

**SUPREME COURT OF NIGERIA**  
MONDAY 13TH JANUARY, 2017. SC. 93/2015  
**CORAM:- M. U. PETER-ODILI, O. ARIWOOLA,**  
**M. D. MUHAMMAD, K. B. AKA'AH,**  
**K. M. O. KEKERE-EKUN, JJSC**

JOB KOLAWOLE BUREMOH ..... APPELLANT  
AND  
ALHAJI ISIAKA AKANDE ..... RESPONDENT

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JURISDICTION - Fundamentality of - Jurisdiction is authority that empowers Court to adjudicate over a matter - And it can be raised orally even for the first time at whatever stage of adjudication (H1)

COURTS - Competence of - Court is competent where inter alia it is properly constituted - Subject matter of action is within its jurisdiction - And action is initiated by due process of the law (H2)

APPEALS - Fresh issue - Raising of - Where fresh issue is raised - Appellate Court must be satisfied that it has all facts of the new issue - And that no explanation could have been given in trial Court if it had been so raised (H3)

ACTIONS - Issues - Determination - Court must avoid determination of substantive issue at interlocutory stage - As it is not proper to make pronouncement capable of prejudging real issue at such stage (H4)

JURISDICTION - Challenge to - Time - A party's resolve to challenge legality of decision of Court given without jurisdiction - Cannot be too late (H5)

APPEALS - Fresh issue - Application to raise - Grant of - The application is granted - As materials the respective parties require to argue and contest the fresh issue - Are readily available (H6)

### **FACTS**

This application was brought before the Supreme Court pursuant to Order 2 rule 28(1), Order 7 rules 4 and 8 of the Supreme Court Rules and under the inherent powers of the Court. Applicant/appellant is seeking for the following reliefs inter alia, an order for extension of time within which appellant may compile and transmit record of appeal, an order deeming the already compiled and transmitted record of appeal as properly transmitted and served, an order granting leave to appellant to raise a fresh issue for the first time before the Court and an order granting leave to appellant to amend his Notice of Appeal by including the fresh issue. The ground for the application is inter alia, that appellant is dissatisfied with the judgment of the Court of Appeal, that the time limited by the Rules of the Supreme Court for the Court of Appeal Registrar to compile and transmit the record of appeal to the Supreme Court has elapsed.

The application is supported by a twenty-six paragraph affidavit sworn to by one Comfort Stephen a clerk in the chambers of appellant's counsel. There are annextures thereto and a further affidavit sworn to by one Olujide Samuel Rotimi Esq., of counsel in the firm of the legal practitioners retained by appellant. The annextures to the affidavit in support of the application are Exhibit A - the judgment of the Court of Appeal delivered on 3rd July 2000 being appealed against, Exhibit B - appellant's original Notice of Appeal, Exhibit C - his proposed additional grounds of Appeal, Exhibits D & D1 - his medical report, Exhibit E - the schedule of Amendment in respect of appellant's Notice of Appeal, Exhibit F - his proposed amended Notice of Appeal and finally, the written address in support of appellant's application. In opposing the application, respondent relies on his thirty-three paragraph counter-affidavit deposed to by one John Ayodeji Esq., a Research Assistant in the law firm retained by respondent as well as the written address. Respondent urged the Court to dismiss the application.

### **ISSUE FOR DETERMINATION**

*"Whether this Honourable Court ought to grant this appli-*

*cation considering the circumstance of this case.*

**HELD** (Unanimously granting the application per MUHAMMAD JSC)

*JURISDICTION - Fundamentality of*

**1. The place of jurisdiction in the adjudication process cannot be over-emphasized. The fundamental nature of jurisdiction explains the various descriptions given to it by jurists and the Courts themselves. Jurisdiction has thus variously been described as the life blood, the fiat, the stamp of authority which necessarily enures to the Court or tribunal and empowers either to adjudicate. Learned applicant's counsel is right in his submission that the fundamental nature of the issue of jurisdiction underscores the liberty allowed in competently raising it even orally and for the first time by any of the parties or the Court suo motu at whatever level in the adjudication process. (p. 106 F)**

*COURTS - Competence of*

**2. A Court is only competent to assume jurisdiction in respect of any matter if:-**

**(a) It is properly constituted with respect to the number and qualification of its members.**

**(b) The subject matter of the action is within its jurisdiction.**

**(c) The action is initiated by due process of the law and**

**(d) Any condition precedent to the exercise of its jurisdiction must have been fulfilled. (p. 107 E)**

*APPEALS - Fresh issue - Raising of*

**3. Learned respondent counsel must be reminded of certain principles that are very relevant in the determination of applicant's motion. Firstly, there are criteria for determining the applicant's motion seeking leave to raise**

**a fresh issue not raised at the two lower Courts which this court dwelt on in too many of its decisions.**

***Idigbe, J.S.C, in Fadiora v. Gbadebo 1 L.R.N. 97, 108 touched on the other points which this Court takes into consideration. The learned and revered late Justice said***

***However, the law is that where a point of law which has not been taken in the Court below has been put forward by an appellant for the first time in a Court of appeal that Court ought not to decide in his favour unless it is satisfied beyond reasonable doubt-***

***(a) That it has before it, all the facts bearing on the new contention as completely as if it has been raised in the lower Court (i.e. Court of first instance) and***

***(b) That no satisfactory explanation could have been given in the Court below if it had been so raised.***

**(p. 108 B/F)**

**E ACTIONS - Issues - Determination**

**4. Secondly, a Court must avoid the determination of a substantive issue at the interlocutory stage. It is never proper for a Court to make pronouncement in the course of interlocutory proceedings on issues capable of pre-judging the substantive issues before the Court. Interlocutory applications, which applicant's motion is, must remain the handmaid and aid that enable the Courts reach the ultimate goal of doing substantial justice between the parties in the real issues in litigation between the parties. (p. 109 B)**

**JURISDICTION - Challenge to - Time**

**5. A party's resolve to challenge the legality of the decision of a Court given without jurisdiction cannot be too late. It is either the Court has jurisdiction or it does not. In the case at hand, therefore, learned respondent counsel's contention that the motion be refused because of**

***the applicant's failure to explain the inordinate delay for the application is accordingly legally incorrect.*** (p. 109 E)

*APPEALS - Fresh issue - Application - Grant of*

***6. Lastly, I am satisfied that the materials the respective parties require to argue and contest the issue the applicant seeks to raise in his appeal are readily available. It is for all these reasons that I find merit in the application and grant same terms. Consequently an order is hereby made:***

***1. Extending time within which the Appellant/Applicant may compile and transmit the Record of Appeal in this case to this Court.***

***2. Deeming the already compiled and transmitted Record of Appeal as properly transmitted and served.***

***3. Granting leave to the Appellant/Applicant to raise for the first time before the Supreme Court fresh issue on the application of the Limitation Law to the case of the Respondent pursuant to the provision of Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006.***

***4. Granting leave to the Appellant/Applicant to amend his Notice of Appeal by including the fresh issue on the application of Limitation Law to the case of the Respondent pursuant to the provisions of the Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006 on the one hand and to harmonize and amend all existing grounds of appeal with the inclusion of particulars on the other hand as per the attached schedule of Amendment and proposed Amended Notice of Appeal and***

***5. Granting leave to the Appellant/Applicant to appeal against the decision of the Court of Appeal, Ilorin Division in Appeal No: CA/IL/70/1999 on grounds other than law alone.*** (p. 109 F)

**NOTABLE POINT OF INTEREST**  
**KEKERE-EKUN JSC**

***1. Limitation law – Effect of***

The effect of a limitation law on a cause of action is that it removes the right of action, the right of enforcement and the right to judicial relief. In other words an action filed outside the limitation period renders the action unenforceable. In effect, where an action is statute barred, the Court will lack jurisdiction to entertain it. (p. 118 G)

**REPRESENTATION**

Akin Akintoye II with Gbenga Oyewole, Esq., For the Appellant/  
applicant  
J. S. Bamigboye, SAN with T. A. B. Oladipo and J. S. Muhammad,  
for the Respondent

**CASES REFERRED TO**

- Long John v. Blakk (1998) 6 NWLR (pt. 555) 524
- Adelaja v. Alade (1994) 7 NWLR (pt. 358) 537
- Niwa v. Shell Petroleum (2011) 1 SCNJ 212
- Ede v. Mba (2011) 121 SCNJ (pt. 1) 147
- Abake v. Odunsi (2013) All FWLR (pt. 697) 659
- Arubo v. Aiyeleru (1993) 2 SCNJ 90
- Okwaranoni v. Mbadugha (2014) All FWLR (pt. 728) 914
- Oloriegbe v. Omotosho (1993) 1 SCNJ 30
- Ukwu v. Bunge (1997) 8 NWLR (pt. 518) 527
- Famu v. Kassim (2013) All FWLR (pt. 674) 39
- Bank of Baroda v. Merchantile Bank Ltd (1987) 6 SCNJ 165
- Oloriode v. Oyebe (1984) 5 SC 1
- Katto v. CBN (1991) 11-12 SC 176
- Lado v. CPC (2011) 12 SC (pt. III) 113

**STATUTE & RULES REFERRED TO**

- Supreme Court Act 1960, s. 31
- Supreme Court Rules 2005, O. 2 r. 28(1), O. 7 rr. 4 & 8

**LEAD JUDGMENT BY MUHAMMAD JSC**

By his motion on notice pursuant to Order 2 Rule 28(1),

Order 7 Rules 4 & 8 of the Supreme Court Rules and under the inherent powers of this Court filed on 22nd April 2015, the appellant applicant seeks the following six reliefs:-

*"1. An Order of this Court extending time within which the Appellant/Applicant may compile and transmit the Record of Appeal in this case to this Court.*

*2. An Order deeming the already compiled and transmitted Record of Appeal as properly transmitted and served.*

*3. An Order of this Honourable Court granting leave to the Appellant/Applicant to raise for the first time before the Supreme Court fresh issue on the application of the Limitation Law of the case of the Respondent pursuant to the provision of Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006.*

*4. An Order of this Honourable Court granting leave to the Appellant/Applicant to amend his Notice of Appeal by including the fresh issue on the application of Limitation Law to the case of this Respondent pursuant to the provisions of the Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006 on the one hand and to harmonize and amend all existing grounds of appeal with the inclusion of particulars on the other hand as per the attached Schedule of Amendment and proposed Amended Notice of Appeal.*

*5. An order of this Honourable Court granting leave to the Appellant/Applicant to appeal against the decision of the Court of Appeal, Ilorin Division in Appeal No:Ca/IL/70/1999 on grounds other than law alone.*

*6. And for such further order(s) as this Honourable Court may deem fit to make in the circumstance of this case"*

The application is premised on the following grounds:-

*"1. The Appellant/Applicant being dissatisfied with the judgment of the Lower Court delivered on 3rd July, 2000, filed a Notice of Appeal against the judgment on 10th July, 2000 and additional grounds of appeal filed on 21st September, 2000.*

*2. The time limited by the Rules of the Court for the Lower Court Registrar to compile and transmit the Record of Appeal to this Court has lapsed.*

3. *The Appellant/Applicant could not meet the demand of funds charged by the Registry of the Lower Court to compile and transmit the Record of Appeal; hence, it could not be so compiled within time.*

B 4. *The judgment of the Lower Court was executed after the dismissal of the Appellant's application for stay of execution.*

5. *Following the execution of the judgment, the Appellant/Applicant's business office on the land in dispute was demolished and he was evicted. This greatly attended the Appellant/Applicant's*  
C *finance, mental being and family life.*

6. *When the business of the Appellant/Applicant which was then worth Ten Million Naira (N10,000,000:00) suffered set back and collapsed the Appellant/Applicant was Psychologically affected and could not even meet the immediate needs of his family which*  
D *eventually affected his state of health. This lasted for about eight years.*

7. *It was well-wishers and family members who ore sympathetic to the plight of the Appellant/Applicant that made funds available to ensure that the Registry of the Lower Court compile and transmit the Record of Appeal and prosecute the Appeal. This was*  
E *after the Appellant started recovering from his ill health.*

8. *The funds to compile the Record of Appeal were to be made available to the Appellant/Applicants former counsel, Prince*  
F *(Dr.) J. O. Ijaodola, but he fell ill and eventually died in 2013. His ailment lasted for at least four years (2009-2013) before his death.*

9. *The Appellant/Applicant subsequently briefed another firm of solicitors - Messrs, D. Akin Akintoye & Co - who agreed to*  
G *prosecute the case Pro bono for the Appellant/Applicant after payment of all Court, travelling and filing expenses.*

10. *That the Record is now ready and has been transmitted to and before this Court.*

11. *The new Counsel saw the need to raise a fresh issue of*  
H *jurisdiction which does not require calling evidence and to harmonize all the existing grounds of appeal with the addition of particulars, hence the need to amend the Appellant/Applicant's Notice of Appeal before the Court.*

12. *Some of the existing grounds of appeal in the Appellant/Applicant's Notice of Appeal raise issues other than law alone for which leave of this Court is required.*

13. *The grounds of appeal raise substantial and recondite issues of law capable of a positive determination of the appeal in favour of the Appellant/Applicant.* B

14. *The delay in compiling and transmitting the Record of Appeal and in bringing this application is not deliberate.*

15. *If this application is refused, the entire and life long investment and business enterprise of the Appellant/Applicant would be lost with no other means of resuscitating same and no opportunity to exercise his constitutional right of appeal.* C

16. *This Court is the only Court with powers to possibly remedy the position and plight of the Appellant/Applicant if his appeal succeeds.* D

17. *The grant of the application will serve the interest of justice.*

18. *The Record of Appeal transmitted to this Court on 15th February, 2015 will be relied upon,* " E

The application is supported by a twenty-six Paragraph affidavit sworn to by Comfort Stephen a clerk in the chambers of applicant's counsel, the annexures thereto and verified therein and a further affidavit sworn to by Olujide Samuel Rotimi Esq. of counsel in the firm of the legal practitioners retained by the applicant. The annexures to the affidavit in support of the application are: Exhibit A, the judgment of the Court of Appeal delivered on 3rd July 2000 being appealed against, Exhibit B appellant's original Notice of Appeal, Exhibit C, his proposed additional grounds of Appeal, Exhibits D & D1 his medical report, Exhibit E the schedule of Amendment in respect of applicant's Notice of Appeal, Exhibit F, his proposed amended Notice of Appeal and finally, the written address in support of Appellant/Applicant's motion. F G

The respondent relies on his thirty-three Paragraph counter affidavit deposed to by John Ayodeji Esq. a Research Assistant the law firm retained by the respondent as well as the written address opposition to the applicant's motion. H

The issue formulated by the Appellant/Applicant's as having arisen and on the basis of which his motion will be determined reads:-

*"Whether this Honourable Court ought to grant this application considering the circumstance of this case."*

B In arguing the motion, learned applicant's counsel submits that the grounds and affidavit in support of the applicant's motion contain cogent facts and reasons why it should be granted. Prominent among these facts is appellant/applicant's resolve to raise the  
C fundamental issue of jurisdiction which the law allows him to do even this Court for the first time. The issues raised in appellant/applicant's proposed amended notice of appeal, it is further submitted, are substantial as their determination will finally lay to rest the vexed issue of the ownership of the land in dispute. Relying  
D inter-alia on Long John v. Blakk (1998) 6 NWLR (Pt 555) 524 at 542, Adelaja V. Alade (1994) 7 NWLR (pt 358) 537 at 545, Niwa v. Shell Petroleum (2011) 1 SCNj 212, Ede v Mba (2011) 121 SCNj (Pt 1) 147 and Abake v. Odunsi (2013) ALL FWLR (Pt  
E 697) 659, learned appellant/applicant's counsel urges that the application be granted.

Replying, learned respondent counsel contends that with time having expired for the applicant to seek leave, the omission of a prayer for extension of time within which to seek the necessary  
F leave the prayers urged on the Court renders the entire application incompetent. Learned counsel relies on the decision in Mr. Victor Adekan V. Elu Line Nv (2006) 5 SCNj 137 at 145 and Bolex Enterprises Nig Ltd V. Incar Nig Plc (1997) 7 SCNj 194. The issue  
G of jurisdiction the applicant asserts is a fresh one it further argued, had been raised and determined at the trial Court. It pertains to the limitation Placed by the Public Officers' Protection Law on the respondent suing the Kwara State Governor which the applicant aligned himself with. The applicant never appealed against the  
H ruling on the objection even after the trial Court's final judgment delivered on 4th March 1998. Findings of fact not appealed against, learned respondent counsel submits, subsists. Commending the decisions Chief Karimu Ajayi Arubo V. Fatai Ayinla Aiyeleru (1993)

2 SCNJ 90 at 102 and Okwaraojinaka Okwaranoni v. Ibeke Mbadugha (2014) ALL FWLR (pt 728) 914 at 932 and Alhaji Raimi Oloriegbe v. J. A. Omotosho (1993) 1 SCNJ 30 at 40, learned counsel submits that only a refusal of applicant's motion will estop him from resuscitating a matter long after it had been decided and settled. The applicant, it is urged, must not have the luxury of litigating his cause piecemeal. B

Further responding, learned counsel submits that with applicant's motion coming more than fifteen years after the lower Courts judgment being appealed against instead of the three months the law allows same to be brought, the applicant is manifestly guilty of inordinate delay Not having provided cogent reasons for the delay, learned counsel submits, applicant is not, on the authorities, entitled to the reliefs he seeks. It will be burdensome, oppressive, unfair and unjust to the respondent for the applicant to be allowed to appeal against the lower Court's judgment that had long been executed. The relief the applicant seeks, it submitted, never granted as a matter of course. In the absence of credible and convincing reasons for the delay the application is unmeritorious and, prays respondent counsel, should be dismissed. Inter-alia learned counsel refers in support of his submissions to Ukwu V. Bunge (1997) 8 NWLR (Pt 518) 527 at 543, Tunde Adeoye Famu v. Chief (Mrs.) Olutunde Abike Kassim (2013) ALL FWLR (Pt 674) 39 at 70, Bank of Baroda & Anor V. Merchantile Bank (Nig) Ltd (1987) 6 F SCNJ 165 at 173. D E

Now, the facts on which parties rely for and against the application are as contained in their respective affidavits and the annextures thereto. F

Paragraphs 2, 3, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 25 of the supporting affidavit to applicant's motion being germane to our understanding of the issues the application raises, are hereinunder reproduced:- G

*"2. That I was dissatisfied with the judgment of the Lower Court delivered against me on 3rd July, 2000 and I through my former Counsel (Prince J.O. Ijaodola) filed a Notice of Appeal against the judgment on 10th July, 2000 and additional grounds H*

*of appeal filed on 21st September, 2000. Copies are attached as Exhibits A, B and C respectively.*

*3. That I applied to the Registry of the Lower Court to compile and transmit the Record of Appeal within time.*

B *10. That when my business suffered a great set back, I was psychologically affected and could not even meet the immediate needs of my family and which eventually affected my state of health adversely. This lasted for eight years (2002-2009).*

C *12. That in the year 2010, precisely on 29th July, my wife, Rebecca Bosede Buremoh who has two children for me (a girl and a boy - my only son) abandoned me and left with my two children as a result of my financial incapacitation and deteriorating health.*

D *13. That the two successive unfortunate incidences above devastated me beyond description and almost led me to untimely death.*

E *14. That by the time I recovered from my ill health some well-wishers and family members who are sympathetic to my plight and who saw me as someone desirous to prosecute this appeal on the merit, made funds available to ensure that the Registry of the Lower Court compile and transmit the Record of Appeal and prosecute the appeal.*

F *15. That the said funds were to be made available to my former Counsel, Prince (Dr.) J. O. Ijaodola but he fell ill and eventually died in February, 2013. His ailment lasted for the last four (4) years (2009-2013) before his death.*

G *16. That I was able to retrieve my file from the Chambers and house of my former counsel after 18 months of his death and therefore briefed a new Counsel, Mr. Akin Akintoye II, who agreed to prosecute the appeal pro bono after payment of all Courts, travelling and filing expenses.*

H *17. That the Record is now ready and has been transmitted to this Court on 15th February, 2015.*

*18. That my said Counsel told me in his office on 27th February, 2015 and I verily believed him that he saw the need to raise a fresh issue on jurisdiction which does not require calling evi-*

*dence. He also said there is need to harmonize all the existing grounds of appeal and include particulars of them, the need to amend my earlier Notice of Appeal before the Court.*

20. *That some of the grounds in my Notice of Appeal also raise issues other than law alone for which leave of this Court is said to be required by my new Counsel - Mr. Akin Akintoye II.* B

21. *That I was informed by Mr. Akin Akintoye II and I verily believe him that the grounds of appeal raise substantial and recondite issues of law capable of a positive determination of the appeal in my favour.* C

22. *That the delay in compiling and transmitting the Record of Appeal and in bringing this application is not deliberate.*

23. *That if this application is refused, my entire and lifelong investment and business enterprise would be lost with no opportunity to resuscitate it and exercise my constitutional right of appeal to the fullest.* D

24. *That I have approached this Court as the only Court with power to possibly remedy my position and plight in the event that I succeed in this appeal.* E

25. *The grant of my application will serve the interest of Justice.* (Underlining supplied for emphasis).

Paragraphs 4, 5, 6, 7, 8, 9, 10, 13, 17, 18, 24, 25, 26, 30, 31 and 32 averred to in respondent's counter-affidavit in opposition to the foregoing paragraphs in the affidavit in support of applicants motion are hereinunder reproduced for their relevance:- F

4. That this suit was instituted against the Applicant at the High Court of Kwara State, Ilorin by a Writ of Summons filed on 15/5/92 but issued on 21/9/92, 23 years ago. G

5. That in the Course of trial at the High Court, Ilorin, the Governor of Kwara State was joined as the 2nd Defendant in the suit.

6. That the Governor of Kwara State as 2nd Defendant raised the issue of statute of limitation against the competence of the suit, and by way of a preliminary objection sought a striking out of the suit. H

7. That the then Counsel to the Applicant late Mr. B. O.

Odejayi forcefully aligned himself with the submission of the Counsel to the Governor, and urged the Court to hold that the action is statute barred against both Defendant, i.e. inclusive of the Applicant.

B 8. That the trial judge on the 7th November, 1996 delivered a considered ruling in which he struck-out the Governor of Kwara state as a party, and held no statute of limitation barred the suit against the Applicant, and in consequence the case proceed to judgment against the Applicant. A copy of the judgment made out C from pages 77-87 of the Applicants produced record of proceedings is herein attached as Exhibit A.

D 9. That the Applicant did not appeal against the ruling, and there is nothing in the limitation law of Kwara State which the Applicant is seeking to raise as a fresh issue that could not have been raised in the objection leading to the ruling in Exhibit A.

E 10. That the Applicant appealed within time against the final judgment of the High Court, Ilorin to the Court of Appeal, Ilorin, and I know that judgment was delivered by the Court of Appeal, Ilorin on the 3rd July, 2000, 15 years before this application, in which the Applicant's appeal was dismissed in its entirety, while the cross-Appeal of the Respondent succeeded in its entirety.

F 13. That the Applicant filed his appeal against the judgment of the Court of Appeal, Ilorin to this Honourable Court timeously on the 10th July, 2000 and filed additional grounds on the 21<sup>st</sup> September, 2000, 15 years ago, and thereafter abandoned the appeal.

G 17. That the present application, 15 years after the time for the compilation of the Record of Appeal had lapsed, and after which the entire land had been fully developed is, I verily believe, unreasonable, oppressive and most unconscionable.

H 18. That the Respondent's title is customary and I verily believe it cannot be assailed by prescription or statute of limitation particularly as the Applicant and his vendor admitted they had constantly been challenged, and his vendor was in fact taken to Court over the land, but he chose to settle out of Court upon his conceding the ownership of the land to the Respondent.

24. That the Respondent informed me in our office during briefing and I verily believe him that it is height of falsehood to say that in September, 2000 the cost of transmitting record of Appeal to the Supreme Court is in the region of N200,000, even now in 2015, 15 years after, I know records are transmitted for less than N150,000 at the highest. B

25. That I know the Applicant very well, and at all times material to this suit he operated commercial transportation plying Ilorin to several towns in the trade name of Blue Cross Express, and I also know he neither suffered mental health issue nor ever C bedridden.

26. That assuming without conceding to the falsehood that the applicant was ill for 8 years spanning 2002-2008, he has not accounted for his failure to compile the record of appeal from 2000-2002 during which period it had lapsed. D

30. That I verily believe that the entire content of the Affidavit in support of this motion are falsehood made up to justify the inordinate, unreasonable delay of the Applicant in pursuing this appeal. E

31. That I verily believe this application is oppressive and will work grave injustice against the Respondent if granted.

32. That I verily believe there are no recondite point of law raised in the Notice of Appeal.

Paragraphs 6, 7, 8, 9, 10, 12, 18, 26 and 27 of applicant's further affidavit support of his application controverting respondent's foregoing averments being relevant are also hereinunder supplied:- F

*"6. That contrary to Paragraphs 7, 8, 9 of the Respondents Counter Affidavit, I know the Appellant/Applicant never at any time raised the issue of statute of limitation, the proper way to raise an issue of statute of limitation is by filing a Notice of Preliminary Objection with an affidavit in its support, which the Appellant/Applicant never did. G*

7. That the objection raised by the Counsel to the Governor at the trial High Court borders on the application of the provision of Public Officers Protection Law to the Governor not on Limita- H

tion Law of Kwara State as misconceived by the Respondent.

8. That contrary to Paragraph 11 of the Respondents Counter Affidavit, I know that the mere alignment of the Appellant/Applicant's then counsel, B. O. Odejayi with the submission of the 2nd Defendant's counsel cannot translate to the Appellant/Applicant to have raised an issue of statute of limitation.

9. That I also know that a fresh issue on this jurisdiction of a Court can be raised at anytime, even when the suit is an appeal, the issue of law in the proposed amended Notice of Appeal (Exhibit F attached to the motion on notice) disclose substantial issue to be tried.

10. That I know that the objection raised by then 2nd Defendant in the suit cannot preclude the Appellant/Applicant from raising a fresh issue on the jurisdiction of the Court.

12. That contrary to Paragraphs 13, 26 and 27 of the respondents counter Affidavit, the Appellant/Applicant never abandoned the appeal and the delay in compiling and transmitting the Record of Appeal was due to his financial incapacity, ill health and the eventual death of Prince J.O. Ijaodola, the Appellant/Applicants former counsel. That the Appellant/Applicant informed me during the briefing in our office and I verily believe him that these three factors cover the period of year 2000 to the time I filed this present application which started immediately the Respondent levied execution of the Appellant/Applicant's land notwithstanding the fact that he was aware of the pending Notice of Appeal and the additional grounds of appeal filed in the year 2000.

18. That the claim that the Appellant/Applicant admitted he had constantly been challenged of his presence on the land is at variance with the Court records. Paragraph 2 of the Appellant/Applicants Statement of Defence at page 20 of the Record, his oral evidence at page 106 of the Record and PW2s oral evidence at page 98 of the Record emphatically shows the Appellant/Applicants denial that anybody ever challenged him over the land before this case was filed in 1992. This issue is on the merit of the appeal itself and does not have anything to do with present application before the Court.

26. That contrary to Paragraph 30 of the Respondent's counter Affidavit, I know that the Appellant/Applicant desires to pursue this appeal timeously but for his ill health, financial incapacity which spanned for several years and the death of his former counsel.

27. That contrary to Paragraphs 31 and 32 of the Respondent's Counter Affidavit, I verily believe the granting of this application will be in the best interest of justice and that there are recondite points of law in the Notice of Appeal to be tried by this Court. B

My lords, given the foregoing averments and the annextures C to the affidavits of both sides, it appears to me that the main grounds on which the applicant predicates his motion have ceased to be contention. The settled facts include: that the appellant/applicant had, on 10th July 2000, timeously appealed against the judgment of the lower Court delivered against him on 3rd July 2000; that D further to his Notice of Appeal, Exhibit B, he also filed additional grounds, Exhibit C, in respect of the very appeal; that the respondent commenced the suit decided in his favour and against the appellant; that the name of the Governor of Kwara State, earlier joined E as the 2nd defendant in the suit, on his preliminary objection pursuant to the Public Officers Protection Law being sustained by the trial Court, was struck out; that the appellant/applicants sickness, evidenced by Exhibits D & D1, impecuniosities and the death of F his former counsel, Dr. J. O. Ijaodola, generally account for the delay in the transmission of the record and prosecution of the appeal; that the applicant having recovered and, on being assisted financially, engaged a new counsel, is desirous of prosecuting his appeal; that some of the grounds applicant's existing Notice of G appeal, not being grounds of law alone, need to be regularized and, most importantly, that the applicant desires to raise the issue of jurisdiction he neither raised at the trial Court nor the lower Court.

Learned respondent counsel has forcefully argued that the H jurisdictional issue the applicant seeks, by leave of this Court, to raise and argue in his appeal, having been raised at and determined by the trial Court, is not a fresh issue. Not having appealed

against the trial Court's ruling on the issue, it is contended, the applicant cannot be allowed to otherwise do so by the grant of his application. I am unable to appreciate learned counsel's arguments.

B Annexed to respondents counter-affidavit in Exhibit B, the ruling of the trial Court of 7th day of November 1996, sustaining the preliminary objection raised by the Governor of Kwara State whose name as a party in the suit was, consequently struck out. The content of Exhibit B particularly at page 10 belies the learned respondent counsels stand with the trial Court's finding thus:-

C *The law is settled, as I pointed out earlier, that the defence of statute of limitation is a complete defence to any action to which it applied. I agree with the submission of learned state counsel for the 2nd Defendant that the Plaintiff ought to have brought the 2nd Defendant in the case for whatever reason he wanted him within*  
D *the period prescribed by the law.*

*I hold that the Plaintiff having failed to bring the 2nd Defendant as party in this case within the period of limitation cannot maintain the action against him. The action is statute barred and*  
E *is to be terminated as against the 2nd Defendant.*

*Lastly the 1st Defendant is sued in this case not as a Public Officer. He is also sued not for any action of his in the discharge of a public duty or execution of any law. He can therefore not avail himself of the prosecution afforded by the 3 months limitation period under the Public Officers Protection Law. (Underlining supplied for emphasis).*  
F

The foregoing finding of the trial Court manifestly speaks for itself.

G ***The place of jurisdiction in the adjudication process cannot be over-emphasized. The fundamental nature of jurisdiction explains the various descriptions given to it by jurists and the Courts themselves. Jurisdiction has thus variously been described as the life blood, the fiat,***  
H ***the stamp of authority which necessarily enures to the Court or tribunal and empowers either to adjudicate. Learned applicant's counsel is right in his submission that the fundamental nature of the issue of jurisdiction***

***underscores the liberty allowed in competently raising it even orally and for the first time by any of the parties or the Court suo motu at whatever level in the adjudication process.*** See Oloriode V. Oyebi (1984) 5 SC 1; Katto V. CBN (1991) 11-12 SC 176; Petrojessica Enterprises Ltd V. Leventis Technical Co Ltd (1992) 6 SC (pt II) 1 and Lado & 43 Ors V. CPC & 53 Ors (2011) 12 SC (Pt III) 113. B

The Kwara State Limitation Law CAP 89 of 1994 the applicant asserts entitles him to raise the jurisdictional issue in the appeal, on being granted leave to add and argue a new ground C thereon, provides in Section 4 thereof as follows:-

*“4 No action shall be brought by any person to recover any land after the expiration of ten years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.* D

Being clear and unambiguous, the section does not brook of any subtle, clever or deviant interpretation. It is an undoubted fetter to the Court’s assumption and exercise of jurisdiction for. See Madukolu v. Nkemdilim (1962) 1 ALL NLR 587. ***A Court is only competent to assume jurisdiction in respect of any matter if:-*** E

***(a) It is properly constituted with respect to the number and qualification of its members.***

***(b) The subject matter of the action is within its jurisdiction.*** F

***(c) The action is initiated by due process of the law and***

***(d) Any condition precedent to the exercise of its jurisdiction must have been fulfilled.*** See also Dangara & Anor V. Usman & 4 Ors (2012) 2 SC (Pt III ) 103. G

Notwithstanding the authorities on the issue of jurisdiction, learned respondent counsel remains unrelenting. If indeed the action that brought about the instant appeal had been commenced *“after the expiration of ten years, from the date on which the right of action accrued to the plaintiff”*, the respondent herein, learned counsel insists that since applicant is guilty of inordinate delay, he H

should be foreclosed from raising the issue of the jurisdiction of the Courts and competence of the suit. He further submits that ex-facie the materials before us do not suggest lack of jurisdiction of the two lower Courts and indeed this Court over the instant matter.

B For all these, it is contended, applicant's frivolous and incompetent motion should be discountenanced. Again, I disagree.

***Learned respondent counsel must be reminded of certain principles that are very relevant in the determination of applicant's motion. Firstly, there are criteria for determining the applicant's motion seeking leave to raise a fresh issue not raised at the two lower Courts which this court dwelt on in too many of its decisions.*** In Salati V. Shehu (1986) 1 NWLR (pt 15) 198 Nnamani JSC (of blessed memory) restated the criteria thus:-

D *"It was the additional prayer to raise a new matter not raised in the three lower Courts that merited closer examination. The attitude of this Court has been that it will not allow a party on appeal to raise a question not raised in the Court of trial or grant leave to*  
 E *a party to argue new grounds not canvassed in the lower Courts except where the new grounds involve substantial points of law substantive or procedural which need to be allowed to prevent an obvious miscarriage of justice. See K. Akpene v. Barclays Bank of Nigeria Ltd. (1977) 1 S.C. 47, Debesi Djukpan v. Rhorhadjor*  
 F *Orovuyovbe & Anor. (1967) 1 All N.L.R. 134, 137; Re Cowburn ex parte Firth, (1881-85) All E.R. 987, 991; Agness Deborah Ejiofodomi v. H.C. Okonkwo (1982) II S.C. 74 at 96-98, 109; United Marketing Co. Ltd. V. Kura (1963) 1 W.L.R. 523. Idigbe, J.S.C,*  
 G *in Fadiora v. Gbadebo 1 L.R.N. 97, 108 touched on the other points which this Court takes into consideration. The learned and revered late Justice said -*

*However, the law is that where a point of law which has not been taken in the Court below has been put*  
 H *forward by an appellant for the first time in a Court of appeal that Court ought not to decide in his favour unless it is satisfied beyond reasonable doubt-*

*(a) That it has before it, all the facts bearing on the*

***new contention as completely as if it has been raised in the lower Court (i.e. Court of first instance) and***

***(b) That no satisfactory explanation could have been given in the Court below if it had been so raised. (See Tasmania (Owners) and Freight Owners v. Smith, etc. City of Corinth (Owners) (1890) 15 App. Cas, 223”*** B

***Secondly, a Court must avoid the determination of a substantive issue at the interlocutory stage. It is never proper for a Court to make pronouncement in the course of interlocutory proceedings on issues capable of pre-judging the substantive issues before the Court. Interlocutory applications, which applicant’s motion is, must remain the handmaid and aid that enable the Courts reach the ultimate goal of doing substantial justice between the parties in the real issues in litigation between the parties.*** See Consortium MC V. NEPA (1992) NWLR (pt 246) 132 and Senator Amange Nimi Barigha V. PDP & 2 Ors (2012) 12 SC (pt. V) 1. C D

***A party’s resolve to challenge the legality of the decision of a Court given without jurisdiction cannot be too late. It is either the Court has jurisdiction or it does not. In the case at hand, therefore, learned respondent counsel’s contention that the motion be refused because of the applicant’s failure to explain the inordinate delay for the application is accordingly legally incorrect.*** E F

***Lastly, I am satisfied that the materials the respective parties require to argue and contest the issue the applicant seeks to raise in his appeal are readily available. It is for all these reasons that I find merit in the application and grant same terms. Consequently an order is hereby made:*** G

***1. Extending time within which the Appellant/Applicant may compile and transmit the Record of Appeal in this case to this Court.*** H

***2. Deeming the already compiled and transmitted Record of Appeal as properly transmitted and served.***

**3. Granting leave to the Appellant/Applicant to raise for the first time before the Supreme Court fresh issue on the application of the Limitation Law to the case of the Respondent pursuant to the provision of Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006.**

**4. Granting leave to the Appellant/Applicant to amend his Notice of Appeal by including the fresh issue on the application of Limitation Law to the case of the Respondent pursuant to the provisions of the Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006 on the one hand and to harmonize and amend all existing grounds of appeal with the inclusion of particulars on the other hand as per the attached schedule of Amendment and proposed Amended Notice of Appeal and**

**5. Granting leave to the Appellant/Applicant to appeal against the decision of the Court of Appeal, Ilorin Division in Appeal No: CA/IL/70/1999 on grounds other than law alone.**

Parties are to bear their respective costs.

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**PETER-ODILI JSC**

I agree with the Ruling just delivered by my learned brother, Musa Dattijo Muhammad JSC and in support of the reasoning I shall make some remarks.

In the motion filed on 22/4/2015, the appellant/applicant prays for the following:

1. An Order of this Court extending time within which the appellant/applicant may compile and transmit the record of appeal in this to this Court,

2. An Order deeming the already compiled and transmitted record of appeal as properly transmitted and served.

3. An Order of this honourable Court granting leave to the appellant/applicant to raise for the first time before the Supreme Court fresh issue on the application of the Limitation Law to the

case of the respondent pursuant to the provision of Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006.

4. An Order of this honourable Court granting leave to the appellant/applicant to amend his notice of appeal by including the fresh issue on the application of Limitation Law to the case of the respondent Pursuant to the provisions of the Kwara State Limitation Law Cap K30, Laws of Kwara state, 2006 on the one hand and to harmonize and amend all existing grounds of appeal with the inclusion of particulars on the other hands as per the attached Schedule of amendment and proposed Amended Notice of Appeal.

5. An Order of this honourable Court granting leave to the appellant/applicant to appeal against the decision of the Court of Appeal, Ilorin Division in Appeal No.CA/IL/70/1999 on grounds other than law alone,

6. And for such further Order(s) as this honourable Court may deem fit to make in the circumstance of this case.

The motion is supported by a 25 Paragraph affidavit deposed to by Job Kolawole Buremoh, the applicant himself and a further affidavit deposed to by Olumide Samuel Rotimi, legal practitioner of the firm representing the applicant and further affidavit deposed to by the applicant.

The respondent opposed the motion with a counter affidavit filed on the 2/10/15 deposed to by John Ayodeji, a research assistant of the legal firm of the respondent.

On the 18th day of October, 2016 date of hearing, learned counsel for the applicant, Akin Akintoye II adopted and relied on his Written Brief in support of the motion.

J.S. Bamigboye adopted respondents reply filed on the 17/10/16 and deemed filed on the 18/10/16

In moving the motion learned counsel for the applicant referred to the documents exhibited to in their affidavit such as the judgment of the Court of Appeal, Notice of Appeal and Additional Grounds of Appeal, Also the medical reports on the appellant's ill health. He submitted that the grounds of appeal complain essentially of the failure of the lower Court to properly evaluate the case

of the appellant/applicant and apply the law to his case. That the burden of proving that the respondent is entitled to the declaration sought which burden was not discharged and the issue of fraud raised by the respondent lacked the necessary particulars and proof that the law required.

B For the applicant was raised a sole issue which is thus:

Whether from facts disclosed in the affidavit in support of this application and the attached annexure marked Exhibits A, B, C and D this honourable Court ought to grant the application of the C appellant/ applicant.

Respondent also raised a single issue which is as follows:

Whether this application on the affidavit evidence and attached Exhibits has made out a favourable exercise of a judicial and judicious discretion.

D Indeed the two issues of the parties are saying the same thing though stated differently and it does not matter which issue is utilized. I shall use that as couched by the respondent.

#### SOLE ISSUE

E Whether this application on the affidavit evidence and attached Exhibits has made out a favourable exercise of a judicial and judicious discretion.

Learned counsel for the applicant submitted that Section 223(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order 2 Rules 28 and Order 7 Rule 4 and 5 of the Supreme Court Rules, 2005 are relevant.

That from the grounds and supporting affidavit the applicant has stated and deposed to cogent reasons/facts why the application should be granted. That all the grounds complained of G the failure of the lower Court to properly evaluate and appreciate the case of the applicant as put before it and the intention of the applicant to raise fundamental issue of jurisdiction before this Court for the first time,

H He further stated that the Proposed Amended Notice of Appeal raise substantial issues to be tried by this Court which resolution of issues will finally lay to rest the vexed issue of ownership of the land in dispute as between the appellant/applicant and the re-

spondent.

That in the exercise of its judicial discretion to extend time within which to take certain procedural steps prescribed by the Rules of Court, substantial justice to the parties has always been the cardinal determinant factor. He cited *Long John v Blakk* (1998) 6 NWLR (Pt. 555) 524 at 542 and a List of Additional Authorities. B

Learned counsel submitted for the applicant that this Court has the discretion to deem the record of appeal as properly compiled and transmitted and grant leave to applicant to amend the notice of appeal and raise for the first time the issue and application of the Limitation Law to the case of the respondent. He cited *Adelaje v Alade* (1994) 7 NWLR (pt. 358) 567 at 545. C

For the respondent learned counsel contended that the decision for which this leave is sought was delivered 15 years before the application as against the three months allowed by law, Section 31 of Supreme Court Act, 1960 that the grounds of appeal are incompetent, the necessary prayers for leave having not been earlier sought. That this has produced a fundamental defect and robs the Court of jurisdiction. He cited *Adelekan v Ecu Line NV* (2006) 5 SCNJ 137 at 145; *Bolex Enterprises Nig. Ltd v Incar Nig. Plc* (1997) 7 SCNJ 194 at 199. D E

That the applicant cannot now competently raise the issue of statute of limitation against which findings he had not appealed to the Court of Appeal even though the matter came up at the trial High Court and so applicant is now estopped to raise the issue of limitation law. He cited *Arubo v Aiyeleru* (1993) 2 SCNJ 90 at 102. F

That the applicant was before and during the pendency of the suit between his vendor and the respondent's family driven away from the land and he stayed away but he returned in 1991 and was sued in 1992. That these are facts found and believed by the trial Court and against which there is no appeal and so those findings subsist He cited *Okwaranoni v Mbadugha* (2014) ALL FWLR (Pt. 728) 914 at 932 etc. G H

He stated on for the respondent that the applicant cannot be permitted to split issues and litigate on them one by one as the

applicant seeks herein on the matter of the Public Officers Protection Law which was raised and decided on the 7th November, 1996 and now come up with the limitation law, referred to *Oloriegbe v Omotosho* (1993) 1 SCNJ 30 at 40.

B That this application is an abuse of Court process as tie judgment was delivered on 3rd July 2000 and this application filed 22nd April, 2015, 14 years and 9 months after.

C Learned counsel for the respondent said the explanations proffered for this long delay in bringing up this application are lacking in substance and should be rejected. He relied on *Oruche v COP* (1997) 4 NWLR (Pt. 497) 1261 etc..

D The main thrust of this application is that the lower Court failed to properly evaluate and appreciate the case of the appellant/applicant as put before it and the intention of the applicant to raise the fundamental issue of jurisdiction before the Supreme Court for the first time. Also the need to amend the notice of appeal and raise for the first time the issue and application of Limitation of Law of Kwara State to the case of the respondent. The explanation proffered by the applicant for the long delay of 15 years plus in making this application anchored on the ill health of the applicant which created difficulties in his business thus hampering funds for compilation and transmission of records. The situation was not helped by the demise of his counsel, Dr. J. O. Ijaodola and the process of retrieving the case file and the procuring of a fresh counsel.

G Indeed the fact that the judgment sought to be appealed against is 15 Years old is a situation that would overwhelm any argument to the contrary such as the appellant/application is pushing forward. However, in this situation where the applicant is crying on the basis that substantial justice is the determinant factor and the matter of jurisdiction is raised in circumstances that cannot be safely ignored. It behoves this Court to take a second look at what really is at stake and if the 15 years plus delay is overriding. All things considered my answer would be an emphatic no. See *Long John v Blakk* (1998) 6 NWLR (pt. 555) 524 at 542; *Adelaje v Alade* (1994) 7 NWLR (Pt. 358) 567 at 545.

H From the foregoing and the well-reasoned lead ruling, I grant

this application. I abide by the consequential orders made.

### **ARIWOOLA JSC**

I was obliged before now with a copy of the ruling of my learned brother, Musa Dattijo Muhammad, JSC just delivered. I am in complete agreement with the reasoning and conclusion that this application has merit and should be allowed. I too will allow the appeal for the same reasoning. B

Appeal is allowed. The application granted in terms. C

I abide by the consequential orders in the said lead ruling including the order on costs.

### **AKA'AH'S JSC**

I was privileged to read in draft the Lead Ruling of my learned brother, Musa Dattijo Muhammad JSC. I am in agreement with my Lord that the discretion of this Court should be exercised in favour of granting the application despite the fact that the application is coming more than fifteen years after the Court of Appeal, Ilorin delivered its judgment in CA/IL/70/1999 on 3rd July, 2000. After judgment was delivered, the Notice of Appeal was filed timeously on 10th July, 2000. The additional grounds of appeal were also filed within time on 21st September, 2000. What delayed the appeal from being heard was the compilation and transmission of records which came about as a result of the vicissitudes that visited the applicant and his former counsel who took ill in 2009 and died in 2013. Although the records were transmitted in 2015, there need to deem the records properly transmitted. D

The applicant is seeking leave to raise and argue a fresh issue bordering on the jurisdiction of the Court that tried the case. In prayers 3, 4 and 5 of the Motion, the applicant praying for -

*“3. An order of this Honourable Court granting leave to the Appellant/Applicant to raise for the first time before the Supreme Court fresh issue on the application of the Limitation Law of the case of the Respondent pursuant to the provision of Kwara State* H

*Limitation Law Cap K30, Laws of Kwara State 2006.*

4. *An order of this Honourable Court granting leave to the Appellant/Applicant to amend his Notice of Appeal by including the fresh issue on the application to the case of the Respondent pursuant to the provisions of the Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006 on the one hand and to harmonize and amend all existing grounds of appeal with the inclusion of particulars on the other hand as per the attached Schedule of Amendment and proposed Amended Notice of Appeal.*

5. *An order of this Honourable Court granting leave to the Appellant/Applicant to appeal against the decision of the Court of Appeal, Ilorin Division an Appeal No. CA/IL/70/1999 on grounds other than law alone”*

Although the respondent opposed the application on the premise that it was incompetent as it was brought way out of time and did not contain the trinity prayers relying on *Bolex Enterprises Nig. Ltd v. Incar Nig Plc* (1997) 7 SCNJ 194 and *Victor Adelekan v. Elu Line NV* (2006) 5 SCNJ 137 at 145 and the fresh issue sought to be raised pertaining jurisdiction had already been dealt with; the applicant should not be indulged the luxury of litigating his cause of action piece meal. He urged this Court to refuse the application because the applicant is guilty of inordinate delay and has not provided cogent reasons for the delay in bringing the application.

The applicant put forward his long period of ill-health and that of his former counsel to explain his delay bringing the application. The fresh issue which the applicant wants to raise is that the action was filed outside the period allowed by law and so statute barred. The effect of the limitation law on the cause of action is that a Court lacks the jurisdiction to entertain the action. This can be raised at anytime even for the first time in the Supreme Court. See: *Salati v Shehu* (1986) 1 NWLR (Pt 15) 198; *A-G. Oyo State v. Fairlakes Hotel Ltd* (1988) 5 NWLR (Pt. 92) 1; *Management Enterprises Ltd v. Otusanya* (1987) 2 NWLR {Pt.55} 179.

Since the applicant has been able to satisfy this Court with the reasons for the delay bringing the motion coupled with the

issue which he intends to raise the appeal which could have an effect on the jurisdiction of the Court which heard the matter at the trial Court, the discretion ought to be exercised in favour of the applicant.

It is for these reasons and the more detailed reasons contained the leading ruling of my learned brother, Musa Dattijo Muhammad JSC that I too found the application to be meritorious and accordingly granted same. B

Application succeeds and it hereby granted. Parties are to bear their respective costs. C

### **KEKERE-EKUN JSC**

I have been obliged before now with a copy of the ruling of my learned brother, MUSA DATTIJO MUHAMMAD, JSC just delivered. I am in complete agreement with the reasoning and conclusion that this application has merit and should be allowed. D

By his motion on notice filed on 22/4/2015 brought pursuant to Order 2 Rule 28(1) and Order 7 Rules 4 and 8 of the Supreme Court Rules and under the inherent jurisdiction of the Court, the appellant/applicant seeks the following reliefs: E

1. An Order of this Court extending time within which the Appellant/Applicant may compile and transmit the Record of Appeal in this case to this Court. F

2. An order deeming the already compiled and transmitted Record of Appeal as properly transmitted and served.

3. An Order of this Honourable Court granting leave to the Appellant/Applicant to raise for the first time before the Supreme Court fresh issue on the Application of the Limitation Law to the case of the Respondent pursuant to the provision of Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006. G

4. An Order of this Honourable Court granting leave to the Appellant/Applicant to amend his Notice of Appeal by including the fresh issue on the application of Limitation Law to the case of the Respondent pursuant to the provisions of the Kwara State Limitation Law Cap K30, Laws of Kwara State, 2006 on the one hand H

and to harmonize and amend all existing grounds of appeal with the inclusion of particulars on the other hand as per the attached Schedule of Amendment and proposed Amended Notice of Appeal.

B 5. An Order of this Honourable Court granting leave to the Appellant/Applicant to appeal against the decision of the Court of Appeal, Ilorin Division in Appeal No: CA/IL/70/1999 on grounds other than law alone.

C 6. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance this case.

D An application of this nature is discretionary. The applicant must place before the Court sufficient material to warrant the exercise of the Court's discretion in his favour. In the instant case such material would include cogent reasons for the delay in compiling and transmitting the record of appeal and the nature of the issue sought to be raised for the first time before this Court. My learned brother has reproduced in extenso the averments in the affidavits deposited to by the parties in support of and in opposition to the application I do not deem it necessary to repeat them. Suffice it to say that I agree with my learned brother that the applicant has given satisfactory explanations for his inability to compile and transmit the record or appeal within the time stipulated by the rules of this Court.

F In addition, the fresh issue to be raised is a jurisdictional one i.e. the application of the Kwara State Limitation Law Cap. K30 Laws of Kwara State 2006 to the dispute between the parties.

G The effect of a limitation law on a cause of action is that it removes the right of action, the right of enforcement and the right to judicial relief. In other words an action filed outside the limitation period renders the action unenforceable. See *Yare vs National Salaries, Wages and Income Commission* (2013) 5 SCNj 406; *Lafia Local Government vs Gov. of Nasarawa State & Ors* (2012) H 7 SCNj 648. In effect, where an action is statute barred, the Court will lack jurisdiction to entertain it.

The settled position of the law is that the issue of Jurisdiction, being so fundamental to the Court's power to adjudicate, can

be raised at any stage of the proceedings, even before this Court. It can be raised orally. It can also be raised suo motu by the Court. This is because, no matter how well the proceedings are conducted or how erudite the judgment arising therefrom, it all amounts to a nullity where the Court lacks jurisdiction. See *Madukolu Vs Nkemdilim* (1962) 1 ALL NLR 587; *Nnakwe Vs The State* (2013) 7 SCNJ 179; *Oloriegbe Vs Omotesho* (1993) 1 SCNJ 30. B

In the instant case, the issue of the failure of the plaintiff (now respondent) to comply with the provision of the Public Officers' Protection Law, which led to the striking out of the name of the 2nd defendant at the trial Court, is a completely different issue from the applicability of the Limitation Law of Kwara State, 2006 to the entire claim. C

I therefore agree with my learned brother that the applicant has placed sufficient material before the Court to warrant the grant of this application. The application filed on 22/4/2015 is accordingly granted as prayed. D

The parties shall bear their respective costs.

E

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