

SUPREME COURT OF NIGERIA
13TH FEBRUARY, 2009. SC. 344/2002
CORAM:- G. A. OGUNTADE, M. MOHAMMED,
I. F. OGBUAGU, P. O. ADEREMI,
M. S. MUNTAKA-COOMASSIE, JJSC

THE ADMINISTRATORS/EXECUTORS
OF THE ESTATE OF GENERAL SANI APPELLANTS
ABACHA (DECEASED)

AND

1. SAMUEL DAVID EKE-SPIFF
2. NINE EKE-SPIFF
3. THE MILITARY ADMINISTRATOR RESPONDENTS
OF RIVERS STATE OF NIGERIA
4. THE ATTORNEY-GENERAL AND
COMMISSIONER FOR JUSTICE, RIVERS
STATE OF NIGERIA

PARTIES - Joinder - Validity of - The general rule is that both plaintiff & defendant should be juristic or natural persons - Existing or living at the time the action is instituted (H1)

ACTIONS - Administrators of estates - Legal capacity - A person can neither sue or be sued as an administrator of an estate of a deceased person - Until he is granted the letters of administration - And his name must be stated on the writ (H2)

PARTIES - Defendants - Legal capacity - Onus of proof - As it is an essential to the competence of an action - The onus is on the plaintiff to prove the legal capacity of the defendant - When challenged (H3)

PRACTICE & PROCEDURE - Parties - Legal capacity - Right to challenge - Applicability of waiver - Such a right is so fundamental that it is not only for the benefit of supposed party - But also inures to the benefit of the public - Therefore it cannot be waived (H4)

LAND USE ACT - Revocation by government - In breach of Land Use Act - Validity of - Revocation of land by government must be for

overriding public interest - With notice of revocation served on the allottee - Else it is invalid (H5)

LAND LAW - Revocation - Statutes of revocation - Applicability of - Where there is fraudulent concealment of the fact of revocation - There is postponement of limitation period - As no prescription runs against a person who was hindered in bringing a court action (H6)

FACTS

The 1st and 2nd respondents had, as plaintiffs, sued the appellants together with the 3rd and 4th respondents, as defendants. By their action, the 1st and 2nd respondents contested the purported revocation of the 1st respondent's right of occupancy by the 3rd respondent and the subsequent purported grant of same to the appellant.

At the trial court, neither the appellant nor the 3rd and 4th respondents gave evidence but they argued that the action was statute barred. The trial court however held that the action was not statute barred. It also gave judgment to the 1st and 2nd respondents as claimed. Aggrieved, appellants appealed to the Court of Appeal. In addition to the issue of statute bar, they raised a fresh issue that they were not juristic persons. The Court of Appeal by a majority, dismissed the appeal. Still aggrieved, the appellants have brought this further appeal to the Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether the Court of Appeal was right in affirming that the issue of the competence of the action is deemed to have been waived by the appellant?”

“(2) Whether the Court of Appeal was right in affirming that the appellant is a suable entity or a legal person and that the action could competently be maintained against it?”

“(3) Whether the Court of Appeal was right in affirming that the action was not statute barred?”

“(4) Whether the 1st and 2nd respondents were entitled to the reliefs granted to them?”

HELD (Unanimously striking out the appeal per **ADEREMI JSC**)
PARTIES - Joinder - Validity of

1. It is axiomatic that only a natural or juristic person can sue or be sued. This same time- honoured rule applies in respect of joinder of parties. The general rule therefore requires that the plaintiff and the defendant should be juristic persons or natural persons existing or living at the time the action is instituted. (p. 210 D)

Administrators of estates - Legal capacity

2. I go further to say that a person does not have the locus standi, indeed, he lacks the competence to bring an action in a representative capacity as an administrator of the Estate of a deceased person until he has been granted the Letters of Administration. If he brought the action before the grant, such grant has no retroactive validity. Similarly, a person, who as a plaintiff, has no legal power to sue another person as an administrator or Executor of an estate of a deceased person without naming the person of such an Administrator or Executor on the writ and ascertaining that Letters of Administration or Probate as the case may be, thus legally empowering that person sued to administer the estate of the deceased, was obtained prior to the initiation of the writ. In the instant case, the 3rd defendant, who is now the appellant, was sued by the plaintiffs (the present 1st and 2nd respondents) as THE ADMINISTRATOR /EXECUTORS OF THE ESTATE OF GENERAL SANI ABACHA -deceased". The names of the Administrators/Executors were never stated in the processes filed. Neither is there any scintilla of evidence that Letters of Administration and/or Probate was granted to anybody in respect of the said Estate of General Sani Abacha (deceased) prior to the institution of this action. (p. 210 E)

PARTIES - Defendants - Legal capacity - Onus of proof

3. Let me say that competency or legal capacity to defend an action is an essential or indeed a desideratum in deciding the competency to institute an action being in itself a vital factor in determining the competency of the action itself. When challenged, in the case of the defendant as to his legal capacity to defend the onus is on the plaintiff to establish the legal competency. As I have said, there is no iota of proof in that direction. (p. 211 C)

Parties - Legal capacity - Right to challenge

4. The 1st and 2nd respondents, in their reply submitted that the 3rd defendant/appellant has by his conduct, waived any allegation of incompetency. But, what is the right said to have been waived here? The answer to that question is that it is the right to defend an action in a representative capacity where the names of the so -called representatives were not stated and no evidence that any legal instrument was given to anybody to administer the estate of the deceased - General Sani Abacha. Such a right is so fundamental that it is not only for the benefit of a supposed party to a case or suit it also inures to the benefit of the public. If somebody has not been shown, in law, to be competent to sue or to be sued, to waive such a right will lead to injustice. It is even against public policy to compromise illegality (manifest or latent). (p. 211 E/G)

D *LAND USE ACT - Revocation by government*

5. The 1st and 2nd defendants have woefully failed to comply with the provisions of the aforesaid Act and consequently they transferred NOTHING to Major General Sani Abacha. Even if the 3rd defendants had been a proper party, in law, to this case, would he have in the face of the materials before the court, had the case of the plaintiffs dismissed? I think not. The 1st and 2nd defendants - the allocating authority- failed to comply with the provisions of Section 28(2) and (6) of the Land Use Act which enjoin that revocation of land by the Government must be for nothing other than for the overriding public interest and that the notice of revocation, served in accordance with the provisions of Sub-section (6) of the Act. Certainly the re-allocation of the land to Major General Sani Abacha cannot be assimilated to an action taken in the overall public interest. Major General Sani Abacha, in this context was an ordinary citizen. (p. 216 B)

LAND LAW - Revocation - Statutes of revocation

6. It will be most unconscionable to allow the provisions of statute of limitation to apply in a situation such as this where the 1st plaintiff - the allottee was fraudulently denied the service of notice of revocation and more importantly where his application for building approval was never attended to. It is those who denied him all these, that now want to reap the fruit of their fraudulent misdeeds. Whatever pact

that might be between the 1st and 2nd defendants and the non-existent 3rd defendant is loaded with malicious intent and no court will even uphold any pact made from malicious intent. Any wrongful act tending to the damage of another must not receive support in the seat of justice. And no one shall be allowed to benefit from his own wrong doing; the Maxim is “EX TURPI CAUSA NON ORITUR ACTIO” It is true that Section 1 of the Limitation Edict 1988 of Rivers State forbids the bringing of an action in court for the recovery of land after the expiration of ten years from the date in which the right of action accrued to him. However Section 31(5) (a) and (b) of the same Edict provides for the postponement of Limitation period in case of fraud, concealment or mistakes.

The saying is that, No prescription runs against a person who was hindered in bringing a court action. (pp. 217 D/218 A)

NOTABLE POINTS OF INTEREST

ADEREMI JSC

1. Expropriatory statutes must be construed contra preferentes

Section 28 and all the Sub-sections I have referred there - under are expropriatory statutes, the like of which I have reproduced above, which encroach on a person's proprietary rights must always be construed “FORTISSIME CONTRA PREFERENTES,” (i.e. strictly against the acquiring authority but sympathetically in favour of the person whose property rights are being taken away). Thus, the law imposes the duty on the acquiring authority to strictly adhere to the formalities prescribed by the law.(p. 215 H)

OGBUAGU JSC

2. A party who fails to file a Brief forfeits his right to address

I will pause here and note that the 1st and 2nd defendants in the trial court and who are now, the 3rd and 4th Respondents in the instant appeal, never appealed against the said Judgment of the trial court which also found against them in the said suit afore-stated and so, they did not participate, in the appeal in the court below. They have also not appealed to this Court and therefore, have not filed any Brief in the instant appeal. At the hearing of this appeal on 17th November, 2008, Chikere, Esq, the learned Attorney-General of Rivers State also informed the Court, that the 3rd and 4th Respon-

dents, did not file any Brief. It is settled that a party who fails to file a Brief in this Court, forfeits his right to address the court orally. That is, where the defaulting party, is a party in the appeal. (p. 222 H)

3. Waiver is an abandonment of a right

B What is waiver? The concept of waiver, is that a person who is under no legal liability and having full knowledge of his right or interest, intentionally, decides to give them or some of them up, cannot be heard to complain that he was not permitted to exercise such rights or that he has been denied the enjoyment of those rights.

C In other words, waiver is defined as an abandonment of a right. To amount to a waiver, expresses or implied, two elements, must co-exist, namely:

(i) The party against whom the doctrine is raised, must have D knowledge or be aware of the act or omission which constitutes the waiver and

(ii) He must do some unequivocal act adopting or recognizing the act or omission. (pp. 226 H/227 B)

E *4. Estoppel - Appellants cannot resile from their representation*

I again pause here to state that the Appellants, could be likened to an incorporated Company or legal personality, who operated, through human beings and not robots. They participated fully in the proceedings up to the filing of a written address at the trial court. It was F the human beings who retained the services of their learned counsel who they thoroughly briefed to defend them and/or - the suit. They represented themselves to the plaintiffs and the trial court, as the Administrators/Executors of the Estate of General Sani Abacha (Deceased). They were not bound to exhibit any Probate or Letters of G Administration in that regard or respect. They did not sue. They therefore, could not make a u-turn to resile from their representation. (p. 228 B)

H *5. Defendants need not prove grant of letters of administration*

It need be stressed, that each case, must be determined upon its own peculiar circumstances as no two cases, can be identical. They can be similar. The facts of the instant case, in my respectful view, are not the same with the above-named decided authorities. The Appellants, I

repeat, did not sue. There was no need for them to have or produce, any evidence of grant of Probate or Letters of Administration.
(p. 228 H)

REPRESENTATION

Mr. Livy Uzoukwu SAN for the appellant with him Mr. Gerald Enyinnia. **B**
Mr. L. E. Nwosu SAN for the 1st and 2nd Respondents with him Mr. Anthony Ayogu and Mr. C. U. Ekomaru
Mr. K. A. Chikere, Attorney-General, Ministry of Justice, Rivers State of Nigeria for the 3rd and 4th respondents with him Mrs. Ngozi C
Iroegbu (Deputy Director of Civil Litigation.)

CASES REFERRED TO

MADUKOLU & ORS VS. NKEMDILIM (1962) ALL NLR 589
ODOFIN & AN VS. AGU & AN (1992) 3 NWLR (PT.229) 350 **D**
ARIORI VS. ELEMU (1983) 1 SCNLRI
AJAO VS. SONOLA (1973) ALL N. L R. 449
NJOKU VS U. A. C. FOODS (1999) 12 NWLR (PT.632) 557
SHITTA & ORS VS LIGALI & ORS (1941) 16 NLR 23
LEGAL PRACTITIONERS' DISCIPLINARY COMMITTEE VS. CHIEF E
GANI FAWEHINMI (1985) 7 S.C. 178
ENGINEERING ENTERPRISES LTD VS. A - G KADUNA (1987) 2
NWLR (PT. 57) 381
LSDPC VS FOREIGN FINANCE CORPORATION (1987) 1 NWLR F
(PT.50) 413
PEENOK INVESTMENT LTD VS HOTEL PRESIDENTIAL LTD
(1983) 4 NCCR 122

STATUTES & RULES REFERRED TO

Land Use Act, s. 28 **G**
Limitation Edict of Rivers State 1988, s. 31
High Court Rules of Rivers State, O. 11 r. 14 (1)

LEAD JUDGMENT BY ADEREMI JSC

This is an appeal against the judgment of the Court of Appeal (Port Harcourt Division) in Appeal NO CA/PH/331/99. The Administrators/Executors of the Estate of General Sani Abacha (Deceased) Vs. Samuel David Eke- Spiff & ORS. The majority judgment of which **H**

was delivered by Hon. Justice S. A. Nsofor while the dissenting judgment was delivered by Hon. Justice Ikongbe. Both judgments were delivered on the 18th of April 2002. The majority and dissenting judgments arose from the appeal lodged against the decision of the High Court of Justice, sitting in Port Harcourt, Rivers State of Nigeria.

B Briefly put, the case of the 1st plaintiff is that he, a retired Permanent Secretary in the Rivers State Government was allocated a plot of land at Diobu GRA, Port Harcourt by the Government of Rivers State. The Building Lease was registered in his name as No 78
C at page 78 in Volume 25 of the Lands Registry in the Office at Port Harcourt. He submitted a building plan for approval, but up till now, his plan has not been approved. What he later discovered was that his right of occupancy was revoked without any notice to him and of course no compensation was paid to him. It eventually came to his
D knowledge that the same piece of land was allocated to Major General Sani Abacha, now deceased. It is his contention that the court action he took was not statute - barred having regard to the provisions of Section 31 (1) (a) and (b) of the Rivers State Limitation Edict, 1988 and since the notice of the revocation was hidden from
E him. He also said that he was down with stroke for some time.

For their part, the 1st and 2nd defendants admit in their pleadings that the 1st plaintiff was once a holder of Building Lease of Plot 228 Diobu, GRA, Phase II, but that his right of occupancy was revoked vide Rivers State Gazette No 17 Volume 18 of 29/5/86 for
F failure of the plaintiff to build within two years of the allocation. They also contend that the plaintiffs action is statute - barred.

The 3rd defendant averred that the land, the subject - matter of this action, was allocated to him with effect from 1st January 1977
G for 99 years and that he was given a Building Lease. He took possession of the land immediately. He was never challenged by anybody. He claimed to have started the development of the plot since 1983 through his contractors C & C Construction Company Ltd again without any interference. He also averred that the plaintiffs action is statute
H barred.

In that trial court, the 1st and 2nd respondents as plaintiffs had by paragraph 19 of the statement of claim dated and filed on 30th November 1998 claimed from the 3rd and 4th respondents, as 1st and 2nd defendants together with the present appellant as the 3rd

defendant, all before the said trial court the following reliefs:

“(1) A declaration that the 1st plaintiff vested with the property known as plot 288 Diobu GRA, Phase II vide the prior the 1st plaintiff vested with the property known as plot 288 Diobu GRA, Phase II vide the prior Building Lease Registered as No 78 at page 78 in Vol.25 of the Land Registry in the office at Port Harcourt is by operation of the Land Use Act 1978 the deemed holder of any Certificate of Occupancy in respect of the Plot 288, GRA Phase II property. B

(2) A declaration that the subsequent grant on 8/6/77 of a Building Lease over the same Plot 288 Diobu, GRA II in favour of Sani Abacha (3rd defendant) as a private citizen (Notwithstanding the prior grant in 1975 to the plaintiff) is unconstitutional and therefore null and void. C

(3) A declaration that the purported 1986 revocation of the plaintiffs Building Lease No 78/78/25 by the 1st defendant is unconstitutional, null, void and of no effect D

(4) An order setting aside the Certificate of Occupancy dated 10th March, 1987 Registered as No 84 at page 84 in Volume 124 of the Lands Registry in the Office at Port Harcourt in favour of Major General Sani Abacha therein addressed as Chief of Defence Staff, Ministry of Defence, Lagos as the same was unconstitutional and irregularly granted. E

(5) An order for re-possession of the said property known as Plot 288 within the Diobu, GRA Phase II, Port Harcourt by the herein plaintiff. F

Both parties filed and exchanged pleadings at the trial court with the 1st and 2nd defendants (herein referred to as 3rd and 4th respondents) filing joint statement of defence and the 3rd defendant (herein referred to as the appellant) filing a separate statement of defence. Suffice it to say that the plaintiffs filed joint statement of claim and a reply. The plaintiffs before the trial court called evidence in proof of the averments in their statement of claim. The defendants before that court, however, did not call evidence. Both sides thereafter, by order of court, submitted written addresses to the court. In a reserved judgment delivered on the 18th of November, 1999 the trial court found in favour of the plaintiffs who are now the 1st and 2nd respondents. In so doing, the trial court held: G H

“Based on paragraph 12 of the plaintiffs statement of claim

and the contentions of the defendants, I am in agreement that the cause of action in this suit arose in 1986.....

I hold that this action is not statute -barred within the contemplation and provisions of the Rivers State Limitation Edict of 1988 which was not in existence when the cause of action arose.

B Assuming that the Limitation Edict of 1988 is applicable to this action irrespective of when the cause of action arose, will this action be held to be statute -barred? Section 31(1) (a) and (b) of the Edict which deals with the postponement of Limitation period in case of fraud concealment, or mistake provides as follows:

C 1. *“Subject to Section (E4) where in the case of any action for which a period of limitation is prescribed by the Edict, either:*

(a) Either the action is based upon the fraud of the defendant;

or

D *(b) Any fact relevant to the plaintiffs right of action has been deliberately concealed from him by the defendant.*

I shall adopt the submissions of the plaintiffs counsel to the effect that the provisions of Section 31 (1) (a) and (b) of the Edict avail the plaintiffs as to the defendant’s fraudulent concealment of facts relevant to the plaintiffs right of action.”

E *The 1st plaintiff was never informed that the property was to be allocated to the 3rd defendant, another citizen for a private purpose. No notice was sent to the 1st plaintiff for any purported breach of the covenants in the plaintiffs Building Lease and neither was the 1st plaintiff informed that his interest in the plot was to be revoked. The plaintiffs brought this suit within the limitation period stipulated in the said Edict when the plaintiffs became aware of the concealment.....*

G *Having admitted the existence of the above facts and documents, the 1st and 2nd defendants cannot honestly contend that the 1st plaintiff was in breach of a mandatory provision of the Building lease. It is trite law that facts admitted need no further proof.*

H *It is therefore my considered view that the 1st plaintiff was not in breach of the mandatory provision of the Building Lease warranting the revocation of this (sic) interest in Plot 288 Phase II GRA. The breach, if any, was occasioned by the acts of the 1st defendant who cannot be allowed to benefit from such acts.....*

In the instant case there is no evidence that any revocation

notice was served on the plaintiff in the manner stated in Section 44 of the Act There was no proper revocation of the 1st plaintiffs right of occupancy in Plot 288 Phase II GRA Port Harcourt.....

The present action was brought against the Administrators/Executors of the Estate of General Sani Abacha (deceased) who, in accordance with the above provisions of the Rules of Court are cognizable persons that can sue or be sued."

Suffice it to say that the order relied upon by the trial judge is Order II Rule 14(1) of the High Court Rules which provides:

"Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or Estate of which they are trustees or representing without joining any of the persons beneficially interested in the trust and shall be considered as representing such persons."

Being dissatisfied with the said judgment of the trial court, the 3rd defendant appealed against same to the court below. After taking arguments of counsel of both parties sequel to the filing and exchange of the respective brief of arguments of the parties, the court below, by a majority judgment delivered on the 18th of April, 2002 dismissed the appeal; while by the dissenting judgment, the appeal was allowed. Still dissatisfied with the majority judgment, the appellants have appealed against same to this court. The appellants have identified four issues for determination by this court. As set out in their brief of argument filed on 15th of January 2003; they are as follows:

"(1) Whether the Court of Appeal was right in affirming that the issue of the competence of the action is deemed to have been waived by the appellant?"

(2) Whether the Court of Appeal was right in affirming that the appellant is a suable entity or a legal person and that the action could competently be maintained against it?"

(3) Whether the Court of Appeal was right in affirming that the action was not statute barred?"

(4) Whether the 1st and 2nd respondents were entitled to the reliefs granted to them?"

Similarly, the proper respondents to this appeal who are (1) Samuel David Eke - Spiff and (2) Mine Eke - Spiff described as 1st

and 2nd respondents, have formulated four issues before us. As set out in their brief of argument filed on the 24th of April, 2003, they are in the following terms:

B *"(1) To what extent does the competence or incompetence of the action against the appellant affect the proceedings and judgment entered against the 1st and 2nd defendants?"*

(2) Whether a defendant who insists that he is not a suable legal person can sue for purposes of obtaining a judgment in its favour while maintaining it does not exist.

C *(3) Whether an act which is constitutionally null and void and of no effect also ab initio can, by effluxion of time become valid, proper and effective.*

D *(4) Whether the court below was right in holding that there was a fraudulent concealment in equity and if so, whether the statute of limitation (assuming but without acceding its applicability) will avail the appellant"*

E I pause here to remind myself that the original 1st and 2nd defendants - the Military Administrator of Rivers State of Nigeria and The Attorney - General and Commissioner for Justice Rivers State of Nigeria against whom judgment of the trial court was entered along with the 3rd defendant/appellant did not appeal against that judgment.

F When this appeal came before us on the 17th of November 2008 for argument, Mr. Uzoukwu, (SAN) learned senior counsel, appearing for the appellants referred to, adopted and relied on his client's brief of argument filed on 15th January 2003 and urged this court to allow the appeal. Mr. Nwosu, learned senior counsel for the 3rd and 4th respondents referred to adopted and relied on his clients' brief of argument filed on the 24th April, 2003 and while contending that the 1st and 2nd respondents (who were plaintiffs before the trial court) were the only respondents at the court below - the (1) the Military Administrator of Rivers State of Nigeria and (2) The Attorney-General and Commissioner for Justice Rivers State of Nigeria
H did not appeal against the judgment of the court of first instance; he finally urged us to dismiss the appeal adding that the appellants here are relying on a derivative title and the Certificate of Occupancy which is fraudulent had already been set aside by the court. Mr. Chikere, the Attorney - General of Rivers State who held himself out as repre-

senting the 3rd and 4th respondents informed the court that his clients have not filed any brief of argument.

I have carefully read the issues formulated by the parties and it is my considered view that issues Nos. 1 and 2 as set out in the appellants' brief can be taken together with issues Nos. 1 and 2, as contained in the respondents' (Samuel David Eke - Spiff and Mine Eke - spiff) brief for they are similar in contents. The issues challenge the jurisdiction of the court to entertain the suit. It was argued by the appellants that they (appellants) were non - legal personalities and by suing them, the 1st and 2nd respondents have not fulfilled the condition precedent to the exercise of jurisdiction by a court, reliance was placed on the decision in MADUKOLU & ORS VS. NKEMDILIM (1962) ALL NLR 589. The competence or jurisdiction of a court cannot be waived citing in support the decisions in (1) ODOFIN & ANOR. VS. AGU & AN (1992) 3 NWLR (PT.229) 350 and (2) ARIORI VS. ELEMO (1983) 1 SCNLR . This action, to the extent to which the appellants are affected, is incompetent and the 1st and 2nd respondents, as plaintiffs at the trial court, having not discharged the onus of establishing competency as required by the decision in AJAO VS. SONOLA (1973) ALL N. L R. 449, issue No 1 must be resolved in favour of the appellants, it was again submitted. On issue No 2, it was contended that by suing the 3rd defendant and describing it as "ADMINISTRATOR OF THE ESTATE OF GENERAL SANI ABACHA (Deceased), the 3rd defendant, now the appellant is a non-legal person. It was further argued that the original 3rd defendant that was initially sued was the "ESTATE", which, it was submitted, was a non-legal person. Amendment of such a name, that is unknown to law, to now read "ADMINISTRATORS/EXECUTORS OF THE ESTATE is not permissible in law, praying in aid, the decision in NJOKU VS U. A. C. FOODS (1999) 12 NWLR (PT.632) 557. Administrators and/or Executors of an Estate where they exist are, beyond argument, natural persons, who can sue and be sued in respect of the Estate they administer, but such natural persons must sue or be sued in their respective names as representing the Estate to sustain the action; it was further submitted while placing reliance in the decisions in SHITTA & ORS VS LIGALI & ORS (1941) 16 NLR 23. I pause to say that I agree with this submission as a correct principle of law. It was not even shown by evidence that letters of Administration or probate

was granted to give legal life to the 3rd defendant, it was again submitted while urging that issue No 2 be resolved in favour of the appellant.

Arguing issues Nos. 1 and 2 together, the respondents, through their brief of argument, submitted that the 3rd defendant, now the appellants were sued as a nominal party adding that the reliefs claimed by the 1st and 2nd respondents, as plaintiffs were targeted at the 1st and 2nd defendants. It was also argued that by entering appearance when the writ was served on it (3rd defendant filing its statement of defence and participating in proceedings the appellants (3rd defendant) must be deemed to have waived its right, adding that the omission to state the names of administrators on the writ was only a mere irregularity, reliance was placed on the decisions in ARIORI & ORS VS. ELEMO & ORS (1983) 1 SC. 13, and IWO CENTRAL LGAS VS. ADJO (2000) 8 NWLR (PT. 667) 115, In concluding, the respondents urged that the two issues be resolved in their favour.

I shall start the consideration of these issues alongside the submissions made in their support and/or against, by saying that ***it is axiomatic that only a natural or juristic person can sue or be sued. This same time-honoured rule applies in respect of joinder of parties. The general rule therefore requires that the plaintiff and the defendant should be juristic persons or natural persons existing or living at the time the action is instituted. I go further to say that a person does not have the locus standi, indeed, he lacks the competence to bring an action in a representative capacity as an administrator of the Estate of a deceased person until he has been granted the Letters of Administration. If he brought the action before the grant, such grant has no retroactive validity. Similarly, a person, who as a plaintiff, has no legal power to sue another person as an administrator or Executor of an estate of a deceased person without naming the person of such an Administrator or Executor on the writ and ascertaining that Letters of Administration or Probate as the case may be, thus legally empowering that person sued to administer the estate of the deceased, was obtained prior to the initiation of the writ. In the instant case, the 3rd defendant, who is now the appellant, was sued by the plaintiffs (the present 1st and 2nd respondents) as***

THE ADMINISTRATOR /EXECUTORS OF THE ESTATE OF GENERAL SANI ABACHA -deceased". The names of the Administrators/Executors were never stated in the processes filed. Neither is there any scintilla of evidence that Letters of Administration and/or Probate was granted to anybody in respect of the said Estate of General Sani Abacha (deceased) prior to the institution of this action. It is for the above stated principles that I agree with the submissions of the appellants that not only must a person who instituted an action in court be seen, in law, to be competent to do so, so also it is important that a person sued in his private capacity or personal name or a person sued in a representative capacity be seen, in the eye of the law to be competent to defend the action.

Let me say that competency or legal capacity to defend an action is an essential or indeed a desideratum in deciding the competency to institute an action being in itself a vital factor in determining the competency of the action itself. See AJAO VS. SONOLA (1973) ALL NLR 2ND Edition Volume 1 page 449. ***When I challenged, in the case of the defendant as to his legal capacity to defend the onus is on the plaintiff to establish the legal competency. As I have said, there is no iota of proof in that direction. The 1st and 2nd respondents, in their reply submitted that the 3rd defendant/appellant has by his conduct, waived any allegation of incompetency.*** Put in simple terminology, that if one party, by his conduct leads another to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict rights when it would be inequitable for him to do so. ***But, what is the right said to have been waived here? The answer to that question is that it is the right to defend an action in a representative capacity where the names of the so -called representatives were not stated and no evidence that any legal instrument was given to anybody to administer the estate of the deceased - General Sani Abacha. Such a right is so fundamental that it is not only for the benefit of a supposed party to a case or suit it also inures to the benefit of the public. If somebody has not been shown, in law, to be competent to sue***

or to be sued, to waive such a right will lead to injustice. It is even against public policy to compromise illegality (manifest or latent). It is absurd or bizarre to encourage disobedience to the dictates of the law. See ARIORI & ORS VS. ELEMO & ORS (1983)

1 SC. 13. The 3rd defendant who is now the appellant, from all I
 B have been saying, supra, is not a competent party NAY the 3rd de-
 fendant to this case ab initio. The name of the 3rd defendant who is
 now the appellant ought to have been struck out by the trial judge. I
 hereby strike out the 3rd defendant from this matter. Consequently I
 C resolve issues Nos. 1 and 2 raised by the appellants in their favour in
 order wards, I answer the two issues in the negative. With respect to
 issue No 1 identified by the respondents, I say that the incompetency
 of the action is only limited to the 3rd defendant. It has no bearing
 on the judgment of the trial court as it relates to the 1st and 2nd
 D defendants who did not appeal against it. I answer the issue No 2
 therein in the negative. It will tantamount to allowing the 3rd defen-
 dant/appellant to blow hot and cold with the same mouth and at the
 same time. The 3rd defendant/appellant is not a party legally known
 to law. To that extent, this appeal is incompetent and it is hereby
 E struck out.

I pause to say that the judgment of this court, which is the apex
 court of our land, must always have a bite. It must be clear in its
 pronouncement. True justice must be seen to have been dispensed
 by it. It must never be ambiguous such as to give room for an appli-
 F cation calling on this court to interpret its judgment. After all, the pre-
 occupation of any court, indeed, the apex court is to dispense justice.
 It is in my quest to see that justice is manifested by this decision that I
 shall go ahead to treat other issues notwithstanding that I have made
 G a pronouncement striking out the appeal as being incompetent.

I shall now take issues No 3 and 4 in the appellant's brief together
 with issues No 3 and 4 in the 1st and 2nd respondents brief from the
 angle of quest for pure justice. I shall start by saying that, over the
 years courts have put a stamp of permanent authority in the saying
 H that it is an essential attribute of the administration of justice, that
 justice must not only be done, but it must manifestly seen to be done.
 What I have just said here was lucidly put by Hewart CJ. in R VS.
 SUSSEX JUSTICES EX PARTE MARCATHY (1924) 1. K. B, 256
 when at page 259 he reasoned:

“.....It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”

The above time-honoured dictum has often been cited with approval by our courts. See LEGAL PRACTITIONERS ‘DISCIPLINARY COMMITTEE VS. CHIEF GANI FAWEHINMI (1985) 7 S.C. 178. It is also agreed that true justice must not be defective and no law must be defective in dispensing justice. The aphorism well established, is that justice is to be denied to none, the well known Maxim is “JUSTITIA NEMINI NEGANDA EST” In ENGINEERING ENTERPRISES LTD VS. A - G KADUNA (1987) 2 NWLR (PT. 57) 381. Eso JSC delivering the judgment of this court, declared thus, in the duty of courts to do justice, at page 398:

“One stream that permeates through all judicial decisionsis the clear unadulterated water, filled with great concern for justice.”

I shall also like to recall the all - time wise saying of this court in ALHAJI RAIMI EDU VS. ODAN COMMUNITY, ADO FAMILY and OKOKOMAIKO COMMUNITY (1980) 8-11 SC. 103 when Aniagolu JSC reasoned thus at page 127:

“The moment a court ceases to do justice in accordance with the law and procedure laid down for it, it ceases to be a regular court to become a kangaroo court.”

Guided by the afore-mentioned principles, I shall now proceed to the last two sets of issues raised for determination by this court. I am not unaware that judgment was entered against the 1st and 2nd defendants (The Military Governor of Rivers State of Nigeria and the Attorney - General and Commissioner for Justice Rivers State of Nigeria) Both of them did not appeal against that judgment. I wish further to say that at the hearing the 1st and 2nd defendants as well as the 3rd defendant/appellant whose name I have struck out as being an incompetent party to the suit, did not call evidence. In law, their act amounts to abandonment of their pleadings. The case against the defendants before that court as gleaned from the pleadings of the 1st and 2nd plaintiffs (now 1st and 2nd respondents) and upon which evidence was led at the trial, was that the 1st plaintiff was the State Grantee of a Building lease for a term of 99 years over the property lying and being at Plot 288 within the Diobu GRA Phase II

Port Harcourt with effect from 1st January 1975. On the 24th day of June, 1976, the 1st defendant (the Military Governor, Rivers State of Nigeria) published a list of properties whose instruments of title he the Military Administrator revoked. Upon a careful examination of the published list the (plaintiff) discovered that his property was not among. Sometime in 1981, he (plaintiff) discovered that some persons had entered his land. He raised a protest to the then Military Administrator who, according to him raised a Panel of Inquiry into allocation of plots and sale of Abandoned Houses in Port Harcourt during the period 1st October, 1979 to 31st December, 1983. According to him, the property (Plot 288 Diobu GRA Phase II) earlier allocated to him was outside the terms of reference of the Panel. Although he claimed he got to know that the Panel recommended that his property be forfeited to the Government; that Government rejected the recommendation. Again in April 1986, he claimed he observed some trespass , being committed on his said plot, he quickly lodged a protest to the Governor and warned the trespassers in writing. Thereafter, nothing happened on the land until when by Edict No 86 dated 30th April 1986 promulgated by the same Governor who had earlier rejected the recommendation for revocation of his plot made to him by the Panel he set up, now revoking the allocation of the land to him. The said plot was later by a Certificate of Occupancy No 84, at page 48 in Volume 124 allocated to Major General Sani Abacha. No Notice of revocation was sent to him in respect of the land and neither was he paid any compensation. It was his further case that he would have developed the plot of land, but his application for building approval was not attended to by the authorities. The trial court evaluated all the evidence including documentary evidence led by the 1st plaintiff and made its findings which I have reproduced above. Can it be said that the 1st and 2nd defendants, properly in law, allocated the plot of land to Major General Sani Abacha in the face of the averments in the plaintiffs pleadings properly supported by evidence adduced? No doubt, by virtue of the provisions of Section 28(1) of the Land use Act 1978, the Governor of a State has the power to revoke a right of occupancy for overriding public interest. The fact that the Right of Occupancy of the land of the plaintiff was revoked by the Governor was not in dispute. Again, that the same land was re - allocated to Major General Sani

Abacha (deceased) admits of no argument. It is equally true that no notice of revocation was sent to the 1st plaintiff/respondent. By re-allocating, the same plot of land to Major General Sani Abacha after revoking the right of occupancy of the plaintiff, the 1st and 2nd defendants cannot be said to have satisfied the provisions of Section 28(1) and (2) of the Land Use Act which states as follow: Section 28 (1) B

“If shall be lawful for the Governor to revoke a right of occupancy for overriding public interest”

Section 28 (2) of the Act defines what “Overriding public interest” in the case of a statutory right of occupancy means. By no means can the re-allocation of that plot to Major General Sani Abacha (now deceased) satisfy the afore-said provisions of Section 28(2). The 1st plaintiff/respondent has also contended vigorously that he was never served with the Notice of Revocation of his Right of Occupancy. That was never challenged; Section 44(a), (b) and (c) of the Land Use Act which relates to service of Notice provides: C

“Any notice required by this Act to be served on any person shall be effectively served on him -

- (a) By delivering it to the person or who it is to be served, or E
- (b) By leaving it at the usual or last known place of abode; or
- (c) By sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode.

None of the above provisions was complied with by the 1st and 2nd defendants. Service of the notice is very crucial. This was done in utter violation of the provisions of Section 28 (6) of the Act; that sub-section 6 provides: F

The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf of the Governor and notice thereof shall be given to the holder (underlining lines for emphasis) G

Of course, no compensation was paid to the 1st plaintiff by the 1st and 2nd defendants for illegally allocating the same land to Major General Sani Abacha. Section 28 and all the Sub-sections I have referred there - under are expropriatory statutes, the like of which I have reproduced above, which encroach on a person’s proprietary rights must always be construed “FORTISSIME CONTRA PREFERENTES,” (i.e. strictly against the acquiring authority but sym- H

pathetically in favour of the person whose property rights are being taken away). Thus, the law imposes the duty on the acquiring authority to strictly adhere to the formalities prescribed by the law. See

(1) LSDPC VS FOREIGN FINANCE CORPORATION (1987) 1 NWLR (PT.50) 413 and (2) PEENOK INVESTMENT LTD VS HOTEL PRESIDENTIAL LTD (1983) 4 NCCR 122.

The 1st and 2nd defendants have woefully failed to comply with the provisions of the afore-said Act and consequently they transferred NOTHING to Major General Sani Abacha. Even if the 3rd defendants had been a proper party, in law, to this case, would he have in the face of the materials before the court, had the case of the plaintiffs dismissed? I think not. The 1st and 2nd defendants - the allocating authority- failed to comply with the provisions of Section 28(2) and (6) of the Land Use Act which enjoin that revocation of land by the Government must be for nothing other than for the overriding public interest and that the notice of revocation, served in accordance with the provisions of Sub-section (6) of the Act. Certainly the re-allocation of the land to Major General Sani Abacha cannot be assimilated to an action taken in the overall public interest. Major General Sani Abacha, in this context was an ordinary citizen. Section 28 (4) and (6) of the same Act provides:

Sub- section (4)

“The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes”

Sub-section (6)

“The revocation of right of occupancy signified under the Land of a public officer duly authorized in that behalf by the Governor and notice shall be given to the holder

(underlining lines for emphasis)

Referring to Sub -Section (4) quoted supra, I repeat, the revocation was not carried out in the overall interest of the public. What is more, no notice of revocation was sent to the 1st plaintiff/respondent; they (1st and 2nd defendants) have also breached the provisions of Sub-section (6). Failure to serve on the 1st plaintiff/respondent the notice of revocation smacks of some fraud. Let me say it

loud, it is not only unconscionable to take away a piece of land already allocated and now re-allocate same to someone else without serving a notice of revocation on the earlier allottee and not paying that person compensation, it is also very unlawful and unconstitutional to so do. The court always has an undoubted jurisdiction to relief against every species of fraud. The fraud here is an unconscientious use of the power arising from the circumstance or condition of the parties. The 1st plaintiff, a former Permanent Secretary of the Government of Rivers State had since retired, no longer at the corridor of power. The person to whom the plot was later re-allocated was a weighty man of authority. It was also submitted that the present action is statute-barred. Faced with the facts of this case as presented supra can statute of limitation apply where the person to be affected has been fraudulently denied the opportunity to react simultaneously? ***It will be most unconscionable to allow the provisions of statute of limitation to apply in a situation such as this where the 1st plaintiff - the allottee was fraudulently denied the service of notice of revocation and more importantly where his application for building approval was never attended to. It is those who denied him all these, that now want to reap the fruit of their fraudulent misdeeds. Whatever pact that might be between the 1st and 2nd defendants and the non-existent 3rd defendant is loaded with malicious intent and no court will even uphold any pact made from malicious intent. Any wrongful act tending to the damage of another must not receive support in the seat of justice. And no one shall be allowed to benefit from his own wrong doing; the Maxim is "EX TURPI CAUSA NON ORITUR ACTIO" SEE ONYIUKE VS OKEKE (1976) 1 NMLR 285. It is true that Section I of the Limitation Edict 1988 of Rivers State forbids the bringing of an action in court for the recovery of land after the expiration of ten years from the date in which the right of action accrued to him. However Section 31(5) (a) and (b) of the same Edict provides for the postponement of Limitation period in case of fraud, concealment or mistakes. It provides:***

"Subject to Section (E4) where in the case of any action for which a period of limitation is prescribed by the Edict either:

(a) The action is based upon the fraud of the defendant; or

(b) Any fact relevant to the plaintiffs right of action has been deliberately concealed from him by the defendants.”

The saying is that, No prescription runs against a person who was hindered in bringing a court action.

B For all I have been saying, issues No. 3 and 4 on the appellant’s brief of argument are hereby answered in the affirmative. I answer Issue No 3 in the 1st and 2nd plaintiffs/respondents’ brief in the negative; I resolve it in favour of the 1st and 2nd plaintiffs/respondents. Finally, I answer Issue No 4 in the same brief in the affirmative.

C Before concluding this judgment, I wish to say that the 2nd plaintiff/respondent (Nine Eke-Spiff) the daughter of the 1st plaintiff/respondent has no locus in this matter. She is a busy-body whose name ought to have been struck out from the start. I hereby strike out that name.

D In conclusion, it is my judgment that this appeal lacks any merit. The person or group of persons described as appellant are unknown to law. The appellant who was described as the 3rd defendant ought to have been struck out from the inception of this case. For the avoidance of doubt, I hereby strike out the so- called 3rd defendant/appe
E llant and consequently I strike out this appeal brought by a person unknown to law.

For the avoidance of doubt again and in the interest of justice, I affirm the judgment of the trial court against the 1st and 2nd defen
F dants who did not even appeal against the judgment. The majority judgment of the court below ought to have struck out the appeal and of course the name of the appellant.

Finally, I wish to say that; by this judgment, the legal title or interest of the 1st plaintiff/respondent in the property known as Plot
G 288, Diobu GRA, Phase II vide the Building Lease Registered as No 78 at page 78 in Volume 25 of the Land Registry in the Office at Port Harcourt remains intact and inviolable. I make no order as to cost.

H **MOHAMMED JSC**

By a writ of summons dated 30th November, 1998, the 1st and 2nd Respondents in this appeal, filed their action as Plaintiffs at the trial High Court of Justice of Rivers State sitting at Port-Harcourt and claimed against the 3rd and 4th Respondents in this Court and

the Appellant as 1st, 2nd and 3rd Defendants respectively, the following reliefs:-

“(1.) A declaration that the 1st Plaintiff vested with the property known as Plot 288 Diobu G.R.A., Phase 11 vide the prior Building Lease Registered as No. 78 at page 78 in vol. 25 of the Land Registry in the Office at Port-Harcourt is by operation of the Land Use Act 1978 the deemed holder of any Certificate of Occupancy in respect of the Plot 288 G.R.A. Phase 11 property.

(2.) A declaration that the subsequent grant on 8th June, 1977 of a Building Lease over the same Plot 288 Diobu, G.R.A. Phase 11 in favour of Sani Abacha (3rd Defendant) as a private citizen (Not withstanding the prior grant in 1975 to the Plaintiff) is unconstitutional and therefore null and void.

(3.) A declaration that the purported 1986 revocation of the Plaintiff’s Building Lease No. 78/78/25 by the 1st Defendant is unconstitutional, null, void and of no effect.

(4.) An order setting aside the Certificate of Occupancy dated 10th March, 1987 Registered as No. 84 at page 84 in Volume 124 of the Lands Registry in the office at Port-Harcourt in favour of Major General Sani Abacha therein addressed as Chief of Defence Staff, Ministry of Defence, Lagos as the same was unconstitutional and irregularly granted.

(5.) An order for re-possession of the said property known as plot 288 within the Diobu, G.R.A. Phase 11, Port-Harcourt by the herein Plaintiff.”

The case of the Plaintiffs/Respondents as constituted was duly heard by the trial Court. Only the 1st Plaintiff who testified in chief and was duly cross-examined. None of the three Defendants in the case called any witness or testified in defence. The learned trial Judge in his judgment granted all the reliefs claimed by the Plaintiffs. This judgment was affirmed on appeal by a majority judgment of the Court of Appeal Port-Harcourt, where only the 3rd Defendant now Appellant, was the Appellant as 1st and 2nd Defendants now 3rd and 4th Respondents did not appeal. The present appeal is therefore a further and final appeal still by the 3rd Defendant/Appellant. In the Appellant’s brief of argument four issues for the determination of the appeal were raised. They are:-

“1. Whether the Court of Appeal was right in affirming that the

issue of competence of the action is deemed to have been waived by the Appellant?

2. Whether the Court of Appeal was right in affirming that the Appellant is a suable entity or legal person and that the action could competently be maintained against it?

B *3. Whether the Court of Appeal was right in affirming that the action was not statute barred?*

4. Whether the 1st and 2nd Respondents were entitled to the reliefs granted to them?"

C Although the Respondents in this appeal have also identified four issues in the Respondents' brief of argument, the issues are virtually the same as those of the Appellant though differently framed.

Issues one and two as formulated in the Appellant's brief of argument are predicated around the competence or otherwise of the action instituted against the Appellant simply identified as the 'Administrators/Executors of the Estate of General Sani Abacha' as the 3rd Defendant. While the Appellant is asserting that the action of the Respondents was not maintainable against it not being a natural or legal person known to law, the Respondents are saying that the Appellant cannot be heard deny being a legal personality capable of being sued when it defended the action along with other Defendants at the trial Court and had appealed against the judgment of the trial Court to the Court of Appeal and then to this Court. Learned senior Counsel to the Respondents concluded that even if the Appellants were not properly joined in the action at the trial Court, having participated in the matter from the trial Court to this Court, the Appellant is deemed to have waived its right to insist that it was not properly joined thereby losing its right to challenge the competence of the action against it.

H As a general rule, only natural persons, that is to say, human beings and juristic or artificial persons such as bodies corporate are competent to sue and be sued before any law Court. In other words, no action can be brought by or against any party other than a natural person or persons unless such party has been given by statute expressly or impliedly or by common law either a legal personality under the name by which it sues or is sued or a right to sue or be sued by that name. See *Fawehinmi v. Nigerian Bar Association* (No. 2) (1989) 2 N.W.L.R. (Pt. 105) 558 at 595. This is because a law suit

is in essence, the determination of legal rights and obligations in any given situation. Therefore only such natural and juristic persons in whom the rights and obligations can be vested are capable of being proper parties to law suits before Courts of law. Following this general rule, where either of the preservative capacity as an Administrator of the Estate of a deceased person until he has been granted the Letters of Administration. See *Mallam v. Mairiga* (1991) 5 N.W.L.R (Pt. 189) 114. Similarly a person who has not applied for nor granted Letters of Administration authorizing him to administer the Estate of a deceased person, cannot defend any action against the Estate of the deceased. In otherwords it is the grant of the Letters of Administration that confers the right to sue or be sued in the name of the Estate of a deceased person. B
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The law is also trite that a non-existing person natural or legal personality, cannot institute an action. Nor will an action be allowed to be maintained against a Defendant, who as sued, is not a legal person. See unreported decision of this Court in *Manager SCOA, Benin City v. G. S. Momodu*, appeal number SC.23/64 delivered on 17th November, 1996 quoted and relied upon by Obaseki, JSC in his lead judgment in *Nurses Association v. Attorney General* (1981) 11 - 12 S.C. 1 at 21 - 22. In the present case therefore the Appellant who was sued by the 1st and 2nd Respondents to defend their action against the 3rd and 4th Respondents as the 3rd Defendant, quite rightly in my view, raised preliminary objection to the competence of the action against it as a Defendant simply described as 'The Estate of General Sani Abacha (Deceased)' or as amended later to "Administrators/Executors of the Estate of General Sani Abacha (Deceased)." The law requires the natural persons who were in possession of the Letters of Administration of the Estate of the late General Sani Abacha ought to have been sued as the 3rd Defendant or Defendants as / the case maybe. As the action was not maintainable against the 3rd Defendant as sued, the name of the 3rd Defendant now Appellant ought to have been struck out from the suit. The defect being a fundamental one could not have been waived by the Appellant. 'Administrators/Executors of the Estate of General Sani Abacha,' not being a legal personality capable of enjoying legal rights and obligation under the law, cannot sue or be sued in Court in that name, It is for the same reason that the Appellant also lacks capacity to pursue the ap- D
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peal at the Court below and in this Court on the merit. That is why I regard it now quite unnecessary to consider the remaining issues in this appeal including the question of whether or not the action of the 1st and 2nd Respondents was statute barred particularly when the 1st and 2nd Defendants now 3rd and 4th Respondents have not
B appealed against the judgment of the trial Court which is the subject of this appeal. The determination of that issue in my view, must await the emergence of a competent party capable of defending the issue in accordance with the law.

C Meanwhile I entirely agree with my learned brother, Aderemi JSC, in his leading judgment that this appeal which has been brought by a person unknown to law, is incompetent and accordingly is hereby struck out with no order on costs.

D

OGBUAGU JSC

This is an appeal against the majority Judgment of the Court of Appeal, Port-Harcourt Division (hereinafter called “the court below”) delivered on 18th April, 2002 affirming the Judgment of the
E Rivers State High Court, sitting at Port-Harcourt, - per Akpughunum, J. delivered on 18th November, 1999 granting to the 1st and 2nd Respondents who were the Plaintiffs in the action giving rise to the instant appeal (i.e. Suit No. PHC/1729/98), all the reliefs sought therein.

F Dissatisfied with the said Judgment, the Appellants, have appealed to this Court on eleven (11) Grounds of Appeal. They have formulated four (4) Issues for determination, namely:.

G “(1) *Whether the Court of Appeal was right in affirming that the issue of the competence of the action is deemed to have been waived by the Appellant?*

(2) *Whether Court of Appeal was right in affirming that the Appellant is a suable entity or a legal person and that the action could competently be maintained against it?*

H (3) *Whether the Court of Appeal was right in affirming that the action was not statute barred?*

(4) *Whether the 1st and 2nd Respondents were entitled to the reliefs granted to them?”.*

I will pause here and note that the 1st and 2nd defendants in

the trial court and who are now, the 3rd and 4th Respondents in the instant appeal, never appealed against the said Judgment of the trial court which also found against them in the said suit afore-stated and so, they did not participate, in the appeal in the court below. They have also not appealed to this Court and therefore, have not filed any Brief in the instant appeal. At the hearing of this appeal on 17th November, 2008, Chikere, Esq, the learned Attorney-General of Rivers State also informed the Court, that the 3rd and 4th Respondents, did not file any Brief. It is settled that a party who fails to file a Brief in this Court, forfeits his right to address the court orally. See the case of Attorney-General of Ondo State v. Attorney General of the Federation 35 ors (2002) 9 NWLR (PT. 772) 222 @ 285: (2002) 6 SCNJ 1. That is, where the defaulting party, is a party in the appeal.

The facts of this case leading to this appeal, are eloquently contained in the lead Judgment of my learned brother, Aderemi, JSC just delivered and which I had the privilege of reading before now. I will make even briefly, my own contribution. I will deal with issues 1 and 2 of the Appellants together with the 1st and 2nd Issues of the 1st and 2nd Respondents which are substantially the same with those of the Appellants although differently couched.

I note that at the trial, the 3rd Defendants who are now the Appellants, were represented by one S.E. Dapaa-Addo, Esq, see (page 66 of the Records). The 1st Plaintiff/Respondent, testified as P.W.1 - See pages 66 to 68 of the Records and Dapaa, Esq, at pages 69 - 70, cross-examined the P.W.1 At page 70 of the Records, on 14 July 1999, when their defence was to open, Mrs. A.I. Chikere, of counsel for the 1st and 2nd defendants, told the court that they do not intend to defend or call any witness or witnesses and that they were resting their case on that of the Plaintiffs. Dapaa-Addo. Esq, also told the court, that he did not intend to call witnesses and would rest his case on that of the Plaintiffs. Thereafter, Nwosu, Esq, (now SAN), applied that the parties, do submit or file written addresses "*in order to save the court's time*". Both Mrs. Chikere and Dapaa-Addo, Esq, were recorded to be in agreement with the request of Mr. Nwosu. The learned trial Judge, granted the application and the case was adjourned to 28th July, 1999 on which date, by reason of the bereavement of Mrs. Chikere of her late brother and who was to be buried that week, the case was further adjourned to 5th October,

1999, “for confirmation of the state of the addresses. Before this, one A.I. Salami, Esq, who appeared for the Plaintiffs/Respondents, informed the court that the 3rd defendant/Appellants had filed its address. In fact, in paragraph 3.8 at page 4 of the Appellants’ Brief, it is stated as follows:

B *“Hearing commenced in the matter wherein the PWI testified and was cross-examined by the Defence. The 1st and 2nd Respondents closed their case. The Defendants thereof now Appellants and 3rd-4th Respondents, called no evidence”.*

C On 5th October, 1999, after listening to the oral submissions of all the learned counsel for the parties, the learned trial Judge, reserved Judgment to the 18th November, 1999. I pause to note that apart from the Pleading in the Statement of Claim in paragraph 2 thereof, that the 2nd plaintiff, is the young daughter of the 1st Plaintiff, nothing else is said therein or in evidence why she was joined as a party in the suit.

I have gone this far because, the Appellant is questioning the competence of the action/suit. In fact, it uses the words “Jurisdiction of the trial court over the Appellant”. The Respondents contend that the Appellants have/had waived their right to so object. I note that the Appellants, entered a Conditional Appearance upon the service on them, of the Writ of summons. See page 14 of the Records.

F They gave their address for service, as “*c/o Their Solicitors, Steve R. Dapaa-Addo & Co., Dolphin Chambers, Wing 2, Ground Floor, Hotel Presidential, Port-Harcourt.*” But significantly, they later filed a copious Statement of Defence containing material facts. I note however, that in paragraphs 2 and 3 thereof, the following were/are pleaded.

G *“2. The Defendant does not admit paragraph 3 of the Plaintiff’s Statement of Claim and shall at the trial contend that the 1st Defendant is a non-existent legal person who can sue or be sued.*

H *3. The Defendant does not admit paragraph 5 of the Plaintiff’s Statement of Claim and shall at the trial contend that the 3rd Defendant is not a legal person who can sue and be sued and that the present action as constituted against it is incompetent”.*

The above is conceded by the Respondents in paragraph 5.7 of their Brief. But they stated thereafter that the Appellant, “curiously stopped there. 3rd defendant did not call any evidence in sup-

port of that pleading or even by way of motion supported by affidavit evidence at least “.

I agree. This is because, firstly, as stated in the case of *Adegoke Motors Ltd Dr. Adesanya & anor.* (1989) 3 NWLR (Pt.109) 250 (a), 292, 296; (1989) 5 SCNJ 180 @ 189 - per Oputa, JSC, challenges to the competence or validity of a writ, can or could be done etc. B

(a) By entering an Appearance on protest or

(b) Enter a Conditional Appearance and

(c) then File a Motion asking the court seized the matter, to set aside the purported writ and the purported service on him or them on the ground of an essential invalidity of both the writ or service. C

See also the cases of *Sonuga v. Anadien* (1967) 1 ANLR 91; *Eboh v. Akpotu* (1968) 1 ANLR 220;

See also the case of *Njoku v. U.A.C. Foods* (1990) (sic) 12 NWLR (Pt.632) 557; C.A. cited in the Respondents' Brief (it is not 1990 but (1999)). D

Secondly, as noted by me in this Judgment, the 1st and 2nd defendants and the Appellants, did not testify at all. It is now settled that pleadings, do not constitute evidence. Where pleadings are not supported by evidence, such pleadings are deemed to have been abandoned. See the cases of *Ajuwon & 4 ors. V. Akanni & ors 7* (1993) 9 NWLR (Pt.316) 182; (1993) 12 SCNJ. 32; *Egeigbe v. Asholor & anor.* (1993) 9 NWLR (Pt.316) 128; (1993) 12 SCNJ. 82; *Magnusson v. Koiki & 2 ors.* (1993) 12 SCNJ. 114- per Kutigi, JSC. (as he then was); *Ajero & anor. v. Ugorji & 6 ors.* (1999) 7 SCNJ. 40 and *Miss Ezeanah v. Alhaji Attah* (2004) 7 NWLR (Pt.873) 468; (2004) 2 SCNJ. 200 (a), 235; (2004) 2 S.C. (Pt.II) 75 - per Onuh, JSC, just to mention but a few. Once pleadings have been filed and exchanged, issues are said to be joined and the case, is ready for hearing. E F G

Thirdly, the Appellants rested their case on that of the Plaintiffs/Respondents. So, the evidence of the Respondents, remained uncontroverted. It is now settled that the implication where a defendant rests his case on the plaintiffs case, it may mean that:

(a) that the defendant is stating that the plaintiff, has not made out any case for the defendant to respond to; or H

(b) that he admits the facts of the case as stated by the plaintiff or

(c) that he has a complete defence in answer to the plaintiffs

case.

See the cases of *Akanbi v. Alao* (1989) 3 NWLR (Pt.108) 118; (1989) 5 SCNJ. 1 and *NEPA v. Olagunju & anor.* (2005) 3 NWLR (Pt.913) 603 @ 632 C.A. In the case of *Aguocha v. Aguocha* (2005) 1 NWLR (Pt.906) 165 @ 184 citing *Akanbi v. Alao* (supra), it is stated that a situation where a defendant failed/fails to lead evidence in defence, but rested his case on that of the plaintiff it is regarded as a legal strategy and not a mistake. If he succeeds, then it enhances his case, but if he fails, that is the end of his case. So it is in this instant case leading to this appeal. They failed woefully, in their strategy - i.e. not to testify or defend.

Fourthly, where a defendant offers no evidence in support of his pleadings, the evidence before the trial court, obviously goes one way with no other set of facts or evidence weighing against it There is nothing in such a situation, to put on the other side of the proverbial or imaginary scale of balance as against the evidence given by or on behalf of the plaintiff. The onus of proof in such a case, is naturally discharged on a minimal of proof. See the cases of *Nwabuko v. Otti* (1961) 1 ANLR 487 @ 490: (1961) 2 SCNLR. 23; *Ogwuma Associated Companies (Nig.) Ltd, v. IBWA* (1988) 1 NWLR (Pt. 73) 658 @ 682; *Balogun v. U.B.A, Ltd* (1992) 6 NWLR (Pt.247) 336 (a), 354; (1992) 7 SCNJ 61; *Hycinth v. Nzeribe v. Dave Engineering Co. Ltd.* (1994) 8 NWLR (Pt. 361) 124; (1994) 9 SCNJ. 161; *Okoebor v. Police Cor... & 2 ors.* (2003) 5 SCNJ. 52 @ 66 and *Chief Durosaro v. Ayorinde* (2005) 3 SCNJ. 8 (a), 23; (2005) 3-4 S.C. 14 just to mention but a few.

From the foregoing. I hold that the use of the word “waived” by the court below, was/is with respect, an understatement. The Appellants, have no case at all. They are standing on quick sand. Grounds 6 and 7 of the Notice of Appeal and all the arguments in respect of the said issues, are with respect, an after-thought. They are wooly and with profound humility, they lack any substance. The Appellants refused and failed to challenge the competence of the suit at its first opportunity by either filing a motion to set it aside after entering a Conditional Appearance. They refused to give evidence and left the evidence of the 1st plaintiff in support of their pleadings, intact and uncontroverted. They rested their case on that of the plaintiffs.

What is waiver? The concept of waiver, is that a person who is

under no legal liability and having full knowledge of his right or interest, intentionally, decides to give them or some of them up, cannot be heard to complain that he was not permitted to exercise such rights or that he has been denied the enjoyment of those rights. See the cases of *Ariori v. Elemo & ors.* (1983) 1 SC 13; (1983) 14 NSCC 1 @ 20; (1983) 15 SCNLR 1; *Ezomo v. Oyakhire* (1985) 1 NWLR (Pt.2) 195 @ 202 and *Adegoke Motors v. Dr. Adesanya.* (supra) - per Karibi-Whyte @ page 292 of the NWLR. ^B

In other words, waiver is defined as an abandonment of a right. See the case of *The Secretary, Iwo Central Local Government & 3 ors.* (2000) 8 NWLR 115 (a), 149-150; (2000) 5 SCNJ. 203 - per Onu, JSC. To amount to a waiver, expresses or implied, two elements, must co-exist, namely: ^C

(i) The party against whom the doctrine is raised, must have knowledge or be aware of the act or omission which constitutes the waiver and ^D

(ii) He must do some unequivocal act adopting or recognizing the act or omission. See the case of *Olatunde v. Obafemi Awolowo University - Claimant & D.E. Simone (Nig.) Ltd. - Defendant* (1998) 5 NWLR (Pt.549) 178 @ 191, 194; (1998) 4 SCNJ. 59 @ 79 citing the cases of *Mathews v. Smallwood* (1910) 1 Ch. 777 (5). 786: *Fullers Theatre & Vaudeville Co. Ltd v. Rofe* (1923) A. C 435 (P.C.) and *Ariori & ors. v. Elemo & ors.* (supra). ^E

In order to show that the court below, was right when it used the word “waiver”, see the case of *NPA v. Constuzioni. General SPA & anor.* (1974) 9 NSCC 622; (1974) All NLR 945 also cited in the case of *Mobil Producing Nig, Unlimited v. Lagos State Environmental Protection Agency & 3 ors.* (2002) 12 SCNJ. 1. ^F

Let me at once state and without any equivocation, that the Appellants, having rested their case on that of the Respondents, they are deemed to have abandoned their pleadings. They had nothing to offer or stand on. The 1st Plaintiff/Respondent, testified and also relied on documentary evidence that he became aware of the fraud and concealment of the entire revocation and allocation, only in 1996. He sued in 1998. The overwhelming evidence of the 1st Plaintiff/Respondent, was rightly, in my respectful view, accepted by the trial court as uncontroverted by all the Defendants. I hold that the action in the circumstance, was not statute-barred. To contend that the suit ^G ^H

is statute-barred, I take it that it is an admission by the Appellants and their learned counsel, that the action, was maintainable, but that it is statute-barred. My answers to all the issues of the Appellants, are rendered by me in the Affirmative/Positive. I say so because, even if the Appellant's name was/is struck out, the action and its result, remain and subsist against the 1st and 2nd defendants/Respondents. I so hold.

I again pause here to state that the Appellants, could be likened to an incorporated Company or legal personality, who operated, through human beings and not robots. They participated fully in the proceedings up to the filing of a written address at the trial court. It was the human beings who retained the services of their learned counsel who they thoroughly briefed to defend them and/or - the suit. See the case of Ogbodu v. Madam O. Ishokare (1967) 3 NMLR 234. They represented themselves to the plaintiffs and the trial court, as the Administrators/Executors of the Estate of General Sani Abacha (Deceased). They were not bound to exhibit any Probate or Letters of Administration in that regard or respect. They did not sue. They therefore, could not make a u-turn to resile from their representation. The Learned Counsel for the Appellants, did not at any stage, give or disclose to the trial court, the names of the Administrators and Executors he appeared for, for the trial Judge to note. See the case of Njemanze v. Shell BP AH (1966) 1 ANLR 8. The cases of Shittu & 11 ors. v. Chief Lisali & 9 ors. (1941) 16 NLR 21; Olu of Warri v. Essien & anor. (1958) 3 FSC 94; Agbonmagbe Bank Ltd. v. General Manager G.B. Ollivant Ltd. & anor. (1961) All NLR 116; Afao v. Sonuza (1973) AH NLR 449; and Nwizes Association v. Attorney-General Contributing (1981) 11 - 12 S.C. 1 @ 21-22 - per Obaseki, JSC have been cited in the Judgment of my learned brother, M. Mohammed, JSC among several other decided authorities about the effect of suing or naming of a non-juristic person, as a defendant. In the instant case, the Appellants, were served with the Writ of Summons hence they caused to be filed, a Conditional Appearance. But instead of following it up with a motion of Objection, they joined issues with the Plaintiffs/Respondents by filing a Statement of Defence.

It need be stressed, that each case, must be determined upon its own peculiar circumstances as no two cases, can be identical. They

can be similar. The facts of the instant case, in my respectful view, are not the same with the above-named decided authorities. The Appellants, I repeat, did not sue. There was no need for them to have or produce, any evidence of grant of Probate or Letters of Administration. So, the case of Mallam v. Mariga (1991) 5 NWLR (Pt.189) 114 @ 127 C.A, with respect, is inapplicable in this case leading to this appeal. I so hold. B

Finally, I note that there are concurrent findings of facts of the two lower courts. This Court's attitude, is not to disturb or interfere with such findings which are not perverse. See the cases of Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt.184) 157; (1991) 5 SCNJ. 52; U.A.C. (Nig.) Ltd, v. Fasheyitan (1998) 11 NWLR (Pt.573) 179; (1998) 7 SCNJ. 179 and Aroyewun & ors. v. Oba Adediran (2004) 7 SCNJ. 240 just to mention but a few. C

Before concluding this Judgment, I hold, with profound humility and respect, that this appeal is a hoax, a fluke and very useless and with no merit whatsoever. I note that even in the dissenting Judgment of Ikongbe, JCA at page 296 of the Records, His Lordship, stated inter alia, as follows:

"Had I not held that the Plaintiffs' action was not maintainable against the 3rd defendant for the two reasons already advanced I would have had no hesitation at all in agreeing with the learned trial judge that the plaintiffs were entitled to till the reliefs they had sought. I would accordingly have granted them. The manner in which the 1st defendant dispossessed the 1st Plaintiff was most When it comes to owning property, no Nigerian, no matter how high his status on the social ladder, is superior to another, no matter how low. The treatment meted by the 1st defendant to the 1st Plaintiff was most wicked and ought to be roundly condemned" F

[the underlining mine] G

I believe that the Learned Counsel for the Appellants, read this portion in the Dissenting Judgment. Section 44(a), (b) and (c) of the Land Use Act, was brazenly breached by the 1st and 2nd Defendants. In order to exhibit or show the bad faith and ruthlessness of the 1st and 2nd defendants, I note that in their said Statement of Defence, they even denied the pleading in paragraph 1 of the Statement of Claim, that the 1st Plaintiff, is a Retired Senior Citizen of Nigeria, native of Twon Brass and a Permanent Secretary in the ser- H

vice of the Rivers State. Yet, they rested their case on that of the 1st Plaintiff.

In the final analysis, I too dismiss this appeal with, ignominy, I also accordingly affirm the Judgment of the court below affirming the Judgment of the trial court. I abide by the consequential orders
B contained in the lead Judgment of my learned brother, Aderemi, JSC, including that in respect of costs.

MUNTAKA-COOMASSIE JSC

C This appeal arose from the decision of the Port-Harcourt Division of the Court of Appeal which, in its split judgment, delivered on the 18th April, 2002 that court dismissed the appeal by the Appellant. The minority judgment was delivered by Ikongbe JCA of blessed
D memory. In his dissenting judgment he allowed the appeal of the Appellant herein.

The Appellant further appealed against the judgment of the majority of the Court of Appeal, hereinafter called court below. Both parties formulated issues for our consideration of the appeal and
E adopted their respective issues before us on 17th of November, 2008. The Appellant's counsel, on behalf of his client, urged this court to allow the appeal, while the Respondents' counsel, (3rd - 4th respondents), urged us to dismiss the appeal. It is to be noted however, that
F the 1st and 2nd defendants plaintiffs did not appeal against the decision of the trial court delivered by Akpughunum J.

I have the privilege of reading before now, the draft judgment of my learned brother Aderemi JSC, just delivered. It is my view that his lordship has stated succinctly the facts of the case. The live issues
G presented to us were fully thrashed out; I do not think it wise to visit same in my judgment. My learned brother in the lead judgment has competently and correctly, in my view, applied the law as it is on the facts of the case.

On the issue whether the appellant, the Administrators/Execu-
H tors of the Estate of General Sani Abacha (deceased), is a legal person, and that the action could competently be maintained against it. I say thus:-

The 1st, 2nd, 3rd, and 4th respondents, were the plaintiffs before the trial court.

After a careful consideration of the issues presented to us I hold that the appellant was a non-legal personality. It cannot be sued. The competence of the court under such circumstance cannot be waived. An estate of a deceased cannot be a legal person. The name is unknown to law-

(i) Madukolu & ors V. Nkemdilim (1962) All NLR 589. Ariori V. Elemo (1983) 1 SCNLR 1. Ajao v. Sonola (1973) All NLR 449; and Njoku v. U. A. C. Foods (1999) 12 NWLR (pt. 632) 557.

Without much ado I entirely agree with my learned brother Aderemi JSC that only a natural or juristic person can sue or be sued. The general rule therefore requires that the plaintiff and the defendant should be juristic persons or natural persons existing or living at the time the action is instituted. In the case at hand, the 3rd defendant, now the appellant was sued by the plaintiffs (at the trial court) as the Administrators/Executors of General Sani Abacha - deceased. The names of the Administrators/Executors were never disclosed in the processes that were filed. There was no evidence that letters of Administration were granted to anybody in respect of the said estate.

The plaintiffs could not discharge the burden placed on them that the defendants, or specifically, the 3rd defendant is competent in law to defend the action. They failed to prove that the 3rd defendant now appellant is legally competent to defend the action. He cannot in law waive any allegation of incompetency. The name of the appellant should have been struck out ab initio in the trial court. Having stated as above, in a nutshell, I will say that on the issue of incompetency of the 3rd defendant now appellant I hold that the appellant herein has never been a party legally recognised and known to law. For the above little exposition of the law and the more detailed treatment of the law I agree with my brother Aderemi JSC that the appeal cannot stand same must be struck out. For the avoidance of any possible doubt the appeal lacks merit and is hereby struck out.

The judgment of the majority in the court below is in order same is affirmed. I abide by the consequential orders made in the lead judgment. No order as to costs.