

SUPREME COURT OF NIGERIA
FRIDAY 16TH DECEMBER, 2016. SC. 335/2012
CORAM:- W. S. N. ONNOGHEN, M. U. PETER-ODILI,
O. ARIWOOLA, K. B. AKA'AHs,
K. M. O. KEKERE-EKUN, JJSC

1. CHIEF UJILE D. NGERE

2. A. W. MBOSOWO

..... APPELLANTS

AND

1. CHIEF JOB WILLIAM OKURUKET 'XIV'

2. NNADI PAUL IBOTILE

..... RESPONDENTS

APPEALS - Grounds - Particulars - Supreme Court Rules O. 8 r. 2(2) requires that - Where grounds allege misdirection or error in law - Particulars and nature of the misdirection shall be clearly stated (H1)

APPEALS - Grounds - Purpose of - It is to give sufficient notice to respondent - About the precise nature of appellant's complaint against a ratio decidendi not obiter of a judgment (H2)

APPEALS - Grounds - Particulars - Purpose of - They are specifications of error or misdirection - So as to make clear how the complaint is to be canvassed (H3)

JURISDICTION - Fundamental nature of - It goes to competence of Court - And as such can be raised for first time at any stage of the proceedings - Even on appeal to Supreme Court (H4)

JURISDICTION - Determination of - Once there is challenge to competence of Court - The issue must first be disposed of - Before Court takes further step in the matter (H5)

JURISDICTION - Determination - Basis - Principally it is plaintiff's statement of claim that determines jurisdiction - But same could also be taken on evidence received - Or by motion supported by affidavit (H6)

JUDGMENTS - Validity of - By virtue of wrong stand taken by trial Court - Leading to its summersault on issue of jurisdiction - Its judgment of 30/05/1990 is a nullity and was rightly set aside (H7)

ORDERS OF COURT - Retrial - Substantive judgment of trial Judge cannot stand - By virtue of his wrong stand on issue of jurisdiction - Hence the need for order of retrial before another trial Judge (H8)

COURTS - Issues - Confinement to - Court is bound to confine its decision to issues raised by parties - As it does not have power to go outside such issues - To formulate cases for the parties (H9)

FACTS

Plaintiffs/respondents commenced this action at the High Court of Rivers State against defendants/appellants claiming, inter alia, a declaration that the chieftaincy stool of Okan-Oma of Ngo Town exists as the known traditional title and declaration that respondents' Uwile family is the rightful family that keeps and maintains the Okan-Ama title. Upon being served with respondents' statement of claim, appellants brought an application, seeking for an order striking out the suit for lack of jurisdiction. After hearing arguments from both parties, the court in its ruling dismissed appellant's preliminary objection to the competence of the Court to try the suit. The Court thus found that it had jurisdiction. Following the ruling of the Court and its assumption of jurisdiction, appellants proceeded to file their statement of defence and the case went to full trial.

At the conclusion of the trial and in the final written address of counsel, appellants again raised the issue of lack of jurisdiction. In its judgment, the Court upon review of the defence came to the conclusion that it lacked jurisdiction to entertain respondents' claims. The Court however went ahead to determine respondents' suit on the merit and found that, assuming it was wrong to have declined jurisdiction, respondents had failed to prove their claims. Aggrieved, respondents appealed to the Court of Appeal Port Harcourt Division. The Court allowed the appeal and held that the decisions of the trial Court in the same suit amounted to the trial Court sitting on appeal over its own decision. On this basis, the Court declared the judgment

of the trial Court a nullity and ordered a retrial before another Judge of the same Court. Dissatisfied, appellants have appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the ruling of the trial court delivered on 9th June, 1987 conclusively determined the vexed issue of the competence/jurisdiction of the trial court to entertain the respondents' claim and thereby rendered the trial court *functus officio* on the said issue of jurisdiction.

2. Whether the substantive judgment of the trial court delivered on 30th May, 1990 is a nullity?

3. Whether the lower court was right to have ordered a retrial before the trial court, despite the lower court having clearly agreed, acknowledged and/or reasoned that the said trial court patently lacked the requisite jurisdiction/competence to entertain the respondents claim.

4. Whether the lower court was right to nullify and/or set aside the entire judgment of the trial court.

HELD (Unanimously dismissing the appeal per

ARIWOOLA JSC)

APPEALS - Grounds - Particulars

1. However, the rules of this court require that if the grounds of appeal allege misdirection or error in law, the particulars and the nature of the misdirection or error shall be clearly stated. See; Order 8 Rule 2(2) of the Supreme Court Rules.
(p. 4612 F)

APPEALS - Grounds - Purpose of

2. A ground of appeal is the totality of the reasons why the decision complained of is considered wrong by the party appealing. In other words, the grounds of appeal are the reasons why the aggrieved party considers the decision to be wrong. The whole purpose of a ground therefore is to give sufficient notice and information to the respondent of the precise nature of the appellant's complaint against the judgment

appealed against. In order words, the purport of any ground of appeal is to avail the court and the respondent the opportunity of knowing the appellant's grouse against the judgment being appealed against. There is no doubt that a ground of appeal must not be argumentative, vague or general in terms. It must necessarily disclose reasonable complaint against a ratio *dicidendi* in the decision appealed against, as opposed to an obiter dictum of the judge.

However, the fact that a ground is or grounds of appeal are argumentative or repetitive is not sufficient to deny an appellant his right of appeal when on the face of the ground of appeal, notable issues arise for consideration by the court. (p. 4613 D)

D APPEALS - Grounds - Particulars - Purpose of

3. Ordinarily, and this should be realized that particulars of the error alleged in a ground of appeal are intended to highlight the complaint against the judgment on appeal. They are the specifications of the error or misdirection in order to make clear how the complaint is to be canvassed in attempting to demonstrate the flaw in a relevant aspect of the judgment. Particulars are not to be made independent of the complaint in a ground of appeal but ancillary to it. (p. 4614 D)

F JURISDICTION - Fundamental nature of

4. It is trite law that jurisdiction is a very fundamental issue that robs on the competence of a court to adjudicate on a matter. This issue of jurisdiction being the nerve centre of a court's adjudication, can be raised at any time and at any stage of the proceedings, at the trial court, Court of Appeal or even for the first time before the highest court of the land. The reason being that a trial without jurisdiction is a nullity in its entirety. (p. 4615 A)

H JURISDICTION - Determination of

5. It is note worthy that the original action was instituted by the respondents and the appellants challenged the compe-

tence of the court to entertain the respondents' claim as contained in the Writ of Summons and Statement of Claim. There is no doubt, and it is trite law that once there is a challenge to the competence of the court to adjudicate over a matter, the issue must first and foremost be disposed of before the court takes any further step in the matter. So, the trial court was right to have taken the objection to its jurisdiction first. (p. 4623 A) B

JURISDICTION - Determination - Basis

6. It is trite law and already settled that in determining jurisdiction of a trial court, the process to be considered is the Statement of Claim. The averments disclosed in the Statement of Claim will show whether or not the court is competent to try it or not. In other words, it is settled law that it is the plaintiffs' claim that determines the question of the court's jurisdiction. C
D

However, I agree entirely with the learned senior counsel for the appellants that to say that objection to jurisdiction of the trial court can only be taken after a Statement of Claim has been filed will amount to a misconception, to say the least. It depends on what materials are available. There is no doubt that it could be taken solely on the Statement of Claim. It could be taken on the basis of evidence received or by a motion supported by affidavit stating the facts upon which reliance is placed. But principally, since it is the plaintiff that is invoking the jurisdiction of court, it is the averments in his Statement of Claim that would determine the jurisdiction of court; but not the Statement of Defence of the defendant or his answer to the claim. The court must look at or examine only the Statement of Claim. (p. 4623 C) E
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JUDGMENTS - Validity of

7. I am of the view that there was nothing left for the trial court to decide again on the issue of its jurisdiction, as he had finally decided that the court has jurisdiction. He should therefore have just proceeded to hear the dispute and given a deci- H

sion. To have come back on the issue of jurisdiction again to decline jurisdiction is, to say the least, a somersault, rendering the entire proceedings leading to the conclusion that the court lacked jurisdiction a nullity. If the trial judge after having taken arguments of both counsel had reserved the court's ruling on the determination of its jurisdiction to the conclusion of trial, he would have been saved this trouble of working in futility.

The ruling of the trial court delivered on 9th June, 1987 conclusively determined the vexed issue of the competence of the trial court to entertain the respondents' claim and thereby rendered the trial court *functus officio* on the said issue of jurisdiction. In the same vein, having taken a stand in its first ruling and thereafter somersaulted to say it later had no jurisdiction, he had robbed its court the required vires to adjudicate again over the respondents' claim. There was nothing left upon which the entire proceedings could have been predicated. Therefore, taking together issues 2 and 3 of the appellants' issues, I hold the firm view that with the wrong and improper stand taken by the trial Judge which led to his somersault, the substantive judgment of the trial court delivered on 30th May, 1990 is a nullity and was therefore rightly nullified and set aside. There was nothing to be salvaged in the entire proceedings. (p. 4624 E)

ORDERS OF COURT - Retrial

8. On the issue of the lower court's order of retrial, it is necessary to have a look at the issue placed before the lower court for determination. This prompted me to have earlier referred to the respondents' grounds of appeal and the questions raised for the determination of the lower court. The issue whether or not the trial court had jurisdiction was not placed before the court below and the instant appellants did not cross appeal on the issue. The main issue was whether or not the trial court can review and rightly reviewed his earlier ruling to say that he had jurisdiction to entertain the suit and reversed same to say that he had none. It has been said that

jurisdiction is the pillar upon which the entire case stands. Instituting an action in a court of law presupposes that the court had jurisdiction. But once the defendant shows that the court has no jurisdiction, the case crumbles. In effect, there is no case before the court for adjudication. The parties cannot be heard on the merits of the case. If the trial judge had deferred his ruling, having ordered the defendants to file their defence, the case may have been saved. But having assumed jurisdiction, and in the process considered the interests of both parties, his substantive judgment cannot stand. Hence, the need for the order for retrial by the same High Court but different judge where the issue of jurisdiction of the trial court can be properly taken and dealt with. The lower court therefore did not determine the issue of jurisdiction of the trial court as that was not one of the questions raised before it.

Indeed, I am obliged to state that the lower court did not consider whether or not the trial court had the requisite jurisdiction to adjudicate on the respondents claim. That was certainly and very clearly not the issue before the lower court.

COURTS - Issues - Confinement to

9. But if, assuming without conceding, the court made any remark or reference to the issue of the jurisdiction of the trial court to entertain the respondents' claim, it must have been said by the way, and as comments made in passing with no legal effect as it was not required to adjudicate on that point by the respondents and as there was no cross appeal by the then respondents now appellants. A court is duty bound to confine its decision to the issues raised by the parties. The court did not have the power to go outside the issues and formulate cases for the parties. Otherwise, it might find itself covered by the dust of conflict.

In the circumstance, the order of retrial by the lower court was rightly made. I shall say nothing more on this.

NOTABLE POINTS OF INTEREST

KEKERE-EKUN JSC

1. Court – When it is functus officio

- B Certain basic principles of law are relevant in determining this issue:
(1) when is a court *functus officio*? (2) whether a court has a right to sit on appeal over its own decision. In *First Bank of Nigeria Plc. Vs T.S.A. Industries Ltd. (2010) 15 NWLR (Pt. 1216) 247 @ 296 D-E*, this court held:
- C “A court is said to be *functus officio* in respect of a matter if the court has fulfilled or accomplished its function in respect of that matter and it lacks potency to review, re-open or re-visit the matter. Once a court delivers judgment in a matter, it cannot re-visit or re-view the said judgment except under certain conditions. More im-
- D portantly, a court lacks jurisdiction to determine an issue when it is *functus officio* in respect of the issue or where the proceedings relating to the issue is an abuse of process.” (p. 4646 D)

2. Competence of Court

- E The law is trite that a court is competent to exercise jurisdiction in respect of a cause or matter when:
1. It is properly constituted as regards numbers and qualification of the members and no member is disqualified for one reason
- F or the other.
2. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction.
3. That case comes by due process of law and upon the ful-
- G fillment of any condition precedent to the exercise of jurisdiction.
(p. 4646 H)

REPRESENTATION

- H O. Akoni, SAN with O. Ben-Omotehinse Esq. and O. Afi Esq. for appellants.
Chief Nnoruka Udechukwu, SAN with Chief F. A. Eneawaji for the respondents

CASES REFERRED TO

- Globe Fishing Industries Ltd. v. Coker (1990) 7 NWLR (pt. 162) 265
- Amuda v. Adelodun (1994) 8 NWLR (360) 23
- Enigbokan v. A.T.I Co. Ltd. (1994) 6 NWLR (pt. 348) at 15-16 B
- Agwasim v. Ojichie (2044) 10 NWLR (pt. 882) 613
- Ugboaja v. Soweminmo (2008) 7 SC 1
- Garuba v. Kwara Investment Co. Ltd (2005) 1 SCM 79
- Saraki v. Kotoye (1992) 11-12 SCNJ 26 C
- Minister of Petroleum & Mineral Resources v. Expo-Shipping Line (Nig) Ltd (2010) 5 SCM 111
- Olufeagba v. Abdurraheem (2009) 11-12 SCM (pt. 1) 125
- Dakolo v. Ravane-Dakolo (2011) 7 SCM 54
- Osason v. Ajayi (2004) 5 SCM 130 D
- Briggs v. Bob-Manuel (1995) 7 NWLR (pt. 409) 559
- Adegbite v. Babatunde (1953) 13 NACA 68
- Adeyemi v. Opeyori (1976) NSCC vol. 10 p. 455
- Nimpa v. Pyendeng (1994) 7 NWLR (pt. 356) 346 E

STATUTES & RULES REFERRED TO

- Chieftaincy Edict No. 5 of 1978, s. 2(5)
- Constitution of the Federal Republic of Nigeria 1999, s. 233
- Constitution of the Federal Republic of Nigeria 1979, s. 6(6)(d) F
- Supreme Court Rules 2008 (as amended), O. 2 r. 9(1)

LEAD JUDGMENT BY ARIWOOLA JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division delivered on 7th July, 1994, coram: Edozie, JCA (as he then was), R. O. Rowland, JCA and M. S. Muntaka-Coomassie, JCA (as he then was) which judgment set aside the judgment of the High Court of River State delivered on 30th May, 1990, (herein after called the trial court) coram: Ichoku, J.

Sometime on 9th May, 2014, sequel to the appellants' application, the appellants were granted leave by this court to appeal against the aforementioned judgment of the Court of Appeal, Port Harcourt Division (hereinafter called 'Lower Court').

The background facts that culminated into the instant appeal need to be given. Succinctly put, it goes thus:

Sometime on 23rd July, 1986, the respondents, as plaintiffs had instituted an action before the High Court, against the predecessors of the appellants as defendants, claiming as follows:

B (a) A declaration that the Chieftaincy stool of OKAN-AMA of Ngo Town exists as the known traditional title.

(b) A declaration that the plaintiffs' Uwile family is the rightful family that keeps and maintains the OKAN-AMA title.

C (c) A declaration that the 1st plaintiff is the rightful Okan-Ama of Ngo.

(d) Perpetual injunction restraining the defendants by themselves, their servants, their agents or privies from parading themselves as the Okan-Ama of Ngo Town.

D Upon receipt of the Statement of Claim of the respondents, the appellants filed a motion praying for an order striking out the suit for lack of jurisdiction by the trial court. The said relief was predicated on the following main ground:-

E *"That the Honourable Court has no jurisdiction regard to the averments contained in the Statement of Claim, particularly in paragraphs, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25 (xxvii) (xxx) (xxv) (xxxvi), (xxxvii) 26 and 27 on the ground that the said averments contravene the provisions of sub-sections (1) of section 18 of the Chieftaincy Edict, 1978 and the*
F *Schedule attached thereto made pursuant to Section 3, 4(1) and 13 of the said Edict No.5 of 1978 and also subsection 6(d) of section 6 of the Constitution of the Federal Republic of Nigeria, 1979".*

G After hearing arguments from both parties, the trial court in his considered ruling dismissed the appellant's preliminary objection to the competence of the trial court to try the suit. The court found that it had jurisdiction.

H In its ruling on the appellant's application challenging the jurisdiction of the court, the trial Judge considered *inter alia*, Section 2(5) of the Chieftaincy Edict No. 5 of 1978 (R.S.L.N No. 10 of 1978) and made the following finding:

"It is clear that there could be other chiefs but the Military Governor shall only recognize occupants of Chieftaincy Stools recog-

nized by Government. Others still exit"

Upon further consideration of Sections 3 & 4(1) and 18(1) of the same Edict No. 5 of 1978, the trial court had made the following findings respectively.

"It is clear here that the recognized stool and in which name the incumbent should go is the Chieftaincy of Ngo. The incumbent should bear no other name than the one recognized - See Section 4(1) of the said Edict."

"It is on this section that the Court is said not to have jurisdiction to try this case. Looking at the Statement of Claim, the claim is not challenging the Chieftaincy of Ngo. It is not the Stool Chieftaincy of Ngo that is the subject of this dispute."

The trial court went further in conclusion to hold as follows:

"On the whole it is my finding that the Court has jurisdiction to try this case. The objection raised as to the jurisdiction of the court in this case is overruled. The defendants are given 40 days to file their Statement of Defence."

Having been overruled on this preliminary objection, the appellants proceeded to file their Statement of Defence and the case went to full trial. At the conclusion of the trial, in the final written address of counsel, the appellants again raised the issue of lack of jurisdiction by the court. In the judgment the trial court upon review of defence came to the conclusion that the court lacked jurisdiction to entertain the respondents' claims. However, the trial court went ahead to determine the respondents' suit on the merit and found that, assuming he was wrong to have declined jurisdiction, the respondents had failed to prove their claims. He also found that the appellants' traditional history was more credible. On page 230 of the record, the trial court had held as follows:

"This being the case this suit is to be struck out as the court is not competent to determine the case, its jurisdiction having been ousted by Edict No. 5 of 1978 particularly Section 18 of the said Edict."

Being dissatisfied with the judgment of the trial court led the respondents to appeal to the lower court by their Notice of Appeal filed on 9th July, 1990. In its judgment, the lower court allowed the appeal of the respondents for the reason that the decisions of the trial

court delivered on 30th May, 1990 in the same suit amounted to the trial court sitting on appeal over its own decision. The lower court further held that the trial judge having delivered the first ruling, dismissing the preliminary objection and assuming jurisdiction, had no power to review and reverse his previous decision. The lower court
B then declared the judgment of the trial court a nullity and ordered a retrial before yet another judge of the same court.

Dissatisfied, the appellants who were respondents before the lower court, filed the instant appeal.

C It is however note worthy that sequel to the order of retrial by the lower court both parties went back to the High Court and the case was duly tried. As agreed by both counsel to the parties herein, the result of the retrial which also went to the Court of Appeal is already the subject of another appeal before this court. I shall come
D back to this issue later, if need be.

In the instant appeal, the appellants distilled the following issues from their notice of Appeal for determination.

Issues for determination:

E 1. Whether the ruling of the trial court delivered on 9th June, 1987 conclusively determined the vexed issue of the competence/ jurisdiction of the trial court to entertain the respondents' claim and thereby rendered the trial court *functus officio* on the said issue of jurisdiction (Ground 1)

F 2. Whether the substantive judgment of the trial court delivered on 30th May, 1990 is a nullity? (Ground 2)

G 3. Whether the lower court was right to have ordered a retrial before the trial court, despite the lower court having clearly agreed, acknowledged and/or reasoned that the said trial court patently lacked the requisite jurisdiction/competence to entertain the respondents claim. (Ground 3 & 4)

4. Whether the lower court was right to nullify and/or set aside the entire judgment of the trial court. (Ground 5).

H In the brief of argument filed on 13th August, 2014, the appellants argued the above issues seriatim.

However, in response to the appellants' brief of argument, the respondents on 9th December, 2015 filed an amended Notice of Preliminary Objection to the hearing of the appeal pursuant to Order

2 rule 9(1) of the Supreme Court Rules, 2008 (as amended). They also filed their respondents' amended brief of argument on the same 9th day of December, 2015. In the said brief of argument, the respondents referred to their Notice of Preliminary Objection on page 8 while the grounds and argument are contained on pages 8-16 of their brief of argument. B

On the hearing of this appeal, the respondents' counsel drew the attention of the court to the respondents' preliminary objection and same was deemed argued. It will therefore be considered first before proceeding to consider the submission of counsel in the merit of the appeal, if at all. The respondents gave eleven grounds of objection to the hearing of the appeal and concluded with the prayer that appellants' ground 1, 2, 3, 4 and 5 be struck out and/or the entire appeal be dismissed as being incompetent and constituting an abuse of court process. C

As expected, the appellants in their response to the Preliminary Objection to their appeal, filed a Reply on 6th January, 2016. D

In arguing the Preliminary Objection, Chief Udechukwu SAN, relying on Order 8 rule 2(3) of the Supreme Court Rules submitted that the law is that the particulars and nature of the error or misdirection alleged in relation to a ground of appeal should be the specific reasoning, finding or observation in the judgment or ruling in question relating to the error or misdirection in the judgment or ruling. E
He relied on *Globe Fhishing Industries Ltd. Vs Coker* (1990) 7 NWLR (Pt. 162) 265; *Amuda v. Adelodun* (1994) 8 NWLR (360) 23 at 31. F
He submitted further, that a notice of appeal is not the place to argue an appeal.

Learned Senior Counsel contended that the particulars set out in aid of grounds 1 & 3 are not an enumeration of the errors or misdirection in the judgment of the Court of Appeal. They are in the main, complaint against the ruling of the trial court of the 9th June, 1987 against which the appellants did not appeal. G

Learned Senior Counsel contended that grounds 1, 2, 3, 3, 4 & 5 in the Notice of Appeal raise issue against the decision of the court of trial of first instance when the appellants did not at any time appeal against the decision of the trial court delivered on the 9th June, 1987 to the effect that the court had jurisdiction on try the case. He H

submitted that the appellants grounds 1, 2, 3, 4 & 5 as set out in the Notice of Appeal are therefore incompetent having regarding to Section 233(1), (2)(a), (b) & (c) of the 1999 Constitution and Order 8 Rule 2(3) of the Supreme Court Rules.

B Learned Senior Counsel submitted that this appeal in competent and constitute an abuse of court process, the appellants having participated in and benefited from the retrial order made by the Court of Appeal, Port Harcourt Division on 7/7/94 leading to SC.54/2012 pending at the Supreme Court.

C Learned Senior Counsel contended that after the lower court had given its judgment of 7/7/94 setting aside the trial courts judgment delivered on 30/5/1990 and ordering a retrial, the appellants had two options – (1) to obey the order of retrial made or (2) to appeal against the judgment of the lower court to the Supreme Court.

D Learned Senior Counsel contended further that the appellants chosen to obey the order of retrial and participated in and benefited from the same and also went ahead with the respondents to the lower court wherein judgment was delivered on 1st June, 2011 against the appellants, which judgment the appellants had appealed to the Supreme Court in SC.54/2012. Learned Senior Counsel submitted that if the appellants had had the judgment of the lower court in their favour, they would not have further appealed, having participated fully in the retrial and benefited therefrom.

F Learned Senior Counsel contended that there are no pleadings to sustain the current appeal No. SC 355/2012, all the pleadings having undergone amendments. He submitted that pleadings once amended date back to the when the original pleadings were filed and exchanged in 1986 and 1987 respectively. He relied on Enigbokan G vs A.T.I Co. Ltd. (1994) 6 NWLR (Pt. 348) at 15-16.

H Learned Senior Counsel contended that the appellants cannot be allowed to maintain two appeals SC. 54/2012 and SC. 355/2012 on the same subject matter (Okan-Ama Ngo) and the same parties to achieve same goal and or common purpose. He submitted that it is a clear abuse of court process. He relied on Agwasim v. Ojichie (2044) 10 NWLR (Pt.882) 613 at 615.

Learned Senior Counsel contended that the appellants cannot formulate any ground of appeal and issue for determination from

an obiter of the court below. He submitted that grounds 3 & 4 and issue No. 3 arising therein are incompetent same having arisen from the *obiter dicta* of the court below. He contended further that ground 5 in the Notice of Appeal and issue 4 formulated by the appellants are incompetent in that the appellants never cross appealed to sustain any part of the judgment of the trial court delivered on the 30th May, 1990. B

He submitted that by S.233 of the 1999 Constitution as amended, appeal cannot emanate from the High Court to the Supreme Court. He finally urged the court to strike out all the grounds of appeal and the issues formulated therefrom and then dismiss the entire appeal. C

Responding to the preliminary objection by the respondents to the appeal, Mr. Akoni, SAN of counsel for the appellants submitted that the respondents' amended preliminary objection and argument in support, to say the least, are specious and border on the preposterous. Learned Senior Counsel contended that the respondents' submissions are not only misconceived but constitute an inaccurate representation of the true position of the law. He submitted that the said particulars clearly amplify the appellants' grounds of appeal and cannot by any stretch of imagination be said to be argumentative or narrative and he urges the court to so hold. D E

Learned Senior Counsel further submitted that where a complaint in a ground of appeal is succinct and clear, there is no need whatsoever for its supporting particulars. He contended that the grounds of appeal being challenged by the respondents in the instant case are quite clear and beyond controversy. He contended that the appellants grounds of appeal contained in the Notice of Appeal are evidently excerpts from the findings, reasoning, resolutions, inference and conclusions of the lower court. He submitted that the said grounds all arose from the judgment of the lower court. F G

On the participation by the appellants in the full retrial as order by the lower court, learned senior counsel contended that parties cannot by consent or acquiescence confer jurisdiction on a court. Neither can parties by their election waive an issue of such a fundamental nature like jurisdiction. He submitted that the issue of jurisdiction calling for determination in this appeal and which has affected H

the vires of this court and indeed both courts below can neither be ignored nor waived. Learned Senior Counsel further submitted that once court is found to be robbed of jurisdiction, all orders, findings, proceedings arising therefrom amount to a nullity. If this appeal is allowed then it means that SC.54/2012 which is founded on the retrial order amounts to a nullity. In the eyes of the law, the retrial order made by the lower court was never made and consequently any proceedings, orders or appeal hinged thereon or which arose from the said retrial order being a nullity never existed.

Learned Senior Counsel finally submitted that the preliminary objection lacks merit. He accordingly urged the court to discountenance and dismiss same.

From the preliminary objection above, it is clear that the respondents are attacking the entire Notice of Appeal of 5 Grounds of Appeal filed on 23rd May, 2014 upon the leave of court granted so to do on 9th May, 2014.

As clearly shown, the Grounds of Appeal were said to be in violation of the Rules of this Court on what the Notice of Appeal is expected to contain. Reliance was placed on Order 8 Rule 2(1) of the Supreme Court Rules, as amended. It states thus:-

Order 8 rule 2(3)-

"The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively."

However, the rules of this court require that if the grounds of appeal allege misdirection or error in law, the particulars and the nature of the misdirection or error shall be clearly stated. See; Order 8 Rule 2(2) of the Supreme Court Rules.

Even though all the 5 grounds of appeal are being attacked by the respondents in their Preliminary Objection, grounds 1 and 3 appear to share greater portion of the attack. Perhaps, it is necessary to show here what those two grounds are without their particulars.

Ground 1

The learned justices of the lower court erred in law by holding that:

"Once the trial court delivered its decision which is subject to appeal as if right or it affects the jurisdiction of the court as in this appeal, that decision whether in a preliminary or final judgment of that court is functus officio. If there is any mistake or any issue to be thrashed out, the Court of Appeal is the proper tribunal to correct and provide proper guidance. The same trial judge has discharged his duty. In order words that court, office or authority has come to an end."

Ground 3-

The learned justices of the lower court erred in law when the court ordered a retrial despite holding that:

"the true position on this appeal is this, that initially, the trial Court's jurisdiction has been effectively ousted by Edict No. 5 of 1978. Section 18 thereof on the ground that the matter then before the court was chieftaincy tussle. The prevailing land and 1963 Constitution lend their support to that position. The learned trial judge could have used the opportunity to obey the law rather than sacrifice it in a most curious manner."

What then is a ground of appeal? **A ground of appeal is the totality of the reasons why the decision complained of is considered wrong by the party appealing. In order words, the grounds of appeal are the reasons why the aggrieved party considers the decision to be wrong.** See Chief N. P. Ugboaja vs S. A. Soweminmo & Ors (2008) 7 SC 1; (2008) 12 SCM (pt. 1) 212; Ojeme vs. Momodu SCNLR 188. **The whole purpose of a ground therefore is to give sufficient notice and information to the respondent of the precise nature of the appellant's complaint against the judgment appealed against. In order words, the purport of any ground of appeal is to avail the court and the respondent the opportunity of knowing the appellant's grouse against the judgment being appealed against.** See Garuba vs. Kwara Investment Co. Ltd & Ors (2005) 1 SCM 79; Saraki vs. Kotoye (1992) 11-12 SCNJ 26; Minister of Petroleum & Mineral Resources & Anor Vs. Expo-Shipping Line (Nig) Ltd (2010) 5 SCM 111; (2010) 3-5 SC (Pt. 1) 171. **There is no doubt that a ground of appeal must not be argumentative, vague or general in terms. It must necessarily disclose reasonable com-**

plaint against a ratio decidendi in the decision appealed against, as opposed to an obiter dictum of the judge. See Prof. B. I. Olufeagba & Ors Vs. Prof. S. Oba Abdurraheem & Ors (2009) 11-12 SCM (Pt. 1) 125 (2009) 12 SC (Pt. 11) 1.

However, the fact that a ground is or grounds of appeal are argumentative or repetitive is not sufficient to deny an appellant his right of appeal when on the face of the ground of appeal, notable issues arise for consideration by the court. Ressel L. Y. Dakolo & Ors Vs. G. Ravane-Dakolo & Ors (2011) 7 SCM 54; (2011) 6-7 SC (Pt. 111) 104.

It should be noted from the argument of the learned senior counsel for the respondents that his complaint is mainly against the way the particulars are couched and that the matter narrated in the said particulars do not arise from the decision of the lower court appealed against.

Ordinarily, and this should be realized that particulars of the error alleged in a ground of appeal are intended to highlight the complaint against the judgment on appeal. They are the specifications of the error or misdirection in order to make clear how the complaint is to be canvassed in attempting to demonstrate the flaw in a relevant aspect of the judgment. Particulars are not to be made independent of the complaint in a ground of appeal but ancillary to it. See Ogundare Osason vs. Adetoyinbo Ajayi (2004) 5 SCM 130.

I have carefully considered the grounds of appeal filed with the appellants' notice of appeal and the particulars given of those grounds, I cannot see how the nature or form of the particulars affected adversely, the substance of the complaint of the appellants against the judgment appealed against. The objection to the particulars of the grounds of appeal lacks merit and I so hold.

Furthermore, there is no doubt that the appellants who were respondents at the lower court did not appeal against the order of the lower court for retrial. Indeed, they went back to the trial court and participated fully in the retrial to the end and were also on appeal. It is clear and there is no controversy that the issue being taken again here on appeal touches and indeed is mainly on the jurisdiction of the trial court to adjudicate on the respondents' claim.

It is trite law that jurisdiction is a very fundamental issue that robs on the competence of a court to adjudicate on a matter. This issue of jurisdiction being the nerve centre of a court's adjudication, can be raised at any time and at any stage of the proceedings, at the trial court, Court of Appeal or even for the first time before the highest court of the land. The reason being that a trial without jurisdiction is a nullity in its entirety. See Attorney General of the Federation & Ors Vs. C. O. Sode & Ors. (1990) 3 SC (Pt.1); John Bankole & Ors Vs. Mojidi Pelu & Ors (1991) 11-12 SC 116; Kotoye Vs. (Mrs.) Saraki (1994) 7-8 SCNJ 524. It is note worthy as clearly shown in the record that even on appeal after the retrial by yet another Judge of the High Court, the issue was again raised seemingly leading to a decision of the lower court on the issue. There is therefore no sufficient material to show that the appeal is against the decision of the trial court. The appellants' complaint is against the decision of the lower court.

In my view and without any further ado on this preliminary objection, I hold that the objection lacks merit and deserves to be overruled. Accordingly, the Preliminary Objection by the respondents to the hearing of this appeal is hereby overruled.

Now to the appeal for consideration on merit having disposed of the issue of Preliminary Objection against the respondents.

As stated earlier, the appellants formulated four issues for determination of the appeal whereas the respondents distilled only one issue as follows:-

"Whether the Court of Appeal was right when it held that the judgment of the learned trial judge delivered on the 30th day of May, 1990 was nullity in that it amounted to an impermissible review and reversal of the earlier decision of the same court delivered on the 9th June, 1987 in the same suit".

I have considered the four issues formulated by the appellants for the determination of their appeal and the sole issue distilled by the respondents. I have no slightest doubt in my mind that the four issues of the appellants can safely be subsumed into the sole issue of the respondent as the said sole issue covers all the issues raised in the four issues of the appellants, and they shall be taken together.

In arguing the appeal, learned senior counsel, Mr. Wale Akoni, SAN contended that a careful and holistic review of the ruling delivered on 9th June, 1987 by the trial court will reveal that the said court did not in that Ruling conclusively determine the issue of whether the trial court was vested with requisite jurisdiction to entertain the respondents' claim. He submitted that the tenor of the trial court's ruling cannot under any logical rule of construction or interpretation be understood to mean that the trial court had finally disposed, wholly resolved or completely determined the vexed issue of the competence or jurisdiction to entertain the respondents' claim. Learned Senior Counsel therefore contended that the trial court was not *functus officio* on the issue of jurisdiction and its substantive judgment delivered on 30th May, 1990 or the same vexed issue of jurisdiction ought not to have been construed by the lower court to be an attempt by the trial court to sit on appeal over the Ruling delivered on 9th June, 1987.

Learned senior counsel contended that the trial court carefully stated that based on the respondents' Statement of Claim, it saw nothing that divested the trial court of the jurisdiction to entertain the respondents' suit and it was solely on this basis that the trial court overruled the appellants' objection raised as to the jurisdiction of the court. He submitted that holistic consideration of the Ruling would reveal that the trial court merely made transient findings/orders.

Learned senior counsel contended that the trial court decided not to reach a conclusive determination on the issue of jurisdiction until evidence was received. He submitted that where the issue of jurisdiction cannot be properly decided without ascertaining the facts, the court cannot decline jurisdiction until by proper procedure the essential facts are established. He relied on *Briggs Vs Bob Manuel* (1995) 7 NWLR (Pt. 409) 559 at 578; *Adegbite vs Babatunde* (1953) 13 NACA 68, *Adeyemi & Ors, Vs. Opeyori* (1976) NSCC Vol. 10 P.455. He went further to submit that what the trial court did was to suspend its determination of the jurisdictional point until issues were properly joined via the pleadings and evidence received. And that it would be inconceivable to attach to the trial court's Ruling any measure of finality on the issue of jurisdiction. He urged the court to hold that the Ruling of the trial court delivered on 9th June, 1987 did not

conclusively resolve the issue of jurisdiction and did not render the trial court functus officio as regards the said issue of jurisdiction.

Issue 2 of the appellants is whether the substantive judgment of the trial court delivered on 30th May, 1990, is a nullity. The appellants submitted that once their issue 1 earlier considered is resolved in the negative in favour of the appellants, and the appeal is determined, it will render the consideration of the other issues for determination academic. Otherwise, the second issue becomes pertinent for determination.

Learned senior counsel contended that it is settled in our body of jurisprudence that where certain factors exist, a court of law has the vires and it possesses the inherent powers to set aside its previous decision. He relied on *Tomtech Nig. Ltd. Vs Amalgamated Trustees Ltd* (2007) All FWLR (PT.392) 1781 at 1840.

Learned senior counsel submitted that assuming without conceding that the trial court made a conclusive finding on the issue of jurisdiction on 9th June, 1987, the same trial court was competent within its inherent powers to set aside that if it came to the conclusion that its earlier decision was reached without jurisdiction and same was a nullity. Learned senior counsel further submitted that it is settled law that where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision arising from such an exercise amounts to a nullity. He relied on *Shell Petroleum Development Co. Vs. Isaiah* (2001) 5 SC (Pt. 11) 1 at 4. He contended that it is judicially recognized that the court is always possessed of the requisite inherent powers to set aside earlier decisions which are nullity. And the lower court on appeal ought to have enquired whether the trial Judge had appropriately exercised its powers in overruling its earlier decision. He submitted that the trial court did in the instant case and this much was admitted by the lower court when it acknowledged that the trial court's jurisdiction had in fact, been ousted. In the circumstances, he further submitted that the trial court's judgment was not and cannot be a nullity as the judgment set aside and overruled the null or void Ruling together with the entire proceedings hinged on that Ruling.

Learned senior counsel contended that infact to the extent that the lower court's judgment, declared the trial court's judgment a nullity and proceeded to order a retrial, when the trial court was in

law and fact not seised with jurisdiction to entertain the respondents' claim, that judgment of the lower court delivered on 7th July, 1994 was a nullity and he urged the court to so hold. He finally submitted that the substantive judgment of the trial court delivered on 30th May, 1990 is not a nullity but rather binding, subsisting and enforceable
B against the respondents.

This takes one to the next issue whether the lower court was right to have ordered a retrial before the trial court, despite the lower court having clearly agreed and acknowledged that the said trial court
C lacked the requisite jurisdiction or competence to entertain the respondents' claim. The appellants submitted that the order of retrial made by the lower court was unfounded, incompetent, null and absolutely void as same arose from an inconsistent and or incongruent evaluation of the respondents' appeal to the lower court.

D Learned senior counsel for the appellants contended that, assuming without conceding that the lower court was right in its finding that the trial court was *functus officio* on the issue of jurisdiction then he submitted that in the light of the finding by the lower court in its judgment delivered on 7th May, 1994 that the trial court lacked
E jurisdiction, the lower court was in grave error when it ordered a retrial of the respondents' claim. He referred to and quoted copiously from the judgment of the lower court on the lower court's findings and contended that the lower court was right to have found that the trial court lacked the competence to adjudicate upon the
F respondents' claim having found that it lacked jurisdiction so to do. But submitted that the lower court was in error to have set aside the entire judgment of the trial court and ordered a retrial before the same trial court, it had declared as having its jurisdiction ousted.
G Learned senior counsel further submitted that the only conclusion the lower court could have rightly reached was to strike out the respondents appeal to it but not up hold same.

H Learned senior counsel submitted that it is doing a legal impossibility for the lower court to order the same trial court which it has found had no jurisdiction to rehear the respondents' claim. He stated that the lower court cannot confer jurisdiction by judicial fiat where there is none, relying on *Dalfam Nigeria Ltd Vs. Okaku International Ltd & Anor* (2001) 15 NWLR (Pt. 375) 203 at 240; *African*

Newspapers of Nigeria Vs. FRN (1985) 2 NWLR (Pt. 6) 137 at 165,
Nimpa Vs Pyendeng (1994) 7 NWLR (Pt. 356) 346.

The appellants contended that the order made by the lower court remitting the suit back to the trial court for retrial did not solve the issue of jurisdiction and equally cannot confer jurisdiction on a trial court. Learned counsel urged the court to so hold and resolve the issue in favour of the appellants. B

As I stated earlier, the respondents had opined that the only issue this court was being asked to decide upon is rather narrow and this is whether the court of Appeal was right when it held that the judgment of the learned trial Judge delivered on the 30th day of May, 1990 was a nullity in that it amounted to an impermissible review and reversal of the earlier decision of the same court delivered on the 9th of June, 1987 in the same suit. The respondents therefore based their entire arguments on this issue. C D

Learned senior counsel referred to the decision of the trial court on the issue of its jurisdiction in the ruling delivered on 9th June, 1987 and submitted that the Supreme Court is not to sit on appeal over the decision of the High Court of first instance, as to whether it decided the appellants, then as defendants had wanted to raise that point they should have appealed to the Court of Appeal against the Ruling delivered by the trial court on the 9th June, 1987. He submitted that the trial court did not defer its decision on the issue of jurisdiction when it was raised. The court settled it and gave the reasons upon which it based its decision. Learned senior counsel contended that the issue before the Court of Appeal was, whether, having settled the issue, the trial Judge was at liberty to review his decision and reverse it subsequently. He went further to say that the Supreme Court is called upon to say whether the lower court was right. Learned senior counsel submitted that any other issue is irrelevant and non sequitor. And that issues in an appeal must relate to the decision appealed against and should constitute a challenge to the ratio of the decision. He cited Saraki Vs Kotoye (1992) 11-12 SCNJ (Pt. 1) 26 at 43. E F G H

Learned senior counsel contended that jurisdiction of court to entertain a suit is determined by the case brought by the plaintiff and not by the defence or counter claim. He relied on Oduye Vs

Nigeria Airways (1987) 4 SC 202; Egbuzien Vs NRC (1994) 3 NWLR (Pt. 336) 23 at 32. He contended further that in the instant case, the trial Judge reviewed the case brought by the plaintiffs and decided that the case did not relate to Chieftaincy of Ngo 2nd Class, and that Section 18 of the Chieftaincy Edict did not affect the plaintiffs' case, and further that the plaintiffs' cause of action accrued after the 30th September 1979. The lower court held that the trial court had no jurisdiction to review his own decision and reverse it. He urged the court to affirm this.

Learned senior counsel submitted that the Ruling of the trial court squarely addressed the issue of jurisdiction raised and settled it. The unwarranted review of its decision was what the respondents felt dissatisfied with which took them to the lower court for re-examination. He submitted that the lower court was right in holding that the trial Judge was wrong and unjustified in reviewing and reversing his own decision. He submitted that the decision of the lower court that declared the judgment of the trial court of 30th May, 1990 a nullity was correct.

On appellants' issue No. 2, learned senior counsel contended that it was predicated on the fallacy that the learned trial court's Ruling of 9th June, 1987 was given without jurisdiction and a nullity. He contended further that this is a disingenuous way of reasserting and re-arguing the very contention which the trial Judge had overruled in a settled decision against which the appellants did not appeal. He submitted that when there is no appeal against a decision it stands. He relied on *Nwabueze Vs Okoye* (1988) 4 NWLR (Pt. 91) 664; *Abacha Vs. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 at 297.

After reviewing the various sections of the relevant Chieftaincy Edict and the decided cases referred to by the appellants in their brief of argument, learned senior counsel for the respondents concluded that the only issue for determination in this suit arising from the point actually decided by the lower court must relate and relate only to the question whether the Court of Appeal was right when it stated the law to be the learned trial Judge lacked the jurisdiction to review its subsisting decision to the effect that he had the jurisdiction and to reverse that decision and enter another decision to the effect that he lacked the jurisdiction to entertain the suit.

Learned senior counsel contended that the lower court was right, then this appeal must fail and be adjudged that the order sending the suit back to the High Court for retrial was correct. He submitted that the lower court was right to have held that the trial Judge lacked the jurisdiction to sit on appeal against his own decision by reviewing it and reversing it. He finally urged the court to resolve all the issues against the appellants and dismiss the appeal. B

As stated earlier, this appeal is against the judgment of the Court of Appeal, Port Harcourt Division delivered on 7th July, 1994. There is no doubt that the said decision of the lower court must have been based on the appeal against the judgment of the trial court delivered earlier on 30th May, 1990. In other words, what the Court of Appeal decided cannot be outside what was brought before it for resolution. Perhaps, it is pertinent to state what was taken before the lower court from the Grounds of Appeal before the court. C D

From the records, it shows that the respondents had sometime in 1990 filed Notice of Appeal to appeal against the judgment of the trial High Court delivered on 30th May, 1990. The said Notice of Appeal had only one ground of appeal with an undertaking to file further grounds of appeal upon receipt of the judgment which was then not ready as at the time of filing the Notice of Appeal. E

With the leave of court, three additional grounds of appeal were filed. The two main grounds of appeal that the respondents utilized before the lower court are grounds 1 and 3 which, without their particulars read thus:- F

Ground 1-

"The learned trial Judge misdirected himself and erred in law in that in his judgment delivered on the 30th May, 1990, he reviewed and reversed his earlier Ruling on the 9th June, 1987 that the court had jurisdiction and conferred on himself a jurisdiction not conferred on him by law." G

Ground 3-

"The decision of the court below dated 30th May, 1990, is a nullity in that the court reversed its finding made in an earlier decision given on 9th June, 1987 in the same proceedings and was therefore a serious error of law." H

From the above two grounds of appeal to the court below, the then appellants, but now respondents had raised a single ques-

tion whether the trial court was competent to review its earlier decision in his Ruling and reverse itself by subsequently giving yet another ruling different from the earlier decision.

In other words, as noted by the lower court in its judgment on pages 320-321 of the Record of appeal, the appellants before the lower court formulated the following questions for determination.

“(a) Was the decision of the court below not a nullity having been given after the court became aware during the hearing that the 1st defendant had died.”

(b) If not, was the court below competent to reverse its earlier finding of fact that the cause of action arose after 30th September, 1979, and its decision based on the said crucial finding that it had jurisdiction to hear the suit, and to substitute therefore a finding again crucial to the issue of jurisdiction that the cause of action arose before 1st October, 1979 namely in 1975-1978 and to decide that it had no jurisdiction?

(c) If the answer to (b) is the affirmative was the court below right in holding that a previous suit between the 1st plaintiff and the 1st defendant in 1978 which the court declined to hear for want of jurisdiction stopped the 1st appellant herein from pursuing his claim in the instant proceeding?”

At the end of the day in its judgment, the lower court came to the conclusion that having delivered the first ruling on the 9th June, 1987 upon consideration of the averments in the Statement of Claim and relevant provisions of the Constitution and Chieftaincy Edicts the trial court had become *functus officio* and therefore no longer had competence to further try the case. Indeed, the lower court held as follows on page 338 of the record:-

“Consequently, the decision of that court on 30th May, 1990 in the same suit amounts to the trial court sitting on appeal over its own decision. That makes the judgment so delivered a nullity. The trial judge having delivered the first ruling had no power to review and reverse his previous decision.”

There is no doubt that it was the above decision of the lower court that led to the instant appeal.

The learned senior counsel for the appellants as earlier noted had argued that the trial court was not *functus officio* on the issue of jurisdiction by his ruling and it did not sit on appeal over his own

ruling delivered on 9th June, 1987. I am afraid this is a misconception of the law, to say the least.

It is note worthy that the original action was instituted by the respondents and the appellants challenged the competence of the court to entertain the respondents' claim as contained in the Writ of Summons and Statement of Claim. There is no doubt, and it is trite law that once there is a challenge to the competence of the court to adjudicate over a matter, the issue must first and foremost be disposed of before the court takes any further step in the matter. See Arabela Vs Nig Agric Insurance Corp (2008) 5 SCM 39; Ojukwu Vs Ojukwu (2008) 12 SCM (Pt. 2) 58. So, the trial court was right to have taken the objection to its jurisdiction first.

It is trite law and already settled that in determining jurisdiction of a trial court, the process to be considered is the Statement of Claim. The averments disclosed in the Statement of Claim will show whether or not the court is competent to try it or not. In other words, it is settled law that it is the plaintiffs' claim that determines the question of the court's jurisdiction. See Aladegbemi Vs Fasanmade (1988) 3 NWLR (Pt. 81) 129; Adeyemi Vs Opeyori (1976) 9-10 SC 311; Ege Sipposing & Traing Ind. Vs. Tigris International Corp. (1999) 14 NWLR (Pt.637) 70 at 89; Ikine & Ors Vs Olori Edjerode & Ors (2001) 12 SC (Pt.11) 94; (2002) 1 SCM 124.

However, I agree entirely with the learned senior counsel for the appellants that to say that objection to jurisdiction of the trial court can only be taken after a Statement of Claim has been filed will amount to a misconception, to say the least. It depends on what materials are available. There is no doubt that it could be taken solely on the Statement of Claim. It could be taken on the basis of evidence received or by a motion supported by affidavit stating the facts upon which reliance is placed. But principally, since it is the plaintiff that is invoking the jurisdiction of court, it is the averments in his Statement of Claim that would determine the jurisdiction of court; but not the Statement of Defence of the defendant or his answer to the claim. The court must look at or examine only the State-

ment of Claim. See Attorney General Kwara State Vs. Olawale (1993) 4 SCNJ 208; Lofu & Ors Vs Itodo & Ors (2010) 12 SC (Pt.1) 165; Ohakim & Anor Vs Agbaso & Ors (2010) 6-7 SC.

In the instant case, the only available materials are the Writ of Summons and Statement of Claim, and these alone are enough to enable the trial court determine whether or not it has jurisdiction to adjudicate upon the plaintiffs/respondents' claim – Nigeria Deposit Insurance Corp. Vs Central Bank of Nigeria & Anor (2002) 7 NWLR (Pt. 766) 272; (2002) 4 SCM 128; Arjay & Ors Airline Management support Ltd (2003) 5 SCM 17 at 30.

In determining its jurisdiction on this matter, the trial court rightly examined the averments in the Statement of Claim and considered the relevant Chieftaincy Edict and Constitution, but clearly disagreed with the defendants now appellants that the trial court has no jurisdiction. Indeed, the trial court came to the following conclusion:

"On the whole, it is my finding that the Court has jurisdiction to try this case. The objection raised as to the jurisdiction of the court in this case is overruled."

By the above conclusion, the defendants surely acquired a right to appeal against the ruling if they so desired, but alas! They never did.

I am of the view that there was nothing left for the trial court to decide again on the issue of its jurisdiction, as he had finally decided that the court has jurisdiction. He should therefore have just proceeded to hear the dispute and given a decision. To have come back on the issue of jurisdiction again to decline jurisdiction is, to say the least, a somersault, rendering the entire proceedings leading to the conclusion that the court lacked jurisdiction a nullity. If the trial judge after having taken arguments of both counsel had reserved the court's ruling on the determination of its jurisdiction to the conclusion of trial, he would have been saved this trouble of working in futility.

The ruling of the trial court delivered on 9th June, 1987 conclusively determined the vexed issue of the competence of the trial court to entertain the respondents' claim and

thereby rendered the trial court *functus officio* on the said issue of jurisdiction. In the same vein, having taken a stand in its first ruling and thereafter somersaulted to say it later had no jurisdiction, he had robbed its court the required vires to adjudicate again over the respondents' claim. There was nothing left upon which the entire proceedings could have been predicated. Therefore, taking together issues 2 and 3 of the appellants' issues, I hold the firm view that with the wrong and improper stand taken by the trial Judge which led to his somersault, the substantive judgment of the trial court delivered on 30th May, 1990 is a nullity and was therefore rightly nullified and set aside. There was nothing to be salvaged in the entire proceedings.

On the issue of the lower court's order of retrial, it is necessary to have a look at the issue placed before the lower court for determination. This prompted me to have earlier referred to the respondents' grounds of appeal and the questions raised for the determination of the lower court. The issue whether or not the trial court had jurisdiction was not placed before the court below and the instant appellants did not cross appeal on the issue. The main issue was whether or not the trial court can review and rightly reviewed his earlier judgment to say that he had jurisdiction to entertain the suit and reversed same to say that he had none. It has been said that jurisdiction is the pillar upon which the entire case stands. Instituting an action in a court of law presupposes that the court had jurisdiction. But once the defendant shows that the court has no jurisdiction, the case crumbles. In effect, there is no case before the court for adjudication. The parties cannot be heard on the merits of the case. See Patrick Okolo & Anor Vs. Union Bank of Nigeria Ltd (2004) 2 SCM 180. If the trial judge had deferred his ruling, having ordered the defendants to file their defence, the case may have been saved. But having assumed jurisdiction, and in the process considered the interests of both parties, his substantive judgment cannot stand. Hence, the need for the order for retrial by the same High Court but different judge where the issue of jurisdiction of the

trial court can be properly taken and dealt with. The lower court therefore did not determine the issue of jurisdiction of the trial court as that was not one of the questions raised before it.

Indeed, I am obliged to state that the lower court did not consider whether or not the trial court had the requisite jurisdiction to adjudicate on the respondents claim. That was certainly and very clearly not the issue before the lower court. But if, assuming without conceding, the court made any remark or reference to the issue of the jurisdiction of the trial court to entertain the respondents' claim, it must have been said by the way, and as comments made in passing with no legal effect as it was not required to adjudicate on that point by the respondents and as there was no cross appeal by the then respondents now appellants. A court is duty bound to confine its decision to the issues raised by the parties. The court did not have the power to go outside the issues and formulate cases for the parties. Otherwise, it might find itself covered by the dust of conflict. See *Anambra State Environmental Sanitation Authority Vs. Ekwenem* (2009) 9 SCM 1, (2009) 7 SCNJ 1.

In the circumstance, the order of retrial by the lower court was rightly made. I shall say nothing more on this.

In the final analysis, all the four issues raised are resolved against the appellants and the appeal is, in my view, liable to dismissal for lacking in merit.

However, I must commend the industry and diligence of the learned senior counsel for both parties, in particular Mr. Akoni, SAN for the appellants. One would not have expected anything less. I am impressed by the canduor displayed in the handling of the matter.

Appeal is dismissed. Even though costs ordinarily follow events, I shall make no order on cost.

ONNOGHEN AG. CJN

I have had the benefit of reading in draft the lead Judgment of my learned, Ariwoola JSC, just delivered.

I agree with his reasoning and conclusion that the preliminary objection as to the competence of the appeal lacks merit and consequently dismiss same.

One the appeal proper, I agree that same lacks merit and should be dismissed.

The facts of this case have been stated, in detail, in the lead Judgment of my learned brother making it unnecessary for me to repeat them herein except as may be needed for the issue(s) being considered. B

Learned senior counsel for appellants O. Akoni, SAN has formulated four issues for the determination of the appeal in the appellants' brief filed on 13/8/2014 as follows:- C

"1. Whether the ruling of the trial delivered on 9th June 1987 conclusively determined the vexed issue of the competence/jurisdiction of the trial court to entertain the respondents' claim and thereby rendered the trial court functus officio on the said issue of jurisdiction. D

2. Whether the substantive judgment of the trial court delivered on 30th May 1990, is a nullity?..."

3. Whether the lower court was right to have ordered a retrial before the trial court, despite the lower court having clearly agreed, acknowledged and/or reasoned that the said trial court patently lacked the requisite jurisdiction/competence to entertain the respondents' claim?..... E

4. Whether the lower court was right to nullify and/or set aside the entire judgment of the trial court?".... F

Haven gone through the record of proceedings particularly the ruling of the trial court on the motion challenging the jurisdiction of the court in entertaining the suit as constituted, the subsequent Judgment of that court and the Judgment of the lower court on appeal arising therefrom, I am in complete agreement with the learned senior counsel for the respondents Chief U. N. Udechukwu, SAN, that only an issue is relevant for the determination of the appeal to wit: Whether the Court of Appeal was right when it held that the learned trial Judge lacked the authority of power to review and reverse his earlier decision delivered on the 9th day of June, 1987, as he did in the final decision delivered on the 30th day of May, 1990". H

In an action instituted on the 23rd day of July, 1986, the

appellants, as plaintiffs, claimed the following reliefs, at the trial court.

“(a) *A declaration that the Chieftaincy Stool of OKAN-AMA of Ngo Town exists as the known traditional title.*

(b) *A declaration that the plaintiffs Uwile family is the rightful family that keeps and maintains OKAN-AMA title.*

B (c) *A declaration that the 1st plaintiff is the rightful Okan-Ama of Ngo Town.*

(d) *Perpetual injunction restraining the defendants by themselves, their servants, their agent or privies from parading themselves as the OKAN-AMA of Ngo Town and from laying claim to the Chieftaincy Stool of OKAN-AMA of Ngo Town.”*

Upon service of the processes on them, the defendants filed a motion for an order that lacked the jurisdiction to entertain the suit and prayed same to be struck out on the ground.

D “(a) *That the Honourable Court has no jurisdiction as regard to averments contained in the Statement of Claim particularly in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, (XXVILL), (XXX), (XXXVI), (XXXVII), 26 and 27 on the ground that the said averments contravene the provisions of sub-*

E *section (1) of section 18 of the Chieftaincy Edict, 1978 (No. 5 of 1978) RSLN. No. 10 of 1978 and the schedule attached thereto made pursuant to section 3,4(1) and 13 of the said Edict No. 5 of 1978 and also subsection (6) (d) of section 6 of the Constitution of the Federal Republic of Nigeria 1979”.*

F After hearing counsel for the parties on the above objection/motion, learned trial judge delivered a ruling to be found at pages 43-52 of the record in which he dismissed the objection. In the course of that ruling, the learned trial judge considered the facts as pleaded

G vis-à-vis the relevant provisions of the law and came to the following conclusion, inter alia, at page 51-52 of the record:-

“Finally as I have stated looking at the Statement of Claim prima facie there is nothing on it to show that the Okana-Ama of Ngo Town the cause of which this action was taken is the same Chieftaincy

H Stool referred to by the Chieftaincy Edict of 1978 and Legal Notice No. 10 thereof... On the face of it without more no one say the two Chieftaincy Stools are one and the same for which one can invoke the provisions of section 18 of the 1978 Edict (supra). One can only

determine this from the pleadings and evidence. The defendants therefore should file their defence in this case.

That apart, the cause of action arose after 30th September, 1978 in which case the 1978 Edict though an existing law could not apply for that will amount to precluding the High Court from exercising jurisdiction conferred on it by section 236 of the Constitution and which jurisdiction is unlimited, Any existing law which is inconsistent with the provisions of the 1979 Constitution will be to that extent of the inconsistency be void. Thus the High Court has jurisdiction to try this case.....

On the whole, it is my finding that the court has jurisdiction to try this case. The objection raised as to the jurisdiction of the court in this case is over-ruled. The defendants are given 40 days to file their Statement of Defence."

The record discloses that the defendants did not appeal against the findings of the trial court reproduced supra but proceeded to file their Statement of Defence as ordered by the court and the matter proceeded to trial at the end of which the trial Judge declined to pronounce on the merit of the case but in a somersault struck out the suit for lack of jurisdiction to hear and determine the action.

At page 230 of the record, the trial Judge held as follows:-

"This being the case this suit is to be struck out as the court is not competent to determine the case its jurisdiction having been ousted by Edict No. 5 of 1978 particularly section 18 of the said Edict."

The above decision of the trial court resulted in an appeal in which the lower court held, inter alia, at pages 337 – 338 of the record thus:-

"Once the trial court delivered its decision which is subject to appeal as of right or it affects the jurisdiction of the court as in this appeal, that decision whether in a preliminary or final judgment that court is functus officio. If there is any mistake or any issue to be trashed out, the Court of Appeal is the proper tribunal to correct and provide proper guidance. The same trial Judge has discharge his duty. In other words, that court, office or authority has come to an end.

Consequently, the decision of that court on 30th May, 1990 in the same suit amounts to the trial court sitting on appeal over its own decision. That makes the Judgment so delivered a nullity. The

trial judge having delivered the first ruling, had no power to review and reverse his previous decision - Amanambu Vs Okafor & Anr. (1967) AMLR 118"

B The instant appeal is against the above Judgment of the lower court which, as I stated earlier, generated four issues by learned senior counsel for appellants as against the lone issue formulated by learned senior counsel for the respondents both of which have been reproduced earlier in this Judgment. Haven reproduced the relevant portions of the decisions of the trial and lower court, it is apparent that the lone issue formulated by learned senior counsel for the respondents is sufficient and appropriate for the determination of the appeal.

D It is the submission by learned senior counsel for appellants that where an issue of jurisdiction cannot be properly decided without ascertaining the facts, the court cannot decline jurisdiction until, by proper procedure, the essential facts are established, which is what the trial court is said to have done in this case; that the lower court was in error when it held that the trial court was functus officio on the issue of jurisdiction and that being functus officio, the judgment of that court was a nullity for being a judgment on appeal against its earlier decision particularly as the earlier ruling of the trial court was temporary, transient and did not finally determine the right of the parties on the issue of jurisdiction, that the trial court did not in the circumstance over-rule itself and urged the court to resolve the issue in favour of appellants.

G On this part, learned senior counsel for the respondents referred the court to the relevant pages in the ruling and Judgment of the trial court as well as the decision of the lower court on the issue and submitted that the lower court was correct when it held that the learned trial Judge lacked the jurisdiction to review its subsisting decision to the effect that he had the jurisdiction and to reverse that decision and enter another decision that he lacked the jurisdiction to entertain the suit, and urged the court to dismiss the appeal.

H From the relevant passages I earlier reproduced from the ruling and Judgment of the trial court and that of the lower court, it is very clear that there is no dispute whatsoever that the trial court after haven found and held that the court had the requisite vires to

hear and determine the suit as constituted went on to hear the case on the merit but in its judgment proceeded to review its earlier ruling on jurisdiction and came to contrary view thereby reversing the said earlier ruling conferring jurisdiction on the court. Also not in doubt is the fact that there was no appeal by either part against the said ruling; rather both parties proceeded, in obedience to the order made in the said ruling to file the necessary processes leading to the full hearing of the matter. It is settled law that a court has the jurisdiction to decide whether it has jurisdiction to hear and determine any matter before it. The trial court haven held in its ruling that it has jurisdiction in the matter, which ruling was not appealed against, was bound, as well as the parties to the action, by that ruling until set aside on appeal by an appellate court of competent jurisdiction. So where there is no appeal against any decision of a court of competent jurisdiction that decision stands - see *Nwabueze Vs Okoye* (1988) 4 NWLR (Pt. 664; *Abacha Vs Fawehimmi* (2000) 6 NWLR (Pt. 660) 228 at 297.

I entirely agree with the decision of the lower court that the trial judge was in grave error in reversing its earlier decision and at the end reversing same which amounts to sitting on an appeal over its own earlier decision.

Haven given the ruling emphasizing that the court has jurisdiction in the matter, the court hereby became functus officio in the matter.

In the circumstance I agree with my learned brother, Ariwoola JSC, that the appeal lacks merit and should be dismissed. In fact the appeal, having regards to the facts and the applicable law is a complete waste of the time of this court and ought not to have been filed, particularly, as the lower court ordered a retrial of the matter before Judge. The time wasted in this worthless appeal could have been better used in rehearing the suit as ordered.

This is therefore a proper case to order substantial costs in favour of the respondents.

In conclusion, I dismiss the appeal and abide by the consequential orders made in the said lead Judgment, including the order as to costs.

Appeal dismissed.

PETER-ODILI JSC

I am in agreement with the judgment just delivered by my learned brother, Olukayode Ariwoola JSC and in support of the reasoning I shall make some remarks.

This appeal is against the judgment of the Court of Appeal, Port Harcourt Division delivered on the 7th July 1994 which set aside the judgment of the High Court of Rivers State delivered on the 30th day of May, 1990.

FACTS BRIEFLY STATED

Sometime in 1970, both the predecessor of the appellants and the respondents, particularly the predecessors of the 1st appellant with some other indigenes of Ngo, capital village of the Ngo Clan or Andoni-Tribe otherwise called “Obolo” Tribe in present day Rivers State, all laid claim to the stool of Ngo village. In short there was a dispute as to who had the right to sit on the said stool.

As a result of the said contending rights, on the 27th April 1971 the Commissioner of Home Affairs and Social Welfare of the then Government of Sought Eastern State of Nigeria to which Ngo town belonged before the boundary adjustment brought the town to Rivers State, declared a dispute and appointed one E. A. Udoh as Sole Commissioner to inquire into the Ngo village Headship dispute. After a full public hearing the Sole Commissioner sometime in July, 1972 produced a report, Exhibit C recommending 1st appellant’s predecessor, HRH Chief Henry Ngere to be recognized by the Government of South Eastern State as the rightful head or Okan Ama of Ngo. The said Government of South Eastern State accepted the recommendation and a Certificate of Recognition as Traditional Rulers dated 1st April 1975, Exhibit E/E1 was issued.

On Andoni and Opobo being merged with Rivers State, the Rivers State Government issued a Certificate of Recognition as a Chief dated 25th April 1979 (Exhibit F/F1) adopting what the South Eastern State Government had done with the chieftaincy of Ngo having a 2nd class status.

In 1978 after the death of the father to the 1st respondent, the 1st respondent set about questioning the status of the 1st appellant’s predecessor but the trial High Court presided over by Dagogo Manuel J. of the Rivers State declined jurisdiction. There was no appeal to

that Ruling and in 1986, the respondents instituted an action in the Bori High Court of Rivers State claiming that 1st respondent was the Okan Ama of Ngo. This action is what has led to the current appeal, the fuller details of which are well stated in the lead judgment.

On the 26th day of September, 2016 learned counsel for the appellants, O. Akoni SAN adopted their Brief of Argument filed on 13/8/14 and a Reply on 6/1/16. In the appellants' Brief of Argument, four issues were formulated as follows:

1. Whether the ruling of the trial court delivered on 9th June 1987, conclusively determined the vexed issue of competence/jurisdiction of the trial court to entertain the respondents' claim and thereby rendered the trial court functus officio on the said issue of jurisdiction? (Formulated from Ground 1 of the Notice of Appeal at pages 383 to 392 in the Record).

2. Whether the substantive judgment of the trial court delivered on 30th May 1990, is a nullity? (Formulated from Ground 2 of the Notice of Appeal at pages 383 to 392 in the Record)

3. Whether the lower court was right to have ordered a retrial before the trial court, despite the lower court having reasoned that the said trial court patently lacked the requisite jurisdiction/competence to entertain the respondents' claim? (Formulated from Ground 3 and 4 of the afore-stated Notice of Appeal).

4. Whether the lower court was right to nullify and/or set aside the entire judgment of the trial court? (Formulated from Ground 5 of the afore-stated Notice of Appeal)

Mr. F. A. Eneawaji, learned counsel for the respondents, adopted their Amended Brief settled by Chief Nnoruka Udechukwu SAN in which was argued the Preliminary Objection of the respondents.

It is to be said that the Preliminary Objection must first be dealt with since the competence of the appeal is at stake and the follow up being whether or not the jurisdiction of this court to go beyond this point exists.

AMENDED PRELIMINARY OBJECTION

The respondents gave a Notice of Preliminary Objection to the hearing of this appeal vide Order 2 Rule 9(1) of the Supreme Court's Rules, 2008 (As amended). They indicated that the hearing

of this appeal, they shall rely upon a preliminary objection to the hearing of the appeal in so far as each of grounds 1, 2, 3, 4 and 5 contained in the Notice of Appeal are concerned. The grounds of the objection were set out in the Notice and the respondents relied on those grounds here reproduced as follows:

B TAKE NOTICE, that at the hearing of this appeal, the respondents shall rely upon an amended preliminary objection to the hearing of the appeal in so far as grounds 1 to 5 contained in the Notice of Appeal dated and filed on the 23rd day of May 2014 are concerned.

C Further Take Notice that the grounds of objection are as set out thereunder:

GROUND OF OBJECTION

1. The particulars set out in aid of grounds 1 and 3 are not only narrative and arguments, the matters narrated do not arise from the decision of the Court of Appeal appealed against and therefore are not legitimate complaints against the said judgment, having regard to Section 233 of the 1999 Constitution.

2. Order 8 rule 2(3) of the Supreme Court Rules, expressly states that the Notice of Appeal shall not contain any argument or narrative.

3. The particulars to Grounds 1 and 3, are not only narrative and arguments, the matter narrated are not legitimate complaint against the decision of the Court of Appeal, being matters not raised and decided by the Court of Appeal, and therefore matters which are extraneous to the issues raised and decided by the Court of Appeal namely: whether the trial court can review its ruling, reverse it, and substituting a different ruling.

4. Grounds 1, 2, 3, 4 and 5 in the Notice of Appeal raise issues which are extraneous to the only issue placed before the Court of Appeal for determination and which was duly determined by the Court of Appeal, namely, whether the trial court had the jurisdiction to review and reverse his decision in the case by substituting a different decision for the one already given and recorded.

H 5. Grounds 1, 2, 3, 4 and 5 in the Notice of Appeal seek to raise issues against the decision of the court of trial of first instance, when the defendants did not at any time appeal against the decision of the trial court delivered on the 9th of June 1987 to the effect that

the court had the jurisdiction to try the case. The Supreme Court cannot hear an appeal against the decision of a High Court.

6. The appellants Grounds 1, 2, 3, 4 and 5 as set out in the Notice of Appeal are therefore incompetent having regard to section 233(1)(2)(a) and (c) of the 1999 constitution and Order 8 Rule 2(3) of the Supreme Court Rules. B

7. The appellant's Grounds 1, 2, 3, 4, and 5 of appeal against the judgment delivered on 7/7/94 ordering for a retrial are incompetent and constitute an abuse of court process, appellants having elected to, and indeed participated in and benefited from the retrial order from which there is currently pending before the Supreme Court, an Appeal No. SC/54/2012. C

8. There were no pleadings to sustain appellants' Grounds 1, 2, 3, 4, and 5 in this Appeal No. SC 335/2012, all the pleadings having been amended during the retrial at the court of first instance. Amended pleadings speak from the date when the original pleadings were filed and exchanged. In other words, once pleadings are amended, what stood before the amendment ceases to define the issues to be tried. Consequentially, in the instant case the appellants and respondents pleadings as amended spoke from the dates of the original pleadings that is, 1986 and 1987 respectively and thus the abandoned pleadings cannot constitute the basis for appeal in this Appeal No. SC.335/2012. D E

9. The appellants cannot be allowed to maintain two appeals, SC 54/ 2012 and SC. 335/2012 on the same subject matter (Okan-Ama Ngo) paramount ruler of Ngo Town and between same parties to achieve same goal and or common purpose. The appellants cannot formulate any ground of appeal and issue for determination from an obiter of the court below. F G

10. Ground 5 in the Notice of Appeal and Issue 4 formulated by the appellants are incompetent in that the appellants never cross appealed to sustain any part of the Judgment of the trial court delivered on the 30th May 1990.

11. Wherefore, the respondents pray that appellants' Grounds 1, 2, 3, and 4 be struck out and or the entire appeal be dismissed as being incompetent and constituting an abuse of court process. H

Pushing forward the arguments in favour of the Preliminary

objection learned counsel for the objectors contended that ground of appeal must not contain narratives or arguments as provided in Order 8 Rule 2(3) of the Supreme Court Rules as a Notice of Appeal is not the place to argue an appeal. He stated that the particulars set out in aid of grounds 1 & 3 are not an enumeration of the errors or
 B misdirection in the judgment of the Court of Appeal but rather narratives of matters as seen from the appellants' perspective, and arguments based on those subjective matters. That the matters narrated are not pertaining to the decision of the Court of Appeal but are
 C extraneous to the issues therein raised before and decided by the Court of Appeal or court below. That they are complaints against the Ruling of the trial court of the 9th June 1987.

Learned counsel further stated that Grounds 1, 2, 3, 4 and 5 of the Notice of Appeal raise issues which are extraneous to the only
 D issue placed before the Court of Appeal for determination and which was duly determined by that court namely whether the trial court had jurisdiction to review and reverse his prior decision that he had jurisdiction to determine the case by turning around to determine that he had no jurisdiction.

E That Grounds 1, 2, 3, 4, and 5 seek to raise issues against the decision of the Court of trial at first instance when the defendant did not appeal against the decision of the trial court delivered on 9th June 1987 to the effect that the court had jurisdiction to try the case. That
 F Grounds 1-5 are incompetent having regard to section 233(1)(2)(a) and (c) of the 1999 constitution and Order 8 Rule 2(3) of the Supreme Court Rules. He cited *Metal Construction W/A Ltd v Miglore* 1990 1 NWLR (Pt. 126) 299 at 311-314.

G For the respondent/objector it was also submitted that this appeal is incompetent and constitutes an abuse of court process since the appellants had participated in and benefited from the retrial order made by the Court of Appeal, Port Harcourt Division on 7/7/94 leading to SC54/2012 pending before this Supreme Court. He relied on *Chukwu v INEC & Ors* (2013) 10 NWLR (Pt. 1415) 385 at
 H 418; *Adesanya v President Federal Republic of Nigeria* (1981) 2 NCLR 358.

He stated on that there are no pleadings to sustain the current appeal No. SC 335/2012, all pleadings having undergone amend-

ments which pleadings amended now date back to the date of the original pleadings filed and exchanged in 1986 and 1986. He cited *Enigbokan v A. T. I. Nig. Ltd* (1994) 6 NWLR (Pt. 348) 15-16.

Olawale Akoni SAN for the appellants now responding to the Preliminary Objection submitted that the objection and arguments thereon are misconceived. The reasons being that the said particulars merely amplified the grounds of appeal and are not argumentative or narrative. He referred to *Mba v Agu* (1999) 12 NWLR (Pt. 629) 1 at 12. B

That whilst the essence of particulars is to project the reason for the complaint, the fact that they are inelegantly drafted does not invalidate the said grounds of appeal. He cited *Apapa v INEC* (2012) 8 NWLR (Pt. 1303) 409 at 424-425; *Hambe v Hueze* (2001) 2 SC 26 at 41-42; *Agbi v Ogbeh* (2005) 8 NWLR (Pt. 926) 40 at 92. C

That once a ground of appeal is shown to arise from the judgment or decision of the lower court being appealed against it is valid simpliciter. He cited *Obijiaku v NDIC* (2002) 10 NWLR (Pt. 774) 201 at 210. D

That the said grounds do arise from the judgment of the lower court. He relied on *Saude v Abdullahi* (1989) 7 SC. (Pt. 11) 116 at 164. E

Learned counsel for the appellants contended that the fact that they participated in the retrial and the appeals therefrom cannot confer an acquiescence or waiver to confer jurisdiction on the court where there is none. He cited *Odu'a Investment Co. Ltd v Talabi* (1997) 10 NWLR (Pt. 523) 1 at 21. F

I have set out in great detail the grounds of the objection of the respondents/objectors which are hinged on the grounds and particulars of appeal being narrative and argumentative which stand the appellants in responding reject. G

For a fact, the particulars of the grounds of appeal are verbose and elaborate which translate to those particulars being inelegant and lacking in beauty which are not grounds upon which the grounds of appeal can be invalidated by the court and the competence of the appeal being questioned. What I see before me are grounds of appeal elaborately expatiated in the particulars to explain the nature of the complaints in the appeal. It is alright to see particu- H

lars not beautifully crafted but no valid legal infraction can be attributed to them which would affect the competence of the grounds of appeal and oust the jurisdiction of the court. In this regard I place reliance on the cases of *Apapa v INEC* (2012) 8 NWLR (Pt. 1303) 409 at 424-425; *Mba v Agu* (1999) 12 NWLR (Pt. 629) 1 at 12.

B I shall further call in aid the dictum of this court in *Hambe v Hueze* (2001) 2 SC 26 at 41-42 as follows:-

"In the matter under controversy, it appears to me that the fulcrum of the matter is whether an appellant, having regard to the Rules of Court has reasonably formulated his grounds of appeal in substantial compliance with the said Rules of Court, notwithstanding the defects or inelegance in the formulation, but so long as the adversary party, from reading the formulated grounds of appeal, is duly notified of the complaint sought to be made by the appellant. The reason for such objective approach is to ensure that any questioning of the validity of a ground of appeal is not simply predicated on form but rather on substance. After all, it is beyond peradventure that today the application of the rules of court and attainment of justice is generally no longer allowed or tolerated to be controlled by strict adherence to technicalities but rather to substance"

Similarly in *Agbi v Ogbeh* (2005) 8 NWLR (Pt. 926) 40 at 92 para D-E the Supreme Court held thus:

"I agree also that grounds of appeal simpliciter are to be differentiated from their particulars. Once the ground of appeal is concise and clear and is not argumentative is not sufficient to deny a right of appeal, provided on the face of the ground of appeal in issue of law arises for consideration."

Clearly, the grounds of appeal in this instance meeting the requirements of the Rules of court and setting out the complaints of the appellants which relate to, arise from and are attacks on the findings of the judgment appealed against are therefore competent however inelegantly scripted. Also there is no confusion as to what the complaints are. See *Nnanna v Onyenakuchi* (2000) 15 NWLR (Pt. 689) 92 at 100; *Obijiaku v NDIC* (2002) 10 NWLR (Pt. 774) 201 at 210.

It is not difficult to see that there is nothing on which this objection can hang and it is not saved by alluding to the appellants

having participated in the retrial currently before the Supreme Court. The objection is therefore overruled.

MAIN APPEAL

I shall utilize the sole issue formulated by the respondents as it encapsulates all the questions raised in the issues identified by the appellants and settles the appeal.

SOLE ISSUE

Whether the Court of Appeal was right when it held that the judgment of the learned trial judge delivered on the 30th day of May, 1990 was a nullity in that it amounted to an impermissible review and reversal of the earlier decision of the same court delivered on the 9th of June 1987 in the same suit.

Learned counsel for the appellants' contentions are that the judgment of the trial court on 30th May 1990 was not a nullity as the trial court was not functus officio on the issue of jurisdiction at the time of delivering its judgment. That the lower court was wrong to have ordered a re-trial of the respondents' claims before another Judge of the High Court of Rivers State. A lot of judicial authorities were cited to buttress the position of the appellants.

The stance of the respondents is that the Court of Appeal was right in that the appellate court having found and decided that the decision of the learned trial judge was a nullity by reason of the fact that the court of first instance cannot sit on appeal over its own decision to review it and reverse, the option open was to order a retrial. The position was also backed up by judicial authorities.

What I see before me as the crux of this matter is whether the trial court can review its ruling, reverse it, if after assuming jurisdiction by its considered decision of the 9th June 1987, the same trial court can after hearing the merits of the case decide that the court lacked jurisdiction to hear the matter ab initio.

The Court of Appeal or court below was of the view that what the trial court did was an act without the necessary vires as having ruled earlier that it had jurisdiction, it had concluded the issue of jurisdiction for all time and to revisit it was to do so when that court was functus officio. A situation that has brought about this appeal before us.

I shall state hereunder the exact words of Ichoku J of the Port

Harcourt High Court when the issue of section 18(1) of the relevant Chieftaincy Edict 1978 was referred to him as follows:

"It is on this section that the court is said not to have jurisdiction to try this case. Looking at the Statement of Claim, the claim is not challenging the Chieftaincy of Ngo. It is not the Stool Chieftaincy of Ngo that is the subject of this dispute,"

The learned trial Judge went on to make the following positive and conclusive decision/finding:

"1. The pleadings namely the Statement of Claim paragraph 1 had shown that Ngo is also a clan and a Town. To which of these the Chieftaincy Stool recognized by Government which is Chieftaincy of Ngo relates had not been clearly shown in the schedule. The Edict had talked of Town or Community and reference to Ngo in the Edict may be Ngo Town or Community. Thus the Chieftaincy Stool which was recognized for which section 18 of the Edict referred to applies is the Chieftaincy of Ngo. That is the name of the stool. It is only on matters relating to the stool called "Chieftaincy of Ngo", That the court is precluded from assuming jurisdiction" (Record page 47, L.1)

3. The Statement of Claim read as a whole has not talked of "Chieftaincy of Ngo" and is not challenging the Stool of Chieftaincy of Ngo. The claim relates to Okan-Ama of Ngo Town who was appointed in 1977 and introduced to or presented to Ngo Town counsel of Chiefs, Ngo Clan Council of Chiefs and Andoni District Council of Chiefs. See paragraph 1 of the Statement of Claim" (Record page 47, L.12)

4. As said the Chieftaincy of Ngo was not the only chieftaincy stool existing in the area and the Government only recognized the stool "chieftaincy of Ngo as second class and did nothing with reference to other chieftaincy stools" (Record page 44 L. 30)

5. The 1st defendant is a chief and head of Ngere family who now parades himself falsely as the Okan-Ama of Ngo town. See paragraph 3 of the Statement of Claim. Thus going through the statement of claim and the submission of learned counsel for the defendants and in view of section 2(b) and the first schedule of the Edict with regard to Andoni District, it is the Chieftaincy of Ngo second class that was referred to and what was recognized was christened the "Chieftaincy of Ngo" and the incumbent Chief Harry Ngere, this is

the name of the stool and we cannot add any other name to it and this is also the provision of section 4(1) of the said Edict". (Record page 47 L.19)

6. If in fact the chieftaincy of Ngo Stool is the one now referred to as Okan-Ama of Ngo Town the next question is whether the court could still have jurisdiction. Distinction should be made between causes of action which arose before 1st October, 1979 and those which had arisen after 30th September, 1979. There is no doubt that if at the time the cause of action arose in this case was before 30th September 1979 that the court has no jurisdiction but if after then this court has jurisdiction".

The learned trial judge went on further to say as follows:

"As earlier on stated the cause of action as shown in paragraphs 3 and 26, the words "now parading himself", the "now" is refereed to as per the time the action arose and that is the time the action was taken in July 1986. The word "now" refers to recently and in the circumstance the recently refers to 1986. The cause of action thus by implication here arose after 1979, 30th September. The Edict of 1978 therefore will apply to the extent that it is not inconsistent with the 1979 Federal Constitution."

The learned trial Judge concluded as his final decision on the point, as follows:

"1. That part, the cause of action arose after 30th September, 1979 in which case the 1978 Edict though an existing law could not apply for that will amount to precluding the High Court from exercising jurisdiction conferred on it by section 236 of the constitution and which jurisdiction is unlimited. Any existing law which is inconsistent with the provisions of the 1979 constitution will be to that extent of the inconsistency be void. Thus the High Court has jurisdiction to try this case.

2. On the whole it is my finding that the court has jurisdiction to try this case. The objection raised as to the jurisdiction of the court in this case is over-ruled."

As I earlier referred, the learned trial Judge having decided after consideration that he had jurisdiction proceeded to hear the full evidence of the substantive matter and at the point of judgment left a decision on the merit unsaid and decided that the court had no juris-

dition to try the case and the result was to have the suit struck out. The plaintiffs saw the scenario as a somersault and agreed by it headed to the Court of Appeal which court decided as follows as shown at pages 235-237 thus:

B *"Once the trial court delivered its decision which is subject to appeal as of right or it affects the jurisdiction of the court as in this appeal, by that decision whether in a preliminary or final judgment that court is functus officio. If there is any mistake or any issue to be thrashed out, the court of appeal is the proper tribunal to correct and*
 C *provide proper guidance. The same trial Judge has discharged his duty. In other words, that court, office or authority has come to an end. Consequently, the decisions of that court on 30th May, 1990 in the same suit amounts to the trial court sitting on appeal over its own decision. That makes the judgment so delivered a nullity. The trial*
 D *Judge so delivered the first ruling, had no power to review and reverse his previous decision - Amanambu v Okafor & Anor. (1967) N. M. L. R 118 (Record page 337 L. 28) and further:*

"For the reasons stated in this judgment, this appeal must and is hereby allowed. The judgment of the court below delivered
 E *on 30/5/90 by Ichoku J is declared a nullity and it is hereby set aside. A retrial at Bori High Court before a different Judge is hereby ordered with N500.00 cost to the appellants"* See Record of page 339.

Indeed what transpired in this matter which gave rise to the
 F appeal before this court and the fallout of the Preliminary Objection raised by the respondent is really a narrow question which anchors on whether the trial court was right in carrying out the first function of deciding on jurisdiction only to later turn around after full hearing of the case, the evidence in town, to say he had no jurisdiction to
 G hear the matter and then struck out the suit. Then comes the other angle of the decision of the Court of Appeal which refused to agree with the court of the trial and rather held that by the time he entered into the full hearing, his court was functus officio and all he did thereafter was a nullity.

H I cannot but agree with the Court of Appeal in that when the court of trial had ruled it had jurisdiction and proceed to hear the merits of the matter he had no business delving into any decision on jurisdiction as that was a matter for the Court of Appeal. The best he

could have done was give a decision on the merits of the case as he heard and left the issue of whether or not jurisdiction enured to the Court of Appeal, that would then decide on the issue of vires and if positive, give a decision on the substantive matter judgment the trial court had made. On the other hand if the Court of Appeal disagreed with his earlier stance on the jurisdiction which is that the trial court lacked the jurisdiction then it would be the place of the Court of Appeal or court below to say so and then proceed to strike out the suit. B

Therefore the court below was correct in deciding that the trial court made a decision sat on appeal over it and gave a ruling without the vires to do so. In this I am strengthened by the case of Amanambu v Okafor & Anor. (1967) N. M. L. R 118. C

In conclusion, I go along with the fuller reasoning in the lead judgment as I dismiss this appeal. D

I abide the consequential orders as made.

KEKERE-EKUN JSC

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division (the lower court) delivered on 7/7/1994, setting aside the judgment of the High Court of Rivers State, Port Harcourt Division (the trial court) delivered on 30/5/1990. The Court of Appeal held that the trial court lacked jurisdiction to entertain the suit having regard to the provisions of Section 18 of Edict No. 5 of 1978, which ousted the jurisdiction of the High Court to entertain chieftaincy matters. It was also of the view that the trial court having held in an interlocutory Ruling that it lacked jurisdiction to entertain the suit, had no jurisdiction to overrule itself. That the judgment was therefore a nullity. It ordered that the suit be sent back to the Bori High Court before another Judge for retrial. E F G

The issue in dispute between the parties at the trial court was who, as between the Uwuile family of Ngo Town, represented by the present respondents, was entitled to title of OKAN AMA of Ngo Village (now in Rivers State). Sometime in 1970, the Government of the defunct South Eastern State of Nigeria (the present Cross-River and Akwa Ibom States), appointed a Sole Commissioner to inquire H

into the matter, as at the time, Ngo Town was a part of the South Eastern States. He produced a report in 1972 wherein he recommended to the Government that the 1st appellant's predecessor was the right person to be made the Village Head i.e the OKAN AMA of NGO. The respondents did not agree with the recommendation. In 1986, they filed a suit before the High Court of Rivers State, Bori Judicial Division seeking the following reliefs:

1. A declaration that the Chieftaincy Stool of Okan Ama of Ngo Town exists as the known traditional title.

2. A declaration that the plaintiff's Uwuile family is the rightful family that keeps and maintains the Okan Ama title.

3. A declaration that the 1st plaintiff is the rightful Okan Ama of Ngo Town.

4. Perpetual injunction restraining the defendants by themselves, their servants, their agents or privies from parading themselves as the Okan Ama of Ngo Town and from laying claim to the Chieftaincy Stool of Okan Ama.

The present appellants, as defendants, filed an application seeking the dismissal of the suit on the ground that the court lacked jurisdiction to entertain it. The ground of the objection was that paragraphs of the Statement of Claim contravened the provisions of Section 18 (1) of the Chieftaincy Edict, 1978 (No. 5 of 1978) RSLN No. 10 of 1978 and the schedule attached thereto made pursuant to Sections 3, 4(d) 13 of the said Edict No. 5 of 1978 and also Section 6 (6) (d) of the 1979 Constitution.

The contention was that by the schedule attached to Legal Notice No. 10 of 1978, the 1st defendant (Ngere) was recognized by Rivers State Government as a 2nd Class Chief for the chieftaincy of Ngo in Andoni Local Government District and that by virtue of Section 6 (5) (d) of the 1979 Constitution the court lacked jurisdiction to entertain the suit.

In a considered Ruling delivered on 9/6/1987 the learned trial judge ruled that the court had jurisdiction to hear the case. The court held at page 47 of the record that the subject of the dispute was not the chieftaincy of Ngo, in which case the jurisdiction of the court would have been ousted. It held that the claim rather relates to OKAN AMA of Ngo Town, which is a different chieftaincy and in respect of

which the court had jurisdiction. At page 48 lines 3-13 of the record, the court held thus:

"The matter before the court now after reading the whole Statement of Claim had arisen because the 1st defendant did not confine himself to the title to which he was recognized. He now refers (to) himself as the Okan-Ama of Ngo. This prima facie is thus the suit now a different stool to the one recognized by Government. The Court therefore is not entertaining the suit relating to Chieftaincy of Ngo which, by virtue of Section 18 of the 1978 Edict (supra) the Court would have had no jurisdiction. But on the face of the claim and the Chieftaincy Stool in dispute this Court has jurisdiction to entertain the case." (Underlining mine) B C

Notwithstanding the following observation at page 52 lines 3-8 of the record:

"On the face of it without more no one can say that the Chieftaincy Stools are one and the same for which one can invoke the provisions of Section 18 of the 1978 Edict (supra). One can only determine this from the pleadings and evidence. The defendants should therefore file their defence in this case", (Emphasis mine) D

The court went on to conclude thus:

"...the cause of action arose after 30th September, 1979 in which case the 1978 Edict though an existing law could not apply for that will amount to precluding the High Court from exercising jurisdiction conferred on it by Section 236 of the Constitution and which jurisdiction is unlimited. Any existing law which is inconsistent with the provisions of the 1979 Constitution will be to that extent of the inconsistency be void (sic). Thus the High Court has the jurisdiction to try this case. E F

...On the whole it is my finding that the Court has jurisdiction to try this case. The objection raised as to the jurisdiction of the court in this case is overruled." (Underlining mine) G

The defendants were ordered to file their Statement of Defence and the court proceeded to hear the case on its merits. At the conclusion of trial, the court surprisingly made a somersault and came to the contrary conclusion that the Chieftaincy of Ngo and the title Okan Ama (which means village Head) are one and the same and therefore by virtue of Section 10 of Edict No. 5 of 1978 the court H

lacked jurisdiction to entertain the matter. The suit was struck out.

The present respondents were dissatisfied with the judgment and appealed to the Court of Appeal. The Court of Appeal on 7/7/1994 held that the trial court was wrong to have sat on appeal over its own decision. It declared the judgment a nullity and accordingly
B set aside while ordering a retrial before a different Judge. The appellants are not happy with the decision and have appealed to this court.

Although the appellants formulated four issues for determination, I am of the considered view that a determination of the first
C issue will have a profound effect on the entire appeal. In the event that it is resolved against the appellants that would be the end of this appeal. Issue 1 reads:

*"Whether the ruling of the trial Court delivered on 9th June 1987, conclusively determined the vexed issue of the competence/
D jurisdiction of the trial court to entertain the respondents' claim and thereby rendered the trial Court functus officio on the said issue of jurisdiction?"*

Certain basic principles of law are relevant in determining this issue: (1) when is a court *functus officio*? (2) whether a court has
E a right to sit on appeal over its own decision. In *First Bank of Nigeria Plc. Vs T.S.A. Industries Ltd. (2010) 15 NWLR (Pt. 1216) 247 @ 296 D-E*, this court held:

*"A court is said to be functus officio in respect of a matter if
F the court has fulfilled or accomplished its function in respect of that matter and it lacks potency to review, re-open or re-visit the matter. Once a court delivers judgment in a matter, it cannot re-visit or re-view the said judgment except under certain conditions. More importantly, a court lacks jurisdiction to determine an issue when it is
G functus officio in respect of the issue or where the proceedings relating to the issue is an abuse of process."*

See also; *Alor vs. Ngene (2007) 17 NWLR (Pt. 1062) 163; Dingyadi & Anor. Vs INEC & Ors. (2011) 10 NWLR (Pt. 1255) 347 @ 391-392 B-B; 410-411 H-B; CITEC International Estate Ltd. Vs
H Francis & Ors. (2014) 8 NWLR (Pt 1408) 139 @ 167 E-F.*

The law is trite that a court is competent to exercise jurisdiction in respect of a cause or matter when:

1. It is properly constituted as regards numbers and qualifi-

cation of the members and no member is disqualified for one reason or the other.

2. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction.

3. That case comes by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction. B

See; Madukolu Vs Nkemdilim (1962) 2 SCNLR 341; Nwankwo Vs Yar'Adua (2010) 12 NWLR (Pt.1209) 518; A.G. Anambra State Vs A.G. Federation (1993) NWLR (Pt. 302) 692. It is clear from the authorities cited above that jurisdiction is a threshold issue that goes to the root of the competence of the court to adjudicate over a cause or matter. Courts are usually admonished to consider and resolve the issue of jurisdiction as soon as it is raised in order not to labour in vain where it lacks jurisdiction, as the proceedings and any decision therein would be a nullity. C D

In the instant case, in the excerpts of the ruling of the trial court, reproduced above, it is evident that the court, after a thorough examination of the pleadings and relevant laws, held categorically that it had jurisdiction to entertain the action ordered the defendants to file their defence and heard the suit on the merit. Having conducted a full trial in the matter, the only course open to the court was to make a determination in favour of one party or the other. The order of the court striking out the suit for want of jurisdiction at the conclusion of the trial amounted to be court sitting on appeal over its ruling delivered on 9/6/1987, which it was not competent to do. It had become *fuctus officio* on regards its decision as to the court's jurisdiction. What the court ought to have done was to have deferred its final decision on the matter to the end of the trial. Having made a definite pronouncement on the issue earlier, the court, as rightly held by the court below, had discharged its duty and had no jurisdiction to review or reverse its earlier order. I therefore agree that the judgment was given without jurisdiction and is a nullity. It was rightly struck out by the lower court. E F G H

I had the benefit of reading in draft the judgment of my learned brother, OLUKAYODE ARIWOOLA, JSC just delivered. For the reasons elaborately stated therein and on the basis of these few

remarks of mine, I find the appeal to be devoid of merit. It is hereby dismissed. I abide by the consequential orders in the lead judgment, including the order as to costs.

Appeal dismissed.

B

AKA'AH'S JSC

My learned brother, Ariwoola JSC made available to me his lead judgment in this appeal wherein he dismissed the appeal and affirmed the order of retrial made by the lower court.

C

I too agree that the order of retrial made by the lower court should stand because of the manner in which the trial judge went about the case. The appeal is dismissed and the case remitted to the High Court of Rivers State for retrial. No order on costs is made.

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