

SUPREME COURT OF NIGERIA
FRIDAY 30TH JANUARY, 2015. SC. 295/2012
CORAM:- S. GALADIMA, M. U. PETER-ODILI, O.
ARIWOOLA, M. D. MUHAMMAD, K. B. AKA'AH, JJSC

1. ALHAJI TAJUDEEN
BABATUNDE HAMZAT

2. ALHAJI SURAKATU SODIPO APPELLANTS
(For themselves and on behalf of the
Muslim Community, Isara Remo)

AND

1. ALHAJI SALIU IREYEMI SANNI

2. ALHAJI BUSARI ALATUNSE RESPONDENTS
3. ALIMI BAKARE

JURISDICTION - Issue of - When to raise - Question of jurisdiction
can be raised at anytime of the proceedings - Even for the first time
in Supreme Court (H1)

LEGAL PRACTITIONERS - Court process - Signing of - Appellant's
statements of claim on which evidence was led were nullity - Same
having been signed by person not entitled to practice as barrister
and solicitor (H2)

FACTS

Before the High Court of Ogun State, plaintiffs/appellants
instituted this action against defendants/respondents claiming inter
alia for a declaration that 1st appellant is the rightful holder of the
office of the Chief Imam of Isara-Remo having been duly turbaned
on the 23/08/2001 by the generality of the Muslim community in
Isara-Remo. Whereas the writ of summons was signed by their legal
practitioner - Olumuyiwa Obanewa, the statement of claim and the
amended statement of claim were signed by Olumuyiwa Obanewa
& Co. The position of appellants from their pleadings and evidence
is that 1st appellant was turbaned the Chief Imam of Isara-Remo,
Ogun State by PW3 Alhaji Rabiun Sunmolorun after appointment by
Muslim chiefs in the Central Mosque and majority of 12 out of 16 of
the Imams of the Ratibi Mosques and after ratification by the wor-

shippers at the Central Mosque.

On the other hand, respondents contended that 1st respondent being a deputy (Noibi) to the late Chief Imam and having performed the function of the Chief Imam in acting capacity for two years, properly replaced the late Chief Imam. At the end of hearing, the court found in favour of appellants and granted all their claims. Respondents were dissatisfied. Hence, they appealed to the Court of Appeal Ibadan Division. The appeal was allowed. Aggrieved, appellants appealed to Supreme Court. Respondents raised an objection to the competence of appellants' two statement of claim signed by a person not authorized to practice as a barrister and solicitor.

HELD (Unanimously striking out the appeal per GALADIMA JSC)

JURISDICTION - Issue of - When to raise

1. It is clear though that this objection was not raised at the two courts below however, it is being raised for the first time before this court. The question as to whether a court has jurisdiction or not to entertain an action can be raised at any time of the proceedings and even for the first time at the appellate court inclusive of this court. (p. 260 H)

Court process - Signing of

2. The respondents are challenging the competence of the two statements of claim of the appellants on which evidence of their witnesses at the trial court was based. It is beyond any argument that the law firm of "OLAMUYIWA OBANEWA & CO" is not legal practitioner recognized under the law. It cannot sign any process meant for filing in the court. The two statements of claim being legal documents ought to have been signed by the named legal practitioner on behalf of the Appellants.

In view of our clear position in OKAFOR v. NWEKE (supra) and other similar cases, I hold that the Appellant's statements of claim on which evidence was led, were a nullity, same having been signed in the name of a law firm which is not by the

provisions of Sections 2(1) and 24 of the Legal Practitioner Act, Cap 207 Laws of the Federation, 1990, a person entitled to practice as a Barrister and Solicitor.

Consequently the statements of claim are hereby struck out. I make no order as to costs. (pp. 262 D/263 E)

NOTABLE POINT OF INTEREST

GALADIMA JSC

1. Competence of court

For a court to be competent to assume jurisdiction, the following three conditions must be satisfied:

(a) The court must be properly constituted as regards number and qualification of members of the bench.

(b) The subject matter of the case must be within the jurisdiction of the court.

(c) The case must come before the court initiated by one process of law and upon fulfillment of all condition precedent to the exercise of the jurisdiction.

Any defect in competence of a court process is fatal and the proceedings arising there from will be rendered a nullity, no matter how well conducted. (p. 261 B)

REPRESENTATION

Toyin Bashorun (MS), for the Appellants

Adewale Adegoke Esq. with Isaiah Opaye Esq., for the Respondents

CASES REFERRED TO

Cotecna International Ltd v. IMB Ltd (2006) 9 NWLR (pt. 985) 275

SLB Consortium Ltd v. NNPC (2011) 9 NWLR (pt. 1252) 317

Idoko v. Ogeikwu (2003) 7 NWLR (pt. 819) 275

Y.S.G. Motors Ltd v. Okonkwo (2010) 15 NWLR (pt. 1217) 524

Nigeria Airways Ltd v. Lapite (1990) 7 NWLR (pt. 163) 392

Pan African Co. Ltd v. NICON (1982) 95 SC 1

Tukur v. Govt. of Gongola State (1959) 4 NWLR (pt. 117) 517

Tiza v. Begha (2005) 15 NWLR (pt. 949) 616

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Skenconsult Nig. Ltd v. Ukey (1981) 1 SC 6

Unity Bank Plc v. Denclag Ltd (2012) 18 NWLR (pt. 1332) 293
Okafor v. Nweke (2007) 10 NWLR (pt. 1043) 521

STATUTES & RULES REFERRED TO

- Constitution of the Federal Republic of Nigeria 1999, s. 233(1)
B Legal Practitioners' Act Cap. 207 LFN 1990, ss. 2(1), 24
Supreme Court Rules, O. 2 r. 9(1)

LEAD JUDGMENT BY GALADIMA JSC

C This appeal by the appellants, who were respondents, is against the unanimous judgment of the Court of Appeal, Ibadan Division delivered on the 5th day of March 2012.

Briefly, the facts of this case are that the appellants as plaintiffs instituted an action against the Respondents as Defendants in the D High Court of Ogun State, Sagamu Judicial Division, by their Writ of Summons dated 18th day of December, 2001. In the writ which was issued and signed by their counsel MUYIWA OBANEWA Esq. of OLUMUYIWA OBANEWA and Co. Legal Practitioners, the plaintiff claimed as follows:

E “1. A Declaration that the 1st plaintiff is the rightful holder of the office of the Chief Imam of Isara-Remo having been duly turbaned on the 23rd day of August, 2001 by the generality of the Muslim community in Isara-Remo.

F 2. A Declaration that the purported turbaning of the 1st Defendant as Chief Imam of Isara Remo on the 21st day of August, 2001 by the 2nd and 3rd Defendants is irregular, null and void and of no effect as the appointment and turbaning was done without the consent of the Muslim community in Isara-Remo.

G 3. An order setting aside the purported turbaning of the 1st Defendant as Chief Imam of Isara-Remo of 24th day of August 2001 by the 2nd and 3rd Defendant.”

On pages 47 - 48 and 83-84 the “statement of claim” and “Amended statement of claim” of the plaintiff respectively were both H signed by their counsel thus:

“OLUMUYIWA OBANEWA & CO.
LEGAL PRACTITIONERS, SOLICITORS
TO THE PLAINTIFFS.”

In proof of their claim, the Appellants in both their pleadings

and evidence contended that the 1st Appellant was turbaned the Chief Imam of Isara-Remo, Ogun State by one Alhaji Rabiu Sunmolorun, the Baba Adinni of Isara Remo General Mosque on 23/8/2001 after appointment by Muslim Chiefs in the Central Mosque and by the majority of 112 out of 161 of the Imamu of the Ratibi Mosque and after ratification by the worshippers at the Central Mosque. B

The Learned trial Judge after taking evidence of witnesses and addresses of counsel to the respective parties found in favour of the Appellants and granted all their claims. The Respondents herein dissatisfied with this decision appealed to the Court of Appeal which held that the appellants' claim was not proved and accordingly dismissed the appeal. It was against that decision the appellants have now come to this court. C

From their Amended Notice of Appeal deemed filed on 13/6/2013 containing 5 (Five) grounds, 3 (three) issues distilled for determination from the Appellants brief signed by their counsel TOYIN BASHORUN and filed on 23/10/2013, are as follows: D

“(i). Whether or not the Court of Appeal was right to have held that the Respondents (Appellants herein) failed to discharge the burden of proof placed on them that the 1st Respondent (1st Appellant) was properly appointed by the appropriate appointers; as the Chief Imam of Isara - Remo. E

(ii). Whether or not the Court below rightly analysed the evidence of PW2 and PW3 who were in position of authority and who had in themselves conducted investigative enquiry into the authenticity of the appointment of the 1st Appellant as Chief Imam of Isara - Remo. F

(iii). The Position of the Odemo of Isara - Remo as member and chair of the Chieftaincy Committee pursuant to the Ogun State Chiefs Law.” G

On their part the respondents raised a sole issue for determination through their counsel ADEWOLE ADEGOKE Esq, filed their brief of argument on 6/8/2013 as follows: H

“Whether the honourable court below was right in holding that the Appellants failed to discharge the burden of proof placed on them that the 1st Appellant was properly appointed by the appropriate appointors as the Chief Imam of Isara-Remo, thereby allowing

the appeal of the Respondents and dismissing the case of the Appellants as presented at the trial court.”

B The Respondents’ have filed a Notice of preliminary objection by which they are challenging the competence of the statement of claim of the Appellants and which evidence of their witnesses at the trial court was based and the power of the trial court to entertain the Appellants’ claim. They prayed that the suit ought to have been dismissed.

C I must also observe that the Appellants Reply brief was filed on 23/11/2013, essentially to respond to the Respondents’ Preliminary objection. They also responded to the other issues raised by the respondents in their brief.

D On the 10th day of November, 2014 when this appeal came up for hearing. Learned Counsel for their respective parties adopted and relied on the briefs of argument. It is then learned counsel for respondents referred to the Notice of Preliminary Objection filed by them in which they are challenging the competence of the statement of claim of the Appellant on which evidence of the Appellants witnesses at the trial court was based. Their main plank of the objection E is that the statement of claim contained on pp. 41 - 48 of the record of appeal was signed by “OLUMUYIWA OBANEWA AND CO.” as “Legal Practitioners, solicitors to the plaintiffs.” In raising the objection the respondents were not unmindful of the fact that it was not raised at the two courts below and that it is being raised for the first F time in this court. It is however, submitted that the issue of jurisdiction is very fundamental in the adjudicatory process, as it touches on the competence of the court to hear and determine a matter before it. That the existence or absence of jurisdiction in a court goes to the G root of the matter and sustains or nullifies whatever decision the court may arrive at, no matter how sound. Learned Counsel relied on COTECNA INTERNATIONAL LIMITED v. IMB LIMITED (2006) 9 NWLR (pt.985) 275 at 279 and SLB CONSORTIUM LTD v. NNPC (2011) 9 NWLR (Pt.1252) 317 at 332.

H It is submitted that since the Law Firm of “OLUMUYIWA OBANEWA and CO.” is not legal practitioner recognized under the law, it follows that the firm cannot sign any process for filing in the court, and therefore the said statements of claim being both legal documents, that ought to have been signed by a named legal practi-

tioner on behalf of the Appellants, are liable to be struck out having not been signed by a legal practitioner known to law. Reliance was placed on the cases of OKAFOR v. NWEKE (2007) 10 NWLR (pt.1043) 521 and SLB CONSORTIUM LIMITED v. NNPC (supra).

On the question of the appropriate or consequential order this court should make, in the circumstance of this case, learned counsel has submitted that an order of dismissal of the appellants' action is quite appropriate. He relied on IDOKO v. OGEIKWU (2003) 7 NWLR (pt.819) 275 at 292 -293, Y.S.G. MOTORS LTD v. OKONKWO (2010) 15 NWLR (pt.1217) 524 at 543; he is however not unmindful of the decision of this court in NIGERIA AIRWAYS LTD v. LAPITE (1990) 7 NWLR (pt.163) 392 at 404 but that the facts of that case are quite different and distinguishable from the facts of the instant case. That in that case the trial had not been concluded and not even commenced at all, and therefore the case will not apply to or be authority for the mere striking out of the Appellants, case at the trial court.

It is the submission of the learned counsel for the appellants that the respondents concede that the writ of summons commencing the suit at the trial court is regular, hence the trial court had the jurisdiction to entertain the suit. He has argued that the subject matter of the preliminary objection pertains to issues which were never raised at the court below. It is conceded however that the pleadings of the respondents, who were Defendants at the trial court, were based on the statement of claim and evidence led on the same by the said respondents herein. That the respondents as appellants in the court below appealed on points and issues they considered germane at the trial court which, in their view would have affected the decision by that court. That it is also a fact that the respondents as appellants at the Lower Court had their appeal upheld. That the appeal to this court relates to the decision of the Lower Court only. That this Court sits only on appeal in respect of decisions or pronouncements of the court below.

Hence, this court cannot and is not capable of entertaining any question in which there was no decision or pronouncement by the court below by virtue of Section 233(1) of the Constitution of the Federal Republic of Nigeria 1999, as amended. It is submitted therefore that this preliminary objection is incompetent in law and should

not be sustained; more so that since the points now raised by the respondents in their preliminary objection is totally unconnected with the decision of the Court of Appeal, the subject matter of this appeal before this court.

B My reaction to the respondents' preliminary objection raised in this appeal will be brief for the purport of Order 2 Rule 9 (1) of the Rules of this court is very clear. It provides that:

C *"A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with ten copies thereof with the Registrar within the same time."*

D The Respondents on 6th August, 2013 filed Respondents brief along with the preliminary objection both dated 5th of August, 2013.

By their Notice of Preliminary Objection the Respondents raised an objection to the jurisdiction of the trial court to hear this suit. The grounds upon which the objection is premised are as follows:

E *"(a). That statement of claim of the Appellants contained on pages 41 - 48 of the Record of appeal was signed by "OLUMUYIWA OBANEWA & CO's person unknown to law as a legal practitioner.*

F *(b). The incompetence is not anyway cured/rectified in subsequent pleadings filed by the Appellants at the trial Court.*

(c). The trial Court assumed jurisdiction to try the case when there was a feature in it which prevented the court from exercising its jurisdiction.

G *(d). The evidence of all Plaintiffs'/Appellants' witnesses was adduced on An incompetent statement of claim.*

(e). A court can only assume jurisdiction over competent court processes.

(f). The honourable trial court was robbed of jurisdiction to entertain the suit and take evidence therein."

H Both counsels are not disputing the facts that the claim of the appellant and evidence of their witnesses at the trial was based on the incompetent statement of claim.

It is clear though that this objection was not raised at the two courts below however, it is being raised for the first

time before this court. The question as to whether a court has jurisdiction or not to entertain an action can be raised at any-time of the proceedings and even for the first time at the appellate court inclusive of this court. See PAN AFRICAN CO. LTD v. NICON (1982) 95 SC 1. TUKUR v. GOVERNMENT GONGOLA STATE (1959) 4 NWLR (Pt.117) 517; TIZA v. BEGHA (2005) 15 B NWLR (pt.949) 616.

For a court to be competent to assume jurisdiction, the following three conditions must be satisfied:

(a) The court must be properly constituted as regards number and qualification of members of the bench. C

(b) The subject matter of the case must be within the jurisdiction of the court.

(c) The case must come before the court initiated by one process of law and upon fulfillment of all condition precedent to the exercise of the jurisdiction. D

Any defect in competence of a court process is fatal and the proceedings arising there from will be rendered a nullity, no matter how well conducted. See MADUKOLU v. NKEMDILIM (1962) 2 SCNLR 341; SKENCONSULT (NIG.) LTD v. UKEY (1981) 1 SC 6. E SLB CONSORTIUM LTD v. NNPC (supra).

The argument put forward on this issue by the respondents is to the effect that the Appellants' action at the trial court had features of an invalid pleadings, which ought to have prevented that court from exercising its jurisdiction, and therefore that case came up before the trial court not initiated by due process of law and without fulfillment of the condition precedent to the exercise of Jurisdiction. F

In determining the respondents' objection, I will consider the statement of the appellants dated 24th day of July, 2002 contained on pp.41-48 of the record of appeal headed "*proposed Amended Statement of claim*" said to have been amended on 7th day of March, 2005, pursuant to the order of Hon. Justice Adesida dated the 7th day of March 2005, contained on pp. 78 - 84 of the record of appeal. These two processes represent the pivot on which the evidence of the Appellants' witnesses at the trial court was based. The statements were both signed by "*OLUMUYIWA OBANEWA & CO*" said to be issued by the "*Legal Practitioners, Solicitors to the plaintiffs.*" G H

Learned Counsel for the appellants does not dispute this but

contended that the respondents have conceded in paragraph 4.18 of their brief of argument, whilst arguing this preliminary objection that:

“In the case leading to the instant appeal, parties filed and exchanged pleadings, on which issues were joined, called evidence and addressed the court. As the writ was regularly issued, the action was properly commenced/initiated and the trial court was therefore vested with preliminary jurisdiction.”

The argument of the learned counsel for the appellants, with due respect, is misconceived. It is without consideration of the preceding paragraph 4.17 and immediate paragraph 4.18 of the respondents’ brief on the issue of competence of the appellants’ statements of claim. The respondents have no grouse with the writ of summons dated 18/12/2001 which initiated the action. It was regularly signed by the learned counsel for the appellants thus:

“MUYIWA OBANEWA Esq. of OLUMUYIWA OF OLUMUYIWA OBANEWA & CO. LEGAL PRACTITIONERS.”

The respondents are challenging the competence of the two statements of claim of the appellants on which evidence of their witnesses at the trial court was based. It is beyond any argument that the law firm of “OLAMUYIWA OBANEWA & CO” is not legal practitioner recognized under the law. It cannot sign any process meant for filing in the court. The two statements of claim being legal documents ought to have been signed by the named legal practitioner on behalf of the Appellants.

This court was faced with a similar situation that came up for consideration in OKAFOR v. NWEKE (2007) 10 NWLR 521. In that case, the offending processes, the Motion On Notice, Notice of Cross Appeal, and a Brief of Argument all signed by “JHC OKOLO SAN & CO” were all held to be incompetent, same having not been issued by a legal practitioner known to law, and were consequently struck out.

In holding these processes incompetent this court held at page 532 thus:

“I have taken into consideration the issue of substantial justice which is balanced on the other side of the scale of justice with the need to correct the current embarrassing trend in legal practice where

authentication or franking of legal documents, particularly processes for filing in the Courts have not been receiving the serious attention they deserve from some legal practitioners. Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our example. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country. The law exists as a guide for actions needed for the practice of the law, not to be twisted and turned to serve whatever purpose, legitimate or otherwise which can only best result in embarrassing the profession if encouraged.” B
C

In SLB CONSORTIUM LTD v. NNPC (supra) this court citing the case of OKAFOR v. NWEKE (supra) struck out the plaintiffs Originating Summons and the statement of claim, both having been signed by “ADEWALE ADESOKAN & CO.. who was held not to be a legal practitioner known to law. It was further held that by that error the suit at the trial court “was not initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.”

In view of our clear position in OKAFOR v. NWEKE (supra) and other similar cases, I hold that the Appellant’s statements of claim on which evidence was led, were a nullity, same having been signed in the name of a law firm which is not by the provisions of Sections 2(1) and 24 of the Legal Practitioner Act, Cap 207 Laws of the Federation, 1990, a person entitled to practice as a Barrister and Solicitor. E
F

Consequently the statements of claim are hereby struck out. I make no order as to costs.

G

PETER-ODILI JSC

I am in agreement with the judgment of my learned brother, Suleiman Galadima JSC, I shall make some comments in support.

This appeal is against the judgment of the Court of Appeal, Ibadan division (the court below) which judgment was delivered on 5th day of March, 2012. The appellants were the respondents at the court below and plaintiffs in the trial High Court of Ogun State, Sagamu Judicial Division by their Writ of Summons dated 18th December,

2001.

FACTS BRIEFTY STATED

The plaintiffs who are now appellants claimed as follows:

“37(1) A declaration that the 1st plaintiff is the rightful holder of the office of the Chief Imam of Isara Remo, having been duly appointed and turbaned as such on the 23rd day of August 2001 by the Muslims, Chiefs and the generality of the Muslim Community in Isara Remo.

2. A declaration that the purported turbaning of the 1st defendant as Chief Imam of Isara Remo on the 24th day of August 2001 by the 2nd and 3rd defendants in irregular, null and void and of no effect as the appointment was done without the consent of the Muslim Community in Isara Remo.

3. An order setting aside the purported turbaning of the defendant as Chief Imam of Isara Remo on the 24th day of August 2011 by the 2nd and 3d defendants.”

The position of the appellants from their pleadings and evidence is that the 1st appellant was turbaned the Chief Imam of Isara-Remo, Ogun State by the pw3, Alhaji Rabiun Sunmolorun, the Baba Adinni of Isara Remo General Mosque on 23rd August 2001 after appointment by Muslim chiefs in the Central Mosque and majority of 12 out of 16 of the Imams of the Ratibi Mosques and after ratification by the worshippers at the Central Mosque. Presentation of staff and other instruments of office was allegedly done by the PW2, Engr. Adetayo Idowu Onadeko, the traditional ruler of Isara-Remo, also called Odemo of Isara. That in the past appointment of a Chief Imam in Isara Remo was reserved for the most learned Islamic scholar in the town.

Appellants admitted that the 1st respondent was the Noibi (Deputy) of the last Imam but that by the custom of Isara Remo it was not automatic for the Noibi to be appointed the Chief Imam on the death of this master. That the appointment of 1st respondent as Noibi had created discontent with a vast majority of the Muslims of Isara boycotting the central Mosque until the death of the said immediate past, Chief Imam, their reason being to register a protest on the perceived entrenchment of only descendants of previous Imams being made Chief Imams. Some organizations waded in to settle the rift but whatever resolution reached was not honoured by the respon-

dents which resulted in the appellants approaching the court seeking the reliefs earlier stated.

The respondents disputed most of the above claims. They said that the 1st respondent was made the Noibi to the immediate past Imam of Isara-Remo on the 26th July, 1998 in protest against which the 1st appellant and his supporters deserted the main central mosque and established their own at Seriki's Mosque, Sabo Isara, on the 31st July, 1998. B

The respondents also rejected the claim that the Odemo of Isara was the consenting authority to the appointment of a Chief Imam in Isara. C

The respondents too admitted that there were 16 Ratibis in Isara and that 14 were in support of the 1st respondent and 2 in support of the 1st appellant. They further stated that being the Noibi, and having performed the functions of a Chief Imam in an acting D capacity for two years before the death of the immediate past Chief Imam on the 17th of August, 2001, the 1st respondent properly replaced the deceased Chief Imam with the consent of the majority of the Muslim community in Isara.

It was further contended by the respondents that the appellants and their supporters were not officers of the main Isara Central Mosque and that the 1st appellant was only installed as the Chief Imam of his faction on the 6th day of September, 2001 E

The learned trial judge after taking evidence of witnesses and the addresses of counsel to the parties delivered his judgment on the 6th day of December, 2006, found in favour of the appellants and granted all their claims. F

The respondent herein appealed to the Lower Court and contended, among others, that both parties having admitted the fundamental roles that the Ratibis played in the appointment of a Chief Imam in Isara, and the appellants having failed to call any or some of them, the claim was not proved and liable to be dismissed. The Lower Court so held and ordered. G

It was against the decision of the Lower Court that the appellants have filed this appeal. H

On the 10th November, 2014 date of hearing, Miss Toyin Bashorun of counsel for the appellants adopted their Brief of Argument filed on 18/3/2013 and deemed filed on 13/6/2013, also a

Reply Brief filed on 23/10/13.

Miss Bashorun of counsel crafted in the Brief of Argument three issues for determination which are as follows:

1. Whether or not the Court of Appeal was right to have held that the respondents (appellants herein) failed to discharge the burden of proof placed on them that the 1st respondent (1st appellant) was properly appointed by the appropriate appointees as the Chief Imam of Isara-Remo.

2. Whether or not the court below rightly analyzed the evidence of PW2 and PW3 who were in position of authority and who had in themselves conducted investigative enquiry into the authenticity of the appointment of the 1st appellant as Chief Imam of Isaro-Remo.

3. The position of the Odemo of Isara Remo as member and claim of the chieftaincy committee pursuant to the Ogun State Chiefs Law.

For the respondent, Mr. Adewale Adegoke of counsel adopted their Brief of Argument filed on 6/8/13 and in it learned counsel formulated a single issue, viz:

Whether the honourable court below was right in holding that the appellants failed to discharge the burden of proof placed on them that the 1st appellant was properly appointed by the appropriate appointors as the Chief Imam of Isara Remo, thereby allowing the appeal of the respondents and dismissing the case of the appellants as presented at the trial court.

Respondents however filed a Notice of preliminary objection challenging the competence of the statement of claim of the appellants on which the evidence of the appellants' witnesses at the trial court was based and the power of the trial court to entertain the appellant's claim and praying the court to dismiss the suit. The arguments however are incorporated in the Brief of argument of the respondents aforesaid. It needs no saying that the preliminary objection would be settled first before this court can embark on the consideration of the appeal.

PRELIMINARY OBJECTION

Learned counsel for the respondent/objector stated that they are raising the objection herein even though nothing of such had been raised in the two courts below because the issue is jurisdictional

which is fundamental and can be brought up for the first time in the Supreme Court. He cited SLB Consortium Ltd v. NNPC (2011) 9 NWLR (Pt.1252) 317 at 332, 335. That the main plank of the objection is that the statement of claim of the appellants was signed by “Olumuyiwa Obanewa & Co” allegedly as “Legal Practitioners Solicitors to the plaintiff” B

Mr. Adegoke of counsel stated that the issue of jurisdiction is very fundamental in the adjudicatory process as it touches on the competence of the court to hear and determine a matter before it. That the existence or absence of jurisdiction in a court goes to the root of the matter and sustains or nullifies whatever decision the court may arrive at, no matter how sound. He referred to Cotecna Int’l Limited v. IMB Limited (2006) 9 NWLR (Pt.985) 275 at 279. C

It was submitted for the objector that the appellant’s action at the trial court had features in it, absence of a valid pleading which ought to have prevented that court from exercising its jurisdiction and so the case came up before the court not initiated by due process of law and without fulfillment of the condition precedent to the exercise of jurisdiction. That the statements of claim were both signed by “*Olumuyiwa Obanewa & Co*” alleged to be “*Legal Practitioners, Solicitors to the Plaintiff.*” That the law firm of Olumuyiwa Obanewa & Co is not a legal practitioner recognized under our laws and so rendered the process liable to be struck out. He cited Okafor v Nweke (2007) 10 NWLR (Pt.1043) 521; Unity Bank Plc v. Denclag Limited (2012) 18 NWLR (pt.1332) 293 at 327. D E F

That with the conclusion of trial on the merit even on the incompetent statement of claim, the proper order to make is one dismissing the action.

Miss Bashorun, learned counsel for the appellant/objection G contended that the objection goes to no issue since even the objector concedes that the Writ of Summons is regular and so an irregularity in the signing of the statement of claim would not invalidate the originating process such as to lead to the incompetence thereof and the denial of jurisdiction to the court of trial to adjudicate. H

The appellant’s reaction to this objection is anchored on Section 233(1) of the 1999 Constitution of Nigeria as amended which provides that the Supreme Court sits on appeal over decisions or pronouncements of the Court of Appeal and so is incapable of enter-

taining any questions in which there was no decision or pronouncements of the Court of Appeal or court below for short.

By that point above the respondent/objector had called attention to as an issue not raised at either the trial court or the court below. Learned counsel for the objector said they are raising it now because the matter is jurisdictional and fundamental, going to the very base of the suit thereby calling to question whether indeed there was a valid action initiated through due process. That the validity or competence of the action ab initio creates one of those exceptions whereby the fact of a late prompting of the breach is excused. Indeed, this is one of such exceptions to which the temporizing of the raising of the jurisdictional lapse finds solace. See *SLB Consortium Ltd v. NNPC Ltd v. NNPC* (2011) 9 NWLR (Pt. 1252) 317 at 332.

The grouse of the learned counsel for the respondent is that even though the Writ of Summons was properly signed by a legal practitioner which ordinarily would qualify the suit as properly initiated but no claims were made in that writ thereby making the statement of claim wherein the pleadings upon which evidence was led to occupy that prime position of an initiating process. Unfortunately, the statement of claim was signed by “Olumuyiwa Obanewa & Co” stated as “Legal Practitioners, Solicitors to the plaintiff”.

It is therefore upon that default in signing or not signing of the statement of claim by a named legal practitioner which created the anomaly throwing up this objection. It is to be reiterated that the existence or absence of jurisdiction in a court goes to the root of the matter and sustains or nullifies whatever the decision the court may arrive at no matter how brilliantly presented. Therefore, to determine whether jurisdiction resides in the court to adjudicate on any matter, the court will consider the following:

1. Whether the action before it is properly constituted as regards the members and qualifications of the members of the bench, such that no member is disqualified for one reason or the other;
2. Whether the subject matter of the case is within the court’s jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction, and
3. Whether the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See *Cotecna Int’l Limited v IMB Limited* (2006)

9 NWLR (pt.985) 275 at 279; SLB Consortium Ltd v NNPC Ltd v NNPC (2011) 9 NWLR (pt.1252) 317 at 320 - 330.

From what is put across by learned counsel for the respondent to which learned counsel for the appellant merely glossed over and in doing that failed to appreciate the danger their processes and competence were in, I find it easy to go along with the contention of the respondent that the appellants' statement of claim on which evidence was led is a nullity having not been signed by a legal practitioner as known by the definition of Section 24 of the Practitioners' Legal Act and so the statement of claim has to be struck out as a nullity and of course along with that striking out would be the evidence hanging on the purported pleadings. This is a situation well established by this court in Okafor v Nweke (2007) 10 NWLR (pt. 1043) 521.

The point has to be made that the Writ of Summons being competent and valid, the suit is well initiated by due process of the law and would therefore stand. I say no more in that regard. Therefore in the final analysis this appeal from all I have stated above and the fuller and better reasoning in the lead judgment, I hereby strike out the statement of claim and this appeal as the preliminary objection is upheld.

I abide by the consequential orders made.

ARIWOOLA JSC

I was privileged to have read in draft the leading judgment just delivered by my learned brother, Galadima, JSC. I am in agreement with the reasoning therein and the conclusion arrived thereat, that the Statement of Claim upon which the evidence relied upon by the trial court was based having been signed by a person not known to law as a legal practitioner, as required by our law, is incompetent, it deserves to be discountenanced and struck out.

However, because the writ of summons by which the action was commenced and which originated the action was properly signed by a legal practitioner as prescribed by our law, it remains valid and can still be built upon as a solid foundation. It is the statement of claim upon which evidence was based that cannot stand. Indeed as the saying goes, you cannot put something on nothing and expect it

to stay, it will fall. Evidence led in the case based on incompetent statement of claim is also incompetent and should be discountenanced and struck out.

Therefore the writ of summons which was separately filed several months before the statement of claim was filed having been properly signed and competent cannot and should not be allowed to be killed by an incompetent statement of claim. It stands while the statement of claim is struck out.

In view of the peculiarity of the case I make no order on costs.

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Galadima, JSC, whose reasoning and conclusion I adopt in upholding respondent's preliminary objection that the appellant's statement of claim on which the evidence leading to the decision in his favour rests in incompetent. Same is struck-out.

I imbibe the consequential orders made in the lead judgment.

AKA'AH S JSC

I was privileged to read in draft the leading judgment of my learned brother, Suleiman Galadima JSC, in which he upheld the preliminary objection challenging the competence of the Statement of Claim. The said Statement of Claim was signed by "Olumuyiwa Obanewa & Co." Arguing the preliminary objection in the brief learned counsel for the respondents said:

"The appellants' action at the trial court had features in it (absence of a valid pleading) which ought to have prevented the Court from exercising its jurisdiction." He then argued that once issues have been joined to be tried and the stage set for the conflict and evidence called, the proper order which the appellate court should make is one dismissing the appellant's case.

In the reply brief learned counsel for the appellants urged this Court to discountenance the preliminary objection on the ground that the subject matter of the preliminary objection pertains to issues

which were never raised at the court below nor even in the trial court, and the respondents as appellants in the Lower Court appealed on points and issues they considered germane to the trial.

There is no dispute whatsoever that the Statement of Claim was not signed by a legal practitioner in accordance with Sections 2(1) and 24 of the Legal practitioners Act Cap. 207 Laws of the Federation. It is therefore not a valid Statement of Claim: See: Okafor vs Nweke (2001) 10 NWLR (Part 1043) 521. One of the conditions to be fulfilled upon which a court would be competent to assume jurisdiction is that the matter coming before the court is initiated by due process of law and upon fulfillment of all conditions precedent to the exercise of the jurisdiction.

The Statement of Claim upon which the evidence of the plaintiff is based is not a valid document and no evidence could be considered on a defective Statement of Claim.

The said statement and evidence are liable to be expunged from the record. It is trite that you cannot put something on nothing and expect it to stand. See *Skenconsult (Nig) Ltd vs. Ukey* (1981) 1 SC 6. No issues could have been joined on the pleadings unless the Statement of Claim was valid. Although the Writ of summons is valid and the suit itself is still legally in existence, the striking out of the Statement of Claim as well as the Statement of Defence together with the evidence adduced on the pleadings cannot extinguish the suit. Consequently this Court cannot make an order dismissing the suit. The plaintiffs/appellants are entitled to have second bite at the cherry if they so choose.

I totally agree with the order made by my learned brother, Suleiman Galadima JSC, striking out the Statement of Claim and making no order on costs.