

SUPREME COURT OF NIGERIA
25TH MARCH, 2011, SC. 266/2005
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F.
TABAI, I. T. MUHAMMAD, O. O. ADEKEYE, JJSC

1. GOODWILL & TRUST INVESTMENT LTD APPELLANTS/
2. MR. JOHNSON OMONIYI ASHAOLU PLAINTIFFS
AND
WITT& BUSH LTD. RESPONDENT/
DEFENDANT

EVIDENCE - Admissibility - Certificate of incorporation - Certified copy - Is inadmissible in evidence - Unless certification was done by corporate affairs Commission (H1)

EVIDENCE - Admissibility - Admission without objection - Effect - Where such evidence is in no circumstance admissible in law - As opposed to where it is admissible under certain conditions - It remains inadmissible though not objected to (H2)

EVIDENCE - Proof - Company law - Incorporation of 1st plaintiff - Whether established - Appellants as plaintiffs failed to prove the fact of incorporation - Though they pleaded it in their pleadings - As the tendered copy of certificate is inadmissible in law (H3)

JURISDICTION - Parties - Courts - Defect in competence - Effect - Such defect is fatal to the proceedings - However well conducted - So in the absence of proper parties as in the instant case - The trial proceedings were a nullity (H4)

FACTS

The plaintiffs/appellants sued defendant/respondent before the High Court of Lagos State, holden at Ikeja, claiming certain sums as the rental value of appellants' generating set and damages for breach of the rental contract until the return of the set to the appellants' yard at 2/4 Sanusi Ibrahim street, Mile 12, Ketu, Lagos State. Appellants' case was that they leased a 250 KVA Rolls Royce Power generating set to defendant on 5th June 1998 for an agreed fee of

N200,000.00 for an initial period of 30 days. Respondent, after testing the set to its satisfaction, had removed it to the site of a third party, Bristow Helicopters Ltd, where it was to be used. But on 18th June 1998, Respondent not only wrote a letter to appellants repudiating the lease but also refused to return the set to appellants' yard thereafter, despite repeated demands. Respondent counter-claimed against appellants alleged malfunctioning of the generating sets which led to breach of its contract with Bristow Helicopters Ltd.

Pleadings were exchanged by the parties. Appellants inter alia, pleaded that 1st appellant was a company incorporated under the laws of Nigeria, while 2nd appellant was the managing director of 1st appellant. However, at trial, appellants failed to tender the original certificate of incorporation of 1st appellant. Rather, they tendered Exhibit A - a copy of the said certificate of incorporation. Though Exhibit A was a certified true copy, the certification was done by the registrar of High Court of Lagos State, Ikeja Division, and not by an official of the Corporate Affairs Commission. Nevertheless, at the end of hearing, the trial court gave judgment in favour of appellants. Aggrieved, respondent appealed to Court of Appeal, which allowed the appeal and struck out appellants' suit on the ground that the juristic personality of 1st appellant was not proved and as such trial court lacked jurisdiction to try the suit as constituted. Dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in its decision that the 1st Plaintiff/Appellant was not a juristic person.

2. Whether the Court of Appeal was right to have determined this appeal on the sole question of the juristic personality of the 1st Plaintiff/Appellant and the inadmissibility of 'Exhibit A' without the leave of the Court of Appeal - "Exhibit A" having been admitted at the trial without objection to its admissibility.

3. Whether the Court of Appeal did not fail in its bounden duty to do substantial justice when it failed to call further evidence to resolve the fundamental question of the juristic personality of the 1st Plaintiff/Appellant or in the alternative order a new trial by the trial court for a determination of the crucial point of the juristic personality of the 1st Plaintiff/Appellant.

4. *Whether the Court of Appeal did not err in law and occasion a serious miscarriage of justice when it sacrificed the doing of substantial justice on the platter of technical argument.*

5. *Whether the Court of Appeal did not err in law when it allowed the Defendant/Respondent to get away with its approbation and reprobation by using the law of the land as an instrument of fraud.*

6. *Whether, upon the production of the original certificate of Incorporation in court for sighting during trial, and the admittance of its Certified True Copy in evidence as Exhibit A, the Court of Appeal did not err in law when it held that the onus of proving the legal status of the 1st Plaintiff/Appellant still fell squarely on the Plaintiff/Appellant without any evidence whatsoever in rebuttal of the Certificate of Incorporation before the court.”*

HELD (Unanimously dismissing the appeal per **MUKHTAR JSC**)
Admissibility - Certificate of incorporation - Certified copy

1. In addition to the above exposition of the law, I will reproduce the provisions of Sections 36(1) and 634 of the Companies and Allied Matters Act 1990, at this juncture.

By virtue of Section 36 supra, a Certificate of Incorporation is a proof that a company has been registered, and by virtue of Section 634, the certification of such document should be by the commission, which is contrary to the position in the instant case, where Exhibit ‘A’ was certified by the High Court. In this respect, Exhibit ‘A’ was an inadmissible evidence, which should not have been relied upon, or given any probative value whatsoever. (p. 709 A)

Admissibility - Admission without objection - Effect

2. Although its admissibility was not objected to, one has to bear in mind the fact that at the time of tendering Exhibit ‘A’, the defendant/respondent was not represented in court. That however, does not estop the defendant from raising the objection that it was not admissible, later and should not be relied upon. In the case of Okulade v. Alade supra, the Supreme Court in dealing with a situation like this postulated thus:-

“In a trial by a judge alone, as in the case in hand, a distinction must be drawn between those cases where the evidence complained

of is in no circumstances admissible in law and where the evidence complained of is admissible under certain conditions. In the former class of cases the evidence cannot be acted upon even if parties admitted it by consent and the Court of Appeal will entertain a complaint on the admissibility of such evidence by the lower court (although the evidence was admitted in the lower court without objection), in the latter class of cases; if the evidence was admitted in the lower court without objection or by consent of parties or was used by the opposite party (e.g. for the purpose of cross-examination) then it would be within the competence of the trial court to act on it and the Court of Appeal will not entertain any complaint on the admissibility of such evidence."

The evidence in the instant case falls within the former class, so I am fortified by the above proposition of law. (p. 709 F)

D

Proof - Company law - Incorporation of 1st plaintiff

3. I have already reproduced the significant pleadings of the plaintiffs on the status of the 1st plaintiff in the earlier part of this judgment. That, the plaintiff had to prove, and in doing so he tendered a copy of the Certificate of Incorporation, which was inadmissible. Towards this burden placed on the plaintiffs by the law, they failed woefully. That he took the original certificate of registration to court, and said, 'this is its original Certificate of Incorporation' is neither here nor there.

F

The plaintiffs definitely did not discharge the burden of proof placed on them by Section 135 of the Evidence Act supra, and so the burden did not shift to the defendant/respondent.
(pp. 711 F/712 A)

G

JURISDICTION - Parties - Courts - Defect in competence

4. It is a cardinal principle of law that jurisdiction is fundamental to the determination of a suit, as unless a court is competent, it cannot exercise jurisdiction over a suit to the extent of deciding on it.

H

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.

I take solace in the above principle of law and hold that the learned trial court was incompetent to decide on the suit, and in

consequence the Court of Appeal did not err when it found thus:-

“The consequence is that the action is not properly constituted for want of proper parties. In the situation as found there, there is no way the trial court could have competently dealt with the matter in controversy, that is, as regards the right and interests of the parties when the proper parties are not even before the court.” B

There is defect in the competence of the trial court to hear and determine the case at hand which is fatal, and so the proceedings are a nullity. (p. 712 C/F/H)

NOTABLE POINT OF INTEREST C

MUKHTAR JSC

1. Reply brief should reply to new points in respondent’s brief

Before I conclude this judgment I will like to comment on the appellants’ reply brief of argument, which in essence contains repetitions D of the argument in the appellants’ brief of argument. The function of an appellant reply brief as stated in plethora of authorities is to reply to new points raised in a respondent’s brief of argument.

In the case at hand the appellants’ reply brief of argument has not addressed new points raised in the respondent’s brief of argument, E but merely sought to further improve on the their earlier argument in the appellants’ brief of argument. (p.713 G)

REPRESENTATION

Mr. G. E. Ezeuko, with him G. I. Ezeuko for the appellant.
Mr. C. O. Aduroja for the respondent. F

CASES REFERRED TO

Ikene v. Anakwe (2000) 8 NWLR, pt. 669, pg.484 G

Ibeanu v. Ogbeide (1994) 7 NWLR pt.359, pg. 699

Ikachi v. Igbudu 2005 12 NWLR part 940 page 543

Olafisoye v. F.R.N. 2004 4 NWLR part 864 page 580

Adefulu v. Okulaja 1998 5 NWLR part 550 page 435

Araka v. Ejeagwu 2000 15 NWLR part 692 page 684 H

Olafisoye v. F.R.N. 2004 4 NWLR part 864 page 580

Ehudimhen v. Musa (2000) 8 NWLR, pt. 699, pg. 540

Daggash v. Bulama 2004 14 NWLR part 892 page 144

Ojukwu v. Obasanjo 2004 12 NWLR part 886 page 169

Gombe v. PW (NIG.) Limited (1995) 6 NWLR, pt. 402, pg. 402
Adedeji v. National Bank of Nigeria 1989 1 NWLR part 96 page 212
Rossek v. African Continental Bank Ltd. 1993 8 NWLR part 312
page 382

Anatogu v. Igwe Iweka II (Eze Obosi) and Others 1995 8 NWLR part
B 415 page 547
Ifedapo Community Bank Ltd v. C. and S. Church 2001 7 NWLR
part 712 page 508

C **STATUTES & RULES REFERRED TO**

Court of Appeal Act, s. 16
Evidence Act, Cap 112, L. F. N. 1990, ss. 93, 95, 97 (1) & (2), 109
and 112
Companies and Allied Matters Act, 1990, ss. 36 and 634
D Supreme Court Rules, O. 2 r. 12

LEAD JUDGMENT BY MUKHTAR JSC

This is an appeal against the judgment of the Court of Appeal,
Lagos Division, which struck out the suit of the plaintiffs/appellants.
E The plaintiffs' claim against the defendant at the trial court are as
follows, as per the statement of claim:-

“(i) *The sum of N567,941.60k being contractual lease sum on*
rental of 250 KVA Rolls Royce Power generating set for 85 days from
F *8th June, 1998 to 31st August, 1998 and banking charges of*
N1,275.00 on Defendants dishonoured cheques No.303 and 304
dated 5th June, 1998 and 30th June, 1998 respectively.

(ii) *Return of the plaintiffs' 250k Rolls Royce Power Generat-*
ing set to the plaintiffs' yard at 2/4 Sanusi Ibrahim Street Mile 12,
G *Ketu Lagos State.*

ALTERNATIVELY

Payment of the sum of N1.5 million naira being the contractual value
of the said 250 KVA generating set.

(iii) *Rental sum of N6,666.67k daily from 1st September, 1998*
H *until the generator is returned to the plaintiffs' yard.*

(iv) *The sum of N2,000,000.00 (Two Million Naira only) as*
general damages for the Defendants breach of contract and deten-
tion of Plaintiffs' Power Generating.

(v) *Interest in the sums claimed at 21% per annum from 1st*

September, 1998 until the total accrued sum is paid and the generator returned.

(vi) The cost of this action.”

Pleadings were exchanged by the parties; to which there was amendment, and a reply to the amended statement of defence. Briefly put the plaintiffs leased a 250 KVA Roll Royce Power generating set to the defendant on 5th of June 1998 for an agreed fee of N200,000.00 for an initial period of 30 days. The terms of the lease was signed on 6th of June, and the defendants technicians tested it before it was removed to the site of a third party, Bristow Helicopters Ltd. On 18th June, 1998, the defendant wrote a letter to the plaintiffs repudiating the lease, and in fact stopped the cheque issued to the plaintiffs. The defendant refused to return the generator to the plaintiffs' yard despite repeated demand.

The defendant denied most of the plaintiffs' allegations stating that it stopped the cheques it issued to the 1st plaintiff because its client, a third party found the generator to be unserviceable and useless. The third party, Bristow Helicopters Limited complained that the generator failed to work, and the 1st plaintiff was informed of the malfunctioning. In spite of some changes in some parts of the generator, there were still problems, hence the defendant repudiated the contract on 15th of June, 1998. The defendant stated that before it repudiated the agreement, a 500 KVA generator was moved to its client's site by Tate Industries to avoid further embarrassment the 1st plaintiff have caused it. The defendant denied that it was obliged to return the plaintiffs' unserviceable generating set to its site having incurred financial loss as a result of the defaulting generating set hired. The defendant therefore counter-claimed as follows against the plaintiffs:-

“(a) The sum of N5,000,000.00 as general damages for the first plaintiffs breach of contract to supply the Defendant with a serviceable generator for the use of the latter's clients.

(b) The sum of N250,000.00 as special damages being the financial cost in providing alternative generating set to the premises of her client.

(c) Interest on the said sum of N5,250,000.00 at 21% from 1st of September 1998 until the total accrued sum is paid.

(d) An order dismissing the claim of the 1st and 2nd plaintiffs

with substantial cost against the Defendant for being frivolous, vexatious and an abuse of the process of the court.

(e) Cost against the 1st and 2nd plaintiffs.”

Parties adduced evidence, and the learned trial judge after evaluating same entered judgment in favour of the plaintiffs, but not in the sums claimed, but with certain variations under each head of damages claimed. The defendant was not satisfied with the judgment, so it appealed to the Court of Appeal, which allowed the appeal, and found thus:-

“The trial court has no competence to entertain the suit for want of competent plaintiff. The appeal being meritorious is allowed. The judgment of the court below is set aside and the plaintiffs suit is hereby struck out with N5,000.00 costs to the appellant.”

The plaintiffs have now appealed to this court on five grounds of appeal against the decision of the Court of Appeal. As is the practice in this court, and according to the rules of this court, briefs of argument were exchanged by the parties, to wit there is also an appellants’ reply brief of argument. The briefs were adopted by learned counsel at the hearing of the appeal. The learned counsel for the appellants specifically referred to pages 47 and 258 of the record of proceedings, whereas the learned counsel for the respondent referred to pages 11 and 12 of their brief of argument.

The appellants in their brief of argument formulated six issues for determination, which are:-

“1. Whether the Court of Appeal was right in its decision that the 1st Plaintiff/Appellant was not a juristic person.

2. Whether the Court of Appeal was right to have determined this appeal on the sole question of the juristic personality of the 1st Plaintiff/Appellant and the inadmissibility of ‘Exhibit A’ without the leave of the Court of Appeal - “Exhibit A” having been admitted at the trial without objection to its admissibility.

3. Whether the Court of Appeal did not fail in its bounden duty to do substantial justice when it failed to call further evidence to resolve the fundamental question of the juristic personality of the 1st Plaintiff/Appellant or in the alternative order a new trial by the trial court for a determination of the crucial point of the juristic personality of the 1st Plaintiff/Appellant.

4. Whether the Court of Appeal did not err in law and occa-

sion a serious miscarriage of justice when it sacrificed the doing of substantial justice on the platter of technical argument.

5. *Whether the Court of Appeal did not err in law when it allowed the Defendant/Respondent to get away with its approbation and reprobation by using the law of the land as an instrument of fraud.* B

6. *Whether, upon the production of the original certificate of Incorporation in court for sighting during trial, and the admittance of its Certified True Copy in evidence as Exhibit A, the Court of Appeal did not err in law when it held that the onus of proving the legal status of the 1st Plaintiff/Appellant still fell squarely on the Plaintiff/Appellant without any evidence whatsoever in rebuttal of the Certificate of Incorporation before the court.”* C

The above issues were adopted by the respondent.

Basically, this appeal revolves around the juristic personality of D the appellants, and a single issue would have sufficed for the determination of the appeal. The numerous issues formulated wouldn't have been necessary, but in the interest of justice, and in order to satisfy the parties that substantial justice is being done, I will consider the argument proffered to cover each issue in the treatment of this E appeal. I will commence with issues (1) and (3) in the appellants' brief of argument. The learned counsel for the appellants in canvassing argument under this issue, has contended that the learned Court of Appeal, having found that the trial court failed in its bounden duty F to determine a question duly submitted to it for determination, also failed to do the right thing that would ensure the doing of substantial justice between the parties when it failed to take steps to resolve the fundamental question of the juristic personality of the 1st Plaintiff/Appellant. He sought the aid of Order 1 Rules 19(2) and 20(3) on G general powers of the Court of Appeal.

According to learned counsel, the Court of Appeal, having failed to do that, this court could right the wrong, pursuant to Order 2 Rule 12(1) and (2) of the Supreme Court Rules. He placed reliance on the cases of Ibrahim v. Ojomo 2004 4 M.J.S. page 143, Akibu v. H Opaleye 1974 11 SC. 189, and Chief Frank Ebba v. Chief Ogodo 1984 4 S.C. 84.

Learned counsel for the appellants also referred this court to the cases of Adebayo v. Shogo 2005 M.J.S.C. page 43, Adisa vs

Oyinwola 2000 6 S.C. part 11 page 47, Owoso v. Adeleke 2004 30 W.R.N. page 93, and Attorney-General of Oyo State v. Fairlakes Hotel 1982 12 S.C. page 7.

In reply, the learned counsel for the respondent referred to the pleadings of the parties where he said issues were joined on this issue of juristic personality. Even though the learned trial judge omitted to make a finding on this issue, the Court of Appeal reviewed the proceedings of the trial court under Section 16 of the Court of Appeal Act and made a finding on the point. The Certificate of Incorporation admitted in evidence was certified by the Registrar of the High Court, an act which the learned counsel submitted was not appropriate, as a Certificate of Incorporation can only be certified by the office of the Registrar General who is in custody of the Certificate of Incorporation. He referred to Sections 97 (1) (e), (2)(c), 111 and 112 of the Evidence Act, Cap 112, 1990, Sections 36(1), 634, (i) and (2) of the Companies And Allied Matters Act, 1990, and the case of Okulade v. Alade 1976 All NLR 56. Learned Counsel finally submitted that the burden of proof that the 1st Plaintiff/Appellant is a juristic person lies on the appellants, and Exhibit A do not meet the statutory requirements referred to above, so the Court of Appeal was right in holding that the Appellants failed to prove that the 1st appellant is a juristic person. He placed reliance on the cases of P.G.S.S. Ikachi v. Igbudu 2005 12 NWLR part 940 page 543, Ifedapo Community Bank Ltd v. C. and S. Church 2001 7 NWLR part 712 page 508, Madukolu & Ors. v. Nkemdilim 1962 All NLR page 581, and Sections 135(1) and (2) and 136 of the Evidence Act, supra.

Learned Counsel for the respondent submitted that the plaintiffs/appellants had the burden of proof to discharge by tendering a genuine Certificate of Incorporation from the Company Registration Authority, which they failed to do woefully. According to learned Counsel Exhibit A is a document within the definition of Section 2 of the Evidence Act, 1990, it is a public document within the meaning of Section 109 of the Evidence Act, and can only be admissible in Evidence under Section 112 only, on the condition that it was certified by the appropriate officer under Section 11A of the Evidence Act and Section 36(1) of the Companies and Allied Matters Act, 1990.

In order to deal with the submission above it is imperative that I reproduce some salient averments in the plaintiffs' statement of claim

here below. They read as follows:-

“1. The first plaintiff is a registered company under the laws in Nigeria with office at 2/4, Sanusi Ibrahim Street, Off Oniyanrin Street, Mile 12, Near Ketu, Lagos State.

2. The second plaintiff is the Managing Director and Chief Executive Officer of the 1st Plaintiff with the same address.” B

In its amended statement of defence the defendant joined issues on the above as follows:-

“2. The defendant denies paragraphs 1, 2, 5, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18 and 19 of the statement of claim and shall at the trial of this suit put the plaintiffs to proof (sic) strictly the allegation of facts contained in the said paragraphs. C

3. The Defendant admits paragraph 1 of the statement of claim only to the extent that the first plaintiff has its office at 2/4, Sanusi Ibrahim Street, Off Oniyanrin Street, Mile 12, Near Ketu, Lagos State D but denies the allegation that the plaintiff is registered under the relevant laws of the Federal Republic of Nigeria.

4. In answer to paragraph 2 of the statement of claim, the second Defendant shall at the trial of the suit be required to proof (sic) the allegation of facts contained therein.” E

To prove the above averments, the 2nd plaintiff testified thus:-

“I am Johnson Omoniyi Ashaolu. I am a Fellow of the Institute of Chartered Accountants of Nigeria. I know the 1st Plaintiff and I am it's Managing Director. It is a Registered Company. This is it's original Certificate of Incorporation. Yes I have the Certified True Copy of my company's Certificate of Incorporation. This is it. (Certified True Copy) (Raises it up). Counsel seeks to tender it. Admitted as EXHIBIT “A”.” F

Under Cross-examination, the 2nd plaintiff had the following to say on the efficacy of Exhibit A. G

“Exhibit A is the certified true copy of the Certificate of Incorporation of the 1st plaintiff. It was certified at the office of the Commissioner of Oaths at the Lagos State High Court Ikeja.”

It is not in dispute that the trial court did not make a finding on this issue of the juristic personality of the 1st plaintiff. There was ample and sufficient evidence before the court to enable it make a finding on the issue. In fact, apart from the evidence, the learned counsel for the defendant addressed the court on this issue in his address. Consequently, the lower court was seized of all the materials required to H

invoke the provision of Section 16 of the Court of Appeal Law 1976 to review the case before it. It did not need any other further evidence before making the finding it made on the issue. In similar vein this court is also seized of all the facts required, and does not need to resort to Order 2 Rule 12 (1) and (2) of the Supreme Court Rules ^Bsupra for any further evidence, as urged by the learned counsel for the appellant. A situation where further evidence will be necessary arises only when the evidence relevant to the issue in controversy to determine an issue and ensure substantial justice is absent and de- ^Cplete from the proceedings. This court or the court below does not ordinarily go out of its way to fish for evidence to fill a vacuum that does not exist in a case, just to satisfy a party, when in fact all the pleadings and evidence, that are necessary material are already part of the record of proceedings before it.

^D It is on record that the plaintiffs tendered a photocopy of a document which was certified by the registrar of the High Court of Lagos State, Ikeja, when in fact, if the 2 plaintiff was desirous of tendering only a copy of the registration document, it should have been certified by an official of the Corporate Affairs office, the document ^Ebeing a public document that is subject to the provisions of Sections 109 - 112 of the Evidence Act supra. But then one should be mindful of the fact that the original copy of the certificate of Incorporation was stated to be in possession of the plaintiffs in this case as is contained in the record of proceedings vide the evidence of the 2nd ^Fplaintiff which has been reproduced above.

The pertinent question to ask here, is, if they had the original certificate and actually brought it to court on the day of hearing, why did the witness not tender it? I am inclined to subscribe to the argu- ^Gment of the respondent that perhaps the plaintiffs did not possess the original Certificate of Incorporation. If they didn't, there was nothing that prevented them from tendering the copy, as permitted by sections 93 and 95 of the Evidence Act supra, but then it has to be done properly according to the dictates of the provisions of sections 109 - ^H112 supra, which the plaintiffs failed to do in this case. Authorities abound that the content of documents may be admitted as secondary evidence, once they have been properly certified. See *Anatogu v. Igwe Iweka II (Eze Obosi)* and *Others* 1995 8 NWLR part 415 page 547, *Obadina family and Executor of Chief J. A. Ajao v. Ambrose*

family and Others 1969 1 NWLR 25, and Daggash v. Bulama 2004 14 NWLR part 892 page 144.

In addition to the above exposition of the law, I will reproduce the provisions of Sections 36(1) and 634 of the Companies and Allied Matters Act 1990, at this juncture. Section 36(1) states:- B

“The certificate of Incorporation shall be prima facie evidence that all the requirements of this Decree in respect of registration and of matters precedent and incidental to it have been complied with and that the association is a company authorized to be registered and duly registered under this Decree.” C

634(1) Any person may, on payment of the fees prescribed in part 111 of Schedule 17 to this Act inspect documents or obtain Certificates of Incorporation of copies of extracts from documents held by the commission for the purposes of this Act. (2) Where a copy of D
extract from any document registered under this Act is certified by the commission to be a true copy or extract, it shall in all proceeding be admissible in evidence as of equal validity with the original documents, and it shall be unnecessary to prove the official position of the person certifying the copy or extract.” E

By virtue of Section 36 supra, a Certificate of Incorporation is a proof that a company has been registered, and by virtue of Section 634, the certification of such document should be by the commission, which is contrary to the position in the instant case, where Exhibit ‘A’ was certified by the High Court. In this respect, Exhibit ‘A’ was an inadmissible evidence, which should not have been relied upon, or given any probative value whatsoever. Although its admissibility was not objected to, one has to bear in mind the fact that at the time of tendering Exhibit ‘A’, the defendant/respondent was not represented in court. That however, does not estop the defendant from raising the objection that it was not admissible, later and should not be relied upon. In the case of Okulade v. Alade supra, the Supreme Court in dealing with a situation like this postulated thus:- F
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“In a trial by a judge alone, as in the case in hand, a distinction must be drawn between those cases where the evidence complained of is in no circumstances admissible in law

and where the evidence complained of is admissible under certain conditions. In the former class of cases the evidence cannot be acted upon even if parties admitted it by consent and the Court of Appeal will entertain a complaint on the admissibility of such evidence by the lower court (although the evidence was admitted in the lower court without objection), in the latter class of cases; if the evidence was admitted in the lower court without objection or by consent of parties or was used by the opposite party (e.g. for the purpose of cross-examination) then it would be within the competence of the trial court to act on it and the Court of Appeal will not entertain any complaint on the admissibility of such evidence.”

The evidence in the instant case falls within the former class, so I am fortified by the above proposition of law. See also the cases of Minister of Lands, Western Nigeria v. Dr. Nnamdi Azikiwe and others SC. 1969/68, Omoniylu v. Omotosho 1961 All N.L.R. 304, Alashe v. Olori Ilu 1964 1 All N.L.R. 390, and Yassin v. Barclays Bank 1968 1 All N.L.R. 171.

In this vein, I endorse the finding of the lower court, which reads as follows:-

“For all this, it is incumbent on this court to exclude and discountenance Exhibit A as inadmissible evidence. The consequence is that the action is not properly constituted for want of proper parties.”

In the light of the above discussions, I resolve issues (1) and (3) supra in favour of the respondent, and dismiss grounds (1) and (3) of appeal to which they are married.

I will now proceed to issues (2), (4) and (6) supra in the appellants’ brief of argument. The argument proffered by learned counsel for the appellants is that the erroneous certification of Exhibit A was due entirely to the genuine mistake of counsel and not for want of a true legal status on the part of the 1st Plaintiff/Appellant, and that the court below had decided the appeal on a distorted record of appeal, which left out a vital evidence that the original Certificate of Incorporation was presented in court during trial and a proper foundation laid before the admittance of the Certified True Copy in evidence. In support of this argument he placed reliance on the cases of Alli Bello & 13 others v. Attorney General of Oyo State 1986 12 SC. page 111, State v. Gwanto 1983 1 SCNLR page 160, Jolayemi v. Alaoye

2004 9 M.J.S.C. page 106. Learned counsel further submitted that the evidential burden of proof had shifted to the defendant/respondent to adduce credible evidence that indeed the 1st plaintiff/appellant is not a juristic person. He referred to Sections 135, 136 and 137 of the Evidence Act supra.

The learned counsel for the respondent has in reply submitted that the issue of juristic personality of the 1st plaintiff/appellant is a fundamental issue of law which touches jurisdiction. He placed reliance on the cases of Madukolu & ors v. Nkemdilim supra, P. G. S. Ikachi v. Igbudu 2005 12 NWLR part 940 page 543, Shitta Bey v. Attorney General of Federation 1988 10 NWLR part 970, and Adefulu v. Okulaja 1998 5 NWLR part 550 page 435. He argued that the plaintiffs/appellants having failed to prove legal status or juristic personality of the 1st plaintiff/appellant the lower court was not competent to assume jurisdiction. According to learned counsel, jurisdiction was raised in the trial court vide pleadings, and besides the issue of jurisdiction can be raised at any stage of proceedings. He submitted that the documentary evidence produced at the trial court does not meet the requirement of the law.

Indeed the evidence that forms part of the fundamental requirement of a suit in the trial court does not meet the requirement of the law, as already found above. The particular piece of evidence I am referring to is Exhibit 'A', which is paramount to the jurisdiction of the trial court, and its competence to hear and determine the suit. ***I have already reproduced the significant pleadings of the plaintiffs on the status of the 1st plaintiff in the earlier part of this judgment. That, the plaintiff had to prove, and in doing so he tendered a copy of the Certificate of Incorporation, which was inadmissible. Towards this burden placed on the plaintiffs by the law, they failed woefully. That he took the original certificate of registration to court, and said, this is its original Certificate of Incorporation' is neither here nor there.*** He may have taken what he claims to be the original certificate to court, but it is not on record that the learned trial judge looked at the content, as it is not so recorded in the record of proceedings. Even if the learned trial judge recorded that she saw it, the fact that it was not part of the evidence in the court below, makes that single act of taking it to court inconsequential. The heavy weather made of this act of taking the

said original certificate of incorporation to court by the learned counsel for the appellant is of no significance, and does not deserve the stress.

The plaintiffs definitely did not discharge the burden of proof placed on them by Section 135 of the Evidence Act supra, and so the burden did not shift to the defendant/respondent. It is after the plaintiff would have proved its assertion, that the burden shifts, and then it becomes incumbent on the defendant to prove its own case or rebut the case of the plaintiff. See *Osawaru v. Ezeiruka* 1978 6 - 7 SC. 135, *Akinfosile v. Ijose* 1960 5 F.S.C. 192, and *Woluchem v. Gudi* 1981 5 SC. 291.

It is a cardinal principle of law that jurisdiction is fundamental to the determination of a suit, as unless a court is competent, it cannot exercise jurisdiction over a suit to the extent of deciding on it. In the case of *Madukolu & others v. Nkemdilim* supra, the issue of jurisdiction and competence was encapsulated thus:-

“Put briefly, a court is competent when-

“(1) *it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and*

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(3) the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.

If the court is competent, the proceedings are not a nullity, but they may be attacked on the ground of irregularity in the conduct of the trial; the argument will be that the irregularity was so grave as to affect the fairness of the trial and the soundness of the adjudication. It may turn out that the party complaining was to blame, or had acquiesced in the irregularity; or that it was trivial; in which case the appeal court may not think fit to set aside the judgment.”

I take solace in the above principle of law and hold that

the learned trial court was incompetent to decide on the suit, and in consequence the Court of Appeal did not err when it found thus:-

“The consequence is that the action is not properly constituted for want of proper parties. In the situation as found there, there is no way the trial court could have competently dealt with the matter in controversy, that is, as regards the right and interests of the parties when the proper parties are not even before the court.”

There is defect in the competence of the trial court to hear and determine the case at hand which is fatal, and so the proceedings are a nullity. See Rossek v. African Continental Bank Ltd. 1993 8 NWLR part 312 page 382, Skenconsult v. Ukey 1981 1 SC.6, and Araka v. Ejeagwu 2000 15 NWLR part 692 page 684.

For the foregoing reasonings I resolve issues (2) (4) and (6) supra in favour of the respondent, and dismiss grounds (2), (4) and (6) of appeal married to the issues for they are bound to fail.

On issue (5), the learned counsel for the appellants did not proffer any argument to cover it, but merely cited the case of Adedeji v. National Bank of Nigeria 1989 1 NWLR part 96 page 212, and reproduced an excerpt of the judgment. That in itself suggests to me that the learned counsel had nothing tangible to canvass in respect of the issue. Although the respondent’s counsel proffered argument to cover the issue, I deem it unnecessary to deal with it, as the situation in this case does not warrant it. Since the bottom line is that the court of trial had no jurisdiction to determine the suit, and I have so found the need to consider or evaluate the other adduced evidence is obviated. The issue is in favour of the respondent, and I so resolve it. Ground (5) of appeal also fail, and it is hereby dismissed.

Before I conclude this judgment I will like to comment on the appellants’ reply brief of argument, which in essence contains repetitions of the argument in the appellants’ brief of argument. The function of an appellant reply brief as stated in plethora of authorities is to reply to new points raised in a respondent’s brief of argument. See Ojukwu v. Obasanjo 2004 12 NWLR part 886 page 169, and Olafisoye v. F.R.N. 2004 4 NWLR part 864 page 580. In the case at hand the appellants’ reply brief of argument has not addressed new points raised in the respondent’s brief of argument, but merely sought

to further improve on the their earlier argument in the appellants' brief of argument.

The end result of this appeal is that it is dismissed for it is unmeritorious. I affirm the judgment of the lower court. Costs is assessed at N50,000.00 in favour of the respondents against the appellants.

ONNOGHEN JSC

C I have had the benefit of reading in draft the lead judgment of my learned brother MUKHTAR, JSC just delivered.

I agree with his reasoning and conclusion therein contained.

The main issue in this appeal is really whether the lower court is right in holding that appellant has not been proved to be a juristic D person. All the other five issues formulated by learned counsel for the appellants are irrelevant.

It is not in dispute that both parties joined issues on the legal personality of the appellant and that Exhibit A was tendered and admitted in evidence by way of establishing the legal personality of E the said appellant.

It is not also disputed that the said Exhibit A is a certified true copy of the certificate of incorporation of the 1st appellant. It is settled law that the contents of a document can be proved in a proceeding F by tendering the original document, or where the original is unavailable by a certified true copy of the said original as secondary evidence of the contents of the said original.

However, Exhibit A, though a certified true copy of the original certificate of incorporation, it was certified by the Registrar of the G High Court.

It is the case of the respondent that the certification on Exhibit A ought to have been done by an officer in the Corporate Affairs Commission (C.A.C) to make it admissible and carry the requisite weight.

H I agree with the submission of learned counsel for the respondent and its affirmation by my learned brother in the lead judgment that the appellants failed, in the circumstance to prove the legal personality of the 1st appellant as required by law, particularly section 634(1) and (2) of the Companies and Allied Matters Act, 1990.

I therefore dismissed the appeal and abide by the consequential orders made in the said lead judgment including the order as to costs.

Appeal dismissed.

B

TABAI JSC

I was privileged to read, before now the lead judgment of my learned brother, Mukhtar, JSC affirming the judgment of the lower court and dismissing the appeal. The fundamental issue is that of the juristic personality of the 1st Plaintiff/Appellant company. C

The issue was clearly raised in the pleadings. In paragraphs 1 and 2 of the statement of claim at page 8 of the record the Plaintiffs/Appellants averred as follows:

“1. The first Plaintiff is a registered company under the laws in Nigeria with office at 2/4 Sanusi Ibrahim Street, off Oniyanrin Street, Mile 12 near Ketu Lagos State.

2. The second Plaintiff is the Managing Director and Chief Executive of Officer of the 1st Plaintiff with the same address.”

The Defendant/Respondent reacted to the above pleadings in paragraphs 2, 3 and 4 of the Amended Statement of Defence and Counter Claim in the following terms :- E

“2. The Defendant denies paragraphs 1,2,5, 8,9, 10,11, 12, 13, 14,15, 16, 17, 18 and 19 of the statement of claim and shall at the trial of this suit put the Plaintiffs to prove strictly the allegation of facts contained in the said paragraphs.” F

“3 The Defendant admits paragraphs 1 of the statement of claim only to the extent that the first Plaintiff has its office at 2/4 Sanusi Ibrahim Street off Oniyanrin Street Mile 12 near Ketu Lagos G State but denies the allegation that the Plaintiff is registered under the relevant laws 5 of the Federal Republic of Nigeria.”

(underlining mine).”

“4 In answer to paragraph 2 of the statement of claim the second Defendant shall at the trial of this suit be required to prove the allegation of facts contained therein.” H

(see page 31 of the record)

In their Reply to the Amended Statement of Defence and counter-claim, the Plaintiffs/Appellants averred in paragraph 3 thus:

"13 In reply to Paragraph 2 of the statement of Defence the Plaintiffs state that the 1st Plaintiff is registered with the corporate Affairs Commission with No. RC 273,255 on the 9th day of June, 1995. The Plaintiffs hereby plead the certificate of incorporation".

(see page 43 of the record.)

B As I said the issue of the 1st Plaintiff/Appellant's due registration under the relevant laws of Nigeria was specifically raised in the pleadings. The burden of proof was equally on the Plaintiffs.

The 2nd Plaintiff testifying for the Plaintiffs' case stated at page 47 of the record as follows.

C "I am Johnson Omoniyi Ashaolu. I am a fellow of the Institute of Chartered Accountants of Nigeria. I know the 1st plaintiff and I am its Managing Director. It is a Registered Company. This is its original Certificate of Incorporation. Yes I have the Certified True Copy of my
D company's Certificate of Incorporation. This is it (Certified True Copy) (Raises it up) Counsel seeks to tender it. Admitted as Exhibit "A".

And under cross-examination at page 64 of the record the witness said:

E *"I am a Chartered Accountant by profession. I am the Managing Director of the 1st Plaintiff. Exhibit "A" is the Certified True Copy of the Certificate of Incorporation of the 1st Plaintiff. It was certified at the office of the Commissioner for Oaths at the Lagos State High Court Ikeja."*

F Now in the face of the issue joined in the pleadings, can the Appellants be said to have discharged their burden of proof? Learned Counsel for the defence submitted that the due registration of the 1st Plaintiff was not proved. Reliance was placed on the Federal Government of Nigeria Official Extraordinary Gazette No. 15 Vol. 81 of 25th
G November, 1994 and section 36(6 j) of the Companies and Allied Matters Act 1990. The substance of the submission of learned counsel for the Appellants was that certification by the Registrar/Commissioner for Oaths of the High Court of Lagos State after comparing the document with the original was proper certification and this particularly so when Exhibit "A " was admitted at the trial without objection.
H

In his judgment however the learned trial judge regrettably glossed over this issue that was keenly contested. The settled principle of law is that once an issue is raised in the pleadings or in grounds

of appeal the Court has a duty to determine and pronounce upon it one way or the other. See *Folayan v. Ogunrinde* (1990) 1 NWLR (Part 127) 369 *Okonji v. Njokanma* (1991) 7 NWLR (Part 202) 131.

This issue of the legal personality of the 1st Appellant was raised at the Court below which examined same in great details. After a thorough and painstaking examination of section 36(1) and 634(1) and (2) of the companies and Allied Matters Act and sections 94(1), 95, 97,(1) and (2) 111 and 112 of the Evidence Act 1990 the court below, Per Chukwuma-Eneh JCA (as he then was), at page 262 of the record held thus: “I have no doubt in my mind that the Appellant is right if in taking the objection where as here it is alleged that Exhibit “A” is totally inadmissible in law as a secondary evidence. Firstly I hold that the Appellants objection to the admissibility of Exhibit “A” at this stage is well taken. See *Olukade v. Alade* (1976) 1 AWLR (Part 1) 67 and secondly as it is not certified by the office of the Registrar General Corporate Affairs Commission-the custodian of registered documents under CAMA it cannot therefore qualify as a certified copy of the Certificate of Incorporation of the 1st Respondent allowable as evidence under the Evidence Act and section 634(2) of CAMA.

And at pages 264-265 the court below concluded:- “For all this, it is incumbent on this Court to exclude and discountenance Exhibit “A” as inadmissible evidence. The consequence is that the action is not properly constituted for want of proper parties. In a situation as found here, there is no way the trial court could have competently dealt with the matter in “controversy, that is, as regards the rights and interests of the parties when the proper parties are not even before the court.”

I am in full agreement with the above opinion. The Defendant/Appellant had by its paragraphs 2, 3, and 4 of the Amended Statement of Defence and Counter-Claim challenged the juristic personality of the 1st Plaintiff/Appellant. By the pleadings, it had warned that at the trial it would require the strict proof of the due incorporation of the 1st plaintiff/appellant under the relevant laws of the Federal Republic of Nigeria. The Appellants were therefore not taken by surprise. The purported certification by a Registrar or Commissioner for Oaths of the Lagos State High Court is no certification in any true legal sense. If the 2nd Appellant had the original Certificate of Incorporation of the 1st Appellant with him on the day he testified he should

have tendered it or in the alternative he should have tendered only such copy duly certified by a duly authorised officer of the Corporate Affairs Commission. This he failed to do. The Appellants thus failed to discharge the burden of proof of the 1st Appellant's incorporation. In these circumstances the Court below was perfectly in order in its findings and conclusions.

In view of the foregoing and fuller reasons well set out in the lead judgment I also dismiss the appeal for lack of merit. I abide by the order on costs contained in the lead judgment.

MUHAMMAD JSC

I have had the advantage to read in draft, the judgment of my learned brother, Mukhtar, JSC, just delivered. I agree with the conclusions arrived at. The appeal lacks merit. Same is also dismissed by me. I abide by orders contained in the leading judgment including order as to costs.

ADEKEYE JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother A. M. Mukhtar JSC. My lord had exhaustively considered all the issues distilled for determination in this appeal. I wish to emphasise her reasoning and conclusion by passing a few remarks on the first two issues in the appellants brief which are:-

- 1) Whether the Court of Appeal was right in its decision that the 1st plaintiff/appellant was not a juristic person.
- 2) Whether the Court of Appeal was right to have determined this Appeal on the sole question of the juristic personality of the 1st plaintiff/appellant and the inadmissibility of "Exhibit A" without the leave of the Court of Appeal. "Exhibit A" having been admitted at the trial without objection to its admissibility.

The germane question hinged on the foregoing issues is the determination of the 1st appellant's juristic status. The question opens the door to further legal questions relating to the institution of the cause of action like:

- (a) Whether the suit at the trial court was properly constituted

for want of proper parties.

(b) Whether 1st appellant has legal personality to institute the suit - that is to sue or be sued.

(c) The competence of the court to adjudicate on the matter.

The questions (a-c) above relate to the issue of jurisdiction. Jurisdiction is defined as a term of comprehensive import embracing every kind of judicial action. The term may have different meanings in different context. It has been defined as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject-matter of the issues or to the persons between whom the issues are joined or to the kind of relief sought.

A court is competent when:-

(a) It is properly constituted as regards numbers and qualification of members of the bench that no member is disqualified by one reason or another.

(b) The subject - matter of the action is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.

(c) Proper parties are before the court.

(d) The action is initiated by due process of law and upon fulfillment of any condition precedent to the exercise of its jurisdiction.

A-G Lagos State v. Dosunmu (1989) 2 NWLR pt. III, pg. 552 SC.

NEPA v. Edeghero (2002) 18 NWLR pt. 798, pg. 79

Madukolu v. Nkemdilim (1962) 2 SC NLR 341

Ibeanu v. Ogbeide (1994) 7 NWLR pt.359, pg. 699.

Gombe v. PW (NIG.) Limited (1995) 6 NWLR, pt. 402, pg. 402.

It is trite law that for a court to be competent and have jurisdiction over a matter, proper parties must be identified. Before an action can succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the court as it goes to the foundation of the suit in limine. Where proper parties are not before the court then the court lacks jurisdiction to hear the suit.

Best vision Centre Limited v. UAC NPDC Plc (2003) 13 NWLR, pt. 838, pg. 394

Ikene v. Anakwe (2000) 8 NWLR, pt. 669, pg.484

Peenok Limited v. Hotel Presidential (1983) 4 NCLR pg. 122

Ehudimhen v. Musa (2000) 8 NWLR, pt. 699, pg. 540

B Moreover, where a court purports to exercise jurisdiction which it does not have the proceedings before it and its judgment will amount to a nullity no matter how well decided.

Araku v. Ejeagwu (2000) 12 SC (pt. 1), Pg. 99

C Madukolu v. Nkemdilim (1962) 2 SC NLR pg. 341, 1 ALL NLR 587.

Sode v. A - G Federation (1986) 6 NWLR (pt. 622) pg. 573

Umanah v. Attah (2006)17 NWLR pt. 1009, pg. 503

Skenconsult v. Ukey (1831) I SC 6

D Benin Rubber Producers Limited v. Ojo (1997)9 NWLR pt. 521, pg. 388 SC

Magaji v. Matari (2000) 5 SC 46

Alero v. African Continental Bank Limited (2000) 6 SC, pt. 1, pg. 27

E Galadima v. Tambari (2000) 6 SC pt. 1 pg, 14

It is apparent from the averments and the evidence before the court - that the cause of action is predicated on a breach of contract and its resultant effect. The parties to the action before the trial court according to the record of proceedings were:-

F Goodwill and Trust Investment Limited

Mr. Johnson Omoniyi Ashaolu

AND

Witt & Busch Limited

G The averment of the parties in their respective pleadings reads:-
Statement of claim:

Paragraph 1

H The first plaintiff is a registered Company under the laws in Nigeria with office at 2/4 Sanusi Ibrahim Street off Oniyarin Street, Mile 12, Ketu Lagos State.

Paragraph 2

“The second plaintiff is the Managing Director and Chief Executive Officer of the 1st plaintiff with the same address”.

Paragraph 3

“The defendant is a corporate body registered under the laws of Nigeria with new office at 1st floor, Union Dicon House, Iyana - Isolo, Itire, Lagos State.”

In the amended statement of Defence paragraph 21 reads: -

“The defendant denies paragraphs 1, 2, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 and 19 of the statement of claim and shall at the trial of this suit put the plaintiffs to proof strictly the allegations of facts contained in the said paragraphs”.

From the foregoing paragraphs not only has the parties joined issue on the legal status of the 1st plaintiff/appellant the defendant/respondent has placed a burden on, the plaintiff/appellant to establish that it is a juristic personality that can sue and be sued.

It has averred that it is a registered Company under the laws in Nigeria, it was incumbent on it to produce and exhibit the certificate of incorporation. The law is that where the legal personality of incorporated company is called into question and issue joined thereon, the onus is on the party claiming the status of juristic person derived from such incorporation to establish it and the corporate status of a body is established by the production of its certificate of incorporation. By Section 36 (6) of the Companies and Allied Matters Act Cap 59 Laws of the Federation 1990 only a Certificate of Registration or incorporation of a Company or Association is prima facie evidence of incorporation of such Company or Association.

In this case unless the 1st plaintiff/appellant produces its Certificate of Incorporation in the name it has sued the defendant/respondent to court it cannot be deemed competent to maintain this action.

Onwunalu v. Ojademe (1971) 1 All NLR pt. 1 pg. 14

Ekpere v. Aforye (1972) 1 All NLR 220

Oloriode v. Oyebi (1984) 1 AC NLR 390

Abakaliki LGC v. Abakaliki R. M. O. (1990) 6 NWLR pt. 155, pg. 182

Fawehinmi v. N. B. A (No.2) 1989 2 NWLR pt. 105, pg. 558

Vulcan Gases Limited v. G.F. Ind. A- G (2001) 9 NWLR pt. H 719, pg. 610

Apostolic Church v. A-G Mid Western State (1972) 7 NSCC, pg. 247

J. K. Randle v. Kwara Breweries Limited (1986) 6 SC 1

African Continental Bank Plc v. Emostrade Limited (2002) 8 NWLR pt. 770, pg. 501

In the case N.N.P.C v. Lutin Investment Limited (2006) 2 NWLR pt. 965, pg. 506 it was held that

B *“The best evidence of proof of Incorporation of Company is the production of a genuine Certificate of Incorporation from the Company Incorporation authority of any particular Country”.*

I shall examine the Provisions of Section 36(6) of the Company And Allied Matters Act which stipulates that:-

C *“The Certificate of incorporation shall be prima facie evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the association is a company authorized to be registered and duly registered under this Act”.*

D The next vital question for consideration is whether the 1st plaintiff/appellant produced its genuine Certificate of Incorporation during the trial before the High Court. In the proceedings of the 31st of March 1999, when the 2nd plaintiff/appellant gave evidence as the Managing Director of the 1st plaintiff/appellant, he appeared to
E have two copies of the Certificate of Incorporation. In the course of trial he identified the original Certificate -by saying - “This is original Certificate of Incorporation. He proceeded to say yes I have the Certified True Copy of my company’s Certificate of Incorporation - this
F is it (certified True Copy) (Raises it up). It was thereafter admitted as Exhibit A. The 2nd plaintiff opted to tender the Certified True Copy of the original Certificate. The Certificate of Incorporation is undoubtedly a public document.

Section 97 (2) (c) stipulates that:-

G Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-

(e) When the original is a public document within the meaning of section 109 of this Act. Section 97 (2) (c) states that:-

H In paragraph (e) or (f) a certified copy of the document, but no other kind of secondary evidence is admissible.

Minister of Lands, Western Nigeria v. Azikiwe (1969) 1 All NLR Pg. 49

Onobruhere v. Esegine (1986) 1 NWLR pt. 19, pg. 799

Nzekwu v. Nzekwu (1989) 2 NWLR pt. 104, pg. 373

Section 111 (i) of the Evidence Act describes what amounts to certification and the nature of certified copies of public document.

Section 112 Stipulates that:-

“Such Certified True Copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purported to be copies. In effect the essence of the demanding for a Certified True Copy of a public document is to assure the authenticity of the document vis-a-vis, the original. There is emphasis in the Evidence Act and under the Company And Allied Matters Act, that every public officer who has custody of a public document shall do the certification.

Section 634 (1) of the Company And Allied Matters Act provides that:-

634(1)

“Any person may on payment of the fees prescribed in part III of the seventeenth schedule to this Act inspect documents or obtain certificates of incorporation or copies of or extracts from documents held by the Commission for the purposes of this Act”

634 (2)

“Where a copy or extract from any document registered under this Act is certified by the Commission to be a True Copy of extract, it shall in all proceedings be admissible in evidence as of equal validity with the original document and it shall be unnecessary to prove the official position of the person certifying the copy or extract”.

From the foregoing it goes without saying that certification shall be done by the Registrar-General of Companies at the Corporate Affairs Commission. Any Certified True Copy which had passed through the foregoing process shall be of equal validity with the original Certificate of Incorporation. Exhibit A however was certified at the Lagos State High Court Ikeja Division. The Registrar of Ikeja High Court is not the officer having custody of the original Certificate of Incorporation, of the 1st plaintiff/appellant. He is not competent in the circumstance to certify a Certificate of Incorporation issued by the Corporate Affairs Commission. The appellants have failed to prove that the 1st plaintiff/appellant is a juristic person.

The issue of the legal personality was contested by the parties before the trial court as parties joined issue on it and the appellant

gave evidence in support of the averment. Strangely enough the learned trial judge omitted to rule on it. I regard the lapse as a fatal omission as I said at the onset of this judgment that a defect in competence is extrinsic to adjudication. The lower court was not competent to assume jurisdiction to hear the matter. The initial trial of the
B suit at the High Court was a nullity, as the 1st plaintiff/appellant did not exist in the eye of the law, and Exhibit A had no probative value before the trial court.

The Court of Appeal rightly invoked its power under Section
C 16 of the Court of Appeal Act to dispose of the appeal on that legal point alone.

With fuller reasons given in the lead judgment, I also dismiss this appeal as lacking in merit and abide the consequential orders including the order as to costs.
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