

SUPREME COURT OF NIGERIA
25TH FEBRUARY, 2011. SC. 58/2003
**CORAM:- F. F. TABAI, I. T. MUHAMMAD, S. M. MUNTAKA-
COOMASSIE, J. A. FABIYI, B. RHODES VIVOUR, JJSC**

1. REV. RUFUS IWUAJOKU ONUKOWUSI
2. REV. DANIEL EKEJI
3. REV. ADOLPUS AGUIHE
4. REV. MOSES EWURUM
5. REV. EUGENE AHAOTU APPELLANTS
6. HON. JUSTICE NGOZI OPARA
7. MR. NELSON NWOLE
8. MR. MARCEL OGUIKE
9. CHIEF FRANCIS NWAGIRIGA
AND
THE REGISTERED TRUSTEES OF THE
CHRIST METHODIST ZION CHURCH RESPONDENT

COMPANY LAW - Legal personality - Incorporation or registration - Effect - It confers on a company a distinct legal personality from its members - Once the formal procedure of incorporation has been complied with (H1)

COMPANY LAW - Succession - Corporate bodies - Differences - The differences they have from unincorporated associations are that they have perpetual succession - They maintain their identity despite changes in membership (H2)

COMPANY LAW - Actions in corporate name - Whether authorised - It is not the law that before such actions are instituted - They must be authorised by persons having authority to institute them (H3)

COMPANY LAW - Merger decision - Constitutionality - Where one company's decision to merge with another is not supported by its constitution - Such decision is unconstitutional (H4)

FACTS

The plaintiff/respondent sued defendants/appellants before the

High Court of Imo State, holden at Owerri. Respondent's claim was for sundry declarations by which it asserted that appellants were no longer members and or officers of respondent, and as such to restrain appellants from interfering with the management, affairs and properties of respondent. It was not in dispute that respondent was incorporated on 26th September, 1949. However, at the time of taking out the writ of summons, all the original registered trustees of the respondent had all died and were yet to be replaced, though there was evidence that respondent had already activated the machinery for their replacement. About thirteen months after the commencement of the action, a new set of trustees were registered. Further, at the time preceding the commencement of the action, the 1st to 5th appellants were all officers of the respondent. In fact, it was their activities as such that made respondent to institute the action. It is the case of respondent that at its conference, appellants had proposed to have respondent merged with the Methodist Church of Nigeria but some members of the respondent objected to such merger. Notwithstanding the objection, appellants purported to go ahead with the merger hence the institution of the suit.

On their part, appellants counterclaimed against respondent, seeking to get judicial approval to their actions above. It was a common ground that there was no provision for a merger of respondent with another church, in the respondent's constitution. After hearing, the learned trial judge found in favour of the respondent and dismissed appellants' counterclaim. Aggrieved, appellants appealed to the Court of Appeal, contending that respondent was bound by the merger. They also contended that the suit was incompetent, in so far as there was no living registered trustees of the respondent, at the time when the suit was instituted. The Court of Appeal heard and dismissed the appeal. Still dissatisfied, appellants have come on a further and final appeal to the Supreme Court.

ISSUES FOR DETERMINATION

1. *"Whether the Court of Appeal was right in holding that the suit of the plaintiff/respondent was competent.*
2. *Whether the Court of Appeal was right when it held that the respondent was not bound by the merger because they had not been at the Methodist Church Nigeria conference at Oturkpo.*
3. *Whether the Court of Appeal was right in holding that the*

resolution to merge with the Methodist Church Nigeria was unconstitutional.”

HELD (Unanimously dismissing the appeal per **MUHAMMAD JSC**)
COMPANY LAW - Legal personality

1. Further, the effect of incorporation or registration of a company, firm, etc. is to confer on it, legal entity as a person separate and distinct from its members. It is a legal person with personality of its own. It is more than a mere association of individuals. It becomes an artificial legal entity, once the formal procedure of registration or incorporation has been complied with. This is what underlies the concept of corporate personality which became finally established at common law, in the locus classicus case of *Salomon v. Salomon & Co. Ltd.* (1897) A. C. 22. (p.437 C)

COMPANY LAW - Succession - Corporate bodies

2. As a body corporate therefore, the Christ Methodist Zion Church enjoys perpetual succession.

It is worthy of note that the most fundamental differences between a corporation and unincorporated association are that the former has perpetual succession, it maintains its identity and its personality, notwithstanding changes in its membership, its property does not belong to its members. In the latter's case, its property belongs to its members from time to time and that property may be owned by entirely different persons at the date when the cause of action arose, at the date when the action is commenced and at the date when the judgment is pronounced. (pp. 437 H/438 A)

Actions in corporate name - Whether authorised

3. It is not the law therefore, as submitted by learned senior counsel for the appellants, that before an action can be instituted in a corporate name, such an action must be authorised by a person or persons having the requisite authority to institute an action. That may perhaps, be good law in cases of unincorporated bodies or entities. In a corporate body, the death of a member or more of that body cannot alter the legal position of a corporate body or deprive it of its power to sue or be sued. The cases of *Alhaji Ajao v. Mrs. Sonol & Anor.* (1973) 8 NSCC 304 at 306, 307 and *Adesokan v. Adetunji* (1994) 5

NWLR (Pt. 346) at 540, relied (*sic, upon*) by learned senior counsel for the appellants, were decided in relation to unincorporated bodies and are quite distinct and inapplicable to this appeal. I thus, affirm the view held by the lower court that the suit of the plaintiff/respondent is competent. (p. 438 H)

COMPANY LAW - Merger decision - Constitutionality

4. At the court below, after review of what transpired at the trial court, it was held on the issue of merger or fusion as follows:

“There was clear evidence before the trial court that at various conferences of the Christ Methodist Zion Church, decisions were taken that the church should merge with Methodist Church Nigeria by a majority of votes. The respondents were consistently against the proposed merger. The principal architect of the merger is the 1st appellant, who gave evidence as DW3. He initiated the move for the Christ Methodist Zion Church to merge with Methodist Church Nigeria when he was a president of the Zion Methodist Church. His evidence under cross-examination at page 231 of the record is pertinent. It reads:

‘There was a conference in 1984 at Oturkpo. I do not know if the representatives of the plaintiff were aware of the meeting at Oturkpo, because they were hostile. The representatives of the plaintiffs, were not at the meeting at Oturkpo.

This testimony shows clearly that the plaintiffs/respondents were not represented at the final meeting, where the decision on the merger was taken. It follows therefore that they could not possibly be bound by the decision of the merger. More seriously, there is no provision in the constitution of the Registered Trustees of the Christ Methodist Zion Church for a merger. Exhibit D is the constitution of the church.

No part of Exhibit D makes provision for the church to fuse or merge with another church, and as far as the decision to merge with the Methodist Church Nigeria is not supported by the constitution of the Christ Methodist Zion Church, it is unconstitutional.”

Therefore, it is the findings and conclusions of the two courts below that there was no merger or fusion between the Christ Methodist Zion Church and the Methodist Church Nigeria, at any point in time. It becomes a Herculean task for me to alter the position taken by the two courts below on issues 2 and 3 as discussed above. The two issues are decided hereby against the appellants and in favour of

the respondent, as held by the two courts below. (p.441 A)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

1. Remedies to a wrong - Must be claimed in one action

As a cause of action can give rise to more than one remedy and where this is so, all the remedies must be claimed in the same action and not to be pursued by way of separate actions. If one remedy had been claimed in one separate action, the claim for the other is barred by the plea of Res judicata. A plea of Res judicata divests a court of jurisdiction. (p. 433 H) B
C

2. Company law - It is only a company that can sue on its behalf

In the realm of company/corporate law, the principle of law enunciated in the case of Foss v. Harbottle (1843) 2 Ha 461, in relation to locus standi, that, subject to certain exceptions, the proper plaintiff in an action in respect of a wrong alleged to be done to a company or an association of persons, is the company or the association of persons itself and not a shareholder or member of the association. Such a shareholder or member of the association, would only be fighting the suit of Company or the association for which he has no locus standi. (p.434 F) D
E

RHODES-VIVOUR JSC

3. A corporate personality is not affected by death of trustees

The clear issue is:

Whether an incorporated body in the process of replacing dead trustees, can file an action in court. F

An unincorporated association acts through representatives appointed by it. This is so because in law, it does not exist. Conversely, an incorporated body has legal personality. It is a corporate entity. It can sue and be sued in its corporate name. It can also enter agreements, etc. in its corporate name.

There is a difference between an unincorporated body, applying to be registered as a corporate body, and an incorporated body applying to register new trustees. The respondent was the latter, and in that state, it still retains its corporate capacity when all its trustees are dead. It follows naturally that since the respondent's corporate exist- H

ence is still intact when all its trustees are dead, the respondent's ability to sue, is in no way affected. The suit is competent, notwithstanding that at the time it was filed, all the trustees were dead. (p. 448 A)

B REPRESENTATION

Chief Amaechi Nwaiwu SAN, with him, J. C. Okafor, Chinyere Onyedim (Mrs.), J. C. Nwandu, Ngozi Udokwu (Miss.), and Ifeanyi Okechukwu for the appellants

C N. Epelle for the respondent.

CASES REFERRED TO

Egbu v. Araka (1988) 2 NWLR (Pt. 84) 598

Bolaji v. Bangbose (1986) 4 NWLR (Pt. 37) 633

D Omisade v. Akande (1987) 2 NWLR (Pt. 55) 158

Thomas v. Odufosoye (1986) 3 NWLR (Pt. 18) 63

Abidoye v. Afawode (2001) 6 NWLR (Pt. 709) 463

Nkune v The Reg. Trustees 1998 10 NWLR Pt 570 p. 514

Savage v. Uwaechia (1972) 1 All NLR (Pt. 1) 251 at p. 257

E Musa v. Ehidihamhen (1994) 3 NWLR (Pt. 334) 544 at 557

Anyaeibunam v. Osaka (2002) 5 NWLR (Pt. 657) 386 at 398

Bello v. A - G Oyo State (1986) 5 NWLR (Pt. 45) 828 at p. 876

Tukur v. Governor of Gongola State (1989) 4 NWLR (Pt. 117) 517

F Mustapha v. Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539

Fawehinmi v. NBA (No. 2) (1989) 2 NWLR (Pt. 105) 558 at p. 640

STATUTE REFERRED TO

Land (Perpetual Succession) Act, Cap. 98, L.F.N., 1985, s. 2 (3)

G

LEAD JUDGMENT BY MUHAMMAD JSC

The plaintiff at the High Court of Imo State (trial court), holden at Owerri, is a religious body known as, and called THE CHRIST METHODIST ZION CHURCH and incorporated on the 26th of September, 1949, under the Land (perpetual succession) Act, Cap. 98, Laws of the Federal Republic of Nigeria. It was founded in 1942 and has branches all over Nigeria including Mbiere. It is a member of an International Council of Christian Churches with headquarters at AMSTERDAM. The overall headquarters of the church is situate at

OBAZU MBIERE.

According to the version of the plaintiff, the government of the church is entrusted into the hands of the president who is the spiritual head of the church, the clergy, the secretary, the assistant secretary, the treasurer, the trustees and the representatives from each of the parishes. The election of the officers is usually for a term of three years but the general conference has the right to extend the period and has the power of suspending or dismissing any member whose life and religious practice are not compatible with the biblical ordinances. The church has no provision for the appointment or designation of bishop or any of her ministers. The ministers of the church, averred the plaintiff, are ordained by the church's senior ministers and the ministers after such ordination, go about preaching and disseminating the words of God to the people. The officers, the running and the administration of the church are as contained in the constitution of the said church. The officers of the church fall into two categories, ministerial and non-ministerial. B C D

The plaintiff maintained that the original trustees of the church were: Timothy Nwanyawu, Joshua Uboh, Nathaniel Achirike and Isiah Anumudu. All these persons as at the date when the writ of summons was issued, were dead. On the 16th of December, 1985, thirteen months after the action had commenced, new trustees were registered in the persons of Rufus Ike, Martin Uziho, Gilbert Mbah and Jonah Duruebube. The conference of the Christ Methodist Church had taken a resolution to merge with the Methodist Church, Nigeria, which decision some members objected to. E F

The defendants averred that they never agreed with the plaintiffs to fuse with the Methodist Church of Nigeria at the material time. They rather opted to retain the independent identity of the Christ Methodist Zion Church. The church elected new trustees as the human registered trustees have all died. Names of the new trustees were forwarded to the Minister for Internal Affairs for registration. The defendants averred further that the Registered Trustees of the Christ Methodist Zion Church, are not and cannot be a religious, body. H They admitted that the church has branches all over Nigeria but deny that it is a member of an International Council of Christian Churches with the headquarters at Amsterdam. That late Rev. M. D. Opara was the sole founder of the church and all others invited were subordi-

nates. That it is the exclusive preserve of the president to ordain ministers and that Rev. Opara ordained all the ministers in his life time and on his death the new minister (1st defendant) started ordaining. The defendants denied almost all the facts averred to by the plaintiff.

The plaintiff then took out a writ of summons claiming as follows;

B 1. "A declaration that the 1st, 2nd, 3rd, 4th and 5th defendants in the above suit are no longer ministers and members of the Christ Methodist Zion Church;

C 2. A declaration that the 6th, 7th, 8th, 9th and 10th defendants in this suit are no longer members of the Christ Methodist Zion Church;

D 3. An order of the court for the defendants to surrender and/or return to the plaintiffs all monies and properties of the Christ Methodist Zion Church in their possession or custody by virtue of their membership and position in the said Christ Methodist Zion Church;

4. An injunction perpetually restraining the defendant, their servants and/or agents from

E i. Interfering with the management, control, affairs, properties and business of the said Christ Methodist Zion Church in the parishes and stations of the said church in Imo State of Nigeria and particularly at Obazu Mbieri, Orodo, Isiekenesi, Agwa, Owerri and Aba stations;

F ii. *Interfering with management, control or conduct of worship at all Christ Methodist Zion Churches in Imo State particularly at Mbieri, Orodo, Atta, Agwa and Isiekenesi parishes and Owerri and Aba Stations;*

iii. *Parading themselves as ministers, functionaries, spokesman and/or members of the Christ Methodist Zion Church and;*

G iv. *Performing the duties of ministers, and/or members of the said church."*

Pleadings were settled by the parties. The appellants as defendants counter-claimed against the respondents as plaintiffs. At the conclusion of trial, the trial court found in favour of the respondent. It also dismissed the appellants' counter-claim.

H The appellants were dissatisfied with the decision of the trial court and they appealed to the Court of Appeal. The Court of Appeal dismissed the appeal hence the present appeal to this court by the appellants.

Briefs of argument were filed and exchanged by the parties.

Learned senior counsel for the appellants formulated the following issues for determination:

1. *“Whether the Court of Appeal was right in holding that the suit of the plaintiff/respondent was competent*

2. *Whether the Court of Appeal was right when it held that the respondent was not bound by the merger because they had not been at the Methodist Church Nigeria Conference at Oturkpo.*

3. *Whether the Court of Appeal was right in holding that the resolution to merge with the Methodist Church Nigeria was unconstitutional.*

The learned counsel for the respondent adopted all the issues formulated by the appellants except issue No. 3.

On the date this appeal was heard, both learned senior counsel for the appellants and his opponent for the respondent, each adopted and relied on his brief of argument and had nothing more to add. Learned senior counsel for the appellants urged us to allow the appeal while learned counsel for the respondent urged us to dismiss the appeal.

In his submissions in the brief of argument, the learned senior counsel for the appellants stated that by their pleadings, the parties were agreed that at the time the suit was commenced, there were no registered trustees of the Christ Methodist Zion Church. He then questioned the competence of the action filed by the plaintiff/respondent. Learned senior counsel argued further that the resolution of the question as to the competence of the action turns on whether or not the action was instituted on the 13th of November, 1984, with the authority of the registered trustees of the Christ Methodist Zion Church in whose name this action was commenced. He cited and placed reliance on the provision of section 2 (3) of the Land (Perpetual Succession) Act, Cap. 98 of the 1958 Laws of the Federal Republic of Nigeria and that pursuant to the incorporation of the trustees of the church, a certificate of incorporation was issued dated the 26th of September, 1949, which was admitted by the trial court as Exh. C. The trustees registered by that certificate were enumerated therein and were, upon incorporation, given the right to sue by virtue of the Land (Perpetual Succession) Act. Parties, he said, have agreed that all the trustees on Exh. C were dead as at the time the action was commenced and that new trustees were not registered as

of that period and were, in fact, not registered until thirteen months after the action was commenced. In support of his submission that before an action can be instituted in a corporate name, the learned senior counsel cited the case of *Ajao v. Sohola & Anor.* (1973) 8 NSCC 304 at 306, 307, to say that such an action must be authorised
 B by a person or persons having the requisite authority to institute the action. Learned SAN submitted that the learned trial judge did not deal with the competency of the plaintiff in his final judgment. Learned SAN as well, challenged the decision of the court below when it held
 C that the death of the original trustees or any of the trustees does not deny the registered body of its corporate existence and capacity to sue and that the question of the replacement of deceased trustees is an internal function of the members and once effected, the authority that issues the certificate should be notified as per section 5 (1) of the
 D Land (Perpetual Succession) Act.

In his submissions on the issue, learned counsel for the respondent referred to the pleadings of the parties and the evidence led before the trial court. He also referred to several decided authorities. He state that based on these authorities, the appellants admitted
 E the fact that trustees had been appointed for the respondent since October, 1984 and their names forwarded with an application to the Minister of Internal Affairs for their registration. Learned counsel submitted further that the Court of Appeal was in the right stead when it relied on the authority of *Anyaeibunam v. Osaka* to decide that the
 F suit at the trial court was competent. He argued that a registered corporate personality remains a valid legal person until its name is struck out from the register of corporations in the Corporate Affairs Commission. He cited in support , the cases of *Musa v. Ehidihamhen*
 G (1994) 3 NWLR (Pt. 334) 544 at 557 D-H; *Vulcan Gases Ltd. v. G. I. V.* (2001) 5 SC (Pt. 1) 1 at 14. Learned counsel urged this court to decide this first issue against the appellants.

Issue one questions the competence of the action/suit filed by the respondent as plaintiff at the trial court. I think by now, the law
 H has been well settled that it is the nature of the claim placed before a court that determines whether that court has jurisdiction over the subject matter or not. See: *Adeyemi & ors. v. Opeyori* (1976) 10 SC 31 at p. 51; *Tukur v. Governor of Gongola State* (1989) 4 NWLR (Pt. 117) 517. It is always important for a court of law to have a very

careful examination of the subject matter placed before it, in order to find out whether action/suit has the required competence to stand before that court. And, for an action to be clothed with competence, the following criteria must among others, be complied with. They are as follows:

1. Existence or accrual of a cause of action B

(a) There must be a cause of action before an intending litigant can seriously think of initiating proceedings in a court. For the purpose of litigation, a cause of action has been comprehensively defined to entail the fact(s) or combination of fact(s) which gives rise to a right to sue and it consists of two elements: the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage. It is thus constituted by the aggregate or bundle of facts which the law will” recognize as giving the plaintiff a substantive right to make a claim for remedy or relief against the defendant. C
See: *Fadare & Ors. v. A-G of Oyo State* (1982) 4 SC 1 at 6 - 7; *Egbe v. Adefarasi* (1985) 5 SC 50 at p. 87; *Alese v. Aladetuyi* (1995) 7 SCNJ 40 at p. 50; *Savage v. Uwaechia* (1972) 1 All NLR (Pt. 1) 251 at p. 257; *Egbu v. Araka* (1988) 2 NWLR (Pt. 84) 598; *Adesokan v. Adegorolu* (1997) 3 SCNJ 1 at p. 16; *Kusada v. Sokoto N. A.* (1968) D
1 All NLR 377 at 381; *Bello v. A - G Oyo State* (1986) 5 NWLR (Pt. 45) 828 at p. 876. E

Thus, existence of cause of action is an indispensable prerequisite. This presupposes that for the claimant to establish a cause of action, there must be before the court juristic or juridical person(s) F who can make the claim and against whom the court can make an enforceable order. See: *A-G Kwara v. Olawole* (1993) 1 SCNJ 208 at p. 235.

(b) Each of the factual elements making up the cause of action G should have come into being before any proceedings are commenced, otherwise the proceedings will be premature and consequently unsustainable. See: *Esin v. Matzen and Timin Nig. Ltd.* (1966) 1 All NLR 233; *Mohammed v. U. B. A* (1976) 2 FNR 21

(c) As a cause of action can give rise to more than one remedy H and where this is so, all the remedies must be claimed in the same action and not to be pursued by way of separate actions. If one remedy had been claimed in one separate action, the claim for the other is barred by the plea of *Res judicata*. See: *Savage v. Uwaechia* (su-

pra); Ijale v. A - G. Leventis & Co. Ltd. (1961) All NLR 762; Fadare v. A - G Oyo State (supra) A plea of Res judicata divests a court of its jurisdiction.

(d) An action can be defeated by limitation of time where its time begins to run from the moment of accrual of cause of action.

^B See: Fadare A - G Oyo State (supra)

(e) A cause of action is governed by the applicable law in force at the time the cause of action accrued and not the law at the time the jurisdiction of the court is involved. See: Mustapha v. Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539; Governor of Oyo State v. Folayan (supra); Kasikwu Farm Ltd. v. A - G Bendel State (1986) 1 NWLR (Pt. 19) 695; Omisade v. Akande (1987) 2 NWLR (Pt. 55) 158. 2. Locus Standi of a Party Suing

(a) A person who intends to litigate must ensure that he/it has ^D the locus standi, i.e. the right or competence to institute proceedings in a court for redress or assertion of a right enforceable at law. The person in whom this right resides as his personal right is the one having locus standi to sue. The law does not recognize busy bodies with no locus standi to sue. See: A - G Kaduna State v. Hassan (1985) ^E 2 NWLR (Pt. 8) 453 at 496; Adefulu v. Oyesile (supra); Oloriode & Ors v. Oyebe & Ors. (1984) 5 SC 1 at p. 16; Senator Adesanya v. President of the Federal Republic of Nigeria & Anor. (1981) 5 SC 112 at pp. 128 - 129; Ogunsanya v. Dada (1992) 4 SCNJ 162 at p. 168. A court will lose jurisdiction if a party has no locus standi. See ^F case of Thomas v. Odufosoye (1986) 3 NWLR (Pt. 18) 63; Bolaji v. Bangbose (1986) 4 NWLR (Pt. 37) 633.

[b] ^G In the realm of Company/Corporate law, the principle of law enunciated in the case of Foss v. Harbottle (1843) 2 Ha 461, in relation to locus standi, that, subject to certain exceptions, the proper plaintiff in an action in respect of a wrong alleged to be done to a company or an association of persons is the company or the association of persons itself and not a shareholder or member of the association. Such a shareholder or member of the association, would ^H only be fighting the suit of company or the association for which he has no locus standi. See: Gombe v. P. W. (Nig.) Ltd. (1995) 7 SCNJ 19.

In consideration of the facts and evidence made available before the trial court and the court below in relation to the competence

of the action filed by the respondent, it is clear that the trial court made a finding to the effect that:

"From Exhibit 'C', it can be seen that the church was incorporated in 1949, under the Land (perpetual succession) Ordinance 1924. By the incorporation Timothy Anyanwu, Joshua Uba, Nathaniel Achirike and Isaiah Anumudu were the appointed trustees of the church. The church thereby became a corporate body, and its registration number was 257. Later, on 16th December, 1985, another Certificate of Incorporation was issued to the church under the Land (perpetual succession) Act Cap. 98 Laws of the Federation of Nigeria 1958. This second certificate still retained the registration number 257 and was tendered in evidence as Exh. 'E'. It is however, in evidence that at the time Exhibit 'E' was issued, all the appointed trustees in Exhibit 'C' were dead. Hence the difference between Exhibit 'C' and Exhibit 'E' is only in respect of appointed trustees of the Church. For in Exhibit 'E' the appointed trustees are Rufus, M.O. Ike, Martin Uzoho, Gilbert Mbah and Jonah Duruebube. When the cause of action arose, the plaintiff headed for the court to seek some relief. That was on 13th November, 1984, the date the writ of summons, in this case was issued. In that circumstance, it is the law in force on the day the cause of action arose that should operate in determining the rights and obligations of the parties in this suit... At the end of the attempt and at the commencement of this action, the church remained a corporate body with name of the "Registered Trustees of Christ Methodist Zion Church."

(underlining supplied for emphasis)

In agreeing with the above finding of the trial court, the court below per Ogebe, JCA, (as he then was) stated:

"In my view, the death of the original trustees or any of the trustees for that matter, does not deny the registered body of its corporate existence and capacity to sue. The question of the replacement of deceased trustees is an internal function of the members and all that is required in the Act is that any changes in the trustees should be notified to the authority who issued the certificate. See section 5 (1) of the Land (perpetual succession) Act. I am therefore unable to agree with the learned Senior Advocate for the appellants that the death of all the original trustees at the time of the commencement of the action makes the action incompetent."

(underlining supplied for emphasis)

It is the argument of learned senior counsel for the appellants in this court that before an action can be instituted in a corporate name, such an action must be authorised by a person or persons having the requisite authority to institute an action. He relied on the
 B case of *Ajao v. Sonola & Anor.* (1973) 8 NSCC 304 at pp. 306 - 307; *Adesokan v. Adetunji* (1994) 5 NWLR (Pt. 346) 540.

The submission made by learned senior counsel for the appellants and as summarised by me above, reminds me of the elementary principles of law or laws governing incorporated and unincorporated bodies. As a general knowledge we all know that there are
 C incorporated and unincorporated bodies/organisations. The former is an association of persons with distinct legal personality such as companies. The latter deals mostly with partnerships i.e. relationships
 D between persons carrying on business in common fetching them profits or rewards. Other bodies include Cooperative Societies which are formed by individuals such as farmers, traders and producers of various goods for commercial purposes. Such a society once registered has the advantage of becoming a body corporate with perpetual suc-
 E cession and has power to hold property and enter into contracts. This court has, in one of its decisions of 1989, described such a society to be “a corporation Aggregate.” *Agbaje, JSC*, went on to say that:

“*A Corporation Aggregate is a collection of individuals united
 F into one body under a special denomination, having perpetual suc-
 cession under an artificial form, and vested by the policy of the law
 with the capacity of acting in several aspects as an individual, particu-
 G larly of taking and granting property, of contracting obligations and
 of suing and being sued, of enjoying privileges and immunities in
 common, and of exercising a variety of political rights more or less
 extensive, according to the design of its institution, or the powers
 conferred upon it, either at the time of its creation or at any subse-
 quent period of its existence.*”

H There is a finding by the trial court that Exhibit ‘C’ is a document which shows that the Christ Methodist Zion Church was incorporated in 1949 under the Land (perpetual succession) Ordinance 1924. This finding was affirmed by the court below where is stated, inter alia, as follows:

"It is not in dispute that by Exhibit C the registered trustees of the Christ Methodist Zion Church were given a certificate of registration on the 26th of September, 1949..... in my view the death of the original trustees or any of the trustees for that matter does not deny the registered body of its corporate existence and capacity to sue."

The above, thus, are two concurrent findings of the two courts below. It is a well laid down principle of the law that this court is loathe in disturbing such a concurrent finding or decision except where such a finding or decision is perverse. See: Abidoye v. Afawode (2001) 6 NWLR (Pt. 709) 463; Odonigi v. Oyeleke (2001) 6 NWLR (Pt. 708) 12 SC.

Further, the effect of incorporation or registration of a company, firm etc. is to confer on it, legal entity as a person separate and distinct from its members. It is a legal person with the personality of its own. It is more than a mere association of individuals. It becomes an artificial legal entity once the formal procedure of registration or incorporation has been complied with. This is what underlies the concept of corporate personality which became finally established at Common Law, in the locus classicus case of Salomon v. Salomon & Co. Ltd. (1897) A. C. 22 where Lord Macnaghten stated the position as follows:

"when the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate 'capable forthwith,' to use the words of the enactment, of exercising all the functions of an incorporated company.... The company, is at law a different person altogether from the subscribers to the memorandum, and, although it may be that after incorporation the business is precisely the same, as it was before, and the same persons are managers, and the same hands received the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act."

As a body corporate therefore, the Christ Methodist Zion Church enjoys perpetual succession. In the Salomon's case it was further held that:

"Not even insanity or bankruptcy of a member can destroy this perpetual succession concept unlike a partnership where it can

lead to a dissolution.”

It is worthy of note that the most fundamental differences between a corporation and unincorporated association are that the former has perpetual succession, it maintains its identity and its personality, notwithstanding changes in its membership and its property does not belong to its members. In the latter’s case, its property belongs to its members from time to time and that property may be owned by entirely different persons at the date when the cause of action arose, at the date when the action is commenced and at the date when the judgment is pronounced. See: *Fawehinmi v. NBA* (No. 2) (1989) 2 NWLR (Pt. 105) 558 at p. 640. In the present appeal, Exh. ‘C’ establishes beyond any dispute that a certificate of incorporation of the Christ Methodist Zion Church was issued since the 26th day of September, 1949. The trustees thereon were enumerated and the church was given the right to sue by virtue of the Land (perpetual succession) Act. This Act which is contained in section 2 (3) of the Land (perpetual succession) Act Cap. 98, Laws of the Federal Republic of Nigeria, 1958, which provides as follows:

“The trustees or trustee shall thereupon become a body corporate by the name described in the certificate and shall have perpetual succession and common seal and power to sue and be sued in such corporate name.”,

(underlining for emphasis)

The trustees named in Exh. ‘C’: Timothy Anyanwu, Joshua Uba, Nathaniel Achirike and Isaiah Anumudu, have, by the act of incorporation, all been subsumed into the corporate name of Christ Methodist Zion Church, which has been conferred with power to sue and be sued. Although all the trustees mentioned in Exh. ‘C’ died, there were replacement of new trustees as per Exh. E. The appointed trustees (new) as found by the trial court were: Rufus, O. M. Ike, Martin Uzoho, Gilbert Mbah and Jonah Duruebube. In any event, it is not the names of the trustees that matters in this case but the corporate name with which the Association, institution or entity is registered that matters. ***It is not the law therefore, as submitted by learned senior counsel for the appellants, that before an action can be instituted in a corporate name, such an action must be authorised by a person or persons having the requisite au-***

thority to institute an action. That may perhaps, be good law in cases of unincorporated bodies or entities. In a corporate body, the death of a member or more of that body cannot alter the legal position of a corporate body or deprive it of its power to sue or be sued. The cases of Alhaji Ajao v. Mrs. Sonol & Anor. (1973) 8 NSCC 304 at 306, 307 and Adesokan v. Adetunji (1994) 5 NWLR (Pt. 346), at 540 relied by learned senior counsel for the appellants, were decided in relation to unincorporated bodies and are quite distinct and inapplicable to this appeal. I thus, affirm the view held by the lower court that the suit of the plaintiff/respondent is competent.

I will take appellants issues Nos. 2 and 3 together. These issues are on the propriety of the resolution by the respondent to merge and whether it was bound by the merger with the Methodist Church. It is the submission of learned senior counsel for the appellants that the Court of Appeal was wrong to have held that the respondents could not be bound by the decision taken on the merger at Oturkpo. This, he said, is because the conference in 1984, at Oturkpo was not the conference of the Christ Methodist Church Nigeria. He relied on the evidence of DW3 and the pleadings especially the amended statement of defence and the counter claim where the appellants averred in para 32 (d) that at the annual conference of Methodist Church Nigeria held at Oturkpo from August 18 -31 1984, the integration of Christ Methodist Zion Church with Methodist Church Nigeria was finally approved. He stated further that the respondent in its reply at page 214 of the records stated simply that they were not parties to the conference at Oturkpo. It follows, he said, that the representatives of Christ Methodist Zion Church at the Methodist Church Nigeria conference at Oturkpo in August, 1984 were those delegated to attend that conference by the Christ Methodist Zion Church. This delegation, he argued further, was pursuant to earlier resolutions passed by the various conferences of the Christ Methodist Zion Church to merge with the Methodist Church Nigeria. This fact was not in dispute between the parties and was recognized as proven by the Court of Appeal.

On issue No. 3, the learned senior counsel for the appellants cited several averments from the pleadings and the evidence that the parties agreed that the government of the church is run on the con-

ference level and decision making under the constitution of the Christ Methodist Zion Church. It is the same body that properly passed a resolution by way of majority votes to merge with the Methodist Church Nigeria. At no time has it been suggested or held that the resolutions passed were not properly passed. Learned senior counsel submitted
 B further that the learned justices of the Court of Appeal were wrong to have held that the resolution to merge with the Methodist Church Nigeria was unconstitutional.

The submissions of learned counsel for the respondent on issues No. 2 and 3 are that going by the evidence of DW1 and the
 C cross-examination of DW2, it is crystal clear that there was never a consensus with the Christ Zion Methodist Church to fuse with the Methodist Church of Nigeria. It was in evidence, he submitted, that the plaintiffs on record retained their identity and refused to be part
 D of the fusion and that they belong to a domestic association within which they are only bound by their own voluntary submission. Learned counsel cited and relied on the cases of WAPGMC v. Okojie (2004) 2 NWLR (Pt. 857) 232 at 244 C - 9; Akintemi v. Onwumechili (1985) 1 NWLR (Pt. 1) 68. The respondent, he said, cannot be compelled
 E to agree to the fusion. The Court of Appeal simply issued a judicial pronouncement of the obvious fact and right and no miscarriage of justice has been disclosed. The right to freedom of religion, argued the learned counsel, belongs to public policy and no parties to this
 F appeal are at liberty to bind themselves against public policy. And, freedom of religion being a constitutional right, parties cannot by consent or acquiescence or failure to object nullify the effect of the Constitution of the Federal Republic of Nigeria. Cases of *Ariori v. Elemo* (1983) 1 SC NLR 1; *Cooperative and Commerce Bank of Nig. Plc. v. A - G Anambra State* (1992) 8 NWLR (Pt. 261) 528 at p. 556 and *Inyana v. Edong* (2002) 2 NWLR (Pt. 752) 284 at 331 C -
 G D, were cited. The Constitution of the respondent (Exh. 'D') made no provision for merger or fusion. Learned counsel urged this court to strike out issue No. 3 or be decided against the appellants as it is
 H purely academic.

At the trial court, this issue of merger or fusion was thoroughly dealt with and the learned trial judge came to the following conclusion:

"In effect, I hold that the purported fusion or merger of the

church with Methodist Church Nigeria is unconstitutional, in that it deprived some members of the church their right guaranteed by section 35 of the 1979 Constitution as amended."

At the court below, after review of what transpired at the trial court, it was held on the issue of merger or fusion as follows:

"There was clear evidence before the trial court that at various conferences of the Christ Methodist Zion Church, decisions were taken that the Church should merge with Methodist Church Nigeria by a majority of votes. The respondents were consistently against the proposed merger. The principal architect of the merger is the 1st appellant, who gave evidence as DW3. He initiated the move for the Christ Methodist Zion Church to merge with Methodist Church Nigeria when he was a president of the Zion Methodist Church. His evidence under cross-examination at page 231 of the record is pertinent. It reads:

"There was a conference in 1984 at Oturkpo. I do not know if the representatives of the plaintiff were aware of the meeting at Oturkpo, because they were hostile. The representatives of the plaintiffs were not at the meeting at Oturkpo.

This testimony shows clearly that the plaintiffs/respondents, were not represented at the final meeting where the decision on the merger was taken. It follows therefore, that they could not possibly be bound by the decision of the merger. More seriously, there is no provision in the constitution of the Registered Trustees of the Christ Methodist Zion Church for a merger. Exhibit D is the constitution of the church. No part of Exhibit D makes provision for the church to fuse or merge with another church and as far as the decision to merge with the Methodist Church Nigeria is not supported by the constitution of the Christ Methodist Zion Church, it is unconstitutional."

Therefore, it is the findings and conclusions of the two courts below that there was no merger or fusion between the Christ Methodist Zion Church and the Methodist Church Nigeria, at any point in time. It becomes a herculean task for me to alter the position taken by the two courts below on issues 2 and 3 as discussed above. The two issues are decided hereby,

against the appellants and in favour of the respondent, as held by the two courts below.

In the final analysis, this appeal lacks merit and it is hereby dismissed with N50.000.00 costs in favour of the respondent.

B MUNTAKA-COOMASSIE JSC

The appellants herein were the 1st set of defendants in the High Court of Imo State holden at Owerri herein referred as trial court. The writ of summons in that suit HOW/264/84, was filed by the respondent herein on the 13/11/1984. The appellants counter claimed after obtaining leave from the trial court to amend their pleadings. The appellants also successfully joined the Attorney-General of the Federation and the Minister of Internal Affairs as defendants in the suit. The respondents, as plaintiffs, sued the appellants and claimed in their Amended Statement of Claim at pages 69 - 78 of the record as follows: -

"1. A declaration that the 1st, 2nd, 3rd, 4th and 5th defendants in the above suit are no longer ministers and members of the Christ Methodist Zion Church.

2. A declaration that the 6th, 7th, 8th, 9th and 10th defendants in this suit are no longer members of the Christ Methodist Zion Church.

3. An order of the court for the defendants to surrender and/or return to the plaintiffs all monies and properties of the Christ Methodist Zion Church in their possession or custody by virtue of their membership and position in the said Christ Methodist Zion Church.

4. An injunction perpetually restraining the defendants, their servants and or agents from:

i. Interfering with the management, control, affairs, properties and business of the said Christ Methodist Zion Church in the parishes and stations of the said Church in Imo State of Nigeria and particularly at Obazu Mbieri, Orodo, Isiekenesi, Agwa, Owerri, Aba and Atta.

ii. Interfering with the management, control or conduct of worship at all Christ Methodist Zion Churches in Imo State particularly at Mbieri, Orodo, Atta, Agwa and Isiekenesi parishes and Owerri and Aba station.

iii. Parading themselves as ministers, functionaries spokesman and/or members of the Christ Methodist Zion Church and

iv. Performing the duties of ministers, and/or members of the said church”.

The defendants now appellants filed their statement of defence and further statement of defence and counter-claim - see pages 191 to 212 of the record of appeal. The reply and defence to counter claim were, set out at pages 213 to 215 of the record of appeal. B

After the conclusion of the trial and in a considered judgment the trial judge Alinnor J, entered judgment in favour of the plaintiffs and dismissed the counter claim of the appellants - pages 273 - 279 at page 279 the trial court held thus:-

“In my opinion, the counter claim is not only misconceived but is an exercise in gold mine digging. There is no merit in the counter claim and it is hereby dismissed. C

Finally, the claim of the plaintiff succeeds and the following declarations and orders hereby issued:- D

1. It is hereby declared that the 1st, 2nd, 3rd, 4th and 5th defendants are no longer ministers or members of the church, the Christ Methodist Zion Church.

2. It is hereby declared that the 6th, 7th, 8th, 9th and 10th defendants are no longer members or functionaries whatsoever of the Church, the Christ Methodist Zion Church. E

3. It is hereby ordered that the defendants should jointly and severally surrender to the plaintiff all the monies and properties of the church, the Christ Methodist Zion Church, in their possession or custody by virtue of their membership and position in the said Christ Methodist Zion Church. F

4. An order of perpetual injunction hereby issues restraining the defendants, their servants, agents and privies from:-

a. Interfering in the management, control, affair, properties and business of the said Christ Methodist Zion Church in the parishes and stations of the said church in Imo State Nigeria and particularly at Obazu Mbieri, Orodo, Isiekenesi, Agwa, Owerri, Aba and Atta.

b. interfering with the management, control or conduct of worship at all Christ Methodist Zion Churches in Imo State particularly at Mbieri, Orodo, Atta, Agwa and isiekenesi parishes and Owerri and Aba Stations.

c. Parading themselves as ministers functionaries, spokesmen

and/or members of the Christ Methodist Zion Church.

d. Performing the duties of ministers and/or members of the Christ Methodist Zion Church”.

According to the appellants, the learned trial Judge held that the decision to merge was not valid as it was against the 1979 Constitution and the land Perpetual Succession Act. He further lamented that the learned trial Judge did not decide whether the action was competent or not. These and other reasons made the defendants to appeal. The defendants then unsuccessfully appealed to the Court of Appeal, now court below. Seven grounds of Appeal were filed. For the sake of clarity, the learned Justices of the court below unanimously dismissed the appeal of the defendants herein appellants and affirmed the judgment of the trial court. The judgment was delivered on 18/12/97, in which the claims of the plaintiffs were granted. The court below re-affirmed the fact that based on the pleadings and evidence that the respondents, as plaintiffs, proved their case and were entitled to judgment as entered by the trial court. The court below, Court of Appeal Enugu, however held that the trial court was wrong to have held that there was a breach of the constitution with regard to the right to freedom of worship and the non-compliance with section 5 A of the Land (perpetual succession) Act, that portion of the trial court judgment was set aside by the court below. Appeal was therefore dismissed.

Dissatisfied with the decision of the court below, the appellants filed their appeal and filed an amended notice of appeal containing three (3) grounds of appeal thus:-

1. A declaration that the 1st, 2nd, 3rd, 4th and 5th defendants in the above suit are no longer ministers and members of the Christ Methodist Zion Church.

2. A declaration that the 6th, 7th, 8th, and 10th defendants in this suit are no longer members of the Christ Methodist Zion Church.

3. An order of the court for the defendants to surrender and/or return to the plaintiffs all monies and properties of the Christ Methodist Zion Church in their possession or custody by virtue of their membership and position in the said Christ Methodist Zion Church”.

Three issues were formulated by the appellants for the determination of this appeal as follows :-

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

suit of the plaintiff/Respondent was competent.

2. Whether the Court of Appeal was right when it held that the respondent was not bound by the merger because they had not been at the Methodist Church Nigeria conference at Oturkpo.

3. Whether the Court of Appeal was right in holding that the resolution to merge with the Methodist Church Nigeria was unconstitutional”. B

After a series of arguments and submissions, learned counsel for the appellants submitted that action was incompetent ab initio since at the time of instituting this action, there was no authority to do so from the registered trustees. He urged this court to so hold and to allow the appeal. C

After treating the three (3) issues distilled by the appellants, the respondents submitted that the appellants appeal lacked merit and same be dismissed. They argued that the registered trustees subsisted in law when the suit was commenced. There was no evidence of withdrawal of the registration. New trustees had been elected and forwarded to the appropriate authority before the suit was commenced. They finally submitted that the decision of the court below vis-a-vis merger does not occasion any miscarriage of justice. E

I have read the illuminating judgment of my learned brother, Tanko Muhammad JSC, just delivered and I am in full agreement with his reasoning and conclusions. I with respect adopt them as mine.

I have no slightest doubt in my mind based on the position of the law that the two decisions of the two lower courts, vis-a-vis the merger or fusion between the two churches, Methodist Church of Nigeria and Christ Methodist Zion Church are done correctly and un-perverse. Such decisions were made in favour of the respondent. I have no cause therefore to hold otherwise. Based on the reasons given by my learned brother, Tanko Muhammad JSC, in dismissing this appeal, I too will similarly hold that the appeal lacks merit and same is dismissed. I endorse the order as to costs in favour of the respondent as adumbrated in the lead judgment. F G

Appeal is dismissed. H

FABIYI JSC

I have read before now the judgment just delivered by my learned brother, I. T. Muhammad, JSC. I agree with the reasons

therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

I wish to chip in a few words of my own in support. Before the writ was issued by the respondent against the appellants on 13th November, 1984, there were new trustees appointed in place of deceased trustees in October, 1984. Their names had been sent to the Minister of Internal Affairs for due registration of their names. As extant in Exhibit 'E', they were registered in 1985. Certificate No. 257 was renewed by the insertion of the names of the new trustees.

The desired merger of the respondent with the Methodist Church, Nigeria by the appellants was consistently opposed by the respondent. This was confirmed by D. W. 3 in his evidence at the trial court. Apart from that, the constitution of the respondent - Exhibit 'D' has no provision for merger with any other church.

I shall limit my comments to issues 1 & 2 as formulated by the appellants. The issues read as follows:-

"1. Whether the Court of Appeal was right in holding that the suit of the plaintiff/respondent was competent.

2. Whether the Court of Appeal was right when it held that the respondent was not bound by the merger because they had not been at the Methodist Church Nigeria conference at Oturkpo."

It is not in contention that the respondent was duly incorporated as a legal personality as dictated by the Land (Perpetual Succession) Act, Cap. 98 of the 1958 Laws of the Federation of Nigeria. By the provision of section 2 (3) of same, once trustees have been registered, they become a body corporate by the name in the certificate and shall have perpetual succession. The body becomes a legal entity with powers to sue and be sued in the corporate name. The death of trustees cannot deny the registered body of its corporate existence and capacity to sue. In putting a stamp of authority on the above stated position, this court in *Anyaeibunam v. Osaka* (2002) 5 NWLR (Pt. 657) 386 at 398 pronounced with force that:-

"An unincorporated association does not legally exist and must of necessity act through its appointed representatives. On the other hand, a corporate entity i.e. an association that has been incorporated has legal personality. It can sue and be sued in its corporate name."

The above, in my considered view, clinches any argument of

the appellants to the contrary.

Without any hesitation, I find that the suit is competent. I resolve issue 1 against the appellants and in favour of the respondent.

The representatives of the respondent consistently opposed the merger of the respondent with the Methodist Church, Nigeria. D.W.3 Confirmed same. No provision of the constitution of the church - Exhibit D provides for merger of the respondent with any other church. The representatives of the respondent belong to a domestic association in which they are only bound by their own voluntary submission. See: *Akinfemi v. Onwumechili* (1985) 1 NWLR (Pt. 1) 68. Their liberty on the matter perpetually inheres in them. They can hardly be compelled to act in the contrary fashion. Those who opposed merger herein, cannot be forced to act against their will. B C

Again, without any equivocation, I resolve issue 2 against the appellants and in favour of the respondent. D

With my above remarks and the fuller reasons ably adumbrated in the lead judgment, I too, feel that the appeal lacks merit and deserves to be dismissed. I order accordingly and abide by all consequential orders contain in the lead judgment; that relating to costs inclusive. E

RHODES-VIVOIR JSC

I have had the privilege of reading in draft the leading judgment prepared by my learned brother, Hon. Justice I. T. Muhammad, JSC. I am in full agreement with the judgment. I would though, add a few observations on the competency of the action. F

The Respondent who was the plaintiff in the court of first instance was incorporated in 1949. Trustees were duly appointed. On 13/11/84, when this suit was filed in court, all the trustees were dead, but trustees had been appointed for the respondent since October of 1984. Their names had been forwarded to the Minister of Internal Affairs for registration. New trustees were eventually registered and certificate of registration issued on 16/12/85. G

At the hearing of this appeal on the 30th of November, 2010, H learned counsel for the appellant, Chief A. Nwaiwu SAN observed that at the time the suit was filed in court by the respondent (as plaintiff), the respondent had no trustees and so the suit was incompetent. Reliance was placed on *Nkune v The Reg. Trustees* 1998 10 NWLR

Pt 570 p. 514.

The clear issue is:

Whether an incorporated body in the process of replacing dead trustees can file an action in court.

B An unincorporated association acts through representatives appointed by it. This is so because in law it does not exist. Conversely, an incorporated body has legal personality. It is a corporate entity. It can sue and be sued in its corporate name. It can also enter agreements, etc. in its corporate name.

C It is only when a certificate of incorporation is issued that an incorporated association is legally in existence. In this case, the respondent came into existence in 1949, when certificate of incorporation was issued in favour of the Registered Trustees of the Christ Methodist Zion Church (the respondent). That is to say the respondent became a corporate entity in 1949. Nkune v The Registered Trustees (supra) relied on by learned counsel for the appellant explains the significance of incorporated bodies. The reasoning in the leading judgment and this concurring judgment are in sequence with it.

E Anyaegbunam v. Osaka 2000 5 NWLR Pt. 657 p 386 Explains how unincorporated bodies can carry on their activities. Both authorities are relevant. There is a difference between an unincorporated body applying to be registered as a corporate body, and an incorporated body applying to register new trustees. The respondent was the latter, and in that state, it still retains its corporate capacity when all its trustees are dead. It follows naturally that since the respondent's corporate existence is still intact when all its trustees are dead, the respondent's ability to sue is in no way affected. The suit is competent, F not withstanding that at the time it was filed, all the trustees were dead. G

For this, and the much fuller reasoning in the leading judgment, I would dismiss the appeal and endorse the order on costs.

H