

**SUPREME COURT OF NIGERIA**  
24TH APRIL, 2009. SC. 236/2002  
**CORAM:- N. TOBI, G. A. OGUNTADE, I. F. OGBUAGU,**  
**I. T. MUHAMMAD, J. O. OGEBE, JJSC**

1. J. A. ADERIGBIGBE  
2. ALHAJI GANIYU SANNI ..... APPELLANTS  
(DECEASED)  
AND  
TIAMIYU ABIDOYE ..... RESPONDENT

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APPEALS - Grounds of appeal - Abandonment - By implication - Where no brief of argument has been filed in respect of an appeal - The appeal is deemed abandoned - And must be struck out (H1)

APPEALS - Notice of appeal - Validity - There is no longer a valid notice of appeal - Where all grounds therein are struck out as incompetent - As a bare notice of appeal is valueless & incompetent (H2)

APPEALS - Grounds of appeal - Additional grounds - Competence - Additional grounds all become naught - Though filed within time extended - Where there exists no valid appeal (H3)

JUDGMENTS - Cross-appeals - Points not appealed on - Where a respondent did not cross-appeal on a point - He cannot raise that point on appeal as of right (H4)

**FACTS**

The plaintiff/respondent sued the defendants/appellants before the High Court of Kwara State claiming sundry reliefs by which he contested the transfer of ownership of the land in dispute by the respondent to the appellants. At the end of hearing, the trial court dismissed the claim in its entirety. Dissatisfied, the respondent appealed to the Court of Appeal originally on two grounds of appeal. Subsequently, with leave, he filed eight additional grounds of appeal.

The appellants raised preliminary objections to the competence of all the grounds of appeal. The Court of Appeal upheld the

objection in respect of all the grounds except the additional ground eight. Eventually it heard and allowed the appeal on that sole ground. The appellants have brought this appeal contending that the additional ground eight cannot stand in view of the striking out of the two original grounds of appeal. For in the absence of the original ground, there is no valid notice of appeal on which ground eight can be anchored.

### **ISSUES FOR DETERMINATION**

1. *“Whether the Court of Appeal was not wrong in considering the argument Based upon additional ground 8 of the respondent’s grounds of appeal when there was no valid notice of appeal before the court upon which the purported additional ground 8 could have been predicated and more so, when the said additional ground 8 was not filed in accordance with well established principles of law and the rules of court.*

2. *Whether the Court of Appeal was right in the manner it misconstrued and misapplied the provisions of section 17(1) of the High Court Law, Cap 49, Laws of N. N. 1963 and section 41 (2) and (3) of the Land Tenure Law, Cap 59, Laws of N. N. 1963 when there was no ground of appeal challenging the trial court’s finding on the matter and there were insufficient materials on record to sustain the application of the provisions of the laws aforesaid to the case.”*

***HELD*** (Unanimously dismissing the appeal per **MUHAMMAD JSC**)  
**Grounds of appeal - Abandonment**

1. From the record of this appeal, I could not trace any brief of argument filed by the cross-appellant to cover his grounds of appeal as set out in the Notice of the Cross-Appeal. I must take it that the cross-appellant decided to abandon the cross-appeal. The law is settled that where no brief of argument has been filed in respect of an appeal by the appellant which includes a cross-appellant, that appeal is deemed abandoned and must be struck out. (p. 783 A)

### ***APPEALS - Notice of appeal - Validity***

2. The court below found two original grounds incompetent as it struck out same. It also found all the additional grounds of appeal save ground No. 8 as incompetent and struck out same. It is clear from this scenario that from the very moment the original grounds of

appeal were found to be incompetent and struck out as a result, there was no more valid Notice of Appeal. The act of striking out the incompetent grounds of appeal rendered the notice of appeal to be bare. And, it is the law that a bare notice of appeal is valueless and incompetent. It is incurably defective and the defect cannot be cured by amendment. (p. 788 B)

### ***Grounds of appeal - Additional grounds - Competence***

3. It is to be noted in this case that when the court below granted the reliefs in the motion which brought about additional ground No. 8 into existence, the applicant therein prayed for leave to amend the Notice of Appeal by adding Ground Eight. It is not that he asked for leave or extension of time within which to appeal. So, where there exists no valid appeal before the court below, the additional grounds filed, including additional ground No. 8, even though within time extended, all became naught. The law is that one cannot build something on nothing and expect it to stand. It will certainly collapse. (p. 788 F)

### ***JUDGMENTS - Cross-appeals - Points not appealed on***

4. Ground one of the grounds of appeal, though omnibus was struck out by the lower court. There is no cross-appeal by the respondent. The law is settled that where a respondent did not cross-appeal on a point he cannot be allowed to raise that point on appeal as of right. (p. 789 B)

### ***NOTABLE POINTS OF INTEREST***

#### ***MUHAMMAD JSC***

#### ***1. Appeals - Parties have a duty to ensure that the record is well-packaged***

It is important to reiterate that records of appeal, whether compiled by the court's registry from where the appeal originates or by a party who was granted leave by way of departure from the Rules of that court to so compile, should represent a neat/tidy, complete and properly pagination and certified bound copies of all the necessary documents required by the Rules of that court which shall form the record of appeal. Anything less is not helping the Appeal Court in the quick dispensation of justice. The parties to an appeal, especially the appel-

lant, have a responsibility to ensure that a whole packaged record of appeal which is really worth that name is the only one made available to the appeal court. (p. 782 C)

**TOBI JSC**

- B 2. *Court of Appeal could have raised issue of jurisdiction suo motu*  
I want to say one last word. The Court of Appeal had the jurisdiction to raise the issue of jurisdiction suo motu and if the court had done that to arrive at the decision, I should have not faulted the court. But  
C the court, instead of doing so, relied on ground 8 which has no legs to stand. (p. 791 E)

**REPRESENTATION**

- Mr. Yusuf O. Ali SAN, for the appellants, with him; Sola Idowu, S. A.  
D Oke, T. Hammad, Alex Akoja, A. Udochukwu (Miss.).  
Mr. R. O. Yusuf for the respondent.

**CASES REFERRED TO**

- Cooperative Bank (E.N) Ltd. V. Ogwum (1991) 1 NWLR (pt.168) at  
E 467  
Enag V. Obetan (1997) 11 NWLR (pt. 528) 255 at 265-266  
Dahuwa V. Adeniran (1986) 4 NWLR (pt 34) 268  
A.C.B. Plc V. Obmilami Brick & stone (No.2) 1993 5 NWLR (pt.294)  
399  
F Agbaje V. Adigun (1993) 1 NWLR (pt.269) 261 at 270 - 271  
Uor V. Loko (1988) 2 NWLR (pt.77) 430  
Management Enterprises Ltd. V. Edunsanya (1987) 1 NSCC, P. 577  
at 583  
G Soffekun V. Akinyemi & ors. (1980) 5-7 SC 1 at pp 86- 87.  
Akibu & ors. V. Oduntan & Ors (2000) 7 SCNJ 189  
Sparkling Breweries Ltd. & ors V. Union Bank of Nig. Ltd. (2001) 7  
SCNJ 321  
Cornelius Ltd. & Ors. V. Ezenwa (1996) 4 SCNJ 123  
H Nkedo & Ors. V. Obi eno & Anor (1997) 5 SCNJ 33

**STATUTES REFERRED TO**

High Court Law, Cap 49, Laws of Northern Nigeria, 1963, s. 17  
Land Tenure Law, Cap 59, Laws of Northern Nigeria, 1963, s. 41

**LEAD JUDGMENT BY MUHAMMAD JSC**

The claim of the respondent herein, as plaintiff before the High Court of Justice, Ilorin (trial court) was as follows:

*"Whereby the plaintiff claims as follows:*

*1. for the following Declarations:-*

*(a) that the cash receipt No. 001 of 14th August, 1973 for the sum of N2,000.00 purportedly being compensation for Transfer of ownership of land by the plaintiff to defendant could not and did not confer any title in respect of the land described therein on the, first defendant.*

*(b) that the Cash Receipt No. 001 of 14th August, 1973 for the sum of N2,000.00 purportedly being compensation for Transfer of ownership of land by the plaintiff to the defendant is null and void and of no legal effect as it was not duly stamped.*

*(c) That the said cash Receipt No. 001 of 14th August, 1973 for the said sum of N2.000.00 purportedly being compensation for transfer of ownership of land by the plaintiff to the defendant did not comply with the provisions of sections 2, 7 and 8 of the illiterates Protection Law and is thereby null and void and of no legal effect.*

*(d) That the said cash Receipt No. 001 of 14th August, 1973 for the sum of N2,000.00 purportedly being compensation for transfer of ownership of land by the plaintiff to the defendant is a fraud upon the plaintiff and is therefore null and void and no legal effect.*

*(e) That the application for a permit to Alienate land dated 10th August, 1973 and signed by the plaintiff was obtained by fraud and is therefore null and void and of no legal effect, and did not comply with sections 2, 7, and 8 of the Illiterate Protection Law. Chapter 51.*

*(f) That the Customary Right of Occupancy No. OLGA/W/31/ 6/73 of 10th August, 1973 granted to the defendant by the Oyun Local Government Authority based on the said application referred to in paragraph (e) above is null and void and of no effect.*

*(g) That the land described in the said Customary Right of Occupancy No. OLGA/W/31/6/73 of 10th August, 1973 is and remains the property of the plaintiff and has never passed to the defendant.*

**(b) PARTICULARS OF SPECIAL DAMAGES**

*(i) N1000.00 for the 583 Kola nuts destroyed.*

- (ii) *N500.00 for the 50 oil palm trees destroyed.*
- (ii) *N200.00 for the 219 coffee destroyed.*
- (iv) *N100.00 for the 10.300 Cassava plants.*
- (v) *N100.00 for the 62 Oranges destroyed.*
- (vi) *N150.00 for the 27 Cashew trees destroyed.*

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(c) GENERAL DAMAGES

- (i) *N50,000.00 for unlawful and exploitation.*
- (ii) *N10,000.00 for the aggravated trespass.*
- (iii) *N10,000.00 for the fraud.*

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*Pending the determination of this suit, and injunction to restrain the 1st defendant from doing or causing the doing of any act on the land or performing any act of claiming any right of ownership or possession on, or waste, alienate or cultivate the said land. And the plaintiff claims the said sum of N72,950.00 from the defendants jointly and severally."*

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The appellants herein, as defendants at the trial court joined issues with respondent on all the salient averments in the statement of claim. After a protracted trial which lasted for over a decade, the trial court dismissed the claim of the respondent in its entirety. The respondent was dissatisfied and filed an appeal to the Court of Appeal, Kaduna, division (court below). The appeal was allowed on the issue of lack of jurisdiction founded on ground 8 of the additional grounds of appeal. Accordingly, suit No. KWS/146/77 was struck out. The appellants were dissatisfied with the decision of the court below and they appealed to this court on six grounds of appeal vide a Notice of Appeal dated 19th of October, 1993 and filed on the same day. The respondent was equally dissatisfied with the decision of the court below. He therefore, filed a Notice of cross-appeal dated 27th of October 1993.

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For the purposes of clarity in this appeal, I think there is need to point out that the respondent had at the lower court, as appellant, filed two original grounds of appeal including the omnibus ground. Later on and in the course of the proceedings in the court below, the respondent sought leave of that court to file and in fact, did file seven additional grounds of appeal. Thus, there were nine grounds of appeal before the court below as filed by the respondent. The appellants as respondents in the court below in their brief of argument

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gave a notice of preliminary objection against all the grounds of appeal filed by the respondent on the ground of incompetence. The arguments on the preliminary objection were incorporated into the appellants brief of argument. There was no reply brief filed by the respondent. By an application dated 7th of April, 1993, the respondent sought leave of the court below to amend the Notice of Appeal by filing an additional ground 8. The application was granted by the court below on the 25th of April, 1993. Again, briefs of argument were filed and exchanged in respect of the additional ground of appeal filed by the respondent. The appellants raised a preliminary objection to the competence of the additional ground of appeal which objection and argument thereon were incorporated in the respondent's brief of argument in answer to appellants' additional brief of argument.

The court below in its judgment upheld the preliminary objections of the appellants and held that all the grounds of appeal filed by the respondent, save the additional ground 8 were incompetent and struck them out accordingly. On the omnibus ground, the court below found that no issue was formulated to cover it and was deemed abandoned and struck it out. On the additional ground 8, the court below held that the objection of learned counsel for the appellants on that ground lacked merit and it dismissed same. The court below went ahead to consider the appeal based on additional ground 8. The court below found in favour of the respondent on this additional ground and allowed the appeal. In his brief of argument, the learned SAN for the appellants formulated two issues as follows:

1. *"Whether the Court of Appeal was not wrong in considering the argument Based upon additional ground 8 of the respondent's grounds of appeal when there was no valid notice of appeal before the court upon which the purported additional ground 8 could have been predicated and more so, when the said additional ground 8 was not filed in accordance with well established principles of law and the rules of court.*

2. *Whether the Court of Appeal was right in the manner it misconstrued and misapplied the provisions of section 17(1) of the High Court Law, Cap 49, Laws of N. N. 1963 and section 41 (2) and (3) of the Land Tenure Law, Cap 59, Laws of N. N, 1963 when there was no ground of appeal challenging the trial court's*

*finding on the matter and there were insufficient materials on record to sustain the application of the provisions of the laws aforesaid to the case."*

Two issues were as well formulated by learned counsel for the respondent. They are as follows:

B *"(a) Whether the lower court was right in allowing the appeal before it against the judgment of the trial court based on additional ground 3 challenging the jurisdiction of the trial court to entertain the claim before it.*

C *(b) Whether the lower court properly construed and applied the provisions of section 17 (1) of the High Court of Northern Nigeria, 1963 and section 41 (2) and (3) of the Law of Tenure Law, Cap 59, Law of Northern Nigeria Law 1993 before arriving at the decision that the trial court had no jurisdiction to entertain the suit before*

D *it"*

Learned counsel for the appellants argued the issues seriatim so also the learned counsel for the respondent, issues for the appellants cover issues for the respondent. This appeal will be considered on the appellants' issues for determination.

E The learned counsel for the appellants after giving a summary of the facts giving rise to this appeal, submitted that the law is now firmly settled that a notice of appeal is the foundation upon which an appeal is based. It is, he said, the originating process which sets the ball rolling for the proper, valid and lawful commencement of an

F appeal. Where the notice of appeal is found to be defective or invalid for whatever reason, the appeal falls to the ground and must be struck out. He referred to the following cases: Cooperative Bank (E.N) Ltd. V. Ogwum (1991) 1 NWLR (pt.168) at 467; Enag V. Obetan G (1997) 11 NWLR (pt. 528) 255 at 265-266.

Learned counsel submitted further that for a notice of appeal to be valid, it must contain valid or competent grounds of appeal. Where the grounds of appeal are held incompetent and are struck out, the notice of appeal and the whole appeal must be dismissed by H the court. The court below, learned counsel contended, was in error in holding that additional ground 8 of the respondent was valid and arguable, after having found that the original grounds of appeal, including the omnibus ground were incompetent and struck out same and there was no longer any valid notice of appeal before the court



below on which additional ground 8 could have been hinged. The cases of Dahuwa V. Adeniran (1986) 4 NWLR (pt 34) 268 and A.C.B. Plc V. Obmilami Brick & stone (No.2) 1993 5 NWLR (pt.294) 399 were cited. Learned counsel argued that the defect in the notice of appeal could not be cured by an application for amendment of the notice of appeal by filing an additional ground of appeal or other additional grounds. It then follows that there was no valid nor competent notice of appeal on which additional ground 8 could be predicated. Learned counsel urges this court to hold that the court below was in error to have based its decision on additional ground 8 of the respondent's grounds of appeal and that this court should declare that decision to be a nullity. B  
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On the issue of jurisdiction relating to issue No. 1, the learned counsel for the appellants submitted that the issue of lack of jurisdiction of the trial court was raised in paragraph 23 of the amended statement of defence of the 1st defendant. There was no reply to that effect filed by the respondent. No issue was thus joined by the parties on the issue of lack of original jurisdiction of the trial court to entertain the claims. Learned counsel submitted that the issue of lack of original jurisdiction of the trial court was a fresh point which was raised by the respondent for the first time in the court below. There was need therefore, for the respondent to seek leave of the court below before he could raise and argue the fresh issue of jurisdiction. He relied on the cases of Agbaje V. Adigun (1993) 1 NWLR (pt.269) 261 at 270 - 271; Uor V. Loko (1988) 2 NWLR (pt.77) 430. Learned counsel argued that the court below was in error in allowing additional ground 8 to be filed and argued by respondent when no leave had been sought and granted by that court. He however, conceded later that an issue of jurisdiction, because of its fundamental nature, can be raised at any stage of the proceedings and even for the first time at the Supreme Court. Learned counsel urged this court to answer issue No. 1 in the positive and allow grounds 1, 2, 3, and 4 on which the issue is premised. D  
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Learned counsel for the respondent, on the other hand, submitted that on issue of jurisdiction, no leave of court is required to raise it. He cited the cases of Management Enterprises Ltd. V. Edunsanya (1987) 1 NSCC, P. 577 at 583; Soffekun V. Akinyemi & ors. (1980) 5-7 SC 1 at pp 86- 87. The submission of learned coun- H

sel for the appellants, he argued, was misconceived. He cited the case of Obiakor V. The State (2002) 10 NWLR (pt.776) 612 at 626. Learned counsel for the respondent added that being a civil appeal, the omnibus ground of appeal is competent and it is the bedrock upon which additional ground of the notice of appeal is predicated.

B Let me express my displeasure in the manner the record of appeal was compiled. Reference was made particularly by the learned counsel for the appellants to “Vol. II” of the compiled record. Speaking for myself, I could not see any “Vol. II” for this appeal. It was C totally misleading. Secondly, there is no consistency in the pagination of the only record made available to me. The Pagination was done at random and sporadically. This is quite unacceptable. It makes following of the record in relation to the arguments proffered by the learned counsel very difficult, tasking and absurd. I think, it is important to D reiterate that records of appeal, whether compiled by the court’s registry from where the appeal originates or by a party who was granted leave by way of departure from the Rules of that court to so compile, should represent a neat/tidy, complete and properly pagination and certified bound copies of all the necessary documents required by E the Rules of that court which shall form the record of appeal. Anything less is not helping the Appeal Court in the quick dispensation of justice. The parties to an appeal, especially the appellant, have a responsibility to ensure that a whole packaged record of appeal which F is really worth that name is the only one made available to the appeal court.

Let me observe again that there is said to be a cross-appeal by the respondent in this matter. Learned counsel for the appellants made reference to that and he said:

G *“The respondent was equally dissatisfied with the decision of the lower court and filed a cross-appeal dated 27th October, 1993. The Notice of Cross-Appeal is at pages 97 - 99 of Vol. 11 of the record of proceedings.”*

H In the only record of appeal before me, I have noticed two pages bearing “97” one in the proceedings of the trial court which bears an affidavit in support while the other page is immediately after the notice of Appeal filed by the appellants. The latter, though not titled as Notice of Cross-Appeal, appears to be the one filed by the respondent as it was signed by learned counsel Mr. Oshe, appellant’s

counsel in the Cross-Appeal. Ground No.1 of the cross-appeal challenged the holding of the court below that the appellant (cross-appellant) abandoned his omnibus ground of appeal on the alleged reason that no issue was formulated on it. **From the record of this appeal, I could not trace any brief of argument filed by the cross-appellant to cover his grounds of appeal as set out in the Notice of the Cross-Appeal. I must take it that the cross-appellant decided to abandon the cross-appeal. The law is settled that where no brief of argument has been filed in respect of an appeal by the appellant which includes a cross-appellant, that appeal is deemed abandoned and must be struck out.** See: Akibu & ors. V. Oduntan & Ors (2000) 7 SCNJ 189; Sparkling Breweries Ltd. & ors V. Union Bank of Nig. Ltd. (2001) 7 SCNJ 321; Cornelius Ltd. & Ors. V. Ezenwa (1996) 4 SCNJ 123; Nkedo & Ors. V. Obi eno & Anori (1997) 5 SCNJ 33. Accordingly, the Notice of cross-appeal which covers pages 97 - 99 of the record of appeal is hereby struck out.

Now turning to issue No. 1 of the main appeal as formulated by the learned counsel for the appellants, it is pertinent to state at the risk of repetition, some of the salient facts of the appeal, The respondent in this court was the appellant in the court below. He was dissatisfied with the decision of the trial court. He filed his notice of appeal to the court below. That Notice of Appeal is contained in pages 235 - 236 of the record of appeal. It bears two original grounds of appeal including the omnibus ground. Later on, and in the course of the proceedings in the court below, the respondent sought leave of the court below to file some additional grounds of appeal. The motion to that effect was moved and granted by the court below on the 24th October, 1990. This is on unnumbered page of the record but the motion was heard and granted by Achike, Mukhtar and Adio, JJCA (as they then were) in application No. CA/K/14M/89. Thus, the total number of the grounds of appeal rose to 7 in the Notice of Appeal. Meanwhile, briefs were settled by the parties. Before hearing of the appeal, however, another motion on notice was filed on the 8th of April 1993, praying, among others, for leave to be granted to the applicant/appellant to further amend the Notice of Appeal by adding Ground Eight which was annexed to the affidavit as Exhibit 'B' and to deem same as duly filed and served. The said motion contained a

prayer for enlargement of time within which to file additional brief of argument annexed as Exhibit 'C' to the affidavit in support and to deem same also as duly filed and served. The motion was taken and granted by the court below on the 25th day of April, 1993. By granting the reliefs sought, the number of grounds of appeal in the Notice  
B of Appeal has now risen to eight.

The appeal was heard on that 25th day of April, 1993 and judgment was reserved. Judgment was subsequently delivered on the 28th day of July, 1993, whereby the appeal was allowed on the  
C issue of jurisdiction formed on ground 8 of the additional grounds of appeal and suit No.KWS/146/77: Yusuf Olabisi V. J. A. Aderigbe & Anor was struck out.

Appellants' issue No. 1 questions the propriety and validity of the court below's holding that additional ground No. 8 was valid and  
D arguable when it is the same court that held that the two original grounds of appeal and the other (7) additional grounds filed by the respondent were incompetent and struck same out. The holding of the court below in respect of the preliminary objections raised by the appellants as respondents reads as follows;

E *"I think it is apposite before attempting to go into the issues for resolution to deal first with the preliminary objections which are two parts embodied in the respondents' briefs of argument filed on the 22nd of October, 1990 and 22nd of April, 1993 respectively. The*  
F *former concerns two original grounds of appeal and seven additional grounds of appeal while the latter relates only to the 8th additional ground of appeal deemed to have been filed on 28th of April, 1993 and if they succeed, that much wilt brevi manu dispose the appeal wholly or for as much as may be, that is pro-tanto.*

G *Leaving the omnibus ground which is ground (1) of the original grounds of appeal at the moment the objection to ground 2 of the original ground(s) of appeal is simply that neither the nature nor the particulars of the errors and misdirection alleged have been specified in the said ground.*

H *I must say with dismay even though I realize that the briefs have changed hands in this case that in my over three decades of combined experience at the Bar and Bench I have never seen any ground of appeal, be it that of error or misdirection so vague and meaningless as ground (2) above. The purported particulars given*

*under this vague ground of appeal are in their bare form no more than quotations in the judgment of the learned trial judge at pages 230 - 231 and 232 respectively of the printed record. It is trite law that a ground of appeal containing mere quotations from passages of a judgment without specifying the nature of the error in law or misdirection is incompetent and ought to be struck out suo motu by the court or on the application of a respondent.....*

*The attack on all the additional grounds of appeal save ground 8 with which I shall deal with later in this judgment centred on the nature of the misdirection or error alleged in each of the said grounds of appeal and the particulars of which were neither specified nor fully or substantially given.*

*I have with great care and concern gone through all the said additional grounds of appeal supra and besides quoting substantially or stating passages where the alleged errors and/or misdirections have occurred nothing else as regards the real nature of such errors or misdirections are specified and in some particulars are not supplied. Alas! Such is the case as far as these additional grounds of appeal stated supra are concerned. They are therefore incompetent.*

*Now coming back to the omnibus ground which the respondents' learned counsel contended is of no ..... there being no issue formulated on it by the Appellant, I entirely agree with this submission. Authorities also .....that an issue in an appeal has to be raised from the grounds of appeal. See: .....*

*At this juncture I think it is germane in addition to my finding above on all the grounds filed by the appellant save ground 8 of the additional grounds of appeal that lumping together grounds of appeal alleging errors and misdirection also make such grounds defective and therefore incompetent and ought to be struck out. ....*

*Also by reason of the lumping together ground of error and misdirection as expatiated above all the additional grounds of appeal are equally defective and therefore incompetent."*

Towards the tail end of the judgment, Oduwole, JCA, concluded as follows:

*"In conclusion the two original grounds of appeal as well as all the additional grounds of appeal save ground 8 (additional) are struck out."*

On additional ground No. 8 the court below observed:

*“This takes me to the 8th additional ground of appeal filed with leave of court only few months ago by the appellant and to which the respondents had taken serious objection by filing Notice of Preliminary . . . . Objection which was incorporated in their brief of argument to appellants additional brief of argument.”*

B The court below, after some analysis of some points of law overruled the objection raised by learned counsel for the appellants and went on to consider the issue formulated on additional ground 8 of the appeal. The court below allowed the appeal. It stated in its words:

C *“The appeal succeeds and it is allowed on the issue of lack of jurisdiction founded on ground 8 of the additional grounds of appeal. Accordingly, suit No.KW5/146/77 Yusuf Olabisi and J.A. Aderigbe and another is accordingly struck out.”*

D I think the fundamental legal question put by learned counsel for the appellants is whether an additional ground can be sustained where the original ground of appeal has been found to be incompetent and struck out.

E I think, too, the whole question has to do with the validity and subsistence of a Notice of Appeal. A Notice of Appeal is the spinal cord of an appeal. It is the foundation upon which an appeal is based. It is the originating process which sets the ball rolling for the proper, valid and lawful commencement of an appeal. Where the Notice of Appeal is defective, no proper appeal can stand. It will certainly collapse. See: Oketie V. Olughor (1995) 5 SCNJ 217; Thor Ltd. V. First City Monument Bank Ltd. (2002) 2 SCNJ 85. Ebokam V. Ekwenibe & Sons Trading Co. Ltd. (1999) 7 SCNJ 77, A Notice of appeal can be competent and valid if it contains at least one valid ground of appeal. See: section 233 (2) of 14 the Constitution of the Federal Republic of Nigeria, 1999; Erisi & Ors V. Idika & Ors (1987) 3 NWLR (pt.66) 503 at page 516. A bare notice of appeal without any ground or grounds of appeal is valueless and incompetent. See: Akeredolu & Ors. V. Akinremi & Ors. (1986) 4 SC 325 at page 372. It is incurably bad. The defect cannot be cured by amendment. See: Global Transport Oceanic Co. S.A. & Anor V. Fixe Enterprises Nig. Ltd. (2001) 2 SCNJ 224.

In this appeal, both original grounds 1 and 2 were struck out by the court below having found same to be incompetent. (See the

concluding part of judgment of Oduwole, JCA, no exact page number to cite). The same result affected all the additional grounds of appeal save additional ground No. 8. In allowing additional ground 8 to scale through, the learned justices of the court, particularly the judgment of Oduwole, JCA, relied on two points as adumbrated by learned counsel for the appellant/respondent in his reply brief. Below is what the Honourable Justice said:

*“The first is that the issue of jurisdiction was not being raised for the first time in this court as it was earlier raised at the trial court by the respondents in their pleadings and later orally at the trial and consequent on which the learned trial judge held inter alia in his judgment that he had jurisdiction. The second is that this issue of jurisdiction is an issue of law which can always be raised without leave.”*

I totally agree with the learned justice of the court below who delivered the leading judgment that, that is the correct position of the law. I will even go further to say that where a ground of appeal raises a question of law alone, that ground can be filed and argued without any leave of court first sought and obtained.

See: Comptroller, Nigerian Prisons Services, Ikoyi, Lagos, & Ors. V. Dr. Femi Adekanye & Ors. (2002) 7 SCNJ 399; Obatoyinbo V. Oshatoba (1996) 5 SCNJ 1. Even counsel for the appellants conceded to that in his brief of argument. He stated:

*“It is conceded that an issue of jurisdiction because of its fundamental nature can be raised at any stage of the proceedings and even for the first time at the Supreme Court”*

Ground No. 8 which was titled “ADDITIONAL GROUND EIGHT” as contained in Exhibit ‘B’ annexed to the affidavit in support of the motion reads, (shorn of its particulars) as follows:

*“The trial High Court erred in law in exercising original jurisdiction in the present case which raises an issue as to title to land, the subject of a statutory right of occupancy granted by a Local Government”*

I am in total agreement here also, with the court below that the issue of jurisdiction was not being raised for the first time at the court below as it was earlier raised at the trial court by the defendants in their pleadings and later orally at the trial and consequent upon which the learned trial judge held that he had jurisdiction. (Refer paragraphs 22 and 23 of the 1st defendant’s amended statement of defence -

page 180 of the record). Thus, additional ground No. 8 was purely on jurisdiction. The court below, I would say, was right to some extent in overruling the objection of the learned counsel for the respondents/appellants in that regard.

My difficulty with the decision of the court below is where it appears that the same court blew both hot and cold, it rather, approved and reprobated. This is what I mean: ***The court below found two original grounds incompetent as it struck out same. It also found all the additional grounds of appeal save ground No. 8 as incompetent and struck out same. It is clear from this scenario that from the very moment the original grounds of appeal were found to be incompetent and struck out as a result, there was no more valid Notice of Appeal. The act of striking out the incompetent grounds of appeal rendered the notice of appeal to be bare. And, it is the law that a bare notice of appeal is valueless and incompetent.*** See: Akeredolu V. Akinremi (Supra). ***It is incurably defective and the defect cannot be cured by amendment.*** See: Global Transport Oceanic Co. S. A. & Anor V. Free Enterprises Nig. Ltd. (Supra). Nwaigwe & 2 Ors. V. Okere (2008) 5 - 6 SC (pt.11) 93 at page 115. Thus, granting leave to file an additional ground or grounds to original grounds which are already incompetent cannot cure the vice which has incurably infected the original grounds. Thus, in the present situation, there was no subsisting notice of appeal upon which to place additional ground No.8.

And hence it has been tagged “additional “ the connotation is that there must be a valid and subsisting ground(s) of appeal before the court. ***It is to be noted in this case that when the court below granted the reliefs in the motion which brought about additional ground No. 8 into existence, the applicant therein prayed for leave to amend the Notice of Appeal by adding Ground Eight. It is not that he asked for leave or extension of time within which to appeal. So, where there exists no valid appeal before the court below, the additional grounds filed, including additional ground No. 8, even though within time extended, all became naught. The law is that one cannot build something on nothing and expect it to stand. It will certainly collapse.*** See: Mackfoy V. U.A.C Ltd. (1962) A.C. 152.



The argument by learned counsel for the respondent in his brief of argument that ground one of the respondent's notice of appeal, being a civil appeal, and as omnibus ground, is competent and it is the bed rock upon which additional ground of the notice of appeal is predicated upon, cannot, in my view, be of any assistance to him. I say so because; **Ground one of the grounds of appeal, though omnibus was struck out by the lower court. There is no cross-appeal by the respondent. The law is settled that where a respondent did not cross-appeal on a point he cannot be allowed to raise that point on appeal as of right** . See: United Marketing Co. V. Kara (1963) 1 WLR 523 at 524; Ahamath V. Ummah (1931) AC 799, 802 - 803; Singh V. Singh (1907) IR 34 Ind. App -164 (privy Council ). It has been pointed out earlier that the cross-appeal filed was abandoned by the cross-appellant. Further, several authorities abound that where original notice of appeal is defective, no additional ground(s) could be hung on it. I will cite few instances:

In the case of Awohunawhi & Anor V. Oteri & Ors (1984) 5 SC 38 at 42, this court, per Nnamani, JSC, (of blessed memory) had this to say;

*"However, If the original notice of appeal was defective, no additional grounds could be hung on it..... in view that there was no appeal before the Court of Appeal and the proceedings there were null and void."*

Again, in the case of Orakosim V. Menkiti (2001) 5 SCNJ 1 at page 10, Ogundare, JSC, held as follows:

*"All the four grounds contained in the Notice of Appeal being incompetent, the appeal itself is also incompetent. And being incompetent, the additional ground will have no appeal to be anchored on."*

Thus, it was wrong of the court below to have based its decision on non-existing appeal. They lacked jurisdiction to embark upon that exercise.

Finally, this appeal succeeds and it is allowed by me on this issue alone. There is no need for me to consider the other issue formulated on the merit of the case. Accordingly, I set aside the decision of the court below being a nullity and make an order striking out the appeal before the court below.

Each party to bear its own costs in this appeal.

### **TOBI JSC**

I have read in draft the judgment of my learned brother, Muhammad JSC and I agree with him. The appeal centres on the use by the Court of Appeal of the additional ground 8 on jurisdiction. It reads:

*“The trial High court erred in law in exercising original jurisdiction in the present case which raises an issue as to title to land, the subject of a statutory right of occupancy granted by a Local Government.”*

As my learned brother has beautifully presented the scenario that led to the filing of the additional ground of appeal, I will not repeat it. I should however emphasize that the Court of Appeal held that all the seven grounds of appeal filed were incompetent and they were accordingly struck out. That court found additional ground 8 a saviour and made use of it to salvage the appeal. The court said *inter alia*:

*“At this juncture I think it is germane in addition to finding above on all the grounds filed by the appellant save ground 8 of the additional grounds of appeal that lumping together grounds of appeal alleging errors and misdirections also make such grounds defective and therefore incompetent and ought to be struck out... In conclusion the two original grounds of appeal as well as all the additional grounds of appeal save ground 8 (additional) are struck out.”*

It is this aspect of the decision that is the crux of this appeal. Issues were formulated on it by the parties. It is the argument of counsel for the appellants that the Court of Appeal was wrong in resorting to ground 8 when the same court struck out the two original grounds as well as the other additional grounds. Counsel raised preliminary objection which was overruled.

Learned counsel for the respondent did not see anything wrong with the position taken by the Court of Appeal. With respect, I see something wrong with it. The noun “addition” means adding numbers together. The adjective “*additional*” involves the idea of joining or uniting one thing to another thereby forming one aggregate and so the thing in whole exists as one aggregate. Accordingly, one can

only add to an existing thing. One cannot add to a non-existing thing. It is both a legal and factual impossibility. And so when all the grounds, (original and additional) were struck out, the additional ground 8 had no standing in terms of increasing the number from seven grounds by one. This is because one can only add something to something. One cannot add something to nothing. In the latter case, as there is nothing to hold or support the something, it will fall or crumble. That is the way I see the situation here. Ground 8, the so-called additional ground, has nothing to support it and so it crumbles. The Court of Appeal, with greatest respect, was in error in trying to save it.

I entirely agree with my learned brother that the Notice of Appeal is the spinal cord of an appeal. It does not only place the appeal in its proper perspective, it is the cynosure or fulcrum of the appeal. There cannot be a valid appeal without a Notice of Appeal or more accurately without a valid Notice of Appeal. The most valid requirement of a Notice of Appeal is the ground of appeal. There cannot be a valid appeal without valid ground or grounds of appeal. This is because the ground of appeal is the basis of the complaint by the appellant against the judgment of the court.

I want to say one last word. The Court of Appeal had the jurisdiction to raise the issue of jurisdiction suo motu and if the court had done that to arrive at the decision, I should have not faulted the court. But the court, instead of doing so, relied on ground 8 which has no legs to stand.

It is for the above reasons and the abler reasons given by my learned brother that I too allow the appeal. I set aside the judgment of the Court of Appeal and strike out the appeal in the Court of Appeal. I also abide by his order as to costs.

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### **OGUNTADE JSC**

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Muhammad J.S.C. I agree with him that this appeal has merit. I would also allow it. The court below having struck out all the grounds of appeal raised by the appellant in his original Notice of Appeal had no jurisdiction to determine the appeal on the basis of the additional grounds of appeal which raise the question of the jurisdiction of the trial court.

It is a valid Notice of Appeal which activates the jurisdiction of an appellate court. A Notice of Appeal which carries no valid ground of appeal cannot be valid and is incapable of activating the jurisdiction of the Court of Appeal. Whilst it is correct to say that the question as to jurisdiction of a court could be raised at any state of a case and even for the first time on appeal, the court before which the issue of jurisdiction is raised, must first possess the jurisdiction to hear the totality of the appeal; and such court cannot have that jurisdiction without a valid notice of appeal.

It was an error on the part of the court below to have proceeded to determine the issue of the jurisdiction of the trial court which was raised vide an additional ground of appeal when the original Notice of Appeal which represented the pivot upon which the jurisdiction of the Court of Appeal stood had been destroyed.

I would also allow the appeal. I make no order as to costs.

### **OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal, Kaduna Division (hereinafter called “the court below”) delivered on 28th July, 1993 allowing the appeal to it by the Respondent against the Judgment of the trial court - per Oyeipo, C.J. of the High Court of Kwara State delivered on 30th May, 2006.

Dissatisfied with the said decision, the Appellant has appealed to this Court on (6) six Grounds of appeal all substantially, relating to the propriety of the court below, relying on an Additional Ground 8 in the Notice of Appeal filed by the Respondent in the court below, The Appellants formulated two issues for determination, namely,

“1. *Whether the Court of Appeal was not wrong in considering the argument based upon additional ground 8 of the respondent’s grounds of appeal where there was no valid notice of appeal before the Court upon which the purported additional ground 8 could have been predicated and more so when the said additional ground 8 was not filed in accordance with well established principles of law and the rules of court.*

2. *Whether the Court of Appeal was right in the manner it misconstrued and misapplied the provisions of Section 17(1) of the High Court Law, Cap 49, Laws of N. A/. 1963 and section 41 (2)*

*and (3) of the Land Tenure Law, Cap 59, Laws of A/ A/ 1963 when there was no ground of appeal challenging the trial Court's finding on the matter and there were insufficient materials on record to sustain the application of the provisions of the laws aforesaid to the case".*

On his part, the Respondent has also formulated two issues for determination which read as follows:

*"(a) Whether the Lower Court was right in allowing the appeal before it against the judgment of the trial court on additional ground 8 challenging the jurisdiction of the trial court to entertain the claim before it.*

*(b) Whether the Lower Court properly construed and applied the provisions of section 17 (1) of the High Court of Northern Nigeria, 1963 and section 41(2) & (3) of the land Law Tenure Law, Cap 59, Laws of Northern Nigeria Law 1993 before arriving at the decision that the trial court had no jurisdiction to entertain the suit before it"*

**Observation:** It seems or appears to me that both learned counsel for the parties, did not bother to vet the Records, the reading by me shows that it is a bundle of confusion on the paging, also some of the pages are blurred and not clear. Then to this appeal.

I note that Ground 1 in the Respondent's Notice of Appeal at page 235 of the Records, is the omnibus ground. It is settled that an appeal predicated on the omnibus or general ground, is not at large and therefore, cannot be used to raise issue of law which must be raised as a separate ground of appeal and not made an adjunct to it. See the cases of Onaga & ors. v. Micho v. Co. (1961) 2 SCNLR 107; (1961) 2 ANLR 209; (1961) All NLR 324 and Davis v. Powell Duffryn Collieries (1942) A.C. 601 @ 616-617 both referred to in the case of Calabar East Co-operative Thrift & Credit Society Ltd. & 3 ors. v. Etim E. Ikot (1999) 14 NWLR (Pt.638) 225; (1999) 12 SCNJ. 321 @ 51. This is why, an omnibus ground of appeal, can, sustain an appeal because, it implies that the judgment of the trial court, cannot be supported by the weight of the evidence adduced by the successful party or that the trial judge, either wrongly accepted evidence or the inference he drew or the conclusion he reached based on the accepted evidence, cannot be justified. See the case of Engr. Osolu v. Engr. Uzodinma Osolu & 6 ors, (2003) 11 NWLR (Pt.382) 608 @ 631-632,645-646; (2003) 6 SCNJ. 162 @ 186.

But if no issue is formulated on it, as in the instant case leading to this appeal, then, it is of no moment. This is because, it is settled that an issue has to be raised from a ground of appeal. See Nwosu v. Udeaja (1990) 1 NWLR (Pt.125) 188; (1990) 1 SCNJ. 152; Chief Agbaisi & 3 ors. v. Ebikorefe & 6 ors. (1997) 4 NWLR (Pt.502) 650; B (1997) 4 SCNJ. 147 @ 157 and Gabriel Adah v. John Adah (2001) 2 SCNJ. 90 @ 97 just to mention but a few. This must be so because and this is also settled, an Appellate Court, can only hear and decide an issue raised on the grounds of appeal filed before it. It does not C deal with grounds of appeal, but with issue or issues formulated for determination. This is why a ground of appeal in respect of which no issue has been raised or formulated, is deemed to have been abandoned and such a ground and all the arguments based on it, must be struck out. See the cases of Onifade v. Olayiwola (1990) 7 NWLR D (Pt.161) 130; (1990) 11 SCNJ. 10; Ndiwe v. Okocha (1992) 7 NWLR (Pt. 252) 129; (1992) 7 SCNJ. 355 and Aromolaran v. Kupoluyi (1994) 2 NWLR (Pt.325) 221 and many others.

This is why it is also firmly established that when issue is not placed before a court, such a court, has no business whatsoever, to E deal with it as the decisions of a court of law, must not be founded on any ground in respect of which it has neither read argument from or on behalf of the parties before it nor even raised by or for the parties or either of them. So said this Court - per Musdapher, JSC in the case of Kraus Thompson Organization Ltd. v. University of Calabar F (2004) 4 SCNJ. 21 @ 133 citing the cases Of Shitta-Bey v. Federal Public Service Commission (1981) 1 SCNLR 372 and Alhaji Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387; (1989) 7 SCNJ, 216.

I note that in paragraphs 3.05 and 3.06 of the Respondent's G Brief, the following are stated:

*"3.05 Ground one of the Respondent's notice of appeal before the Lower Court was that:*

*"3: GROUNDS OF APPEAL"*

*1. The judgment is against the weight of evidence".*

H *"3.06 Being a civil appeal, the omnibus ground of appeal is competent and it is the bedrock of which (sic) additional ground of the notice of appeal is predicated upon."*

[ the underlining mine]

On the said main or original ground having been struck out by

the court below on 28th July, 1993 in its Judgment, the said Additional Ground 8, naturally and with respect, commonsensically, goes with it and therefore, there is nothing left in the said Notice of Appeal more so, as all the rest of the seven additional grounds of appeal, were equally struck out by the court below. See page 18 of its said Judgment. In other words, the court below, with profound humility and respect, was clearly in error, when it “clung” to additional Ground 8 in coming to its said decision of initially, allowing the Respondent’s appeal having regard to the fact that there was no “foundation” on which the Notice of Appeal which was therefore, bare, valueless, impotent and incompetent, could stand. See the case of Mackfoy v. U.A.C. Ltd. (1962) A.C. 162.

In the words of Nnamani, JSC (of blessed memory) in the case of Chief J. O. Awhinawhi & anor. v. Chief S.E. Oteri & ors. (1984) 5 S.C. 38 (a), 42.

*“..... If the original notice of appeal was defective, no additional grounds could be hung on it..... I am also of the view that there was no appeal before the Court of Appeal and the proceedings there was null and void.....”*

As I have shown above in this Judgment, in fact, the second ground was eventually, struck out as being so vague and meaningless by the court below. See page 10 of the said Judgment. So, if the additional grounds which included Ground 8 of the Notice of Appeal, had been struck out, the effect is that, there was no Notice of Appeal showing any valid ground of appeal. See also the case of Azeez Akeredolu & ors. v. Akinremi (1986) 4 S.C. 325 @ 572 - per Karibi-Whyte, JSC.

Again, I note that in dealing with or considering the said Ground 8, the court below, ultimately or finally, held that the trial court had no jurisdiction to entertain the said suit or action which it consequently, struck out. So, whichever way I or one looks at it, this appeal is unmeritorious and fails.

It is from the foregoing and the more detailed lead Judgment of my learned brother, Muhammad, JSC just delivered and which I had the advantage of a preview, that I too, allow the appeal. I abide by all the consequential orders contained in the said Judgment including that in respect of costs.

**OGEBE JSC**

I read before now the lead Judgment of my learned brother  
Muhammad, JSC and I agree entirely with his reasoning and conclu-  
sion and adopt the judgment as mine.

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