

SUPREME COURT OF NIGERIA
FRIDAY 22ND JANUARY, 2016. SC. 40/2005
CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.
PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC

OZURUMBA NSIRIM APPELLANT
AND
DR. SAMUEL W. AMADI RESPONDENT

APPEALS - Respondent - Role of - Duty of respondent is to defend the judgment of the court below - Except where he disagrees with some aspects of it - In which case he is to file cross appeal (H1)

APPEALS - Respondent's notice - Filing - Where respondent is of the view that appellate court should vary decision of lower court - He has to file a respondent's notice to that effect (H2)

APPEALS - Issue - Formulation - Issue for determination must arise from grounds of appeal - But when it is not based on grounds of appeal filed - The issue is held to be irrelevant (H3)

JURISDICTION - Issue of - Although jurisdiction can be raised at any stage - But it does not mean that it is raised without regard to rules of court - Designed to aid parties to obtain justice in court (H4)

FACTS

This action was commenced at the High Court of Rivers State Port Harcourt by plaintiff/respondent against defendant/appellant, seeking inter alia for a declaration that respondent who is the next of kin of one Chief Christian O. Amadi (deceased) is entitled to the grant of letters of Administration in respect of the property in dispute. Respondent's case was founded on an assignment of the land in dispute to the deceased – Chief Amadi. On the contrary, appellant contended that the property in issue was not assigned by his late father - one John Amabibi Nsirim and that the said late father granted a Power of Attorney to a donee over the said property thereby having nothing left to assign to the privy of respondent and that the respondent not being armed with Letters of Administration at the

time the suit was commenced but suing as the next of kin of his late father, lacked locus standi to institute the action.

At the end of the hearing, the court found for appellant on the ground that his late father having granted a Power of Attorney to a donee, had nothing left to assign to the brother of respondent. The court however, failed to consider the issue of locus standi of respondent to institute the action as raised by appellant. Dissatisfied, respondent appealed to the Court of Appeal Port Harcourt Division. The court held that respondent is entitled to the assignment of the leasehold interest in respect of the property in issue. Appellant's issue on the failure of trial court to determine the locus standi of respondent was held to be incompetent and thus struck out. Aggrieved, appellant stormed the Supreme Court on an appeal.

ISSUE FOR DETERMINATION

"Whether or not the learned Justices at the Court of Appeal were right in refusing to consider and determine the question of the capacity or locus standi of the Respondent to sue, which was a challenge to the competence of the action and, therefore the jurisdiction of the trial Court to entertain the Respondent's claims".

HELD (Unanimously dismissing the appeal per

ONNOGHEN JSC)

APPEALS - Respondent - Role of

1. It is settled law and practice that the duty of a respondent to an appeal is to defend the judgment of the Court below which is usually in his favour. His duty is not to attack the judgment already given in his favour except where he disagrees with some aspects of the judgment in which case he is required to file a cross appeal in which he prays the appellate Court to set aside the aspect of the judgment he considers against his interest or for the Court to consider an aspect of the case he put forward at the Lower Court which the Lower Court failed and/or neglected to consider and determine in its judgment. (p. 434 H)

APPEALS - Respondent's notice - Filing

2. Where however, the respondent is of the view that there is

the need for the appellate Court to vary the decision of the Lower Court or affirm that decision on other grounds he has to file a respondent's notice to that effect as provided for Order 3 Rule 14 supra. (p. 435 B)

APPEALS - Issue - Formulation

3. An issue or issues for determination must arise from the grounds of appeal relied upon. Therefore, when an issue(s) as formulated is not based on the ground of appeal filed, the legal effect is that it is/they are on that account irrelevant.
(p. 435 E)

JURISDICTION - Issue of

4. It is very clear from the issue formulated by learned counsel for the respondent in the Lower Court that jurisdiction is not the direct issue in contention, arising from the grounds of appeal. I agree with the general proposition of law that an issue of jurisdiction can be raised at any stage in the proceedings including on appeal but that does not mean that there are no rules governing the raising of an issue of jurisdiction or that it can be raised without regard to the Rules of Court crafted or designed to aid parties to obtain justice in the Court of law.
(p. 436 A)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Jurisdiction – Definition of

Jurisdiction is defined as the legal capacity of a Court to hear and determine judicial proceedings. It is a power to adjudicate concerning the subject matter controversy. (p. 435 G)

REPRESENTATION

E. B. Ukiri, Esq. with him, D. M. Idoko, Esq., for the Appellants
Wilcox Abereton, Esq., for the Respondents

CASES REFERRED TO

Comptroller Nigerian Prisons Services v. Adekanye (2002) FWLR (pt.

120) 1650

Adigun v. Ayinde (1993) 8 NWLR (pt. 313) 516

Nwanezia v. Idris (1993) 3 NWLR (pt. 279) 1

Ugo v. Obiekwe (1989) 1 NWLR (pt. 99) 566

Osinupebi v. Sabiu (1982) 7 SC 104

B Western Steel Works Ltd. v. Iron Workers Union of Nigeria (1987) 1 NWLR (pt. 49) 284

Aredoyin v. Arowolo (1989) 4 NWLR (pt. 114) 172

Ono v. JSC Delta State (2000) 7 SC (pt. 11) 1

Ogundare v. Ogunlowo (1997) 6 NWLR (pt. 509) 360

C Padawu v. Jatau (2003) 5 NWLR (pt. 813) 247

Edem v. Canon Bail Ltd. (1998) 6 NWLR (pt. 553) 298

RULES REFERRED TO

D Court of Appeal Rules 2002, O. 3 r. 14(1)(2)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal Holden at Port Harcourt in appeal No.CA/PH/55/98 delivered on E the 22nd day of April, 2004 in which the Court allowed the appeal of the instant respondent in parts.

The respondent, as plaintiff instituted suit No.PHC/341/87 in the High Court of Rivers State, Holden at Port Harcourt in which he claimed the following reliefs in the Statement of Claim:

F 1. *A declaration that the plaintiff who is the next of kin of Chief Christian O. Amadi (deceased) is entitled to the grant of letters of Administration in respect of the Plot 91 Gborokiri Layout, otherwise known as No.3 Andoni Street, Gborokiri, Port Harcourt.*

G 2. *A declaration that the plaintiff is entitled to the Assignment of the leasehold interest in respect of Plot 91 Gborokiri Layout, otherwise known as No. 3 Andoni Street, Gborokiri, Port Harcourt.*

H 3. *An order revoking and/or nullifying the Letters of Administration dated 15/2/82 purportedly granted to the Defendant in respect of the said Plot 91 Gborokiri Layout, otherwise known as No.3 Andoni Street, Gborokiri, Port Harcourt.*

4. *An Order for the Defendant to account for all the rents he wrongly collected from the tenants in the premises from 23/4/80 (when his fathers interest in the property ceased to the date of judg-*

ment and payment of the same over to the estate of Chief Christian O. Amadi (deceased).

5. An order of perpetual injunction to restrain the Defendant and/or his servants and agents from interfering with the said property.”

The above claim of the present respondent is based on an assignment of the land in dispute to his late brother, Chief Christian Amadi. B

The appellant, however contended that the property in issue was not assigned by his late father, late John Amabibi Nsirim and that the said late John Amabibi Nsirim granted a Power of Attorney to a donee over the said property thereby having nothing left to assign to the privy of the respondent and that the respondent not being armed with Letters of Administration at the time the suit was commenced but suing as the next of kin of his late father, lacked locus standi to institute the action. C D

Though the High Court granted relief No 2 supra; an order revoking and/or nullifying the letters of Administration dated 15/12/82; the Court gave Judgment to the defendant/appellant herein on the ground that his father having granted a Power of Attorney to another, had nothing left to assign to the brother of the plaintiff// respondent herein. The Court, however, failed to consider the issue of locus standi of the plaintiff/respondent to institute the action as raised by the defendant. E

Dissatisfied with the above judgment, the present respondent F appealed to the Court of Appeal, Holden at Port Harcourt which Court held, in the judgment delivered on the 22nd day of April, 2004, inter alia, as follows:-

“In conclusion, the appeal is allowed only in respect of paragraph 24(2) of the Statement of Claim. Accordingly I declare that the plaintiff is entitled to the assignment of the leasehold interest in respect of Plot 91 Gborokiri Layout, otherwise known as No.3 Andoni Street, Gborokiri Port Harcourt. He may therefore take the appropriate steps to have the assignment duly registered and also apply for a rectification of the Register of Title Deeds.” G H

See page 150 of the record.

It should be noted, at this stage, that the present appellant, who was respondent in the Lower Court, neither cross appealed nor

filed a respondents notice against the judgment of the trial Court for failure to determine the issue of locus standi as raised in the pleadings and address of counsel. Rather than file a cross appeal or respondent notice, the learned counsel for the respondent therein raised an issue touching and concerning the non determination by the trial Court of the issue of locus standi of the plaintiff to which the Lower Court, at pages 148 to 150 of the record had this to say inter alia:

"I now turn to issue 1 in the respondents brief which seeks to question the competency of the plaintiff's claim. The formulation of the issues for determination have to come within the ambit of the grounds of appeal. See A-G Bendel State vs Aideyan (1989) 4 NWLR (Pt.118) 646. The respondent's issue should arise from the grounds of appeal. See U.A.C. (Nig) Ltd vs Global Transports S.A. (1996) 5 NWLR (Pt.448) 291; Yaktor vs Gov Plateau State (1997) 4 NWLR (Pt.498) 216. Where there is no cross appeal, the respondent is duty bound to confine himself to the appellant's grounds of appeal. See Edem vs Cannon Ball Ltd. (1998) 6 NWLR (Pt.553) 298. However, a respondent to an appeal may file respondent's Notice in accordance with Order 3 Rule 14(1) and (2) Court of Appeal Rules to contend that the decision being appealed against should be varied either in any event or in the event of the appeal being allowed in whole or in part or that the judgment should be affirmed or varied on other grounds. In such a case the formulation of issues and the arguments of the respondent may not be strictly in line with the grounds of appeal in the further amended grounds of appeal filed together with the further amended appellant's brief, the complaints of the appellant were...

In none of the further amended grounds of appeal is there a ground that complained about a Ruling or finding made by the learned trial Chief Judge about the capacity of the appellant to sue. Issue No.1 in the respondent's brief is incompetent and is accordingly struck out"

The above passage in the judgment of the Lower Court constitutes the foundation of the instant appeal, the issue for the determination of which has been formulated by learned counsel for appellant, E. B. UKIRI ESQ in the appellant brief filed on 22nd April, 2005 as follows:-

"Whether or not the learned Justices at the Court of Appeal

were right in refusing to consider and determine the question of the capacity or locus standi of the Respondent to sue, which was a challenge to the competence of the action and, therefore the jurisdiction of the trial Court to entertain the Respondent's claims".

It should be noted that there is no appeal regarding the decision of the Lower Court allowing the appeal of the present respondent in respect of paragraph 24(2) of the Statement of Claim. In law, therefore, the decision of the Lower Court thereto subsists and remains binding on the parties.

In arguing the issue, learned counsel for appellant stated that though appellant raised the issue of locus standi in his pleadings and produced evidence thereto at the trial and made submissions on the issue, the trial Judge did not consider the issue in the judgment; that the same issue was raised and argued before the Lower Court which struck same out for non compliance with the provisions of Order 3 Rule 14(1) and (2) of the Court of Appeal Rules; that the Lower Court took a narrow and inaccurate approach to the very fundamental question of the competence of the action and its impact on the jurisdiction of the Lower Court; that it is trite law that an issue of jurisdiction can be raised at any stage of the proceedings, even on appeal; that the Courts can even raise the issue suo motu; that the Lower Court was bound to consider the issue of jurisdiction however raised; that compliance with the provisions of Order 3 Rule 14(1) and (2) is not a condition precedent to the questioning of the jurisdiction of a trial Court's decision on appeal. Learned counsel submitted that the striking out of the issue by the Lower Court without considering same occasioned a miscarriage of justice and urged the Court to consider and determine the issue and resolve same in favour of appellant and allow the appeal.

On his part, learned counsel for the respondent, H. SENIBO ESQ in the respondent brief filed on 10/6/05 submitted that the Lower Court was right in the decision it arrived at on the issue having regard to the proper interpretation of Order 3 Rule 14(1) and (2) of the Court of Appeal Rules: that where a respondent does not file a cross appeal or a respondent notice, he can only formulate issues based on the grounds of appeal filed by the appellant, relying on *Comptroller Nigerian Prisons Services vs. Adekanye* (2002) FWLR (Pt.120) 1650 at 1681 - 1682; *Adigun vs. Ayinde* (1993) 8 NWLR (Pt.313)

516 at 528; that the issue of locus standi before this Court is not a fresh issue, same had been raised before the Lower Courts. It is the further submission of counsel that the issue of locus standi raised in this case is not a direct issue of jurisdiction of the Court and urged the Court to resolve the issue against appellant and dismiss the appeal.

B The issue raised in the appeal is very straight forward and simple. Can a respondent to an appeal formulate issue(s) for determination outside the grounds of appeal filed by the appellant without first and foremost filing either a cross appeal or a respondents notice? The
C Lower Court held that he cannot, having regard to case law and the provisions of Order 3 Rule 14(1) and (2) of the Court of Appeal Rules. Appellant, on the other hand contends that he can, the issue being a matter affecting the jurisdiction of the Court which can be raised at any stage in the proceeding including on appeal irrespective
D of whether he files a cross appeal or a respondent notice.

I had earlier in this judgment reproduced the relevant portion of the judgment of the Lower Court constituting the foundation of the instant appeal. Order 3 Rule 14(1), (2) & (3) of the Court of Appeal Rules 2002 (being the applicable Rules) provide as follows:-

E *“(1) A respondent who not having appealed from the decision of the Court below desire to contend on the appeal that the decision of that Court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, must give notice to that effect, specifying the grounds of that contention and
F the precise form of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.*

*(2) A respondent who desires to contend on the appeal that the decision of the Court below should be affirmed on ground other
G than those relied upon by that Court must give notice to that effect specifying the grounds of that contention.*

*(3) Except with the leave of the Court a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the Court below should be varied upon grounds not specified in a
H notice given under this rule or apply for any relief not so specified or to support the decision of the Court below upon any grounds not relied upon by that Court or specified in such a notice.”*

It is settled law and practice that the duty of a respondent to an appeal is to defend the judgment of the Court be-

low which is usually in his favour. His duty is not to attack the judgment already given in his favour except where he disagrees with some aspects of the judgment in which case he is required to file a cross appeal in which he prays the appellate Court to set aside the aspect of the judgment he considers against his interest or for the Court to consider an aspect of the case he put forward at the Lower Court which the Lower Court failed and/or neglected to consider and determine in its judgment.

Where however, the respondent is of the view that there is the need for the appellate Court to vary the decision of the Lower Court or affirm that decision on other grounds he has to file a respondent's notice to that effect as provided for Order 3 Rule 14 supra.

In the instant case, both parties agree that appellant, as respondent in the Lower Court, neither filed a cross appeal nor a respondent's notice with regard to the decision of the trial Court on appeal and which was given in his favour.

The respondent's issue 1 before the Lower Court which the Court held to be incompetent is as follows:

"(1) Whether or not the plaintiff's claim was competent, having been filed before letters of Administration were granted to him."

An issue or issues for determination must arise from the grounds of appeal relied upon. See *Nwanezia v. Idris* (1993) 3 NWLR (Pt.279) 1 at 12. ***Therefore, when an issue(s) as formulated is not based on the ground of appeal filed, the legal effect is that it is/they are on that account irrelevant.*** See *Ugo v. Obiekwe* (1989) 1 NWLR (Pt.99) 566. *Osinupebi v. Sabiu* (1982) 7 SC 104, 110, 111; *Western Steel Works Ltd v. Iron Workers Union of Nigeria* (1987) 1 NWLR (Pt.49) 284, 304.

Jurisdiction is defined as the legal capacity of a Court to hear and determine judicial proceedings. It is a power to adjudicate concerning the subject matter controversy.

I had earlier reproduced the reliefs claimed by the plaintiff in the trial Court. Can it be said that having regard to the said reliefs the trial Court does not have the requisite jurisdiction to hear and determine the issues(s) in controversy between the parties? Better still, can it be said that the issue of jurisdiction is directly in contention between

the parties having regard to the reliefs claimed?

It is very clear from the issue formulated by learned counsel for the respondent in the Lower Court that jurisdiction is not the direct issue in contention, arising from the grounds of appeal. I agree with the general proposition of law that an issue of jurisdiction can be raised at any stage in the proceedings including on appeal but that does not mean that there are no rules governing the raising of an issue of jurisdiction or that it can be raised without regard to the Rules of Court crafted or designed to aid parties to obtain justice in the Court of law.

I had earlier pointed out in this judgment that the traditional role of a respondent in an appeal is to defend the judgment of the Lower Court given in his favour and that where he decides to challenge the judgment either as a whole or in part, he has to file a cross-appeal in which he provides the grounds of his complaints against the decision.

It is settled law that issues in appeal can only validly arise from the grounds of appeal or cross appeal and that where an issue or issues for determination does/do not arise from the grounds of appeal, such an issue(s) is/are incompetent and liable to be struck out. In the instant case and as found by the Lower Court, respondents issue 1 before the Lower Court does not arise from any of the grounds of appeal filed in the appeal. The respondent filed no cross appeal, the ground(s) of which might have grounded the issue in question neither, also as found by the Lower Court, did the respondent file a respondent's notice in the appeal.

No one is saying that a respondent in an appeal cannot raise an issue for determination of the appeal either on jurisdiction or otherwise but that the issue(s) so raised must be anchored in the grounds of appeal which must in turn arise from the ratio in the judgment on appeal, otherwise the issue(s) formulated is/are grossly incompetent. The reason simply is that the judgment of a Court of law is presumed valid and subsisting unless set aside by an appellate Court of competent jurisdiction, upon a proper appeal or cross appeal.

As stated earlier, in this judgment, a respondent who does not cross-appeal but intends to contend that the judgment of the Lower Court be varied or affirmed on grounds other than those relied upon by the Lower Court can do so by filing a respondent's notice under

the Rules of Court, otherwise any issue for determination not anchored on the grounds of appeal (main or cross) or respondents notice is grossly incompetent and liable to be struck out.

I therefore agree entirely with the decision of the Lower Court earlier reproduced in this judgment as I find same to be without reproach. In the circumstance I find no merit in the issue under consideration and consequently resolve same against appellant and dismiss the appeal. B

Appeal is dismissed for want of merit with N250,000.00 costs against appellant in favour of respondent.

Appeal dismissed. C

NGWUTA JSC

I have read with gratitude the lead judgment delivered by my learned brother, Onnoghen, JSC. I agree with the reasons and conclusion leading to the dismissal of the appeal. I desire to say a few words in support of the judgment. D

An appeal is an invitation to a higher Court to review the decision of a Lower Court to find out whether on a proper examination of the facts placed before it and the applicable law, the Lower Court arrived at a correct decision. It is a complaint against the decision appealed against, be it that of the trial Court or the Court below the appellate Court. See *Lawrence Adebola Aredoyin & Ors v. Arowolo* (1989) 4 NWLR (Pt.114) 172 at 211. E F

It is the appellant, the aggrieved party, who appeals the judgment against him. The ground of appeal is on the ratio decidendi of the judgment appealed against and the issues to be determined must flow from the grounds of appeal. See *Ono v. JSC Delta State* (2000) 7 SC (Pt.11) p.1. G

Usually the respondent in whose favour the Court has given judgment will, and can, not challenge the judgment in his favour. A respondent who has issue or issues against the judgment in his favour can raise the issues by way of cross-appeal or respondent's notice in strict compliance with Order 3 Rule 14 (1) , (2) and (3) of the Court of Appeal Rules , 2002 reproduced in full in the lead judgment. H

He can also file a cross-appeal. If he has not taken advantage of Order 3 or filed a cross-appeal and desires to raise issue or issues in

the appeal, he cannot raise any issue outside the appellant's grounds of appeal. He can adopt the appellant's issues as formulated or give the issues a slant to favour his side of the case. If he must formulate issues of his own the issues must flow from the appellant's grounds of appeal.

B As demonstrated in the lead judgment, the respondent did not file a cross-appeal or a respondent's notice. He formulated the following issues in his brief of argument:

C *"Whether or not the learned Justices of the Court of Appeal were right in refusing to consider and determine the question of the capacity or locus standi of the respondents to sue, which was a challenge to the competence of the action and, therefore the jurisdiction of the trial Court to entertain the respondent's claims"*

D This is not an issue raised by the appellant nor is it framed from the appellant's grounds of appeal. It is an issue raised from the blues and is floating in the air without any foundation. The issue was framed in contravention of the principle that where the respondent has not filed a cross-appeal, the issues for determination formulated by him must arise from the grounds of appeal filed by the appellant. See E *Ogundare v. Ogunlowo* (1997) 6 NWLR (Pt.509) 360; *Padawu v. Jatau* (2003) 5 NWLR (Pt.813) 247.

F Appellant says the issue is one of jurisdiction. Jurisdiction in its strict sense is the limit which is imposed upon the power of a validly constituted Court to hear and determine issues properly brought before it by due process by reference to:

- (1) The subject matter in issue.
- (2) The persons between whom the issue is joined, and
- (3) The kind of relief sought.

G See *Adeyemi v. Opeyori* (1976) 9-10 SC 31; *Ikine v. Ediezode* (2001) 92 LRCN 3288 at 3316; *Aladegbemi v. Fasanmode* (1988) 3 NWLR (Pt.81) 129.

H It is true that jurisdiction can be raised at any stage of a proceeding from the trial Court to the penultimate Court and to the ultimate Court. But I do not subscribe to the view that jurisdiction of Court to determine a matter can be raised anyhow. No, the matter must be properly before the Court. One cannot import an issue from outside into the proceeding before a Court and invoke its jurisdiction.

The trial Court may have jurisdiction to entertain the issue before it and when it failed to do so the appellant failed to raise the issue by the proper procedure in Order 3 (supra) to ignite the jurisdiction of the Court below.

The issue, though within the jurisdiction of the trial Court must be brought before the Court of Appeal by way of appellate practice and procedure before the jurisdiction of the Court below can be invoked, otherwise the issue is incompetent and liable to be struck out. Jurisdiction is not a magic wand that a party can wave to induce the Court, trial or appellate, to deal with issues not properly brought before it.

For the above and the fuller reasons in the lead judgment I also dismiss the appeal as devoid of any merit. I adopt the order on cost.

Appeal dismissed.

PETER-ODILI JSC

I agree totally with the judgment just delivered by my Lord, W, S. N. Onnoghen, JSC and to show support for the reasonings from which the decision came about, I shall make some comments.

This appeal comes from the decision of the Port Harcourt Division of the Court of Appeal delivered on the 22nd day of April, 2004. The Respondent herein as Plaintiff at the trial High Court commenced the suit as “the Administrator of the estate of Late Christian O. Amadi by virtue of letters of administration” over Plot 91 Gborokiri Layout, otherwise known as No.3 Andoni Street, Gborokiri, Port Harcourt. The reliefs sought by the Plaintiff at the High Court are stated hereunder:-

1. A declaration that the Plaintiff who is the next of kin of Chief Christian O. Amadi (deceased) is entitled to the grant of letter of Administration in respect of Plot 91 Gborokiri Layout, otherwise known as No, 3 Andoni Street, Gborokiri, Port Harcourt.

2. A declaration that the plaintiff is entitled to the Assignment of the leasehold interest in respect of Plot 91 Gborokiri Layout, otherwise known as No. 3 Andoni Street Gborokiri, Port Harcourt.

3. An order revoking and/or nullifying the letters of Administration dated 15/2//82 purportedly granted to the Defendant in re-

spect of the said Plot 91 Gborokiri Layout otherwise known as No. 3 Andoni Street, Gborokiri, Port Harcourt.

4. *An order for the Defendant to account for all the rents he wrongfully collected from the tenants in the Premises from 23/4/80 (when his father's interest in the property ceased) to the date of judgment and payment of the same over to the estate of Chief Christian O. Amadi (deceased).*

5. *An order of perpetual injunction to restrain the Defendants and/or his servants and agents from interfering with the said property."*

The Appellant as Defendant denied the Claims of the Plaintiff and challenged the locus standi of the plaintiff to institute the action. Evidence was led at the end of which the High Court gave judgment in favour of the Defendant/Appellant on ground that his father having granted a Power of Attorney to another person had nothing left to assign to the brother of the Plaintiff/Respondent.

On appeal to the Court of Appeal or Court below for short that Court allowed the appeal only respect of paragraph 24(2) of the Statement of claim, directed the respondent to take steps to have the assignment duly registered and apply for the re-certification of the register of Title Deeds. Also that appellate Court refused to consider the issue of the capacity or locus standi of the respondent in that Court on the ground that the Appellant had not complied with Order 3, Rule 14 (1) of the Court of Appeal Rules.

Being dissatisfied, the appellant has approached this Apex Court on four grounds of appeal.

On the 27th day of October, 2015, learned counsel for the Appellant, E. B. Ukiri Esq. adopted the Brief of the Appellant filed on the 22/4/2015. He raised a sole issue for the determination of the appeal which is as follows:-

Whether or not the Learned Justices of the Court of Appeal were right in refusing to consider and determine the question of the capacity of locus standi of the Respondent to sue, which was a challenge to the competence of the action and, therefore, the jurisdiction of the trial Court to entertain the Respondent's claims.

Wilcox Abereton Esq. of counsel for the Respondent adopted his Brief of Argument settled by H. Senibo Esq and filed on 10/6/05. In the Brief of Argument was identified a lone issue being thus:-

Whether the issue of the capacity of the plaintiff to sue is a matter questioning the jurisdiction of the Court which can be raised by the Respondent on an appeal to the Court of Appeal without a Cross-Appeal or a Respondent's notice.

The issues as crafted by the counsel on either side says the same thing a different way and I shall answer the question raised by each counsel which question is the propriety of the Court of Appeal declining the consideration and determination of the capacity of locus standi of the Respondent to sue. B

Canvassing their stand point, learned counsel for the Appellant submitted that the Court below took a narrow and inaccurate approach to the very fundamental question of the competence of the action and its impact on the jurisdiction of the Lower Court. That it is settled law that the question of jurisdiction can be raised at any stage of the proceedings even on appeal. That the trial and appellate Courts can even raise same suo motu. That the Lower Court was duty bound to consider and determine the issue of jurisdiction and competence of the Respondent's claims however it was raised and that compliance with Order 3, Rule 14(1)(2) of the Rules of Court of Appeal is not a condition precedent to the questioning of jurisdiction of a trial Court's decision on appeal. That the incompetence of the respondent's action or the lack of capacity to commence the action at the time he did deprived the trial Court of jurisdiction to entertain the claims. C D E

Learned counsel for the Respondent submitted that the Court below was right in its interpretation of Order 3, Rule 14(1) and (2) of the Court of Appeal Rules since the Appellant as Respondent had not cross-appealed or filed a Respondent's Notice. That the respondent must formulate issues for determination in the appeal with reference to the grounds filed by the appellant as the Court of Appeal can only entertain issues based on the grounds of appeal filed before it. He cited *Comptroller Nigerian Prison Services & Ors v. Dr. Femi Adekanye & Ors* (2002) FWLR (Pt.120) 1650; *Samuel A. Adigun v. I. O. Ayinde & Ors* (2002) FWLR (Pt.120) 1650; *Samuel A. Adigun v. I. O. Ayinde & Ors* (1993) 8 NWLR (Pt.313) 516 at 528. F G H

The thrust of the dispute this appeal as displayed in part of the judgment of Court of Appeal which that Court decided while striking out the issue on the question of the locus standi of the Respondent

therein and Appellant before this Court in keeping with Order 3, Rule 14(1) and (2) of the Court of Appeal Rules and its words thus:-

“In none of the further amended grounds of appeal is there a ground that complains about the Ruling or finding made by the Learned Trial Chief Judge about the capacity of the Appellant to sue.

B Issue No.1 the in the respondent’s brief incompetent and it is accordingly struck out. There is no appeal against the order dismissing the application to amend the statement of claim and so I will not venture an opinion”.

C The Appellant’s view is that the Lower Court took a very narrow and inaccurate approach to the very fundamental question of the competence of the action and impact on the jurisdiction of the Lower Court since the issue of jurisdiction can be raised at any point even on appeal and also the trial and appellate Courts may raise it even suo motu. That the non-compliance with Order 3, Rule 14(1) and (2) is not a condition precedent to the questioning of the jurisdiction of a trial Court’s decision on appeal and so that appellate Court was wrong to strike out the said Issue No.1 and a miscarriage of justice thereby occurred.

E The Rule of the Lower Court at the crux of this matter is hereunder quoted, viz:-

Order 3, Rule 14 (3) of the Court of Appeal Rules:

F “Except with the leave of the Court, a Respondent shall not be entitled on the hearing of the appeal to contend that the decision of the Court below should be varied upon grounds not specified in a notice given under this rule, to apply for any relief not so specified or to support the decision of the Court below upon any ground not relied upon by that Court or specified in such a notice”.

G Going back in time, the issue of locus standi was taken in the High Court and brought to the Court of Appeal Even though the trial Court did not rule on it, the Court of Appeal did which produced the grievance that is being articulated before this Apex Court. From the writ of summons and statement of claim, the Plaintiff/Respondent sued in his name and in his pleading had averred he brought the action as the Administrator of the Estate of Late Chief Christian Amadi by virtue of the Letters of Administration issued on 13/10/87 even though the Letters had not been obtained when he filed his writ on 3/8/87. In the course of the trial, plaintiff/respondent had ten-

dered the said letters of administration without objection and even though learned counsel for the Defendant now appellant raised the issue of plaintiff's locus standi in his address the learned trial judge did not refer to it his judgment.

The grouse of the Appellant now that they ought to raise the issue of locus standi by having the Notice of Appeal varied which the Court Below refused the absence of a cross appeal or Notice to Contend at that Lower appellate Court. I am in agreement with learned counsel for the Respondent that what the learned Justices of the Court of Appeal did was the proper and correct interpretation of the Rule in question. The reason is that where a Respondent as the Appellant now, where he had not cross-appealed or filed a Respondent's Notice since he must formulate issues for determination in the appeal within the grounds filed by the appellant and not outside those grounds of appeal. Therefore, in that failure to file either a cross-appeal or Notice to Contend, the Court of Appeal had no option than to decline to entertain the issues which were not covered in the grounds of appeal. See *Comptroller Nigerian Prisons Services & Ors v. Dr. Femi Adekanye & Ors* (2002) FWLR (Pt.1993) 8 NWLR (Pt.313) 516 at 528; *Edem v. Canon Bail Limited* (1998) 6 NWLR (Pt.553) 298.

Clearly, this appeal for the reasons stated above, and the fuller reasoning the lead judgment cannot be sustained and so I dismiss the appeal and affirm the decision of the Court Below, I abide by the consequential orders made.

F

ARIWOOLA JSC

My learned brother Onnoghena, JSC obliged me with the draft of the lead judgment just delivered and I am in complete agreement with His Lordship's reasoning that the appeal lacks merit and should be dismissed in its entirety.

Accordingly, I too will dismiss the appeal. Appeal is dismissed. I abide by the consequential orders in the lead judgment including that on costs.

H

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother

Onnoghen JSC, just delivered. I entirely agree with his lordship that the appeal lacks merit and stands dismissed. I abide by the consequential orders made in the lead judgment including the order of costs.

B

C

D

E

F

G

H