

SUPREME COURT OF NIGERIA
FRIDAY 16TH DECEMBER, 2016. SC. 164/2003
**CORAM:- W. S. N. ONNOGHEN Ag. CJN, M. U. PETER-
ODILI, O. ARIWOOLA, K. B. AKA'AHs,
K. M. O. KEKERE-EKUN, JJSC**

CHRISTIAN OKAFOR APPELLANT
AND
1. BENDE DIVISIONAL UNION
JOS BRANCH
2. MR. DICKSON U. E. UWAGBAMA
3. EMMA I. CHUKWU
4. ANTHONY ONWUKANJO RESPONDENTS
5. UKOHA U. UKOHA
6. D. I. KALU
7. SUNDAY A. UKANDU
8. MRS. J. NWAMUO

COURT PROCESSES - Amendment - Effect - Amendment of Court process takes effect from date of the original document sought to be amended (H1)

COURT PROCESSES - Names of parties - Listing of - Amendment - Failure to state full names of remaining 16 respondents - Was irregularity that can be cured by amendment (H2)

APPEALS - Preliminary objection - Purpose of - Supreme Court Rules O. 2 r. 9(1) allows respondent to file notice of preliminary objection - The purpose of which is to terminate appeal in limine (H3)

APPEALS - Issues - Formulation of - Single issue can be formulated from several grounds - But it is not proper to formulate more than one issue from single ground of appeal (H4)

COURTS - Issues - Binding nature of - Court must confine itself to the case presented and issues raised by parties - As it has no business considering issue not properly brought before it (H5)

COURTS - Issues - Suo motu raising - Where Court deems it fit to take a point suo motu - Parties must be given opportunity to address Court - Before a decision on the point is made (H6)

EVIDENCE - Reevaluation of - Where trial Court fails to properly do evaluation - And the issue is not based on credibility of a witness - Appellate Court can reevaluate evidence and give its own opinion (H7)

ACTIONS - Cause of action - Meaning of - It is the facts which gave rise to right to sue - The right of which consists of the wrongful act of defendant - That gave plaintiff right to complain (H8)

ACTIONS - Cause of action - Time - Cause of action in the matter arose between 1985 and 1986 - When 1st respondent was alerted that the property has been sold to appellant (H9)

ACTIONS - Cause of action - Determination - Basis - In order to determine when a cause of action accrued - The processes to be considered are writ of summons and statement of claim (H10)

LEGISLATION - Limitation law - Effect of - Is that legal proceedings cannot be validity instituted - After the expiration of the prescribed period (H11)

FACTS

Before the High Court of Plateau State Holden at Jos, plaintiffs/respondents instituted this action claiming inter alia, a declaration of title and perpetual injunction restraining trespass on a property in dispute. 1st respondent (Bende Divisional Union Jos Branch) is a socio-cultural/tribal union while 2nd to 8th respondents are its principal members. Sometime in 1962, 1st respondent decided to acquire landed property for the purpose of carrying out its activities. Two of its trustees, namely Eze Samson U. Ukaegbu and Daniel Orji Ogba (who were later sued at trial Court as 1st and 2nd defendants) and one Elijah

Udemba Ikwunze – 3rd defendant (all now deceased) were instructed to locate a suitable piece of land and conduct negotiations on behalf of the Union. Following the instructions of the Union, a property within the Jos metropolis was purchased from funds raised by the Union. Unfortunately, due to the political climate in the country as at the material time, which de-emphasized tribal Unionism, the Jos Local Authority refused to effect the change of title in the name of Bende Divisional Union.

To salvage the situation, 1st respondent authorised its aforementioned trustees to register the property in their personal capacities on the understanding that necessary steps would be taken subsequently in the future to re-register the property in the Union's name. In 1981 when the Union was subsequently re-inaugurated, it took steps to recover the property from the said trustees. The recovery was not made possible by the trustees. Hence, respondents instituted the action in 1986. It was then 1st respondent discovered that the trustees had since sold the property to appellant (4th defendant in the suit). At the hearing of the suit, the trustees claimed ownership of the property and stated that the money paid by 1st respondent was later refunded to it, when it was not possible to register the property in 1st respondent's name. The trustees filed an application seeking for a dismissal of the suit on the ground that the same was statute barred. In its ruling, the Court dismissed the application and held that the suit was not statute barred. Aggrieved, the trustees appealed to the Court of Appeal Jos Division. The Court dismissed the appeal. Aggrieved further, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Was the court below right when it *suo motu* substituted 1981 with 1986 as the date of accrual of cause of action as found by the trial court and against which there was no appeal?
2. Whether the learned Justices of the Court of Appeal were right in failing to hold that the cause of action accrued in 1981?
3. Whether the claim for account of stewardship and monies collected on the property from 1959 is maintainable, and not statute barred?

HELD (Unanimously dismissing the appeal per
KEKERE-EKUN JSC)

COURT PROCESSES - Amendment - Effect

1. Now, the law is trite that the effect of an amendment of a court process is that it takes effect from the date of the original document sought to be amended. This applies to every successive further amendment of whichever nature and at whatever stage it is made. The action will proceed as if the amendment had been inserted from the beginning. (p. 4700 H)

COURT PROCESSES - Names of parties - Listing of - Amendment

2. It is the correct position of the law that where a document, such as a notice of appeal, is fundamentally defective, it cannot be cured by an amendment. The issue is whether the failure to state the names of 16 respondents in full was a fundamental or incurable defect that would vitiate the entire process? I answer in the negative. The 1st respondent, Bende Divisional Union, Jos Branch is a juristic person capable of suing and being sued in its own name. I think it is mischievous to read Bende Divisional Union, Jos Branch together with “and 16 others” as if it is one person. In any event, I am of the view that the failure to state the full names of the remaining 16 respondents was an irregularity that could be cured by amendment. Having failed to challenge the amendment at the time leave was sought, it is too late in the day for the respondents to raise the issue at this stage. They must now forever hold their peace. The Amended Notice of Appeal dates back to the date of the original notice of appeal and properly reflects the full names of the respondents in the appeal. I therefore hold that the original notice of appeal is no longer relevant in these proceedings. The Amended Notice of Appeal filed on 4/3/2015 is competent. Grounds 1 and 2 of the preliminary objection are accordingly overruled. (p. 4701 D)

APPEALS - Preliminary objection - Purpose of

3. As rightly observed by learned counsel for the appellant,

Order 2 Rule 9(1) of the Rules of this court allow a respondent to file a notice of preliminary objection to the hearing of an appeal. The purpose of such an objection is to terminate the appeal *in limine* for being incompetent or fundamentally defective. Thus, once there are other grounds to sustain the appeal, the procedure of preliminary objection should not be used. (p. 4702 B)

APPEALS - Issues - Formulation of

4. I observe that the respondent has formulated more than one issue from ground 3 of the Amended Notice of Appeal. Parties have been admonished time and again by this court against proliferation of issues. While it is permissible to formulate a single issue from several grounds of appeal, it is not proper to formulate more than one issue from a single ground of appeal. (p. 4703 B)

COURTS - Issues - Binding nature of

5. The first issue to be resolved is whether, from a careful perusal of the record it could be said that the court below *suo motu* substituted 1981 (as purportedly found by the trial court) with 1986 as the date of accrual of the cause of action. This issue is fundamental and if resolved in the appellant's favour is capable of disposing of the entire appeal. This is because a court is bound to confine itself to the case presented and the issues raised by the parties. It has no business considering an issue not properly brought before it. (p. 4709 C)

*COURTS - Issues - *Suo motu* raising*

6. Where a court sees fit to take a point *suo motu*, the parties must be given an opportunity to address it before a decision on the point is made. Failure to adhere to these guidelines would occasion a miscarriage of justice, as it runs counter to the impartial status and stance expected of a Judge. It would amount to a breach of the parties' right to fair hearing. Correspondingly, it would render the proceedings a nullity. (p. 4709 E)

EVIDENCE - Reevaluation

7. It has been established that the trial court failed in its duty to evaluate the pleadings, affidavit and documentary evidence before it and failed to reach a decision as to when the cause of action accrued. The law is settled that where a trial court fails to properly evaluate the material before it, and the question in issue does not call for the assessment of the credibility of witnesses, an appellate court is in as good a position as the trial court to evaluate the evidence (or the material before the court) and come to a proper decision which may or may not accord with that of the trial court. (p. 4710 H)

ACTIONS - Cause of action - Meaning of

8. A cause of action has been held to be “the fact or combination of facts which gives rise to a right to sue. The right to sue consists of the wrongful act of the defendant which gives the plaintiff the right to complain and the damage consequent to the wrongful act” A cause of action has also been held to be that particular act of the defendant which gives the plaintiff his cause of complaint, every fact which is material to be proved to entitle the plaintiff to succeed and every fact which the defendant would have the right to traverse. (p. 4711 D)

ACTIONS - Cause of action - Time

9. A cause of action is said to accrue for the purposes of a statute of limitation upon the occurrence of an event whereby a cause of action becomes complete so that the aggrieved party can begin and maintain his cause of action.

Time begins to run where there is in existence, a person who can sue and another who can be sued and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed.

I agree entirely with the unassailable findings above. I agree with the learned Justices of the court below that the claim of ownership of the property by the trustees only became an issue when they took steps that were adverse to the 1st

respondent's title by the sale of the property to the appellant between 1985 and 1986. It was this sale that alerted the 1st respondent to the fact that there was an adverse claim to the property. There is nothing in the pleadings to suggest that there was any dispute between the parties until the 1st defendant became aware in 1986 that the property had been sold. Indeed, as pleaded in paragraph 22 of the statement of claim, the delegation of the 1st respondent that met with the 1st defendant was well received and the 1st respondent's title over the property was acknowledged with a promise to act with dispatch in transferring title to it.

As rightly observed by the court below, the 1st - 3rd defendants were already trustees of the property and had registered the property in their own names at the behest of the 1st respondent. It is to be expected that there would be some delay in the handing over process, which did not raise any alarm until it was discovered that they had exercised acts of ownership on the property by the sale thereof to the appellant. I therefore agree with the court below that the cause of action accrued in 1986. (p. 4711 G/4715 C)

ACTIONS - Cause of action - Determination - Basis

10. It is also well settled that in order to determine when a cause of action accrued, the processes to be considered are the writ of summons and the statement of claim. (p. 4712 A)

LEGISLATIONS - Limitation law - Effect of

11. The parties are *ad idem* that the applicable law was the Real Property Limitation Act of 1874, a statute of general application, applicable to Plateau State at the time the cause of action arose, which extinguishes the right of a person to recover land after the expiration of 12 years from the date on which the cause of action accrued to him.

The effect of a limitation law is that legal proceedings cannot be properly or validity instituted after the expiration of the prescribed period. A limitation law removes the right of action of a plaintiff, his right of enforcement and the right to

judicial relief, leaving him with a bare and empty cause of action, which he cannot enforce. (p. 4715 H)

REPRESENTATION

Chief Wale Taiwo with O. Olakanmi, for the Appellant

B Samuel Zibiri with Sonny Idasefiema and Azodoh Uzoma, for the Respondents

CASES REFERRED TO

- C First Bank of Nig. Plc. v. T.S.A. Industries Ltd (2010) LPELR- SC. 316/2006
Opara v. Amadi (2013) LPELR - SC. 189/2012
Ikuepenikan v. State (2015) LPELR - SC. 402/2010
PPA v. INEC (2012) 13 NWLR (pt. 1317) 215
D Carter Nig. Ltd. v. University of Jos (1994) 11 NWLR (pt. 323) 631
Lion Africa Insurance Co. Ltd. v. Esan (1999) 8 NWLR (pt. 614) 197
Babafola v. Adadejana (2001) 12 NWLR (pt. 728) 597
Shettima v. Goni (2011) 18 NWLR (pt. 1279) 413
Adewunmi v. A.G. Ekiti State (2002) 2 NWLR (pt. 751) 474
E Unity Bank Plc v. Denclag Ltd. (2013) 18 NWLR (pt. 1332) 293
Nwaigwe v. Okere (2008) 13 NWLR (pt. 1106) 445
Aderibigbe v. Abidoye (2009) 10 NWLR (pt. 1150) 592
Daniel v. INEC (2015) LPELR - SC. 757/2013
F Nwankwo v. Yar'Adua (2010) 12 NWLR (pt. 1209) 518
A.G. Bendel State v. Aideyan (1989) 4 NWLR (pt. 118) 646

STATUTES & RULES REFERRED TO

- Constitution of the Federal Republic of Nigeria 1999, s. 240
G Real Property Limitation Act of 1874, s. 31(4)
Trustees Act 1888, ss. 6, 8
Supreme Court Rules, O. 2 r. 8

LEAD JUDGMENT BY KEKERE-EKUN JSC

- H This appeal is against the judgment of the court of appeal, Jos division delivered on 8/11/2000 affirming the ruling of the High Court of Plateau State, sitting at Jos wherein the court dismissed an application filed by the defendants/applicants seeking to dismiss the

suit on the ground that it was statute-barred.

The facts that gave rise to this appeal are as follows:

The 1st respondent, the Bende Divisional Union, Jos Branch is a socio-cultural/tribal union while the 2nd to 8th respondents are its principal members. Sometime in 1962, the 1st respondent, decided to acquire landed property for the purpose of carrying out its activities. Two of its Trustees, namely Eze Samson U. Ukaegbu and Daniel Orji Ogba (who were later sued as 1st and 2nd defendants) and one Elijah Udemba Ikwunze (all now deceased) were instructed to locate a suitable piece of land and conduct negotiations on its behalf. A house belonging to one Daniel Adeleke (now deceased) situate at No. 24 Langtang Street, Jos (former 24 Palmer Street, Jos) was identified and purchased for a consideration of £750. It was the respondents' case that payment was made from funds raised by the Union. Unfortunately, it was not possible to effect the necessary change of title because the Union was not registered. It eventually got registered in 1965. However, according to the respondents, the political climate in Nigeria at the time was tense with several civil disturbances and tribal conflicts. It was therefore a policy of the government of the day to de-emphasise tribal unions.

Consequently, the Jos Local Authority refused to effect the change of title in the name of Bende Divisional Union.

In trying to find a solution to the circumstance in which it found itself, the 1st respondent authorised its trustees which included the erstwhile 1st and 2nd defendants to register the property in their personal capacities on the understanding that necessary steps would be taken to register the property in the Union's name when the mood in the country was more conducive. To compound an already uncomfortable situation, civil war broke out in Nigeria in 1966. As a result, members of the Union were forced to flee the northern part of the country and return to the former Eastern Region. It was the respondents' contention that up till the end of the war in 1970, the 1st and 2nd defendants and the late Elijah Udemba Ikwunze held the property in trust for the Union. On 21st June 1981, the Union was formally inaugurated and immediately thereafter, steps were taken by the newly elected officers to recover the Union's properties in possession of the 1st and 2nd defendants and the late Elijah Ikwunze, which

included the property at 24 Langtang Street, Jos. In spite of these efforts, somewhere along the line, the property was sold to the present appellant by the 1st to 3rd defendants.

The respondents, as plaintiffs instituted suit No. PLD/J306/86 against Eze Samson U. Ukaegbu, Daniel Orji Ogbah and three others for title to the property. The present appellant, purchaser of the property, was the 4th defendant. The suit was however discontinued. Subsequently, the respondents instituted a fresh suit on 25/4/1994 seeking the following reliefs:

C *“1. A declaration that the property situate, lying and being at No. 24 Langtang Street, Jos is the property of the first plaintiff and that the first plaintiff is entitled to the grant of a Statutory Right of Occupancy over the said property.*

D *2. A perpetual injunction restraining the first to the fourth defendants their servants, agents, privies, heirs or such other representatives howsoever called or described from trespassing to or committing any further act of trespass in respect of the said property.*

E *3. An order directing the first to the 3rd defendants to give account of their stewardship as the trustees cum officers of the Bende Divisional Union Jos Branch for the period between 1959 and 1981 both years inclusive.*

F *4. A further order directing the first to the third defendants to give account of all monies collected from or in respect of the property aforesaid either as rent or hire charged from October 1962 to date inclusive of monies received from the Benue-Plateau Abandoned Properties Committee.*

G *5. An order directing the first to the third defendants to hand over to the plaintiffs all Union documents and other moveable properties in their possession particularly the following:*

(a) Original copy of the Certificate of Registration.

(b) Union's Constitution.

(c) Minutes Book.

(d) Typewriter.

H *6. An order setting aside any Certificate of Occupancy or other document of title granted in respect of the said property in the name or names of the 1st to 4th defendant.*

AS ALTERNATIVE TO reliefs 3 and 4 above:-

7. The lump sum of N1,000,000.00 to be paid by the first to fourth defendants.”

It was the case of the defendants at the trial that when the property in issue could not be registered in the name of the Union, the 1st and 2nd defendants and Elijah Ikwunze renegotiated for the purchase of the property with the late Mr. Adeleke. That the plaintiffs’ money, which had been advanced as consideration was returned to it and that they then bought the property themselves and registered it in their names as their personal property. They maintained that the property belonged to them. B

After the exchange of pleadings, the defendants filed a motion on notice praying for the suit to be dismissed on the ground that it was statute barred. C

In a considered ruling delivered on 2/3/1999, the High Court per M.N. Ntiem, J. dismissed the application and held that the suit was not statute barred. An appeal to the lower court was dismissed on 8/11/2000 and the ruling of the trial court was upheld. D

The appellant is dissatisfied with the decision and has further appealed to this court vide his Amended Notice of Appeal dated 01/03/2013 but filed with leave of this court granted on 25/2/2013. The amended notice of appeal contains 4 grounds of appeal. The parties duly filed and exchanged their respective briefs of argument in compliance with the Rules of this court. At the hearing of the appeal on 27th September 2016, H.N. UGWUALA-ESQ., learned counsel for the respondents drew the court’s attention to a preliminary objection raised and argued in his brief. E F

S. OYAWOLE ESQ. adopted and relied on the Amended Appellant’s brief filed pursuant to an order of this court granted on 25/2/2013 and the appellant’s Reply Brief which was deemed properly filed on 27/9/2016. He urged the court to overrule the preliminary objection and allow the appeal. G

H. N. UGWUALA ESQ. adopted and relied on the respondents’ Amended Brief of Argument filed on 18/3/2013. He adopted the arguments in respect of the preliminary objection at pages 7-14 H thereof and urged the court to uphold same and strike out the appeal. Alternatively, he adopted his arguments on the merit of the appeal and urged the court to dismiss same.

The respondents having raised a preliminary objection to the competence of the appeal, it is prudent to consider and resolve it first before delving into the merits of the appeal. Should the preliminary objection succeed, it would have the effect of terminating the appeal in limine. See: First Bank of Nig, Plc Vs T.S.A. Industries Ltd (2010)

^B LPELR- SC.316/2006; Opara & Anor. Vs Amadi & Anor. (2013) LPELR - SC.189/2012 @ 12 D - E; Ikuepenikan Vs The State (2015) LPELR -5C.402/2010; (2015) 9 NWLR (Pt.1465) 518.

^C The grounds of the objection as set out in paragraph 3.01 of the Respondents' Amended Brief of Argument are as follows:

1. The Original Notice of Appeal violates the mandatory provisions of Order 2 Rule 8 of the Supreme Court Rules in that it does not reflect the same title of the parties as that which obtained in the court of trial and the Court of Appeal.

^D 2. There are no proper or competent or juristic respondents in the Original Notice of Appeal filed by the appellant. There is therefore no valid Notice of Appeal which can or could have been amended.

^E 3. Assuming but not conceding that the appellant's original Notice of Appeal is competent, Ground 3 of the Amended Notice and Grounds of Appeal filed by the appellant and the issue framed therefrom are merely academic as they are of no practical utilitarian value to the appellant even if judgment is given in his favour in this appeal.

^F Argument on the Preliminary Objection

^G In a nutshell, it is the contention of the learned counsel for the respondents that the appellant failed to comply with the provisions of Order 2 Rule 8 of the Rules of this court, which make it mandatory that notices of appeal, applications for leave to appeal, briefs and all other documents filed in the appeal shall reflect the same title as that which obtained in the court of trial. Essentially, the complaint is that, in the writ of summons and statement of claim at the trial court and in the original Notice of Appeal filed pursuant to leave granted by the lower court on 22/1/2001, the names of the 17 ^H plaintiffs at the trial court and respondents at the court below respectively were fully stated while in the instant appeal, the respondents are described as "Bende Divisional Union Jos Branch and 16 others." On the failure to comply with Order 2 Rule 8 of the Rules of this

court learned counsel relied on PPA Vs INEC & Anor. (2012) 13 NWLR (Pt.1317) 215 @ 236 - 237.

He further submitted that “Bende Divisional Union and 16 Others” is not a juristic person capable of suing and being sued. He argued that each of the 17 respondents must stand alone. He relied on: Carter Nig. Ltd. Vs University of Jos & Anor. (1994) 1 NWLR (Pt.323) 631; and Lion Africa Insurance Co. Ltd. & Anor. Vs Mr. & Mrs. E.A. Esan (1999) 8 NWLR (Pt.614) 197 @ 202. He submitted that in the absence of all the parties being fully and specifically listed, this court would lack jurisdiction over the “16 others” who are not parties before it. Babafola Vs Adadejana (2001) 12 NWLR (Pt.728) 597 @ 615 referred to.

He submitted that since the original notice of appeal was defective, the leave granted to the appellant by this court on 25/2/2013 to amend same is of no moment, as it stands on nothing. He urged the court to strike out both the Original and Amended Notices of Appeal.

In the event that the court does not accede to his requests to strike out the notices of appeal, he urges the court to strike out Ground 3 of the Amended Notice of Appeal and the issue formulated therefrom on the ground that they are academic and of no practical value to the appellant even if the appeal succeeds. It is contended that Ground 3 and issue 3 distilled therefrom, which challenge the following finding of the court below, to wit: *“that the consequential claim for an account of the stewardship (of the property) from 1959 and for an account of monies collected for or in respect of the property, having been based on the first relief for declaration of title is equally maintainable”*, is academic because the reliefs referred to were never sought against the appellant but against the 1st, 2nd and 3rd defendants who are all now deceased. That the appellant was neither a Trustee of the 1st respondent nor a member of the Union. Relying on Shettima Vs Goni (2011) 18 NWLR (Pt.1279) 413 @ 455 F he urged the court to strike out both Ground 3 and Issue 3 predicated thereon.

In reply, learned counsel for the appellant drew the court’s attention to its record of 25/2/2013 when the appellant was granted leave to amend his Notice of Appeal, which application was granted

without objection from learned counsel for the respondents. He submitted, relying on *Adewunmi Vs A.G. Ekiti State* (2002) 2 NWLR (Pt.751) 474 @ 506 E - F. that the law is trite that an amendment once granted dates back to the date of the original process and that the process that was amended becomes irrelevant in the determination of any of the issues before the court. He submitted that the respondents are precluded from making any reference to the original Notice of Appeal. On the curative effect of an amendment, he relied on: *Unity Bank Plc Vs Denclag Ltd.* (2013) 18 NWLR (Pt.1332) 293 @ 327 B - G.

Relying on several authorities, he challenged the mode of raising the objection. He referred to Order 2 Rule 9 of the Rules of this court and argued that the objection raised in respect of Ground 3 of the Amended Notice of Appeal and Issue 3 distilled therefrom, cannot be raised in the form of a preliminary objection since its resolution would not have the effect of terminating the appeal.

Learned counsel argued that looking at reliefs 3 and 4 and the alternative relief 7, which were not fully set out by the respondents in their brief, the interest of the appellant is interwoven with those of the 1st - 3rd defendants. He submitted that the grant of issue 3 in the appellant's favour would confer a benefit on him. Accordingly, he urged the court to overrule the entire preliminary objection.

It is noteworthy, in my view, that the attack in grounds 1 and 2 of the preliminary objection are targeted at the original notice of appeal dated 23/1/2000 but filed on 23/1/2001 pursuant to leave of the court below granted on 22/1/2001. It is not in dispute and indeed the records of this court show that on 25/2/2013, a motion on notice filed on 19/10/2001 for leave to amend the said notice of appeal was moved in court and that the application was granted after learned counsel for the respondents, H.N. UGWUALA ESQ., informed the court that he was not opposing it. In other words, the application was granted without objection. It is also" pertinent to note that there is no appeal against the order granting the amendment.

Now, the law is trite that the effect of an amendment of a court process is that it takes effect from the date of the original document sought to be amended. This applies to every successive further amendment of whichever nature and at what-

ever stage it is made. The action will proceed as if the amendment had been inserted from the beginning. See Adewumi Vs A.G. Ekiti State (2002) 2 NWLR (Pt.751) 474 @ 506 E - F per Wall, JSC; The Registered Trustees of the Airline Operators of Nigeria Vs MAMA (2014) 8 NWLR (Pt.408) 1; Britannia-U Nig. Ltd. Vs Seplat Pet. Dev. Co. Ltd. & Ors (2016) 1 - 3 SC (Pt.111). B

It was held by this court in the case of Vulcan Gases Ltd. Vs Gesellschaft Fur Ltd. Gasverwertung A.G. (2001) 5 SC (Pt.1) 1 @ 15 that once an amendment is made, what stood before the amendment is no longer material before the court and no longer defines the issues to be tried. C

It is the contention of learned counsel for the respondents that the original notice of appeal was fundamentally defective ab initio and therefore the subsequent amendment had no leg to stand on, as you cannot put something on nothing. D

It is the correct position of the law that where a document, such as a notice of appeal, is fundamentally defective, it cannot be cured by an amendment. See: Nwaigwe Vs Okere (2008) 13 NWLR (Pt.1106 V 445; (2008) LPELR - 2095 ESO; Aderibigbe Vs Abidoye (2009) 10 NWLR (Pt.1150) 592; (2009) LPELR - 140 (SC); Daniel Vs INEC & Ors. (2015) LPELR - SC. 757/2013. ***The issue is whether the failure to state the names of 16 respondents in full was a fundamental or incurable defect that would vitiate the entire process? I answer in the negative. The 1st respondent, Bende Divisional Union, Jos Branch is a juristic person capable of suing and being sued in its own name. I think it is mischievous to read Bende Divisional Union, Jos Branch together with "and 16 others" as if it is one person. In any event, I am of the view that the failure to state the full names of the remaining 16 respondents was an irregularity that could be cured by amendment. Having failed to challenge the amendment at the time leave was sought, it is too late in the day for the respondents to raise the issue at this stage. They must now forever hold their peace. The Amended Notice of Appeal dates back to the date of the original notice of appeal and properly reflects the full names of the respondents in the appeal. I therefore hold that the original notice of appeal*** E F G H

is no longer relevant in these proceedings. The Amended Notice of Appeal filed on 4/3/2015 is competent. Grounds 1 and 2 of the preliminary objection are accordingly overruled.

The third ground of objection is that ground 3 of the Amended Notice of Appeal and issue 3 distilled therefrom should be struck out
B for being academic and of no utilitarian value to the appellant.

As rightly observed by learned counsel for the appellant, Order 2 Rule 9(1) of the Rules of this court allow a respondent to file a notice of preliminary objection to the hearing of an appeal. The purpose of such an objection is to terminate the appeal in limine for being incompetent or fundamentally defective. See: G.E.C. Vs Akande & Ors. (2010) 18 NWLR (Pt.1225) 596; (2010) LPELR - 9356 (SO; S.P.D.C. Nig. and 192-193 G - A. **Thus, once there are other grounds to sustain the appeal, the procedure of preliminary objection should not be used.** See: SPDC Nig. Ltd. Vs Amadi (supra). Whether the appellant's issue 3 is academic or not is an issue to be determined when the appeal is determined on its merits. It has no effect on the competence of the appeal itself. There is no complaint against the other
C grounds of the Amended Notice of Appeal. The preliminary objection raised in respect of this issue is misconceived. It is hereby overruled.
D
E

On the whole, I find no merit in the preliminary objection and it is hereby dismissed.
F

I now proceed to determine the appeal on its merits. The appellant formulated 3 issues for determination as follows:

1. Was the court below right when it *suo motu* substituted 1981 with 1986 as the date of accrual of cause of action as found by
G the trial court and against which there was no appeal? (Ground 1)

2. Whether the learned Justices of the Court of Appeal were right in failing to hold that the cause of action accrued in 1981? (Ground 2)

3. Whether the claim for account of stewardship and monies
H collected on the property from 1959 is maintainable, and not statute barred? (Ground 3)

The respondents on their part formulated 2 issues thus:

1. Were the learned Justices of the Court of Appeal right in

finding and holding as they did that the respondents' cause of action for the recovery of the property in dispute accrued in 1986 and not in 1981 and that the respondents' suit is not statute barred? (Grounds 1, 2 and 3 of Amended Notice of Appeal)

2. Were the learned Justices of the Court of Appeal right in holding as they did, that the respondents' claim for the account of B
stewardship as well as account for monies collected from or in respect of the property in issue was maintainable and not statute barred? (Ground 3 of the Amended Notice of Appeal)

I observe that the respondent has formulated more than one issue from ground 3 of the Amended Notice of Appeal. Parties have been admonished time and again by this court against proliferation of issues. While it is permissible to formulate a single issue from several grounds of appeal, it is not proper to formulate more than one issue from a single ground of appeal. See Leedo Presidential Hotel Ltd. Vs B.O.N. (Nig.) Ltd. C
(1993) 1 NWLR (Pt.269) 334 @ 347 A - C; Nwankwo Vs Yar'Adua (2010) 12 NWLR (Pt.1209) 518; A.G. Bendel State Vs Aideyan (1989) 4 NWLR (Pt.118) 646; Arum Vs Nwobodo (2013) LPELR-SC.172/2004. D
E

In the circumstances, I shall adopt the issues formulated by the appellant in the resolution of this appeal. I shall take issues 1 & 2 together.

Issues 1 and 2

1. Was the court below right when it suo motu substituted F
1981 with 1986 as the date of accrual of cause of action as found by the trial court and against which there was no appeal? (Ground 1)

2. Whether the learned Justices of the Court of Appeal were right in failing to hold that the cause of action accrued in 1981? G
(Ground 2)

Appellant's submissions

Learned counsel for the appellant reproduced the following portions of the ruling of the trial court at page 88 lines 12-27 of the record and of the judgment of the court below at page 157 lines 11 H
to 13 and 158 lines 7-9 thereof:

Learned trial Judge:

"The applicants are saying that the cause of action arose in

1981 and that the plaintiffs did nothing until 1994, so they are not entitle (sic) to take any action in relation to a title in respect of the land. I have been urged to refer to the statement of claim, I have indeed done so, and I found on page 5 paragraph 25 of the said statement of claim, that the plaintiffs did file a case in the High Court here in Jos with file No. PLD/J306/86 and this case was consequently discontinued. Again in 1994 the plaintiffs returned to court to file the present suit, Could it be said then that the plaintiffs slept over their rights and that section 3 of Edict No. 16 of Plateau State of 1988 operates against them in respect of their claim, In my opinion, they have not gone to sleep over their rights considering what I have said above in respect of paragraph 25 at page 5 of the statement of claim.” (I note that reference to page 88 of the record is incorrect. The correct page is page 108.)

D Court below:

“Now looking at the appeal at hand the learned trial Judge in her ruling dated 2/3/99 appears not to have focused her attention nor made any definite finding about the actual date or year the cause of action accrued. But one can discern from the ruling that she subtly accepted the year 1981 as the date of the accrual of the cause of action.”

“If, as the learned trial Judge appears to have accepted the cause of action arose in 1981, then subsequent findings in respect of the controversy would have been simple.”

Learned counsel submitted that from the above reproduced portions of the record, the lower court had “spotted and recognised” the date of accrual of the cause of action as found by the learned trial Judge to be 1981. He submitted that notwithstanding this recognition, the court went on to hold that the cause of action accrued in 1986 when the respondents became aware of the adverse title of the appellant (erroneously referred to in the judgment as respondents).

He contended that the crux of the appeal before the lower court was the use by the learned trial Judge of the suit filed in 1986, which was later discontinued, to reach a determination that the respondents had not slept on their rights. He argued that by virtue of Section 240 of the 1999 Constitution (as amended) the jurisdiction of the Court of Appeal is limited to determining whether a trial court

has arrived at the right conclusion based on the facts and relevant law and not to try the case all over again. He submitted that in the absence of an appeal against the finding of the trial court that the cause of action accrued in 1981, it was wrong for the court below to have disturbed the finding even if in its view such finding was wrong. He relied on the cases of Okwuji Vs Ishola (1982) SC 314 - 349; Egonu Vs Egonu (1978) 11 - 12 SC 1 (5) 129; Oshodi Vs Eyifunmi (2003) 13 NWLR (Pt.684) 298 @ 332 C - E; 349 - 350 H - A and 352 B - D; Nwabueze Vs Obi Okove (1988) 4 NWLR (Pt.91) 664. He submitted that the finding remains valid and subsisting until it is challenged and set aside on appeal. Okafor Vs A.G. Anambra State (1991) 6 NWLR (Pt.200) 659. B C

He submitted that in substituting its own views for those of the trial court, the court below abdicated its appellate role. He argued further that the court below raised the issue of a different date for the accrual of the cause of action *suo motu* and resolved it without inviting the parties to address it. He urged the court to set aside the decision in this regard. He relied on the case of Ovwole Vs Akande (2009) 15 NWLR (Pt.1196) 119 @ 148 B - E. D

Under issue 2, it is contended that the court below erred in failing to hold that the cause of action accrued in 1981. Learned counsel referred to paragraphs 5 and 6 of the defendants'/applicants' counter affidavit to the motion to dismiss the suit at page 64 of the record and submitted that the averments show that the 1st respondent's Trustees were not willing to hand over the property in 1981 when it was demanded of them and this was what gave rise to negotiations between 1981-1985. He submitted that the lower court correctly summarised the facts at pages 142 - 143, lines 17 - 25 and lines 1 - 2 of the record respectively. E F G

He submitted that from the averments before the court, there was clearly a dispute between the then plaintiffs and the 1st - 3rd defendants at the trial court over ownership of the property which is why, in his view, it was averred that efforts were being made by the respondents to see if there could be an amicable return of the property to them from 1981 up till 1994 when they instituted their action in court. He submitted that there could not be a move for a peaceful resolution without the existence of a dispute in the first place. He H

relied on the case of: *Eboigbe Vs N.M.P.C.* (1994) 5 NWLR (Pt.347) 649 @ 675 A and *Halsbury's Laws of England* 4th Edition Volume 28 paragraph 622.

B He submitted that a cause of action has been defined as every fact which is material to be proved to entitle the plaintiff to success. That it is a factual situation, which gives a person a right to judicial relief. He referred to *Edosomwan Vs A.C.B. Ltd.* (1995) 7 NWLR (Pt.408) 472 @ 477 C - E. He submitted further that a cause of action accrues when the act of the defendant gives the plaintiff cause to complain and that the accrual of a cause of action is the event whereby a cause of action becomes complete so that the aggrieved party can begin and maintain his action. *Shell Petroleum Devt. Co. Vs Farah* C1995) 5 NWLR (Pt.382) 148 @ 186 - 187 E - D referred to.

D He submitted that on the facts of this case, the cause of action accrued in 1981 because by that time the respondents were already aggrieved by the conduct of the 1st - 3rd defendants. That there were already in existence parties that could sue and be sued for remedies in court. He submitted that negotiations for the purpose of settling a dispute does not stop the limitation period from running, He submitted that the year 1981, when the 1st respondent was reorganised and began negotiating with its Trustees for the return of their property, was when the cause of action accrued and that by virtue of the Real Property Limitation Act of 1874, a statute of general application applicable to Plateau State at the time, the suit was statute barred by the time it was filed in 1994, being 13 years after the accrual of the cause of action. He urged the court to resolve both issues in the appellant's favour.

G Respondents' submissions

H In reaction to the submissions of learned counsel for the appellant, learned counsel for the respondents submitted that a wrong impression has been created by the appellant's counsel as to the actual finding of the court below regarding the manner in which the trial court resolved the issue of whether the action was statute barred or not. He referred to the ruling of the trial court at page 108 (not 88) of the record and submitted that the trial court did not make any finding of fact that the cause of action accrued in 1981. He submitted

that what the trial court did was merely to recapitulate the position being advanced by the defendants/applicants and without agreeing or disagreeing with the applicants, dismissed the objection based on the fact that the respondents had filed suit No. PLD/3306/86 in 1986, although it was subsequently discontinued.

He noted that even the court below, at page 157 lines 8 -11 B of the record, lamented the failure of the learned trial Judge to make a specific finding on the date of accrual of the cause of action. He submitted further that the contention of learned counsel for the appellant that the court below accepted that the trial court found the date of accrual of cause of action to be 1981, is not supported by the court's finding at pages 157 - 158 of the record, which he reproduced *in extenso*. He submitted that the learned Justices appreciated the fact that even if the year 1981 was "subtly accepted" by the learned trial Judge as the date when the cause of action accrued, he failed to specifically determine the issue. C D

He submitted that the sole issue before the trial court was whether the plaintiffs' (now respondents) claim was statute barred and that the learned trial Judge having failed to resolve the issue, the learned Justices of the Court of Appeal were in as good a position as the trial court to evaluate the pleadings and affidavit evidence before it and come to a specific finding on the issue, He noted that the issue in controversy did not depend on the credibility or reliability of witnesses before the trial court but on documentary evidence contained in the pleadings, affidavits and documents attached thereto. In support of this contention, he relied on *Ishola Vs Union Bank of Nig. Ltd.*, (2005) 6 NWLR (Pt.922) 422 & 443 A - B; *Shell B.P. Pet Devt. Co. Of Nigeria Ltd. Vs Cole & Ors* (1978) 3 SC 183 @ 194 and *Awoyale Vs Ogunbiyi* (1986) 2 NWLR (Pt.24) 626 @ 634 F -H. E F G

Referring to paragraphs 18 - 24 of the Statement of Claim at pages 8 - 9 of the record and paragraph 5 of the respondents' counter affidavit at page 64 thereof, learned counsel submitted that although after the inauguration of the 1st respondent on 21/6/81 and the election of officers, steps were taken between 1981 and 1986 to recover the property in dispute from the Trustees, it was only when they became aware that the trustees had exercised acts of ownership by the sale of the property to the appellant between 1985 and 1986 H

that they decided to go to court.

He submitted that contrary to the contention of learned counsel for the appellant that the cause of action accrued upon the 1st respondent's inauguration on 21/6/81, the said inauguration could only have allowed the 1st respondent to re-organise its affairs and
B that it was when the Trustees manifested an adverse claim in 1986 by refusing to hand over the property that the cause of action accrued.

Learned counsel submitted that in any event, the pleading in the statement of claim indicated that it was a claim for the recovery of
C trust property and for accounts of its management by the Trustees and that by the combined provisions of Section 31(4) of the Real Property Limitation Act 1874 and Section 6 of the Trustees Act 1888 applicable to this matter, statutes of limitation are inapplicable where the claim is founded on fraud or fraudulent breach of trust to which
D a Trustee was a party or privy or where the claim is to recover trust property or the proceeds still retained by the Trustees or previously recovered by them and converted to their use. He relied on the case of Adekeye & Ors Vs Chief O.B. Akin-Olugbade (1987) 2 NSCC 865 @ 874-875 and Oleme Vs Oleme (2000) 13 NWLR (Pt.685)
E 606 @ 614 C - D. He submitted that in light of the law and authorities cited, whether the cause of action accrued in 1981 or 1986, the limitation period provided for by the Real Property Limitation Act of 1874 does not apply to this case.

He urged the court to resolve both issues against the appel-
F lant.

Appellant's Reply

Learned counsel for the appellant maintained his contention that the trial court made a specific finding on the date of accrual of
G the cause of action and submitted that there was no appeal against any alleged failure of the trial court to evaluate the affidavit/documentary evidence and/or determine the issue. On this premise, he submitted that the authorities of Ishola Vs U.B.N. Ltd. (supra) and Shell B.P. Devt. Co. Of Nig. Ltd Vs Cole (supra) and Awoyale v.
H Ogunbiyi (supra) cited by learned counsel for the respondents on the powers of the appellate court to evaluate evidence where the trial court falls to do so, are inapplicable. He urged the court to disregard the submissions regarding the applicability of Section 31 (4) of the

Real Property Limitation Act 1874 and Section 8 of the Trustees Act 1888 and the authorities referred to on the ground that the issue did not arise either from the pleadings of the parties or the affidavit evidence before the court. He submitted that parties must be consistent with the case they present before the court and are not permitted to change course at the Court of Appeal or at the apex Court, as an appeal is a continuation of the case at the trial court. He referred to I.M.N.L. Vs Pegofor Ind. Ltd. (2005) 15 NWLR (Pt.947VI @ 19 A-B; Edebiri Vs Edebiti 4 NWLR (Pt.498) 165 @ 174 A - C. Resolutions of Issues 1 and 2:

The first issue to be resolved is whether, from a careful perusal of the record it could be said that the court below suo motu substituted 1981 (as purportedly found by the trial court) with 1986 as the date of accrual of the cause of action. This issue is fundamental and if resolved in the appellant's favour is capable of disposing of the entire appeal. This is because a court is bound to confine itself to the case presented and the issues raised by the parties. It has no business considering an issue not properly brought before it. See: ADH Ltd. Vs Amalgamated Trustees Ltd. (2007) All FWLR (Pt.392) 178 @ 1807 E - F; Ojoh Vs Kamafu (2005) 8 NWLR (Pt.958) 523 @ 568 B - C; F.R.M. Vs Yau Mohammed (2014) 19 WRN 1; (2014) LPELR -22465 (SC). ***Where a court sees fit to take a point suo motu, the parties must be given an opportunity to address it before a decision on the point is made.*** See: Olusanya Vs Olusanya (1983) 14 NSCC 97 @ 102; Ejike Vs C.O.P. (2015) 4 - 5 SC (Pt.1) 101; Eholor Vs Osanyande (1992) 6 NWLR (Pt.249) 524; (1992) 7 SCNJ 217. ***Failure to adhere to these guidelines would occasion a miscarriage of justice, as it runs counter to the impartial status and stance expected of a Judge.*** See: Eholor Vs Osayande (supra) at 543 G - H. ***It would amount to a breach of the parties' right to fair hearing. Correspondingly, it would render the proceedings a nullity.***

Learned counsel for the appellant has argued this issue on the premise that the trial court made a definite finding as to the date the cause of action accrued. I have read again the portion of the

judgment at page 108 lines 12 - 27 of the record, reproduced earlier in this judgment. My understanding of the views expressed by the learned trial Judge is that even if the cause of action arose in 1981, as contended by the defendant (now appellant) having regard to suit No. PLD/3306/86 filed by the plaintiffs (now respondents), they could not be said to have slept on their rights. The trial court, as rightly observed by learned counsel for the respondents neither agreed nor disagreed with the defendants' proposition. This is why the court below observed thus at page 157 of the record, which I shall reproduce again for ease of reference:

"Now looking at the appeal at hand, the learned trial Judge in her ruling dated 2/3/99 appears not to have focused her attention nor made any definite finding about the actual date or year the cause of action accrued. But one can discern from the ruling that she subtly accepted the year 1981 as the date of the accrual of the cause of action..... However, the dimension the conflicting affidavit evidence sworn to in support and the corresponding counter affidavit in opposition to it have disclosed, put the question of the date of the accrual of the cause of action a fact, the discovery of which, should have formed the cornerstone of the ruling." (Emphasis mine)

The word "*subtle*" is defined in the Oxford Learner's Dictionary (International Student's Edition) New 8th edition as: "*not very noticeable or obvious*".

In Dictionary.com (iPad app) it is defined as "*fine or delicate in meaning or intent; difficult to perceive or understand*."

The court below was clearly lamenting the failure of the trial court to make a definite finding on the issue, which should have formed the cornerstone of its ruling.

It follows therefore, that if there was no definite finding of the trial court that the cause of action accrued in 1981, the issue of the court below *suo motu* "inserting" the year 1986 does not arise.

As observed by learned counsel for the respondents in paragraph 6.08 of his brief and as can be seen from paragraph 3.00 of the appellants' brief at the court below (page 94 of the record), the sole issue distilled for the determination of the appeal was; "*whether the claim of the plaintiffs is statute barred*."

It has been established that the trial court failed in its

duty to evaluate the pleadings, affidavit and documentary evidence before it and failed to reach a decision as to when the cause of action accrued. The law is settled that where a trial court fails to properly evaluate the material before it, and the question in issue does not call for the assessment of the credibility of witnesses, an appellate court is in as good a position as the trial court to evaluate the evidence (or the material before the court) and come to a proper decision which may or may not accord with that of the trial court. See: Afolayan Vs Ogunrinde (1990) 1 NWLR (Pt.127) 369 @ 385 C; Obimeche Vs Akusobi (2010) 12 NWLR (Pt.1208) 383 @ 416 H; Ishofa Vs Union Bank of Nig. Ltd. (2005) 6 NWLR (Pt.922) 422 @ 443 A - B.

I now proceed to consider whether the lower court was right when it held that the cause of action in this matter accrued in 1986. **A cause of action has been held to be “the fact or combination of facts which gives rise to a right to sue. The right to sue consists of the wrongful act of the defendant which gives the plaintiff the right to complain and the damage consequent to the wrongful act”** See: Egbue Vs Araka (1988) 3 NWLR (Pt.84) 598 0) 599 C - D; Amodu Vs Ambode (1990) 5 MWLR (Pt.1501) 356 @ 367; Edierode Vs Ikine (2001) 12 SC (Pt.1) 94. **A cause of action has also been held to be that particular act of the defendant which gives the plaintiff his cause of complaint, every fact which is material to be proved to entitle the plaintiff to succeed and every fact which the defendant would have the right to traverse.** See: Chevron (Nig) Ltd. Vs Lonestar Drilling Nigeria Ltd. (2007) 16 NWLR (Pt.1059) 168; Adimora Vs Ajufo (1988) 3 NWLR (Pt. 80) 1.

A cause of action is said to accrue for the purposes of a statute of limitation upon the occurrence of an event whereby a cause of action becomes complete so that the aggrieved party can begin and maintain his cause of action. See: Adimora Vs Ajufo (supra); Yare Vs National Salaries, Wages & Income Commission (2013) LPELR- 20520 (SC); Samson Owie Vs Solomon Ighiwi (2005) 5 NWLR (Pt.917) 184. **Time begins to run where there is in existence, a person who can sue and another who can be sued and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed.** See: Owie Vs

Ighiwi (supra); Fadare & Ors Vs A. G. Oyo State (1982) 13 NSCC 52 @ 60.

It is also well settled that in order to determine when a cause of action accrued, the processes to be considered are the writ of summons and the statement of claim. See: Omomeli

B Vs Kolawole (2008) 14 NWLR (Pt.1106) 180; Ayanboye Vs Balogun (1999) 5 NWLR (Pt.151) 392; Eqbe Vs Adefarasin (1987) ANLR 1 @ 21; Woheren JP Vs Emereuwa & Ors. (2004) 13 NWLR (Pt.890) 398.

C In the instant case, the relevant paragraphs for determining when the cause of action accrued are paragraphs 18-24 of the statement of claim at pages 8 - 9 of the record. The paragraphs are reproduced hereunder for ease of reference:

D 18. *“The 1st plaintiff (i.e. the Union) was formally inaugurated in 1981 at a meeting held at LGED School Jos on the 21/6/81. The plaintiffs shall rely on the minutes of the meeting at the hearing of this case.*

E 19. *After the full inauguration of the Union (i.e. 1st plaintiff) election was subsequently conducted following which new officers were elected to fill the various posts. At the hearing of this case the plaintiffs shall rely on a copy of the Daily Times Newspaper of 23/4/82.*

F 20. *The plaintiffs further aver that after the Union had been fully re-organised steps were then taken to recover all the Union’s properties in possession of its former officers particularly the property at No. 24 Langtang Street, Jos as well as the monies in the Unions Bank account with African Continental Bank Jos Branch which was later transferred to Umuahia Branch. Based on the foregoing the*
G *Union selected some delegates to visit some of the former officers including the 1st defendant. A letter to this effect was written to the 1st defendant to intimate him about the visit. At the hearing of this case the plaintiffs shall rely on letter dated 10/1/86 addressed to the 1st defendant. Notice is given to the 1st defendant to produce the Original copy.*
H

21. *The delegation aforesaid undertook the journeys and visited some of the past officers and members of the Union including the defendant. At the end of their tour they write a report of their findings and submitted it to the 1st plaintiff. The plaintiffs shall rely on*

the said-report at the hearing of this case.

22. During the visit to the 1st defendant by the delegation he made it clear to them that the property at 24 Langtang Street Jos was that of the 1st plaintiff and he promised to take all necessary steps to formally hand it over to the Union. On arrival back to Jos a letter of appreciation was written to him. The plaintiffs shall rely on the letter dated 6/2/85 addressed to the 1st defendant as well as his reply to it dated 3/3/86 at the hearing of this case, Notice is hereby given to the 1st defendant to produce the original copy of the letter of 6/2/86. The foregoing letters apart the 1st plaintiff wrote other letters to the 1st defendant when nothing concrete was heard from him pertaining to the handing over of the property, At the hearing of this case the plaintiffs shall rely on the letter dated 16/8/86 addressed to the 1st defendant as well as the one dated 24/3/86. The 1st defendant is given notice to produce the original copies of the said letters.

23. Efforts were still being made by the plaintiffs to have the matter of the handing over of the property amicably resolved and in this regard letters were written to prominent Igbo Chiefs as well as members of Imo State Council of Chiefs (as it was then called). At the hearing of this case the plaintiffs shall rely on copies of all such letters including the ones addressed to Sir Akanu Ibiam as well as his replies to the letters.

24. Despite the correspondences aforesaid the 1st, 2nd and 3rd defendants did nothing to hand over any of the Union's properties to the plaintiffs. Instead they sold the property at 24 Langtang Street, Jos to the 4th defendant. At this juncture a Mass Rally of the Union members took place on the 8/11/86 where it was resolved that legal steps be taken against the defendants to recover the Union's Properties. At the hearing of this case the plaintiffs shall rely on the report of the said rally dated 12/11/86 as well as the resolution of the rally dated 8/11/86." (Emphasis mine)

It is pleaded in paragraphs 20-24 above that after the reorganisation of the 1st respondent in 1981, steps were taken to recover all the Union's properties in the possession of its former officers, including the then 1st to 3rd defendants i.e. Messrs Eze Samson U. Ukaegbu, Daniel Orji Ogbah and Thomas Ogwo Azu. From paragraph 22, it is evident that there was no dispute regarding the return

of the properties until 1986 when it was discovered that the 1st and 2nd defendants and Mr. Ikwunze (now deceased) had exercised powers of ownership over the property in dispute by selling it to the 4th defendant (now appellant).

In paragraph 5 of the plaintiffs'/respondents' counter affidavit to the motion to dismiss the suit at page 64 of the record, it was averred as follows:

"5. That between 1981 when the 1st plaintiff was formally re-organised and 1986, the 1st and 2nd defendants were members of the 1st defendant and amicable steps were taken to get the house back from the Trustees. It was when they refused to hand over the property that we decided to go to court."

The court below at page 164 of the record held thus:

"Let me say that the formal inauguration of the 1st respondent on 21/6/81 only enabled the respondents "to" organise the 'activities of the 1st respondent and to recover as in the main suit, the properties of the Union. It could not have been possible for the respondents to have known the claim of the appellants regarding the house No. 24 Langtang Street, Jos without getting positive response from them. Certainly being trustees of the property as contended by the respondents, their claim to ownership of the property will only become an issue when any action is taken by them adverse to the title of the 1st respondent. The fact that a certificate of occupancy was issued in the names of the appellants and later renewed in their said names is well noted, However, as it relates to the claim of the 1st respondent that the property was vested in the appellants as trustees, there appears to be no evidence from affidavit evidence that 1st respondent was made aware of the issuance of the said certificates or the assertion of title adverse to its own. As things stand therefore, the averments of the respondents that they only became aware of the adverse claim of title by the respondents in 1986 determines the commencement date of the accrual of the cause of action."

The court held further at pages 166 - 167 of the record:

"When the 1st respondent Union was formally inaugurated on 21/6/81 in Jos and the 2nd to 17th respondents were elected, house No. 24 Langtang Street, Jos was in the possession of the appellants.

Indeed by paragraphs 14, 16 and 17 of the statement of claim title to the house was vested in the late Eze Sampson Uwaka Ukaegbu, Elijah Udemba Ikwunze and 2nd appellant as trustees of the 1st respondent. It was therefore not out of place when upon the formal inauguration of the 1st respondent on 21/6/81, the respondents as per paragraph 5 of the counter affidavit in opposition to the motion to dismiss the suit took steps to amicably recover house No. 24 Langtang Street, Jos, from the 1st and 2nd appellants since it was not clear to them whether in fact there was any adverse claim to the title of the 1st respondent.” (Emphasis mine)

I agree entirely with the unassailable findings above. I agree with the learned Justices of the court below that the claim of ownership of the property by the trustees only became an issue when they took steps that were adverse to the 1st respondent’s title by the sale of the property to the appellant between 1985 and 1986. It was this sale that alerted the 1st respondent to the fact that there was an adverse claim to the property. There is nothing in the pleadings to suggest that there was any dispute between the parties until the 1st defendant became aware in 1986 that the property had been sold. Indeed, as pleaded in paragraph 22 of the statement of claim, the delegation of the 1st respondent that met with the 1st defendant was well received and the 1st respondent’s title over the property was acknowledged with a promise to act with dispatch in transferring title to it.

As rightly observed by the court below, the 1st - 3rd defendants were already trustees of the property and had registered the property in their own names at the behest of the 1st respondent. It is to be expected that there would be some delay in the handing over process, which did not raise any alarm until it was discovered that they had exercised acts of ownership on the property by the sale thereof to the appellant. I therefore agree with the court below that the cause of action accrued in 1986.

The parties are *ad idem* that the applicable law was the Real Property Limitation Act of 1874, a statute of general application, applicable to Plateau State at the time the cause

of action arose, which extinguishes the right of a person to recover land after the expiration of 12 years from the date on which the cause of action accrued to him.

The effect of a limitation law is that legal proceedings cannot be properly or validity instituted after the expiration of the prescribed period. A limitation law removes the right of action of a plaintiff, his right of enforcement and the right to judicial relief, leaving him with a bare and empty cause of action, which he cannot enforce. See: Military Administrator of Ekiti State Vs Afadeyelu (2007) All FWLR (Pt.369) 1195 @ 1219 C; C.P.C. Vs Yuguda (2012) LPELR - SC.34/2012; Williams Vs Williams (2008) 10 NWLR (Pt.10951) 364; Aremo II Vs Adekanye (2004) 13 MWLR (Pt.891) 572. The writ of summons in the instant case was filed on 29th March 1994. From 1986 to 1994 is a period of eight years. The suit was filed well within the statutory limit. Without further ado, Issues 1 and 2 are hereby resolved against the appellant.

Issue 3

Whether the claim for account of stewardship and monies collected on the property from 1959 is maintainable and not statute-barred?

Under this issue, the appellant is dissatisfied with the highlighted portion of the judgment of the court below at page 168 of the record, to wit:

“The declaration sought in respect of House No. 24 Langtang Street, Jos therefore is clearly maintainable. The consequential claims for the account of stewardship from 1959 as well as that of account for monies collected from or in respect of the property, having been based on the first relief for declaration of title are equally maintainable.” (Underlining mine for emphasis)

The claims for account of stewardship and for monies collected are contained in reliefs 3 and 4 of paragraph 34 of the statement of claim reproduced earlier in this judgment. They are repeated here for ease of reference -

“3. An order directing the first to the 3^d defendants to give account of their stewardship as the trustees cum officers of the Bende Divisional Union Jos Branch for the period between 1959 and 1981 both years inclusive.

4. A further order directing the first to the third defendants to give account of all monies collected from or in respect of the property aforesaid either as rent or hire charged from October 1962 to date inclusive of monies received from the Benue-Plateau Abandoned Properties Committee.” (Emphasis supplied)

It is contended on behalf of the appellant that these claims constitute a cause of action and that the said claims for accounts from 1959 pre-date the existence of the 1st respondent, which came into being in 1965. Learned counsel submitted that a claim for account postulates a claim in contract, which ought to be commenced within 5 years of the date of accrual of the cause of action. The following cases were cited in support: Ikine Vs Edierode_(2001) 18 NWLR (Pt.745) 446 @ 471 G - H; P.M. Udoh Trading Co. Ltd. Vs Abere (2001) 11 NWLR (Pt.723) 114 @ 130 B-E; 136 F-G. He submitted that from the facts of this case, the claims for account are statute-barred. He submitted further that the said claims are independent causes of action and are not consequential to the main claim for declaration of title. He urged the court to resolve this issue in the appellant’s favour.

In arguing the preliminary objection, learned counsel for the respondents had argued that ground 3 of the Notice of Appeal and issue 3 predicated thereon are incompetent for being academic, as the reliefs (3) and (4) referred to were not directed at the present appellant, but at the original 1st, 2nd and 3rd defendants, who were trustees of the property in dispute and that arty order made for an account of stewardship of the property or monies collected thereon would not affect the appellant who is neither a trustee nor a member of the 1st respondent.

It is to be recalled that earlier in this judgment, I held that the third ground of preliminary objection seeking the striking out of ground 3 of the notice of appeal and issue 3 predicated thereon for being academic was not a proper issue to be raised, by way of preliminary objection, having regard to the fact that the object of a preliminary objection to the hearing of an appeal is to terminate the appeal *in limine*. I stated that it was an issue that would properly be considered when the merit of the appeal is being determined as there were other competent grounds capable of sustaining the appeal.

I have now considered this issue on its merits and come to the inevitable conclusion that the issue is indeed academic and not worth expending precious time on. As observed by learned counsel for the respondents, the reliefs contained in paragraph 34 (3) and (4) of the statement of claim are in no way directed at the appellant who was the fourth defendant at the trial court. The reliefs are specifically directed at the 1st-3rd defendants, who are all now reported dead. There is no substance whatsoever in this issue and it is accordingly resolved against the appellant.

Having resolved all the issues in contention against the appellant, I hold that this appeal is devoid of merit. It is hereby dismissed. The judgment of the court below delivered on 8th November 2000 is hereby affirmed. Costs are assessed at N250,000.00 against the appellant and in favour of the respondents.

ONNOGHEN Ag. CJN

I have had the privilege of reading in draft, the lead Judgment of my learned brother, KEKERE-EKUN JSC just delivered. I agree that the appeal is without merit and should be dismissed.

The facts of the case have been stated in detail in the said lead Judgment making it unnecessary for me to repeat them therein except, as maybe relevant for the point being made

I agree with the lead Judgment that failure by an appellant, to state on the Notice of appeal all the necessary parties to the appeal, is an irregularity which is not fatal to the appeal in question, the rationale being that the court is assigned to do substantial justice in any matter before it rather than justice according to technicalities.

It should be noted that this appeal is a further appeal by the appellant who lost the action at the High Court and his appeal thereon at the Court of Appeal. The appeal is, therefore, partly on concurrent findings of fact.

The decision of this court in the case of Progressive Peoples Alliance (PPA) Vs. Independent National Electoral Commission & Anor. (2012) 13 NWLR (Pt. 1317) 215 at 236 - 237 cited and relied upon by learned counsel for the respondent on the preliminary objection

as to the non reflection of the same title etc as that which obtained in the court of trial, is distinguishable on the facts and consequently inapplicable to this case.

My comments in this Judgment centres around the issue as to whether the action as constituted is statute barred.

Learned counsel for appellant has stated that the trial Judge allegedly found that the course of action arose in 1981 which finding was set aside by the lower court by substituting 1986 for 1981 suo motu and without any complaint by any of the parties to the said alleged finding by the trial court.

I have carefully gone through the record and can confirm that the trial Judge did not make such an alleged specific finding of facts as to the accrual of the cause of action in 1981. The relevant passage is at page 108 lines 12-28 of the record. There the learned trial Judge stated thus:

“The applicants are saying that the cause of action arose in 1981 and that the Plaintiffs did nothing until 1994, so they are not entitled to take any action in relation to a trite in respect of the land.

I have been urged to refer to the statement of claim. I have indeed done so, and I found on page 5 paragraph 25 of the said statement of claim, that the plaintiffs did file a case in the High Court here in Jos with file No. PLD/J306/86 and this case was consequently discontinued. Again in 1994 the plaintiffs returned to court to file the present suit. Could it be said then that the plaintiffs slept over their rights and that section 3 of Edict No. 16 of Plateau State of 1988 operates against them in respect of their claim. In my opinion, they have not gone to sleep over their rights considering that I have above in respect of paragraph 25 at page 5 of the statement of claim. The, application on this point alone has failed”

It is very clear from the passage reproduced supra that the trial court did not make a finding of fact that the cause of action accrued in 1981 as submitted by learned counsel for appellant. It is also very clear from the said passage that the learned trial Judge made no specific finding as to the particular date of the accrual of the cause of action, hence the reaction of the lower court at page 157 lines 8 - 11 of the record as follows:-

“Now looking at the -appeal at hand, the learned trial Judge

in her ruling dated 2/3/99 appears not to have focused her attention nor made any definite finding about the actual date or year the cause of action accrued”

The above being the state of affairs on the facts relevant to the determination of the sole issue submitted to that court for determination, which is whether the action was not statute barred, the lower court was duty bound to evaluate the affidavit evidence, finding of facts, relevant for the determination of the issue before it, which the lower court is entitled to do the evaluation or re-evaluation not involving credibility or reliability or demeanour of witness(es) before the trial court but solely on the documentary evidence on record. See *Ishola Vs U.B.N. Ltd. (2005) 6 NWLR (Pt. 922) 422 at 443; Shell B.P. Petroleum Development Company of Nigeria Limited Vs H.H. Pere Cole & Ors (1978) 3 S.C 183 at 1-94. Awovale Vs Ogunbiyi (1986) 2 NWLR (Pt. 24) 626 at 634*. It is therefore my view that the lower court was right after evaluation of available documentary evidence on record in coming to the conclusion that the cause of action accrued in 1986 and consequently that the action as constituted is not statute barred.

Another point worthy of note is the fact that by the authority of this court as laid down in the case of *Adekeye & Ors. Vs Olugbade (1987) 2 N Sec 865 at 874 -875*, a person who holds the property of another is not allowed to set up the statute of limitation against the beneficial owner, particularly where the claim is founded upon fraudulent breach of trust to which the trustee was a party or privy, or to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his use.

It is therefore clear and I hereby hold that a claim against a person as trustee for an account in respect of property held in trust or trust property is a claim for equitable relief which is not barred by any limitation period.

The instant action is against the trustees of the 1st respondent and the appellant who claims through the said trustees for the recovery of the trust property and for accounts by the said trustees of the proceeds of the trust property. See Section 31 (4) of the Real Property Limitation Act, 1874 and Section 8 of the trustees Act, 1988.

It is for the above reasons and the more detailed reasons contained in the lead Judgment of my learned brother that I too find no merit in this appeal and consequently dismiss same.

I abide by the consequential orders made in the said lead Judgment including the order as to costs.

Appeal dismissed.

B

PETER-ODILI JSC

I am in total agreement with the judgment and reasonings just delivered by my learned brother, Kudirat Kekere-Ekun, JSC and to show my support, I shall make some remarks.

C

This appeal is against the judgment of the Court of Appeal sitting in Jos delivered on the 8th November, 2000 wherein the appellant's appeal to the Court below was dismissed.

D

The suit at the trial Court was initiated by the plaintiffs/respondents, on the 24th April, 1994 claiming the following in the Statement of Claim as follows:-

1. *"A declaration that the property situate, lying and being at No. 24 Langtang Street, Jos, is the property of the first plaintiff and that the first plaintiff is entitled to the grant of a statutory right of occupancy over the said property.*

E

2. *A perpetual injunction restraining the first to the fourth defendants, their servants, agents, privies, heirs or such other representatives howsoever called or described from trespassing to or committing any further act of trespass in respect of the said property.*

F

3. *An order directing the first to the 3rd defendants to give account of their stewardship as the trustees cum officers of the Bend Divisional Union, Jos Branch, for the period between 1959 and 1981 both years inclusive.*

G

4. *A further order directing the first to the third defendants to give account of all monies collected from or in respect of the property aforesaid either as rent or hire charges from October 1962 to date inclusive of monies received from the Benue Plateau Abandoned Properties Committee.*

H

5. *An order directing the first to the third defendants to hand over to the plaintiffs all Union documents and other moveable prop-*

erties in their possession particularly the following:-

(a) Original copy of the Certificate of Registration.

(b) Union's Constitution.

(c) Minutes Book.

(d) Typewriter.

B 6. *An order setting aside any Certificate of Occupancy or other document of the granted In respect of the said property In the name or names of the 1st to 4th defendants, As alternative to reliefs 3 and 4 above.*

C 7. *The lump sum of N1,000,000.00 to be paid by the first to fourth defendants.*

The case of the Defendants at the trial Court (including the Appellant herein) is that when the house at No. 24, Langtang Street, Jos, could not be registered in the name of Bende Divisional Union, D the 1st and 2nd Defendants along with Elijah U. Ikwunze re-negotiated for the purchase of the same property with the Vendor. 1st Plaintiff's money, advanced as consideration for the purchase, was returned to it and the property was bought by them and accordingly registered in their names as their personal property. Their contention is that the E property is their own and that the 1st plaintiff did not purchase it since along the line it became impossible to effect transfer of title documents. Please see paragraphs 10 and 11 of their Joint Statement of Defence at pages 44 to 45 of the Record.

F On the 27th September, 2016 date of hearing, learned counsel for the Appellants, Mrs. Oyawole adopted the Amended Appellant's Brief of Argument settled by S. Oyawole Esq. filed on 4/3/2013 and Appellant's Reply Brief filed on 18/7/2013 and deemed filed on the 27/9/2016. He distilled three issues for determination which are thus:-

G 1. *Was the Court below right when It suo motu substituted 1981 with 1986 as the date of accrual of cause of action as found by the trial Court and against which there was no appeal? (Ground 1)*

H 2. *Whether the teamed Justices of the Court of Appeal were right in falling to hold that the cause of action accrued in 1981. (Grounds 2 & 4)*

3. *Whether the claim for account of stewardship and monies collected on the property from 1959 is maintainable and not statute barred, (Ground 3).*

Learned counsel for the respondents, H. N. Ugwuala Esq. adopted the Brief of Argument of the respondents as amended filed on 18/3/13 in which he argued the Preliminary Objection he had raised.

It needs no saying that the Preliminary Objection would be first tackled before the Court can go into the meat of the matter. B

NOTICE OF PRELIMINARY OBJECTION PURSUANT TO ORDER 2, RULE 9 OF THE SUPREME COURT RULES 1985 AS AMENDED)

TAKE NOTICE that the Respondents herein intend to rely C upon a Preliminary Objection to the hearing of this appeal, notice whereof is hereby given, on the following grounds:

(i) The Original Notice of Appeal violates the mandatory provisions of Order 2, Rule 8 of the Supreme Court Rules In that It does not reflect the same title of the parties as that which obtained In Court D of trial and the Court of Appeal.

(ii) There are no proper or competent or juristic, Respon- dents in the Original Notice of Appeal filed by the Appellant There Is therefore no valid Notice of Appeal which can he or could have been E amended.

(iii) Assuming but not conceding that the Appellants Original Notice of Appeal is competent, Ground 3 of the Amended Notice and Grounds of Appeal filed by the Appellant and the issue framed there from, are merely academic as they are of no practical utilitarian F value to the Appellant even if judgment is given in his favour in this appeal.

Learned counsel for the respondent contended that the No- tice of Appeal is incompetent as it violates the mandatory provisions of Order 2, Rule 8 of the Rules of the Supreme Court. That the title G of the suit and the names of the parties as obtained at the Court of trial in the Writ of Summons and Statement of Claim did not tally with the title in the appellant's Notice of Appeal and so, the appeal ought to be struck out. He cited Progressive Peoples Alliance (PPA) v INEC & Anor. (2012) 13 NWLR (Pt. 1317) 215 at 236 - 237. H

That the "Bende Divisional Union, Jos Branch & 16 others" is not a juristic personality and thus cannot be a proper or competent party that can sue and be sued or be made a respondent to an ap-

peal. He relied on *Carlen Nig. Ltd v University of Jos & Anor.* (1994) 1 NWLR (Pt. 323) 631; *Lion of Africa Insurance Company Ltd & Anor. v. Mr. & Mrs. E. A. Esan* (1999) 8 NWLR (Pt. 614) 197 at 202.

That in the absence of all, the parties (i.e respondents) being fully and specifically listed in this appeal, this Court will have no jurisdiction over the “16 others” who are not parties before it. He cited *Babatofa v Aladefana* (2001) 12 NWLR (Pt. 728) 597 at 615.

Mr. Ugwuola of counsel for the respondents/objector submitted that if the court finds the appellants’ appeal competent, the court should strike out appellants’ ground 3 as well as the issue framed therefrom for being academic and no practical utilitarian value to the appellant even if he wins this appeal. He stated that this Court is not to entertain academic issues. He relied on *Plateau State of Nigeria v A.6. Federation* (2006) 3 NWLR (Pt. 697) 346 at 419, *Efet v INEC* (2011) 7 NWLR (Pt. 1247) 423 at 451 etc.

Learned counsel for the appellant, Mrs. Oyawole submitted that the objection should be overruled. That it is on record that this Court on 25th February, 2013 granted appellant leave to amend their notice of appeal and the amendment once granted relate back to the date of the original document amended and so, the document so amended is treated as though it never existed as it is no longer referred to in the determination of the case before the Court. She referred to *Adewunmi & Anor. v A. G. Ekiti State & Ors.* (2002) 2 NWLR (Pt. 751) 474 at 508; *Unity Bank Plc v Denclag Ltd* (2013) 18 NWLR (Pt. 1332) 293 at 327.

It was further submitted that the 3rd leg of the respondent’s objection contending a lack of live issue in ground 3 and issue 3 distilled therefrom is incompetent having regard to Order 2, Rule 9 of the Rules of this Court. That by the said provision, no ground of objection which is not capable of terminating an appeal can be raised by way of notice of preliminary objection as in the instant case. She cited *SPDC Ltd v Amadi* (2011) 14 NWLR (Pt. 1266) 157 at 183; *NNPC v Famfa Oil Ltd* (2012) 17 NWLR (Pt. 1328) 148 at 185 - 186 etc.

That the ground 3 of the appellant’s amended notice of appeal as well as the issue formulated therefrom are competent and the objection should be overruled.

The grouse of the respondents/objectors are anchored unfortunately on the Notice of Appeal which had ceased to be with the coming into being of the Amended Notice of Appeal filed on 4/3/2013 and properly accepted by Court. Therefore, the issues on validity and competence raised against the Notice of Appeal no longer hold water except for the matter of Ground 3 in the appellant's amended notice of appeal and issue 3 distilled therefrom as they do not raise any live issue thereby making them academic or moot point. For effect the said Ground 3 of the Appellant's, Ground of Appeal is as follows:-

"The learned Justices of the Court of Appeal erred in law when they found and held that:

"The consequential claim for the account of stewardship from 1959 as well as the account for monies collected from or in respect of the property, having been based on the first relief or declaration of title is equally maintainable'

PARTICULAR OF ERROR:

(a) Claim for account of monies is a distinct claim and indeed an independent cause of action.

Claim for declaration of title is not hinged on claims for account of monies.

(b) The grant or refusal of either may not affect the grant or refusal of the other.

(c) An account for monies from 1959 to 1981 postulates that the cause of action for account accrued from 1959.

(d) The Court below had earlier as at 1965 there were parties that could sue and be sued.

(e) The delay by the plaintiffs in suing for account of monies until 1994 rendered their claim statute barred".

It can be seen that the ground 3 and the issue 3 formulated therefrom are incompetent and so are struck out.

MAIN APPEAL:

The respondent had raised two issues for determination which are as follows:-

1. Were the learned Justices of the Court of Appeal right in finding and holding as they did, that the Respondents' cause of action for the recovery of the property in dispute, accrued in 1986 and

not in 1981, and that the Respondents suit not statute barred (Grounds 1, 2 and 3 of the Appellants' Amended Notice and grounds of appeal).

2. Were the learned Justices of the Court of appeal right in holding as they did, that the Respondents claim for the account of
B stewardship as well as account for monies collected from or in respect of the property in issue was maintainable and not statute barred? (Ground 3 of the Appellants Amended Notice and Ground of Appeal).

C I shall utilise the issues as Grafted by the appellant save for the struck out Issue 3.

ISSUES ONE & TWO:

Was the Court below right when it suo motu substituted 1981 with 1986 as the date of accrual of cause of action as found by the
D trial Court and against which there was no appeal.

Whether the learned Justices of the Court of Appeal were right in failing to hold that the cause of action accrued in 1981?

Learned counsel for the appellant contended that the Court below was wrong to substitute 1981 with 1986 as date of accrual of
E cause of action as found by the trial judge and against which there was no appeal, That the Court of Appeal was not conferred with the jurisdiction to try cases but to see whether the trial Court had arrived at the right conclusion having regard to the facts and the relevant
F laws. That if a finding is not challenged on appeal/ the Court of Appeal does not have jurisdiction to disturb the same even if the finding is wrong in the appellate Courts view or opinion. He cited Okwuji v Ishola (1982) 2 SC 314 at 349, Egonu v Egonu (1978) 11 - 12 SC 1 at 129; Okafor v A. G. Anambra State (1991) 6 NWLR (Pt. 200)
G 659 etc.

Also submitted for the appellant is that it is trite law that if an issue is raised suo motu, the Court must give the parties the opportunity to make input before it can come to a decision on the point or issue so raised and failure to do so will lead to the setting aside of a decision
H emanating from such an issue on appeal. He referred to Ovewole v Akande (2009) 15 NWLR (Pt. 1196) at 148.

Learned counsel for the respondents submitted that it is settled law that where the evidence adduced before a trial court is docu-

mentary and not based on the demeanour or credibility of witnesses, an appellate court is in as good position as the trial court to evaluate such documentary evidence and draw necessary inferences from it, which is what occurred here in the matter of the accrual date from 1981 to 1986 which the Court of Appeal accepted to be the right date. He relied on *Ishola v Union Bank of Nigeria Ltd.* (2005) 6 B NWLR (Pt. 922) 422 at 443; *Shell BP v Pere Cole & Ors* (1978) 3 SC 183 at 194, *Awovaie v Ogunbiyi* (1986) 2 NWLR (Pt. 24) 626 at 634.

Learned counsel for the appellant contended that a cause of action accrues when the act of the defendant gives the plaintiff a cause to complain and a negotiation for peaceful resolution does not prevent or stop the period of limitation stipulated by a statute from running. He cited *Shell Petroleum Dev. Co v Farah* (1995) 5 NWLR (Pt. 382) 148 at 186 -187, *Eboigbe v NNPC* (1994) 5 NWLR (Pt. D 347) 649 at 695.

That by the settled facts as contained in the affidavit of the parties and the unchallenged findings of the learned trial judge as regards the date of accrual of cause of action, the actual date of the action is 1981.

Learned counsel for the respondents contended by stating that whether the cause of action of the respondents accrued in 1981 or 1986, the limitation period provided for by the Real Property Limitation Act 1874, does not apply to the present action being an action against the Trustees of the 1st respondent and the appellant herein, who claims through the Trustees for the recovery of the trust property in issue, and for accounts by the trustees of the proceeds of the property still retained by them or converted to their own use. He cited *Ojene v Ojene* (2000) 13 NWLR (Pt 685) 606 at 614; *Adekeye & Ors v Akin Olugbade* (1987) 2 NSCC 865 at 874-875.

The summary of the case put across by the appellant is that the fact that the respondents commenced moves to amicably recover the 1st respondent's property from the 1st and 3rd defendants at the trial Court presupposes that there had been a dispute amounting to an adverse possession by the said defendants against the respondents (plaintiffs). That time did not stop to run for the purpose of limitation of action during negotiation and the commencement of

negotiation by the respondents in 1981 determined the date of accrual of cause of action. That the respondents' claim for account of stewardship and rent from 1959 to 1981 ought to be held to be statute barred having been brought more than 5 years after the accrual of the cause of action and same not being contingent or dependent on the Respondents' claim for title.

The opposing posture of the respondent is that respondents' claim as constituted is not statute barred, the cause of action having arisen in 1986 and not 1981 as rightly found and held by the Court below and even if the cause of action accrued in 1981 as contended by the appellant, it is still not statute barred the action being one against the trustees of the 1st respondent and the present appellant who claims through the said trustees for the recovery of the trust property and for the accounts by the trustees of the proceeds of the said trust property.

The learned trial Judge at page 84 of the record of appeal stated on the matter of the accrued date of the cause of action thus:-
"The applicants are saying that the of action arose In 1981 and that the plaintiffs did nothing until 1994, so they are not entitled to take any action in relation to a title in respect of the land.

I have been urged to refer to "the statement of claim. I have indeed done so, and I found on page 5 paragraph 25 of the said statement of claim, that the plaintiffs did file a case in the High Court here in Jos with file NO.PLD/3306/86 and this case was consequently discontinued. Again In 1994 the plaintiffs returned to court to file the present suit. Could it be said then that the plaintiffs slept over their rights and that Section 3 of Edict No. 16 of Plateau State of 1988 operates against them in respect of their claim.

In my opinion, they have not gone to sleep over their rights considering what I have said above in respect of paragraph 25 at page 5 of the statement of claim. The application based on this point alone has failed".

Mangaji JCA (of blessed memory), at page 157, line 8 to 11 of the record, stated in the Court of Appeal as follows: -

"Now looking at the appeal at hand the learned trial Judge in her ruling dated 2/3/99 appears not to have focused her attention nor made any definite finding about the actual date or year the cause

of action accrued”.

The Court of Appeal at pages 157 to 158 of the Record said:
“But one can discern from the ruling that she subtly accepted the year 1981 as the date of the accrual of the cause of action, At page 98 of the record of appeal, the learned trial Judge in her ruling said inter alia: B

“The applicants are saying that the cause of action arose in 1981 and that the plaintiffs did nothing until 1994, so they are not entitled to take any action in relation to a title in respect of the land. I have been urged to refer to the statement of claim. I have indeed done so, and I found on page 5, paragraph 25 of the said statement of claim, that the plaintiffs did file a case in the High Court here in 30s with file Mo. PLD/3306/86 and this case was consequently discontinued. Again, in 1994, the plaintiffs returned to Court to file the present suit...” C

In my opinion, they have not gone to sleep over their rights considering what I have said above in respect of paragraph 25 at page 5 of the statement of claim”. D

If, as the learned trial Judge appears to have accepted the cause of action arose in 1981, then subsequent findings in respect of the controversy would have been simple. However, the dimension the conflicting affidavit evidence sworn to in support of and the corresponding counter affidavit in apposition to it have disclosed put the question of the date of the accrual of the cause of action a fact the discovery of which should have formed a cornerstone of the ruling. F

This Court has in lots and lots of cases stated and restated the rule that the Court of Appeal will not usually or in the normal course of events interfere with the findings of fact by the trial Judge but the exception is where there is ample evidence that the court of trial failed to evaluate it and make correct findings on the issue, the appellate court is in as much as good position as the trial court to deal with the facts and make the appropriate findings. However, if it turns out that what is in issue turns on the credibility or reliability of witnesses, the course open to the Court of Appeal is to make an order for a retrial. I place reliance on Shell B. P. Learned counsel for the respondents urges the Court to accept that assuming the cause of action accrued in 1981 and not 1986, the cause of action is alive because H

the issue is an action in recovery of trust property and for accounts of the proceeds of the property by the trustees and so cannot be affected by the Limitation Act. I cannot agree more. This is so because by the combined provisions of Section 31(4) of the Real Property Limitation Act 1874 and Section 8 of the Trustees Act 1888, all applicable matter, statutes of limitation neither avail the trustees of the 1st respondent nor the appellant who claims through them in an action against trustees or any person claiming through them were as in this instance/ the claim is founded on any fraud or fraudulent breach of trust to which a trustee was a party or privy or the claim is to recover trust property or the proceeds still retained by the trustees or previously received by the trustees and converted to their use. See Chief Adedapo Adekeye & Ors v Chief O. B. Akin-Olugbade (1987) 2 NSCC 865 at 874 - 875. I cannot resist quoting the dictum of this Court as it seemed to have had the present situation in mind. Adekeye & Ors v Akin-Olugbade (supra) at pages 874 -875 thus:-

“It will be a sad day for our law of property if the doctrine of implied trust is brushed aside and any person who holds the property of another is allowed to set up the statute of limitation against the beneficial owner. One only hopes that day may never dawn.

The trial Judge was wrong in not drawing the inference of an implied trust from his devastating findings of fact against the Alban Pharmacy - the 2nd Defendant, The Court of Appeal was right in rejecting the defence of limitation of action. This ground of appeal therefore fails. Ground 5 deals with the equitable defences Laches, Stale Claims, Standing-by, Acquiescence, etc. In spite of any other procedural defect which chief Williams, SAN pointed out in his Brief - (that these defences though pleaded were not canvassed in the High Court and are thus deemed to have been abandoned: See Shell B.P v Abadi (1974) 1 All N.L.R Pt. 1, Page 16 (lines 27 - 30) - Ground 5 suffers from a radical and intrinsic fundamental vice, How clean are the hands of the 1st and 2nd Defendants who had converted partnership property into their personal use and are still managing or mismanaging same? The rights to be protected in this action are the beneficial rights of the other members of the Partnership against the illegal and inequitable conduct of the 1st and 2nd Defendants/Applicants. Can it be ever said that it has become dishon-

est and unconscionable on the part of the beneficiaries - of the property at No. 128 Broad Street, Lagos to claim their legal entitlement as such beneficiaries? If the answer is No as it is bound to be then, the equitable defence of laches and acquiescence cannot avail the present Appellants. He who comes to equity must first do equity and also come with clean hands. The hands of the 1st and 2nd Defendants are so soiled that equity will close her and her gates on them and refuse them any of her special protection or relief. Also, Section 8 of the Trustee Act 1988 excludes these equitable defences here/the claim is founded (as in the case on appeal) upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his use. B C

See also *Ojeme v Ojeme* (2000) 13 NWLR (Pt.685) 606 at 614 a Court of Appeal decision which went along the same principle as that enunciated in the case earlier cited. Indeed, whether the cause of action arose in 1981 or 1986, the Limitation Act 1874, does not apply to the action of the respondents and the appellant herein, who claims through the trustees for the recovery of the trust property in dispute and for accounts by the trustees of the proceeds of the property still retained by them or converted to their own use. E

I see no basis for going outside what the Court below did fully captured in the lead judgment. I dismiss the appeal and abide by the consequential orders made. F

ARIWOOLA JSC

I have had the privilege of reading in draft, the lead judgment just delivered by my learned brother, Kekere-Ekun JSC and I agree entirely with the reasoning in the said lead judgment that led to the conclusion that the appeal is devoid of merit and be dismissed. I too will dismiss the appeal. G

Appeal is dismissed. H

I abide by the consequential orders arrived at including the order on costs.

AKA’AHS JSC

I had the privilege of reading in draft the illuminating judgment of my learned brother, Kekere-Ekun JSC. She dealt exhaustively with the preliminary objection and the main issues. I agree that the appeal lacks merit and should be dismissed. I too dismiss the appeal. I wish to say something about the preliminary objection.

Learned counsel who filed the preliminary objection contended that the Notice of Appeal was fundamentally defective since “Bende Divisional Union and 16 Others” is not a juristic person who is capable of suing and being sued. I agree that the correct position of the law is that an amendment cannot cure an incompetent process. See: *Nwaigwe v. Okere* (2008) 13 NWLR (Pt. 1106) 445; *Aderibigbe v. Abidoeye* (2009) 10 NWLR (Pt. 1150) 592. It is however incorrect as learned counsel for the respondents argued that Bende Divisional Union Jos Branch and 16 Others are not proper or competent or juristic respondents.

Learned counsel did acknowledge in his brief that Bende Divisional Union Jos Branch *was* registered in 1965. The 16 others are natural persons. Consequently the Notice of Appeal was competent and can be amended by substituting the names of the parties who have died or by deleting their names from the Notice of Appeal. Where the Notice of Appeal is amended, it takes retrospective effect to when the original Notice was filed. See: *Adewumi v. A-G Ekiti State* (2002) 2 NWLR (Pt. 751) 474; *Vulcan Gases Ltd v. Gesellschaft Fur Ltd; Gasverwertung AG* 6 (2001) SSC (Pt. 1) 1.

The appeal is dismissed and I abide with order on costs made in the lead judgment.