

SUPREME COURT OF NIGERIA
FRIDAY 4TH MAY, 2012. SC. 375/2002
CORAM:- W. S. N. ONNOGHEN, I. T. MUHAMMAD,
N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, JJSC

1. ALHAJI (CHIEF) S.D.

AKERE & 13 ORS

..... APPELLANTS

(For themselves and on behalf of
Association of Landowners whose
land was acquired along
Araromi-Akufo in 1963)

AND

1. THE GOVERNOR OF

OYO STATE

2. ATTORNEY-GENERAL OF

OYO STATE

..... RESPONDENTS

3. COMMISSIONER FOR LANDS,

HOUSING AND PHYSICAL

PLANNING

4. COMMISSIONER FOR

AGRICULTURE AND NATURAL

RESOURCES

JURISDICTION - Fundamental nature - Where court has no jurisdiction - Any action it takes will be a nullity - Notwithstanding that the proceeding was well conducted (H1)

COURTS - Appeals - Jurisdiction - Determination - Trial or appellate court must first determine - Whether or not it has jurisdiction over matter - Presented to it for adjudication (H2)

APPEALS - Issues - Formulation - Any issue not related to ground of appeal is not only incompetent - But valueless to determination of the appeal - And must be ignored (H3)

APPEALS - Courts - Issue - Jurisdiction - As there is no appeal on issue of jurisdiction - Court of Appeal lacked jurisdiction to reopen

3472 Akere v. Gov. Oyo State (2012) 11-12 KLR (pt. 319) 3471;
the issue - Already settled by trial court (H4)

TRIBUNALS - Land tribunal - Judicial notice of - No evidence is required to prove existence or otherwise of the tribunal - As it is a matter court can take judicial notice of (H5)

EVIDENCE - Evaluation - Interference - Decision to apply s. 4(2) Land Use Act was based on improper evaluation - Hence Supreme Court can rightly intervene - Since credibility of witnesses is not involved (H6)

FACTS

Plaintiffs/appellants commenced this action by way of originating summons at the High Court of Oyo State, Ibadan, wherein they posed inter alia, the following question, whether appellants are entitled to be paid compensation including interest for delayed payment for their land compulsorily acquired in 1963. Defendants/respondents filed notice of preliminary objection to the hearing of the suit on the ground that the action is statute barred by virtue of section 10 of the Public Lands Acquisition Law Cap. 105 Laws of the Western Region of Nigeria 1959 and the Limitation Law Cap. 64 Laws of Oyo State 1978.

In its ruling, the court dismissed the objection. In his judgment, the learned trial Judge held that appellants are only entitled to payment of the sum of N1, 233, 960 as compensation and that no interest shall be paid on the said sum. Dissatisfied, appellants appealed to the Court of Appeal, Ibadan. The court while dismissing the appeal, held that the trial court had no jurisdiction to entertain appellants' claim. The court thus struck out the suit. Again, appellants were aggrieved. They appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 the trial court has jurisdiction to entertain the appellants' case.

2. Whether the lower court was right in basing compensation payable on N1, 500.00 and awarding the sum of N1,233,960.

3. Whether the appellants are or not entitled to interest on compensation payable to them.

The three issues are composed of the respondents' issues 1 and 2 resolved into one.

HELD (Unanimously allowing the appeal per **NGWUTA JSC**)

JURISDICTION - Fundamental nature

1. What the learned Justices of Appeal heard and determined was the appellants' appeal, not even a respondents' notice. The over-riding importance of jurisdiction cannot be overstated. It is the life blood of any litigation before a court properly so called. It is so fundamental that when a court has no jurisdiction, any action taken by that court will be a nullity notwithstanding the fact that the proceeding was well conducted. (p. 3487 B)

Appeals - Jurisdiction - Determination

2. A court of trial or a court exercising appellate jurisdiction must first of all determine whether or not it has jurisdiction to take cognisance of the matter presented to it for adjudication. The issue of jurisdiction is all embracing and has to be determined forthwith once it is raised competently. This is one case in which the issue of jurisdiction was not competently raised and the lower court is without jurisdiction to determine it. The lower court engaged in an exercise in futility in purporting to determine the merit of the issue which was not competently raised before it. (pp. 3487 E/3491 C)

APPEALS - Issues - Formulation

3. Though the issue of jurisdiction can be raised at any time either in the trial court or in an appellate court, the right to do so like any other right, is not absolute. There are certain circumstances where the issue cannot be raised unless certain requirements are complied with. In this appeal, there are two factors which inhibit the right of the respondent to raise the issue of jurisdiction and by extension on the competence of the lower court to determine same.

The first one relates to the principle of formulation of issue in an appeal. By that principle, any issue for determination in an appeal not related to or based on a ground or grounds of appeal is not only incompetent but completely valueless to the determination of the appeal and must be ignored.

B The issue for determination must flow from the ground or grounds of appeal. A respondent is at liberty to adopt the issues framed by the appellant from the grounds of appeal or he may give the issue a slant to favour his own case, but in so doing, he has to confine himself to the grounds of appeal. A respondent who did not cross-appeal has no business presenting issues from the blues. In this case, the issue of jurisdiction did not arise from any ground or combination of appellants' grounds of appeal. There was no cross-appeal from D where the issue could have been raised. Here, the issue of jurisdiction raised, not by way of preliminary objection, but as a substantive issue for determination, is grossly incompetent as it did not arise from or relate to, any of the appellants' grounds of appeal. (p. 3487 E)

Courts - Issue - Jurisdiction

4. Secondly, the issue of jurisdiction was raised by way of preliminary objection by the respondents in the trial wherein they argued that the suit was statute-barred. There was no appeal F against the ruling of the trial court on the preliminary objection declaring that the High Court had jurisdiction to hear the case. The issue of jurisdiction having been settled at the trial court, can only be entertained on appeal to the lower court G and since there was no such appeal, the lower court lacked the jurisdiction to reopen an issue already settled by the trial court. In my humble view, the trial court's decision on issue of jurisdiction is a subsisting decision of that court and there being no appeal against it, the Court of Appeal was not competent to pronounce on it. In conclusion on this issue, I am of H the view that the Court of Appeal erred in law in entertaining the issue of jurisdiction for the following reasons:

1. The issue does not relate to any ground of appeal and there was no cross-appeal from which the issue could have

risen.

2. There was no appeal against the decision of the trial court on the issue of jurisdiction. (pp. 3488 D/3489 B)

Land tribunal - Judicial notice of

5. No evidence is required to prove the existence vel non of the Lands Tribunal. It is a matter of which the court can take judicial notice. The tribunal does not exist if the court cannot take judicial notice of its existence. (p. 3491 B)

EVIDENCE - Evaluation - Interference

6. In my view and based on the evidence before the court, the land of the appellants was developed with buildings on it at the time it was acquired by the respondents. It follows that the application of S .4 (2) of the Act by the trial court was wrong and the lower court erred in affirming the decision of the trial court. The decision to apply S.4 (2) of the Act was based on none or improper evaluation of evidence before the trial court and this court has a right and indeed a duty to intervene and right the wrong resulting there from, as the evaluation of evidence does not involve assessment of credibility of witnesses. (p. 3495 D)

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. Judgment – Binding nature of

In the circumstance, it is very clear and as settled in a long line of cases by this court, that a decision of a court/tribunal not appealed against is deemed accepted and remains binding on the parties and all and sundry. (p. 3498 D)

ARIWOOLA JSC

2. Parties must be heard when court raises issue suo motu

However, when a court raises a point suo motu, as the court below did in the present case on issue of jurisdiction of the trial court, the parties must be given an opportunity to be heard on the issue, in particular, the party that may be adversely affected as a result of the

point raised suo motu. By doing so, the court will avoid any breaching of the parties' right to fair hearing. (p. 3515 D)

REPRESENTATION

Kazeem Gbadamosi, for the Plaintiffs

B O.A. Ishola (Director of Civil Litigation, Oyo State), for the Respondents

Michael F. Lana Esq., for the Appellants

CASES REFERRED TO

C Ogunyade v. Oshunkeye (2007) All FWLR (Pt. 389) 1179

Nwabueze v. Okoye (1988) 4 NWLR (Pt. 91) 664

Briggs v. Bob-Manuel (2003) FWLR (Pt.146) 945

Idika v. Erisi (1988) 2 NWLR (Pt.78) 563 at 579

D Oniah v. Onyia (1989) 1 NWLR (Pt.99) 514

Imonikhe v. A-G Bendel State (1992) 6 NWLR (Pt. 248) 396

Jiddun v. Abina (2000) 14 NWLR (Pt. 686) 209

Joy v. Dam (1999) 9 NWLR (Pt. 620) 538

Amusa v. State (2003) FWLR (Pt. 148) 1296

E Oforkire v. Maduikie (2003) FWLR (Pt. 147) 1090

Osakue v. Federal College of Education Asaba (2010) 5 SCM 185

Madukolu v. Nkemdilim (1962) 1 ANLR (Pt. 4) 587

Abisi v. Ekwealor (1993) 6 NWLR (Pt. 302) 643

F **STATUTES & RULES REFERRED TO**

Public Lands Acquisition Miscellaneous (Provisions) Decree No. 33 of 1976, ss. 4 (2), 11

Evidence Act Cap. E14 of 2004, s. 73

G Constitution of Federal Republic of Nigeria 1979, s. 136

Supreme Court Rules 1999 (as amended), O. 2 r. 9

LEAD JUDGMENT BY NGWUTA JSC

In the Originating Summons issued at the High Court Registry,

H Ibadan, on 25th day of November, 1992, the appellants, as plaintiffs, posed the following question:

“Whether the plaintiffs are entitled to be paid compensation including interest for delayed payment for their land compulsorily acquired in 1963 along Araromi-Akufo road, Ibadan. If the answer

to the above question is in the affirmative then the plaintiffs' claim:

(i) Declaration that under and by virtue of the provisions of section 31 of the Constitution of the Federation 1963, No. 20 the plaintiffs are entitled to be paid compensation for their land situate along Araromi-Akufo road, Ibadan compulsorily acquired by the defendants in or about 7th February, 1963. B

(ii) Declaration that by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976, No. 33 the plaintiffs are entitled to be paid interest at bank rate on the said compensation. C

(iii) An order directing the defendants to pay the plaintiffs the sum of N21,222,348.25 representing principal and interest due to the plaintiffs as compensation.

(iv) Interest at the rate of 21% per annum on the sum of N21,222,348.25 from 1st January 1992 until the whole amount is D paid.

(v) Such further orders."

In support of the Originating Summons is a 19 paragraph affidavit deposed to by the 2nd appellant, Alhaji Karimu Olapade Akere.

The defendants (respondents) filed a notice of preliminary E objection to the hearing of the suit. The notice was dated 31/3/93 and was predicated on the ground that:

"(1) The application (Suit) is statute barred by virtue of the provisions of section 10 of the Public Lands Acquisition Law Cap. 105 Laws of the Western Region of Nigeria 1959 (now Cap. 105, F Laws of Oyo State of Nigeria 1978) and the Limitation Law Cap. 64, Laws of Oyo D State of Nigeria, 1978."

On 14/6/93, a counter-affidavit of 11 paragraphs was filed on behalf of a group called "Akufo Land Owners Association" stating, G inter alia, that the association did not authorise Mr. Akinyemi to sue on their behalf. Mr. Akinyemi is, perhaps, the 14th plaintiff (appellant) Chief A. A. Akinyemi.

In a ruling on the preliminary objection delivered on the 8th H day of March 1994, the learned trial Judge Adesina J., concluded thus:

"On the whole, the preliminary objection is refused and is accordingly dismissed. (See page 42 of the record).

Nothing was said of the counter-affidavit of the Akufo Land-

owners Association. The case proceeded to trial before Adekola J., on 31st May 1995. At the close of the defence's case on 2/8/95 the court adjourned to 19/9/95 for counsel's addresses. On 10/1/96, the court reserved judgment till 20/3/96. In the judgment delivered on schedule, the learned trial Judge made reference to the ruling delivered on 8/3/94. His Lordship expressed the view that the ruling that the suit was not statute barred would have been otherwise if Adesina, J., had applied section 11 of Decree No. 33 of 1976 in which case the claim for compensation would have been time-barred by 3rd August 1968. The learned Judge regretted his incompetence to review and reverse the ruling that the Suit was not statute-barred. His Lordship however concluded his judgment as follows:

"In the circumstances I hereby declare that the plaintiffs are only entitled to the payment of the sum of N1,233,960 as compensation in respect of 822.64 hectares of land acquired by the defendants in 1963 and that the said amount shall not attract any interest whatsoever."

He said he could not grant interest on the compensation due to the plaintiffs because the land was acquired from the original land-owners. He added that even if interest is payable, the plaintiffs would have been limited to ten years from the time of purchase of the property to the time they were served notice of acquisition. The learned trial Judge made the final order that the plaintiffs be paid the sum of N 1,233,960 as the amount due as compensation in respect of the 822.64 Hectares of land acquired from them by the defendants.

Aggrieved by the judgment, the plaintiffs now appellants, appealed to the Court of Appeal, Ibadan Division. The lower court reviewed the facts and the authorities relied on by the parties, and concluded thus:

"In the result, there is totally no merit in the entire appellants' appeal and it deserves to be dismissed. But since I have held earlier above that the learned trial Judge had no jurisdiction to entertain the claim the order I will make is one setting aside the judgment and orders made by the lower court. In their place, I hereby make an order striking out the applicants' claim. The claim is accordingly struck out. But I will make no order on costs." (See page 207 of the record).

Again, the appellants were aggrieved. They appealed to this court on four grounds. In accordance with the rules of this court,

learned counsel for the parties filed and exchanged briefs of argument. In his brief of argument dated 28th November, 2003 and filed on 11th December, 2003 for the appellants distilled the following four grounds of appeal:

"i. whether the issue of jurisdiction was competently raised in the court. Ground 1.

B

ii. whether the lower court was right in basing compensation payable on N1,500.00 and awarding the sum of N1,233,960.00. Grounds 2 and 3.

iii. Whether the appellants are or not entitled to interest on compensation payable to them. Ground 4."

C

In his brief deemed filed on 26/5/2008, learned counsel for the respondent, in his preliminary point of law, urged the court to strike out paragraphs 3.8 (a) and (c) of the appellants' brief because the date of accrual of cause of action was not raised or pronounced upon in the lower court. He relied on *Akpan v. Julius Berger (Nig.) Plc. (2003) FWLR (Pt. 182) 1827 at 1838 paragraphs B-E, (2002) 17 NWLR (Pt. 795) 1*. In the event that the court does not accede to his request, he formulated the following four issues in his brief:

i. Whether by virtue of the Public Lands Acquisition Miscellaneous (Provisions) Decree No. 33 of 1976, the trial court has jurisdiction to entertain the claim of the appellants.

E

ii. Whether the lower court was right in holding that the trial court lacked jurisdiction to try the plaintiff/appellants' claim.

F

iii. Whether the lower court was right in affirming the judgment of the trial court that the appellants were entitled to only N 1,233,960.00 as compensation on 822 hectares of land acquired by the then regional government.

iv. Whether the lower court was right in affirming the decision of the trial court to the effect that the plaintiffs/ appellants were not entitled to interest on the amount payable as compensation to the appellants."

G

Appellants' reply brief was deemed filed and served on 13/2/2012. At the hearing of this appeal on 13/2/2012, the respondents were not represented by counsel. The appeal was deemed to have been argued in the briefs filed on behalf of the parties. I shall here and now deal with what learned counsel for the respondents dubbed "preliminary point of Law" pursuant to which he urged the court to

H

strike out paragraphs 3.8 (a) and (c) in the appellants' brief for the fact that the appellants raised the issue of the accrual of cause of action for the first time. If this is meant to serve the purpose of preliminary objection, it is incompetent for failure to follow the procedure laid down in Ord. 2 r. 9 of the Supreme Court Rules 1999 (as amended) hereunder reproduced:

"Order 2 Rule 9:

1. *A respondent intending to rely upon a preliminary A objection to the hearing of the appeal shall give the ap-
pellant three clear days notice thereof before the hear-
ing, setting out the grounds of objection and shall file
such notice together with ten copies thereof with the reg-
istry within the same time.*
2. *If the respondent fails to comply with this rule the court
may refuse to entertain the objection or may adjourn
the hearing thereof at the cost of the respondent or may
make such other orders as it thinks fit."*

Even if the preliminary point of law raised by the appellant had been raised in compliance with the above order, it could have been of no avail to the respondents, as the issue was resolved in the preliminary objection filed by the respondents in the trial court. The respondents' objection was predicated on the ground that:

"1. The application (suit) is statute-barred by virtue of the provisions of Section 10 of the Public Lands Acquisition Law Cap. 105 Laws of the Western Region of Nigeria 1959 (now Cap. 105 of Laws of Oyo State of Nigeria, 1978) and the Limitation Law Cap. 64 Laws of Oyo State of Nigeria, 1978."

Issues relating to the date of accrual of the cause of action were canvassed by the parties in the trial court in their arguments in the preliminary objection. The court resolved the issue in favour of the appellants. The respondents cannot, in the circumstance, raise the of issue of date of accrual of action once more in the guise of preliminary point of law.

In his reply brief learned counsel for the appellants referred to the judgment of the trial court that the defendants did not discharge the burden on them to prove the time the cause of action arose. He referred to page 42 lines 18-32 of the record where the trial court held:

“Lastly, I must say that by section 236(1) of the un-suspended part of the Constitution of Federal Republic of Nigeria 1979 which is still subsisting the jurisdiction of the High Court of a State is unlimited both in criminal and civil matters. Therefore, part of section 10(1) of the Oyo State Public Lands Acquisition Law which purports to deny any person in claiming compensation in respect of compulsory acquisition of his property and the amount of compensation to a Court of Law except through a Land Tribunal is void to that extent. As a matter of fact the Public Lands Acquisition Law was a law promulgated in 1978 before the 1979 Constitution. That is why Land Tribunals ceased to be in existence after the 1979 Constitution had become operational. The plaintiffs are therefore right in bringing their action in this court.”

The respondent did not cross-appeal the above decision. The preliminary objection, if that is what it is, is hereby overruled. Paragraph 3.8 (a) and (c) in the appellants’ brief is competent. The lower court decided that the trial court had no jurisdiction to entertain the appellants’ claim. It is the issue of jurisdiction the appellants should concentrate on, not whether the issue is competently raised or not. Respondents’ issues 1 and 2 are the same whether the trial court had jurisdiction to entertain the matter.

In dealing with the appeal, I will adopt issues 1 and 2 in the respondents’ brief as issue 1 and appellants’ issues 2 and 3. I will re-number the issues thus:

1. Whether by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 the trial court has jurisdiction to entertain the appellants’ case.

2. Whether the lower court was right in basing compensation payable on N1,500.00 and awarding the sum of N1,233,960.

3. Whether the appellants are or not entitled to interest on compensation payable to them.

The three issues are composed of the respondents’ issues 1 and 2 resolved into one.

I have carefully examined the grounds of appeal filed by the appellants vis-à-vis the issues raised by the parties in their briefs. Issues 1 and 2 in the respondents’ brief resolve themselves into one issue - a challenge to the jurisdiction of the trial court to entertain the appellants’ suit. Learned counsel for the respondents did not relate

the issues to anyone of the appellants' four grounds of appeal. They neither counter-claimed nor filed a respondents' notice. In their four grounds of appeal, appellants did raise the issue of whether or not the lower court had jurisdiction to entertain their suit. Appellants' ground one is on the way and manner the respondents, who did not
B raise the issue in the trial court, raised it in the lower court. The ground is concerned not with jurisdiction or lack of it, but with the way it was raised in the court below. I will discountenance the issues, i.e. 1 and 2 in the respondents' brief. *Idika v. Erisi* (1988) 2 NWLR (Pt. 78) 563
C at 579 and *Oniah v. Onyia* (1989) 1 NWLR (Pt. 99) 514 and 527 among others are relied on by the appellants and I find them apt. Issues 3 and 4 in the respondents' brief are a different version of appellants' issues 1 and 2.1 shall therefore determine the appeal on the three issues in the appellants' brief of argument.

D Arguing issue one in his brief, learned counsel for the appellants questioned the propriety of the respondents raising the issue of jurisdiction in the lower court when the issue did not arise from the appellants' ground of appeal in that court and the respondent did not file a cross-appeal. He argued that, based on *Briggs v. Bob-Manuel*
E (2003) FWLR (Pt. 146) 945 at 955, (2003) 5 NWLR (Pt. 813) 323, since the issue of jurisdiction in this case had the effect of reversing the decision appealed against, the respondents cannot raise the issue without a cross-appeal. He relied on *Idika v. Erisi* (1988) 2 NWLR
F (Pt. 78) 563 at 529 and argued that the issue of jurisdiction raised for the first time by the respondent did not arise from the grounds of appeal and as the respondents did not cross-appeal the issue was not tied to any ground of appeal. He relied on *Oniah v. Onyia* (1989) 1 NWLR (Pt. 99) 514; *Imonikhe v. A-G Bendel State* (1992) 6 NWLR
G (Pt. 248) 396 at 407. He argued that even if it was assumed that the issue was raised as preliminary objection, the rule for so doing was not with. He referred to *Jiddun v. Abina* (2000) 14 NWLR (Pt. 686) 209 at 223. He referred to the record and contended that in raising the fresh issue of jurisdiction, the respondent did not for or obtain
H leave of court to do so. He relied on *Joy v. Dom* (1999) 9 NWLR (Pt. 620) 538 at 547. In the circumstances, he argued, the lower court was in error when it considered and resolved the issue of jurisdiction raised by the respondents.

In issue two, learned counsel contended that exhibit E was

part of the appellants' evidence in the main suit as it was attached to the affidavit of 25th November, 1992 in support of the summons. He argued that the lower court did not appreciate that the reason the trial court rejected exhibit E as the basis for calculation of compensation due to the appellant was that Akufo fell outside the 12 km radius from Mapo Hall while it was shown in exhibit D that Araromi fell within the 12 km but there was no evidence of the total Hectares of the land which fell within the 12 km radius. B

He submitted that the evidence on whether or not the land fell within the 12 km radius from the Mapo Hall was not properly evaluated by the trial court and since the issue does not involve the credibility of witnesses, this court is in as good a position as the trial court to evaluate the evidence. He relied on *Abisi v. Ekwealor* (1993) 6 NWLR (Pt. 302) 643 at 673. Learned counsel referred to affidavit evidence of the parties and argued that the totality of the evidence D show:

- i. That exhibit E was based on the provisions of the 1st Schedule to Decree No. 33 of 1976 and was issued by the respondents.
- ii. That the radius of 12 km from Mapo Hall, Ibadan is not the basis of zoning under Decree 33 as it was not used in other acquisitions. E
- iii. That radius of 12 kilometres was only referred to in Legal Notice No. 13 of 1978 made under the Land Use Decree, 1978.
- iv. That the respondent admitted liability to the tune of a sum of N3,923,992.80. F

As in what zone under Schedule 1 to the Public Lands Acquisition (Miscellaneous Provisions) Decree the land is located, he said that there is evidence that the land is in Ibadan, even though the respondents argued that the land is not in Ibadan but is behind The Polytechnic, Ibadan, a rural area, relying in Oyo State Legal Notice No. 13 of 1978 made under the Land Use Decree. He raised the question whether the OYSLN 13 of 1978 is applicable to land acquired under Decree 13 of 1967. He pointed out that Decree No. 13 of 1967 did not state which area of the State is rural but categorised H the lands as follows:

- i. State Capital (irrespective of which part of the State Capital).
- ii. Industrial and Commercial Urban Centres.

iii. Other Urban and Semi-Urban Centres.

iv. All other areas.

He referred to S .2 of OYSLN 13 of 1978 and said that the areas declared urban areas are for the purposes of the Land Use Decree of 1978, By way of analogy, Counsel cited Okomu Oil Palm Co. Ltd. Iserhienrhien (2001) 6 NWLR (Pt. 710) 660 at 679 and I.M.B.N. A v. Olloh (2002) 9 NWLR (Pt. 773) 475 at 488 in which this Court held that the definition of Public Officer is for the purpose of the Code of Conduct and urged the Court to hold that OYSLN 13 of 1978 is limited for the purpose of the Land Use Decree of 1978. He stressed that the land is along Araromi-Akufo road, Ibadan and not at Araromi or Akufo but in Ibadan, the State Capital. He contended that the amount payable on lands acquired in State Capitals is N3,750.00 per hectare. He urged the Court to allow the appeal on the issue and hold that the basis of compensation should be the sum of N3,750.00 per hectare.

In issue three, he argued that the lower courts wrongly invoked S.4 (2) of the Decree No. 33 of 1976 to deny appellants' interest on compensation due to them. He contended that S.4 (2) relates to; (i) undeveloped land; (ii) land acquired by purchase. He referred to paragraphs 3 and 7 of the 2nd appellants' affidavit in support of the summons and argued that the appellants are original owners and that the land was already developed before it was acquired by the respondents, and the claim is brought under S.6 of Decree 33 and not S.4 (2) thereof, He referred to pages 19,24-25 of the record and argued that having agreed in exhibits E and H to pay the total sum of N21,222,348,25 the respondents are estopped from disputing the rate of interest payable. He referred to section 91 (3) of the Evidence act, Abdullahi v. Hashidu (1999) 4 NWLR (Pt. 600) 638; Ogidi v. Egba (1999) 10 NWLR (Pt. 621) 42 and submitted that exhibits R1-R3 on pages 66-67 of the record which were procured and written during the pendency of the action and relied on by the respondents to prove the rate of interest are of no evidential value.

He urged the court to reverse the concurrent decisions of the lower court. He urged the court to allow the appeal for:

i. Issue of jurisdiction entertained by the Court of Appeal was not raised from a ground of appeal;

ii. Appellant's claim was based on N3/750.00 per hectare as provided for State Capitals in the 1st Schedule to the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976.

iii. The appellants are entitled to interest under S.6 of the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976. S. 4(2) thereof is not applicable. B

In his brief, learned counsel for the respondents argued issues 1 and 2 together. Issues 1 and 2 are issues of jurisdiction. The issues do not relate to any ground of appeal as I have stated earlier in this judgment. Respondents did not file a cross-appeal. The issues are not relevant to the determination of the appeal and are hereby dis- C
countenanced.

In issue 3, learned counsel for the respondents said that the conclusion that the appellants are entitled to N1,233,960.00 as compensation was based on evaluation of the evidence of PW1, and PW2. D
He said that the lower court found that the PW1 was an interested witness, being one of the claimants as well as the expert that computed the figures in question. He argued that the appellants did not lead evidence to show that the compensations paid on lands acquired for IITA, Ajoda, New Town and Ibadan Airport were paid under the E
provisions of the Public Lands Acquisition Decree 33 of 1976.

Learned counsel argued that the appellants cannot rely on a letter exhibit E written by one defendant to another defendant in respect of compensation payable to be N21,222,348.25 but should F
have called credible independent witness to prove same but they failed to do so. He said that the lower court could not rely on computation based on N3,750.00 per hectare and the location of the land as given by Chief Akinyemi who was commissioned by the appellants. He argued that the lower court rightly took judicial notice of G
the fact that farm settlements were in rural areas and the land was acquired for farm settlement. He relied on S.73 of the Evidence Act and *U.B.A. Ltd. v. Abimbolu* (1995) 9 NWLR (Pt. 419) 371. He contended that the lower court was right in affirming the decision of the trial court on the compensation due to the appellants. H

In issue 4, he relied on s.4 (2) of the Public Lands Acquisition (Miscellaneous Provisions) Decree in his argument that the appellants are not entitled to interest not having shown that they acquired the land by purchase. He said that the lower court was right in affirm-

ing the decision of the trial court that the appellants were not entitled to interest. He urged the court to dismiss the appeal.

In his reply brief, learned counsel for the appellants dealt with the preliminary point of law raised by the respondents and touched on issues III and IV in the respondents' brief.

B In order to determine whether or not the issue of jurisdiction was competently raised in the lower court by the respondents, it is necessary to reproduce the 7 grounds of appeal filed by the appellants in that court.

C *"Grounds of appeal:*

1. *The learned trial Judge erred in law when he held that the plaintiffs put in their claim for compensation 26 years after the land had been acquired.*

D 2. *The learned trial Judge erred in law when he held that the compensation due to the plaintiffs shall be limited to the existing use, value of the land which shall attract no interest since the plaintiffs did not acquire their land by way of purchase and the estate had not been mainly developed for residential purposes.*

E 3. *The learned trial Judge erred in law when computing the compensation payable to the plaintiffs, he held that the acquired land fell outside urban area within Zone C of Schedule 1 to PLAN for which N1,570.00 per hectare has been prescribed as compensation for other urban and semi-urban centres.*

F 4. *The learned trial Judge erred in law when he failed to hold the exhibits E and H amount to admission of liability to the plaintiffs to the tune of N21,222,348.25 as held earlier in the ruling of the same court which was never appealed from.*

G 5. *The learned trial Judge erred in law when he held that if his learned brother had adverted to Section 11 of the PLA his Interlocutory ruling confirming the right of the plaintiffs to compensation would have been different.*

6. *The judgment is against the weight of evidence.*

H 7. *The learned trial Judge erred in law when he held that person who can assess the amount of compensation payable is the Chief Lands Officer of a State."*

I have reproduced the grounds of appeal shorn of their particulars but there is nothing in the particulars that raises, directly or by implication, an issue of jurisdiction. No issue of jurisdiction could have

been validly raised from any of the grounds and the appellants did not raise any in his brief before the lower court. The same cannot be said of the respondents.

Issue one in the respondents' brief in the lower court is hereunder reproduced:

"1. Whether by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976, the trial court has jurisdiction to entertain the claim of the plaintiffs." B

What the learned Justices of Appeal heard and determined was the appellants' appeal, not even a respondents' notice. The over-riding importance of jurisdiction cannot be overstated. It is the life blood of any litigation before a court properly so called. It is so fundamental that when a court has no jurisdiction, any action taken by that court will be a nullity notwithstanding the fact that the proceeding was well conducted. See Osakue v. Federal College of Education Asaba & Anor (2010) 5 SCM 185, 201-202; (2010) 10 NWLR (Pt. 1201) 1. See also Madukolu v. Nkemdilim (1962) 1 ANLR (Pt. 4) 587; (1962) 2 SCNLR 341 for the principles which define the jurisdiction or competence of a court to entertain a particular matter. D E

A court of trial or a court exercising appellate jurisdiction must first of all determine whether or not it has jurisdiction to take cognisance of the matter presented to it for adjudication. Though the issue of jurisdiction can be raised at any time either in the trial court or in an appellate court, the right to do so like any other right, is not absolute. There are certain circumstances where the issue cannot be raised unless certain requirements are complied with. In this appeal, there are two factors which inhibit the right of the respondent to raise the issue of jurisdiction and by extension on the competence of the lower court to determine same. F G

The first one relates to the principle of formulation of issue in an appeal. By that principle, any issue for determination in an appeal not related to or based on a ground or grounds of appeal is not only incompetent but completely valueless to the determination of the appeal and must be ignored. See Omo v. JSC, Delta State (2000) 7 SC (Pt. II) 1; (2000) 12 NWLR (Pt.682) 444. ***The issue for determination must flow from the*** H

ground or grounds of appeal. A respondent is at liberty to adopt the issues framed by the appellant from the grounds of appeal or he may give the issue a slant to favour his own case, but in so doing, he has to confine himself to the grounds of appeal. A respondent who did not cross-appeal has no business presenting issues from the blues. In this case, the issue of jurisdiction did not arise from any ground or combination of appellants' grounds of appeal. There was no cross-appeal from where the issue could have been raised. Here, the issue of jurisdiction raised, not by way of preliminary objection, but as a substantive issue for determination, is grossly incompetent as it did not arise from or relate to, any of the appellants' grounds of appeal. On the authority of *Madukolu v. Nkemdilim* (supra), the Court of Appeal is not competent to determine the issue so raised.

Secondly, the issue of jurisdiction was raised by way of preliminary objection by the respondents in the trial wherein they argued that the suit was statute-barred. In their preliminary objection, the respondents (as defendants) stated:

"The application (Suit) is statute-barred by virtue of the provisions of section 10 of the Public Lands Acquisition Law Cap. 105 Laws of Oyo State of Nigeria 1978 and the Limitation Law Cap. 64 Laws of Oyo State of Nigeria 1978."

The learned trial Judge Adesina, J. overruled the preliminary objection, At page 41 of the record, His Lordship held:

"However, it is the defendant that ought to plead and prove that the action is statute-barred. For instance, it U the defendant that ought to prove in the precise date when the cause of action arose for the computation of the period of limitation."

In concluding his ruling, the learned Judge held:

"Lastly must say that by section 236 (1) of the un-suspended part of the Constitution of the Federal Republic of Nigeria, 1979 which is still subsisting, the jurisdiction of the High Court of a State is unlimited both in criminal and civil matters. Therefore, part of section 10(1) of the Oyo State Public Lands Acquisition Law which purports to deny any person in claiming compensation in respect of compulsory acquisition of his property and the amount of compensation to a court of law through a Lands Tribunal is void to that extent. As a

matter of fact, the Public Land Acquisition Law was a law promulgated in 1978 before the 1979 Constitution. This is why the Lands Tribunals ceased to be in existence after the 1979 Constitution had become operative. The plaintiffs are therefore right in bringing their action in court."

There was no appeal against the ruling of the trial court on the preliminary objection declaring that the High Court had jurisdiction to hear the case. The issue of jurisdiction having been settled at the trial court, can only be entertained on appeal to the lower court and since there was no such appeal, the lower court lacked the jurisdiction to reopen an issue already settled by the trial court. At page 204 of the record, the lower court, in its judgment concluded on the issue of jurisdiction held:

"As it has been clearly shown that the Oyo State High Court that adjudicated over the appellants' claim lacked jurisdiction to entertain the action, the entire proceedings before the court is therefore a nullity."

In my humble view, the trial court's decision on issue of jurisdiction is a subsisting decision of that court and there being no appeal against it, the Court of Appeal was not competent to pronounce on it. In conclusion on this issue, I am of the view that the Court of Appeal erred in law in entertaining the issue of jurisdiction for the following reasons:

1. The issue does not relate to any ground of appeal and there was no cross-appeal from which the issue could have risen.

2. There was no appeal against the decision of the trial court on the issue of jurisdiction.

If I may add, I think it is unfortunate that Adekola, J. of the Oyo State High Court purported to sit on appeal over the judgment of Adesina, J. of the same High Court and came to the conclusion that the ruling would have been the other way round if his learned brother had considered a particular legislation. But even that had no effect on the validity of the ruling against which no appeal was filed and which the respondents are deemed to have accepted.

In order to justify its interference and reopening of an issue already settled by the trial court and against which the respondent

did not appeal or cross- appeal, the lower court at pages 200-201 of its judgment made a big show of the importance of jurisdiction, as if that was ever in doubt. The lower court stated:

“*In view of the importance attached to the issue of jurisdiction, the law relating to how and when the issue could be raised is very relaxed. The position of the law, therefore, is that the issue of jurisdiction can be raised viva voce, it can be raised at any stage of a case be it at the trial or appeal to the Court of Appeal or to the Supreme. ... Once it is apparent to any party that the court may not have jurisdiction a fortiori the court can even raise it suo motu.*”

The mode adopted by the respondents was by raising it as a preliminary issue in the respondents’ brief....” I do not intend to raise an issue on the exposition of the law relating to jurisdiction by the court below. However, the last part of the portion of the judgment reproduced above gives a cause for concern. I think the court below appeared to have stepped out of its role as an impartial arbiter in the contest as to whether the judgment of the trial court is right or wrong and leaned towards the respondents.

The respondents did not raise the issue of jurisdiction as a preliminary issue in their respondents’ brief. Paragraph 3.0 of the respondents’ brief in the court below is captioned “*Issues for Jurisdiction*”. In paragraph 3.01, the first issue for determination was framed thus:

“*i. Whether by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976, the trial court has jurisdiction to entertain the claim of the plaintiffs.*” See page 166 of the record.

Contrary to the assertion of the court below, the issue was raised as a substantial issue for determination. The importance of jurisdiction cannot confer jurisdiction on the courts to make case for any party before it. And if the court raises the issue suo motu the parties, particularly the appellants ought to be given opportunity to be heard before its resolution. But even if it was raised as a preliminary issue, the respondents cannot be heard to reopen an issue already settled by the trial court without appeal or cross-appeal.

In the ruling on the issue of jurisdiction raised as preliminary objection by the respondents, the Oyo State High Court decided it had jurisdiction and that in any event, no Lands Tribunal was in exist-

ence in the State at the material time. In my view even if the Lands Tribunal had exclusive jurisdiction where and when the Tribunal is not constituted, the State High Court would have Jurisdiction over matters it would have jurisdiction but for the exclusive jurisdiction of the Tribunal. See *State v. Lantarki Yamusissika* (1974) 6 SC 53 at 61, one of the cases relied on by the appellants. B

No evidence is required to prove the existence vel non of the Lands Tribunal. It is a matter of which the court can take judicial notice. The tribunal does not exist if the court cannot take judicial notice of its existence.] See S. 73 of the Evidence Act Cap. E14 of 2004. ***The issue of jurisdiction is all embracing and has to be determined forthwith once it is raised competently. This is one case in which the issue of jurisdiction was not competently raised and the lower court is without jurisdiction to determine it. The lower court engaged in an exercise in futility in purporting to determine the merit of the issue which was not competently raised before it.*** See *Madukolu v. Nkemdilim* (supra) C D

In issue 2, the lower court stated the reasons for the trial court's refusal to accept the sum of N21,222,348.25 in exhibit E as compensation due to the appellants as: E

"a. Exh. E was attached to the appellants' affidavit in the interlocutory motion in which the respondents urged the court to dismiss the suit as statute barred.

b. The parties had not joined issues on the amount of compensation payable to the appellant at that stage. F

c. The writer of Exh. E was one of the claimants and the principle adopted conflicted with those laid down in Public Lands (Acquisition Miscellaneous Provisions) Act of 1976." See page 206 of the records. G

The lower court did not advert to the main reason for the trial court's rejection of the sum of N21,222,348.25 as compensation due to the appellants. At page 132 of the record, the trial court stated in its judgment: H

"In Schedule 1 of the Decree, the sum of N3,750 be paid per Hectare in respect of State Capitals and Industrial and Commercial Urban Centres. While the sum of N1,500.00 is payable per Hectare in respect of other Urban and Semi-Urban Centres, and such

Zone will be in Zone C. Can it be said having regard to the available evidence before the Court that Araromi/ Akufo acquisition should be in Zone B or Zone C.”

The trial court stated further at page 132 of the record:

“*It seems to me more appropriate to agree with the interest classification of Akufo/Araromi settlement to be within the other Urban and semi-urban centre (sic). This is so when one considers the purpose for which the acquisition of Akufo/Araromi was made. It was made for the purpose of farm settlement. Farm settlement are (sic) not ordinarily located within an urban area. My acceptance of the fact that Akufo/Araromi is within Zone C, that is other urban and semi-urban centre is reinforced the more by the plan exhibit D where Akufo itself was shown to fall outside the 12 kilometre radius from Mapo Hall, while it was shown in exhibit D that Araromi fell within the 12 kilometre (sic). There is no evidence before the Court that the total Hectare of the land acquired from the plaintiffs by the defendants which fell within the 12 kilometre radius from Mapo Hall.*” See pages 132-133 of the record.

The real reason the trial court had for rejecting the figures based on N3,750.00 per hectare and preferring the figure based on N1,500.00 per hectare is the location of Akufo and Araromi. The lower court did not appear to have appreciated this point. The trial court relied on exhibit D to conclude, perhaps rightly, that Akufo is outside the 12 kilometre radius from Mapo Hall. It was shown also on exhibit D that Araromi falls within the 12 kilometre radius from Mapo Hall. Be that as it may, the locations of Akufo and Araromi in relation to Mapo Hall are irrelevant to the determination of appellants’ case in the trial court.

Their claim is based on the land “*situate along Araromi-Akufo road, Ibadan.*” There is no evidence that the appellants’ land acquired by the respondent is situate at a place other than along Araromi-Akufo road, Ibadan. In the same vein, it is not claimed, nor was evidence led by either party, that the land is situate at Akufo or Araromi or both. It is appropriate to reproduce here part of the judgment of the trial court on this point. The court held:

“*... it would have been possible and appropriate for the court to assess compensation on the basis of N3, 750 for such urea and the other area falling within Akufo which is outside the 12 kilometre ra-*

dus from Mapo Hull to be calculated on the basis of N1,520 per hectare.” See page 133 of the record.

The trial court assumed suo motu and without evidence that the land was situate at Akufo and Araromi and not along Araromi-Akufo road, Ibadan as stated by the appellants. In paragraph 3 of the affidavit of one of the appellants deposed to on 25/11/93, the location of the land was stated as along Araromi- Akufo road. The paragraph reads:

“(3)... that a copy of the acquisition notice is attached herewith as exhibit.” See page 3 of the record.

The said exhibit is Western Nigerian Gazette No.9 Vol. 12 of 7th February 1963. The relevant portion is headed “*Western Region Notice No. 206 Public Lands Acquisition Law (Cap 105) land required for the service of the government of western Nigeria*”. It states:

“*Notice is hereby given that the following land at Araromi-Akufo Road, Ibadan, in the Ibadan Division of the Ibadan Province, Western Nigeria is required by the Government for public purposes absolutely.*” (Emphasis mine)

The description of the land in the notice stated inter alia:

“*All that parcel of land at Araromi-Akufo road, Ibadan in the Ibadan Division, Ibadan Province, Western Nigeria*” See page 6 of the record. Araromi-Akufo road, Ibadan, cannot be the same as Araromi or Akufo or both as implied by the trial court and accepted by the lower court in its judgment. In the First Schedule to the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 applicable to the appellants’ claim for compensation for their land acquired for public purposes, the Zones and compensation payable per hectare of land are:

“*Zone A: Metropolitan Lagos (i.e.. the former Federal Territory.*

B (i) Lagos State, other than Metropolitan Lagos N7,500 per hectare,

(ii) State Capitals

(iii) Industrial and Commercial Centres == N3,750 per hectare.

C. Other Urban and Semi-Urban Centres == N1,550 per hectare.

D. All other areas ==N 1,250 per hectare.

Ibadan was the capital of old Western Nigeria and now the capital city of Oyo State. For whatever purpose the land was acquired, even if for a farm settlement as speculated by the trial court, it cannot transform a portion of the Capital City of Ibadan into “Other Urban or Semi-Urban Centres”. Therefore, the appellants are entitled to compensation on the basis of N3.750 per hectare as their land acquired by the respondent is situate along Araromi-Akufo road within the Oyo State Capital, Ibadan. Appellants are entitled to their claim of compensation for their land at the rate of N3,750.00 per hectare. Issue 2 is resolved in favour of the appellants.

In issue 3, the appellants posed the question “*whether the appellants are or are not entitled to interest on compensation payable to them.*” In dealing with the issue of interest, the trial court applied, and the lower court affirmed the application of Section 4 (2) of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 which provides:

“S.4 (2): Where the land is an undeveloped land, compensation payable shall be limited to the actual cost of the land together with interest at the bank rate calculated from the date of the purchase of the land up to the date of the £ notice to acquire the land, subject to a maximum of ten years, or the existing use value of the land, whichever is the greater...”

The appellants did not claim to have acquired the land. However, the question is whether the land is undeveloped as found by the trial court and affirmed by the lower court or developed as claimed by the appellants. In paragraphs 7, 8, 9, 10 and 11 of the affidavit of Alhaji Karimu Olapade, one of the appellants, it was averred as follows:

“7. That we filed our claim for compensation and about three years after the acquisition, the compensation due to us for our crops within the acquisition was paid by the defendants with a provision that the compensation for buildings and the land would be paid to us later. (Italics mine)

8. That we made several demands on the defendants through several meetings with their officials to ensure payment of the compensation due to us for our buildings and land but they kept on promising to pay. (Italics mine)

9. That attached as exhibit A is a copy of the minutes of the

meeting we held with the officials of the defendants on 14th December, 1977, where they promised that the government was ready to accede to our request and pay us our compensation both on building and land. (Italics mine)

10. *That notwithstanding the promise and persistent demands by us thereafter the compensation due to us for buildings was only paid in 1984 through December 1987 with promise that the compensation due for land would be paid later. (Italics mine)*

11. *That subsequent to the payment of the compensation for buildings, we made several demands again on the defendants through the 14th plaintiff who wrote several letters to the 1st defendant. Copies of the letters are attached herewith as exhibits B and C, while the note referred in exhibit B is attached as exhibit D.” See page 4 of the record.” (Italics mine)*

The above averments were not controverted and are therefore deemed accepted by the respondents who had opportunity to challenge them but did not do so. A land on which there are buildings for which the respondents already paid compensation cannot be said to be undeveloped. ***In my view and based on the evidence before the court, the land of the appellants was developed with buildings on it at the time it was acquired by the respondents. It follows that the application of S.4 (2) of the Act by the trial court was wrong and the lower court erred in affirming the decision of the trial court. The decision to apply S.4 (2) of the Act was based on none or improper evaluation of evidence before the trial court and this court has a right and indeed a duty to intervene and right the wrong resulting therefrom, as the evaluation of evidence does not involve assessment of credibility of witnesses.*** See *Hamza v. Kure* (2010) 5 G SCM 89; (2010) 10 NWLR (Pt. 1203) 630. The appropriate section of the Act applicable to the appellants’ case is S.6 which provides as follows:

“6. Where an owner of an estate or interest in land compulsorily acquired is required to yield up possession of his estate or interest in land prior to the payment of compensation or provision of alternative accommodation as the case may be, interest at the bank rate shall be payable on the value of the estate or interest acquired (as determined pursuant to this Decree) for the period between the

entry on the land and the payment of compensation ...”

At the acquisition of their land by the respondents, the appellants yielded possession without alternative accommodation provided for them. In my view, they are entitled to compensation as stipulated in section 6 of the Act. I resolve issue 3 in favour of the
B appellants.

Consequently, I allow the appeal as meritorious. The judgment of the lower court which affirmed the judgment of the trial court is hereby set aside. In its place, I enter judgment in favour of the appel-
C lants based on their claim in the trial court. Respondents are ordered, jointly and severally, to pay cost at N50, 000.00 to the appellants. Appeal allowed.

D

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, holden at Ibadan delivered on the 11th day of April, 2002 in appeal no. CA/I/162/96/T/4.

Following the compulsory acquisition of a large portion of
E land including the portion containing approximately 3,620 acres at the Araromi - Akufo Road, Ibadan for the establishment of farm settle-
ments by the Government of the Old Western Nigeria In 1963 vide Western Nigeria Notice No. 205 dated 4th February, 1963 mid pub-
F lished in Western Nigeria Gazette no. 9, volume 12 of 17th February, 1963, the appellants, as plaintiffs instituted suit no. M/367/92 claim-
ing the following reliefs:-

i. Declaration that under and by virtue of the provisions of Section 31 of the Constitution of the Federation 1963, no. 20 the
G plaintiffs are entitled to be paid compensation for their land situated along Araromi- Akufo Road, Ibadan compulsorily acquired by the defendants in or about 7th February, 1963.

ii. Declaration that by virtue of the provisions of the Public Land Acquisition (Miscellaneous/Act, 1976 No. 33 the plaintiffs are
H entitled to be paid interest at bank rate on the said compensation.

iii. An order directing the defendants to pay the plaintiffs the sum of N21, 222,348.25 (twenty-one million, two hundred and twenty-two thousand, three hundred and forty-eight naira, twenty-five kobo) representing principal and interest due to the plaintiffs as

compensation.

iv. Interest at the rate of 21% per annum on the sum of N21,222,348.25 (twenty-one million, two hundred and twenty-two thousand, three hundred and forty-eight naira, twenty-five kobo) from 1st January, 1992 until the whole amount is paid.

At the conclusion of trial, the High Court entered judgment for the plaintiffs/appellants in the sum of N1,233,960.00 (one million, two hundred and thirty-three thousand, nine hundred and sixty naira) as compensation for the 822.64 hectares of the land acquired. The plaintiffs were not satisfied with the decision and consequently appealed to the Court of Appeal.

However, prior to the determination of the suit by the trial court, the respondents, as defendants filed a notice of preliminary objection on the 31st day of January, 1993 praying the court to strike out the suit on the ground that:

“The application is statute barred by virtue of the provisions of Section 10 of the Public Lands Acquisition Law Cap. 105 Laws of the Western Region of Nigeria, 1959 (Now Cap. 105 of Laws of Oyo State of Nigeria, 1978) and the Limitation Law, Cap. 64 Laws of Oyo State of Nigeria”.

Following arguments, the trial court ruled on 8th March, 1994 that exhibit E dated 6th July, 1992 was an acknowledgment of the debt and that Section 136 of the 1979 Constitution confers jurisdiction on the High Court over the matter and consequently dismissed the preliminary objection.

There is no appeal against the above ruling. It is important to note that the respondents did not cross appeal against the judgment of the trial court neither did they file a respondent notice.

In spite of the above facts, the lower court, in its judgment of 11th April, 2002, dismissed appellants’ appeal and set aside the judgment of the trial court on the ground that the trial court had no jurisdiction to entertain the plaintiffs’ claims. It is against the above decision that the instant appeal is filed, the issues for the determination of which have been stated in the appellant’s brief filed on 11th December, 2003 as follows:

“1. Whether *the issue of jurisdiction was competently raised at the lower court. Ground 1.*

2. Whether the lower court was right in basing

compensation payable on N1,500.00 and awarding the sum of N1,233,960.00. Grounds 2 and 3.

3. Whether the appellants are or are not entitled to interest on compensation payable to them. Ground 4'.

As stated earlier in this judgment, the respondents did not cross appeal against the judgment of the trial court neither did they file a respondent notice against same yet their issue no. 1 before the lower court, is as follows:-

“Whether by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976, the trial court has jurisdiction to entertain the claim of the plaintiff”

It is based on the above issue that the lower court held that the trial court had no jurisdiction and set aside the decision of that court. This is unfortunate as the trial court had in an earlier ruling held that it had jurisdiction to entertain the matter and the respondents never appealed against that ruling. Even after the final decision of that court, respondents filed no cross appeal nor respondent's notice on which the issue could have been based/raised.

In the circumstance, it is very clear and as settled in a long line of cases by this court, that a decision of a court/tribunal not appealed against is deemed accepted and remains binding on the parties and all and sundry.

Also trite is the law that an issue to be determined by an appellate court must be raised/based or formulated from either a ground or combination of grounds of appeal for it to be valid and relevant for consideration.

In the instant appeal, the respondents' issue 1, reproduced supra does not rise from the grounds of appeal filed by the appellants neither could it be said to arise from the grounds of cross appeal or respondents' notice since none was filed by the said respondents. In short, it was an “issue” at large, or an issue not known to law and consequently did not deserve any judicial consideration at all.

It is for the above and the more detailed reasons contained in the lead judgment of my learned brother, Ngwuta, JSC a preview of which I had the benefit of reading that I agree that the appeal is meritorious and deserves to be allowed. I therefore order accordingly and abide by the consequential orders made in the said judgment.

ment including the order as to costs. Appeal allowed.

MUHAMMAD JSC

My learned brother, Ngwuta, JSC permitted me to read his judgment just delivered. I agree with him entirely that there is merit in the appeal and it should be allowed. I allow the appeal. I set aside the judgment of the court below. I abide by consequential orders made in the lead judgment.

PETER-ODILI JSC

The appellants as plaintiffs before the High Court of Oyo State holden at Ibadan in their originating summons dated 25th day of November, 1992, claimed as follows:

(i) Declaration that under and by virtue of the provisions of Section 31 of the Constitution of the Federation 1963, No. 20 the plaintiffs are entitled to be paid compensation for their land situate along Araromi-Akufo Road, Ibadan compulsorily acquired by the defendants in or about 7th February, 1963.

(ii) Declaration that by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act, 1976 No. 37, the plaintiffs are entitled to be paid interest at bank rate on the said compensation.

(iii) An order directing the defendants to pay the plaintiffs the sum of N21,222,348.25 representing principal and interest due to the plaintiff as compensation.

(iv) Interest at the rate of 21% per annum on the sum of N21,222,348.25 from 1st January, 1992 until the whole amount.

The respondents filed a notice of preliminary objection dated 31st day of January, 1993 wherein they prayed the court to strike out the plaintiffs' application on the ground that the application was statute barred pursuant to Section 10 of the Public Lands Acquisition Law Cap. 105 Laws of Western Region of Nigeria 1959 now Cap. 105 of Laws of Oyo State of Nigeria, 1978 and the Limitation Law Cap. 64 Laws of Oyo State of Nigeria. The learned trial Judge in his ruling dated 8th day of March, 1994 dismissed the preliminary objec-

tion holding, on the issue of limitation.

(a) that exhibit “E” dated 6th July 1992 was an acknowledgment of the debt; and

(b) on the issue of jurisdiction that Section 236 of the 1979 confers jurisdiction on the High court over the matter.

B There was no appeal against that ruling. The plaintiffs then filed an application for judgment in default of defence and the respondents filed two counter affidavits dated 21st and 24th October 1994 respectively. It was agreed by the parties and the court that C evidence be taken in view of the series of affidavits and counter-affidavits on both sides.

After hearing the evidence on both sides and addresses of counsel, the learned trial judge gave judgment dated 20th March, 1996 partly in favour of the plaintiffs awarding them the sum of N D 1,233,960.00 as compensation due in respect of 822.64 Hectares of land acquired from them by the defendants. Dissatisfied with only the amount of compensation awarded, the plaintiffs appealed to the Court of Appeal. The Court of Appeal dismissed the appellants’ appeal by a judgment of 11th April, 2002 and set aside the judgment E and orders of the trial court on the ground that the High Court had no jurisdiction to entertain the plaintiffs’ claims. Dissatisfied the appellants have appealed to this court.

On the 13th February 2012 when this appeal was heard the F through learned counsel, Michael F. Lana Esq. adopted their 11/2/03 and a reply brief filed on 30/9/10 and deemed filed on 13/2/12. In the brief were distilled three issues for determination, viz-

1. Whether the issue of jurisdiction was competently raised at the lower court?
- G 2. Whether the lower court was right in basing compensation payable on N1,500.00 and awarding the sum of N1,233,960.00.
3. Whether the appellants are or are not entitled to interest on compensation payable to them.

H The respondents absent and not represented even though properly served had their brief settled by Mr. H. F. Sule, Director Civil Litigation and Advisory Services, Oyo State Ministry of Justice filed on 26/5/08, taken as argued. In it, respondents had raised a preliminary point of law wherein they contended that the issue of cause of action and when the cause accrued was not part of the record. That

that issue was therefore incompetent to be taken at this stage and so should be struck out. He cited *Akpan v. Julius Berger (Nig.) Plc. (2003) FWLR (Pt. 182) 1827 at 1838; (2002) 17 NWLR (Pt. 795) 1.*

Respondents thereafter stated that if the preliminary point did not succeed they were raising four issues for determination as follows: B

1. Whether by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976, the trial court has jurisdiction to entertain the claim of the plaintiffs/appellants. C

2. Whether the lower court was right in holding that the trial court lacked jurisdiction to try the plaintiffs/ appellants claim.

3. Whether the lower court was right in affirming the judgment of the trial court that the appellants were entitled to only N1,238,960.00 as compensation on 882 hectares of land acquired by the then regional government. D

4. Whether the lower court was right in affirming the decision of the trial court to the effect that the plaintiff/appellants were not entitled to interest on the amount payable as compensation to the appellants. However, vague or minute a preliminary objection is, it must be first considered before the court can go forth since as in this instance the competence of the process is questioned. It must be resolved so that the court is not made to embark on a futile adventure into an appeal or suit that it either has no power to do or the matter being already dead, whatever one does changes nothing. Preliminary point of law: E

The preliminary objection of the respondent is based in the main on when the issue of cause of action and when it accrued as raised by the appellants in the court below. That it was an incompetent issue and should be struck out. F

Learned counsel for the appellants in response within their reply brief said the respondents have raised a preliminary point of law without first applying for and obtaining leave to raise such an issue contrary to Order 2 rule 9 of the Supreme Court Rules 1999 (as amended). That the absence of that leave renders the issue herein raised as incompetent and should be struck out. He cited *Onochie v. Odogwu (2006) All FWLR (Pt. 317) 544 at 560; (2006) 6 NWLR (Pt.975) 65.* G

He stated that if the court is minded to entertain this objection he was urging that it has no merit since the issue of cause of action was part and parcel of the issue of Limitation Law raised by the respondents as a preliminary objection in the trial court. He referred to page 39 of the record and was properly considered by that court which found that the respondents did not prove the accrual of the cause of action and the only evidence was the acknowledgment of debt by the respondents especially, exhibit 'E'. That there had been no appeal against that decision of the trial court and the parties are therefore bound by it. He cited *Ogunyade v. Oshunkeye* (2007) All FWLR (Pt. 389) 1179, (2007) 15 NWLR (Pt. 1057) 218; *Nwabueze v. Okoye* (1988) 4 NWLR (Pt. 91) 664 at 679; *Attorney-General, Anambra State v. Attorney-General, Federation* (1993) 6 NWLR (Pt. 302) 692 at 732.

This preliminary objection of the respondents is a curious one, the basis for it and even the substance having been raised at the court of trial and determined by the court. The matter has to do with cause of action in relation to the Limitation Law as a preliminary objection at the trial court and the learned trial judge after reviewing the addresses of counsel in his ruling concluded as follows:

"It is also the defendants to establish when the cause of action arose and when the claim was made. On the Limitation Law Cap. 64, he submitted that the burden is still on the defendants to establish the time the cause of action arose. This has not been discharged by the defendants. However, it is the defendants that ought to plead and prove that the action is statute barred. For instance, it is the defendant that ought to prove i.e., the precise date when the cause of action arose for the computation of the period of limitation."

The learned trial Judge finally dismissed the preliminary that the defendants now respondents did not prove the accrual of cause of action. No appeal was filed against that decision. Therefore It remained binding and I see no reason now without cross appealing why the respondent should come up here and now at this court to raise it as a fresh objection. I rely on *Ogunyade v. Oshunkeye* (2007) All FWLR (Pt. 389) 1179, (2007) 15 NWLR (Pt. 1057) 218; *Nwabueze v. Okoye* (1988) 4 NWLR (Pt. 91) 664 at 679; *A-G., Anambra State v. A-G. Federation* (1993) 6 NWLR (Pt. 302) 692 at 732.

From what I have stated above and the record pages 19 - 42, it seems to me that the respondents embarked on this fanciful adventure as an attempt to try their luck on anything that would have the semblance of the answer to attack this appeal. In doing this, the respondents had not been mindful that this waste of time is one this court really does not need. If a counsel or party wants to embark on a luxurious court process he had to do so with a sense of responsibility and not take the court through a wild goose chase, all with the inapplicable invocation of lack of jurisdiction. What I am in effect saying is that this objection lacks merit and is dismissed. Main appeal: B C

Arguing the appeal, Mr. Lana learned counsel for the appellants contended that the respondents raised the issue of jurisdiction for the first time in their brief in the Court of Appeal without filing a cross- appeal and without seeking leave to raise the issue. That when a complete reversal of the decision a lower court should be by cross- appeal which they respondents did, not do. Also that the issue No. (i) in the respondent's brief in the lower court did not relate to any ground of appeal and the respondents had not in the court below asked for leave to raise a fresh issue, is sought by the respondent, it That the court below considering that issue and dismissing the appeal on that issue denied the appellants their right to fair hearing. He cited Briggs v. Bob-Manuel (2003) FWLR (Pt.146) 945 at 955, (2003) 5 NWLR (Pt. 813) 323; Idika v. Erisi (1988) 2 NWLR (Pt.78) 563 at 579; Oniah v. Onyia (1989) 1 NWLR (Pt.99) 514 at 527; Imonikhe v. Attorney-General, Bendel State (1992) 6 NWLR (Pt. 248) 396 at 407; Jiddun v. Abina (2000) 14 NWLR (Pt. 686) 209 at 223; Joy v. Dam (1999) 9 NWLR (Pt. 620) 538 at 547; Amusa v. State (2003) FWLR (Pt. 148) 1296 at 1307, (2003) 4 NWLR (Pt. 811) 595; Oforkire v. Maduiké (2003) FWLR (Pt. 147) 1090 at 1000 -1001, G (2003) 5 NWLR (Pt. 812) 166.

For the appellants was further submitted that the failure of the trial court to properly evaluate the evidence including exhibit 'E' made it come to the erroneous conclusion. That exhibit 'E' was not applicable in the computation of compensation. That the lower court also came to a wrong summation when it held that the issue before the court was whether the plaintiffs' claim was statute barred or not and so this court would intervene and right the wrong. He cited Abisi v. Ekwealor (1993) 6 NWLR (Pt. 302) 643 at 673. H

Mr. Lana of counsel went on to contend for the appellants that the lower court and the trial Judge wrongly invoked Section 4 (2) of Decree 33 of 1977 to deny the appellants' interest. Section 4 (2) relates to (i) undeveloped land (ii) acquired by purchase. He referred to the evidence before court as contained in paragraphs 3 and 7 of the 2nd appellants' affidavit in support of the summons. That it was clear that the plaintiffs were original landowners and their land was already developed thus their claim was properly brought under Section 6 of the Decree 33 and not section 4 (2). Also that it was clear from the evidence that the appellants had yielded up possession of their land and so entitled to interest by virtue of Section 6 of the Decree. That the respondents having agreed in exhibits 'E' and 'H' to the total sum of N21,222,348.25 were stopped from disputing the rate of interest payable. He said the respondents could not in law use exhibits R1 - R3 which were procured during the pendency of the action. He cited *Abdullahi v. Hanhitu* (1999) 4 NWLR (Pt. 600) 638; *Ogidi v. Egba* (1999) 10 NWLR (Pt.621) 42; Section 9 (3) Evidence Act.

Respondents submitted through their brief that the trial court lacked jurisdiction to try the case by virtue of Sections 12 and 18 of the Public Lands Acquisition Decree of 1976 and 1963 and 1979 Constitution of Nigeria. That the issue of jurisdiction is the basis upon which the court's judgment and orders are founded. That the issue of jurisdiction is so fundamental that without it the whole proceedings is a nullity and so the issue of jurisdiction can be raised at any time even at the appeal court for the first time and needs not be related to any ground of appeal. He cited *Jammal Steel Structures Ltd. V. Continental Bank Ltd.* (1973) 1 All NWLR (Pt. 2) 208 at 222; *Bronik Motors & Anor v. Wema Bank* (1983) 6 SC 158 at 289, (1983) 1 SCNLR 296; *Forestry Research Institute of Nigeria v. Gold* (2007) 5 SCNLR 302 at 305, (2007) 11 NWLR (Pt. 1044) 1; *Mandara v. A.G. of Federation* (1984) 4 SC 8, (1984) 1 SCNLR 311; *Benson Obiakor & Anor v. The State* (2002) 10 NWLR (Pt. 776) 612.

For the respondents was put forward that they did not need leave of court to raise issue of jurisdiction. That at the court below when the issue was raised, appellants were allowed to file a reply brief on the new issue raised and the appellants replied in full on the issue of jurisdiction and so cannot complain of a denial of fair hear-

ing. That the cause of action accrued in 1963 and not 1992 as appellants are contending. He cited the Public Lands Acquisition (Miscellaneous) Provision Decree 33 of 1976 the law at the point of the accrual of the cause of action and well covered by the 1979 Constitution. He cited *Afolayan v. Ogunrinde* (1990) 1 NWLR (Pt. 127) at 369; *Kate Enterprises Ltd. v. Daewoo (Nig.) Ltd.* (1985) 2 NWLR (Pt. 5) 116 at 118; *Uwaifo v. A-G., Bendel State* (1982) 1 SC 124, (1983) 4 SCNLR 1; *Emenimaya v. Okorji* (1987) 3 NWLR (Pt. 59) 6.

That the parties cannot by consent confer jurisdiction on the court. That although Section 236 of the 1979 Constitution confers unlimited jurisdiction on the State High courts, equally Section 274 of the same constitution made the Public Lands Acquisition Act No. 33 of 1976 an existing law which was in force at the material time. That Section 6 (6) (d) of the 1979 Constitution had ousted the jurisdiction of the High Court, that Section 161 (3) of the 1963 Constitution had the same effect. He cited *Uwaifo v. A-G., Bendel State* (supra); *A-G., Imo State v. A-G., Rivers State* (1983) 2 SCNLR 108; *Madukolu v. Nkemdilim* (1962) 1 All NLR 587, (1962) 2 SCNLR 341.

Respondents submitted that the Court of Appeal found that nothing was wrong with the evaluation of the evidence of the trial court on this issue of compensation and agreed with it. That the lower court was right when it held that the appellants were not entitled to interest because appellants did not show that they acquired the land by purchase.

Replying on point of law sequel to the reply brief, the appellants through counsel submitted that the two courts fell into error by using the Legal Notice No. 13 of 1978 made by the Oyo State Government acting under the Land Use Decree without adverting their minds to Section 31 of the Land Use Act. That any calculation of compensation on land acquired before the Promulgation of the Land Use Act must be as provided in the Public Lands Acquisition (Miscellaneous) Decree and not as provided in the Land Use Act. For land acquired after 29th March 1978 compensation will be provided in Section 29 of the Land Use Act.

That Section 3 of the Land Use Act makes it clear that the designation of parts of a State into Urban areas is for the purpose of

the Land Use Act and not for any other purpose and certainly not for the purpose of Decree 33 of 1976 which operated in respect of land acquired before the Land Use Act. He stated that Section 31 of the Land Use Act takes all issues relating to such acquisition outside the purview and operation of the Land Use Act.

- B The above being the summary of the submissions from both sides of the divide it seems to me that there is need to go back into what the Court of Appeal did in its consideration of the appeal. Therefore, I shall go into the essential part of the judgment useful for our purpose herein. It is that not only could the issue of jurisdiction be raised, even viva voce, anytime was valid. Also that the issue of jurisdiction need not be embedded in a ground of appeal or be a ground of appeal and the respondent did not have to cross appeal to bring the matter up and for it to be entertained first before anything else.
- C
- D The court below sorting out that primary question entered into the merit of the issue of jurisdiction and basing its decision on the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 came to the conclusion that the State High Court had no jurisdiction to adjudicate on the matter since its jurisdiction was clearly stated therein as
- E ousted.

I would want to go into some of the relevant sections of the law, precisely the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 Section 3 thereof provides as follows:

- F *“Any claim in respect of compensation payable by virtue of the Public Lands Acquisition Act or the State Lands Act or any other enactment or law shall be determined in accordance with the provisions of this Decree, and any dispute arising from such claim shall be referable by any party to the dispute for adjudication by a Lands*
- G *tribunal established under Section 12 below.”*

- It is to be noted that by Section 12 (1) of the Act, the Land Tribunals are created while Section 12 (2) provided for the Constitution or membership. It stated that the Tribunal shall be made up of a Judge of the High Court of a State or of the Federal Revenue Court
- H *“who shall be assisted by two assessors, each of whom shall possess qualifications approved for appointment to the public service of the Federation or of a state, as the case may be, as estate surveyor or land officer and shall have been qualified for not less than 5 years...”*

Going into Section 18 (1) of the same Act wherein it was

provided thus:

“18 (1) - As from the commencement of this Decree and notwithstanding anything to the contrary in any law, the High Court of a State or any other court having original jurisdiction in land matters shall not have jurisdiction to hear or determine -

(a) any question relating to or connected with the ownership, whether beneficial or otherwise, of any land to be compulsorily acquired by the government for the public purposes of the Federation or of a State; and

(b) any question relating to or concerning any such land including the amount of compensation payable in respect of such acquisition and the persons entitled to such compensation, and no action whatsoever shall be brought in any such court in respect of any such question, and if such action is pending in any such court or on appeal in any other court, the action shall abate...”

The above provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 have left nothing for conjecture or speculation or doubtful as to who would the jurisdiction to deal with the cause of action in the suit at the court of first instance. The implication would have been that the Oyo State High Court which heard and determined the suit before it, had done so without the vires since its powers had been specifically ousted and even in the composition of the trial Tribunal which was imbued with the necessary authority, there is no way and by no stretch of imagination can an Oyo State High Court be equated or described as an alternative to the Lands Tribunal which has a composition with the qualifications of the members well spelt out. As if those hindrances to the powers of the Oyo State High Court were not enough, the Act had gone further to embrace matters properly before the State High courts previously and before the enactment under review to state firmly and unequivocally that with the coming into being of the Act those matters had automatically abated in those regular courts.

Again for effect, I would cite Section 1 of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 aforesaid which A came into force on the 1st day of July 1976 with particular reference to Section 23 (1) thereof. It provides:

“1 (1) Compensation payable in respect of land compulso-

rily acquired under the Public Lands Acquisition Act, the State Lands Act or any other enactment or law permitting the acquisition of land compulsorily for the public purposes of the Federation or of a State shall be assessed and computed in accordance with the provisions of this Decree, notwithstanding anything to the contrary in the constitution of the Federation or in any other enactment or law or rule of law.”

(2) Without prejudice to subsection (1) of this section, where before the commencement of this decree any land has been compulsorily acquired by the government or notice for the acquisition of any land has been given in accordance with the provisions of the Public Lands Acquisition Act, or any other applicable law and compensation in respect of such acquisition has not been paid, the compensation payable shall be determined in accordance with the provisions of this Decree, notwithstanding anything to the contrary in the Constitution of the Federation or in any other enactment or law or rule of law.

The interpretation of those provisions is that the entire field to which the appellants’ claim fall into are well covered leaving nothing for an escape route or channel. The appellants’ claims in short are that the trial court had failed to award interest on the amount awarded and that that court ought to have accepted the evidence led on the rate of interest payable per hectare and in further error in refusing to award less than the N21,222,348.25 mentioned in the document exhibit ‘E’.

Some basic principles of law need be reiterated here at least to remind ourselves as to what is applicable when the matter of jurisdiction as in the instant appeal is thrown up in relation to the facts and the operating laws at the time the cause of action arose and if as has happened here an intervening legislation has been promulgated that could change the course of events. It is not a matter for splitting hairs that the issue of jurisdiction is the basis on which a court’s proceedings and judgment at the end of the day are founded. It is fundamental as any proceeding done without jurisdiction no matter what ill is to be cured is an act done in futility. Therefore, it is not a condition for its applicability that it is related to any ground of appeal. This is so because it occupies a special and unique position which sets it apart from anything else. See *Bronik Motors Ltd. v. Wema Bank* (1983)

6 SC 158 at 289, (1983) 1 SCNLR 296; *Mandara v. Attorney General, Federation* (1984) 4 SC8, (1984) 1 SCNLR 311.

The above being the state of affairs, the next question is whether the trial court had the jurisdiction or the empowerment to entertain the suit and claims of the plaintiffs/appellants before it. The trial court said it had the vires, the Court of Appeal disagreed. In this case in hand the cause of action arose in 1963 when the land was acquired by the government and the issue of compensation was discussed. The amount payable dragged on between 1963 to 1976 when the Public Lands Acquisition Act No. 33 was promulgated, that did not change what law should be applicable since it is that at the time the cause of action arose. In this instance it was in 1963, then in the 1976 Public Lands Acquisition Act No. 33 came into being and the operating Constitution was the 1963 Constitution of Nigeria Section 161 (3) thereof which Constitution and provision had ousted the jurisdiction of the State High Court in respect of land subject of Public Acquisition. It needs be recaptured the relevant provisions of the law upon which the matter at hand fell under. Section 3 of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 provided as follows:

“3. Any claim in respect of compensation payable by virtue of the Public Lands Acquisition Act or the State Lands Act or any other enactment or law shall be determined in accordance with the provisions of this Decree, and any dispute arising from such claim shall be referable by any party to the dispute for adjudication by a Lands Tribunal established under section 12 below.”

Section 12 (1) in its provisions created the Lands Tribunal and Section 12 (2) provided the Constitution or members of the Tribunal to be a Judge of the High Court or the Federal High Court sitting with two assessors with the qualifications of the assessors provided for.

Section 18 (1) of the said Act then provided for the exclusive jurisdiction of the Tribunal and clearly ousted the jurisdiction of the State High Court on lands falling within the purview of that Act with specific mention of land compulsorily acquired by the Government for public purposes of the Federation or State. By Section 23 (1) of the Act it was provided that the Act applied even to cases of outstanding compensations in respect of acquisitions made before

the Act came into force.

Having stated those provisions of the Act, the next question would be how it has affected the matter in hand.

On whether the issue of jurisdiction now raised at this stage not through a preliminary objection but as part of substantive issue in the appeal before this court. The fundamental nature of the issue of jurisdiction cannot be over-emphasised as it is the thresh hold of adjudication and of paramount importance. This is so because if the court lacks jurisdiction it can do nothing and if it proceeds to do it, all the court does comes to naught. It is for this prime position of jurisdictional issues that it can be raised at anytime even at this level. However, as the saying goes, for every general rule there is an exception and in this instance that exception is standing on two prongs. One is the fact that the issue of jurisdiction is not related to any of the grounds of appeal and so the issue framed on the matter of jurisdiction is of no moment as it is an incompetent issue which has no value or validity. Also the respondent had not cross-appealed on this jurisdictional issue and there was no respondent's notice on which the matter could be anchored.

The second prong being the fact that at the court of trial the now respondents who were defendants had raised the issue of jurisdiction on the basis that the action of the appellants herein who were plaintiffs was statute barred pursuant to Section 10 of the Public Lands Acquisition Law Cap. 105 Laws of Oyo State of Nigeria 1978 and the Limitation Law Cap. 64 Laws of Oyo State of Nigeria 1978.

In a considered ruling that court of trial held that the suit was not Minute barred since 1979 Constitution protected it. The respondents herein did not appeal at the Court of Appeal. Since there was no appeal on that issue of jurisdiction that ruling and what it pertained valid and subsisting and cannot now be smuggled in under the guise of the principle upon which the issue of jurisdiction can be raised at anytime and at any level. I refer to the case of *Madukolu v. Nkemdilim* (1962) 1 All NLR (Pt. 4) 587, (1962) 2 SCNLR 341; *Osakue v. Federal College of Education, Asaba & Anor* (2010) 5 SCM 185, (2010) 10 NWLR (Pt. 1201) 1; *Omo v. Judicial Service Commission, Delta State* (2000) 7 SC (Pt. II) 1, (2000) 12 NWLR (Pt. 682) 444.

The matter of jurisdiction having been effectively settled at

the court of trial and not having been challenged in the Court of Appeal cannot not be re-opened as it is akin to a door shut which no one can open. That done with, the next issue to consider is the matter of whether the issue raised at the Court of Appeal on the issue of the Lands Tribunal being the effective forum to the exclusion of the regular High Court. That matter was not properly brought before the court below and it should therefore not have gone into it. That being the case and in the absence of any material to the contrary it can be said this is a good case for this court taking judicial notice of an issue, that is, that the Lands Tribunal was not in existence thereby giving the trial court, competence to enter into and adjudicate on the suit before it.

On the merits of the appeal, the appellants are entitled to the compensation as provided for in Section 6 of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976.

From the above and the well articulated reasons in the lead judgment, Nwali Sylvester Ngwuta, JSC, I allow the appeal and set aside the judgment of the court below.

I abide by the consequential orders in the lead judgment.

ARIWOOLA JSC

The action that culminated in this appeal was commenced by the appellants as plaintiffs by an originating Summons filed on 25/11/92 before the High Court of Justice of Oyo State, holden at Ibadan in the Ibadan Judicial Division. In the Summons, the appellants had raised the following question for determination by the court:

“Whether the plaintiffs are entitled to be paid compensation including interest for delayed payment for their land compulsorily acquired in 1963 along Araromi Akufo Road, Ibadan.”

In the event that the above question was answered in the affirmative, then the plaintiffs claimed as follows:

“1. Declaration that under and by virtue of the provisions of section 31 of the Constitution of the Federation 1963, No.20, the plaintiffs are entitled to be paid Akufb Road, Ibadan compulsorily acquired by the defendants in or about 7th February, 1963.

2. Declaration that by virtue of the provisions of the Public

Lands Acquisition (Miscellaneous Provisions) Act, 1976 No.33, the plaintiffs are entitled to be paid interest at bank rate on the said compensation.

B 3. *An order directing the defendants to pay the plaintiffs the sum of N21,222,348.25 representing principal and interest due to the plaintiffs as compensation.*

4. *Interest at the rate of 21 % per annum on the sum of N21,222,348.25 from 1st January, 1992 until the whole amount is paid.*

C 5. *Such further orders.”*

In support of the said Summons was an affidavit of 19 paragraphs deposed to by the 2nd plaintiff - Alhaji Karimu Olapade D Akere. Attached to the said Summons were various documents marked exhibits A-H respectively.

D After the preliminary objection by the defendants to the competence of the action was overruled and dismissed by the trial court on the 8th March, 1994, the defendants filed a Counter Affidavit on the 21st October, 1994 to oppose the action. The defendants attached various documents to their Counter Affidavit, marked us exhibits.

E They also filed a further Counter Affidavit of 15 paragraphs deposed to by the same Lands Officer who had earlier deposed to the Counter Affidavit. The defendants again attached oilier documents and marked them as exhibits R7-R9 respectively.

F The case eventually proceeded to hearing. At the end of the trial, both counsel addressed the court and Judgment was reserved. In the judgment of the trial court delivered on 20th March, 1996 the plaintiffs’ claim succeeded in part and was accordingly granted with costs against the defendants.

G The plaintiffs were dissatisfied with the trial court’s decision hence they appealed to the court below with their Notice of Appeal filed on 5th June, 1996.

H Parties filed and exchanged their respective briefs of argument and the appeal was heard. In its reserved judgment, the court below held as follows:

“In the result, there is totally no merit in the entire appellants’ appeal and it deserves to be dismissed. But since I have held earlier above that the learned trial judge had no jurisdiction to entertain the claim, the order I will make is one, setting aside the judgment and

orders made by the lower court. In their place I hereby make an order striking out the appellants' claim. The claim is accordingly struck out. But I will make no order on costs."

The dissatisfaction of the appellants led to the instant appeal which notice of appeal dated 20/6/2002 contained four (4) grounds of appeal. Both parties also filed and exchanged brief of arguments. B

In their brief of arguments duly filed on 11/12/2003, the appellants distilled three issues for determination as follows: Issues for Determination

1. Whether the issue of jurisdiction was competently raised at the lower court. C

2. Whether the lower court was right in basing compensation payable on N1,500.00 and awarding the sum of N1,233,960.00

3. Whether the appellants are or are not entitled to interest on compensation payable to them. D

The respondents in their brief of argument filed on 26/5/2008 but deemed filed and served on 3/6/2008, formulated the following four issues for determination.

1. Whether by virtue of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No.33 of 1976, the trial court has jurisdiction to entertain the claims of the plaintiffs/appellants. E

2. Whether the lower court was right in holding that the trial court lacked jurisdiction to try the plaintiffs/appellants' claim. F

3. Whether the lower court was right in affirming the judgment of the trial court that the appellants were entitled to only N1,233,960.00 as compensation on 882 hectares of land acquired by the then regional government.

4. Whether the lower court was right in affirming the decision of the trial court to the effect that the plaintiffs/ appellants were not entitled to interest on the amount payable "as compensation to the appellants. G

It is noteworthy that the respondents neither filed a cross-appeal nor a respondents' notice to the appeal before the court below. It is equally interesting to note that even though the respondent twice to file notice of appeal but they each time withdrew their application for enlargement of time to appeal and filed notice of cross appeal and on the two different occasions had applications struck out H

having been withdrawn. (See pages 184-192 of the record). Therefore, the court below heard the appeal based on the notice and grounds of appeal filed by the appellants on the 5th June, 1996. The said notice of appeal had seven (7) grounds of appeal. (See pages 137-139 of the record).

B On a careful perusal of the grounds of appeal filed before the court below, it is clear that the issue of jurisdiction of the trial court to entertain the appellants' claim was not listed, either in the grounds or particulars of appeal. And as I noted earlier, there was neither a cross appeal, by the respondents nor a respondents' notice to the appellants' appeal against the decision of the trial court. One then wonders how the court below came to consider the issue of the jurisdiction of the trial court and resolved same against the appellants when no such issue was argued before it.

D There is no doubt and this has been settled, that the issue of jurisdiction being a fundamental one can be raised at any stage of the proceedings in the court of first instance or in the appellate courts. Same issue of jurisdiction or competence of the court can be raised either by any of the parties or by the court suo motu. Indeed, where E there are sufficient facts *ex facie* on the record of court establishing *p* lack of jurisdiction or want of competence, in the court, the court is duty bound to raise it suo motu, if the party so affected would not raise it. See *Oloba v, Akereja* (1988) 3 NWLR (Pt.84) 508 at 528; *Oloriegbe v, Omotosho* (1993) 1 SCNJ 30, (1993) 1 NWLR (Pt. 270) 386; *Nuhu v, Ogele* (2003) 18 NWLR (Pt. 852) 251 at 279, *Odiase v. Agho* (1972) 1 All NLR (Pt.I) 170, *Senate President v. Nzeribe* (2004) 41 WRN 39 at 97, (2004) 9 NWLR (Pt. 878) 251. *Mozie & Ors v, Mbamalu & Ors* (2006) 12 SCM (Pt.I) 306 at 315-316, (2006) F 15 NWLR (Pt. 1003) 466.

G However, it is the law and it is trite that a court, be it court of first instance or appellate should not raise a point suo motu and proceed to resolve the issue without giving parties before it the opportunity to address it on the said issue. The case is that of the parties but H not that of the court. The court's only role in adjudicating is to decide on the matters as presented before it in the pleadings and oral evidence. See *Sule Sanni v. Durojaiye Ademiluyi* (2003) 4 SCM 145 at 162, (2003) 3 NWLR (Pt. 807) 381; *Dan Amale v. Sokoto Local Govt. & Ors* (2012) 2 SCM 45 at 58, (2012) 5 NWLR (Pt. 1298)

181. Otherwise, the parties' right to fair hearing will be breached.

It is clear from the record that the court below took the matter of jurisdiction of the trial court to entertain the appellants' claim, suo motu without inviting and giving the parties opportunity to address it on the issue. What is more, the issue seemed to have been decided and laid to rest at the trial court, hence it was not raised by the respondents at the court below. The court below was therefore wrong to have taken up the matter as they did, the issue not having been properly and competently raised before or by the court. B

Generally, it is a basic principle of law and it is trite, that when an issue is not placed before a court of law, it has no business whatsoever to deal with it. See; Florence Olusanya v. Olufemi Olusanya (1983) 3 - SC 41 at 56/57, (1983) 1 SCNLR 134; Ochonma v. Unosi (1965) 1 NMLR 321 at 323. C

However, when a court raises a point suo motu, as the court below did in the present case on issue of jurisdiction of the trial court, the parties must be given an opportunity to be heard on the issue, in particular, the party that may be adversely affected as a result of the point raised suo motu. By doing so, the court will avoid any breaching of the parties' right to fair hearing. See; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410 at 420, Odiase v. Agho (1972) 1 ALL NLR (Pt.1) 170, Ejowhomu v. Edok-Eter Mandilas Ltd. (1986) 5 NWLR (Pt.39) 1, Oje v. Babalola (1991) 4 NWLR (Pt.1 85) 267 at 280. Yekinni A. Abbas & Ors v. Mogaji & Ors (2001) 11 SC 1 at 14 (reported as Abbas v. Solomon (2001) 15 NWLR (Pt. 735)144). D
E
F

It is for the above reason and more comprehensive and fuller reasons in the lead judgment of my learned brother, Ngwuta, JSC which I was privileged to have read before today and with which I am in total agreement that I also found the appeal meritorious. Accordingly, I allow the appeal and abide by the consequential orders in the said lead judgment including the order on costs. Appeal allowed. G