In the Supreme Court of Nigeria

On Friday, the 23rd day of March 2012

Before their Lordships

Walter Samuel Nkanu Onnoghen ..... Justice Supreme Court
Ibrahim Tanko Muhammad ..... Justice Supreme Court
Olufunlola Oyelola Adekeye ..... Justice Supreme Court
Bode Rhodes-Vivour ..... Justice Supreme Court
Mary Ukaego Perter-Odili ..... Justice Supreme Court

SC.421/2001

Between

Goldmark Nigeria Limited ..... Appellants
Electra Holdings Limited
Nigerian Ports Plc
Landgold Holdings Limited

And

Ibafon Company Limited ..... Respondents
Kolawole Abayomi balogun
The Attorney General of the Federation
The Honourable Minister for Transport
The Honourable Minister for Works & Housing

Judgment of the Court
delivered by
Olufunlola Oyelola Adekeye. JSC

This is a further appeal to the Supreme Court by the 1st - 4th appellants against the judgment of the Court of Appeal Lagos Division delivered on the 30th day of March 2000. This judgment affirmed the judgment of the Lagos High Court entered in favour of the 1st - 2nd plaintiffs now 1st - 2nd respondents on the 31st of March 1994.

The appeals lodged by the four appellants were consolidated pursuant to Order of the Supreme Court on 2/2/2009, whereupon the names of the parties as stated on the Motion on Notice dated 25th of May 2006 were adopted.

The parties were re-designated as follows –

1. Goldmark Nigeria Ltd - 1st Appellant
2. Electron Holdings Ltd - 2nd Appellant
3. Nigerian Ports Plc - 3rd Appellant
4. Landgold Holdings Ltd - 4th Appellant

And

1. Ibafon Company Ltd - 1st Respondent
2. Kolawole Abayomi Balogun - 2nd Respondent
3. Attorney-General of the Federation - 3rd Respondent
4. The Minister of Transport - 4th Respondent
5. The Minister of Works & Housing - 5th Respondent

The Federal Government of Nigeria now represented by the Attorney-General of the Federation, the 3rd respondent in this appeal acquired a large tract of land at Ibafon off Apapa-Oshodi Expressway, Lagos through its agencies the Ministry of Transport, Ministry of Works and Housing, the 4th and 5th respondents, in July 1976 by the Public Notice 901 of 22nd of June 1976. The 1st and 2nd respondents, Ibafon Company Limited and Kolawole Abayomi Balogun took a Writ of Summons on the 14th day of August 1990 challenging the acquisition of their land by Public Notice No 901 of the 22nd of June 1976. The beneficiary of the acquisition was the Nigeria Ports Authority now the 3rd appellant in this appeal. The Statement of claim was amended on the 22nd of June 1992.

By the amended statement of claim, the 1st and 2nd respondents claimed before the Lagos State High Court as follows-

1. A declaration that alienation by the 1st defendant to the 5th, 6th, 7th, 8th and 9th defendants and other private business concerns for private business/commercial use of lands acquired by the Federal Government from the plaintiffs on the ground of "public purpose" and the use of these lands by the said defendants and/or other private concerns for their own profit making business/commercial ventures, is not a "public purpose" under the Public Lands Acquisition Act Cap 167 and consequently such alienations are illegal, unlawful, null and void and of no legal effect whatsoever.

2. A declaration that the two parcels of land measuring 2,835 and 1.333 hectare & originally belonging to the 1st and 2nd defendants respectively before the purported compulsory acquisition of the same since June 1976 by the Federal Military Government of Nigeria have ceased to be under any valid legal acquisition and shout automatically revert to the 1st and 2nd plaintiffs, the same having not been used for any public purpose.

3. An order of inquiry/account into the total sum of rents collected so far from the alienation of the said parcels of land by the 1st defendant since June 1976 to the date of judgment and a direction that the said total sum be paid over to the 1st and 2nd plaintiffs in proportion to the respective lands.

4. An order of perpetual Injunction restraining all the defendants either by themselves, their servants, agents and/or privies from further trespassing upon, alienating, transacting business or doing any thin whatsoever in respect of or on the said parcels of land forming the subject matter of this suit.

In the Alternative Only

i. A declaration that the plaintiffs are entitled to compensation for the said acquisition should this honourable court find same to be leg, and

ii. An inquiry as to the amount of compensation payable to the plaintiffs by the 2nd to 4th defendants.

The 1st and 2nd respondents filed a 2nd amended Statement of Claim paragraphs 2-7 read as follows-

2. "By two separate Deeds of lease dated 6th of January 1978 and 20th of January 1976 and registered as No 99 at page 99 in Volume 1794, No 16 in Volume 1806 the land registry in Lagos, the 1st and 2nd plaintiffs respectively became leaseholders for 99 years each of the parcels of land being, lying and situate Ibafon off Apapa-Oshodi Expressway Araromi, Apapa measuring 2.835 hectares and 1.383 hectares and more particularly described in survey plans No KE/L/914 dated 20th May 1976 by Alhaji Y.O. Keshinro Licensed Surveyor and No DB/26/P of 17th January 1976 by Ogunmekan Licensed Surveyor respectively. The plaintiffs shall rely on the said Deed of Lease, survey plan and the two purchase receipts each dated 6th January 1976 at the trial of this suit

3. At all material times, the plaintiffs were in possession of the said parcels of land and have been exercising ownership rights until when by government Notice No 601 of 22nd of June 1976, the Federal Military Government purported to acquire the said parcels of land for public purpose and in particular for the Nigerian Ports Authority took possession of the said lands.

4. No Notice of the acquisitions was ever served on the plaintiffs nor were they given the opportunity of being heard.

5. To the plaintiffs total shock the plaintiffs discovered that rather than use the said lands for its own purposes, the Nigerian Ports Authority has since then leased out the said lands to private individuals and companies particularly the 5th, 6th,7th, 8th and 9th defendants who now use the parcels of land for their own personal businesses such as the selling of sand and other businesses which are totally private and which have nothing to do with the purpose for which the lands were acquired.

6. Upon realizing that the said lands were no longer used for public purposes, the plaintiffs by several correspondents appealed to the 1st, 2nd, 3rd and 4th defendants to release the lands back to the plaintiffs who

needed the lands for their own business purposes rather than leasing them out to other third party businessmen, all to no avail. The plaintiffs shall rely upon all relevant correspondences between the plaintiffs, the plaintiffs' solicitors and the defendants at the trial.

7. The plaintiffs by their solicitors letter dated 26th February 1990 gave notice to the 1st defendant pursuant to Section 97 (2) of the Ports Act Cap 155 Laws of the Federal Republic of Nigeria before commencing this suit."

The 1st - 4th appellants as defendants filed their statement of defence and the 3rd-5th respondents. The case of the 1st and 2nd respondents was that the 2nd respondent purchased two parcels of land from the Oluwa family, the receipts of payment issued were tendered as Exhibits A and B. The parcel of land 2,835 hectares was purchased for the use of his company the 1st respondent which he intended to register at a future date and another 1,333 hectares for himself. He took possession of the land and fenced the entire area. He surveyed the properties in 1978 and beacons were erected on the land. Deeds of leases were executed to cover the parcels of land which were registered at the Lands Registry. They were marked Exhibits A and B and Exhibits C and D. At the time Exhibit A was prepared, the 1st respondent was not incorporated as a company. When Exhibit D was executed, the 1st respondent had been incorporated and it was expressly contracted to ratify and adopt the benefit of the contract incorporated in Exhibit A. The 2nd respondent was in possession of the parcels of land when agents of the 4th and 5th respondents entered the land to demolish the 'walls erected thereon and ejected the 1st and 2nd respondents. The agents claimed that the land had been acquired by the Federal Government. The 1st and 2nd respondents claimed that no notices of acquisition were served on them. The plaintiffs testified that the 3rd-5th respondents through the Nigerian Ports Authority had been employing the land for purposes other than public use; as activities like selling sand, leasing and fishing were carried on there. The 1st and 2nd respondents tendered survey plans in support of their claim to the land in dispute.

The defence of the appellants and the 3rd-5th respondents in a nutshell are: -

1. That by Public Notice 901 Exhibit F, the 3rd - 5th respondents compulsorily acquired the land for the use of the Nigerian Ports Authority in perpetuity. Acquisition was published in the Federal government official gazette No 35 Volume 63 of 8th July 1976.

2. The lands are being used for ports related activities on the areas not presently required by Nigerian Ports Authority like sand dredging and piling which could only be carried out within the area under the control of Nigerian Ports Authority.

3. The claim of the 1st and 2nd respondents are spurious as all the parcels of land in the foreshore of all areas where there are lagoons and seas belong exclusively to the Nigerian Ports Authority.

4. The area in question is land reserved for port development acquired by NPA Plc and as it is the practice in other parts of the world over this land had been laid out into a new industrial layout, the lease the next 13-15 years. The NPA Plc acquired 2,500 hectares as owner for present and future development of the ports.

5. The lands of the 1st and 2nd respondents were part of the land for future expansion of the Nigerian Ports Authority Plc.

6. That the 2nd respondent/4th appellant is also a lease holder over the lands before the acquisition and disputes the plaintiff's claim. It took a lease of the piece of land in 1987.

7. The 1st respondent cannot benefit from Exhibits A and D not being in existence or properly incorporated when they were executed.

8. The trial court should not have proceeded against it having dismissed the respondents' case against the 3rd appellant who is the predecessor-in-title.

The 3rd appellant as 1st defendant, the Nigerian Ports Authority brought a motion on Notice under Order 22 rules 2 and 3 of the Civil Procedure Rules 1972 to dismiss the suit. The grounds for the application were that the 1st and 2nd respondents did not commence the action in compliance with the provisions of Sections 97 and 98 of the Ports Act 1990. The action against the Nigerian Ports Authority was statute-barred not having been instituted within twelve months of the act of acquisition. The statutory pre-action notices prescribed in Section 97 of the Ports Act were not served on the Nigerian Ports Authority prior to the institution of the action. The court took argument and a considered ruling was delivered on the 22nd of March 1991 in which the court struck out the case against the 3rd appellant.

The matter went on to trial without the 3rd appellant the Nigerian Ports Authority. Trial ended on 26th of May 1993. On the 31st of March 1994, the court entered judgment in favour of the 1st and 2nd respondents. The learned trial judge declared that the compulsory acquisition effected by the Federal Government on behalf of the Nigerian Ports Authority was null and void. The 1st and 2nd respondents were the parties vested with title to the property on or before June 1976 when the Notice of acquisition

was purportedly issued. There was no evidence that acquisition notice was served on the 1st and 2nd respondents by the Federal Government agencies; the 4th and 5th respondents. The entry upon the land of the 1st and 2nd respondents constituted actionable trespass for which damages should be awarded. The learned trial judge went further to pronounce that the use of the land as proved before the court does not constitute use for public purpose under the Public Acquisition Act Cap 167. In view of the fact that the act of the appellants constitutes actionable trespass for which damages are payable, trial courts then ordered an account of how much had been collected on- the land which should be paid over to the 1st and 2nd respondents in proportion of their holdings. Vide pages 289-290 of the Record. Though the learned trial judge found that the 1st and 2nd respondents had proved their case and were entitled to an order of perpetual injunction restraining further trespass onto the property but declined to make an order against the appellants and 3rd and 4th respondents so as not to compel the government to legislate on its behalf more so as the lands have been leased out to other people by the appellants.

The 1st and 2nd respondents being dissatisfied with that part of the judgment, by which the court declined to make an order of perpetual injunction against the appellants, filed an appeal to the Court of Appeal. The 7th defendant now 1st appellant filed a cross-appeal on the ground that the High court was in error in entering judgment for the plaintiff/1st - 2nd respondents when the claim against the 1st appellant and its predecessor-in- title had been dismissed on the ground that the action was incompetent.

The 1st appellant; Goldmark Nigeria Limited argued that the Lagos High Court lacked the jurisdiction to entertain the suit after the 26th August 1993. The 2nd appellant; Electra Holdings Limited also filed a cross-appeal on similar ground and further that the acquisition was within the competence of the 4th and 5th respondents and finally that the 1st and 2nd respondents failed to prove that the 2nd appellant was in occupation of the property within their holdings.

The Court of Appeal delivered its judgment on the 30th of March 2000 whereby the appeal of the 1st and 2nd respondents was allowed and the cross-appeals of the 1st and 2nd appellants dismissed. The Court of Appeal held that a dismissal of the action against the 3rd appellant was not a bar to the continuation of the case against the other appellants who derived then title from the 3rd appellant. The Court of Appeal emphasized that from the Amended Statement of Claim, there was no doubt that it is the acquisitior of land by the 3rd - 5th respondents that constitute the substratum of the entire case before the trial High Court. In view of the foregoing findings of the Court of Appeal, the 2nd appellant who did not participate in the proceedings at the Court of Appeal sought leave to appeal as an interested party and was so permitted by the order of court dated the 19th of January, 2004. The 1st, 2nd and 4th appellants filed their appeals to this court against the judgment of the Court of Appeal.

The 1st appellant in the brief filed on 9/11/2010 formulated four issues for determination as follows-

1. Whether the learned justices of the Court of Appeal were right in holding that the Lagos State High Court had jurisdiction to adjudicate over the matter after August 26th 1993.

2. Whether the action against the 1st appellant was maintainable in view of the dismissal of the claim against the 1st respondent/3rd appellant (i.e. NPA) for reasons of the claim being statute-barred.

3. Whether the learned justices of the Court of Appeal were right il upholding the declaration granted in favour of the plaintiffs/1st -2nd respondents in the face of the incontrovertible evidence that the 1st respondent's company was not in existence i.e. had not been incorporated at the time the land was purportedly conveyed to it by Oluwa chieftaincy family.

4. Whether the learned justices of the Court of Appeal were right in granting an order of perpetual injunction against the appellants in substitution for the direction by the learned trial judge that evidence should be adduced on the said issue of compensation.

The 2nd appellant settled two issues for determination as follows –

1. Whether the learned justice of the Court of Appeal were right in holding that the High Court had jurisdiction to continue with the action after the 26th of August 1993.

2. Whether the Court of Appeal was right in holding that the action in the High Court was maintainable against the 3rd appellant (former 1st defendant) and other appellants who all derived their titles from the 3rd appellant (former 1st defendant) notwithstanding the dismissal of the action against the 3rd appellant on the ground that the action against it was incompetent.

The 3rd appellant (interested party) formulated two issues for determination in the following terms -

1. Whether the learned justices of the Court of Appeal were incorrect in holding that the High Court of Lagos State possessed the jurisdiction to continue determination of the action after the 26th of August 1993.

2. Whether the learned justices of the Court of Appeal were incorrect in holding that the action was maintainable against the defendants who were successors-in-title to the 1st defendant (now 3rd appellant), notwithstanding the dismissal of the action against the 1st defendant now 3rd appellant on the ground that the action against it was incompetent.

The 4th appellant distilled three issues for determination as follows –

1. Whether the lower court was correct to have allowed the plaintiffs/1st and 2nd respondents appeal on the grounds of non-service of notice of acquisition contrary to the case put forward by them at the trial court which was based on the allegation of use of the land for a purpose other than public purpose and whether same did not amount to formulating a case for the party different from that put forward by it.

2. Whether the lower court did not err in law when it upheld the decision of the trial court in favour of the 1st plaintiff/respondent despite the fact that the 1st plaintiff/respondent had not yet been incorporated at the time it purportedly acquired interest in the subject matter of this appeal and whether in view of its lack of capacity it was entitled to the service of notice of acquisition.

3. Whether the claims against the 8th defendant/4th appellant was maintainable in view of the dismissal by trial court of the plaintiff/1st and 2nd respondents' claims against the 1st defendant/4th appellant who is the predecessor-in-title to the 8th defendant/4th appellant.

All the respondents distilled four issues for determination as follows -

1. Whether the learned justices of the Court of Appeal were right in holding that the Lagos State High Court had jurisdiction to adjudicate over the matter after 26th August 1993.

2. Whether the action against the 1st appellant was maintainable in view of the dismissal of the claim against the 1st defendant/3rd appellant Nigerian Ports Authority for reasons of the claim being statute-barred.

3. Whether the learned justices of the Court of Appeal were right in upholding the declaration granted in favour of the plaintiffs in the face of the incontrovertible evidence that the 1st defendant company was not in existence (i.e. had not been incorporated) at the time the land was purportedly conveyed to it by the Oluwa Chieftaincy Family.

4. Whether the learned justices of the Court of Appeal were right in granting an order of perpetual injunction against the defendants in substitution for the direction by the learned trial judge that evidence should be adduced on the said issue of compensation.

I intend to be guided by the four issues raised by the 1st appellant for the resolution of this appeal.

Issue One

> Whether the learned justices of the Court of Appeal were right in holding that the Lagos State High Court had jurisdiction to adjudicate over the matter after 26th of August 1993.

The 1st appellant submitted in respect of the foregoing issue that the judgment of the Lagos State High Court which was affirmed by the Court of Appeal Lagos Division was delivered on 31st March 1994. The court ceased to have jurisdiction as from the 26th of August 1993 by the Federal High Court Amendment Decree No 60 of 1991 as amended by date of commencement Order 1993. As at that date, Federal High Court Amendment Decree No 60 of 1991 vested in the Federal High Court exclusive jurisdiction over all Federal Ports Authorities in ports related matters by virtue of Section 7 (1) (g) of the Decree.

While Section 7 (1) (u) of the Decree extended exclusive jurisdiction of the Federal High Court to include -

> "Such other civil or criminal jurisdiction as relate to any matter with respect to which the Federal Government has powers to make law."

The provisions of Section 7 (6) of the Federal High Court amendment Decree 1993 provided that all such cases pending in other courts apart from the High Court coming within the umbrella of Section 7 of the act shall abate and the judge to whom it is pending shall transfer it to the Registrar of the Federal High Court to be heard as a new suit. Though the court had jurisdiction initially it was taken away midstream by Decree No 60 which came into force on 26th of August 1993. The 1st appellant submitted that the Court of appeal was wrong in concluding that the substratum of the entire case was acquisition of the land by the 2nd, 4th and 5th respondents. Whereas the acquisition was on behalf of the Nigerian Ports Authority for the

purpose of delimitation of the port area. The acquisition of land for the Ports Authority is a matter on which the Federal Government has powers to make laws like Public Lands Acquisition Act Cap 167 Laws of the Federation of Nigeria and Lagos 1958.

The 2nd appellant in its submission made reference to the Federal High Court Amendment Decree No 60 of 1991 which was amended and came into effect on 26th August 1993.

Section 7 (1) (g) of the Decree stipulates that –

> "The court shall to the exclusion of any other court have original jurisdiction to try civil causes and matters connected with or pertaining to-
>
> (g) Any admiralty matter, including shipping and navigation on the River Niger or River Benue and their agents and on such other inland waterways as may be designated by any enactment to be an international waterway, all ports including the constitution and powers of the ports authorities for Federal Ports and carriage by sea"

The lower court limited itself to the Statement of claim of the plaintiff to conclude that it is the acquisition of land by the 2nd, 3rd and 4th defendants that constitutes the substratum of the entire case. It is also advisable to see evidence proffered in the statement of defence in determining the issue of jurisdiction. The lower court also failed to advert its mind to the evidence on record which shows that the acquisition of the land in dispute was connected with or pertained to Federal Ports or related to powers of the Ports Authority for Federal Ports. Section 5 (1) of the Nigerian Ports Act No 74 Laws of the Federal Republic of Nigeria 19941 gives the President of Nigeria the power to acquire land on behalf of the Ports authority to enable it exercise its powers to provide adequate port facilities to the public. The issue of compulsory acquisition is secondary or merely incidental to the main issue. The acquisition is for the main purpose of port extension, development and delimitation. The High Court cannot] adjudicate on the ancillary issue while the main issue goes to the Federal High Court. By section 22 (3) of the Federal High Court Act, High Court of Lagos should have transferred the matter to the Federal High Court to be started de novo.
The 2nd appellant cited cases such as *Adeyemi v Opeyori (1976) 9 and 10 SC 31; Nigerian Deposit Insurance Corporation v Central Bank of Nigeria & Anor (2002) 7 NWLR (Part 766) page 272; Barry v Eric (1998) 8 NWLR (Part 562) page 404; Shell Petroleum Development Co. (Nig.) Ltd. v Maxim (2001) 9 NWLR (Part 719) page 541; Zangina v Commissioner of Works Borno State (2001) 9 NWLR (Part 718) page 382; Trade Bank Plc v Benilux (Nig.) Ltd. (2003) 9 NWLR (Part 825) page 416.*

The 3rd appellant submitted on this issue that the Federal High court Amendment Decree 1991 with the date of commencement order as 1993 came into effect on 26th August 1993. Section 7 (j) was re-enacted as Section 230 Constitution (Suspension and Modification) Decree No 107 of 1993 now Section 251 of the Constitution. Section 7 (j) gave the court exclusive original jurisdiction to try civil causes and matters connected with or pertaining to all Federal Ports including the constitution and powers of the port authorities for Federal ports and carriage. The Court of Appeal erred by affirming the jurisdiction of the High Court of Lagos State to entertain the suit after 26th August 1993. The Federal High Court Amendment Decree 1991 Section 7 (j) vested exclusive jurisdiction in Federal ports and ports related matters in the Federal High Court. The court below was absolutely wrong to have relied on the amended statement of the 1st and 2nd respondents to conclude that it is the acquisition of land by the 3rd, 4th and 5th respondents that constitutes the substratum of the entire case. The court below should have looked at the relevant portion of the statement of defence of the defendant before the trial court before deciding on the issue of jurisdiction. The court also did not take into consideration evidence on record like that of Elijah Adesokan Olawunmi and Onyesere Muonye for the defence which demonstrated that such acquisition was for Federal Ports or related to powers of the Ports Authority for Federal Ports. Section 38 of the Nigerian Ports Authority Act No 361 Laws of the Federation 1990 provided for acquisition of land.

The issue of acquisition of land as envisaged by the lower court is secondary or merely incidental to the main issue. The President of Nigeria has the power to acquire land on behalf of the Ports Authority to enable it exercise its power to acquire land on behalf of the Ports Authority to enable it exercise its powers to provide adequate Port facilities to the public. The main issue to be determined here is the development and delimitation of the ports area by the 3rd appellant - the incidental issue is the compulsory acquisition of land for that purpose. The High Court of Lagos State cannot adjudicate on the subsidiary issue while the main issue shall be handled by the Federal High Court. As from the 26th of August 1993, the High Court had ceased to have jurisdiction over matters within the exclusive jurisdiction of the Federal High Court. By Section 22 (3) Federal High Court Act, all such matters should have been transferred from the Lagos High Court to the Federal High Court to be tried de novo.

The 3rd appellant cited cases in support of the legal points raised above such as *Olutola v University of Ilorin (2004) 18 NWLR (Part 905) page 416 at pages 470-471; Mobil Oil (Nigeria) Plc v IAL 36 Inc (2006) 6 NWLR (Part 659) page 146; Adeyemi v Opeyori (1976) 9-10 SC page 31; Nigeria Deposit Insurance Corporation v Central Bank of Nigeria & Anor (2002) 7 NWLR (Part 766) page 272 at pages 296 B-D; Apena v National Union of Printing and Publishing Paper Products (2003) 8 NWLR (Part 822) page 426; Barry & Ors v Eric & Ors (1998) 8 NWLR (Part 562) page 404; Tukur v Government of Gongola State (1989) 4 NWLR (Part 117) page 517.*

The 4th appellant did not raise any issue on the jurisdiction of the Lagos High Court to try this case.

The 1st - 2nd respondents replied that it is not in dispute that Section 7 (u) (1) of the Federal High Court Amendment Act No 50 1991 conferred exclusive jurisdiction on the Federal High Court in

(u) such other civil or criminal jurisdiction as –

(1) relates to any matter with respect to which the Federal Military Government has power to make law.

The public lands acquisition Acts of the Federal Government is not challenged either. What the 1st and 2nd respondents challenged at the trial court is the compliance by the relevant agencies of the Federal Government with the provisions of the Acquisition Act. The 1st and 2nd respondents proved that notice of acquisition which is mandatory under the Act was not served on them. The provisions of Section 7 (u) (1) of the Federal High Court Amendment Act No 50 1991 do not apply to the plaintiff's claim which was illegal acquisition of land by the 1st, 2nd and 4th respondents. The averments of the Interested Party/3rd appellant demonstrated that 1st, 2nd and 4th appellant were put on the land by the 2nd appellant. The defence witness Elijah Adesoken Olawunmi said that the land in question formed part of the land acquired for part of the NPAs barges plans. The evidence from the appellants before the court did not show that any of the 1st, 2nd and 4th appellants dealt in barges

The 1st and 2nd respondents contended that Decree 107 of 1993 is a substantive law which does not have retrospective operation and such will not affect pending legal proceedings so as to deprive the State High Court jurisdiction to conclude the proceedings caught by the Decree.
Consequently, the two respondents submitted that there is no provision in Decree No 107 of 1993 for cases which are pending in the State High Court to have abated. The respondents relied on Section 6 of the Interpretation Act Cap 192 Laws of the Federation of Nigeria 1990. The 1st and 2nd respondents cited cases: *Orthopeadic Hospitals Management Board v Garba & Ors (2002) 14 NWLR (Part 788) page 538; Are v Attorney-General Western Region (1960) SCNLR page 224; University of Ibadan v Adamalekun (1967) NSCC page 210; Colonial Sugar Refining Co. Limited v Irving (1905) AC 369; Obieweubi v CBN (2011) 7 NWLR (Part 247) page 465 at page 497.*

The 3rd, 4th and 5th respondents submitted that the dispute before the Lagos High Court did not in any way concern delimitation of the ports area. The plaintiffs came before the court demanding the return of their land on the ground that it was not validly acquired and that it was not being used for public purpose. Throughout the hearing of the case, the plaintiffs/respondents did not canvass the issue of delimitation of the ports area because nobody canvassed that issue before the court. Therefore the Federal High Court Amendment Decree No 60 of 1991 (date of commencement) Order 1993 which fixed the date of commencement of Decree No 60 of 1991 as the 26th of August 1993 did not apply to this case. Issue one raises the question whether the learned justices of the Court of Appeal were right in holding that the Lagos State High Court had jurisdiction to adjudicate over the matter after the 26th of August 1993.

All the respondents had in their submission amplified that the Lagos State High Court had jurisdiction to continue with this dispute after the 26th of August 1993. The two relevant Decrees connected to this issue are the Federal High Court Amendment Decree No 60 of 1991 which came into force on the 26th day of August 1993 and Decree 107 of 1993 which came into force on the 17th day of November 1993. Both are substantive laws which do not have retrospective operation. This is clearly an issue of jurisdiction. Jurisdiction is defined broadly as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are founded or to the kind of relief sought. The question of jurisdiction of a court is a radical and crucial question of competence because if a court has no jurisdiction to hear and determine a case, the proceedings are and remain a nullity *ab initio* no matter how well conducted and brilliantly decided they might be, because a defect in competence is not intrinsic but extrinsic to the process of adjudication. It is trite law that jurisdiction of a court is determined by the plaintiffs' claim as endorsed in the writ of summons and statement of claim even where a Federal Government Agency is involved. See *Trade Bank Plc v Benllux (Nig) Ltd (2003) 9 NWLR (Part 825) page 466; Onuorah v Kaduna Refining & Petrochemical Co. Ltd. (2005) 6 NWLR (Part 921) Page 393; Gafar v Govt. of Kwara State (2007) 4 NWLR (Part 1024) page 375; Tukur v Govt. Gongola State (1989) 4 NWLR (Part 117) page 517; Adeyemi v Opeyori (1976) 9-10 SC 31; Nkuma v Odili (2006) 6 NWLR (Part 977) page 587.*

Any objection to the jurisdiction of a court can be raised in any of the following situations –

a. On the basis of the statement of claim

b. On the basis of evidence received

c. By motion supported by affidavit setting out facts relied on

d. On the face of writ of summons

e. Where appropriate, as to the capacity in which the action was brought or against whom the action was brought.

See *Nnonye v Anyichie (2005) 2 NWLR (Part 910) page 623; NDIC v CBN (2002) 7 NWLR (Part 766) page 272; Arjay Ltd. v Airline Management Support Ltd. (2003) 2 SCNJ page 148*

In consideration whether the trial court, the Lagos High Court had jurisdiction to have adjudicated on the matter, it is the 1st and 2nd respondents Amended Statement that should be our focus of attention in issue one. In the amended statement of claim of the 1st and 2nd respondent, the government acquisition by Public Notice 901 of 22nd June 1976 of their properties located at Ibafon off Apapa-Oshodi Expressway, Lagos was challenged. The supposed acquisition was executed by the 3rd, 4th and 5th respondents for the benefit of the 3rd appellant/interested person.

The acquisition was challenged on grounds that-

i) No notice of acquisition was ever served on the plaintiffs/1st and 2nd respondents.

ii) The use of the land in particular, its alienation to the 1st, 2nd and 3rd appellants does not constitute a public purpose under the public Land acquisition Act Cap 107 Laws of the federation of Nigeria 1967.

The 1st and 2nd respondents sought declaration that the acquisition was void and for enquiry into damagesand perpetual injunction restraining further trespass.
The two relevant laws came into effect as follows-

1. Federal High Court (Amendment) Decree No 60 of 1991 on the 26th of August 1993.

2. Section 230 (1) of Decree 107 of 1993 came into force on the 17th of November 1993

The 1st and 2nd respondents instituted their action in court in 1990; trial commenced in 1993 and was completed in May 1993 before 26th of August 1993, the commencement date of Decree N instituted their action in court in 1990; trial commenced in 1993 and was completed in May 1993 before 26th of August 1993, the commencement date of Decree No 60 of 1991 and before the 17th of November 1993 commencement date of Decree 107 of 1993, Judgment in the matter was however adjourned to the 31st of March 1994 a date after the commencement of the laws. In effect, the action was part-heard and pending at the Lagos High Court when these laws came into effect. This appeal in hand is on all fours with the case of *Orthopeadic Hospitals Management Board v Garba & Ors (2002) 14 NWLR (Part 788) page 538, (2002) 7 SC (Part 11) page 138.* The High Court of Kano State was about to deliver judgment in Garba's case when the new law transferring and vesting jurisdiction in cases involving the Federal Government and its agencies to the Federal High Court.

Section 7 (u) (1) of the Federal High Court Amendment Act No 60 of 1991 referred to the exclusive jurisdiction of the Federal High Court in-

(u) Such other civil or criminal jurisdiction as (1) relates to any matter with respect to which the Federal Military Government has power to make law.

In the case of *OAMS v Garba (supra)* the Supreme Court concluded that the Decree did not affect the High Court's jurisdiction to conclude and decide the cases pending before it when the Decree was promulgated and came into force. The court in the *OAMB v Garba (supra)* affirmed the Supreme Court's decision in the case *of Are v A-G Western Region (1960) SCNLR page 224* that "unless it affects purely procedural matters, a statute cannot apply retrospectively except when it is made to do so by clear and express terms."

Thus the effect of the words of an amending law or enactment is "in future" and therefore it could not by necessary implication have the effect of putting a stop to proceedings which had already been validly commenced.

In that case, Mohammed JSC held at pages 553-554 that-

> "I agree with the submission of the learned counsel that Decree No107 of 1993 which further amended the jurisdiction of the learned counsel that Decree No107 of 1993 which further amended the jurisdiction of the Federal High Court did not contain any abatement provision. That being so I am of the opinion that the argument of the learned counsel that the abatement provision is impliedly repealed is based on sound reasoning. Decree No 107 of 1993
>
> It was enacted with the sale purpose of restoring and suspending of same and modification Decree 1993 provided for detailed jurisdiction of the Federal High Courts to have abated and I agree that it could be implied that the provision of abatement in Decree 60 of 1991 had been repealed"

In short, a right in existence at the time a new law is passed transferring jurisdiction of one court to another will not be lost. Decree No 107 of 1993 has no retrospective effect as it was a constitutional amendment which was not declared to take effect retrospectively; neither did it contain any abatement provision. It would not affect pending legal proceedings so as to deprive the State High Court jurisdiction to conclude such proceedings. This court went further to clarify the issue of jurisdiction that the law in force or existing at the time the cause of action arose governs the determination of the suit while the law in force at the time of trial based on the cause of action determines the court vested with jurisdiction to try the case. The other case in which this court expound on the foregoing aspect of jurisdiction are-

Olutola v Federal College of Education (Technical) Asaba (2010) 10 NWLR (Part 1201) page 1; Obiuweubi v CBN (2011) 7 NWLR (Part 1247) page 465.

In the case of *Obiuweubi v CBN (supra)* this court held that-

> "For the State High Court to have jurisdiction under Decree No 107 of 1993 the cause of action must arise before the 17th of November 1993 and the trial must also be in progress before the said date. That is to say all part-heard cases in the State High Court before the 17th November 1993 can continue after 17th November 1993 in the State High Court because Decree No 107 of 1993 does not have retrospective operation and in view of Section 6 (1) of the Interpretation Act Cap 192 Laws of the Federation of Nigeria 1990."

Moreover Section 6 (1) of the Interpretation Act Cap 123 Laws of the Federation of Nigeria 2004 makes provision for the effect of repealed enactments which reads-
Section 6 (1). The repeal of an enactment shall not:-

a. Revive anything not in force or existing at the time when the repeal takes effect.

b. Affect the previous operation of the enactment or anything duly done or suffered under the enactment.

c. Affect any right, privilege, obligation or inability accrued or incurred under the enactment.

d. Affect any penalty forfeiture or punishment incurred in respect of any offence committed under the enactment.

e. Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the enactment had not been repealed.

It is clear from the foregoing provision that legal proceedings may be continued as if the enactment has not been repealed. This is strongly in support of the stand of the 1st and 2nd respondents in this case. The trial court and the Court of Appeal affirmed that the case of the 1st and 2nd respondents was all about illegal acquisition of land. That the appellants were put on the land by the 2nd appellant; the Ports Authority hence acquisition was not made for a public purpose but for private gain of the parties involved. The action of the 3rd, 4th and 5th respondents in acquiring the land was declared null and void. The action of the 1st and 2nd respondents is based on a breach of the provisions of the Public Lands Acquisition Act Cap 167 Laws of the Federation of Nigeria 1967. The proviso to Decree No107 of 1993 Section 230 (1) (s) in *pari materia* with Section 251 (1) (s) of the 1999 Constitution which reads –

> "Nothing in the provisions of paragraphs (a), (r) and (s) shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.
>
> The action of the 1st and 2nd respondents based on the foregoing provision can be heard by the State High Court. See *NEPA v Edegbero (2002) 18 NWLR (Part 798) page 29 at page 100."*

I resolve the foregoing issue in favour of the 1st and 2nd respondents.

Issue Two

> Whether the action of the 1st appellant was maintainable in view of the dismissal of the claim against the 3rd appellant - the Nigerian Port Authority for reasons of the claim being statute-barred.

The 1st appellant submitted that the 3rd appellant brought an application before the trial court seeking an order of dismissal of the action against it on the ground that the 1st and 2nd respondents did not in commencing the action comply with the provisions of Sections 97 and 98 of the Ports Act 1990. In the ruling of the court delivered on the 22nd of March 1991, the trial court dismissed the suit against the 1st - 2nd respondents on the grounds that they failed to serve the statutory pre-action notice on the

3rd appellant which is a pre-condition to the maintenance of the action and the fact that the action was brought outside the statutory period of 12 months. The action was declared statute-barred. The contention of the 1st appellant is that in view of the dismissal of the suit against the 1st defendant, the action before the court thereupon became improperly constituted and ought similarly to have been dismissed as against the other appellants who derived their interest in the land in dispute from the 3rd appellant; the Nigerian Ports Authority. The 1st appellant cited cases such as *Permanent Secretary Ministry of Works Kwara State v Balogun (1875) 5 SC Page 59; Chelen Ana v Gaadi Amogo & 3 Ors (1985) NCNLR page 1260; Tyam Bambe & Ors v Alhaji Yusufu Adetunji & 6 Ors (1977) 1 SC page 1; Ajero v Ugorji (1999) 10 NWLR (Part 621) page 1; Military Governor of Ekiti State v Aladeyem (2007) 14 NWLR (Part 1055) page 619.*

The 2nd appellant explained in the submission on this issue that the acquisition of land by the 3rd, 4th, and 5th respondents was for and on behalf of the 3rd appellant.

The 1st and 2nd respondents sued the Nigeria Ports Authority Nigeria Plc and alienation of the land by the 3rd appellant was the subject matter of the 1st relief. The action was dismissed against the 1st and 2nd respondents as they failed to serve the requisite pre-action Notice and the action against them was declared statute-barred. The argument was that once the 3rd appellant was no longer in the matter, the other appellants who derived their title from the 3rd appellant could not be proceeded against on these same claims. The action against them had become improperly constituted and should have been struck out. They ought not to have been put through the rigour of trial with the result that their title was impugned whilst the title of their predecessor remains intact.

The 2nd appellant cited the case of *Permanent Secretary of Works Kwara State v Balogun (1975) NSCC page 290 at page 291.*

The 3rd appellant submitted on this issue that the acquisition by the 3rd, 4th and &5th respondents was done on the behalf of the 3rd appellant, the Nigerian Ports Authority. The action was dismissed against it for being statute-barred. The case was thereafter continued against 1st, 2nd and 4th appellants who derived their title from the 3rd appellant. Once the 3rd appellant was no longer in the action, it could not have been properly constituted against the other appellants without the presence of the 3rd appellant. The decision of the trial court that the acquisition made by the 3rd - 5th respondents on behalf of the 3rd appellant was unlawful was mad behind the back of the 3rd appellant and that offends against the principle natural justice. The 3rd appellant cited cases *Permanent Secretary Ministry of Works Kwara State v Balogun (1975) NSCC 290; Obata of Otan-Aiyegbaju & ors v Adesina & Ors (1999) 2 NWLR (Part 590) Page 163.*

This is the third in the brief of argument of the 4th appellant. The 4th appellant emphasized that it is trite that in civil actions all parties necessary for the invocation of the judicial powers of the court must come before it s as to give the court the jurisdiction to grant the reliefs sought. At pages 90 of the Record, the trial court dismissed the claim of the 1st and 2nd respondents against the 3rd appellant. They proceeded against the 1st, 2nd and 4th appellants regardless of the fact that their predecessor-in-title in respect of the land the 3rd appellant was no longer a party.

In view of the reliefs sought by the 1st - 2nd respondents which was primarily against the 3rd appellant - the suit was not properly constitute: The court should not have proceeded to grant the claims as same affected the interest of the 3rd appellant whose name had been dismissed. No evidence against him should have been entertained or relied on in the judgment. The argument of the lower court at page 928 of the Record to the effect that the action was properly constituted with the presence of 3rd to 5th respondents is of no moment as the 3rd appellant is in legal possession of the acquired land. The 3rd - 5th respondents are just nominal parties to the suit. The other appellants are lessees of the 3rd appellant the reversionary interest on the land resides on the 3rd appellant.

The 1st and 2nd respondents submitted that at the commencement of the action before the Lagos High Court, the suit was dismissed against the 3rd appellant. The 1st and 2nd respondents as plaintiffs failed to serve the necessary pre-action notice on the 3rd appellant or instituted the action within twelve months according to the Ports Act. The order of dismissal made by the court was not on the merits being a procedural objection. Such dismissal not being on the merits would not form the basis for a plea of *res judicata*, The 3rd appellant was only a nominal party to the respondents' action for trespass as people in actual and physical possession of the land. The main parties in the action are the 3rd - 5th respondents who acquired the land in dispute. The respondents were challenging the acquisition of the land by the Federal Government Trespass being an injury to the plaintiff's possession the action could be lawfully maintained against the 1st, 2nd and 4th appellants who were the actual physical trespassers, The 1st - 2nd respondents did not have to join their predecessors-in-title for their respective trespass on the land in dispute.

The 3rd, 4th and 5th respondents submitted that action at the Lagos State High Court was dismissed against the 3rd appellant on the provisions of Section 97 (1) and (2) of the Ports Act Cap 155 Laws of the Federation 361 of Nigeria and Lagos 1958. As the provisions of the Act relate to the Nigerian Ports Authority only, the 1st, 2nd and 4th appellants cannot avail themselves of the dismissal of the case against Nigeria Ports Authority for a number of obvious reasons. The protection is strictly for the person concerned for any act done by that person in the execution of the particular law. The cause of action against the appellants is different. The cause of action of the 1st and 2nd respondents against the 3rd appellant is alienation of the acquired land for private

use by the 1st, 2nd and 4th appellants while the cause of action against these appellants was for trespass alienation of the land subject matter of dispute and making use of same not for public purpose but for private use. The dismissal of the action against the 3rd appellant carried away with it the 1st and 2nd respondents' claim against it.

The cause of action against the other appellants could be adjudicated upon without the 3rd appellant. The decision of the two lower courts made against the 1st, 2nd, and appellants in the absence of the 3rd appellant was proper and in order.

In order to consider this issue, it is necessary to reconsider the claims of the 1st and 2nd respondents in the action before the Lagos High Court. The 1st and 2nd respondents challenged the breach by the relevant Federal agencies the 3rd - 5th respondents of Sections 5 and 9 of the provisions of the Public Acquisition Act 1958. They proved in the trial of the action that notice of acquisition which is mandatory under the act was not served on them. On the 22nd of March 1991 the trial court made an order dismissing the 3rd appellant the Nigerian Ports Authority from the suit. The court I granted that order on the provisions of Section 97 (1) and (2) of the ports Act Cap 155 Laws of the Federation of Nigeria and Lagos 1958. That provision of the Ports Act made it mandatory that an action must b commenced against it within twelve months limitation period and that pre-action notice must be served on the Ports Authority. That provision of the Act is exclusively for the benefit of the 3rd appellant. The Act did not apply to the 1st, 2nd and 4th appellants as it cannot confer any benefits on them. The argument that the action ought not to continue against the 1st, 2nd and 3rd appellants after the 3rd appellant their predecessor-in-title was no longer a party in the action is not tenable either. The action was dismissed against the 3rd appellant for a procedural defect and not on the merits. As observed by the 3rd - 5th respondents the cause of action against these appellants and their predecessor-in-title are quite different. While th1 cause of action against the 3rd appellant was for alienating government acquired land to private companies for their private enterprises, the cause of action against the 1st, 2nd - 4th appellants was for trespass on improperly, acquired land forming the subject matter of the suit. It follows without and shadow of doubt that the dismissal of the 1st and 2nd respondents action against the Nigerian Ports Authority cannot avail the other appellants as the action which took them to court are entirely distinct from that of NPA. The cases of *Permanent Secretary Ministry of Works v Balogun (1975) 5 SC 59 and Chelen Hua v Gaadi Amogo & 3 Ors (1985) HCNLR 1260* cited by the appellants are not on all fours with this appeal as the parties in these suits were brought to court on a single cause of action.

The action in this case challenges the acquisition of the large tract of land including the land of the 1st and 2nd respondents by the Federal Government and its agencies for the benefit of the Nigerian Ports Authority for the expansion of the Nigerian Ports without serving the proper notice and without acquiring the land for public use. The primary parties are the 3rd respondent - the Federal government; 4th respondent the Ministry of Transport and the 5th respondent the Ministry of Works and Housing. The 3rd appellant and the successors-in-title the 1st, 2nd and 4th appellants are Secondary parties. The lower court appreciated this position when it provided in the judgment at pg. 282 lines 18-29 of the Record that-

> "The 1st defendant had been sued by the plaintiffs but had brought a Notice of Preliminary objection that the necessary provisions of the Ports Act Cap 115 of the 1958 Laws, Sections 97 and 98 thereof were not complied with. The action as brought against the 1st defendant was incompetent and this court so ruled. That situation was quite different from the position whereby the necessary parties were not joined. In fact by joining the 3rd defendant the supervising Ministry the 1st defendant the Nigerian Ports Authority had constructive notice which is binding on them. I therefore hold that the 1st defendant had constructive notice and is bound by what affected the 3rd defendant. The court was saying that though the 3rd appellant now joined as person interested was dismissed at an initial stage of the action due to procedural defects raised by it, the 3rd appellant was not prejudiced by the action. The interest was represented by the supervising ministry the Ministry of Transport and all other Federal Government agencies who actualized the acquisition on behalf of the 3rd appellant. The 1st, 2nd and 4th appellants had to remain as parties as they had to defend the claim of the 1st and 2nd respondents for trespass. The suit was still properly constituted in the absence of the 3rd appellant."

The observation of the Court of Appeal is apt in this situation when it held at page 14 of the judgment and page 932 of the Record that -

> "Having held that the purported acquisition was null and void, the interest of the 1st defendant now 3rd appellant in a void acquisition is itself void, it is non sequitur.
>
> No parcel of land passed to the 1st defendant from the acquiring authority - the government particularly the 2nd and 4th respondents."

Subsequently, the action of the 1st and 2nd respondents was maintainable against the 1st, 2nd and 4th appellants in the absence of the 3rd appellant their predecessor-in-title.

Issue Two is resolved in favour of the 1st and 2nd respondents.

Issue Three

Whether the learned justices of the Court of Appeal were right in upholding the declaration granted in favour of the plaintiffs in the face of the incontrovertible evidence that the 1st defendant company was not in existence i.e. (had not been incorporated) at the time the land was purportedly conveyed to it by the Oluwa Chieftaincy Family.

The 1st appellant submitted on this issue that the consequences of non-incorporation of the 1st respondent company at the time of purchase of the land in dispute is that the said purchase is a nullity and the company later incorporated could not adopt or ratify the transaction. This is particularly so as the receipt was issued in the name of Ibafon Company Limited. The 2nd respondent gave evidence and tendered the receipt issued to the first plaintiff company as Exhibit A (see page 436 of the Records). The certificate of incorporation was tendered as Exhibit K1. The 1st respondent bought part of the land in dispute on 6th January 1976 whilst the company was incorporated on 1st September 1977. The transaction is a nullity as pre-incorporation contracts are incapable of confirmation of adoption either by a resolution of the directors or by the company taking benefits under them. The 1st appellant cited two English decisions to strengthen this to wit *Newbome v Sensolid Great Britain Limited (1953) 1 All ER page 708; Re-Empress Engineer Co. (1880) 16 Ch.D 125.*

The transaction recited in Exhibit D is a nullity and was incapable of adoption or ratification by the company when it was subsequently incorporated. There is in fact no evidence that such ratification or adoption ever took place. The Court of Appeal omitted to consider this legal question in the appeal before it.

The 4th appellant submitted that the Court of Appeal failed to consider this issue though it was one of the issues formulated for determination at the lower court. The issue was then raised by the 1st and 2nd appellants. A non-legal or juristic person lacks the capacity to contract. Where a non-legal or juristic person purports to contract such contract will be declared null and void. It was testified during the trial that part of the land was purchased on the 6th of January 1978 by Exhibit A and Exhibit D was contracted to formalize the transaction covered by Exhibit A on 6th of January 1978. It was also on record that a company known as Ibafon Hotels Limited was incorporated on 1st September 1977 and the company later changed its name to Ibafon Company Limited on 16th of June 1980. That company is now the 1st respondent's company. By 6th of January 1976, the 1st respondent had no legal capacity to acquire interest in the subject matter of this appeal. The purported contract entered into on 6th January 1978 in Exhibit D to give effect to Exhibit A is unknown to law. A company cannot take benefit of a pre-incorporation contract neither can it ratify a pre-incorporation contract. Ratification under Section 72 of the Companies and Allied Matters Act 1990 came into force in 1990; it is not applicable to this transaction. There is no corresponding provision for ratification of pre-incorporation contract in the Land (Perpetual Succession) Act, Cap 98, 1958 Laws of the Federation of Nigeria which is the applicable law as at June 1976 when the cause of action arose. The applicable law on the issue of ratification of pre-incorporation contract under the circumstance is the law at the time the company was incorporated. Exhibit D was purported to conclude a transaction which was started by Exhibit A. The 1st respondent came into existence on 16th June 1980 when Ibafon Hotels changed its name to Ibafon Company Limited. The transactions covered by Exhibit A on 6th of January 1976 and 6th of January 1978 both predated the coming into existence of the 1st plaintiff as Ibafon Company Limited on 16th of June 1980. It is legally impossible for the 1st respondent to have entered into those transactions. As regards the land purchased in the name of a non-juristic person and not the 2nd respondent's name - the transaction is void *ab initio* and nothing passed from the lessor to the 1st respondent as it lacked the capacity to contract as at the time it purportedly did. Where a contract is entered into by a non-juristic person such a contract is null and void. The 1st respondent did not prove its title to the land; it was not entitled to the service of notice of government acquisition of the land in dispute. The 1st respondent claimed 2.835 square meters of the land in dispute, whereas it has no legal or equitable interest in the land and therefore cannot challenge the 4th appellant's interest in the land.

The 1st and 2nd respondents replied on issue three that the 2nd respondent gave evidence as PW1 at page 387 of the records as the Chief Executive Office of the 1st respondent. He purchased part of the property in dispute - 2.893 hectares for the benefit of the plaintiff in 1976. The receipt Exhibit A was issued in favour of the 1st respondent. The 1st respondent was incorporated in 1978 as Ibafon Company Ltd. A deed of lease was entered into in 1978 as Exhibit D to adopt the benefits in Exhibit A. The recital of Exhibit D was back-dated to 6-1-76. The basic effect of this transaction is that the 2nd respondent as the chief executive officer of the 1st respondent purchased a plot of land and entered into immediate possession - a receipt was issued. It has acquired an equitable interest in the property that cannot be overlooked save by a bona fide purchaser for value without notice. The 2nd respondent on entering possession erected walls as fence on the property. This is actual notice of his possession to the entire world. This equitable interest arose in 1976 when Exhibit A was executed and continued until the 1st respondent acquired legal right to the land. If the 1st respondent has no legal right under the pre-incorporation contract the 2nd respondent has a right to the property which will ground an action in the terms of the claim before the court. *Ogunbambi v Abowaba* was cited. He was an occupier and one who had an interest in the land. There was no concrete evidence even from the respondents - the supervising authority of the acquisition that the 2nd respondent the occupier of the land was served with notice of the acquisition. The court declared the acquisition void for that reason. On the other hand Exhibit D was executed in favour of the 4th appellant in August 1976. There was no physical or visible sign of possession on the parcel of land when the Federal Government agencies came to the land during the investigation for acquisition. The 2nd respondent acquired interest in the land on the 6th of January 1976 - strengthened by Exhibits A and B and tool immediate possession. The 2nd respondent bought a piece of land for himself - covered by Exhibits B and C to which he acquired an unchallenged right. The equitable interest acquired by the 2nd respondent defeats any interest the 4th respondent might claim through Exhibit D. The 3rd, 4th and 5th respondents submitted that it is not in dispute that Ibafon Company Limited was not yet registered as a corporate entity in

January 1976 when the 2nd respondent obtained two leases one in his own name and one in the name of Ibafon Company Limited. The respondent restated the principle of law that a non-juristic person cannot sue or be sued in any action and any contract entered into with a non-legal or non juristic person is null and void. The 2nd respondent was the actual proprietor of the 1st respondent in January 1976 when he obtained a least in the name of the 1st respondent acting as the agent. The 1st respondent was not a legal entity by then so the presumption is that he intended to enter into the contract with Oluwa chieftaincy family for the procurement of the lease for himself. The Lagos High Court was right to have pronounced the 2nd respondent the owner of the two plots. The 1st respondent with the terms of Exhibit D had entered into a new contract ratifying Exhibit A by Exhibit D - a fresh Deed of lease. The 1st respondent had by Exhibit D complied with the opinion pronounced by the Supreme Court in *Transbridge Company Limited v Survey International Limited (1986) 4 NWLR (Part 37) page 576 at 577* and in *Engineering Enterprises Ltd. v A-G Kaduna State (1987) 2 NWLR (Part 57) page 381*.

The court is urged to resolve this issue in favour of the 1st and 2nd respondents. The position is clear that when the 2nd respondent purchased the two plots of land from Oluwa family, he contemplated keeping the smaller plot for his own use and the larger portion for his company - the Ibafon Hotels Ltd - which now transformed as Ibafon Company Limited. The 1st respondent was not yet registered as a corporate entity in January 1976 when the 2nd respondent purchased the lands. On the payment of the appropriate amount of money the Oluwa family the original owners of the land released the plot to him after issuing him the requisite receipts. The 2nd respondent took physical possession of the plots by erecting fence on the land. He collected two receipts Exhibits A and B. In 1978 the 2nd respondent entered into a fresh contract, a Deed of Lease, Exhibit D so as to enable the 1st respondent to take benefits of the land. The 1st respondent was then registered as Ibafon Company Limited. The recital of the deed of lease indicates that the date of commencement was 6/1/76. The certificate of incorporation of 1st respondent was tendered as Exhibit K. The recital of Exhibit D reads -

> "And whereas the lessee hath earlier negotiated for and the lessor had duly earlier leased out the said hereditament hereinafter intended to be claimed to the lessee subject to the under mentioned terms and conditions but at that time no proper deed of lease was ready for execution by both parties."

The foregoing ratified the contract of the 1st respondent with entering into a fresh contract by the Deed of lease Exhibit D. The germane question is whether by the lease Exhibit D can now adopt or ratify the incorporation contract. Section 72 of the Company and Allied Matters Act which condones this view did not come into operation until 1990. There was no known law prior to 1990 - to cover the period the 1st respondent entered into the contract in 1976. The trial court confirmed that with the ratification in Exhibit D - the 1st respondent had established a proprietary interest in the parcel of land. The court supported this view with the cases decided by this court *Transbridge Company Limited v. Surrey International Limited (1986) 4 NWLR (Part 37) pages 576-577; Engineering Enterprises Ltd. v A-G Kaduna State (1987) 2 NWLR (Part 57) Page 381.*

It is not disputed that the 2nd respondent is the owner of the 1st respondent Ibafon Company Limited. The 2nd respondent testified before the trial court to that effect -

> (1) "I am the CEO of the 1st plaintiff. It was incorporated in Lagos State under the Companies Act. It was incorporated in 1977. I am not here with the certificate."

The 2nd respondent as the owner of the 1st respondent bought two plots of land. He paid the required amount to the family - took possession, surveyed the land, erected his beacons on the land. These acts of possession were confirmed by the Federal Government agencies who effected the compulsory acquisition.

What is important to this appeal is whether notice of acquisition was served on the occupier of the property for the purpose of acquisition.

Who can be adjudged the occupier in this case as between the 1st and 2nd respondents and the 4th appellant? The 4th appellant also traced his root of title to Oluwa family. He purchased the land in august 1976. There was no physical act of possession attributable to him. The maxim is where two equities are equal the first in term prevails. Where the 2nd respondent and the 4th appellant both traced the ownership of the land to Oluwa family, the question arises as to who first acquired the property. The Deed of Lease of the 2nd respondent was in January 1976 whereas the 4th appellant purchased the land in August 1976. The two lower courts rightly decided that the right and proper persons to be served with the notice of acquisition was the 2nd respondent. Where a person pays for land, obtains receipts of payment, followed by his going into possession and remaining in possession equitable interest is created for him in the land. The equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity. See *Nsiegbe v Mgbemena (2007) 10 NWLR (Part 1042) page 364; Kachalla v Banki (2006) 8 NWLR (Part 982) page 364; Ogunbambi v Abowaba (1951) 13 WACA page 222.*

A person who is not the proven owner or occupier of land in respect of which notice of acquisition or revocation is issued has no *locus standi* in law to seek nullification of the acquisition. *Elegushi v Oseni (2005) 14 NWLR (Part 945) page 348.*

It would amount to sufficient service of a notice of acquisition of a piece of land or of revocation of grant in respect of the land if service of the notice is effected on the occupier of the land. See *Elegushi v Oseni (2005) 14 NWLR (Part 945) page 348; Obikoya & Sons Ltd. v Govt. Lagos State (1987) 1 NWLR (Part 50) page 385.*

I resolve this issue in favour of the 1st and 2nd respondents.

Issue Four

> Whether the learned justices of the Court of Appeal were right in granting an order of perpetual injunction against the defendants in substitution for the direction by the learned trial judge that evidence should be adduced on the said issue of compensation.

The 1st appellant submitted that the learned trial judge granted the declaration sought by the 1st and 2nd respondents but declined to grant the order of injunction sought and directed the respondent to adduce evidence on the issue of compensation. The trial court declined to grant injunction in the circumstance of the case, in view of the hardship which would be occasioned by the grant of an injunction *vis-a-vis* the fact that the plaintiffs were asking for compensation in the alternative. The decision of the trial judge in refusing to grant an injunction cannot be faulted having regards to the peculiar facts of this case. The land in dispute was acquired in 1976. It was leased to six other companies for a term of 21 years for monetary values. The companies had moved into possession and invested on the land. The 1st and 2nd respondents did not file an action until 14 years after the acquisition. Publication of the notice of acquisition was in the Gazette. Delay defeats equity. The 1st appellant cited cases to buttress the submission. *Wilmot v Barber 15 Chancery 105 at page 106; Ipadeola v Oshowole (1987) 3 NWLR (Part 59) page 18.*

The court is urged to grant the alternative claim of compensation sought by the 1st and 2nd respondents. The 1st and 2nd respondents replied that the lower court entered judgment in their favour declaring the appellants and anybody deriving possession through them as trespassers on the properties in dispute and declared the acquisition of the properties as void. It is trite that a victim of an act of trespass is entitled to an order of injunction to restrain continuance of a further trespass. This court had in similar cases of declaring acquisition to be illegal and void, had upheld the grant of ancillary relief of injunction. The ground given by the trial judge for declining to make the order does not justify a refusal of the order. The appellants have been declared trespassers. They have been ordered to render accounts to the 1st and 2nd respondents for the use of their properties. They are now entitled to their properties as if the acquisition did not take place. If this court does not make an order of injunction, there will arise from this decision of the trial court multiple suits against various parties to enforce the order declaring the respondents the owners of the properties. Since a perpetual injunction is granted in a final judgment determining the concluding right of the parties, there was no basis for the trial court to refuse to make the order and to order the 1st and 2nd respondents to lead evidence on their alternative claim for compensation as though the acquisition was legal.

The justices of the Court of Appeal were right in granting the order of perpetual injunction against the defendants. The 1st and 2nd respondents cited cases. *Onabanjo v Ewetuga (1993) 4 NWLR (Part 228) page 445; Okerengwo v. Imo State Education Board (1989) 5 NWLR (Part 121) at page 295; Obanor v Obanor (1976) NMLR 39; Lawson v Ajibulu (1991) 6 NWLR (Part 195 page 44; LSDPC v Banire (1992) 5 NWLR (Part 243) page 62.*

The 3rd - 5th respondents contended that the justices of the Court of Appeal were right in upholding the 1st and 2nd respondents appeal on the issue of the grant of perpetual injunction.

The learned trial judge of the trial court found that the 1st and 2nd respondents had successfully proved their case on the preponderance of evidence and are also entitled to perpetual injunction in the action being sought. The learned trial judge then declined to grant perpetual injunction on the grounds:-

(1) So as not to legislate for the Federal government.

(2) Because all the lands had been leased to other parties.

The perpetual injunction should have been granted in the circumstance of this case especially since the acquisition was declared null and void against the 1st appellants. The 3rd to 5th respondents urged this court to dismiss the appeal.

The grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement. See *Commissioner of Works Benue State v Devcon Ltd. (1988) 3 NWLR (Part 83) page 407; LSPDC v Banire (1992) 5 NWLR (Part 243) at page 620; Afrotec v MIA (2001) 6 WEN page 65; Globe Fishing Industries Ltd. v Coker (190) 7 NWLR (Part 162) Page 265.*

Compensation was a relief sought as an alternative claim by the 1st and 2nd respondents. A court will proceed to make an order in respect of an alternative claim where the main or previous claim did not succeed but where a court grants the claim of a successful party to a suit there will be no need to consider an alternative claim. See *Agidigbi v Agidigbi (1996) 6 NWLR (Part 454) page 300*.

The trial court found in favour of the 1st and 2nd respondents and declared the acquisition of their properties by Public Notice 901 of 1978 illegal, null and void for reasons of fundamental breach of the provisions of Public Acquisition Act Cap 167 of the law of the Federation of Nigeria and Lagos 1958. These are for failure to serve the requisite notice on the occupiers of the property and to acquire for public purpose. The appellants were declared trespassers on the properties and liable to render accounts to the 1st and 2nd respondents of the profits made on the use of the properties. The learned trial judge ought to have granted perpetual injunction restraining the appellants their servants and privies from further trespassing upon, alienating or doing anything whatsoever on the parcel of land, the subject matter of the suit. It was wrong of the trial court not to make the order in the circumstance and to order the claimants to lead evidence on their claim for compensation after declaring the acquisition illegal, null and void. The order contradicted his findings in the suit.

The trial court declined granting the perpetual injunction in the following words:-

> "Therefore, to restrain the defendants perpetually on the use of the parcels of land is to legislate for the present executive as to what use to make for a particular Scheme. The defendants are not averrs to the plaintiffs using the land but there is no parcel of land available to be leased out. The alternative is to compensate the plaintiffs."

The Court of Appeal was therefore right in granting the order of perpetual injunction to rectify that anomaly. I resolve this issue in favour of the 1st and 2nd respondents.

The 4th appellant raised the issue as to

> "whether the lower court was correct to have allowed the 1st and 2nd respondents appeal on the grounds of non service of notice of acquisition contrary to the case put forward by them at the trial court which was based on the allegation of use of land for a purpose other than public purpose and whether same did not amount to formulating a case for a party different from that put forward by it."

The 4th appellant grouped the claims of the 1st and 2nd respondents into primary and secondary claims. The primary claim was for declaration that the alienation of their lands by the 3rd appellant to the 1st, 2nd and 4th appellants was null and void on the basis that it was not being used for public purpose for which it was compulsorily acquired. The secondary claims are as follows:-

1) A declaration that the land be reverted to the 1st and 2nd respondents.

2) An order for inquiry/account of the rent collected by the 3rd appellant.

3) An order for perpetual injunction against the 1st, 2nd and 4th appellants.

The 4th appellant submitted that the 1st and 2nd respondents at the trial court did not specifically claim for a declaration that the acquisition was null and void for the reason of non-service of notice of acquisition, though it pleaded non-service of the notice of acquisition. In order to succeed under this claim, it must be so pleaded. This court is urged to resolve this issue in favour of the 4th appellant.

The 1st and 2nd respondents replied that this issue is germane to all the appeals. It is apparent from the claims and pleadings of the 1st and 2nd respondents that the acquisition of their properties at Ibafon along Apapa Oshodi Expressway Lagos executed by the 3rd - 5th respondents by Public Notice No 901 of 22nd June 1976 was challenged on two grounds:-

1) No notice of acquisition was ever served on the plaintiffs

2) The use of the land in particular by the 1st, 2nd, and 4th appellants does not constitute a public purpose under the public lands acquisition Act Cap 167, laws of the Federation of Nigeria 1967.

The 1st and 2nd respondents sought a declaration that the acquisition was void and sought for enquiry into damages and perpetual injunction. Parties testified in support of their cases. It is not disputed that the 3rd to 5th respondents to the appeal carried out the compulsory acquisition exercise of the land and transferred the land to the 3rd appellant the Nigerian Ports Authority. The evidence before the trial court by the 2nd respondent that he was occupying the land and he was not served with any Notice of Acquisition was uncontroverted.

The 3rd and 5th respondents that carried out the acquisition did not establish any proof in the course of trial that the 1st and 2nd respondents were served the required Notice of Acquisition. In essence the 3rd - 5th respondents failed to comply with the provisions of Sections 5 and 9 of the Public Land Acquisition Act, Cap 167, Laws of Nigeria and Lagos 1958.

I regard this issue raised by the 4th appellant in this appeal as being over meticulous in the face of overwhelming evidence before the court about the process of acquisition. It is an attempt by a desperate appellant to save its appeal.

The claim of the 1st and 2nd respondents challenged the breach of the Public Land Acquisition law in the acquisition of their properties by the Federal Government Agencies. The twin pillars of a valid acquisition according to the provisions of the Public Lands Acquisition Act Cap 167 Laws of Nigeria and Lagos 1958 particularly Sections 5 and 9 were infringed by the 3rd, 4th and 5th respondents at Ibafon Lagos. It was the case of the 1st and 2nd respondents that no Notice of Acquisition of their land was served on them and that the acquisition was not for public purposes as required by law but for the private benefit of the 1st, 2nd and 4th appellants. The 3rd - 5th respondents did not put forward before the trial court any concrete evidence of notice being served on the claimants - 1st and 2nd respondents.

There was ample evidence of transfer to the 3rd appellant the Nigerian Ports Authority and the purported lease for a term of 21 years at the payment of rents to the 1st, 2nd and 3rd appellants.

Further there was evidence that the 1st, 2nd and 4th appellants engaged the land for their private gains and not for Ports related matters. It is imperative to re-state the provisions of Section 5 and 9 of the Publics Lands Acquisition Act 1967 Laws of Nigeria and Lagos which reads:

Section 5:

> "Whenever the government-general resolves that any lands are required for a public purpose of the Federation the Minister shall give notice to the persons interest or claiming to be interested in such lands or to the persons entitled by this ordinance to sell or convey the same or to such of them as shall after reasonable inquiry be known to him (which notice may be as in Form A in the schedule or to the like effect)."

Section 9(1):

> "Every notice under Sections 5 and 8 shall either be served or left at their last usual place of abode or business if any such place can after reasonable inquiry be found and in case any such parties shall be absent from Nigeria or if such parties or their last usual place of abode or business after reasonable inquiry cannot be found, such lands or if there be no such occupier shall be affixed upon some conspicuous part of such lands."

Section 9(2):

> "Prescribes method of notice to Corporation, Company or Firm to be served on the principal office or if not known on principal officer or agent of such Corporation, Company or Firm."

Section 9(3):

> "All notices served under the provisions of this ordinance shall be published once at least in the gazette."

If the forgoing is not complied with, such acquisition shall be illegal, unlawful null and void. The law equally empowers such acquisition when it is required for public purpose.

What is public purpose is not defined in the Act but have been identified by the courts in numerous cases. The acquisition must be for *bona fide* public purpose. It is suggested that for a particular purpose to qualify as public purpose or public interest it must not be vague and the way it benefits the public at large must be capable of proof. The test is whether or not the purpose is meant to benefit the public and not just to aid the commercial transaction of a company or a group people for their own selfish or financial purposes. *Alhaji Bello v The Diocesan Synod of Lagos & Ors 1960 WNWL page 166.*

On the issue of notice this court pronounced several decisions that the publication in the gazette does not constitute sufficient notice there must be personal service of same on the person. *Ononuju & Anor v Attorney -General Anambra State & 2 Ors (2009) 4-5 SC (Part1) page 163; Attorney-General Bendel State v Aideyan (1989) 4 NWLR (Part 118) page 646; Provost Lagos State College of Education & Ors v Dr. Kolawole Edun & Ors (2004) 6 NWLR (Part 870) page 476; Okeowo v Attorney-General Ogun State (2010) 16 NWLR (Part 1219) page 327.*

This court had always emphasized that government has the right to compulsorily acquire property on payment of compensation. There is no argument about such constitutional power. There are statutes which provide for the procedure of acquiring property by the government. Government is expected to comply with those statutes which it has enacted.

Where government disobeys its own statutes by not complying with this the laid down procedure for acquisition of property it is the duty of the courts to intervene between the government and the private citizen. The trial court found in favour of the 1st and 2nd respondents. The Court of Appeal held that based on the testimony of the parties there was nothing to controvert the findings of the trial judge that notice of acquisition was not served. Both courts declared the public acquisition of the properties of the 1st and 2nd respondents invalid, null and void. This court has no reason or exceptional circumstance to interfere with the concurrent findings of fact of the lower courts.

In sum the appeals lacks merit and I accordingly dismiss them. The costs of the appeal is assessed at ₦50,000.00 in favour of the 1st - 2nd respondent.

Judgment delivered by
Walter Samuel Nkanu Onnoghen. JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother Adekeye, JSC just delivered.

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

I therefore order accordingly and abide by all consequential orders made in the said lead judgment including the order as to costs

Judgment delivered by
Ibrahim Tanko Muhammad. JSC

I read in advance the judgment of my learned brother, Adekeye, JSC just delivered.

I have no hesitation in dismissing the appeal on the reasons advanced by my learned brother, Adekeye, JSC. I dismiss the appeal as lacking in merit.

I affirm the court below's judgment.

Judgment delivered by
Bode Rhodes-Vivour. JSC

I have had the privilege of reading in draft the leading judgment of my learned brother, Adekeye, JSC. I agree completely with it. I propose to add only a few observations on issue No1 it reads:

> Whether the learned justices of the Court of Appeal were right in holding that the Lagos State High Court had jurisdiction to adjudicate over the matter after 26th of August 1993.

I shall restrict myself to the Law. Delving into the facts would amount to repetition since the facts of this case have been comprehensively set out in the leading judgment.

The relevant legislations are Decree No 60 of 1991 which came into force on 26/8/91 and Decree 107 of 1993 which came into force on 17 /11/93. Both Legislations State clearly when suits are to abate in the State High Court and commence in the Federal High Court.

This is an issue of jurisdiction. The law in force at the time of trial based on cause of action determines the court vested with jurisdiction to try the case.

Jurisdiction is fundamental and it is determined by the pleadings filed by the plaintiff and the claim he seeks. It is thus a question of law and once raised it should be resolved quickly. It is so important that it can be raised at any time and even in the Supreme Court for the first time, If the State High Court no longer has jurisdiction to hear the plaintiffs claims by virtue of the two legislations alluded to, no matter how well the trial was conducted, the entire proceedings would amount to a nullity, See *Adeyemi v Opeyori (1976) 9-10 SC page 31; Usman Dan Fodio University v Kraus Thompson Organisation Ltd (2001) 15 NWLR (Part 36) Page 305; Bronik Motors Lts & anor v Wema Bank Ltd (1983) 1 SCNLR page 296; Madukolu v Nkemdilim (1962) 1 ANLR Page 581;*

In *Obiuweubi v CBN (2011) 2-3 SC (Part 1) page 146*, I said:

> "that the law in force, or existing at the time the cause of action arose is the law applicable for determining the case. This Law does not necessarily determine the jurisdiction of the court at the time that jurisdiction is invoked. That is to say the Law in force at the time cause of action arose governs determination of the suit while the law in force at the time of trial based on cause of action determines the court vested with jurisdiction to try the case."

In this matter the suit was instituted in the Lagos High Court in 1990. Trial commenced in 1993 and was concluded in May of 1993. Judgment was fixed for 31st March, 1994.

By virtue of Section 7 (1) (g) of the Federal High Court Amendment Decree No 60 of 1991 the Federal High Court was vested with exclusive jurisdiction over the issues in this appeal as from the 26th of August 1993. Section 230 (1) of Decree 107 of 1993 which came into force on the 17th of November 1993 also vested exclusive jurisdiction in the Federal High Court.

In *Obiuwevbi v CBN (Supra)* I reviewed the following cases. *Olutola v Unilorin (2004) 18 NWLR (Part 905) page 4l6; Osakue v F. C. E. (Technical) Asaba & 2 Ord (2010 2-3 SC Page 111; O.H.M.B. v Garb & 2 Ors 2002 7 SC (Part 11) page 138;* and observed that Decree No l07 of 1993 is substantive law. It has no retrospective operation and so would not affect proceedings that were ongoing before 17/11/93. Cases that were ongoing before 17/11/93 were to be concluded by the State High Court while cases that commenced after 17/11/93 are to be heard by the Federal High Court.

Finally I held that:

> "For the State High Court to have jurisdiction under Decree 107 of 1993 the cause of action must arise before the 17th of November, 1993 and the trial must also be in progress before the said dote. That is to say, all part-heard cases in the State High Court before 17 /11 /93 can continue after 17/11/93 in the State High Court because Decree 107 of 1993 does not have retrospective operation, and in view of Section 6 (1) of the Interpretation Act Cap. 192 Laws of the Federation of Nigeria 1990"

Applying the above to the facts, the suit was instituted in 1990. Trial commenced in 1993 and was concluded in May 1993. Trial was concluded before 26/8/1993, the commencement date of Decree No 60 of 1991 and 17/11/93, the commencement date of Decree 107 of 1993.

If the case was part heard before both legislations come into force, the State High Court would still have had jurisdiction to hear the case. This case was concluded before both legislations come into force. The fact that judgment was delivered in 1994 makes no difference. The State High Court had jurisdiction to hear the case.

For this, and the more detailed reasoning in the leading judgment I would dismiss the appeal with costs of N50,000.00 in favour of the 1st and 2nd respondents.

Judgment Delivered by
Mary Ukaego Peter-Odili. JSC

In July 1976, the Federal Ministry of Works and Housing acquired a large expanse of land at Ibafon, Off Apapa-Oshodi Express Way, for the use of the Nigerian Ports Authority. Due to the fact that not all the land was immediately needed, the Authority leased out a portion thereof to some other 4 companies engaged in port related activities. One of such companies being Goldmark Nigeria Limited who in the Court of Trial was the 7th Defendant in Suit No LA/1688/90 who is now the 1st Appellant in this consolidated appeal.

In August 1990, the Plaintiff/Respondents instituted action at the Lagos High Court challenging the compulsory acquisition of the land alleging that the notice of acquisition was never served on them and that the use to which the land was being put did not constitute public purpose. At the very early stage in the proceedings i.e. on 22nd March 1991 the 1st Defendant (Nigerian Ports Authority) was struck out from the suit on the grounds that the action against it was statute barred not having been commenced with 12 months of the act complained of i.e. the acquisition. Also that the statutory notices prescribed in Section 97 of the Ports Act were never served on the Authority prior to the institution of the action.

The matter went to trial without the 1st Defendant (NPA) and on 31st March 1994, the trial Judge, S. O. Hunponu-Wusu. J. of the Lagos High Court entered judgment declaring the compulsory acquisition effected by the Government on behalf of the Ports Authority null and void. The trial Judge directed the Plaintiff's counsel to lead evidence on the issue of compensation, as the case was not an appropriate one for the granting of an injunction.

Being dissatisfied with the judgment the 1st Appellant herein lodged an appeal to the Court of Appeal which appellate Court dismissed the appeals of 1st and 2nd Appellant and allowed the cross-appeal of the Plaintiff.

The 1st Appellant, Goldmark Nigeria Limited filed an Appellant's Brief on 9/11/2010 which brief was settled by Obasanjo Fagbemi Esq. in it were couched four issues for determination which are as follows:-

1. Whether the Learned Justices of the Court of Appeal were right in holding that the Lagos State High Court had jurisdiction to adjudicate over the matter after 26th August 1993.

2. Whether the action against the 1st Appellant was maintainable in view of the dismissal of the claim against the 1st Defendant (i.e NPA) for reasons of the claim being statute barred.

3. Whether the Learned Justices of the Court of Appeal were right in upholding the declaration granted in favour of the Plaintiff in the face of the incontrovertible evidence that the 1st Defendant Company was not in existence i.e had not been incorporated at the time the land was purportedly conveyed to it by the Oluwa Chieftaincy Family.

4. Whether the Learned Justices of Court of Appeal were right in granting an order of perpetual injunction against the Defendants in Substitution for the direction by the learned trial judge that evidence should be adduced on the said issue of compensation.

In the 2nd Appellant's Brief filed on 29/10/2010 and Chief Peter O. Okolo of counsel. They distilled two issues determination, viz:-

1. Whether the learned Justices of the Court of Appeal were right in holding that the High Court had jurisdiction to continue with the action after the 26th of August, 1993.

2. Whether the Court of Appeal was right in holding that the action in the High Court was maintainable against the 2nd Appellant (formerly 9th Defendant) and other Appellants who all derived their title from 3rd Appellant (former 1st Defendant) notwithstanding the dismissal of the action against the 3rd Appellant (former 1st Defendant).

Dr. Olumide Ayeni settled the Brief of Argument of the 3rd Appellant, which was filed on 20/7/2010 in which were formulated two issues being:-

1. Whether the learned Justices of the Court of Appeal were incorrect in holding that the High Court of Lagos State possessed the jurisdiction to continue the determination of the action after the 26th of August 1993.

2. Whether the learned Justices of the Court of Appeal were incorrect in holding that the action was maintainable against the Defendants who were successors in-title to the 1st Defendant (now 3rd Appellant) notwithstanding the dismissal of the action against the 1st Defendant (now 3rd Appellant) on the ground that the action against it was incompetent.

The 4th Appellant had a Brief of Argument settled by Mr. C. V. Ihekweazu and filed on 3/6/2010, therein were couched three issues for determination as follows:-

1. Whether the Lower Court was correct to have allowed the Plaintiff/1st and 2nd Respondents' appeal on the grounds of non - service of notice of acquisition contrary to the case put forward by them at the trial court which was based on the allegation of use of the land for a purpose other than public purpose; and whether same did not amount to formulating a case for a party different from that put forward by it.

2. Whether the Lower Court did not, err in law when it upheld the decision of the trial Court in favour of the 1st Plaintiff/Respondent despite the fact that judge that the evidence should be adduced on the issue of compensation.

The 3rd - 4th and 5th Respondents had filed two Briefs on 16/6/09 responding to the 3rd Appellant's Brief and that of the 4th Appellant.

Mr. Fabgemi, learned counsel for the 1st Appellant submitted that the judgment of the High Court which was subsequently upheld by the Court of Appeal was delivered on 31st March 1994. That the Lagos High court had ceased to have jurisdiction in the suit from August 1993 given the provisions of the Federal High Court (Amendment) Decree No 60 of 1991 as amended because at that date jurisdiction over port matters and matters over which the Federal Military Government had power to make laws were effectively transferred to the Federal High Court exclusively.

Learned counsel said that the provisions of Section 7 (6) of the Federal High Court (Amendment) Decree 1993 then provided that all such cases pending in other courts apart from the Federal High Court coming within the umbrella of Section 7 of the

Act shall abate and the judge before whom it is pending shall transfer it to the Registrar of the Federal High Court to be heard as a new suit.

Mr. Fagbemi said the Court of Appeal was wrong in holding that the substratum of the entire case was acquisition of the land by the holding of 2nd, 3rd and 4th Defendants. He said that in so far as the acquisition was intended for the purposes of .the Ports Authority the acquisition inevitably concern the delimitation of the Port Area. That the 1st Defendant is also a Federal Ports Authority and what was also being contested in the action was the power of the Ports Authority to lease land acquired for public purposes to private individuals. He stated that it was therefore too narrow a view to simply characterize the action of the Plaintiffs as a challenge to the acquisition of land.

It was further contended for the 1st Appellant that the decision the Court of Appeal was in error in affirming the judgment for the Plaintiffs when the claim against the 1st Defendant (NPA), the leasor to the 7th Defendant/Appellant had been dismissed on the grounds that the action against it was statute barred. That the decision availed for the benefit of the 7th defendant/appellant as 1st defendant ceased to be a party to the suit and its title to the land could not be successfully impugned without it being a party to the suit. He stated that the said Ruling of the State High Court was premised on the failure of the Plaintiff to serve on the 1st Defendant the statutory notices which were pre-condition to the maintenance of the action and the fact that the action was brought outside the limitation period of 12 months.

Learned counsel for the 1st Appellant went on to say that in view of the dismissal of the suit against 1st Defendant, the action before the court became improperly constituted and ought similarly to have been dismissed as against the other defendants who derived their interest in the land dispute from the 1st Defendant. He cited the cases of *Permanent Secretary Ministry of Works Kwara State v Balogun (1975) 5 SC 59; Chelen Hua v Gaadi Amogo & 3 Ors (1985) HCNLR 1260; Tijani Bambe & 6 Ors v Alhaji Yusuf Adetunji & 6 Ors (1977) 1 SC 1 at 8.*

That the effect of the ruling of the Court that, the matter was statute barred against the 3rd Appellant (NPA) was that the Plaintiff was deprived of any remedy against the 3rd Appellant. He referred to *Military Governor of Ekiti State v Adedeyelu (2007) 14 NWLR (Part 1055) 619 at 6S2.*

Mr. Fagbemi said that the ruling of the High Court remaining extant till today means that the claim of the Plaintiff now 1st and 2nd Respondents against the 1st Defendant now 3rd Appellant was statute barred. That the Court below should have considered the fact that the Plaintiff had been adjudged to have no remedy against the 1st, 2nd and 4th Appellants overlord (the 3rd Appellant) and accordingly held that it likewise had no remedy against the 1st, 2nd and 4th appellants since they being privies of the 3rd Appellant were subject to the enjoyment of all his rights and liabilities.

Going on, learned counsel for 1st Appellant said that the consequence of the non incorporation of the 1st Plaintiff company at the time of purchase of the land in dispute is that the said purchase is a nullity and the company later incorporated could not adopt or ratify the transaction in Exhibit A especially as the receipt was issued in the name of Ibafon Company Limited. He cited Newburne v Sensolid (Great Britain) Limited (1953) 1 All ER 708. In Re: Empress Engineering Co (1980) 16 Ch D 125; Companies And Allied Matters Act 1990which was the law applicable at the material time. Therefore the change in the position of the law now has no effect on that transaction.

Concluding Mr. Fagbemi said the same considerations against the grant of an injunction also provided sufficient grounds of objection to the Declaration granted by the learned trial judge as damages would have provided adequate compensation. He cited *Ipadeola v Oshowole (1987) 3 NWLR (Part 59) 18.*

Chief Peter Okolo learned counsel for the 2nd Appellant submitted that the issue of jurisdiction is fundamental to the hearing of this case. That the relevant provision of the Federal High Court (Amended) Decree No 60 of 1991 which came into being after the action was taken in the High Court in 1990. That even though generally it is the claim of the Plaintiff that determines the jurisdiction of a Court but in certain cases as the present the Statement of Defence cannot be ignored which happened here and led to a miscarriage of justice. He cited *NDIC v Central Bank of Nigeria & anor (2002) 7 NWLR (Part 776) 272 at 296; Adeyemi v Opeyori (1976) 9 & 10 SC 31; Apena v National Union of Printing Publishing and Paper Products (2003) 8 NWLR (Part 822) 426 at 442 E - F.*

Also stated for 2nd Appellant is that the Lower Court did not take into consideration endorse on record which shows that the acquisition of the land in dispute was connected with or pertained to Federal Ports or related to powers of the Ports Authority for Federal Ports.

Chief Okolo further submitted that from positions of the pleadings and evidence on record clearly point to the fact that the matter before the High Court was clearly connected with and pertained to Federal Ports. He referred to Section 14 (1) (a) of the Ports Act (Cap.361) Laws of the Federation, Sections 3 (1) & 5 (I) of the Nigerian Ports Act No 74 LRN 1994; *Barry v Eric (1998) 8 NWLR (Part 562) 404 at 422 - 423; Shell Petroleum Development Co (Nig.) Ltd v Maxim (2001) 9 NWLR (Part 719) 541 at 553 - 554.*

He stated that the course or matter in this instance is tied to, fastened together with and established a relationship with the power of the Ports Authorities for Federal Ports. That the main issue is the development and delimitation of the ports area by the 2nd Appellant and the incidental issue is the compulsory acquisition of land for the main purpose of port extension, development and delimitation. He said it was submitted that the High Court cannot adjudicate on the ancillary issue where the main issue should appropriately go before another Court. He cited *Zangina v Commissioner of Works Borno State (2001) 9 NWLR (Pt. 718) 382 at 493 A - C.*

Chief Okolo of Counsel contended that as from the 26th August 1993 the Lagos State High Court ceased to have jurisdiction over the matter with the coming into effect of 1993 order as regards the Commencement of the Amendment to the Federal High Court Act and by Section 22 (3) of the Federal High Court Act, the High Court of Lagos State should have transferred the matter to the Federal High Court to be started *de novo.* That the Court ought to have taken cognizance of all the processes of court in determining this issue of jurisdiction. He cited *Trade Bank Plc v Benilux (Nig.) Ltd (2003) 9 NWLR (Part 825) 416 at 432; Apena v National Union of Printing Publishing and Paper Products (2003) 8 NWLR (Part 822) 426 at 442.*

Learned counsel for the 2nd Appellant concluded by saying that it offends the principles of natural justice for the case to proceed with the resultant effect of nullifying the interest of the 1st Defendant now 3rd Appellant when it had successfully defended the action by having the case dismissed against it. He urged the Court to resolve the issues in favour of 2nd Appellant.

Dr. O. F. Ayeni, learned counsel for the 3rd Appellant argued along the same lines as the 2nd Appellant stating that all the processes available should have been considered by the Court in the determination of the question in the jurisdiction of court. That the central claim of the Plaintiffs as demonstrated in the first endorsement of the writ of summons is a declaration that alienation of portions of the land in dispute to the other defendants is illegal and void. That a matter or action would not be justifiable without the necessary parties joined in the action. He referred to *Obala of Otan - Aiyegbaju & ors v Adesina & ors (1999) 2 NWLR (590) 163 at 180.*

That it offends the principle of natural justice for the case to proceed with the resultant effect of nullifying the interest of the 3rd Appellant when it had successfully defended the action by having the case dismissed against it.

Mr. Ihekweazu, learned counsel for the 4th Appellant said the trial Court granted to the Plaintiffs reliefs not claimed or before the court which is not allowed by law. He cited *S. E. Co. ltd v BCI (2006) 7 NWLR (Part 978) 198 at 201; Adeye v Adesanya (2001) 6 NWLR (Part 708) 1; Awojugbagbe Light Ind. Ltd v Chinukwe (1995) 4 NWLR (Part 390) 379; Ibemere v Unaegbu (1992) 4 NWLR (Part 235) 390.*

He stated on that the primary relief sought by the Plaintiff was predicated exclusively on the alleged wrongful use of the land for a purpose other than public purpose for which it was acquired and the court went outside the relief sought to make its considerations and decision.

Also canvassed for the 4th Appellant is that a non legal or juristic person lacked the capacity to contract and so having happened here the purported contract should be declared null and void. He cited *Transbridge Co Ltd v Swvey Int. ltd (1986) 4 NWLR (Part 37) 576; Ukwu v Bunge-(1997) 8 NWLR (Part 518) 527 at 544.*

Mr. Ihekweazu said that the non service of the acquisition on the 1st Plaintiff/Respondent who is not a proven owner of the land would not change anything since 1st Plaintiff was not entitled to the service of the notice of the acquisition. He cited *Elegushi v Oseni (2005) 4 NWLR (Part 945) 348.*

Further submitted for the 4th Appellant is that where the name of party has been struck out or dismissed in an action, the entire legation against him ought to be struck out and no evidence against him should be entertained. That in the case in hand, the claim is primarily against the actions of the 3rd Appellant who was 1st Defendant the court of trial and its success both at the trial and Court of Appeal were based on allegations made against 1st Defendant/3rd Appellant by the Plaintiff. That following the principle of law stated above the court would strike out all the allegations in the form of evidence and claims against the 1st Defendant/3rd Appellant. That toeing that line it follows that there will be no allegation or claims left against the 8th defendant/4th Appellant and so those claims should be dismissed.

Responding, learned counsel for the 1st and 2nd Respondents said contrary to the arguments of counsel for the 1st Appellant that the suit did not challenge the power of the Federal Government to make laws relating to Port Activities. Also not challenged is the Public Lands Acquisition Acts rather the question is the compliance by the relevant agencies of the Federal Government with the provisions of the acquisition Act. That they have shown as Plaintiff that notice of acquisition which is mandatory under the Act was not issued or served 1st and 2nd Respondents.

That the claims here differ from those in the cases referred to in the Appellant's brief in that the actions here cannot be defeated by non-joinder and the striking out of the Defendant's predecessor in title not being a decision on the merits would not prevent the trial of other defendants for their respective trespass.

T.E. Williams SAN for the 1st and 2nd respondents responding to the Brief of the 2nd Appellants stated that, it has become elementary that it is the critical consideration of the writ of summons and Statement of Claim that jurisdiction of the court is determined. Also that the two Federal High Court (Amendment) Decree relied on by the 2nd Appellant and other Appellants are substantive laws which law do not have retrospective operation. That it is important to note the date when the State High Court ceased to have jurisdiction to hear this case. He cited *Obiuweubi v CBN (2011) 7 NWLR (Part 1247) 466 at 497; OHMB v Garba (2002) 7 SC (Part 11) 138 or (2002) 14 NWLR (Part 788) 538.*

Learned counsel for 1st and 2nd Respondents said that before compulsory acquisition, persons interested in the land must be given notice of intention to acquire the land before publishing same in the gazette. He cited *Attorney-General of Bendel State v Aideyan (1989) 4 NWLR (Part 118) 646 at 673; Provost Lagos State College of Education & ors v Dr. Kolawole Edun & ors (2004) 6 NWLR (Part 870) 476 at 506.*

That the parcel of land was not properly acquired for public purpose and so where the acquisition is invalid, null and void, the effect is that every other step taken in consequence of the purported acquisition such as the transfer of title by the 3rd – 5th Respondents to the Nigerian Ports Plc (3rd Appellant), the purported lease by the 3rd Appellant to the 1st, 2nd and 3rd Appellants whether public or private is clearly null and void. He referred to *Ononuju & Anor v Attoney-General Anambra State & 2 Ors (2009) 4 - 5 SC (Part 1) 163 at 207 - 208; Ereku & ors v The Military Governor, Mid-Western State of Nigeria (1974) 10 SC 59 at 65, 68.*

Mr. Williams of counsel for 1st and 2nd Respondents further contended that in this action, the suit was brought against an Agency of the Federal Government seeking injunction in an action based on the Public Lands Acquisition Act and therefore falls within the proviso to Decree No 107 of 1993 and one that cannot be heard by the State High Court. He referred to *NEPA v Edegbereo (2002) 18 NWLR (Part 798) 79 at 100; Udu v Kraus Thompson Organisation Ltd (2001) 15 NWLR (Part 736) 305 at 323.*

From the 3rd, 4th and 5th Respondents, Mr. Kolapo Adebale submitted that the Federal High Court (Amendment) Decree 1991 (Date of Commencement) Order 1993 which fixed the date of commencement of the Decree No 60 of 1991 as the 26th August 1993 did not apply to the instant case. Therefore the deadline of the 26th August, 1993 whereby the trial of such cases before the State High Courts should abate and the cases would be transferred to the Federal High Court did not apply to the instant case. That though the substratum of the whole case rested on the acquisition by the 2nd, 3rd and 4th Defendants/Respondents and the acquisition was intended for transfer to the 1st Defendant/Respondent, there was no condition attached to the transfer that the land must be used for the activities of the Federal Ports. That the Appellants made a fallacious assumption that, since the 1st Defendant/Respondent was a Federal Ports Authority the acquisition of the land must inevitably concern the delimitation of the Ports Area. Mr. Adabale of counsel said the dispute before the Lagos High Court did not concern delimitation of the Ports Area rather the Plaintiff came before the court demanding the return of this land on the ground that it was not validly acquired and that it was not being used for the public purpose. That throughout the hearing of the case, the Plaintiffs/Respondents had nothing to say for or against the delimitation of the Ports Area because nobody canvassed that issue before the Court.

Learned counsel for the 3rd, 4th and 5th Respondent further submitted that the case of defendant/appellants was dismissed on the provisions of Section 97 (1) and (2) of the Ports Act. Cap 155, Laws of the Federation of Nigeria and Lagos, 1958 which provisions relate solely to the Nigeria Ports Authority. That the Defendant/Appellants cannot avail themselves of the dismissal of the case against the Nigeria Ports Authority for a number of obvious reasons the first being that the Defendants/Appellants were not part of the Nigeria Ports Authority and incapable of benefiting from the limitation under Section 97 of Cap. 155 which was solely for the benefit of the Nigeria Ports Authority. That the twelve months limitation period and the pre-action notice did not apply to the Defendants/Appellants as the Act did not confer those benefits on them. He cited *Ibrahim v J.S.C Kaduna State (1998) 14 NWLR (Part 419) 1 at 31.*

That the second reason is that the cause of action against the Nigeria Ports Authority was different and distinct from the one against the Defendants/Appellants which was the alienation of lands to the 5th to 9th Defendants that against the Defendants/Appellants was trespassing upon alienating, transacting business or doing anything whatsoever in respect of or on the said parcels of land forming the subject matter of this suit. He said it is trite law that the cause of action is the act of the Defendant in respect of which the Plaintiff is complaining. He referred to *Egbe v Adefarasin (1987) 1 NWLR (Part 47) 1 at 20.*

That it follows that the dismissal of the Plaintiff's action against NPA cannot be of any benefit to the Defendants/Appellants as their actions that took them to court were not the same as, and are entirely distinct from that of the NPA. He said that the Claim against the 1st Defendant as clearly stated in the Statement of Claim is completely different from the claim against any of the remaining eight defendants and with the removal of the 1st Defendant from the action, it simply carried away with it the Plaintiff's claim against it. That as against the remaining eight Defendants there were still proper Plaintiff before the Court with a different cause of action against each and every one of them.

Mr. Adabale went on to submit that the 1st plaintiff/respondent established a proprietary interest in the parcel of land in question, and the Lagos High Court was right to so pronounce. That after having entered into a fresh contract in terms of the previous one by means of the new Deed of Lease, the 1st plaintiff/respondent, even if not in existence as at 6th January, 1976

when the 2nd plaintiff/respondent procured that parcel of land in its name, had by the Deed of Lease complied with the opinions expressed by the Supreme Court in *Transbridge Company Limited v Swvey International Limited (1986) 4 NWLR (Part 37) 576 - 588; Engineering Enterprises Ltd v A.G. Kaduna State (1987) 2 NWLR (Part 57) 381.*

Mr. Adabale concluded by saying that once the trial court had found that the plaintiffs were entitled to the perpetual injunction being sought, it should have granted the relief against the 5th to 9th defendants especially since the acquisition of the land had been declared null and void. That by ordering the plaintiffs to lead evidence on their alternative claims of compensation, the learned trial judge had deprived the plaintiffs of their hard-earned remedy of repossession of the land. That the fact that the 1st defendant (NPA) had no parcel of land available to give the plaintiffs/respondents as substitute for the land being occupied by the 5th to 9th defendants should not debar the plaintiffs/respondents from gaining repossession of their land, the acquisition of which had been ruled to be null and void. That the Court of Appeal was right in deciding what the Lagos High Court failed to do.

Responding to 3rd appellant's Brief, Mr. Adabale for the 3rd, 4th and 5th respondent said that the issues before the High Court had nothing to do with admiralty matters and navigation on rivers and water ways which was the subject matter of Section 7 of the Decree No 60 of 1991. That the High Court had jurisdiction to entertain the issues of improper acquisition of land and subsequent trespass on the land.

That the cause of action against the 5th to the 9th Defendants is different from the one against the 1st defendant and so as the case against the 1st defendant was dismissed without considering its merit, the case against the 5th to the 9th defendants remained, even though they derived their title from the 1st defendant which fact was merely an issue before the High Court, whether the 1st defendant was still a party to the suit or not.

This appeal is in the main against the concurrent findings of the two Courts below, viz: - the State High Court of Lagos and the Court of Appeal, Lagos Division. These two courts had held that the 4th defendant (The Federal Ministry of Works and Housing) did not serve the necessary notice of acquisition on the owners or occupiers of the land nor had the notices placed at conspicuous places on the land which lapse rendered the acquisition of the plaintiffs' land illegal and therefore a nullity. This is because Sections 5 and 6 of the Public Lands Acquisition Act Cap. 267 Laws of the Federation of Nigeria 1958, the enabling law had provided clearly that Notice must be given of the Governor/ President's intention to acquire any parcel of land, and further that such notice must be served personally on the persons interested or claiming to be interested therein, or failing them, the occupier, or if none, be posted on a conspicuous place on the land. It was not disputed in evidence that the entire premises were fenced with walls. This state of the law has been settled by this court in the case of *Attorney-General of Bendel State v Aideyan (1989) 4 NWLR (Part 118) 646 at 673* where Nnaemeka-Agu placed on record the interpretation of the Bendel State Public Lands Acquisition Law Sections 5 and 9, *in pari materia* legislation to the one at hand and he said:-

> "It is therefore the clear intention of the law that publication of the notice served on him in the Gazette shall be after personal service of that or in the manner stated. Much as in certain other situations publication in the Gazette constitutes constructive notice to the whole world, the combined effect of Sections 5 and 9 of the Bendel State Public Lands Acquisition Law set out above is that constructive notice is not enough. The law insists upon actual notice of the intention to acquire. So anything short of that amounts to non-compliance with the express provisions of the law."

One cannot but continue to emphasize that where a statute specifically provides for a particular way in which Government or any party can obtain title, the Government or the party can only acquire title by strict compliance with the statute, unless the statute or its wording is against the constitution of the land. Another way of stating it is that there should be strict compliance with the issue of serving notice on land owners or interested persons in compulsory acquisition of land in accordance with the provisions of the law aforesaid. See *Provost Lagos State College of Education & ors v Dr. Kolawole Edun & ors (2004) 6 NWLR (Part 870) 476 at 506; Okeowo v Attorney-General Ogun State (2010) 16 NWLR (Part 1219) 327.*

Taking the above principles in context, there is evidence undisputed that the plaintiff was only informed of the purported acquisition in 1980 in a letter of response written to him in respect of his complaint over the defendant's entry into the land. Going further the case of the 2nd appellant, Electra Holdings Ltd is that their claim to title to the land is founded upon the lease granted to it by the Nigerian Ports Authority (3rd appellant). The 3rd appellant's claim to title to the land is founded upon this questionable acquisition by the Federal Government, the validity of which depended on the acquisition within the laid down procedures provided mandatorily by Sections 5 and 9 of the Public Land Acquisition Act, Cap 167, Laws of Nigeria and Lagos 1958, which validity is none existent the acquisition failing the test. Therefore since the 3rd appellant claims to have derived title from the 3rd and 5th respondents its fate would be affected by theirs. The full implication is that the parcel of land is not properly acquired for public purpose. Since the acquisition is invalid, null and void, as the concurrent findings attest then every other step taken in consequence of that purported acquisition like the transfer of title by the 3rd - 5th respondents to the Nigerian Ports Plc (3rd appellant) and the purported lease by the 3rd appellant to the 1st, 2nd and 4th appellants for whatsoever purpose; public or private would be clearly null and void as something cannot be place on nothing. See *Macfoy v UAC (1962) AC 152 per Denning MR; Ononuju & anor v Attorney General Anambra State & 2 Ors (2009) 4 - 5 SC (Part 1) 163 at 207* where Onnoghen JSC said it as it is.

The appellants had made a hue and cry that the Lagos State High Court lacked jurisdiction since the Federal Government and its agencies were involved in the transactions leading to this suit culminating in the current appeal to the Supreme Court. They anchored their contention on Section 7 (u) (i) Federal High Court Amendment Act No 60, 1991 and Decree 107 of 1993. That is a simplistic and an ephemeral understanding of the correct position. Firstly I would quote Section 7 (u) (i) Federal High Court Amendment Act No 60, 1991 which provides thus:-

> "(u) such other civil or criminal jurisdiction as-
>
> (i) Relates to any matter with respect to which the Federal Military Government has power to make law."

The above piece of legislation prescribes that when those provisions apply, the appropriate forum is the Federal High Court. The contention as I said was premised upon a very narrow space without situating the facts herein with an eye on the proviso to Decree No 107 of 1993. Section 230 (1) (s) thereof provides as follows:-

> "any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; provided that; nothing in the provisions of paragraphs (q) (r) (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."

That proviso was properly explained by this Court per Niki Tobi JSC in *NEPA v Edegbero (2002) 18 NWLR (Part 798) 79 at 100* and it is not difficult to follow it here in agreeing with the two Courts below that indeed the State High Court of Lagos was well empowered to enter into adjudicating in the dispute for which we are at this stage.

From the above which has not produced anything persuading this Court from going along with the two Courts below in their findings and conclusions which position is fully articulated in the leading judgment delivered by my learned brother, O. O. Adekeye. JSC, I do not hesitate in dismissing this appeal.

I abide by the consequential orders as made in the lead judgment.

Counsel

Mr. O.J. Fagbemi	…..	For the First Appellant
Mr. Emeka Okpoko	…..	For the Second Appellant
Dr. O.F. Ayeni *with him* Dr. O.F. Ayeni O.F. Abegunde A. Udoh M.I. Fadipe (Miss) O. Adeosun O.F. Ekengba J.B. Musa	…..	For the Third Appellant
Mr. C.V.C. Ihekweazu *with him* Ndubuisi Okonta	……	For the 4th Appellant.
Mr. F.R.A. Williams *with him* M. Saldudu O.E. Osunbode T.C. Obiefule	…….	For the 1st and 2nd Respondents
Mr. Kolapo Adabale *with him* Joshua Aloko	……	For the 3rd, 4th and 5th Respondents.
Nil	……	6th - 9th Respondents have been struck out.