

SUPREME COURT OF NIGERIA

4TH MAY, 2012. SC. 220/2002

**CORAM:- W. S. N. ONNOGHEN, I. T. MUHAMMAD,
O. O. ADEKEYE, N. S. NGWUTA, M. U. PETER-ODILI, JJSC**

DR. TOSIN AJAYI

..... APPELLANT

AND

1. PRINCE (MRS.) OLAJUMOKE ADEBIYI

2. PRINCE ADETOUN OJOMO

..... RESPONDENTS

3. THE MILITARY GOVERNOR OF

LAGOS STATE

4. ATTORNEY-GENERAL OF LAGOS STATE

LAND LAW - Actions - Limitation - Lagos State Limitation Law s.16
(2) - Action for recovery of land - Cannot be validly instituted after
12 years - From the date cause of action accrued (H1)

ACTIONS - Limitation - Determination - Basis - It is determined from
when cause of action accrued - And date of commencement of suit -
As well as period of limitation in statute (H2)

LAND LAW - Public land - Acquisition - Cause of action - Computa-
tion - Public Land Acquisition Law of Lagos State - Right of action
accrues from date - The acquisition is published in gazette (H3)

ACTIONS - Land law - Public land acquisition - Proper party - The
State government must be made a party - In suits bordering on ac-
quisition - And service of notice thereof (H4)

ACTIONS - Limitation - Public Officers Protection Law s.2 - Actions
against public officers - Shall be brought within 3 months of the act
complained of (H5)

STATUTES - Limitation - Public Officers Protection Law - Pleadings -
Defendant must specifically plead the defence at trial court - Other-
wise he cannot rely on same on appeal (H6)

ACTIONS - Limitation - Preliminary objection - Purpose - Objection

1844 Ajayi v. Adebisi (2012) 5 KLR (pt. 312) 1843; (2012) 11

is to show court that action is statute barred - And that plaintiff has no locus standi - Hence court must address the issue first (H7)

ACTIONS - Locus standi - Meaning - Locus standi is legal right of party - To institute an action in court - Without any inhibition (H8)

ACTIONS - Locus standi - Determination - Principles & Tests - Party must show that his rights have been infringed - And the action must be justiciable - As well as an existence of dispute (H9)

ACTIONS - Locus standi - Absence of - Effect - The suit is incompetent - And court lacks jurisdiction to entertain same - Save to give an order of dismissal (H10)

JURISDICTION - Determination of - Basis - Court must consider deposed facts in affidavits - Writ of summons and statement of claim (H11)

ACTIONS - Jurisdiction - Fundamental nature - Once the issue is raised - Court must not order against defendant - Until the issue is settled (H12)

JURISDICTION - Objection - Basis - Objection can be taken on statement of claim - Evidence received - Facts deposed in affidavits - And on writ of summons (H13)

COURTS - Jurisdiction - Challenge to - Court must first consider whether or not it has jurisdiction - As a defect in same - Renders the proceedings a nullity (H14)

APPEALS - Concurrent judgments - Supreme Court will interfere - Where the judgments are perverse - Or has occasioned a miscarriage of justice (H15)

FACTS

Lagos State Government acquired Oba John Ojomo's (deceased) piece of land situate at Opebi-Ikeja in 1974 through a notice of acquisition published in its official gazette. Aggrieved by this, the

deceased instituted this action against 3rd defendant/appellant, 2nd defendant/3rd respondent and 1st defendant/4th respondent at the High Court of Lagos State, Ikeja. The deceased claimed inter alia, a declaration that the said acquisition is a nullity. It took appellant three years after the commencement of the action to file his statement of defence. Appellant brought an application objecting to the jurisdiction of the court on the ground that the action is statute barred.

Appellant relied on the State Government's notice of acquisition published in 1974. Appellant also relied on the Limitation Law of Lagos State and raised the defence of Public Officers Protection Law. However, he did not plead the facts in respect of same. The learned trial judge refused the application and insisted that appellant shall put up his defence. Adjournments sought by appellant were also refused by the court. Thereafter, the court ruled in favour of the deceased and granted the reliefs sought. Being dissatisfied, appellant appealed to Court of Appeal, Lagos Division. The court dismissed the appeal and affirmed the decision of the trial court. Aggrieved further, appellant has appealed to Supreme Court.

ISSUES FOR DETERMINATION

1) When does a cause of action accrue to a plaintiff and in this case is the action of the plaintiff/respondent statute-barred.

2) Whether the issue of jurisdiction could be raised at any stage of the proceedings.

3) Whether the court below was justified in holding that the rules of natural justice, fair trial and fair hearing were observed in this case when the 3rd defendant/appellant's defence was unilaterally closed by the court on a date fixed for ruling on a preliminary objection raised by the plaintiff/respondent.

4) Whether the Court of Appeal was right in upholding the decision of the court that the acquisition notice is null and void and in so far as it relates to the portion of the respondent's land which fall's within the notice of acquisition.

5) Whether from the state of pleadings there was a cause of action in this case to warrant the judgment of the court below.

6) Whether the court below was right in affirming the findings of fact and evaluation of evidence in the circumstance of the case.

HELD (Unanimously allowing the main appeal and cross-appeal per **ADEKEYE JSC**)

Actions - Limitation - Lagos State Limitation Law s.16 (2)

1. The essence of a limitation law is that the legal right to enforce an action is not perpetual right but a right generally limited by statute. Where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Therefore a cause of action is statute-barred if legal proceedings cannot be commenced in respect of same because the period laid down by the limitation law had lapsed. An action which is not brought within the prescribed period offends the provisions of the law and does not give rise to a cause of action. By virtue of Section 16(2) of the Lagos State Limitation Law, the period for bringing an action for recovery of land is 12 years. The relevant section emphasized that an action for recovery of land shall not be brought after the expiration of 12 years from the date on which the right of action accrued to the person bringing it or if it accrued to some person through whom he claims to that person. An action which is not brought within the prescribed period of twelve years offends the provisions of Section 16(2) of the Lagos State Limitation Law 1994. The plaintiff/respondent's action is consequently statute-barred having been caught by the Statute of Limitation. Once again, where an action is statute-barred, a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation law for instituting such an action had elapsed and the right to commence the action would have been extinguished by law. (pp. 1860 C/1861 H/1863 C)

ACTIONS - Limitation - Determination - Basis

2. The yardsticks to determine whether an action is statute-barred are:

a) The date when the cause of action accrued.

b) The date of commencement of the suit as indicated in the writ of summons.

c) Period of time prescribed to bringing an action to be ascertained from the statute in question. (p. 1860 E)

Public land - Acquisition - Cause of action - Computation

3. Time begins to run for the purposes of the limitation law from the date the cause of action accrues.

There is evidence that the land in Opebi village was acquired by the Lagos State Government by Government Notice 140 Public Acquisition Law Chapter 105 published in Lagos State of Nigeria Gazette No. 11 Vol. 7 of 16th April 1974. Under the Public Land Acquisition Law a cause of action or a right of action accrues as from the date the government acquisition is published in a government gazette. The cause of action in respect of the acquisition accrued on the 16th of April 1974 when the Lagos State Government published the acquisition in the gazette. The plaintiff/respondent instituted his action at the Lagos High Court on the 31st of July 1991. By simple mathematical calculation from the date the cause of action accrued, which was the date the land was acquired by the Lagos State Government and published in the gazette on the 16th of April 1974 and the date the action was filed in 1991 is 17 years. (pp. 1860 G/1861 B/G)

ACTIONS - Land law - Public land acquisition - Proper party

4. The appellant also raised the defence of Public Officers Protection Law. He claimed to have bought the disputed land from Lagos State Government. PW2 also testified that he saw people who claimed to have come from Lagos State Government as arrangement to acquire the land was then in progress. Before any issue as to whether the land in dispute has been properly acquired by a State Government and whether the notice of acquisition and revocation of grant was properly served by the government can be effectively adjudicated upon and determined by the trial court, it is imperative to join the State government concerned in the suit. (p. 1862 C)

ACTIONS - Limitation - Public Officers Protection Law s.2

5. By virtue of Section 2 of the Public Officers Protection Act Cap 114 Laws of Lagos State –

“Any action commenced against any person for any act done in pursuance or execution or intended execution of any Act, Law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act or Law, duty or authority shall be brought within three months of the act, neglect or default complained of or in the case of a continuing damage or injury within three months next after the ceasing thereof.”

The word ‘person’ in that section does not only refer to natural persons but extend to public bodies, artificial persons sued by their official names or titles like the 3rd and 4th respondents in this case. The officials of the Lagos State Government were spotted on the land in 1986. An action was filed in respect of the acquisition in 1991 against the Military Governor of Lagos State and the Attorney-General of Lagos State. Where a law prescribes a period for instituting an action, proceedings cannot be instituted after that period. The plaintiff/respondent was out of time by five years. (p. 1862 G)

STATUTES - Limitation - Public Officers Protection Law

6. The plaintiff/respondent argued that the Public Officers Protection Law is a limitation statute. This is a special defence like fraud, estoppel, res judicata hence it must be specifically pleaded by a defendant before he can rely on it in any proceedings. The reason is to avoid taking the plaintiff by surprise as a limitation statute is not meant to be used to ambush the other party. Where such a defence is not pleaded by the defendant in the Statement of Defence in the court of first instance, the defendant can neither raise it nor rely on it on appeal. (p. 1863 F)

ACTIONS - Limitation - Preliminary objection - Purpose

7. This to my mind is a grave misconception of the principle of the law in issue. The whole basis of the preliminary point of law was to show the trial court that the action going by the

writ and statement of claim was statute-barred and that the plaintiff/respondent had no locus standi to institute the action. Both lower courts were carried away by the conduct of the case by the appellant that they failed to advert their mind to the preliminary points of law raised in the summons. It is however trite that where the issue of limitation is raised in defence of an action, it is only proper that the issue should be addressed first as it makes no sense to decide the merit of a matter that is statute-barred. In the event of a successful plea of limitation law against a plaintiff's right of action, the action becomes extinguished and un-maintainable at law. (pp. 1864 E/1865 E)

Locus standi - Meaning

8. Locus Standi is the legal right of a party to an action to be heard in litigation before a court of law or tribunal. The term entails the legal capacity of instituting or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever. (p. 1866 E)

Locus standi - Determination - Principles & Tests

9. The guiding principles to determine whether a person has locus standi or not are:

- a. He must be able to show that his civil rights and obligations have been or are in danger of being infringed.
- b. The fact that a person may not succeed in the action is immaterial.
- c. Whether the civil rights and obligations having been infringed depends on the particulars of the case.
- d. The court should not give any unduly restrictive interpretation to the expression locus standi.

The tests for the determination of the locus standi of a person are:-

- a. The action must be justiciable.
- b. There must be a dispute between the parties.

(p. 1866 F)

Locus standi - Absence of - Effect

10. Locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the court before which an action is brought. Thus where there is no locus standi to file an action, the court cannot properly assume jurisdiction to entertain the action. Locus standi being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal by any of the parties without leave of court or by the court itself suo motu. The issue can be raised, after the plaintiff has duly filed his pleadings by a motion and or in a statement of defence. Locus standi to institute proceedings in a court is not dependent on the success or merits of a case; it is a condition precedent to the determination of a case on the merits. The two lower courts fell into grave error in dismissing the summons filed by the appellant to raise the legal points of statute of limitation and locus standi by holding that legal points be raised at the conclusion of evidence on the legal reliefs sought by the plaintiff/respondent. The issue of locus standi is a condition precedent to the determination of a case on merit. Where a plaintiff has no locus standi to bring a suit, the suit becomes incompetent and the court lacks the jurisdiction to entertain it, the only order the court can make in the circumstance is that of dismissal. The two lower courts had obviously put the cart before the horse in their application of the operative principles in respect of the matter before them. (p. 1867 B)

JURISDICTION - Determination of - Basis

11. In addition the relevant things to be considered by the court in determining the issues of jurisdiction are the facts as deposed to in affidavits, the writ of summons and the statement of claim where one had to be filed and served. The statement of defence is not one of the relevant materials for that purpose. (p. 1871 A)

Jurisdiction - Fundamental nature

12. It is trite that once an issue of jurisdiction is raised in any suit, the court must not give an order in the suit affecting the

defendant until the issue of jurisdiction is settled. The trial court obviously made a wrong order in dismissing the application of the appellant based on issues of jurisdiction, locus standi of the plaintiff/respondent and Limitation Law.

(p. 1871 F)

B

JURISDICTION - Objection - Basis

13. Furthermore, an objection to jurisdiction can be taken at any time depending on what materials are available. It would be taken in the following situations -

C

a. On the basis of the statement of claim or

b. On the basis of the evidence received or

c. By a motion supported by affidavit giving full facts upon which reliance is placed or

d. On the face of the writ of summons, where appropriate as to the capacity in which action was brought or against whom action is brought. (p. 1872 B)

D

Jurisdiction - Challenge to

14. In effect, where there is a challenge to the jurisdiction of a court, the court must first assume jurisdiction to consider whether it has or lacks jurisdiction. In this case, the defect in the competence of the trial court to entertain the suit was fatal, while the entire proceedings before the court was a nullity no matter how well conducted or decided or the level of industry put into the trial and judgment by the learned counsel for the plaintiff/respondent and the learned trial judge. The absence of jurisdiction is irreparable in law and the only procedural duty of a court is to strike out the case. In view of the fact that the proceedings and judgment of the trial court was a nullity, the matter ends there. The Court of Appeal has nothing to consider and affirm. (p. 1873 A)

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F

G

APPEALS - Concurrent judgments

H

15. The Supreme Court is always reluctant to overturn the concurrent judgments of the High Court and the Court of Appeal. Where concurrent judgments of the two lower courts appear to be perverse, occasion a miscarriage of justice,

unreasonable and against the evidence adduced, or in violation of some principle of law and procedure, the Supreme Court will not allow them to stand. (p . 1873 D)

REPRESENTATION

- B C. S. Ekeocha with B. U. Achumba (Mrs.), for the Appellant
 P. O. Jimoh-Lasisi SAN with C. V. C. Ihekweazu; M. B.
 Jimoh-Akogun; A. O. Okorie for the 1st and 2nd Respondents
 Olatunde Adejuyigbe with O. Osinaike; J. I. Chindo for the 3rd and
 C 4th Respondents/Cross-Appellants

CASES REFERRED TO

- British Airways v. Akinyosoye (1995) 1 NWLR (Pt. 374) 722
 SPDC Nig. Ltd. v. Farah (1995) 3 NWLR (Pt. 382) 148
 D Jallea Ltd. v. Owoniboye Tech. Sew. Ltd. (1995) 4 NWLR (Pt. 391)
 534
 Asaboro v. Pan Ocean Oil Nig. Ltd. (2006) 4 NWLR (Pt. 971) 595
 Oguko v. Shellel (2004) 6 NWLR (Pt. 868) 17
 Osun State Govt. v. Dalami Nig. Ltd. (2007) All FWLR (Pt. 365) 438
 E Akinkunmi v. Sadiq (2001) 2 NWLR (Pt. 696) 101
 FRN v. Associate Motors Co. Ltd. (1998) 10 NWLR (Pt. 570) 441
 Obiefuna v. Okoye (1961) 1 SCNLR 144
 Mobil Producing Nig. Unltd v. LSEPA (2002) SC (Pt. 1) 26
 Ishola Balogun Ketu v. Onikoro (1984) 111 SC 265
 F Oyebanji v. Lawanson (2008) 6-7 SC 243
 Osho v. Foreign Finance Corp (1991) 4 NWLR (Pt. 195) 157
 A-G Kwara State v. Olawole (1999) 1 NWLR (Pt. 272) 645
 Izonkwe v. Nnadozie (1953) 14 WACA 961

STATUTES & RULES REFERRED TO

- Public Officers Protection Law Cap 114 Laws of Lagos State, s. 2(a)
 Limitation Law of 1994, s. 16 (2)
 Public Acquisition Law of 1974
 H Constitution of Federal Republic of Nigeria 1999, ss. 36, 233 (1)(5)
 High Court of Lagos State (Civil Procedure Rules) 1994, O. 17 r. 11,
 O. 19 rr. 1-8, O.22 r. 2

LEAD JUDGMENT BY ADEKEYE JSC

This is an appeal against the judgment of the Court of Appeal Lagos Division delivered on the 4th of July, 2000. The judgment of the Court Appeal affirmed the judgment of the High Court of Lagos State delivered on the 12th November, 1996. The facts of the case are that the plaintiff Oba John Ojomo now deceased commenced an action in the High Court of Lagos State against Dr. Tosin Ajayi as 3rd defendant, the Attorney-General of Lagos State as 1st defendant and the Military Governor of Lagos State as 2nd defendant. By order of the trial court, the plaintiff amended his statement of claim on the 4th December 1995, and thereupon claimed against the defendants as follows:

(a) A declaration that the acquisition and/or revocation of his Right of occupancy by Lagos State Government of his land at Opebi Village Ikeja covered by the registered Deed of conveyance dated 7th July 1977 and registered as No. 94 at pages 94 in volume 1635 Lagos State, is a nullity.

(b) An Order directing the immediate provision and grant to the plaintiff by the 1st and 2nd defendants of a parcel of land comparable in size in a comparable locality for a term of ninety years at a nominal ground rent of not more than one Kobo per annum free of all survey, stamping, registration and other charges.

Alternatively, against the defendants jointly and severally damages or compensation in the sum of N20,000,000 (Twenty Million Naira) for the unlawful confiscation and permanent eviction of the plaintiff from his aforementioned land.

(c) An Order directing the payment of mesne profits of damages or compensation for the unlawful occupation of the said land by the defendants from the date of purported acquisition thereof at the rate of N2,000,000 per annum until the date of payment.

The plaintiff unaware of the purported Notice of Acquisition was dismayed when the 3rd defendant relied on Lagos State Government Notice No. 140 contained in the Lagos State Gazette No. 11 volume 7 of 1974. The plaintiff engaged a Registered Surveyor, Ademola Ashipa who produced a composite plan LAT/90/LA/95; Exhibit E which showed that out of the plaintiff's land contained in his deed of conveyance; Exhibit A measuring 5592.184 square metres, only 1485 square metres edged Blue in area in Exhibit E falls within

the area of Acquisition. It is evident from the composite plan; Exhibit E that the plaintiff's land falls within his predecessor-in-title's land Alhaji Isiba verged Green. The area verged Blue covered by the Notice of Acquisition encroached upon the plaintiff's land verged Red. The 1st and 2nd defendants, the Military Governor of Lagos State and the Attorney-General of Lagos State though were served with all Court processes did not file their defence to the case. The 3rd defendant who filed a defence to the case, engaged in applying for several adjournments including filing motions to amend his statement of defence. At the stage when the plaintiff had closed his case, the 3rd defendant brought summons to dismiss or strike out the action for lack of jurisdiction on the ground that the case is statute barred by the limitation law of Lagos. Though it took the 3rd defendant three years after this suit was instituted before his statement of defence was filed, he did not plead facts raising the statute of limitation or the defence of Public Officers Protection Law Cap 114 Laws of Lagos State. The defence of Public Officers Protection Law and the Limitation Law of 1994 are special defences which in accordance with Order 17 Rule 11 of the High Court of Lagos State Civil Procedure Rules 1994 must be specially or specifically pleaded. The learned trial judge was however of the impression that the summons dated the 2nd of August 1996 brought after issues have long been joined by the parties and the plaintiff had called all his witnesses and closed his case was brought to stall the proceedings. The learned trial judge after hearing arguments from both parties dismissed the application in its entirety and ruled that the 3rd defendant shall put up his defence and at the end of his defence he would be allowed to raise any point of law the learned senior advocate may wish to put up. The 3rd defendants counsel continued to apply for adjournments to contact the 3rd defendant. On the 27th of September, 1996 the learned trial judge refused to grant any further adjournment sought by the 3rd defendant in the matter and closed his case. On the 12th of November 1996 the learned trial judge delivered judgment and granted the reliefs sought by the plaintiff in the Amended Statement of claim (vide pages 137-147 of the record). The learned trial judge awarded the sum of N100,000 per annum with effect from 1st of January 1986 until possession is yielded. Having been aggrieved by the decision of the learned trial judge the 3rd defendant appealed to the

Court of Appeal. In the judgment of the Court, the learned justice relied on the cases of *Odusote v. Odusote* (1971) All NLR pg. 221 and *Solanke v. Ajibola* (1965) 1 All NLR 46 at pg. 54 to hold that:-

“With these number of adjournments at the instance of the appellant the impression, one gets is that he was not diligent. It is useless course for a party to continuously employ tactics to delay the disposal of cases expeditiously by 28th September, 1996 even after the series of adjournments, the appellants counsel was not sure of where the appellant was. Hence the learned trial judge was correct not to accede to further request for an adjournment for ample opportunity to hear his own side of the story has been given”. Vide pages 215 lines 5 - 13. The Court of Appeal further held at pg. 217 lines 8 -15 that:

“That is what happened in the instant case. The respondent and the appellant had joined issues on their pleadings. Nowhere did the appellant plead facts raising issues of Notices of Acquisition and Limitation arising out of Public Acquisition Law which he now sought to raise in his summons for directions of 2nd August 1996.

Respondent had closed his case and the 3rd defendant had sought several adjournments but now brought the summons. The summons is definitely misconceived and was designed merely to halt the proceedings of the lower court”.

The 1st and 2nd defendants, the Military Governor of Lagos State and the Attorney - General Lagos State did not appeal against the judgment of the High Court and the Court of Appeal. The 3rd defendant/appellant filed a further appeal to this court against the judgment of the Court of Appeal. Oba John Ojomo was represented at the Court of Appeal by Princess (Mrs.) Olajumoke Adebisi and Prince Adetoun Ojomo as the 1st set of respondents. While the 3rd and 4th respondents on 25th of September 2007 obtained an order for extension of time to cross-appeal against the judgment of the Court of Appeal dated 4th July, 2000. At the hearing of the appeal on 13/2/2002 the appellant adopted and relied on the appellant's amended, brief of argument deemed filed on 25/9/07 and the reply brief filed on 19/11/09. The appellant distilled six issues for determination from the grounds of appeal as follows:

1) When does a cause of action accrue to a plaintiff and in this case is the action of the plaintiff/respondent statute-barred.

2) Whether the issue of jurisdiction could be raised at any stage of the proceedings.

3) Whether the court below was justified in holding that the rules of natural justice, fair trial and fair hearing were observed in this case when the 3rd defendant/appellant's defence was unilaterally closed by the court on a date fixed for ruling on a preliminary objection raised by the plaintiff/respondent.

4) Whether the Court of Appeal was right in upholding the decision of the court that the acquisition notice is null and void and in so far as it relates to the portion of the respondent's land which fall's within the notice of acquisition.

5) Whether from the state of pleadings there was a cause of action in this case to warrant the judgment of the court below.

6) Whether the court below was right in affirming the findings of fact and evaluation of evidence in the circumstance of the case.

The 1st and 2nd respondents adopted and relied upon the 1st and 2nd respondent's further amended brief of argument deemed filed on 10/11/09. The 1st and 2nd respondents settled five issues for determination as follows:

1) Whether the plaintiff/respondent's case was statute barred.

2) Whether the Court of Appeal was right in holding that the validity and extent of the Notice of Acquisition in relation to the land in dispute can only be determined after hearing evidence on both sides.

3) Whether the Court of Appeal was right when they held that the learned trial judge was correct not to accede to further request for an adjournment as the 3rd defendant was given opportunity to be heard on Ground 5 of the Amended Notice of Appeal. Issue to be argued in alternative to notice of preliminary objection.

4) Whether the Court of Appeal was right in upholding the judgment of the trial court that the Acquisition Notice is null and void in so far as it relates to the portion of the respondent's land.

5) Whether the Court of Appeal was right when they confirmed the findings of fact made by the trial court.

I intend to be guided by the issues formulated by the appellants. The plaintiffs/respondents filed notice of Preliminary Objection later embodied in their brief against grounds 5 and 9 of the Notice of Appeal and issues Nos. 1 and 3 of the amended appellant's brief.

The court is urged to strike out the grounds of appeal and the issues formulated from them for being incompetent. The objection to my mind is adequately covered by the issues for determination raised in the main appeal. The objection is therefore over-ruled for the avoidance of repetition. I intend to cover them extensively in the main appeal. B

Issue One:

When does a cause of action accrue to a plaintiff and in this case is the action of the plaintiff/respondent statute-barred.

The appellant considered this issue under three sub-heads as follows: C

a) Whether the plaintiff's/ 1st respondent's suit is statute barred in the light of the provisions of the Lagos State Limitation Law.

b) Whether the plaintiff's/ 1st respondent's suit is statute barred in the light of the provisions of the Public Officers Protection Act. D

c) Whether the title of the plaintiff is not caught by the rule Nemo Dat Quod Non Habet since the Lagos State Government acquired the land in dispute in 1974 while the plaintiff purchased the land in dispute in 1977 three years later.

As regards (a) above the appellant submitted that the 1st respondent's action was statute barred by virtue of Section 16 (2) of Lagos State Limitation Law of 1994 and Section 2 (a) of the Public Officers Protection Law. The Lagos State Government acquired the land in dispute on 16/4/74 while the 1st respondent purchased the land 3 years later but commenced action in respect of the government acquisition in 1991, seventeen years thereafter. The land was acquired by Lagos State Government by Government Notice No. 140 Public Acquisition Law Chapter 150 published in Lagos State Gazette No. 11 Vol. 7 of 16th April 1974. A cause of action accrued as from the date the government acquisition is published in the government gazette. University of Ibadan vs. Adetoro (1991) 4 NWLR pt. 542, pg. 404, National University Commission vs. Oluwo 2001 3 NWLR pt. 699, pg. 40 at 107. Under Section 2 (a) of the Public Officers Protection Law the action against the Lagos State Government for the acquisition of the land at Opebi Village was not commenced within three months next after being aware of the acquisition in 1986 but the plaintiffs/respondent's waited till 1991 to challenge the validity of the acquisition in court. The appellant cited the E F G H

cases of Permanent Secretary, Ministry of Works Kwara State Vs Balogun (1975) NSCC pg.292, Ibrahim vs. JSC (1998) 14 NWLR pt.584, pg. 1, Offoboche vs. Ogoja Local Government (2001) 16 NWLR pt. 739, pg. 458.

The appellant submitted that the 1st respondent's predecessor in-title had no title in 1977 to pass unto the 1st respondent under the doctrine of *Nemo Dat Quod Non Habet* as the Lagos State acquired the land in 1974. In the circumstance the principal relief of the 1st respondent in the Amended Statement of Claim seeking for a declaration that the acquisition/revocation of the right of Occupancy of the plaintiff by the Lagos State Government is a nullity and cannot avail him. Revocation and acquisition affected his predecessor-in-title who was on the land in 1974. The land purchased by the 1st respondent in 1977 from Alhaji Momoh Isiba was a Government acquired land. The 1st respondent had no locus standi to institute this action against the Lagos State Government or the appellant who bought land from the Lagos State Government. The appellant referred to the case of *A-G Kaduna State vs. Mallam Umaru Hassan* (1985) 2 NWLR pt. 8. The contention of the appellant is that the action has become statute barred having been instituted outside the twelve years stipulated by Section 16 (2) of Lagos State Limitation Law of 1994, while the right of action has become extinguished, having instituted the cause of action outside the three months statutory period allowed by Section (2) Public Officer Protection Law.

The 1st respondent replied to this issue by submitting that the appellant did not plead the Limitation Law and that he is a public officer in his statement of defence. Both are special defences which must be specially pleaded under Order 17 Rule 11 of the High Court of Lagos State Civil Procedure Rules 1994. The marginal note of this Rule indicate that certain facts must be specially pleaded of which the Limitation Law is one of them. The 1st respondent emphasized that Dr. Tosin Ajayi is not entitled to take benefit of the special defence of Public Officers Protection Law Cap 114 Laws of Lagos State because he is not a public officer. In that a party who challenges the competence of a court on the basis of certain facts but fails to put in issue when those facts were pleaded, stand the risk of being precluded at a later stage when the proceedings have been brought to a final conclusion, from re-opening that issue of fact. In this case the appellant

did not plead the Limitation Law and even if it is applicable the court cannot grant the defendants the benefit of the Limitation Law contrary to the rules of pleadings and the principal of avoidance of surprise. The plaintiff/respondent emphasized that his case is not statute-barred by the provisions of Section 16 (2) of the Limitation Law of Lagos State. By virtue of paragraphs 12,18, 19 and 23 of the amended statement of claim dated 4th December, 1995 the validity of the notice of Acquisition raised by the plaintiff namely lack of service, purpose of acquisition not stated and the land in dispute falling outside the land covered by the Lagos State Government Notice No. 140 requires that oral evidence be taken from both parties to determine the issues as decided by the learned trial judge in his ruling while dismissing the summons of the appellant dated the 2nd of August 1996. The plaintiff/respondent instituted an action to challenge the acquisition of land as no legislation authorizes any person or authority in Lagos State to acquire private land save under statutory provision which include stating bona fide and with precision the public purpose for which the land was being acquired and to use the acquired land for that purpose only.

In paragraph 23 of the Amended statement of claim and the evidence of Ademola Ashipa a surveyor, the land in dispute falls outside the land covered by Lagos State Government Notice No. 140 as shown in the composite plan LAT/90/LA/95. The learned trial judge was willing to consider the objection raised by the appellant to the jurisdiction of the court but was of the opinion that since the plaintiff/respondent had closed his case, the appellant must put in his defence and both parties would thereafter be heard on the objection on oral evidence instead of affidavit evidence. This was affirmed by the Court of Appeal that issues of validity of an acquisition based on lack of service are issues that can only be determined after hearing evidence and not on affidavit evidence as the appellant wanted the court to rely on in this application. The plaintiff/respondent cited cases in support of his submission Mobil Producing Nigeria UNLTD v. LSEPA (2002) SC pt. 1, pg. 26; Ishola Balogun Ketu & Anor v. Chief Wahab Onikoro (1984) 111 SC 265; Oyebanji & Ors v. Lawanson (2008) 6-7 SC 243 at 251; Osho v. Foreign Finance corporation (1991) 4 NWLR, (pt. 195) pg. 157.

The contention of the appellant under Issue One is that the

plaintiff/1st respondent's suit is statute-barred by virtue of the provisions of Section 16 (2) of the Lagos State Limitation Law Cap 1994. Before going further to consider the argument and submission of parties on this issue I find it convenient here to re-state the provision of that Law. Section 16 (2) of the Lagos State Limitation Law 1994 reads:-

"An action for recovery of land shall not be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or if it accrued to same person through who he claims to that person".

The essence of a limitation law is that the legal right to enforce an action is not perpetual right but a right generally limited by statute. Where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Therefore a cause of action is statute-barred if legal proceedings cannot be commenced in respect of same because the period laid down by the limitation law had lapsed. An action which is not brought within the prescribed period offends the provisions of the law and does not give rise to a cause of action.

The yardsticks to determine whether an action is statute-barred are:

- a) The date when the cause of action accrued.***
- b) The date of commencement of the suit as indicated in the writ of summons.***
- c) Period of time prescribed to bringing an action to be ascertained from the statute in question.***

Time begins to run for the purposes of the limitation law from the date the cause of action accrues. British Airways Plc. v. Akinyosoye (1995) 1 NWLR (pt.374) pg.722, Shell Petroleum Development Co. (Nig.) Ltd. v. Farah (1995) 3 NWLR (pt.382) pg.148, Jallea Ltd. v. Owoniboye Tech. Sew. Ltd. (1995) 4 NWLR (pt.391) pg.534, Asaboro v. Pan Ocean Oil (Nig.) Ltd. (2006) 4 NWLR (pt.971) pg.595, Oguko v. Shell (2004) 6 NWLR (pt.868) pg.17, Osun State Government v. Dalami Nigeria Ltd. (2007) All FWLR (pt.365) pg.438, Akinkunmi v. Sadiq (2001) 2 NWLR (pt. 696) pg. 101, FRN v. Associate Motors Co. Ltd. (1998) 10 NWLR (pt.570) pg.441, Obiefuna v.

Okoye (1961) 1 SCNLR pg. 144.

The germane relief in the plaintiff/1st respondent's action reads
 "(a) A declaration that the acquisition and/or revocation of his right of occupancy by Lagos State Government of his land at Opebi village Ikeja covered by his registered deed of conveyance dated 7th July 1977 and registered as No. 94 at pg.94 in volume 1635 Lagos State is a nullity."

There is evidence that the land in Opebi village was acquired by the Lagos State Government by Government Notice 140 Public Acquisition Law Chapter 105 published in Lagos State of Nigeria Gazette No. 11 Vol. 7 of 16th April 1974. Under the Public Land Acquisition Law a cause of action or a right of action accrues as from the date the government acquisition is published in a government gazette. University of Ibadan v. Adetoro (1991) 4 NWLR (Pt. 542) 404, National University Commission v. Oluwo (2001) 3 NWLR (Pt. 699) 90. The plaintiff/respondent's root of title to the land was through purchase of the disputed land from one Alhaji Momoh Isiba by a Deed of conveyance Exhibit A dated the 7th of July 1977. PW3 Alhaji Aliu Afariogun a member of Iyade Oshoja family testified that the entire land in Opebi village belonged to his family. Alhaji Momoh Isiba purchased land from his family. He observed a building under construction on the land and the signboard of First Foundation Medical Centre in 1986. PW4 a registered surveyor employed by the plaintiff/respondent produced a composite plan of the entire land as Exhibit E. The land verged red on Exhibit E belongs to the plaintiff/respondent, the area verged blue is the area acquired by Lagos State Government. The land acquired by the Lagos State Government encroached on the 1st respondent's land by up to 1,485 square meters.

The cause of action in respect of the acquisition accrued on the 16th of April 1974 when the Lagos State Government published the acquisition in the gazette. The plaintiff/respondent instituted his action at the Lagos High Court on the 31st of July 1991. By simple mathematical calculation from the date the cause of action accrued, which was the date the land was acquired by the Lagos State Government and published in the gazette on the 16th of April 1974 and the date the action was filed in 1991 is 17 years. By virtue of Section 16(2)

of the Lagos State Limitation Law, the period for bringing an action for recovery of land is 12 years. The relevant section emphasized that an action for recovery of land shall not be brought after the expiration of 12 years from the date on which the right of action accrued to the person bringing it or if it accrued to some person through whom he claims to that person. An action which is not brought within the prescribed period of twelve years offends the provisions of Section 16(2) of the Lagos State Limitation Law 1994. The plaintiff/respondent's action is consequently statute-barred having been caught by the Statute of Limitation.

The appellant also raised the defence of Public Officers Protection Law. He claimed to have bought the disputed land from Lagos State Government. PW2 also testified that he saw people who claimed to have come from Lagos State Government as arrangement to acquire the land was then in progress. Before any issue as to whether the land in dispute has been properly acquired by a State Government and whether the notice of acquisition and revocation of grant was properly served by the government can be effectively adjudicated upon and determined by the trial court, it is imperative to join the State government concerned in the suit. Elegushi v. Oseni (2005) 14 NWLR (pt.945) pg.348, Mobil Oil (Nig.) Ltd. v. Nabsons Ltd. (1995) 7 NWLR (pt.407) pg.254. The plaintiff/respondent rightly joined the Attorney-General Lagos State and Military Governor of Lagos State. It has not at any stage of the action either before the court of first instance and the appellate court discontinued the action against any of these parties.

By virtue of Section 2 of the Public Officers Protection Act Cap 114 Laws of Lagos State –

“Any action commenced against any person for any act done in pursuance or execution or intended execution of any Act, Law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act or Law, duty or authority shall be brought within three months of the act, neglect or default complained of or in the case of a continuing damage or injury within three months next after the ceasing thereof.”

The word 'person' in that section does not only refer to natural persons but extend to public bodies, artificial persons sued by their official names or titles like the 3rd and 4th respondents in this case. The officials of the Lagos State Government were spotted on the land in 1986. An action was filed in respect of the acquisition in 1991 against the Military Governor of Lagos State and the Attorney-General of Lagos State. Where a law prescribes a period for instituting an action, proceedings cannot be instituted after that period. The plaintiff/respondent was out of time by five years. Ekeogu v. Abiri (1991) 3 NWLR (pt.179) pg.258. Yabugbe v. COP (1992) 4 NWLR (pt.234) pg.162. Ibrahim v. J.S.C. (1998) 14 NWLR (pt.584) pg.1

Once again, where an action is statute-barred, a plaintiff who might have had a cause of action loses the right to enforce the cause of action by judicial process because the period of time laid down by the limitation law for instituting such an action had elapsed and the right to commence the action would have been extinguished by law. Emiator v. Nigerian Army (1999) 12 NWLR (pt.631) pg.362, Ekeogu v. Abiri (1991) 3 NWLR (pt. 179) pg. 258, Permanent Secretary Ministry of Works Kwara State v. Balogun (1975) NSCC 292, Ibrahim v. J.S.C. (1998) 14 NWLR (pt.584) pg.1, Offoboche v. Ogoja L. G. (2001) 16 NWLR (pt.239) pg.458, Egbe v. Adefarasin (1985) 1 NWLR (pt.3) pg.549, Obiefuna v. Okoye (1961) 3 SCNL 144.

The plaintiff/respondent argued that the Public Officers Protection Law is a limitation statute. This is a special defence like fraud, estoppels, res judicata hence it must be specifically pleaded by a defendant before he can rely on it in any proceedings. The reason is to avoid taking the plaintiff by surprise as a limitation statute is not meant to be used to ambush the other party. Where such a defence is not pleaded by the defendant in the Statement of Defence in the court of first instance, the defendant can neither raise it nor rely on it on appeal. The plaintiffs/respondents cited Order 17 Rule 11 of the High Court of Lagos State Civil Procedure Rules 1994 which provides that:

"The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable or that the transaction is either void or voidable in

point of law and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the proceedings as for instance fraud, limitation law, Law of Lagos State release payment, performance, facts showing illegality either by an enactment or common law, or by the Law Reform (Contract) Law, Laws of Lagos State."

At the close of the case of the plaintiffs/respondents, the appellant filed summons dated 2nd August 1996 through his new counsel. The appellant's learned senior counsel raised the issue of lack of jurisdiction of the trial court as the suit is statute-barred and that the plaintiff has no locus standi to bring the action. These issues of law if properly examined and heard by the trial court are capable of terminating the proceedings. The learned trial judge's conception was that the summons dated the 2nd of August 1996 was another delay tactics by the appellant. He dismissed the application and ordered the 3rd defendant to put up his defence to the claim of the plaintiffs/respondents before the court and that at the end of his defence, he would be allowed to raise any part of law the learned senior counsel wished to raise. The learned trial judge was ready and willing to entertain the points of law in respect of locus standi and limitation law, only after the appellant would have given evidence in support of his defence to the claim of the plaintiff/respondent.

This to my mind is a grave misconception of the principle of the law in issue. The whole basis of the preliminary point of law was to show the trial court that the action going by the writ and statement of claim was statute-barred and that the plaintiff/respondent had no locus standi to institute the action. Under such peculiar circumstance, this court held in the case of Adegun v. Ayinde (1993) 8 NWLR (pt.313) pg. 576 that:-

"It is well settled that where a defendant conceives that he has a good legal or equitable defence to an action, he is entitled as a matter of preliminary objection to the action to raise such a defence. Where a preliminary objection is that an action does not lie, it postulates that the action is incompetent and the court therefore lacks the requisite jurisdiction. Where an action can be decided on a preliminary objection, it is manifestly absurd to suggest that the court should take evidence."

The Court of Appeal surprisingly endorsing the grave omission of the learned trial court held at p. 217 lines 8-15 of the record that:

“The respondent and the appellant had joined issues on their pleadings. Nowhere did the appellant plead facts raising issues of Notice of Acquisition and limitation arising from Public Acquisition Law which he now sought to raise in his summons for Direction of 2/8/96. Respondent had closed its case and the 3rd defendant had sought several adjournments but now brought the summons. The summons is definitely misconceived and was merely designed to halt the proceedings of the lower court.”

At page 216 lines 7-18 the Court of Appeal held that:-

“The determination of the dispute in relation to the land acquired by the government and the issue of validity or otherwise acquired by the Notice of Acquisition based on lack of service are issues that can only be determined after hearing evidence, not on affidavit evidence, as the appellants wanted the court to rely on in this application. The learned trial Judge was quite right when he upheld the objection of the respondents counsel and directed the defendant to put up his defence and raise the point of law at the conclusion of the trial. So also is the issue of Jurisdiction. It requires evidence. It cannot be easily determined on affidavit evidence.”

Both lower courts were carried away by the conduct of the case by the appellant that they failed to advert their mind to the preliminary points of law raised in the summons. It is however trite that where the issue of limitation is raised in defence of an action, it is only proper that the issue should be addressed first as it makes no sense to decide the merit of a matter that is statute-barred. In the event of a successful plea of limitation law against a plaintiff’s right of action, the action becomes extinguished and un-maintainable at law. Muemue v. Gaji (2001) 2 NWLR (pt. 697) pg. 289, Egbe v. Adefarasin (1985) 1 NWLR (pt. 3) pg. 549, Sosan v. Ademuyiwa (1986) 2 NWLR (pt. 27) pg. 241. The appellant concluded that the transaction between the Plaintiff/1st respondent and his predecessors-in-title was caught up by the Doctrine of nemo dat quod non habet. As the amended statement of claim of the plaintiff/1st respondent at paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,20,21,22,23 and reliefs 1 and 2 agreed that the entire Opebi Village in Ikeja including the land in

dispute was acquired by Lagos State Government in 1974. The plaintiff/respondent bought this same acquired land from one Alhaji Momoh Isiba. It was not for the Lagos State Government to serve Notice of Acquisition on the plaintiff/respondent in that Exhibit A - the purported title document of the plaintiff/respondent came three years after the Lagos State Government had acquired the land in dispute at Opebi Village Ikeja. Alhaji Momoh Isiba had no title in law by 1977 to transfer to the plaintiff/respondent. The Deed of Conveyance Exhibit A has no legal effect. The plaintiff/respondent ought to have instituted the action against his predecessor in title and not against the Lagos State Government who had acquired the land three years before the transaction of sale between the plaintiff /1st respondent and Alhaji Momoh Isiba. The plaintiff/ respondent had no locus standi to maintain an action against the Lagos State Government and the appellant that bought the land from the Lagos State Government. The person who could maintain an action against the Lagos State Government and the appellant is Alhaji Momoh Isiba the predecessor-in-title of the plaintiff/respondent. The plaintiff/respondent's action is not justiciable as it is statute-barred. There is no dispute between the Lagos State Government who acquired the land in 1974 and the plaintiff/respondent who bought the land in 1977.

Locus Standi is the legal right of a party to an action to be heard in litigation before a court of law or tribunal. The term entails the legal capacity of instituting or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever. The guiding principles to determine whether a person has locus standi or not are:

a. He must be able to show that his civil rights and obligations have been or are in danger of being infringed.

b. The fact that a person may not succeed in the action is immaterial.

c. Whether the civil rights and obligations having been infringed depends on the particulars of the case.

d. The court should not give any unduly restrictive interpretation to the expression locus standi.

The tests for the determination of the locus standi of a person are:-

a. The action must be justiciable.

b. There must be a dispute between the parties.

Inakoju v. Adeleke (2007) 4 NWLR (pt.1025) pg.423, Akinnubi v. Akinnubi (1997) 2 NWLR (pt.486) pg. 144, Adesokan v. Adegorolu (1997) 3 NWLR (pt.493) pg.261, A-G Kaduna State v. Mallam Umaru Hassan (1985) NWLR (pt.8) pg.483, Elendu v. Ekwoaba (1995) 3 B NWLR (pt.386) pg. 704.

Locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the court before which an action is brought. Thus where there is no locus standi to file an action, the court cannot properly assume jurisdiction to entertain the action. Locus standi being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal by any of the parties without leave of court or by the court itself suo motu. The issue can be raised, after the plaintiff has duly filed his pleadings by a motion and or in a statement of defence. Locus standi to institute proceedings in a court is not dependent on the success or merits of a case; it is a condition precedent to the determination of a case on the merits. C

Owodunni v. Registered Trustees of C.C.C, (2000) 6 SC (pt.111) Pg.60, Madukolu v. Nkemdilim (1962) 2 SCNLR pg.314, Klifco v. Holfmann (1996) 3 NWLR (pt.435) pg. 276. ***The two lower courts fell into grave error in dismissing the summons filed by the appellant to raise the legal points of statute of limitation and locus standi by holding that legal points be raised at the conclusion of evidence on the legal reliefs sought by the plaintiff/respondent. The issue of locus standi is a condition precedent to the determination of a case on merit. Where a plaintiff has no locus standi to bring a suit, the suit becomes incompetent and the court lacks the jurisdiction to entertain it, the only order the court can make in the circumstance is that of dismissal. The two lower courts had obviously put the cart before the horse in their application of the operative principles in respect of the matter before them.*** D

In paragraph 23 of the Amended Statement of Claim of the plaintiff/respondent pages 39-44 of the Record of Appeal states:

“The plaintiff avers that the land in dispute falls outside the

land covered by Lagos State Government Notice No. 140 as shown in composite plan LAJ/90/LA/95 prepared by Ademola Ashipa.”

The foregoing averment being at variance with his claim and reliefs predicated on the acquisition, one wonders why he instituted this action against the appellant and cross-appellants/respondents. I resolve this issue in favour of the appellant.

Issue Two

Whether the issue of jurisdiction could not be raised at any stage of the proceedings.

The appellant submitted that the lower courts had no jurisdiction to entertain this matter as it was ab initio statute-barred. By the doctrine of *Nemo Dat Quod Non Habet*, the plaintiff /1st respondent’s purported vendor had no title in 1977 to pass to him as the Lagos State Government acquired the land in dispute in 1974. Further in the Ruling dated 27/6/96 at page 90 lines 24-29 and in the judgment at page 144 lines 7 -8, the learned trial judge dismissed the preliminary objection on jurisdiction holding that the issue of jurisdiction raised by the appellant at the close of the plaintiff/ 1st respondent’s case was too late in the proceedings, “*a delay tactics*” and that the appellant can through his learned senior counsel raise any point of law he may wish at the end of the defence. The Court of Appeal affirmed the reasoning of the learned trial judge and at page 215 lines 15-27 of the Records relied on Order 22 Rule 2 of the Lagos State High Court Civil Procedure Rules of 1994 which provides for a party to raise by his pleadings any point of law and unless the court otherwise orders, any point of law so raised shall be disposed off by the judge who tries the cause at and after the trial. The court held that parties cannot isolate certain issues for determination. The Court of appeal was wrong to have held that the issue of jurisdiction requires evidence. The appellant defined jurisdiction and that Order 22 Rule 20 has nothing to do with the procedure of preliminary objection in regard to the jurisdiction of court.

This court made a clear distinction between demurrer and jurisdiction going by the case of *NDIC v. CBN (2004) 7 NWLR (pt.766) pg.272 pt pages 244*. The appellant submitted that objection to jurisdiction can be taken on the basis of statement of claim writ of summons and on the basis of the evidence received. It was misleading to equate demurrer with objection to jurisdiction as the two lower courts

did. The appellant cited numerous cases in support of his submission on jurisdiction. Some of the cases are: - *Madukolu v. Nkemdilim* (1962) All NLR (Pt.2) pg.571, *Oloriode v. Oyeji & Ors* (1984) NSCC Vol. 15 297, *Aduwon & Ors v. Adeoti* (1990) 2 NWLR (pt.1320) PG. 271, *Western Steel Works Ltd. v. Iron & Steel Workers Union* (1986) 3 NWLR (pt.30) pg. 617, *Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd.* (1992) 5 NWLR (pt.244) pg.675 at 690, *Barclays Bank of Nig. Ltd. v. Central Bank of Nig. Ltd.* 119761 1 All NLR 409, *A-G of Kwara State v. Olawale* (1993) 1 NWLR (Pt.272) pg.645.

The plaintiff/1st respondent replied by reference to the series of Adjournments granted to the appellant before and after hearing of the case, at the close of the plaintiff/respondent's case. On the 2nd of August 1996, the appellant through his new counsel, Chief M. Ohwovorile SAN filed a summons praying the court to dismiss the action for lack of jurisdiction based on Limitation Law of Lagos State. The trial court dismissed the application and directed the 3rd defendant to put up the defence and raise the point of law at the end of his defence. The court on the 27th of September 1996 refused to grant any further adjournment to the appellant. The learned trial judge closed the case of the appellant. The plaintiff/respondent held that the court of Appeal was right when it held that the learned trial judge was right in upholding the objection of the plaintiff and in directing the 3rd defendant/appellant to put up his defence and raise the point of law at the end of his defence. The plaintiff/respondent further submitted that the court of Appeal was right when it held that evidence was necessary to determine the validity or otherwise of the Notice of acquisition. The Court of Appeal held that the appellant did plead the issues of limitation he now sought to raise in his summons dated 2nd August 1996 when he was to open his defence. The Court of Appeal saw the application as a delay tactics to stall the trial of the case before the trial court.

It is necessary to recount what transpired before the trial court and the rationale behind the reaction of the Court of Appeal to the Ruling and judgment of the trial court. Before and after the commencement of trial in this suit, the learned trial judge had indulged the appellant with series of adjournments. The appellant changed counsel and on the 2nd of August 1996 filed a summons raising the issue of statute of limitation and locus standi of the plaintiff/respond-

ent to institute the action, the court perceived the application as a delay tactics to stall the trial of the case. The court and the plaintiff/respondent saw the point of law relating to limitation law as one of those special defences which must be specially or specifically pleaded by the defendant according to order 17 rule 11 of the High court of
B Lagos State Civil Procedure Rules 1994. The court was persuaded that after trial had commenced, it is not open to any party to isolate certain issues for determination as cases are not tried in piecemeal manner, particularly when the matter was then part-heard. The court
C dismissed the application and directed the learned senior counsel to raise the point of law at the end of the defence. The court decided to hear both parties on the point of law raised after close of evidence.

The Court of Appeal affirmed the reasoning of the lower court and relied on Order 22 Rule 2 of the Lagos State High Court Civil
D Procedure Rules 1994 which stipulates that a party may raise by his pleadings any point of law and unless the court otherwise orders, any point of law so raised shall be disposed of by the judge who tries the case at or after the trial. The court went further to hold that it is not open to a party under the rules to isolate certain issues for determi-
E nation. Consequently the Court of Appeal concluded that the issue of jurisdiction requires evidence as it cannot be determined on affidavit evidence (vide pg. 216 lines 16-17).

The foregoing findings of the two lower courts are a miscon-
F ception of the principles of law relating to jurisdiction. The two points of law raised by the appellant's senior learned counsel in the application dated the 2nd of August 1996 are fundamental issues of jurisdiction. Limitation Law and Locus Standi are both threshold issues which can be raised any time or for the first in the Court of Appeal or in the
G Supreme Court. It is not limited to being raised as a special defence and pleading them specifically as required by the Rules of court under Order 22 Rule 2 of the Lagos State High Court Civil Procedure Law. It transcends any high court Rules. It can be raised by preliminary objection at any stage of the proceedings before any court by
H any of the parties or even suo motu by the court. It is therefore noteworthy that an application or preliminary objection seeking an order to strike out a suit for being incompetent on the ground of absence of jurisdiction is not a demurrer and therefore can be filed and taken even before the defendant files his statement of defence

or without the defendant filing a statement of defence. The reason being that the issue of jurisdiction can be raised at any time.

In addition the relevant things to be considered by the court in determining the issues of jurisdiction are the facts as deposed to in affidavits, the writ of summons and the statement of claim where one had to be filed and served. The statement of defence is not one of the relevant materials for that purpose. In the case of National Deposit Insurance Corporation v. Central Bank of Nigeria (2002) 7 NWLR (Pt.766) pg.272 pages 296-297, this court identified the difference between demurrer and objection to jurisdiction by holding that -

“There is distinction between objection to Jurisdiction and demurrer. It is misleading to equate demurrer with objection to jurisdiction. It is a standing principle that in demurrer, the plaintiff must plead and it is upon that pleading that the defendant will contend that accepting all the facts pleaded to be true, the plaintiff has no cause of action or where appropriate no locus standi. The issue of jurisdiction is not a matter for demurrer proceedings. It is much more fundamental than that and does not entirely depend as such on what a plaintiff may plead as facts to prove the relief he seeks. What it involves is what will enable the plaintiff to seek a hearing in court over his grievance and get it resolved because he is able to show that the court is empowered to entertain the subject matter. It does not always follow that he must plead first in order to raise the issue of jurisdiction.”

It is trite that once an issue of jurisdiction is raised in any suit, the court must not give an order in the suit affecting the defendant until the issue of jurisdiction is settled. The trial court obviously made a wrong order in dismissing the application of the appellant based on issues of jurisdiction, locus standi of the plaintiff/respondent and Limitation Law. In the case of Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd. (1992) 5 NWLR (pt.244) Pg.675 at page 693, it was held that -

“Jurisdiction is the very basis on which any tribunal tries a case. It is the lifeline of all trials. A trial without jurisdiction is a nullity. This importance of jurisdiction is the reason why it can be raised at any stage of a case be it at trial, on appeal to the court of appeal or to this court (supreme court) a fortiori the court can suo motu raise it. It is

desirable that preliminary objection be raised early on the issue of jurisdiction but once it is apparent to any party that the court may not have jurisdiction, it can be raised even viva voce as in this case. It is always in the interest of justice to raise the issue of jurisdiction so as to save time and costs and to avoid a trial in nullity." *Western Steel Works Ltd. v. Iron & Steel Workers Union* (1986) 3 NWLR (Pt. 30) pg.617, *Oloba v. Akereja* (1988) 3 NWLR 9 (Pt. 84) pg. 508, *Odofin v. Agu* (1992) 3 NWLR (Pt. 229) pg. 350.

Furthermore, an objection to jurisdiction can be taken at any time depending on what materials are available. It would be taken in the following situations -

- a. On the basis of the statement of claim or**
- b. On the basis of the evidence received or**
- c. By a motion supported by affidavit giving full facts upon which reliance is placed or**

d. On the face of the writ of summons, where appropriate as to the capacity in which action was brought or against whom action is brought. *A-G Kwara State v. Olawole* (1999) 1 NWLR (pt.272) pg.645, *Izonkwe v. Nnadozie* (1953) 14 WACA 961, *Adeyemi y. Opeyoyi* (1976) 9 -10 SC pg.31, *Kasiwu Farms Ltd. v. A-G Bendel State* (1986) 1 NWLR (pt.19) pg. 695, *Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria* (1976) 1 All NLR 409, *National Bank (Nig.) Ltd. v. Shoyeye* (1977) 5 SC 181.

The objection of the appellant dated the 2nd of August 1996 as to the Limitation Law in respect of the acquisition of the disputed land by the Lagos State Government and the issue of the locus standi of the plaintiff/respondent ought to have been entertained by the lower court as threshold issues. The facts before the court based on the plaintiff/respondent's case reveal that, the action instituted by him was statute-barred by virtue of Section 16 (2) of the Lagos State Limitation Law 1994 as it was brought 17 years after the acquisition instead of 12 years stipulated in the Limitation Law. Furthermore by the averments in the pleadings of the plaintiff/respondent he acquired the land from his predecessor-in-title on the 7th of July 1977, whereas Lagos State Government published the Acquisition of the land in the gazette on the 16th of April 1974. His predecessor-in-title was the owner and occupier of the land in 1974. The plaintiff/respondent lacked the locus standi to institute this action as legally, he has no axe

to grind with the Lagos State Government in respect of the acquisition. ***In effect, where there is a challenge to the jurisdiction of a court, the court must first assume jurisdiction to consider whether it has or lacks jurisdiction. In this case, the defect in the competence of the trial court to entertain the suit was fatal, while the entire proceedings before the court was a nullity no matter how well conducted or decided or the level of industry put into the trial and judgment by the learned counsel for the plaintiff/respondent and the learned trial judge. The absence of jurisdiction is irreparable in law and the only procedural duty of a court is to strike out the case. In view of the fact that the proceedings and judgment of the trial court was a nullity, the matter ends there. The Court of Appeal has nothing to consider and affirm.*** The rule in *U.A.C. v. Macfoy* (1961) WLR pg.1405 becomes operative as you cannot put something on nothing. ***The Supreme Court is always reluctant to overturn the concurrent judgments of the High Court and the Court of Appeal. Where concurrent judgments of the two lower courts appear to be perverse, occasion a miscarriage of justice, unreasonable and against the evidence adduced, or in violation of some principle of law and procedure, the Supreme Court will not allow them to stand.*** *Bayol v. Ahamba* (2001) 2 WLN 109, *Cameroun Airlines v. Otutuizu* (2011) 4 NWLR (pt.1238) pg.512, *Onwubuariri v. Igboasoiyi* (2011) 3 NWLR (Pt.1234) pg.357. In view of the fact that this appeal raised an issue of jurisdiction which is sustained on the first two issues, it will not be necessary to consider the other four issues. In the final analysis, there is merit in this appeal and it is hereby allowed. The judgment and orders of the two lower courts are accordingly set aside. Costs of the appeal is assessed at N50,000.00 against the plaintiff/respondent.

CROSS APPEAL:

In the Amended Statement of Claim of the plaintiff Oba John Ojomo (deceased) dated the 4th of December 1995, at paragraph 23, the plaintiff claims against the defendants jointly and severally:-

1) A declaration that (1) the acquisition and/or (2) the revocation of his right of occupancy by the Lagos State Government of his land at Opebi village Ikeja covered by his registered deed of conveyance dated 7th July 1977 and registered as No. 94 at pg. 94 in vol-

ume 1635 Lagos State is a nullity.

2) An Order for immediate possession of the land subject-matter of the plaintiffs deed of conveyance.

3) Mesne profits in the sum of N2,000,000 per annum with effect from 1st January 1936 until possession is yielded up.

B The 1st and 2nd defendants the Military Governor of Lagos State and the Attorney-General of Lagos State who were served with all courts processes did not file their defence to the case; consequently they did not defend this action in the High Court. They did not appeal against the judgment of the High Court to the Court of Appeal either. On the 25th of September 2007, this court granted them as C 3rd and 4th respondents and order for extension of time to cross-appeal against, the judgment of the Court of Appeal dated the 4th of July 2000. The 3rd and 4th respondents/cross-appellants adopted D and relied on the cross- appellants' amended brief filed on 8/10/07 wherein three issues were formulated for determination as follows:-

1) Whether the court below was right when it held that after commencement of trial it is not open to a party to isolate certain issues for determination even when that issue touched on the jurisdiction of the court. E

2) Whether the court below was right when it held that it was proper for the trial judge to have dismissed the preliminary objection challenging its jurisdiction on the ground that the point of law raised therein to wit, statute of limitation was not placed in the statement of F defence.

3) Whether the court below was justified when it held that the rules of natural justice, fair play and fair hearing were observed in their case when the 3rd defendant/appellant's defence was closed on G a date not fixed for hearing or for the defence to open.

The 1st and 2nd respondents raised a preliminary objection against 3rd - 4th respondents/cross-appellants' cross-appeal and the amended brief as being incompetent and ought to be struck out. The plaintiff/respondent argued that the 3rd and 4th respondents/cross-appellants predicated all the issues on the judgment of the Court of H Appeal. Whereas they did not file a defence at the High Court and were not a party at the trial before the court. They did not appeal against the ruling of the High Court dated the 27th September 1996 or the judgment of the court dated the 22nd September 1996. The

grounds of appeal did not arise from the Ruling of the 27th of September 1996. The 3rd and 4th respondents have no legal grievance against the Ruling of the High Court dated 27th of September 1996 in respect of the Summons on Notice dated 2nd August 1996 filed exclusively by the 3rd defendant/appellant, Dr. Tosin Ajayi. The 3rd and 4th respondents have no locus standi to appeal against the ruling dated 27th September 1996 based on the Summons on Notice dated the 2nd August 1996 a process filed by the 3rd defendant. The issues raised against the judgment of the Court of Appeal cannot be sustained as they have no legal grievances to canvas on the said issues. The 3rd and 4th respondents have no valid cross-appeal; they cannot challenge the judgment of the Court of Appeal dated the 4th of July 2004. The plaintiff/respondent cited cases in support of the submission like: Akinbiyi v. Adetabu (1956) SC NLR pg. 109, Kotoye v. CBN (1989) 1 NWLR, pt.98, pg.419, Akulaku v. Yongo (2002) 2 D SC (Pt. 11) pg. 45, Mobil Producing Nigeria Unltd. vs. LSEPA (2002) 12 SC Pt.1 pg. 26. The 3rd and 4th respondents replied to the foregoing with reference to the leave granted by this court to cross-appeal from the decision of the Court of Appeal delivered on that 4th of July 2000. The grounds of appeal filed in the cross-appeal arose from the decision of the Court of Appeal and not from the decision of the High Court. The grounds of appeal and issues formulated from them are valid and competent in law. The 3rd and 4th respondents/cross-appellants made reference to the provision of Section 233 (5) of the 1999 Constitution which provides that:

“Any right of appeal to the Supreme Court from the decisions of the Court of Appeal confirmed by this Section shall be exercisable in the case of a party thereto or the Supreme Court at the instance of any other person having an interest in the matter.”

The 3rd and 4th respondents maintained that they are parties on record in the Court of Appeal and therefore have a right of appeal against any decision made by the court as the plaintiff/respondent made than necessary parties on the suit. I have considered the arguments of both parties and I agree with the 3rd and 4th respondents/cross-appellants that they are still Parties on record in the suit and even in this appeal, as the plaintiff's/respondents did not file notice of discontinuance against them. On gleaning through the Record and the Amended brief of the 3rd and 4th respondents/cross-

appellants, the Notice of appeal, the issues raised from them are predicated on and emanated from the case of the appellant as 3rd defendant before the High Court, and his appeal to the Court of Appeal. The traditional role of a respondent in an appeal is to defend the judgment but the 3rd and 4th respondents did not support the judgment of the two lower courts. They have filed this cross-appeal in solidarity with the appellant as the Court of Appeal dismissed the appeal of the appellant and affirmed the judgment of the trial High Court. The trial High Court in the judgment delivered on the 12th November 1996 declared that the acquisition made by the 4th respondent/cross-appellant was not made for education and other social service while the order made against the 1st - 3rd defendants were made jointly and severally in terms of the plaintiffs amended statement of claim, dated 4/12/95. The order in the foregoing judgment affirmed by the Court of Appeal affected the cross-appellants. However, the three issues raised by the cross-appellants in their cross-appeal are issues which were subsumed in the issues raised in the main, appeal and covered by the argument of both parties. It will be merely repetitive to go over the issues in this cross-appeal. The issues of jurisdiction raised in the main appeal were sustained with the resultant effect of nullifying the entire proceedings before the court of first instance and consequently rendering the judgment of the Court of Appeal hollow. The objection to the cross-appeal is over-ruled. The cross-appeal is meritorious and it is allowed. No order as to costs.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, ADEKEYE, JSC just delivered. I agree with the reasoning and conclusion that the appeals have merit and should be allowed.

My learned brother has exhaustively dealt with the issues raised in the appeals and I have nothing useful to add particularly as the principles of law applicable to the facts are well settled. I therefore order accordingly and abide by all the consequential orders made in the said lead judgment including the order as to costs. Appeal and cross appeal allowed.

MUHAMMAD JSC

I was afforded the opportunity of reading before now, the judgment just delivered by my learned brother, Adekeye, JSC. I am in agreement with my lord in her reasoning and conclusion which I adopt as mine. I make no order as to costs. B

PETER-ODILI JSC

This is an appeal against the decision of the Court of Appeal Lagos Division delivered on the 4th July, 2002. The Court of Appeal dismissed the appeal and affirmed the judgment of the trial High Court of Lagos State. C

The Plaintiff at the trial Court commenced an action against the Defendant at the High Court of Lagos State claiming the following reliefs:- D

(a) A declaration that the acquisition and/or revocation of his right of occupancy by Lagos state Government of his land at Opebi village Ikeja (covered by his registered deed of conveyance dated 7th July 1997 and registered as No. 94 at Page 94 in volume 1635, Lagos state) is a nullity. E

(b) An order directing the immediate provision and grant to the plaintiff by the 1st and 2nd defendants of a parcel of land comparable size in a comparable locality for a term of ninety years at a nominal ground rent of not more than one kobo per annum, free of all survey, stamping, registration and other charges. F

Alternatively, against the defendants jointly and severally damages or compensation in the sum of N20,000,000.00 (Twenty million naira) for the unlawful confiscation and permanent eviction of the plaintiff from his aforementioned land. G

(c) An order directing the payment of mesne profits of damages or compensation for the unlawful occupation of the said land by the defendants from the date of purported acquisition thereof at the rate of N2,000,000.00 per annum until the date of payment. H

The plaintiff and the 3rd defendant filed their pleadings. The 1st and 3rd defendants did not file any statement of Defence. At the trial, the plaintiff called four witnesses. At the close of the plaintiff's case, 3rd defendant engaged a new counsel who brought an appli-

cation for striking out the suit on the ground that the court lacked the jurisdiction to entertain the matter as the suit is statute barred and that the plaintiff lacks the locus standi to institute the matter. The plaintiff filed a notice of preliminary objection to the 3rd defendant's application for striking out the suit on ground of jurisdiction, con-
 B tending inter-alia that the application was incompetent, as the issue of jurisdiction was not raised in time. The trial court on 27/9/96 sus- tained the objection and struck out the application on jurisdiction. The trial court then asked the 3rd defendant to open his case and
 C failure of which the trial court summarily closed 3rd defendant's de- fence and proceeded to deliver judgment in favour of the plaintiff. The 3rd defendant then appealed to the court of Appeal hereinafter referred to as the Lower Court, which court on 4th July 2000 dis- missed the appeal and affirmed the judgment of the trial court. The
 D 3rd defendant/appellant still dissatisfied with the judgment of the lower court has now appealed to this Honourable court. The 3rd Defend- ant/Appellant shall herein be referred to as the Appellant, while the Plaintiff/1stRespondent shall herein be referred to as the 1st Respond- ent while the 1st and 2nd Defendants/Respondents shall hereinafter
 E be referred to as the 2nd and 3rd Respondents. The judgment of the Lower Court is at pages 208 - 220 B of the record.

Mr. Ekeocha, learned counsel for the appellants on the 113/2/ 12 date of hearing adopted their Amended Brief filed on 13/9/07 and deemed filed on 25/9/07. He also adopted a Reply Brief on 19/
 F 11/07. In the Brief were crafted five issues for determination which are as follows:-

1. When does a cause of action accrue to a plaintiff and in this case is the action of the plaintiff/respondent statute-barred.
- G 2. Whether the issue of jurisdiction could not be raised at any stage of the proceedings.
3. Whether the court below was justified in holding that the rules of natural justice, fair trial and fair hearing were observed in this case when the 3rd defendant/appellant's defence was unilaterally
 H closed by the Court on a date fixed for ruling on a preliminary objec- tion raised by the plaintiff.
4. Whether the court of Appeal was right in upholding the decision of the trial court that the acquisition notice is null and void in so far as it relates to the portion of the respondent's land which fall

within the notice of acquisition, Exhibit 'D'.

5. Whether from the state of pleadings there was a cause of action in this case to warrant the judgment of the Courts below.

For the 1st and 2nd Respondents Mr. Jimoh-Lasisi SAN adopted their Brief filed on 6/7/09 and deemed filed on 10/11/09. The learned senior counsel referred to their Preliminary objection which argument is embedded in the brief. The Preliminary objection was raised upon the following:-

(1) Ground 5 of the amended Notice of Appeal and Issue No. 3 of the Amended Appellants Brief of Argument based on the said ground of appeal are incompetent and should be struck out.

(2) Ground 9 of the Amended Notice of Appeal and Issue 1 of the Amended Appellant's Brief of argument based on the ground are incompetent and should be struck out.

The grounds of the objection are as follows:-

1. The Court of Appeal in its Judgment at page 219 lines 17 - 27 of the record struck out ground 2 of the Notice of Appeal dealing with the closure of the 3rd defendant's/appellant's defence on the ground of failure to apply for extension of time to seek leave to appeal against the interlocutory ruling or order closing his defence in the Court of Appeal.

2. The Appellant has not challenged the striking order of Ground of the Notice Appeal dealing with the closure of his case by the Court of Appeal at p. 219 lines 17 - 27 of the record of Appeal.

3. Grounds 5 of the Amended Notice and Issue No.3 of the Amended Appellants' Brief of Argument based on the said ground is an appeal against the interlocutory decision of the High Court of Lagos State dated 27/09/1996 directly to the Supreme Court.

4. The Supreme Court has no jurisdiction to entertain appeals directly from the decision of the High Court. See Section 233 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

5. Ground 9 of the Amended Notice of Appeal and Issue No. 1 of Amended Appellant's Brief of argument raises the issue the case being statute barred by virtue of section 2 (a) of the public officers Protection Law cap 114 Laws of Lagos for the first time.

6. The issue of Limitation Law by virtue of section 2 (a) of the Public officers protection Law did not arise from the Judgment of the court of Appeal dated 4th July, 2000.

7. The 3rd Defendant/Appellant never raised the issue of the action being statute barred by virtue of section 2 (a) of the Public officers protection Law of Lagos state in his statement of Defence.

8. The issue of action being statute barred by virtue of Limitation Law by virtue of Section 2 (a) of the Public officers Protection Law of Lagos Now being canvassed in Ground 9 and Issue No. 1 of the Amended Appellant's Brief of argument did not raise from the decision of the High Court or the Judgment of the Court of Appeal dated 4th July 2000.

9. The issue of this action being statute barred by virtue of section 2 (a) of the public officers Protection Law of Lagos not having arisen from the decision of the High court or the Judgment of the court of Appeal dated 4th July 2000 is incompetent in law, consequently the Ground 9 of the amended Notice of Appeal and the issue No. 1 of the Amended Appellant's Brief of Argument based on Ground 9 should be struck out.

It was submitted by 1st and 2nd Respondents that the order of the Court of Appeal striking out ground 2 of the Notice of Appeal dealing with closure of the 3rd defendant/appellant's defence by the trial Court (page 17-27 of the record) is still subsisting and in full force as the Appellant has not appealed against the order of the Court of Appeal. It is necessary to reproduce Ground 5 of the Amended Notice of Appeal hereunder:-

"The learned Justices of the Court of Appeal erred in law when they held that the learned trial Judge was correct in closing the case of the 3rd Defendant/Appellant who could open his defence on 27th September 1996, when that date was fixed for ruling on the preliminary objection of the plaintiff/respondent thereby offending the rules of natural justice or fair hearing."

Learned Senior Advocate, Jimoh-Lasisi stated that ground 5 of the Amended Notice of Appeal is an appeal against the interlocutory decision of the High Court of Lagos directly to the Supreme Court has no such jurisdiction. He cited *Akulaku v Yongo* (2002) 2 SC (pt.11) 45 at 74. Also that the Supreme Court has jurisdiction to hear appeals directly from the High Court on issue which was never raised by the 3rd defendant/appellant in his Statement of Defence. He referred to Section 233 (1) of the 1999 Constitution.

In Reply, along with the reply brief it was canvassed for the

Appellants that the Limitation Law and Public Officers protection Law are not special defences which must be specially pleaded rather they are jurisdictional points of law which Section 74 (1) (a) of the Evidence has provided for the Courts to take judicial notice of all laws in the country. That the result is that where a Limitation law or the Public Officers Protection Law is raised by the Court suo motu or drawn to the attention of the court wither orally or by Motion on Notice or by Summons or by Affidavit Evidence at any stage in a proceedings in a case including for the first time at the Supreme Court, the court should take judicial notice of the law and apply it. He cited *Ibekwe v Isemb* (2009) 5 NWLR (Pt. 1134) 234 at 255; *Petro Jessica Enterprises Ltd v. Leventis Technical Co. Ltd* (1992) 5 NWLR (pt. 244) 675 at 693. He stated that in order to determine whether or not an action is statute barred the documents to be considered by the Court are the Writ of Summons and Statement of Claim only and not the Statement of Defence to handle the fundamental issue of Limitation Law. He cited *Eboiebe v NNPC* (1994) 5 NWLR (pt. 347) 649; *Sandra v Kukawa Local Council* (1991) 2 NWLR (Pt. 174) 379; *Oke v. Oke* (2006) 17 NWLR (pt. 1008) 224.

It is to be said that since the basis of this preliminary objection and grounds thereof having been covered in the arguments in issues 1 and 3 of the amended appellants Brief, it is best not to enter into the consideration thereof. Rather it is struck out so that the court can go into the main appeal where the questions raised in the objection are properly and fully dealt with.

I shall proceed with the Appeal proper. The Issues for determination of the Appellant in the Brief of Argument settled by Dr. Izinyon SAN and utilized in this appeal are as follows:-

ISSUES FOR DETERMINATION:

1. Whether the plaintiff/respondent's case was statute barred. Ground 1 of the Amended Notice of Appeal.

2. Whether the Court of Appeal was right in holding that the validity and extent of the Notice of acquisition in relation to the land in dispute can only be determined after hearing evidence on both sides. Grounds 2 and 3 of the Amended Notice of Appeal.

3. Whether the Court of Appeal was right when they held that the learned trial Judge was correct not to accede to further request for an adjournment as the 3rd defendant was given an opportunity

to be heard. Ground 5 of the Amended Notice of Appeal - ISSUES TO BE ARGUED IN ALTERNATIVE TO NOTICE OF PRELIMINARY OBJECTION.

4. Whether the court of Appeal was right in upholding the judgment of the trial court that the acquisition notice is null and void in so far as it relates to the portion of the Respondent's land. Ground 6 of the Amended Notice of Appeal.

5. Whether the court of Appeal was right when they confirmed the findings of fact made by the trial court Ground 12 of the Amended Notice of Appeal.

For the appellants it was submitted that the action in this case was not commenced until 1991 some 17 years after the accrual of the cause of action and so by virtue of Section 16 (2) of the Lagos State Limitation Law, the action was statute-barred having been caught by the Statute of Limitation. He cited the cases of *Akinwunmi v. Sadiq* (2001) 2 NWLR (Pt. 696) 101 at 111; *FBN Plc v. Associate Motors Co. Ltd* (1998) 10 NWLR (Pt. 570) 441; *Obiefuna v Okoye* (1961) 1 SCNLR 144. That to ascertain when an action is statute-barred the following enquiries must be made:-

(a) Seek to know when the cause of action accrued to the plaintiff.

(b) Check from the writ of Summons when the suit was instituted, and

(c) Ascertain from the statute in question what period of time is prescribed to bring the action.

That in the instant case, the cause of action arose on 16th April 1974 when the Lagos State Government published the Gazette showing that the land in dispute and all lands in Opebi Village, Ikeja had been acquired by the Government. However the Writ of summons was filed on 31st July 1991, a period of 17 years after the acquisition. That by that law the injured party had 12 years to bring the action but failed to do so. He cited *Merchantile Bank Nig Ltd v. Feteco Ltd* (1998) 3 NWLR (Pt.540) 143 at 156 - 157. Appellants further contended that the Plaintiff/1st Respondent became aware of the actions of the Lagos State government in 1986 but waited till 1991 to file the suit against the Military Governor of Lagos State and the Attorney General of Lagos State. That the Public Officers were protected since the action should have been brought within three months

next after the act complained of. He cited *Permanent Secretary, Ministry of Works Kwara State v Balogun* (1975) NSCC 292; *Ibrahim v JSC* (1998) 14 NWLR (Pt. 584) 1; *Offoboche v Ogoja L.G.* (2001) 16 NWLR (Pt. 739) 458. That the Plaintiff/1st Respondent ought to have proceeded against his predecessors-in-title and not against the Lagos State Government who had acquired the land three years before the transaction between plaintiff/1st respondent and Alhaji Momoh Isaiba. That if there was anybody that could maintain an action, it was the plaintiffs/1st respondent predecessors-in-title who were in possession in 1974 at the time the Lagos State Government acquired the land. Learned counsel stated that there was in fact no dispute between plaintiff /1st respondent and the Lagos State Government or the 3rd defendant/appellant that bought from the Lagos State Government. The bottom line being that plaintiff had no locus standi. He cited *Attorney General of Kaduna State v. Mallam Umaru Hassan* (1995) 2 NWLR (Pt. 8) 483. B C D

For the appellant it was further contended that the point of law raised after the plaintiff closed his case is on limitation and locus standi and there was no necessity to seek leave to raise them. He cited *Madukolu & Ors v Nkemdilim* (1962) All NLR (Pt.2) 571, *NDIC v CBN* (2002) 7 NWLR (Pt. 766) 272 at 294 - 297; *Oloriode & Ors v. Oyebi & Ors* (1984) NSCC Vol. 15 P.297. That appellant can raise the issue of jurisdiction at any stage even on appeal, up to the Supreme Court. He referred to *Aduwon & Ors v Adeoti* (1990) 2 NWLR (Pt. 132) 271 at 284; *Western Steel Works Ltd v. Iron & Steel Workers Union* (1986) 3 NWLR (pt. 30) 617. Also, Dr. Izinyon SAN for the Appellant submitted that objection to jurisdiction can be taken on the face of the writ of summons or on the basis of the statement of claim or evidence received. He cited *Attorney General of Kwara State v. Olawale* (1993) 1 NWLR (Pt. 272) 645 at 674 - 675; *Izenkwe v. Nnadozie* (1953) 14 WACA 361 at 363; *Barclays bank of Nigeria Ltd v. Central Bank of Nigeria Ltd* (1976) 1 All NLR 409; *National Bank (Nig.) Ltd v. Shoyeye* (1977) 5 SC 181 at 194. Learned senior counsel for the appellant said that the closure of the appellant's defence by the trial court when the case was fixed for ruling deprived the appellant of his right to fair hearing as enshrined under Section 36 of the 1999 Constitution of the Federal Republic of Nigeria. He cited *Unongo v. Aper Aku* (1983) 1 FNR 341 at 357, *Isiyaku Mo-* E F G H

hammed v Kano National Assembly (1968) 1 All NLR 42. Going on
 Dr. Izinyon SAN said that the plaintiff/1st respondent or PW2 could
 not possibly be served with a notice of acquisition of the land by the
 Lagos State Government in that they came into the land three years
 after the Government had by Exhibit "D" acquired the land. That
 B the Court below was wrong in law to have declared Exhibit "D" null
 and void in relation to the plaintiffs, land. He stated on that since by
 the Amended Statement of Claim the plaintiff /1st respondent stated
 that the land in dispute falls outside the land acquired by the Lagos
 C State Government this translates to plaintiff /1st Respondent not dis-
 closing any reasonable cause of action in this matter. He referred to
 Adimora v Ajufo & Ors (1988) 6 SCNJ 18 at 31. Dr. Izinyon SAN
 referred to certain pieces of evidence including Exhibits D, the Gov-
 ernment Gazette and the composite plan Exhibit E contending that
 D the pleadings of the plaintiff/1st respondent were at variance with the
 evidence laid and so both go to no issue. He cited Kaleo v Kalso
 (1999) 6 NWLR (Pt. 608) 639; Ofomaya v. Commissioner for Edu-
 cation (1995) 1 NWLR (Pt. 411) 69; Egbunike v. A.C.B. Ltd (1995)
 2 NWLR (Pt. 374) 34; Ugo v. Okafor (1996) 3 NWLR (Pt. 438) 542
 E Ogoja Local Government v Offoboche (1996) 7 NWLR (Pt.458) 48.

For the 1st and 2nd Respondents it was contended by counsel
 on their behalf Mr. Jimoh-Lasisi SAN that the Public Officers Protec-
 tion Law and the Limitation Law of 1994 are special defences and
 must be specially pleaded which defendant/appellant did not do. He
 F cited order 17 Rule 11 of the High court of Lagos State (Civil Proce-
 dure) Rules 1994. Also Order 19 Rule 18 of the same Rules, Mobil
 Producing Nigeria Unlimited v L.S.E.P.A. (2002) 12 SC (Pt. 1) 26 at
 38; Ishola Balogun Ketu & Anor v Chief Walahi Onikoro (1984) 10
 G SC 265 at 267 - 268; Oyebamiji & Ors v Lawanson (2008) 6-7 SC
 243 at 252. He further stated that the appellants had not challenged
 by Notice of Appeal the finding of the Court at page 216 of the
 Record on the matter of the trial court upholding the objection of
 Respondent's (at the Court below) counsel and directed defendant
 H to put up his defence and raise the point of law at the conclusion of
 the trial and also the issue of jurisdiction. He cited C.C. & Industry
 S.P.R. Limited v Ogun State Water Corporation (2002) 4 SC (Pt. II)
 86; Ejowhomu v Edok - Eter Mandilas Limited (1984) 9 SC 41 at
 90. Mr. Jimoh-Lasisi SAN went on to say that the burden of proof of

a valid acquisition on the state of pleading in the instant appeal which rested on the 3rd defendant/appellant who failed to discharge the burden. He cited *Osho v Foreign France Corporation* (1991) 4 NWLR (Pt. 184) 57. That after the plaintiff/respondent had closed his case and the 3rd defendant/appellant after several adjournments at his instance brought summons to dismiss or strike out the action for lack of jurisdiction on the ground that the case was statute barred by the Limitation Law of Lagos State. B

For the 1st and 2nd Respondents it was further shown what transpired in the course of the trial and the delay occasioned by the defendant/appellant and the appellant was not in a position to say he was denied fair hearing. He cited *Odusote v Odusote* (1971) All NLR 221; *Solanke v Ajibola* (1968) 1 All NLR 46 at 54. Mr. Jimoh-Lasisi Senior Advocate said that the defendants including the 3rd defendant/appellant who were relying on the Notice of Acquisition out to produce evidence that person on land in 1974 were personally served with the Notice of Acquisition. That since no certificate of title was tendered at the trial Exhibit D; Notice of Acquisition is null and void as found by the Court of Appeal. He cited *Atunrase v Federal. Commissioner for Works and Housing* (1975) 1 All NLR (pt. 1) 331. C D E

In summary the version as put forward by the appellants is that the appeal be allowed as the plaintiff/1st respondent's suit is statute barred sequel to Section 16 (2) of Lagos State Limitation Law of 1994 and Section 2 (a) of the Public Officers Protection Law since the acquisition was done on 16/4/94 and the plaintiff/respondent brought the action 17 years later even though he made the purchase on 7/7/77. That the 1st respondent's predecessor-in-title had no title as at that 1977 when 1st respondent purportedly made the purchase. That the closure of the appellant's case on the same date of 27/9/96 when the ruling was delivered occasioned a denial of fair hearing on the appellant contrary to Section 36 of the 1999 Constitution. Finally that since the suit was statute-barred ab initio the court had no jurisdiction to entertain the action. F G

For the plaintiff /respondent it is contended that the Court of Appeal was right to have upheld what the learned trial Judge did when it held that there was need for evidence to be proffered to determine the validity of the Notice of Acquisition and the extent. That the exercise of the discretion of the trial court not to accede to H

any further request for adjournment was without fault. Also that there was no plea by the 3rd Defendant to plead issues of Notice of acquisition and Limitation arising from the public acquisition which the 3rd defendant sought raise in his defence and no leave had been sought to canvass ground 2 of the Notice of Appeal challenging the refusal of adjournment and closure of the case since the court of Appeal had held that the 3rd defendant/appellant used the delay tactics to stall the trial.

On the strong position of the appellant that the action was statute barred and could not really take off, I would want to recapture the essence of a statute of limitation. As Tobi JCA (as then was) states in *Merchantile bank Nig. Ltd v. Feteco Ltd* (1998) 3 NWLR (pt.540) 142 at 156 - 157 as follows:-

"A statute on limitation of action is designed to stop or avoid situation where a plaintiff can commence action any time he feels like doing so, even where human memory would normally have faded and therefore failed, put in another language, by the statute of limitation, a plaintiff has not the freedom of the air to sleep or slumber and make up at his own time to commence an action against a defendant. The different statutes of limitation which are essentially founded on the principle of equity and fair play will not avail such a sleeping or slumbering plaintiff."

As a follow up to the principle well laid out in the case cited above is the fact that a statute of limitation such as the public officers (Protection) Law in which the acquisition by the Lagos state Government through its officers fall into, the law removes the right of action, the right of enforcement and the right of judicial relief in a plaintiff and leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute-barred, that is to say, if such a cause of action is instituted outside the three months statutory period allowed by such law. See *Ibrahim v Judicial Service Commission* (1998) 14 NWLR (pt. 594) 1 at 31 - 33. The above is the law but situated in the present instance, the poser would be, does the principle on statute of limitation and the Public Officers Protection Law which on the face would seem relevant, apply. To answer that question I would refer and quote Order 1-7 Rule 11 of the High Court of Lagos State Civil Procedure Rules 1994 which provides thus:-

"The defendant or plaintiff (as the case may be) must raise by

his pleading all matters which show the action or counter claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the preceding pleadings as for instance fraud, Limitation Law, Laws of Lagos State release payment, performance facts showing illegality either by an enactment or common law or by the Law Reform (contracts) Law, Laws of Lagos State."

To underscore the essential part that must be brought in when pleading, Order 19 Rule 1-8 of the same High Court of Lagos State Civil Procedure Rules 1994 provides as follow:-

"In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of any enactment, he shall insert in the margin of his pleading the words "by statute" together with the year in which the enactment on which he relies was passed, and also the chapter and section of such enactment otherwise such defence shall be taken not to have been pleaded by virtue of any enactment."

It may be argued that those Rules of court are not mandatory from whichever line of thinking but that would be difficult to sustain in view of earlier interpretation of similar provisions by none less than this Apex Court. In the case of Mobil Producing Nigeria Unlimited v L.S.E.P.A. (2002) 12 SC (Pt. 1) 26 at 38 Ayoola JSC said:-

"A party who challenges the competence of a court on the basis of certain facts but fails to put in issue, those facts, stands the risk of being precluded at a later stage when the proceedings have been brought to a final conclusion from reopening that issue of fact."

This Court in the above had relied and followed an earlier decision in Katsina Local Authority v. Makudawa (1971) NSCC 119. Putting the principles and of course Rules of Court of trial in context, it is not in dispute that the appellant in the High court did not plead issues of Notice of Acquisition and Limitation arising from Public Acquisition vis-a-vis the Public Officers Protection Lagos. In circumstances such as this, this very court had put its stamp of authority on what should apply in the case of Ishola Balogun Ketu v. Chief Wahabi Onikoro (1984) 10 SC 265 anchored by Obaseki JSC thus -

"It is a cardinal rule of pleading that such a specific matter as

Limitation Law must be expressly set out or pleaded in the statement of defence. Once it is not pleaded the defendant cannot be granted the protection of that law. In this case, it is not pleaded and even if it is applicable, the court cannot grant the defendants the benefit of the Limitation Law contrary to the principle of the avoidance of surprise."

B On whether the Court of Appeal was right in upholding what the Trial Judge did in refusing further adjournment at the instance of the appellants an archival reference to the Records would help. It is as follows:-

C (i) On 29th June 1994 when trial was called the trial had to be adjourned to 21st, 26th and 27th October 1994 for hearing because Mr. Abak the 3rd defendant just served his statement of defence. See page 21 lines 2 - 34 to page 22 line 1 of the record.

(ii) On 19th December 1995 trial started and the plaintiff called D two witnesses.

(iii) On 5th February 1996 the matter had to be adjourned to 7th March 1996 because the defendants and their counsel were not in court.

(iv) on 3rd May 1996 when the 3rd defendant was to open his E defence he asked for adjournment on the ground that the 3rd defendant was out of the country. The trial court granted the adjournment and fixed the case for 24th May 1996.

(v) On 24th May 1996 Mr. Abak the 3rd defendant informed F the court that he has filed a motion to amend his statement of defence. The learned trial Judge heard the motion.

(vi) On 14th June 1996 when the case came for hearing the 3rd defendant and his counsel were not in Court. The trial Court adjourned the matter till 2nd July 1996 for further hearing (pages 64 G lines 25-33 of the record).

(vii) On 2nd July 1996 the 3rd defendant's counsel asked for adjournment. The trial court adjourned the case still 17th July 1996 and 19th July 1996 for defence to open their defence. (page 65 lines 13-20 of the record)

H (viii) On 17th July 1996 when the case was called the 3rd defendant was in court and Mr. Abak was not in Court. The trial Court stood the matter down. Later on 17th July 1996 when the case was called chief M. Ohwovorile SAN appeared for the 3rd defendant and stated that he has just been briefed. The case was

adjourned till 5th August 1996, 4th August 1996, and 16th August 1996 for further hearing (page 66 lines 9-27 of the record).

(ix) On 2nd August 1996 the 3rd defendant through his new counsel chief M. Ohwovoriole SAN filed a Summons dated 2nd August 1996 praying the court to dismiss and or striking out the action of the plaintiff for lack of jurisdiction based on Limitation Law of Lagos State. The plaintiff filed a Notice of Preliminary Objection to the summons dated 2nd August 1996. B

(x) The learned trial Judge upheld the objection of the plaintiff's counsel and directed the 3rd defendant to put up the defence and raise the point of law at the end of his defence (p. 91 lines 2 - 71. C

(xi) On 27th September 1996 the trial Judge called on the 3rd defendant to open his defence when his counsel Mrs. Ogunajo asked for adjournment which he learned trial Judge refused and closed the 3rd defendant's case. D

The 3rd defendant/appellant filed a Notice of Appeal dated 2nd October 1996 challenging the Ruling dated 27th September 1996 of the High Court upholding the Notice of Preliminary Objection against the Summons dated 2nd August 1996 and dismissing the summons (pp. 110-113 of the record). It is pertinent to observe E that the decision of learned trial Judge on 27th September 1996 refusing the adjournment sought by the 3rd defendant and the closure of the 3rd defendant's defence was not appealed against in the Notice of Appeal dated 2nd October 1996. On 12 November 1996 F the learned trial Judge, delivered judgment and granted the reliefs sought by the plaintiff in the Amended Statement of Claim (See pages 137 - 147 of the record). The 3rd defendant filed a Notice of Appeal against judgment dated 18th December 1996 (pp. 153 - 155). At the Court of Appeal the 3rd defendant/appellant obtained leave and G filed Amended Notice of Appeal dated 1st November 1999 (pp. 192 - 195 of the record). Leave to amend Notice of Appeal was granted on 20th November 1999 (p. 204 of the record).

Ground 2 of the Amended Notice of Appeal (pages 192 - 195 of the record) raises issue of fair hearing and closure of their case H which relates to the decision of High Court dated 27th September 1990 refusing adjournment and closing the 3rd defendant's case. It is respectfully submitted that the issue raised in ground 2 of the Amended Notice of Appeal (pages 192 - 195) does not relate to final

judgment which the Amended Notice of Appeal is complaining about. The Court of Appeal dealt with the issue raised on fair hearing, refusal of adjournment and closure of the 3rd defendant's case at pages 212 - 213 of the record. At page 213 lines 13 - 15 of the record the Court of Appeal said: *"The issue raised here touches on the exercise of the discretion of a Judge to grant or refuse adjournment and the correct procedure to follow."*

Based on what transpired previously in the course of trial, the Court of Appeal relying on the decisions of the Supreme Court in *Odusote v Odusote (1971) All NLR 221*, *Solanke v Ajibola (1968) 1 All NLR 45* at 54 at page 215 lines 5 - 13 said:

"With this number of adjournments at the instance of the appellant the impression one gets is that he was not diligent. It is useless course for a party to continuously employ tactics to delay the disposal of cases expeditiously..."

By 28th September 1995, even after the series of adjournments, the appellant's counsel was not sure of where the appellant was. Hence the learned trial Judge was correct not to accede to further request for an adjournment as ample opportunity to hear his own side of the story has been given."

That the Appellant in the light of all the indulgences granted him by the trial Court bending backwards and forwards as the whim took the appellant would raise the matter of not being properly heard is a little too much to swallow. The trial Court had a discretion over those adjournments and exercised it but whether judiciously, judicially can only be answered after the court had satisfied itself that the jurisdiction to do so was available apart from whether or not the plaintiff now respondent had the locus standi to bring the action.

Clearly what transpired at the court of trial and hurriedly affirmed by the Court of Appeal is that with the many adjournments shown up above and displayed in the records, the trial court lost patience with the appellant and refused to entertain the newly filed summons of the appellant dated the 2nd August, 1996 and proceeded to rule that the issue of a lack of jurisdiction as the suit of the plaintiff/respondent was statute barred and that the plaintiff had no locus standi to bring the action, that the objection could not fly and overruling that application proceeded to hear the suit on the merits. That was a wrong approach which stemmed from the trial courts

perception of the several adjournments to mean a delay tactic which gave the impression that the application to bring in the summons in which was well pleaded the matter of the suit of the plaintiff being statute barred and the plaintiff lacking the necessary standing. This error the court of Appeal fell into when it agreed with what the court of trial did. B

It must be said that however, the trial court felt about the attitude of the defendant now appellant on the raising of the issue of limitation of action or the matter being statute barred and that plaintiff had no locus standi, that court was obliged to give it the first shot since the issues had to do with whether or not the court had the authority or jurisdiction to enter into the matter. This is so that if the issue of jurisdiction succeeded that would terminate for all time the action of the plaintiff. See *Egbe v. Adefarasin* (1985) 1 NWLR (pt.3) 549, *Inakoju v. Adeleke*; *Adesokan v. Adegorolu* (1997) 3 NWLR D (pt.493) 261; *madukolu v. Nkemdilim* (1962) NLR 314. As to the time when an issue of jurisdiction can be raised at any time and at any stage of the proceedings even at this level on appeal. The point has to be reiterated that once it is raised, everything else has to stop to give the prime position of hearing on the jurisdictional issue. It cannot be said to have been brought too late however irritating, the process maybe. See *Oloba v. Akereja* (1988) 3 NWLR (Pt.84) 508; *Odofoin v. Agu* (1992) 3 NWLR (pt. 229) 350; *Adeyemi v. Opeyori* (1976) 9 - 10 SC 31. The conclusion from the foregoing and the fuller reasons in the lead judgment is that the objection of the appellant of 2nd august, 1996 raising the Limitation Law on the acquisition of the disputed land by the Lagos State Government and the matter of locus standi of the plaintiff/respondent ought not to have been dismissed by the trial court. It should have been upheld because the action instituted by the plaintiff/respondent was statute barred by virtue of Section 16(2) of the Lagos State Limitation Law 1994 as it was brought 17 years after the acquisition instead of within 12 years as provided for in that Limitation Law. Therefore the judgment of the Court of Appeal affirming what the trial court did is set aside and the appeal herein allowed. Costs of N50,000 awarded against the respondent. E F G H

CROSS-APPEAL:

The 3rd and 4th Respondents Cross-appealed by a Notice of

Cross-appeal filed on 8/10/07 on two grounds namely:-

GROUND 1:

The court below erred in law when it held that:

“after commencement of trial it is not open to a party under the rules to isolate certain issues for determination. Cases are not to be tried in piecemeal after evidence is taken especially when the matter is part heard (sic).”

GROUND 2:

The Court below erred in law when it held that the trial court in dismissing the defendant summons for direction because the issue of notice of acquisition and limitation arising from the public acquisition law raised in the objection was not pleaded in the Statement of Defence.

The Cross-Appellants prayed for the Court's order setting aside the decision of the Court below and remit the case back to the High Court for hearing of the objection and the case on its merit. Mr. Adejuyibi learned counsel for the Cross-appellants adopted their Amended Cross-Appellant's Brief settled by Lawal Pedro, Attorney General of Lagos state and filed on 8/10/07. Also adopted is their Reply Brief filed on 4/12/09. He urged the court to dismiss the preliminary objection of the 1st and 2nd Respondents/cross-Respondents. In the Brief were formulated three issues for determination as follows:-

1. Whether the Court below was right when it held that after commencement of trial it is not open to a party to isolate certain issue for determination even when that issue touches on the jurisdiction of the Court.

2. Whether the Court below was right when it held that it was proper for the trial Judge to have dismissed the Preliminary Objection challenging its jurisdiction on the ground that the point of law raised therein, to wit; statute of limitation was not pleaded in the Statement of Defence.

3. Whether the Court below was justified when it held that the rules of natural justice, fair play and fair hearing were observed in this case when the 3rd Defendant/Appellant's defence was closed on a date not fixed for hearing or for the defence to open.

The 1st and 2nd Respondents raised an objection on the grounds as follows:-

1. The 3rd and 4th Respondents were 1st and 2nd Defendants in the trial court (High Court of Lagos state) did not file a statement of Defence.

2. The 1st and 2nd Defendants now 3rd and 4th Respondents which did not appeal against the Ruling of the High court dated 27th September 1996 and the Judgment of the High court dated 22nd September.

PRELIMINARY OBJECTION:

Arguing this objection learned counsel for the cross-Respondents, Mr. Jimoh-Lasisi contended that the cross - Appellants have no legal grievance to appeal against the Ruling of the High court dated 27th September 1996 in respect of the summons Notice dated 2nd August 1996 filed by the 3rd defendant/appellant, Dr. Tosin Ajayi which ruling was affirmed by the court of Appeal in its judgment dated 4th July 2000. That in the case the two grounds of appeal in Notice of cross-appeal complains about the Ruling of High court the Notice of preliminary objection against the summons on Notice dated 2nd August 1996 filed by 3rd defendant/appellant which was confirmed by the court of Appeal in their Judgment dated 4th July 2000. That it is evident the cross-Appellants have no legal grievance in the dismissal of the 3rd Defendant/Applicant's summons on Notice dated 2nd August 1996 which they can complain about as they have done by way of Notice of Cross-appeal. He referred to *Kotoye v. CBN* (1989) 1 NWLR (pt.98) 419 at 445 - 446. That issue No. 3 raised in the 3rd and 4th Respondent's Amended Brief of argument is incompetent in law because issue No. 3 deals with the special defence of Limitation Law which is a matter of special defence which was never raised by the 3rd and 4th Respondents (1st and 2nd defendants) as they failed to file a defence in the High court. That the Supreme Court has no jurisdiction to entertain a defence which was not canvassed in the High court for the first time in the Supreme Court. He cited *Akulaku v. Yongo* (2002) 2 SC (Pt. II) 45 at 74. Mr. Jimoh-Lasisi SAN stated that Issues Nos. 1 and 2 formulated by the cross-appellants are incompetent and ought to be struck out. That if the Notice of cross-appeal is struck out on the ground of incompetence then the 3rd and 4th Respondents/cross-appellants would be precluded from attacking the Judgment of the court of Appeal as they had done in Issue No. 3 formulated in their Brief.

- Mr. Lawal Pedro, for the Cross-Appellants replying in accordance with their Reply Brief contended that the preliminary objection of the cross-Respondents is misconceived in that the grounds of cross-appeal arose from the decision of the court of Appeal and not the High court and so the issues are valid. He cited Section 233 (5) of the constitution. That cross-Appellants being parties on record in the court of Appeal have a right to appeal against any decision made by the court in which the 1st and 2nd Respondents as plaintiffs in the High Court had made the Cross-Appellants necessary parties as defendants. He cited *Eluebe v Omokhafa* (2004) 11 - 12 SC 60 at 70-71. He stated that by the decision of this court made on 25/9/2007 by which the Cross-Appellants were granted leave to cross-appeal from the decision of the Court of Appeal being subsisting and binding on the 1st and 2nd Cross-Respondents who are now stopped from raising the same issues to wit; non-participation in the proceedings in the Courts below, failure to appeal from the decision of the High Court, lack of grievance against the decision of the Lower courts which were raised in opposition to the 3rd and 4th Respondents/Cross-Appellants application for leave to cross-appeal. He referred to *Ladega v. Durosimi* (1978) 3 SC 91 at 101 - 102; *Fadiora v. Gbadebo* (1978) 3 SC 219. This preliminary objection is dismissed being a waste of time. The learned Attorney General said since the Cross-Respondents have no defence or answer to the cross-appeal as they had failed or neglected to respond to the arguments of the Cross-Appellants then they had impliedly conceded to their opponent. He cited *Adesanya v Otuewu* (1993) 1 NWLR (pt. 270) 414 at 456. The Cross-Appeal need not cause a splitting of hairs since the questions on the cross-appeal really have been answered in the appeal.
- Therefore embarking on a full discourse herein would be a journey into academia. Consequently from the detailed reasoning in the lead Judgment I allow the cross-appeal, the issues having been effectively dealt with in the main appeal especially in the lead judgment of O. O. Adekeye JSC.
- I abide by the consequential orders in the leading judgment on the main appeal and the cross-appeal.