IN THE COURT OF APPEAL OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN

ON THURSDAY THE 26TH DAY OF FEBRUARY 2025

BEFORE THEIR LORDSHIPS

BITRUS GYARAZAMA SANGA	JUSTICE, COURT OF APPEAL
LATEEF ADEBAYO GANIYU	JUSTICE, COURT OF APPEAL
ASMA'U OJUOLAPE AKANBI	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/B/137/2025

BETWEEN:

UBTH MANAGEMENT BOARD
UNIVERSITY OF BENIN TEACHING HOSPITAL (UBTH) } APPELLANTS

AND

1. PA SUNDAY ENODOLOMWANYI
2. CHIEF OSEMWINGIE ERO
3. ENGR. ALEXANDER OGHOGHO GUOBADIA
4. ELDER BENJAMIN IYARE

(For themselves and on behalf of Ugbowo Community) } RESPONDENTS

5. EDO STATE GOVERNMENT
6. THE HONOURABLE ATTORNEY GENERAL, EDO STATE
7. EDO STATE GEOGRAPHICAL SERVICES
8. FEDERAL MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT.
9. THE HONOURABLE MINISTER, FEDERAL MINISTRY OF LANDS, HOUSING, AND URBAN DEVELOPMENT
10. THE HON. A.G. OF THE FEDERATION } RESPONDENTS

JUDGMENT
(DELIVERED BY BITRUS GYARAZAMA SANGA, JCA)

This appeal is from the Ruling delivered on the 2nd of May, 2025, by **Asemota J.,** of the High Court of Justice, Edo State of Nigeria, Benin Judicial Division **in Suit No: B/211/2023.**

The 7th and 8th Defendants/Applicants now Appellants filed a Notice of Preliminary objection dated and filed 08/05/2024 against the 1st – 4th Respondents who were the Claimants seeking for the following relief:

*"AN **ORDER** of this Honourable Court striking out/dismissing the suit for being statute barred, incompetent, and want of jurisdiction"*

The grounds for the application are as follows:

> *" a) Lack of jurisdiction: That by virtue of Section 8 of the Public Lands Acquisition Law (Cap 105) of the Midwestern State of Nigeria as conveyed through the Midwestern State of Nigeria Gazette No. 55. Vol. 6 of 4th December 1969, the jurisdiction of this Honourable Court is estopped from entertaining any claim not instituted within twelve (12) months from the publication of Notice No. 735 in the Midwestern State of Nigeria Gazette of 1969 and under Section 49 of the Land Use Act, 1978.*
>
> *b) This suit is statute barred. The Claimants/Respondents were under a statutory duty to bring the action within the twelve (12) months of Midwestern State Notice No. 735 under the Public Land Acquisition Law (Cap 105) conveyed by the Midwestern State of Nigeria through the Midwestern State of Nigeria Gazette No. 55, Vol. 6 of 4th December, 1969, 12 years under Section 6(2) of the limitation Law of Bendel State, 1976 as applicable to Edo State and three (3) months under Section 56 of EDOGIS Law 2018.*
>
> *c) The Claimants' action is incompetent for failure to comply with Section 56(1), (2) and (3) of the EDOGIS Law, 2018..."*

(See pages 90-102 of the Records).

On 25/6/2024, The Claimants filed a Counter-affidavit to the 7th & 8th Defendants' Notice of preliminary Objection deposed to by the 2nd Respondent containing 41 paragraphs. Attached to the Counter-affidavit is the Claimants/Respondents Written address in opposition to the 7th & 8th Defendants' preliminary Objection. (See pages 103-124 of the Records).

On 1/7/2024, 7th & 8th Defendants filed 7th & 8th Defendants/Applicants further affidavit in support of their Notice of preliminary objection and Reply on point of law to the Claimants/Respondents Counter affidavit. Attached thereto is 7th and 8th Defendants/Applicants Written Address in support of their further Affidavit and Reply on Point of law. (See pages 125-172 of the Records).

On 20/2/2025, Learned Counsel for the 7th and 8th Defendants and the Claimants moved their processes on the preliminary objection and the learned trial Judge adjourned to 11/4/2025 for Ruling. (See pages 172'A' – 172'J' of the Records).

Ruling was delivered on 2/5/2025. The learned trial Judge reviewed the pleadings of the parties and the evidence adduced in support thereof and formulated 1 issue for determination as follows:

"Whether having regard to the facts and circumstances of this case, this Court is divested of the jurisdiction to entertain the suit."

The learned trial Judge reached the following decision:

> *"...the preliminary objection is predicated on the following: - (1) That the land the subject matter of this action was compulsorily acquired in 1969. (2) That the action is statute barred.*
>
> *It needs to be stated from the outset that the Claimants have maintained that the basis of their challenge is not against the compulsory acquisition of the land but rather the purpose for which some of the unutilized portions of*

the acquired land have or are being used. The pith and substance of their challenge is that the unutilized land has been converted by the 7th and 8th Defendants to private use rather than for public use...

The position of the law which is well settled is that in determining whether an action is statute barred as to divest the trial Court of the necessary vires to entertain the claim, the Court is required to examine the Writ of Summons and Statement of Claim...

The yardstick for determining whether an action is statute barred is to look: -

"a) The date when the cause of action accrued.

b) The date of commencement of the suit and

c) The period of time prescribed by the statute for bringing an action...."

A critical examination of the Writ of Summons and Statement of Claim reveals as stated earlier that the Claimants' challenge is to the use of the unutilized portions of the land acquired...

In the instant case the crucial question is when did the cause of action arise. The Claimants conceded or admitted that their action is not in respect of the compulsory acquisition but the allocation to private individuals. The issue of compulsory acquisition takes backstage...

...The cause of action in this case can be said to have arisen when the 4th Defendant was said to have started to allocate the unutilized portions to private individuals in 2016. This action was filed on 23/02/2023, a period of about seven years when the cause of action arose. The period is within the twelve-year period of limitation provided for under Section 6(2) of the Limitation Law of Bendel State 1976 as applicable to Edo State for instituting actions of this nature.

I must hasten to add that all the arguments canvassed by the learned counsel for the 7th and 8th

Defendants/Applicants with respect to the applicability of the Statute of Limitation, Section 8 of the Public is of little benefit as it dwelt extensively on Lands Acquisition Law, Section 49 of the Land Use Act etc., the Acquisition of the parcel of land in 1969 which has no bearing with the Claimants' Statement of Claim and the Writ of Summons at this preliminary stage, more so when the arguments are juxtaposed with the originating processes. I hold therefore that this Court is clothed with the jurisdiction to entertain this suit. See Section 39 of the Land Use Act 1978.

... I consider it imperative to state that the matter of the non-issuance of a pre-action notice on 3rd Defendant, in my firm view would not divest the Court of the jurisdiction to hear this matter. I have taken the liberty to examine the case file. Indeed, there is an application dated 24/06/2024 by the Claimants which is yet to be proved to strike out the name of the 3rd Defendant among others as parties in this suit. I agree with the Claimants' counsel that the 3rd Defendant is at best a nominal party notwithstanding, reliefs of the Statement of Claim...

In conclusion, I do not find merit in the preliminary objection, and it is accordingly dismissed. The lone issue formulated is resolved in favour of the Claimants/ Respondents. the sum of N50,000,00 (Fifty Thousand Naira) is awarded as costs in favour of the Claimants against the 7th and 8th Defendants. **(See pages 173-185 of the Records).**

The 7th and 8th Defendants were aggrieved with the Ruling of the trial Court. On 13/5/2025They filed a Motion on Notice seeking an Order for leave to appeal containing 10 grounds. This motion was granted on 17/6/2025. (See Pages 186-213 of the Records).

On 27/6/2025, the Appellant filed a Notice of appeal with leave containing 2 grounds of appeal. (See pages 214-217).

BRIEF FACTS OF THE CASE

1st – 4th Respondents representing the Ugbowo Community instituted this Suit as Claimants against the Appellants and the 5th – 10th Respondents as the 1st – 8th Defendants. The land, subject matter of this Suit was compulsorily and statutorily acquired in 1969 by the then military government of Mid-western States through the Public Lands Acquisition Law CAP 105, which was conveyed by the Midwestern State Notice No.735 published in the Mid-western State of Nigeria Gazette No. 55, Vol.6 of 4th December 1969 and vested in the Federal Government of Nigeria.

The 1st – 4th Respondents as Plaintiffs claimed they were in possession of the land for over 100 years before the acquisition of same by the government. That the community was not paid any form of compensation. That their dispute is over the unutilized portion of the said land.

Letters of allocation of sale of land in Bendel State issued to land purchasers was issued on 3rd January 1990. The Ugbowo community claimed to have discovered private structures on the land in 2016 and demanded for reversion as private ownership was inconsistent with public purpose being the basis and reason for government acquisition. The Appellants filed a preliminary objection contending that the subject matter was statute barred but the Respondents countered that they were not challenging the acquisition of 1969 but the misuse with the cause of action accruing in 2016 making the matter a live matter.

The lower Court ruled in favour of the 1st – 4th Respondents stating that the suit was rightly filed within the 12-year limitation period counting from 2016.

APPELLANT'S BRIEF

Appellant's Brief of Argument filed 25/9/2025 was settled by Dr. S. O. Daudu, Ph.D.. Learned Counsel formulated 2 issues for determination as follows:

1. *Whether having regards to the facts and circumstances of this case the trial court was legally correct when it held that it has jurisdiction to entertain the Claimants' case and dismissed the Appellants' preliminary objection challenging the competence and jurisdiction of the trial court on the ground that the suit is statute barred? This issue is distilled from Ground 1 of the Grounds of Appeal.*
2. *Whether the trial court propounded the case for the Claimants (1st - 4th Respondents) as there is no evidence on record to show that the 1st - 4th Respondents became aware of pockets of development of the land in dispute only in 2016 in view of the letters of allocation of sale of a house within the land in dispute dated 3rd January 1990 and so brought this action within the time prescribed by statute? This issue is distilled from Ground two (2) of the Grounds of Appeal.*

In his submission while arguing issue 1, learned Counsel to the Appellant contends that the trial Court floundered completely and veered off target in reaching its decision that the acquisition of the parcel of land in 1969 has no bearing with the Claimants' Statement of Claim and the Writ of Summons at this preliminary stage. That the trial court failed to appreciate the gravamen of the Claimants' Statement of Claim and Writ of Summons. That in order to determine whether the acquisition of the parcel of land or any part thereof in 1969, now in dispute, has any bearing with the Claimants' Statement of Claim and Writ of Summons in this appeal, the Statement of Claim must be critically examined with some relevant portions highlighted. That it is crystal clear and beyond dispute that the foregoing pleadings are centered around the 1969 compulsory acquisition of the land and the

Federal Government Letters of allocation of a part on 3rd. January 1990 to address the housing deficit for public purposes, which is now the subject matter of the dispute. That the trial court was in error when it held that the Claimants' Statement of Claim and Writ of Summons has nothing to do with the 1969 compulsory acquisition of the land, part of which is now in dispute. That the suit is Statute barred when considered against the provision of **Sections 1, 4 and 8 of the Public Lands Acquisition (Cap 105) of the Midwestern State of Nigeria Gazette No 55 vol. 6 of the 4th December 1969, Section 6(2)of the Limitation Laws of Bendel State 1976, applicable in Edo State and Section 49 of the Land Use Act,1978.** That there is nothing showing that the land was acquired from the Claimants, Ugbowo Community as at 1969. That there is nothing before trial court to show that as at 1969 when the Land was acquired, the Claimants sent a Statement of their Estate, Interest, or Right as required under the Public Lands Acquisition Law (Cap 105) to the Commissioner of Lands and Transport (Land Division). That consequently, the land in question was treated as unoccupied land in 1969. That by the provisions of Section 8 of the law under reference, no Court shall entertain any claim in respect to the land, part of which is in dispute, that was not instituted within 12 months of the publication of Notice No 735 of 4th December 1969 published in the Mid-Western State Gazette No. 55 vol. 6 of 4th December, 1969. That the Appellants' contention at the trial court was that the suit was statutorily barred because it was instituted 54 years after the compulsory acquisition of the land, and 33 years after the said letters of allocation which is now in dispute were issued. That the suit is statute barred requiring the trial court to decline jurisdiction. That the right of the Claimants to commence this action, if they ever had any, has since been extinguished by law. Cited: **MKPEDEM V UDO (2000) 9 NWLR (pt. 673) 643-645; JALLCO LTD V**

OWONIBOYS TECHNICAL SERVICES LTD (1995) 4 NWLR (pt. 3912) 534 at 547; and **N.E.P.A V OLAGUNJU (2005) 3 NWLR (pt 913) p. 623.** That the Appellants have been in possession of the res since 1969 without any form of disturbance or interference from anybody including the 1st - 4th Respondents. That the trial court was in error when it held that the Claimants (now 1st - 4th Respondents) were not challenging the acquisition of the land compulsorily acquired in 1969, vested in the Federal Government of Nigeria absolutely or any of its agency, when in fact the Claimants were seeking a relief to de-acquire a part, the subject matter of this suit. Learned Counsel to the Appellant urged this Court to resolve this issue in favour of the Appellant by holding that this suit is statute barred and set aside the ruling of the trial court delivered on 2nd May, 2025.

Issue 2 formulated and argued by learned Counsel to the Appellant is:

> *Whether the trial court propounded the case for the Claimants (1st - 4th Respondents) as there is no evidence on record to show that the 1st - 4th Respondents became aware of pockets of development of the land in dispute only in 2016 in view of the letters of allocation of sale of a house within the land in dispute dated 3rd January 1990 and so brought this action within the time prescribed by statute?*

Learned counsel to the Appellant submits that the question should be answered in the positive. That there is nothing on record that supports 2016 as the year the 4th Defendant started allocating the unutilized portion of the land in dispute to private individuals to bring this action within the limitation period prescribed under Section 6 (2) of the Limitation Law of Bendel State 1976 as applicable in Edo State, nor within Section 8 of the Public Lands Acquisition Law (Cap 105) also applicable in Edo State. That whether the Claimants' suit is

challenging the acquisition of 1969 or the purported allocation of some portion of the unutilized parts to private individuals as at 3rd January 1990, this action is statute barred. Cited: **Section 6(2) of the Limitation Law of Bendel State, 1976 (as applicable to Edo State); Section 7 (1) of the Limitation Law (Supra); Section 8 Public Lands Acquisition Law, (Cap 105);** and **Midwestern State Notice No. 735 of the Midwestern State of Nigerian Gazette No. 55, Vol 6, of the 4th December 1969.** That the cause of action in this case arose according to the trial court when the 4th Defendant started to allocate the unutilized portion of the land compulsorily acquired in 1969 to private individuals by letters of allocation issued on 3rd January 1990. That there is nothing on record to show that the said letters of allocation were issued in 2016. That the trial Court propounded the case for the Claimants when it relied on **Section 39 of the Land Use Act** in assuming jurisdiction, without considering the provisions of **Section 49 of the Act** under which the Appellants, preliminary objection was hinged. That Section 39 of the Land Use Act 1978 is not applicable to any land acquired prior to or at the commencement of the Land Use Act 1978, vested in the Federal Government of Nigeria or any of its agency (see Section 49 of the Land Use Act 1978). That it is not in contention that the land, the subject matter of this suit, was acquired and vested in the Federal Government, or the Appellants herein, which are statutory agencies of the Federal Government. That Parties are at consensus that the land, the subject matter of this suit, was compulsorily acquired in 1969. That no provision in the Land Use Act 1978, not even Section 39 of the Act, erroneously relied on by the trial court can affect the Appellants' title to the land, whether developed or undeveloped. That there was no material evidence or documents before the trial court that divested title from the Federal Government or the Appellants herein to vest same on

Claimants at the trial Court. That the Claimants failed to establish their estate, interests or rights over the land in question at the time it was statutorily acquired in 1969 and as such cannot lay claim to ownership of same now. That there is no evidence before the trial court that the land in dispute was acquired from the Claimants as at 1969. That there is no material evidence before the Court to support the claim that the cause of action arose in 2016. That cause of action is not determined by when a party claimed to have become aware of the event he seeks the court protection or intervention on. That cause of action is determined by when the cause of action arose, not when a party becomes aware of the event complained of. Cited: **PASTOR BLESSED IGHIWIYISI & ORS V. COMM. OF LANDS, SURVEY & ORS (Unreported Suit No: B/343/2014).** That the allocation of housing Programme done in 1990 by the Federal Government under the Federal Government housing programme was pursuant to the 1969 statutory acquisition and nothing more. That the public purposes contemplated in the 1969 Midwestern Gazette of 1969 is not limited to the establishment of the 8th Defendant. That it is therefore wrong for the Claimants to classify the 1990 Federal Government Housing Programme as allocation for private purpose. That the 1st - 4th Respondents having not contested that the land the subject matter of this suit was compulsorily acquired in 1969 and vested absolutely in the Federal Government or the Appellants, and the letter of allocation of sale of a house in Bendel State issued on 3rd January 1990, the trial Court propounded the case for the 1st - 4th Respondents when it held that the cause of action arose in 2016. Learned Counsel to the Appellant urged this Court to resolve this issue in favour of the Appellant, allow this appeal, set aside the decision of the trial Court for lack of jurisdiction, and dismiss the suit of the Respondent.

RESPONDENT'S BRIEF

The Respondent's brief of argument containing a Preliminary Objection filed 20/10/2025 was settled by O. O. Iyamu SAN. Learned Silk raised a Notice of preliminary objection in his brief wherein he submits that: the Appellants' Notice of Appeal is fundamentally defective, incompetent, and incapable of invoking the jurisdiction of this Court. That the Appellants filed their Notice outside the statutory 14-day period without extension of time. That **Section 24 (2) (a) of the Court of Appeal Act, Cap. C36, Laws of the Federation of Nigeria, 2004,** mandates that a notice of appeal against an interlocutory decision must be filed within fourteen (14) days from the date of the decision. That the Appellants' motion for leave to appeal was filed on the 13th day of May, 2025, and granted on the 17th day of June, 2025. That the Notice of Appeal was dated and filed on or about the 26th day of June, 2025, which is fifty-five (55) days after the ruling. That this exceeds the statutory period by a substantial margin. That the 14-day period commences from the date of the interlocutory decision. That the application for leave must be filed within 14 days and the notice filed thereafter without undue delay to remain within the overall timeline. Cited: **TUNJI BOWAJE V. MOSES ADEDIWURA (SC) (2008) 11 NWLR (Pt.1099); LAMAI V. ORBIH (SC) (1980) 5-7 SC 28; OJEMEN & ORS V. MOMODU II & ORS (SC) (1983) 1 SCNLR 188; [1983] NGSC 9; HALLMARK BANK PLE V. AKULUSO (CoA) (2005) 14 NWLR (Pt.945) 307; ALLANAH V. KPOLOKWU (SC) (2016) 6 NWLR (Pt.1507)1;** and **UGO V. UGO (SC) [2017] 18 NWLR (Pt.1597)218.** That extensions are discretionary under **Section 24(4) of the Court of Appeal Act,** requiring a "trinity prayer" application (extension of time to seek leave, grant of leave, and extension of time to appeal). Cited: **Bawaje v. Adediwura.** That failure to adhere to these requirements deprives the appellate Court of jurisdiction. Cited: **AKPASOBI V. UMWENI (1985) 1NWLR (Pt.3) 424.** That with the absence of an application

for extension of time under **Section 24 (4) of the Court of Appeal Act** *and* **Order 6 Rule 9 of the Court of Appeal Rules, 2021**, a notice filed out of time is incompetent and robs the Court of jurisdiction. Cited: **LAMAI V. ORBIH (1980) 5-7 SC 28**. That the Appellants raised grounds involving questions of fact or mixed questions of law and fact without prior leave. That Sections **241 and 242 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, provide that leave to appeal is required for interlocutory decisions where the grounds involve questions of fact or mixed questions of law and fact. That appeals as of right are permitted only where the grounds involve questions of law alone or in specified circumstances, such as decisions on injunctions. That the Notice of Appeal dated 26/6/2025, contains both grounds of law and of fact since it invites this Court to evaluate the applicable laws and the evidence presented at the lower Court. That in the absence of prior leave to appeal on such grounds, the Notice is defective and incompetent. Cited: **TUNJI BOWAJE V. MOSES ADEDIWURA (2008) 11 NWLR (Pt. 1099) 500;** and **ALLANAH V. KPOLOKWU (2016) 6 NWLR (Pt. 1507) 1.** That the grounds of appeal are argumentative, narrative, and prolix grounds of appeal in violation of the Court of Appeal Rules, 2021. Cited: **Order 7 Rule 2(3) of the Court of Appeal Rules, 2021.** That prolix and argumentative grounds render the Notice incompetent, justifying its striking out. Cited: **KALU V. UZOR (2006) 8 NWLR (Pt. 981) 66**. That these defects vitiate the entire Notice, as they contravene mandatory procedural rules. Learned Counsel for the Respondent urged this Court to uphold the Preliminary Objection, strike out the Appellants' Notice of Appeal dated the 26th day of June, 2025, and dismiss the appeal for want of jurisdiction.

REPLY TO 1st – 4th RESPONDENTS' PRELIMINARY OBJECTION:

Learned counsel to the Appellant replied to the preliminary objection in his "Appellant's Reply to the 1st – 4th Respondents' brief of argument and Notice of Preliminary Objection" filed on 31/10/2025. That the Brief of argument and Notice of preliminary objection raised by Counsel to the 1st – 4th Respondents are riddled with errors and substantial non-compliance with the Rules of this Court and as such should be discarded and allow the Appellants' appeal on its merit. That 1st - 4th Respondents brought their Notice of Preliminary Objection pursuant to Section 233 of the 1999 Constitution (as amended) which deals with the Jurisdiction of the Supreme Court and not this Court (Court of Appeal) hence they have not properly invoked the jurisdiction of this Court. That 1st - 4th Respondents Notice of Preliminary Objection is dated 20th October, 2025, but the 1st - 4th Respondents informed this Court at page 3, paragraph 1.7 of their Brief of argument that their Preliminary objection is dated 15th October, 2025. That this is misleading and not a true reflection of the records before your Lordships. That there is therefore no 1st – 4th Respondents Preliminary Objection dated 15th October, 2025 before this Court. That the right created under Section 242 (1) of the 1999 Constitution (as amended) is not a right of appeal but a right to seek leave to appeal. That it is the right to seek leave to appeal that must be exercised within 14 days from the date the interlocutory ruling was delivered. That the 1st - 4th Respondents informed this Court that the right of appeal accrued to the Appellants on 2nd May, 2025. That the Notice of appeal was dated 26th June, 2025, which is 55 days after the ruling. That this is misleading because on 2nd May, 2025, the right of appeal had not accrued to the Appellants. That the Appellants' right of appeal only accrued on 17th June, 2025 when the lower Court granted the Appellants leave to Appeal. That the Notice of appeal was dated on 26th June, 2025 but filed on 27th June 2025 which is just about ten (10) days after the right to

appeal accrued to the Appellants. That where an appeal can only be with the leave of Court under Section 242 of the 1999 Constitution, no right of appeal exists ab-initio since leave is a condition precedent to bringing the appeal. Cited: **NATIONAL INLAND WATERWAYS AUTHORITY V SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD (2020) LCN 4926 (SC)**; and **WILLIAMS V MOKWE (2005) 14 NWLR (Pt. 945) 249.** That the notice and ground of appeal with the leave attached filed on 27th June, 2025 were served on the 1st - 4th Respondents since 30th June, 2025. That the 1st - 4th Respondents had enough time to challenge the grant of the leave to Appeal and the Notice of Appeal filed since 27th June, 2025, but they did not. That it is too late in the day to challenge the competence of the Notice of Appeal filed since 27th June, 2025, in their brief of argument. That the process for challenging the Notice having not been satisfied, there is indeed no challenge before this Court against the Appellants Notice of appeal. That the Appellants grounds of appeal, that is grounds 1 and 2 are precise and in full compliance with Order 7 Rules 2 (3) of the Court of Appeal Rules 2021. Learned Counsel to the Appellant urged this Court to dismiss the objection and proceed to hear the appeal on the merit.

Without prejudice to the Preliminary Objection above, Learned Counsel to the Respondent adopted and reframed the 2 issues formulated by the Appellant for determination of this appeal as follows:

1) ***Whether, having regard to the facts, pleadings, and applicable law, the lower court was correct in holding that it has jurisdiction to entertain the Respondents' suit, as the cause of action accrued in 2016 upon misuse of the unutilized land, and dismissing the Appellants' Preliminary objection on grounds that the suit is not statute-barred? (Distilled from Ground 1).***

2) *Whether the lower court properly relied on the Respondents' pleadings in determining that the cause of action arose in 2016, particularly in light of the 1990 allocation letters, or whether it erred by "propounding" a case for the Respondents? (Distilled from Ground 2).*

While arguing issue 1, learned Counsel to the Respondent submits that the lower court was legally correct in assuming jurisdiction and dismissing the Appellants' Preliminary objection. That the Appellants' brief is fraught with factual inaccuracies, legal misapplications, internal contradictions, and illogicalities that fatally undermine their position. That the Appellants: i) misstate the filing date of the originating processes as 23rd to 24th March 2023 whereas the lower court's ruling confirms 23rd February 2023; ii) assert no evidence for the 2016 accrual though it is explicitly averred in the Respondents' Statement of Claim; iii) omit key averments regarding lack of notification and compensation in 1969; and iv) overstate undisputed facts, claiming absolute vesting without reversion despite the Respondents' pleadings disputing this upon failure of purpose. That the Appellants erroneously apply Section 8 of the Public Lands Acquisition Law (Cap.105), which bars claims to estates or rights within 12 months of the 1969 Gazette publication. That limitation statutes aim to prevent stale claims but do not extend to subsequent misuse or deviation from public purpose. That Respondents do not challenge the acquisition itself but the subsequent misuse and failure of public purpose. That compulsory acquisition does not automatically extinguish pre-existing titles if the land is not utilized for the intended public purpose, allowing claims for reversion to accrue upon evident misuse. Cited: **PROVOST, LAGOS STATE COLLEGE OF EDUCATION V. EDUN (2004) 6 NWLR (Pt. 870) 476; OSHO V. FOREIGN FINANCE CORPORATION (1991)4 NWLR (Pt. 184) 157; KOFARE & ANOR v. TAHIR & ANOR (2024) LPELR-63072(CA);** and **ADENIRAN V. ADIO (2024) 16 NWLR (Pt. 1908) 345.** That the Appellants' reliance on Section 6 (2) of the Limitation Law of Bendel State 1976 (applicable in Edo State), which prescribes a 12-year bar for land recovery actions (paragraphs 5.8-5.9,

7.2, 9.0 point 11), is equally misplaced. That limitation statutes may appear to infringe on property rights, but they apply only where the cause of action accrues from dispossession or a recoverable event. Cited: **UNIZIK Law Journal Vol. 21 (1) (2025);** and **Section 16 (2) of the Limitation Law of Lagos State, as discussed in LSP164: Limitation in Land Disputes, 2024).** That the clock starts from the date the right accrues, including awareness of the wrongful act. That the invocation of Section 2 (a) of the Public Officers Protection Act for a 3-month limit is inapplicable to land recovery or title declarations, as it protects official acts but not perpetual possession disputes. Cited: **NEPA V. OLAGUNJU (2005) 3 NWLR (Pt. 913) 602;** and **IBRAHIM V. LAWAL (2015) 17 NWLR (Pt. 1489) 490.** That Section 49 of the Land Use Act preserves Federal titles but does not immunize against misuse challenges. Cited: **IBIYEMI V. LAGOS STATE GOVERNMENT (2003) 10 NWLR (Pt.828) 304; YAKUBU V. SIMON OBAJE (2024); DONLI V. ABDULAHI & ORS (CA) (2024); ATTORNEY-GENERAL OF BENDEL STATE V. AIDEYAN (1989) 4 NWLR (Pt. 118) 646;** and **OLATEJU V. COMMISSIONER FOR LANDS & HOUSING, KWARA STATE & ORS (Supreme Court, 2024).** That the Appellants' reliance on Mkpedem v. Udo (2000)9 NWLR (Pt. 673) 643 and Jallco Ltd v. Owoniboys Technical Services Ltd (1995) 4 NWLR (Pt.391) 534 is misplaced, as those cases involved direct challenges to dispossession, not misuse accrual. Learned Counsel to the Respondent urged this Court to resolve this issue in favour of the Respondent.

Issue 2 argued by the Respondent is:

> *Whether the lower court properly relied on the Respondents' pleadings in determining that the cause of action arose in 2016, particularly in light of the 1990 allocation letters, or whether it erred by "propounding" a case for the Respondents?*

Learned Counsel submits that the trial judge did not "propound" a case but properly relied on the Respondents' pleadings, which aver discovery of private structures in 2016.

That the Appellants' claim of no evidence is inaccurate and contradicted by the Record. That the 1990 allocation letters (Exhibit A) do not contradict the 2016 accrual, as the Respondents plead the land remained unused until then, with inquiries revealing Edo State's surreptitious allocations. That Cause of action accrues upon material facts, including awareness. Cited: **EGBE V. ADEFARASIN (1987) 1 NWLR (Pt.47)1; SANDA V. KUKAWA LOCAL GOVERNMENT (1991) 2 NWLR (Pt. 174) 379);** and **KOFARE & ANOR v. TAHIR & ANOR (2024) LPELR-63072(CA).** That the Appellants' reliance on Pastor Blessed Ighiwiyisi & Ors v. Comm. of Lands, Survey & Ors (Unreported Suit No: B/343/2014) is fundamentally misplaced. That as an unreported decision from a coordinate High Court, it lacks precedential value and is not binding on this Court, particularly when it appears to conflict with established appellate authorities affirming reversion upon failure of public purpose, such as **Provost v. Edun (supra) and Ereku v. Military Governor of Mid-Western State (1974) 10 SC 59**, where limitation for reversion claims was held to run from the date of evident abandonment or misuse, not the initial acquisition. Even assuming the accuracy of the Appellants' selective quotation from this unreported judgment, the facts differ from the instant case. That limitation in ongoing misuse cases commences from awareness, not earlier events. Cited: **ADENIRAN V. ADIO (2024) 16 NWLR (Pt. 1908) 345.** That their denial of the Respondents' locus standi is baseless, as original owners have standing to challenge misuse. Cited: **ADESANYA V. PRESIDENT (1981) 2 NCLR 358;** and **FAWEHINMI V. AKILU (1987) 4 NWLR (Pt. 67) 797.** Learned Counsel to the Respondent urged this Court to resolve this issue in favour of the Respondent, dismiss the appeal for being unmeritorious, and reaffirm the judgment of the trial Court.

APPELLANT'S REPLY

Learned Counsel for the Appellants submit in their Reply brief filed 31/10/2025 that 1st - 4th Respondents Brief of Argument's failure to comply with Order 19, Rules 3 (6) (b) of the Court of Appeal Rules, 2021 amounts to substantial non-compliance. That the 1st – 4th Respondents misinformed this Court that their Originating Process was filed on 23rd February, 2023, as against the actual date contained in the Originating Process, which is 23rd or 24th March, 2023. That this error affects the credibility and integrity of the 1st – 4th Respondents' process before this Court.

That none of the cases cited by the 1st - 4th Respondents in their brief of argument and Notice of Preliminary Objection is applicable to this current Appeal and some cases were incorrectly cited. That these impeded on the credibility of the brief of argument and the motion for preliminary objection. That in the eye of the Law, there is no 1st – 4th Respondents brief of argument nor a valid preliminary objection, before this Court. That **Tunji Bowaje v Moses Adediwura (2008) 11 NWLR (Pt. 1099) 500** was wrongly cited by the 1st – 4th Respondents which rendered the information supplied false. That the right citation is **Tunji Bowaje v. Moses Adediwura (1976) SC 13191.** That this case is not applicable to the instant Appeal. That **Lamai v Orbih (1980) 5-7, SC 28** was wrongly relied upon by the 1st - 4th Respondents. That in the instant Appeal, the Appellants filed the leave to appeal within 14 days stipulated by the Court of Appeal rules. That the Appellants equally filed their Notice of Appeal within 14 days of the grant of the leave to appeal. That the Appellants acted in accordance with the provisions of **Section 242 (1) of the 1999 Constitution of the Federal Republic of Nigeria and Section 24 of the Court of Appeal Act, 2021**. That the Appellants Notice of application for leave to appeal was made within 14 days. That The

Appellants filed their Notice of Appeal within ten (10) days of the determination of the Application for leave to appeal. That the law will not order an impossibility. That it is impossible to file Notice of Appeal within 14 days of an interlocutory ruling where an application for leave to appeal is required. That **Ojemen & Ors v Momodu & Ors. (1983) SC NLR 188** was wrongly relied upon by the 1st - 4th Respondents. That it is not applicable to this present appeal on mixed law and facts from the High Court to the Court of Appeal. That section 242 of Constitution did not mention an appeal on mixed law and facts. That what is required in an appeal of mixed law and facts from the High Court to the Court of appeal is leave to appeal and that was obtained by the Appellants. That **Ojeme v Momodu II (1983)** only applies to appeals from the Court of appeal to the supreme Court. That **Hallmark Bank Plc v Akuluso (Court of Appeal) (2005) 14 NWLR (Pt. 945) 307** was wrongly cited by the 1st – 4th Respondents and it is not applicable. That Hallmark Bank Plc v. Akuluso does not correspond with any known Court of Appeal case from 2005. That **Allanah v Kpolokwu (2016) 6 NWLR (Pt. 1507) 1 SC** was wrongly relied upon by the 1st – 4th Respondents and is not applicable to this present Appeal as it borders on the failure to file a formal notice of Preliminary objection not being fatal. That **Ugo v Ugo (2017) 18 NWLR (Pt. 1597) 218 SC** was wrongly relied upon by the 1st - 4th Respondents. That it is not applicable to this current appeal. That **Kalu v Uzor (2006) 8 NWLR (Pt. 981) 66** is not applicable to the instant appeal as it is in respect to election petition cases which are sui generis. Learned Counsel to the Appellant urged this Court to discountenance all the argument of the Respondents as contained in his Respondents' Brief of Argument, resolve all the issues in favour of the Appellants, and grant this appeal.

RESOLUTION OF ISSUES:

Before I delve into consideration of the issues propounded and argued by learned counsel to the parties in this interlocutory appeal, I will consider the preliminary objection raised and argued by learned senior counsel to the Respondents. The grouse of the Respondents is that the notice of appeal was filed outside the 14 days prescribed for filing notice of interlocutory appeal pursuant to section 24 (2)(a) of the Court of Appeal Act 2021.

On their part the Appellants contended that the preliminary objection by the Respondents is misplaced since it is the right to seek leave to appeal that must be exercised within 14 days from the date the interlocutory ruling was delivered.

Section 24 (1), (2)(a) of the Court of Appeal Act provides thus:

> *"Where a person desires to appeal to the Court of Appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of Court within the period prescribed by the provision of subsection (2) of this section that is applicable to the case.*
>
> *(2) The periods for giving of notice of appeal or notice of application for leave to appeal are:*
>
> *(a) in an appeal in a civil cause or matter, fourteen days where the appeal is against an interlocutory decision and three months where the appeal is against a final decision"*

It is my finding that the notice of appeal dated 26/6/2025 and filed on 27/6/2025 was filed 10 days after the right of appeal accrued to the Appellants. I therefore resolve the preliminary objection in favour of the Appellants and discountenance the argument by the Respondents. Same is hereby dismissed. This appeal will be considered on its merit.

In determining this appeal, I will adopt the issues canvassed by learned Counsel to the Appellants. The first issue is:

Whether having regards to the facts and circumstances of this case the trial court was legally correct when it held that it has jurisdiction to entertain the Claimants' case and dismissed the Appellants' preliminary objection challenging the competence and jurisdiction of the trial court on the ground that the suit is statute barred?

The question that comes to mind in determining this issue is: What are the facts and circumstances of this case that gave rise to filing **Suit No. B/211/2023** by the 1st to 4th Respondents? (Henceforth to be referred to as the Respondents). The Respondents filed Suit No. B/211/2023 against 8 Defendants among which are the 7th and 8th Defendants now the Appellants. They are seeking from the lower Court a declaration that the Appellants who compulsorily acquired a portion of the Claimants communal land in 1969 pursuant to the Public Lands Acquisition Law (Cap 105) as conveyed in the Midwestern State Notice No. 735 published in the Midwestern State of Nigeria Gazette No. 55, Vol. 6 of 4th December 1969 for establishing the 8th Defendant (now 2nd Appellant), since the acquisition was compulsorily done during the military regime, the Claimants were not notified, neither were they compensated for their land or crops planted thereon. That the then Midwestern State Military Government just brought heavy duty equipments and bulldozed all the crops on the land for "public purpose", which is the establishment and construction of the 2nd Appellant. The entire land compulsorily acquired was 670 acres. Only 471 acres was used leaving 199.637 acres unutilized and left lying fallow. The State Government and/or the 2nd Appellant did not reverted back the unutilized land to the original owners.

Later the officers of the 4th Defendant (Federal Ministry of Lands, Housing, and Urban Development) started allocating the land surreptitiously to individuals who erected private residencies on the unutilized land. The Claimants on

discovering this state of affairs wrote a letter dated 19/11/2020 to the 5th Defendant (The Honourable Minister, Federal Ministry of Lands, Housing, and Urban Development) to revert back the unutilized land to them. When there was no reply, the 1st to 4th Respondents engaged the services of a legal practitioner who wrote a letter to the 4th Defendant on 27/8/2021 on the same issue, and another on 27/9/2021 which was replied by the said 4th Defendant on 2/11/2021. After that, all communications with the Claimants ceased. The Claimants engaged the services of a Registered surveyor who charted out the entire land, showing the undeveloped area being secretly allocated to individuals for private use, in clear violation of the purpose for which the land was compulsorily acquired. The Claimants then commenced this suit.

The 7th and 8th Appellants did not allow the suit filed by the Claimants to be heard and determined on the merit. They filed a Notice of Preliminary objection challenging the Jurisdiction of the lower Court and urging it to strike out/dismiss the Suit for being statute barred, thus incompetent for want of jurisdiction. The learned trial Judge in a well-considered Ruling dismissed the Preliminary Objection and held that he has jurisdiction to hear and determine the Suit No. B/211/2023. The 7th and 8th Defendants did not take kindly to that Ruling thus they filed this appeal.

I deem it necessary to recount the facts that gave rise to filing this appeal for the obvious reason that the facts of this suit are not the normal challenge to the authority of government or any of its agency to acquire landed property for public purposes. In the instant suit the land was compulsorily acquired for public purposes but some portion remained unutilized, instead of returning the unutilized land to the community that owned the land (before the compulsory acquisition in 1969), the 4th Defendant decided to be

allocating the land to individuals (for valuable consideration) who are erecting structures on it. Thus, this suit is in respect to the conversion of the unutilized land to private use and not challenging the compulsory acquisition of the land in 1969. Since that is the fact in the suit, the Appellant's reliance on Section (6)(2) of the Limitation Law of Bendel State 1976 (applicable in Edo State) which prescribes a 12-year bar for land recovery actions is not applicable to this suit. For emphasis I reiterate that since the Claimant's claim is not for recovery from the 1969 compulsory acquisition but for declaration of reversion due to misuse which occurred in 2016 upon discovery of private developments on the unutilized portion of land, the lower Court rightly held that this suit filed in 2023 is within the 12 years period.

Section 49 of the land use Act, 1978, quoted and relied upon by the Appellants preserves Federal title in respect of land in a State, but it does not prevent challenge for misuse especially where no compensation was paid. See **IBIYEMI V LAGOS STATE GOVERNMENT (2003) 10 NWLR (Pt 828) at 304.** It is my holding on this issue that the lower Court was legally right in its ruling when it held that it has jurisdiction to entertain this Suit No. B/211/2023 and thus dismissed the Appellant's Notice of Preliminary Objection that the suit is statute barred. I so hold and resolve this issue in favour of the Respondents.

Issue 2 formulated by the Appellant is:

> ***Whether the trial court propounded the case for the Claimants (1st - 4th Respondents) as there is no evidence on record to show that the 1st - 4th Respondents became aware of pockets of development of the land in dispute only in 2016 in view of the letters of allocation of sale of a house within the land in dispute dated 3rd January 1990 and so brought this action within the time prescribed by statute?***

I have made my finding on the propriety or otherwise of the holding by the lower Court in its Ruling delivered on 2/5/2025 (pages 173-185 of the Records). I took note of the fact that suit No. B/211/2023 dated 23/3/2023 did not proceed to hearing. Learned Counsel to the 7th and 8th Defendants challenged the hearing of the suit by filing a Notice of Preliminary Objection wherein they sought for the striking out or dismissal of the suit in *limine* for being statute barred, incompetent, and for want of jurisdiction by the lower Court. I also noted that the Appellants as the 7th and 8th Defendants filed a Joint Statement of Defence on 8/5/2024 including a counter-claim (pages 67-72 of the Records). But the suit did not proceed to hearing. This issue raised by the Appellants is urging the Court to delve into the merit or otherwise of the suit by considering whether there is evidence on record that shows that the Respondents became aware of pockets of development of the land in dispute. Pleadings were filed by parties but no evidence was adduced in support of the pleadings. It is trite law that evidence is any specie of proof or probative matter legally presented at the trial of an issue by the act of the parties, through the medium of witnesses, records, documents, exhibits, concrete object, etc. for the purpose of inducing belief in the minds of the Court or jury as to their contentions. See **BILL & BROTHERS LTD. V. DANTATA & SAWOE C.C.N LTD. (2021) 12 NWLR (Pt. 1798) at 50.** Therefore, raising the issue of evidence on record that shows if and when the Respondents become aware of development on the land in dispute is premature at this stage since no evidence has been adduced in support of pleadings. The issue of evidence will arise during the trial of this suit to determine the issues that arise on merit. I so hold and discountenance the submissions on this issue by learned Counsel to the parties.

pon resolving the two issues in favour of the Respondents it s my finding that this appeal lacks merit. It is hereby dismissed. The decision reached by the lower Court in its Ruling on 2nd May, 2025 in Suit No. B/211/2023 is affirmed by me. I make no order as to cost.

BITRUS GYARAZAMA SANGA,
JUSTICE, COURT OF APPEAL

COUNSEL APPEARANCES:

Counsel for the Appellants not represented.

O. Iyamu SAN., for the 1st – 4th Respondents with him is

G.A. Oladejo Esq.,

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A/B/137/2025;

LATEEF ADEBAYO GANIYU,JCA.

I was afforded the opportunity of reading in advance the judgment just delivered by my Learned brother, BITRUS GYARAZAMA SANGA,JCA. I agree with the reasoning, conclusions and decisions reached therein which I adopt as mine.

Having said that, it is pertinent to place it on record that the law has been long established that , once the purpose for which land is acquired by the acquiring Authority is defeated, the land will revert to the traditional/original owner(s). See DAVIES V. IFO LOCAL GOVERNMENT &ORS. (2023)LPELR-(CA) where this Court held thus:

"The law is trite as stressed by the Supreme Court in LAWSON v AJIBULU (1991) 6 NWLR (Pt. 194) 44, that compulsory acquisition of land must be for public purposes, and where same land is not properly acquired for public purpose, the acquisition is invalid, notwithstanding that there was a lapse of time between the date of acquisition and the transfer of land to a third party, or that the parcel of land was only a small portion of a larger parcel of land so acquired. See also: ONONUJU & ANOR v A.G. ANAMBRA STATE & ORS (supra). Therefore, the position of the law is that where the public purpose for which land is compulsorily acquired fails or is abandoned, the ownership of the land automatically reverts by operation of law to the original owner from whom the land was compulsorily acquired. In other words, once the public purpose for which the land is compulsorily acquired is abandoned, the ownership of the land reverts back to the original owner from whom it was compulsorily acquired. This principle was stated by the Supreme Court in the case of OGUGUA UKWA & 2 ORS v AWKA LOCAL COUNCIL & 3 ORS (1965) LPELR-25260(SC), where Onyeama, JSC held that: "We do not think the question is whether the Appellants (in this case the (Plaintiffs) resumed possession, for, in our view, their right to recover possession revived when the area was abandoned in respect of the use for which it was originally given unless the grantors made a fresh grant or agreed to the land being used for same other purpose." Indeed, in OLATUNJI v MILITARY GOVERNOR OF OYO STATE (1994) LPELR-14116(CA), this Court, per Salami, JCA (as he then was, later PCA), succinctly held as follows: "The appellant is not entitled to speculate or fish for the ground or grounds for acquiring his interest in the property in dispute. The best he would do in the circumstance is to lie patiently in waiting until the acquiring authority manifest its true intention. Before manifestation of the acquiring authority's intention, he is helpless, not only himself would be helpless, the Court to which he has constitutional access to would equally be left in complete helplessness. But when he exposes his flank and demonstrates his intention by granting a right to a purpose not within the purview of the enabling Act, the appellant is at liberty to assert his constitutional proprietary right. Indeed, it is when he knew of the grant to the fourth respondent that a cause of action arose. He would be acting on a mere suspicion if he had acted prior to the acquisition

ing diverted to a purpose other than public and to drive him so soon from judgment seat would render his right to fair hearing nugatory. I find and hold that he is entitled to pursue the action in spite of lapse of time because the devil itself does not know the darkest recess of human mind until he manifests it. The case of A.O. Osho v. Foreign Finance Corporation (1991)4 NWLR (Pt. 184) 157; Chief A.O. Lawson v. Chief A.A. Ajibulu (1991) 6 NWLR (Pt. 195) 44 and Chief Ereku v. The Military Governor, Mid-Western State of Nigeria (1974) 10 S.C 59; (1974) 1 All NLR (Pt.2) 163 are all decisions saying if a property is ostensibly acquired for public purpose and it is subsequently discovered that it has directly or indirectly been diverted to serve private need the acquisition can be vitiated. The acquiring authority cannot rob Peter to pay Paul by divesting one citizen of his interest in a property by vesting same in another: Dzungwe v. Gbishe (Supra). If the acquiring authority can no longer find a public purpose for the land so acquired, the only avenue open to it is to deacquire it and let the same revert to the person in whom it was already vested. And in all cases where public purpose failed, the land reverted to original owner: Ajao & Anor v. Sole Administrator for Ibadan City Council (1971) 1 NMLR 74." As rightly observed by the trial Court at page 618 of the Record, the state of the pleadings and evidence of the Appellant and the 2nd and 3rd Respondents shows that they were on common ground that the public purpose for which the Federal Government acquired the vast expanse of land, which includes the land in dispute, had failed or was abandoned by the Federal Government. Now, since the Appellant and the 2nd and 3rd Respondents were each claiming to be the owner and in possession of the land in dispute until the compulsory acquisition of same by the Federal Government, it is clear that with the abandonment of the public purpose of the acquisition by the Federal Government, the issue of reversion of the rights, title and interest in the land in dispute had indeed arisen: OGUGUA UKWA & 2 ORS v AWKA LOCAL COUNCIL & 3 ORS (supra); OLATUNJI v MILITARY GOVERNOR OF OYO STATE (supra); and AJAO & ANOR v SOLE ADMINISTRATOR FOR IBADAN CITY COUNCIL (supra). I am therefore of the considered view that the learned trial Judge was right when he held at page 624 of the Record that "upon the abandonment of the purpose of the acquisition the reversionary interests of the original owners became automatically revived by operation of law without any assurance or conveyance." By so holding, the learned trial Judge was not embarking on any "scholarly voyage of discovery" as imputed by the Appellant, but merely applying the law to the state of pleadings and evidence placed before him." Per MOHAMMED ,JCA (Pp. 43-48, paras. D-B).

Therefore, the 1st-4th Respondents having became aware in 2016 that the Letters of allocation were issued to the new purchasers of the unutilized portion of the land in dispute, it goes without saying that the grievance of the 1st -4th Respondents has nothing to do with compulsory acquisition of the entire land but it is limited to sale of the unutilized portions of the said compulsorily acquired land to individuals for construction of private structures, contrary to public purpose that the Land was acquired in 1969 by the Mid-Western State

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vernment instead of reverting the same to the Ugbowo Community that originally owned the entire land. Thus, since the res in the suit which gave birth to this appeal has to do with failure to allow the unutilized portion of the land in dispute to revert to the 1st -4th Respondents. The issue of the case being statute-barred is completely out of place because the cause of action of the 1st -4th Respondents undoubtedly arose in 2016.

In the circumstance, I am also of well-considered view that this appeal is bereft of merit and it is liable to be and is hereby DISMISSED.

LATEEF ADEBAYO GANIYU,

JUSTICE,COURT OF APPEAL.

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