1996) 5 NWLR (pt.446) 17. The State Lands (Cancellation of Leases) Edict No.15 of 1972 validly cancelled the lease of the Appellant. The Edict was valid as between the parties. H

The question now is whether in view of the foregoing Appellant had at the time of the institution of this action in 1988 a surviving right of action. Appellant will be entitled to a right of action, if there were on the facts a cause of action. A cause of action has been defined to mean a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy. This involves every material fact which is required to be proved to enable the plaintiff to succeed. – See Patkum Industries Ltd. v. Niger Shoes Ltd. (1988) 5 NWLR (pt.93) 138; Bello v. A-G of Oyo State (1985) 5 NWLR (pt 45) 828.

There is a cause of action to any person when the combination of the circumstances giving rise to a remedy accrues to such person. Hence, it is the act of the Defendant which gives to the Plaintiff his cause of complaint.

In the instant case the Respondents have argued and the two Courts below have found that the cause of action to the Appellants arose on the cancellation of his lease by the Rivers State Government. By such act the deed of lease of Appellant ceased to be effective and his interest in the property was effectively terminated. This gave Appellant the right of action.

In the Court of trial, the learned trial Judge after considering the evidence oral and documentary before him found as follows

“with the cancellation of the lease in 1972 and the action taken out in 1988 it has taken the Plaintiff 16 years after whatever action that was accrued to them to take this action. Then section 15(2)(a) of the Limitation Act of 1966 the Plaintiff has 12 years within which to bring this action. This action is thus statute-barred.”

Affirming this finding in the Court below, Katsina-Alu JCA stated it thus;

“When the lease of the property in question was cancelled in 1972, the property reverted to the State Government. The Plaintiff’s interest in the property was taken away from that date, that is to say 1972. In other words the cause of action arose in 1972. The Government of Rivers State was for upwards of 16 years in possession of the land when the Plaintiff commenced this action in the Port Harcourt High Court.”

This is undoubtedly on the facts a correct statement of the law. I therefore agree with it, and find that the Appellant's cause of action must have arisen in 1972. See Egbe v. Adefarasin (1987) 1 NWLR (pt.47) 1, Adimora v. Ajufo (1988) 3 NWLR (pt.80) 1 FBN v. Associated Motors (1998) 10 NWLR, 441.

The facts as established are that Appellant took out his writ of summons and filed his statement of claim on the 10th November, 1988. In accordance with Section 15(2)(a) of the Limitation Act 1966 which applied in the Rivers State, and section 1 of the Limitation Edict No. 7 of 1988. Appellant should have instituted his action within 12 and 10 years, respectively of 1972, the period of the accrual of the right of action. Having not instituted the action within the period prescribed by the law, the Appellant has lost his right of action, which is already statute-barred – See Obiefuna v. Okoye (1961) 1 SCNLR. 144. I also find accordingly, and answer issue 1 in the affirmative. – See Eboigbe v. N.N.P.C. (1994) 5 NWLR (pt.346) 649 at p.659. Sanda v. Kukawa Local Government. (191) 2 NWLR (pt.174) 379 Odubeko v. Fowler (1993) 7 NWLR (pt.308) 637. Ekeogu v. Aliri (1991) 3 NWLR (pt.179) 258. FBN v. Associated Motors (1998) 10 NWLR 441.

It follows therefore that since an action is not maintainable because it is statute-barred, it cannot be properly and validly instituted. If instituted it is liable to be struck out as not being properly before the court. Having decided issue 1 in the affirmative, it is unnecessary to discuss the other issues raised in this appeal.

The action is accordingly hereby struck out. Appellant shall pay N10,000 as costs to Respondent.

BELGORE JSC

I have read and discussed in advance the draft of the judgment of my learned brother Kalgo, JSC and I agree that this appeal lacks merit. I H also dismiss the appeal for reasons adequately set out in the said judgment with N10,000.00 costs to the respondents.

OGUNDARE JSC

This appeal raises once again the vexed question of abandoned properties in the River State. The Plaintiff, who is now appellant before us, had sued the two defendants, now respondents, claiming, as per paragraph 20 of its statement of claim, thus:

“20. By the premises aforesaid, the plaintiff is damnified and claims against the defendants jointly and severally as follows:-

1. A declaration that the reacquisition by the Government of the Rivers State of Nigeria of which the 2nd defendant is the legal Representative, and resale to the 1st defendant of the plaintiff’s property known as Plot 3 within Station Road, Port Harcourt, the subject-matter of the Deed dated the 8th day of September, 1958 and registered as No. 5 at Page 56 in Volume 181 of the Deeds Registry in the Office at Enugu now at Port Harcourt is illegal, null and void and of no effect whatsoever.

2. N100,000.00 (one hundred thousand naira) damages for trespass in that in March 1986 and on diverse other dates, the defendants by themselves, their servants and/or agents forcibly broke and entered the Plaintiff’s said property called Number 3 Station Road, Port Harcourt and disturbed the plaintiff’s possession thereof against its wish.

3. A perpetual injunction restraining the defendants, their servants and/or agents from further trespass to the plaintiff’s property known as Plot 3 within Station Road Layout otherwise called Number 3 Station Road, Port Harcourt.

4. An Order setting aside and/or bringing forward for cancellation the Deed dated the 17th day of July, 1978 registered as No. 78 at page 78 in Volume 72 of the Deeds Registry in the office at Port Harcourt by which the Government of Rivers State of Nigeria purported to have sold Number 3 Station Road to the 1st defendant.

5. A declaration that the plaintiff is entitled to Statutory Certificate of Occupancy in respect of the property known as Plot 3 within Station Road Layout otherwise called Number 3 Station Road, Port Harcourt the subject-matter of a Deed dated the 8th day of September, 1958 registered as No. 56 at page 56 in Volume 181 of the Deeds Registry now at Port-Harcourt.

6. *As against the 1st defendant only: an account of all rents and moneys collected by the 1st defendant from the plaintiff's tenants living in the property Number 3 Station Road, Port Harcourt without the plaintiff's consent and payment of such rents and moneys to the plaintiff.*

7. *As against the 2nd defendant: an Order of the Honourable Court compelling the Government of Rivers State of Nigeria to execute all relevant Title Deeds and/or Statutory Certificate of Occupancy in respect of or touching Number 3 Station Road, Port Harcourt.*

8. *In the alternative, the plaintiff claims against the Government of Rivers State of Nigeria a total sum of 300,000.00 (Three hundred thousand naira) being adequate compensation for compulsory reacquisition of Number 3 Station Road, Port Harcourt."*

The Plaintiff was the lessee of Plot 3, Station Layout Port Harcourt (hereinafter is referred to as the property in dispute) by virtue of a lease dated 8th September 1958 executed in its favour by the former Government of Eastern Nigeria. The lease was for a period of 40 years. The Plaintiff entered into possession and built on the land. The Rivers State was created in 1967 out of the former Eastern Nigeria with Port-Harcourt as the State capital. The property in dispute thus becomes situate in Rivers State and the Government of the said State succeeded the Government of the defunct Eastern Nigeria as landlord to the Plaintiff in respect of the said property.

In 1972 the Rivers State Government enacted an edict titled State Lands (Cancellation of Leases) Edict 1972 and by virtue of this Edict Plaintiff's lease over the property in dispute, among others, was revoked and cancelled. This fact was published in the State Government Gazette (Exhibit N). In addition to the cancellation of the lease, Plaintiff's property was treated as an abandoned property under the Abandoned Property (Custody and Management) Edict 1969. In 1978 the property was sold to the 1st Defendant by the Abandoned Property Implementation Committee for N55,000.00 pursuant to the power conferred on it by Decree No. 90 of 1979. 1st Defendant entered into possession and started collecting rents from the tenants in the building. Following the sale to the 1st defendant, the Plaintiff in April 1985 wrote to the Abandoned Property Implementa-

tion Committee for compensation in respect of the said property. Being not satisfied with the offer of compensation made to him, the Plaintiff on 11th November 1988 issued a writ claiming as hereinbefore stated.

The learned trial Judge found against the Plaintiff and dismissed its claims. Its appeals to the Court of Appeal was unsuccessful. It has now further appealed to this Court upon six grounds of appeal contained in the Notice of Appeal dated 13th August, 1996 and filed on 16/8/96 and, which, because of 2nd Defendant's preliminary objection to the competence of the appeal, I set out hereunder. They read:

C "ERROR IN LAW

(1) *Their Lordships, the Honourable Justices of the Court of Appeal, erred in law when they held in their judgment that 'Section 28 of the State Lands Law of Eastern region to which the Plaintiff referred, talks of recovery of possession after the lease has been forfeited or cancelled. This presupposes that the Plaintiff is in possession of the property. In the present case, the Plaintiff was not in possession. The property was an abandoned property'*

E PARTICULARS AND NATURE OF THE ERROR

(a) *The plaintiff, a lessee, under a deed of lease tendered as Exhibit B at the trial was legally in possession by virtue of the lease with effect from the date of commencement of the lease. It is erroneous to hold otherwise.*

(b) *Whether or not a property is an abandoned property within the intendment of the provisions of the Abandoned Properties (Custody and Management) Edict No. 8 of 1969 is a question of law to be decided upon judicial interpretation of section 2 of the Edict. It is not a question of fact to be resolved by oral evidence or by admissions on the pleadings.*

(c) *It has been judicially settled that a Limited Liability Company such as the Plaintiff in this case is not 'a person whose home town or place of origin is not situate in the Rivers State' for the purpose of section 2 of the relevant Edict. Both the court of first instance and the Court of Appeal below were wrong to have held otherwise.*

H 2. ERROR IN LAW

Their Lordships, the learned Justices of the Court of Appeal erred

in law when they held that the Plaintiff did not challenge cancellation of its Lease at the trial and did not appeal against the finding of the Court of first instance on the question of non challenge.

PARTICULARS AND NATURE OF THE ERROR

(a) *Their Lordships failed to take cognizance of paragraphs 17, 18, 19 and 20 (1) of the Plaintiffs Statement of Claim and paragraph 9 of the plaintiffs amended reply to the 2nd Defendant Amended Statement of Defence.*

(b) *Their Lordships did not appreciate that cancellation of the Plaintiff's Lease under Edict No. 15 of 1972 was pleaded as a defence. Under the relevant rules of pleadings, there was an implied joinder of issues on the Statement of Defence, and at any rate the plaintiff was not obliged to plead law beyond what was set out in paragraph 17, 18 19 & 20 (1) of its Statement of Claim and in paragraph 9 of its reply of the defence.*

(c) *An aggrieved party need not appeal against each and every finding of fact or obiter dictum which he disagrees with. It is enough if there are grounds of appeal which cover the field. The original ground 1 and the further grounds 2, 3 and 4 argued by the Plaintiff at the Court of Appeal sufficiently covered the field.*

(3) ERROR IN LAW

Their Lordship the learned Justices of the Court of Appeal erred in law when they held that the Supreme Court's decision in PEENOK INVESTMENTS LTD. V. HOTEL PRESIDENTIAL LTD. (1982) 1 SC. 1 notwithstanding, the purported cancellation of the Appellant's Deed of Lease under the provisions of the State Lands (Cancellation of Leases) Edict No. 15 of 1972 as amended was in the circumstances of this case valid.

PARTICULARS AND NATURE OF THE ERROR

(a) *When an enactment has been declared null and void, it is deemed not to have been enacted ab initio, and any transaction founded on it is also null and void on the maxim ex nihilo nihil fit.*

(b) *By paragraphs 17, 18, 19 and (2)(1) of the Statement of Claim and paragraph 9 of the Amended reply to the 2nd Defendants Statement*

of Defence and in view of paragraphs 11(a) and (b) of the 2nd Defendants Statement of defence and Order 25 Rule 10 of the Rules of the High Court of Rivers State 1987, the parties had clearly and directly put in issue the question of the validity of the alleged cancellation of the Plaintiffs Deed of Lease.

(c) Their Lordships, with respect, were clearly in error when they held that this case is on all fours with the case of ABAYI V. OFILI (1986) 1 NWLR (Pt. 15) 134, when in ABAYI V. OFILI case, the parties never fought their case on the basis of the validity vel non of the Edict No. 15 of 1972.

4. ERROR IN LAW

Their Lordships the learned Justices of the Court of Appeal below erred in law when they held that the Plaintiff's suit was statute-barred.

D PARTICULARS AND NATURE OF THE ERROR

(a) It is the Plaintiff's claim and not the defence that determines whether an action is statute-barred. Accordingly time begins to run from the day when the cause of action endorsed on the claim is complete. The right of action is said to accrue from that date.

(b) From the facts pleaded in paragraphs 9, 10, 11, 12, 13 and 16 of the Statement of Claim, the Cause of Action became complete giving rise to the plaintiff's right of action in December, 1985 and not in 1972 as opined by the Court of Appeal.

(c) A person cannot be said to have a cause of action when he is not even aware of any act or event occasioning the cause of action. Therefore on the pleadings of the Plaintiff, it is event pleaded in paragraphs 9 – 13 of the statement of claim that crystalised the Plaintiffs right of action.

(d) Any party pleading statute of limitation must plead the relevant dates of reckoning of the limitation period. The 2nd Defendant did not so plead, and the Court of Appeal and the High Court had no business supplying that evidence, thereby ignoring paragraphs 9, 10, 11 and 13 of the Statement of Claim.

(e) Since the purported cancellation of the Appellant's Lease was void, being founded on an enactment which has been declared to be

void and since the property is in law not an abandoned property, any act done pursuant to the abandoned property legislation or the cancellation of Lease legislation is wholly null and void and cannot be the basis of calculating limitation of time, because ex nihilo nihi fit.

(5) ERROR IN LAW

Their Lordships the learned Justices of the Court of Appeal erred in law when they held that the Appellant had a duty to apply to the court to set aside sale of its property or cancellation of its lease when both transactions were void and incompetent.

PARTICULARS AND NATURE OF THE ERROR

(a) The Court in coming to its view applied the principle applicable to judicial orders and judgements which are by law presumed to be right until reversed or set aside in a subsequent proceeding.

(b) In case of non judicial transaction or act the law has always been that when a party believes that a transaction liable to effect his right is null and void, he is under no obligation to ask for a declaration that the transaction is null and void. And a void transaction cannot be set aside because being void ab initio there could be nothing to set aside.

(6) ERROR IN LAW

Their Lordships, the learned Justices of the Court of Appeal erred in law in holding that there was a valid sale of the Plaintiff's property to the 1st Defendant in the circumstances of this case.

PARTICULARS AND NATURE OF ERROR

(a) Since the validity of the sale is predicated on the property being an abandoned property and the plaintiff's lease having been cancelled, both of which premises are untenable the purported sale cannot stand.

(b) It is a contradiction in terms to say that the Plaintiff's property is abandoned and therefore sold as such and to say that the plaintiff's lease has been cancelled and that the property had reverted to the State.

(c) The Plaintiff held his property under the State land law and any dispossession of the plaintiff in a manner not sanctioned by that law is ineffective."

The parties filed and exchanged their respective briefs of argu-

ment. In the brief filed by the 2nd Defendant objection is taken to the competence of the appeal in that:

“the Appellant did not obtain the leave of the Court of Appeal nor this Honourable Court pursuant to section 233(3) of the Constitution of the Federal Republic of Nigeria 1999.”

The grounds for the objection are stated in the brief as follows:

“It is not in dispute that the instant Appeal is mainly against the concurrent finding of facts of both the trial Court and the Court of Appeal, that being the case, it is our submission that leave to appeal pursuant to Section 233(3) of the 1999 Constitution is generally a sine qua non to the competence of the Appeal. Furthermore, ORDER 2 RULE 32 SC. RULES requires leave for such appeal and such leave is granted only in exceptional circumstances without which the appeal is incompetent.

D MAIGORO V. GARBA (1999) 10 NWLR (Pt. 624) S. 55 at 568. IRHABOR V. OGAMIEN (1999) 8 NWLR (Pt. 616) 517 at 524.

From the circumstances of this appeal, since the requisite leave for the appeal was not obtained and where the time for such leave has expired – (Section 31(2)(9) of the Supreme Court Act), we submit, respectfully that this appeal is incurably defective, we urge this Honourable Court to so hold – REGISTERED TRUSTEES OF AMORC. V. AWONIYI (1994) 7 NWLR (pt. 355) 154 at 189 OGIIDI V. EGBA (1999) 10 NWLR (pt. 621) 42 at 72.”

A similar objection is also raised in the brief of the 1st Defendant.

I must pause here to observe that as this appeal was filed on 16/8/96, it is not the 1999 Constitution that applies but the 1979 Constitution, section 213(3) of which provided for appeal with leave. Again Order 2 rule 32 of our Rules referred to in the argument above, which reads:

“32. Where, in an appeal to the Court from the court below, the court below has affirmed the findings of fact of the court of first instance, any application to the Court in pursuance of its jurisdiction under section 233(3) of the Constitution for leave to appeal shall be granted only in exceptional circumstances.”

does not seem to be apposite as the rule only prescribes what the Court has to bear in mind when considering an application for leave to appeal where

there has been concurrent findings of fact of the two courts below.

In oral submissions before us Mrs. Cookey-Gam, learned Attorney-General of Rivers State, submitted that grounds 1 and 2 were of mixed law and fact and that grounds 5 and 6 were of fact. She conceded, however, that grounds 3 and 4 were of law simpliciter. Mr. Mudiaga-Odje, learned counsel for the 1st Defendant associated himself with the submissions of the learned Attorney-General.

Mr. Udechukwu, SAN for the Plaintiff argued that the six grounds of appeal were competent. Counsel submitted that ground 1 raised the issue as to appellant's right under a lease with particular reference to the law applicable to it. He opined that this did not involve a discussion of disputed facts. Learned Senior Advocate submitted that ground 2 was also one of law. He argued that where the complaint was that the finding was inconsistent with the pleadings, as alleged in ground 2, this was a matter of law. Learned counsel also submitted that grounds 3, 4, 5 and 6 were equally grounds of law. He relied on BAMGBOYE V. UNIVERSITY OF ILORIN (1999) 10 NWLR 290, 323 C-E and COMEX LTD. V. N.A.B. LTD (1997) 3 NWLR 643 at 656 H – 657H.

This Court has had occasions to pronounce on the test to be applied in determining whether a ground of appeal is one of law alone or of mixed law and fact. I refer to such cases as OGBUECHIE V. ONOCHIE (1986) 2 NWLR 484; NWADIKE V. IBEKWE (1987) 4 NWLR 718 at 744-745; BAMGBOYE V. UNIVERSITY OF ILORIN (supra) and COMEX LTD. V. N.A.B. LTD (supra). In OGBUECHIE V. ONOCHIE Eso JSC observed at page 91 of the Report:

“There is no doubt that it is always difficult to distinguish a ground of law from a ground of fact but what is required is to examine thoroughly the grounds of appeals in the case concerned to see whether the grounds reveal a misunderstanding by the lower tribunal of the law or a misapplication of the law to the facts already proved or admitted, in which case it would be question of law, or one that would require questioning the evaluation of facts by the lower tribunal before the application of the law in which case it would amount to question of mixed law and fact. The issue of pure fact is easier to determine.”

And at pages 91-92, the learned Justice of the Supreme Court set out, with approval, the tests suggested by C.T. Emery and Professor B. Smythe, both of the Durham University in the Law Quarterly Review Volume 100 of October 1984 in the article titled “*Error of law in Administrative Law.*”

B Applying these tests to the grounds of appeal in this case, I am of the view that the learned Senior Advocate is correct in his submission that the grounds of appeal are of law and, therefore, the Plaintiff requires no leave to appeal. I hold that the appeal is competent and overrule the preliminary objection.

C The Plaintiff, in his brief, formulated six issues as calling for determination in this appeal. They are:

“(i) *Whether having regard to the state of the pleadings and the evidence adduced at the trial, the Court of Appeal was right when it*
D *affirmed the judgment of the Court of first instance to the effect that the Appellant’s suit was statute-barred.*

(ii) *Whether the Court of Appeal below was right when it affirmed the decision of the Court of first instance to the effect that the*
E *property in question was an abandoned property within the context and intendment of section 2 of the Abandoned Property (Custody and Management) Edict No. 8 of 1969 of Rivers State of Nigeria.*

(iii) *Whether, even if the property in question was an abandoned*
F *property, there was a valid sale of it to the First Respondent under the provisions of the Abandoned Property Decree No. 90 of 1979 so as to invoke the ouster clause contained in the said Decree.*

(iv) *Whether the Court of Appeal was right when it held that the Supreme Court’s decision in PEENOK INVESTMENTS LTD. V. HOTEL*
G *PRESIDENTIAL LTD. (1982) 1 SC 1 notwithstanding, the purported cancellation of the Appellant’s Deed of Lease under the Provisions of the State Lands (Cancellation of Leases) Edict No. 15 of 1972, as Amended was valid in the circumstance of this case.*

H (v) *Whether the Court of Appeal below was right when it held that the Appellant, as plaintiff at the Court of first instance, did not challenge cancellation of its Lease at the trial and did not appeal against the finding of the Court of first instance on the question of such non-chal-*

lenge.

(vi) Assuming the purported sale of the property in question and the purported cancellation of the Appellant's Lease to be invalid, whether the Court of Appeal was right in holding that the Appellant had a duty to apply to a Court to set aside the sale or the cancellation."

B

The issues raised in the briefs of the two Defendants are not dissimilar to the above issues.

Issue 1 Whether action is statute-barred.

The 2nd defendant pleaded in paragraphs 9(c) and 11(a) of his amended statement of defence as hereunder:

C

"(9)(c) The plaintiff's claim is statute-barred, having regard to the provisions of statute of limitation."

"11(a) In the alternative, the 2nd defendant contends and shall contend at the trial that sometime in 1972, the Rivers State Government cancelled the lease of the plaintiff under the State Lands (Cancellation of Leases) Edict, 1972; the cancellation was published in the Rivers State Government Gazette as No. 56 Volume 4 dated 1st November, 1982."

D

In its amended reply to the 2nd Defendant's statement of defence, the Plaintiff averred:

"9. In reply to paragraph 11 of the Statement of Defence, the plaintiff avers that any purported cancellation of the plaintiff's Lease was done in bad faith and wrongful in law and that the 1st defendant purchased nothing."

F

The Plaintiff, thus did not deny that his lease was cancelled as pleaded by the 2nd Defendant but contended that the cancellation was in bad faith and wrongful in law. If, therefore, the Plaintiff had any grudge against the Defendants its grudge must commence with the cancellation of its lease. By this cancellation, the Plaintiff ceased to have any title to the property in dispute. Its cause of action, therefore, arose on the cancellation of its lease in 1972 when the State Lands (Cancellation of Leases) Edict was enacted by the Rivers State Government and certain leases, including Plaintiff's, were cancelled. This is the finding of the two courts below who, on this finding, concluded that plaintiff's action taken in 1988 was statute-barred.

G

The Plaintiff has complained in this Court that this finding is er-

H

roneous.

It is argued by learned leading counsel, Mr. Udechukwu SAN that as the Edict has been declared invalid by the Supreme Court in PEENOK INVESTMENT LTD. V. HOTEL PRESIDENTIAL LTD.

B (1982) 1 SC 1, it must be taken as having been repealed and could, therefore, not ground a course of action. It is learned Senior Advocate's submission that Plaintiff's cause of action arose in 1985 when 1st Defendant, according to the Plaintiff's pleading, wrongfully took possession of the property in dispute.

C With profound respect to learned Senior Advocate, I do not think PEENOK's case has the effect as submitted by him. True enough, the Edict came for consideration in that case and this Court held that it was invalid. That case would be precedent to be followed in cases based on the D same facts and considerations. Thus, for Plaintiff to take advantage of it he must first institute an action within time wherein he would question the validity of the Edict and the trial court would be bound to follow PEENOK's case. The decision of a court does not repeal a statute, it only pronounces E on the validity or otherwise of that statute. Anyone adversely affected by the statute would still need to institute an action to have a declaration in his favour. The Plaintiff who claimed that his cause of action arose in 1986 forgot that his Claim 1 and alternative Claim 8 relate to the cancellation by the 2nd Defendant of his lease or, to use its expression, the F "reacquisition" or "compulsory reacquisition" of its property. That "reacquisition" took place in 1972 when its lease was cancelled pursuant to the Edict. Had its action been within time he could have relied successfully on PEENOK's case to have the reacquisition" declared void. Unfortunately for the Plaintiff, that was not to be. G

Plaintiff's action not having been commenced within 12 years of the accrual of the cause of action as provided for in section 15(2) of the Limitation Act 1966, the action is statute-barred and his title to the property in dispute extinguished – See section 20 which provides:

"20. On the expiration of the period fixed by this Decree for any person to bring an action to recover land, the title of that person to the land shall be extinguished."

The courts below came to the right conclusion when they so held.

In view of the conclusion I have just reached on Issue 1, I consider it unnecessary to go into the other issues raised in this appeal as this conclusion is sufficient to dispose of this appeal.

I agree with my learned brother Kalgo JSC that this appeal is lacking in merit. I, too dismiss it with N10,000.00 costs to each Defendant.

OGWUEGBU JSC

I have had a preview of the judgment just delivered by my learned brother Kalgo, JSC. and I agree with him that the appeal fails on the sole ground that the action is statute-barred.

The trial court and the court below made concurrent findings of fact that the action was caught by both the Limitation Act of 1966 which applied in Rivers State and the Limitation Edict No. 7 of 1988 of Rivers State. The cause of action which gave the plaintiff the right of action is the cancellation of the lease of his property known as Plot 3 within Station E Road, Port Harcourt which was registered as No. 5 at page 56 in Volume 181 of the Deeds Registry in the Office at Enugu (Cancellation of Leases) Edict No. 15 of 1972 and published in the Rivers State Government Gazette No. 56 Volume 4 of 1st November, 1972 (Exhibit "N").

On the limitation of actions, the learned trial judge found as follows:

"It is clear therefore that land was acquired in 1972 and the Plaintiff did not come to Court not until 1988. From 1972 to 1988 is 16 years... thus I accept the unchallenged evidence of D.W.2 that the lease of the plaintiff was cancelled in 1972 by Rivers State Government. This cancellation was published in the Official Gazette i.e. Exhibit "N". Under section 117 (a) 87 (sic) of the Evidence Act, the Gazette is a notice of its publication to the whole world and the plaintiff is inclusive... Then section 15(2)(a) of the Limitation Act of 1966 the Plaintiff has 12 years within which to bring this action or possible cause of action arose in 1972. This action is thus statute barred."

The court below affirmed the above findings of the learned trial judge when it held:

"I have already stated that the cause of action arose in 1972 when the lease was cancelled. The cancellation was published in Government Gazette (Exhibit "N") which was notice to the whole world. The cause of action was the cancellation of the lease and not the sale of the property to the 1st defendant in 1978... There has been no appeal against this finding."

Indeed there is no appeal even in this court against the finding by the learned trial judge which was affirmed by the court below that the cause of action arose in 1972 when the plaintiff's lease was cancelled. That finding not having been appealed against remains binding on the plaintiff. I have myself come to the same conclusion as the courts below that the cause of action arose in 1972 when the plaintiff's lease was cancelled. It now remains for me to consider the effect of the various enactments on limitation of actions applicable to the case, namely, the Limitation Act, 1966 and the Rivers State Limitation Edict No. 7 of 1988.

It is always a good defence to an action that it was commenced after the expiry of the relevant statutory period of limitation from the accrual of the cause of action or other date specified in the statute and for most classes of action, the relevant periods of limitation are laid down in the Limitation Act or law. Generally, the operation of the Limitation Act or law does not extinguish the cause of action but merely bars the remedy of bringing the action after the lapse of the specified time from the date when the cause of action arose. There are, however, instances where the operation of legislation is not only to bar the remedy, but operates to extinguish the right or title to the property or claim in question. For example, the Limitation Act, 1966 which is applicable in this case makes the following provisions in its sections 15(2)(a) and 20:

"15(2) The following provisions shall apply to actions by a person to recover land –

(a) subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first

accrued to some person through whom he claims, to that person;

“20” On the expiration of the period fixed by this Decree for any person to bring an action to recover land, the title of that person to the land shall be extinguished.”

In addition, the Rivers State Limitation Edict No. 7 of 1988 which is equally applicable to the case fixed the period for bringing an action to recover land at ten years from the date the right of action accrued.

Having come to the conclusion that plaintiff’s cause of action arose in 1972 when the Rivers State Government cancelled the lease of the property, the subject matter of litigation and he filed the action in the Port Harcourt Division of the High Court of Rivers State on 10th November, 1988, sixteen years after the accrual of the cause of action, his right and title to the property was absolutely extinguished after 1984 by virtue of section 20 of the Limitation Act, 1966. The provision of section 15(2)(b) of the said Act is not applicable to this case. In the particular circumstances of this case, the limitation law has worked in a prescriptive manner and extinguished not only the remedy but also the plaintiff’s title to the property. See *Odekilekun v. Hassan & or.* (1997) 12 NWLR (pt 531) 56, *Sosan v. Ademuyiwa* (1986) 3 NWLR (pt. 27) 241 and *Fadare & Ors. v Attorney-General Oyo State* (1982) 4 SC. 1 at 8. These cases were decided on various statutory limitation enactments which are in *pari material* with sections 15(2)(a) and 20 of the Limitation Act, 1966.

The single issue of effluxion of time based on the Limitation Act having disposed of the whole appeal, it will be idle to consider other issues raised in the appeal however meritorious they might be. Whether the cause of action accrued in 1972 when the lease was cancelled or 1978 when the Rivers State Government sold the property to the 1st defendant, in either case, the action had become statute-barred by the Limitation Act, 1966 and the Rivers State Limitation Edict, 1978 which legislations provide for periods of twelve years and ten years respectively.

Finally, it was the contention of Chief Udechukwu, SAN for the appellant that the bare averment in paragraph 9(c) of the Amended Statement of Defence of 2nd the defendant that *“the plaintiffs claim is statute-barred having regard to the provisions of state of limitation”*, cannot be

regarded as proper pleading of limitation law and that that averment was never given in evidence at the hearing. He cited the cases of *Savanah Bank of Nigeria Ltd. V Pan Atlantic Shipping & Transport Agencies Ltd. & Ors.* (1987) 1 NWLR (pt 49) 212, *Salami & ors. v. Okano* (1987) 4 NWLR (pt. 63) 1 at 8 and *Gbangudu v. Ishola & ors.* 91981) 6 CA (Pt. 11) 217 at 228. The learned Senior Advocate of Nigeria did not reckon with the evidence of D.W. 2 who testified that the lease of the property in question was cancelled by the Rivers State Government by virtue of Edict No. 15 of 1972 and the fact of cancellation was gazetted on 1st November, 1972. The said Official Gazette was tendered in evidence as exhibit “N” without any objection. It will therefore not be right for counsel to contend that no evidence was laid by the defence on the statute of limitation.

As to the insufficiency of pleading of the statute, I must refer to paragraphs 9(c) and 11 of the Amended Statement of Defence of the 2nd defendant and paragraphs 8 and 9 of the Amended Reply to the Amended Statement of Defence of the 2nd defendant where the plaintiff averred that the purported sale of his property was wrongful, that his action is not statute-barred and that the cancellation was done in bad faith. I agree that the best way of pleading statute of limitation is to raise distinctly the particular statutory provision relied upon. Having pleaded that the action is time-barred by statute of limitation in paragraph 9(c) and proceeded to plead in paragraph 11 that the lease was cancelled in 1972 and referred to the Edict, I hold the view that the plaintiff was left in no doubt as to the limitation period alluded to. The plaintiff joined issue with the 2nd defendant on the statutory limitation period and there was unchallenged evidence on the issue by the 2nd defendant which the courts below found to be established. I do not think that the appellant’s contention on insufficiency of pleading the statute is well founded.

In the result, the appeal fails on the single issue of defence of limitation of action. I hereby dismiss the appeal with N10,000.00 costs to the respondents.