

1. J.A. ADERIBIGBE
2. ALHAJI GANIYU SANNI (DECEASE)

V.

TIAMIYU ABIDOYE

SUPREME COURT OF NIGERIA

SC/236/2002

NIKI TOBI, J.S.C. (*Presided*)  
GEORGE ADESOLA OGUNTADE, J.S.C.  
IKECHI FRANCIS OGBUAGU, J.S.C.  
IBRAHIM TANKO MUHAMMAD, J.S.C. (*Read the Leading judgement*)  
JAMES OGENYI OGEBE, J.S.C.

FRIDAY. 24<sup>th</sup> April, 2009

*APPEAL - Brief of argument - Filing of- Where appellant, file in respect of appeal - Effect.*

*APPEAL - Fresh issue on appeal - Issue of jurisdiction can be raised for the first time on appeal without leave.*

*APPEAL - Grounds of appeal - Ground from which no formulated - How treated.*

*APPEAL - Grounds of appeal - Omnibus ground of appeal-whether, can sustain appeal - Where no issue formulated How treated.*

*APPEAL - Issues for determination - Respondent who has not cross-appealed-whether can raise point on appeal as of right.*

*APPEAL- Nothing of appeal- function, nature and requirement of – where defective- effect on appeal.*

*APPEAL- Nothing of appeal - Valid notice of appeal - Ingredients of - whether defect can be cured by amendment.*

*APPEAL-Notice of appeal - Where incompetent - Whether additional ground of appeal can be added thereto.*

*APPEAL- Record of appeal - Requirements of - Need to be tidy, complete and properly paginated.*

*COURT- Issues before the court - Issue not raised before the court- Duty on court not to consider.*

*PRACTICE AND PROCEDURE -Appeal - Brief of argument – Filing of where to appellant fails to file in respect of appeal - Effect.*

*PRACTICE AND PROCEDURE - Appeal - Fresh issue on appeal –issue of jurisdiction - Whether can be raised for the first time on appeal without leave.*

*PRACTICE AND PROCEDURE - Appeal - Grounds of appeal –ground from which no issue is formulated - How treated.*

*PRACTICE AND PROCEDURE - Appeal - Grounds of appeal- omnibus ground of appeal - Whether can sustain appeal – where no issue formulated there from - How treated.*

*PPRACTICE AND PROCEDURE- Appeal - Issues for determination- respondent who has not cross-appealed - Whether can raise, point on appeal as of right.*

*PRACTICE AND PROCEDURE - Appeal - Notice of appeal – Nature of - where defective - Effect on appeal.*

*PRACTICE AND PROCEDURE - Appeal - Notice of appeal – where incompetent- whether additional ground of appeal can be added thereto.*

*PRACTICE AND PROCEDURE – Appeal- record of appeal requirement of – need to be tidy, complete and properly paginated.*

*PRACTICE AND PROCEDURE -Issues before the court- issue not raised before the court - Duty on court not to be consider.*

**Issue:**

Whether the Court of Appeal was right in considering the appeal based upon the additional ground 8of the respondent's grounds of appeal.

**Facts:**

At the High Court of Kwara State, the respondent challenged the validity of the purported alienation of his property to the appellants and the Right of Occupancy granted to the appellants based on the said alienation. He sued the appellants claiming various declaratory reliefs, special and general damages in respect of a peace of land in Oyun Local Government in Kwara State. The appellant joined issues with the respondent on all the salient averments in the statement of claim. At the conclusion of a protracted trial which lasted over a decade, the trial court dismissed the respondent’s claim.

Aggrieved, the respondent appealed to the Court of appeal, The respondent filed two original grounds of appeal including omnibus ground. Later on and in the course of the proceeding at the Court of Appeal, the respondent sought leave of the court to file seven additional grounds of appeal. The motion to that effect was moved and granted by the Court of Appeal on 24<sup>th</sup> October, 1990. Thus, there were seven grounds of appeal before the Court of appeal filed by the respondent. The appellants, in their brief of argument gave a notice of preliminary objection against all the grounds of appeal on the ground of incompetence.

However, before the hearing of the appeal, the respondent filed another motion dated 7<sup>th</sup> April, 1993 seeking the leave of the court to further amend the notice of appeal by filing an additional ground 8. The additional ground 8 complained that the trial court erred in law in exercising jurisdiction in the case which raised the issue of title to land subject of a right of occupancy granted by local Government. The application was granted by the court on 25<sup>th</sup> April 1993. Again, briefs of argument were filed and exchanged in respect of the additional ground of Appeal filed by the respondent. The appellants' raised a preliminary objection to the competence of the additional ground of appeal.

The court of appeal upheld the appellant's preliminary objection and held that all the ground of appeal filed by the respondent, save the additional ground 8, were incompetent and accordingly struck them out. On the omnibus ground, the Court of appeal found that no issue was formulated to cover it, that it was deemed abandoned and was struck out. On the additional ground 8, the court Appeal held that the objection in respect of the ground lacked merit and it dismissed the objection. The Court of Appeal then considered the appeal based on the additional ground 8, found in favour of the respondent on the additional ground, allowed the appeal and struck out the suit.

Dissatisfied, the appellants appealed to the Supreme Court. The respondent was dissatisfied with the aspect of the holding of the court of Appeal that he abandoned the omnibus ground of appeal and he cross-appealed against it. However, the respondent did not file any brief of argument in support of the cross-appeal.

Held (unanimously *allowing the appeal and striking out the cross-appeal*)

1. *On Function and nature of notice of appeal -*  
**A notice of appeal is the 'spinal cord' of an appeal. It is the foundation upon which an appeal is based. It is the originating process which sets the ball rolling for the proper, valid and lawful commencement of an appeal. Where the notice of appeal is defective, no proper appeal can stand. It will collapse. [In re: Otnedon (1995) 4 NWLR (Pt.392) 655; Thor Ltd. v. F. C. M. B. Ltd. (2002) 4 NWLR (Pt. 757) 427; Ebokam u Ekwenibe & Son\ Trading Co. Ltd. (1999) 10 NWLR (pt. 622) 242 referred to.] (P. 614. paras. E-G)**
2. *On Ingredient of a valid notice of appeal -*  
**A notice of appeal can be competent and valid if it contains at least one valid ground of appeal. A bare notice of appeal without any ground or grounds of appeal is valueless and incompetent. It is incurably bad. The defect cannot be cured by any**

amendment. In the instant case, the act of the court of appeal in striking out the incompetent grounds of appeal rendered the notice of appeal to be bare. There was no more valid notice of appeal when the original grounds of appeal were found to be incompetent and struck out as a result. The grant of leave to file an additional ground or grounds to the original grounds which were incompetent could not cure the vice which had incurably infected the original grounds. Therefore, there was no subsisting notice of appeal upon which to place the additional ground 8 [erisi v. *Idika* (1987) 4 NWLR (Pt. 66) 503; *akeredolu v. Akinremi (No. 2)* (1986) 2 NWLR (Pt. 25) 710 global *Transport Oceanico S. A. v. Free ENT. (Nig.) Ltd.* (2001)5 NWLR (pt. 706 referred to.) (Pp. 614-615, paras. G-A)

3. *On Ingredient of a valid notice of appeal –*

The most valid requirement of a notice of appeal the ground of appeal. There cannot be a valid appeal without a valid ground or grounds of appeal. This is because the ground of appeal is the basis of the complaint by the appellant against the judgment of the court. (*R 619, paras. C-D*)

4. *on whether additional ground of appeal can be added to incompetent notice of appeal –*

Where all the grounds contained in a notice of appeal are incompetent, the appeal itself is also incompetent, And being incompetent, an additional ground of appeal will have no appeal to be anchored other words, if the original notice of appeal was defective, no additional ground of appeal hung on it. In the instant case, as there existed on valid appeal before the Court of Appeal, the additional grounds filed, including the additional ground 8, even though within time extended, all became naught. [awhinawhi v. oteri (1984) 5 SC 38; orakosim v. menkiti (2001) 9 NWLR (pt. 719) 529 referred to.] (pp. 616-617, paras, C-F 618-619, paras. H-A; 619, paras. G)

Per TOBI, J.S.C. at pages 618-619, paras. G-B:

"Learned counsel for the respondent did not see anything wrong with the position taken by the court of Appeal. With respect, I see something wrong with it. The noun "addition" means adding numbers together. The adjective "additional" involves the idea of joining or uniting one thing to another thereby forming one aggregate and so the thing in whole exists us one aggregate. Accordingly, one can only add to an existing thing. One cannot add to a non-existing thing. It is both a legal and factual impossibility. And so when all the grounds (original and additional) were struck out, the additional ground 8 had no standing in terms of increasing the number from seven grounds by one. This is because one can only add something to something. One cannot add something to nothing. In the latter case, as there is nothing to hold or support the something, it will fall or crumble. That is the way I see the situation here. Ground 8, the so called additional ground, has nothing to support it and so it crumbles. The Court of Appeal, with greatest respect, was in error in trying to save it."

Per OGBUAGLJ, J.S.C. at pages 622-623, paras. G-B:

"On the said main or original ground having been struck out by the court below on 28<sup>th</sup> July, 1993 in its judgment, the said *Additional Ground 8*, naturally and with respect, *commonsensical goes with it* and therefore there is nothing left in the said notice of appeal more so, as all the rest of the seven additional grounds of appeal, were equally struck out by the court below. See page 18 of its said judgment. In other words, the court below, with profound humility and respect, was clearly in error, when it "clung" to additional ground 8 in coming to its said decision of initially allowing the respondent's appeal having regard to the fact that there was no "foundation" on which the notice of appeal which was therefore, bare, valueless, unimportant and incompetent, could stand. See the case of *mackfoy v. U.A.C Ltd.* (19620 A.C 162"

5. *On whether omnibus ground of appeal can sustain appeal -*

An appeal predicated on an omnibus or general ground of appeal is not at large and therefore cannot be used to raise an issue of law, which must be raised as a separate ground of appeal and not made an adjunct to it. This is why an omnibus ground of appeal can sustain an appeal because it implies that the judgment of the trial court cannot be supported by the weight of the evidence adduced by the successful party or that the trial court either wrongly accepted evidence or the inference it drew or the conclusion it reached based on the accepted evidence cannot be justified. But if no issue is formulated on it, then it is of no moment as an issue has to be raised from a ground of appeal. [*onaga v. Micho & Co.* (1961) 2 SCNLR 101; *Calah. operative Thrift & Credit Society Ltd. v. ikot* (1999) 14 NWLR (Pt. 638) 225; *Nwosu v. Udeaja* (1990)1 NWLR (Pt. 125) 188; *Agbaisi v. Ebikorefe* (1997) 4 NWLR (Pt. 502) 630; *Adah v. Adah* (2001) 5 NWLR (Pt. 705) 1 referred to.] (Pp. 621-622, paras. D-A).

6. *On Treatment of ground of appeal from which no issue is formulated –*

An appellate court can only hear and decide an issue raised on the grounds of appeal filed before it. it does not deal with grounds of appeal filed before it but with issue or issues formulated for determination. Thus, a ground of appeal in respect of which no issue has been raised or formulated deemed to have been abandoned and such a ground and all the arguments based on it must be struck out. [*onifade v. olayiwola* (1990) 7 NWLR (pt. 161) 130; *ndiwe v. okocha* (1992) 7 NWLR (pt. 252) 129; *aromolaran v. kupoluyi* (1994)2 NWLR (Pt. 325) 221 to.] (P. 622, paras. A-C)

7. *On whether issue of jurisdiction can be raised for the first time on appeal without leave –*

**Where a ground of appeal raises a question of law alone, it can be filed and argued without any leave of court first sought and obtained. The issue of jurisdiction is an issue of law, which can always be raised without leave. In the instant case, the additional ground 8 was purely on jurisdiction, although the appellants had raised the issue at the trial court in their pleadings and later orally, consequent upon which the trial court held that it had jurisdiction.** [*Comptroller, Nigeria Prisons services, Lagos v. Adekanye* (2002) 15 NWLR (Pt. 790) M2; *Obatoyinbo v. Oshatoba* (1996) 5 NWLR (Pt. 450) M1 referred to.] (P. 615, paras. C-G)

8. *on Power of appeal court to raise issue of jurisdiction of trial court -*

**A Court of Appeal has the jurisdiction to raise the Issue of the jurisdiction of the trial court *sno motu*. (P. 619, para. D)**

9. *on whether respondent can raise point on appeal as of right where he did not cross-appeal thereon –*

**Where a respondent did not cross-appeal on a point, lie cannot be allowed to raise that point on appeal as of right. (P. 617, para. C)**

10. *On duty on court to restrict it to issue raised before it-*

**Where an issue is not placed before a court, the court has no business whatsoever to deal with it as the decision of a court of law must not be founded on any ground of appeal in respect of which it has neither heard argument from or on behalf of the parties before it nor raised by or for the parties or either of them. [Kraus Thompson organisation ltd v. university of calabar (2004) 9 NWLR (2004) 9 NWLR (pt. 879) 631; shitta-bay v. F.P.S.C (1981) 1 SC 40; saude v. abdullahi (1989) 4 NWLR (pt.116) 387 referred to.] (p. 622, paras. C-E)**

11. *On Need for record of appeal to be tidy, complete and properly paginated -*

**A record of appeal, whether compiled by the court's registry from where the appeal originates or by a party who was granted leave by way of departure from the rules of the court to so compile, should represent a neat, tidy, complete, properly paginated and certified bound copies of all the necessary documents required by the rules of the court to form the record of appeal. Anything less is not helping the appeal court in the dispensation of justice. The parties to an appeal, especially the appellant, have a responsibility to ensure that a whole packaged record of appeal which is really worth that name is the only one made available to the appeal (p. 610, paras. B-D)**

Per MUHAMMAD, J.S.C. at pages 609, paras.H.D

**"Let me express my displeasure in the manner the record of appeal was compiled. Reference was made particularly by the learned counsel for the appellants to "Vol. II" of the compiled record. Speaking for myself, I could not see any "Vol. II" for this appeal. It was totally misleading. Secondly, there is no consistency in the pagination of the only record made available to me. The pagination was done at random and sporadically. This is quite unacceptable. It makes following of the record in relation to the arguments proffered by the learned counsel very difficult, tasking and absurd. I think, it is important to reiterate that record of appeal, whether compiled by the court's registry from where the appeal originates or by a party who was granted leave by way of departure from the rules of the court to so compile, should represent a neat/tidy, complete and properly paginated and certified bound copies of all the necessary documents required by the rules of that court which shall form the record of appeal. Anything less is not helping the appeal court in the quick**

**dispensation of justice. The parties to an appeal, especially the appellant, have a responsibility to ensure that a whole packaged record of appeal which is really worth that name is the only one made available to the appeal court."**

12. On effect where appellant fails to file brief of argument in inspect of appeal –

Where no brief of argument has been filed in respect of an appeal by the appellant, who includes a cross-appellant, the appeal is deemed abandoned and must be struck out. In the instant case, there was no brief of argument filed by the cross-appellant to cover the grounds of appeal as set out in the notice of cross-appeal. [*Akibu v. Oduntan* (2000) 13 NWLR (Pt. 685) -146; *Sparkling Breweries Ltd. v. U. B. N. (Nig.) Ltd.* (2001) 15 NWLR (Pt. 737) 539; *Josiah Cornelius Ltd . Ezenwa* (2002) 18 NWLR (Pt. 793) 298; *Nkado v. obiano* (1997) 5 NWLR (Pt. 503) 31 referred to.] (pp 610-611, paras. H-B)

**Nigerian cases referred to in the Judgment:**

**A.C.B plc. V. obmiami Brick & Stone (Nig.) ind.** (No.2) (1993) 5 NWLR (pt. 294)399

**Adah v adah** (2001) 5 NWLR (Pt. 705) 1

*Agbaisi v Ebikorefe* (1997) 4 NWLR (Pt. 502) 630,

*Agbaje v Adigun* (1993) I NWLR (Pi. 269) 261

*Akeredolu v Akinremi (No.2)(1986)* 2 NWLR (Pt. 25) 710.

*Akibu v oduntan* (2000) 13 NWLR (Pt. 685)446

*Aromolaran v. kupoluyi* (1994) 2 NWLR (Pt. 325) 221

*Awhinawhi v. Oteri* ( 1984) 5 SC 38

*Calabar East Co-Operative Thrift & Credit Society ltd v ikot* (1999) 14 NWLR (Pt. 638) 225

*Comptroller, NPS, Lagos (No. 2) v. Adekanye* (2002) 15 NWLR (Pt. 790) 332

*Cooperative Bank (E. N.) Ltd. v. Ogwuru* (1991)1 NWLR (pt. 168)458

*Dahnwa v. Adeniran* (1986) 4 NWLR (Pt.34) 264

*Ebokam v. Ehvenibe & Sons Trading Co. Ltd.* (1999) 10 NWLR (Pt. 622) 242

*Enang v. Obeten* (1997) 11 NWLR (Pt. 528) 255

*Erisi v. Idika* (1987) 4 NWLR (Pt. 66) 503

*Global Transport OceanicoS. A. v. FreeEnt. (Nig.) ltd.* ( 2001)5 NWLR (Pt. 706) 426

*Josiah Cornelius Ltd. v. Ezenwa* (2002) 18 NWLR (Pt 793) 298

*Krans Thompson Organ. Ltd. v. University of Calabar* (2004) 9 NWLR (Pt. 879)631

*Mangt. Ent. Ltd. v. Otunsanya* (1987) 2 NWLR (Pt.55) 179

*Ndiwe v. Okocha* (1992) 7 NWLR (Pt. 252) 129  
*Nkado v. Obiano* (1997) 5 NWLR (Pt. 503) 31  
*Nwaigwe v. Okere* (2008) 13 NWLR (Pt. 1105) 445  
*Nwosu v. Udejaja* (1990) 1 NWLR (Pt. 125) 188  
*Obatoyinbo v. Oshatoha* (1996) 5 NWLR (Pt. 450)  
*Obiakor v. State* (2002) 10 NWLR (Pt. 776) 612  
In re: *Otitedon* (1995) 4 NWLR (Pt. 392) 655  
*Onaga v. Micho* (1961) 2 SCNLR 101  
*Onifade v. Olayiwola* (1990) 7 NWLR (Pt. 161) 130  
*Orakosim v. Menkiti* (2001) 9 NWLR (Pt. 719) 529  
*Osolu v. Osoln* (2003) 11 NWLR (Pt. 832) 608  
*Scnule v. Abdullah!* (1989) 4 NWLR (Pt. 116) 387  
*Shnia-Bey v. F. P. S. C.* (1981) 1 SC 40  
*Sofekmi v. Akinyemi* (1980) 5 - 7 SC 1  
*Sparkling Breweries Ltd. V. U.B.N. Ltd.* (2001) 15 NWLR (pt 737)539  
*ThorLtd. v. F. C. M. B. Lid.* (2002) 4 NWLR ( p t 7 5 7 ) 4 2 7  
*Uor v. Loko* (1988) 2 NWLR (Pt. 77) 430

**Foreign Cases referred to in the judgment:**

*Ahanialh v umma* (1931) AC 799  
*Davies v. powerll duffryn associated colleries ltd.* (1942) AC 601  
*Macfoy v.U. A. C. Ltd.* (1962) AC 152  
*Singh* (1907) IR 34 Ind. App. 164  
*United Marketing Co. v. Kara* (1963) I WLR 523

**NIGERIA STATUTES REFERRED TO IN THE JUDGEMENT:**

Constitution of the Federal Republic of Nigeria, 1999, S. 233(2) Protection Law, Cap. 51, Laws of the Federation of Nigeria Ss, 2, 7, 8,  
High court law, Cap. 49, Laws of Northern Nigeria. 1963, S. 17(1)  
Land tenure Law, Cap. 50, Laws of Northern Nigeria, 1963, S. 41(2)(3)

**APPEAL:**

This was an appeal against the decision of the Court of Appeal which allowed the respondent's appeal against the judgment of the High Court which dismissed the respondent's suit. The Supreme Court, in a unanimous decision, allowed the appeal.

History of the case:

Supreme Court:

Name of *Justices that sat on the appeal*: Niki Tobi, J.S.C. (president); George Adesola Oguntade, J.S.C.; Ikechi Francis Oguntade, J.S.C.; Ibrahim Tanko Muhammad, J.S.C. (*Read the leading Judgment*); James Ogenyi Ogebe, J.S.C.  
Appeal No.: SC. 236/2002

Date of *Judgment*: Friday, 24<sup>th</sup> April, 2009

Name of *Counsel*: Mr. Yusuf O. AH, SAN (*with him*, Sola Idowu, S. A. Oke, T. Hammad, Alex Akoja and A. hiikwu [Miss]) - *for the Appellants*

*Mr. R.O. Yusuf -for the Respondent*

*Court of Appeal:*

*Division of the court of Appeal from which the appeal was brought* Court of Appeal was brought; court of appeal Kaduna

Name of justices *that sat on the appeal*: Okay Achike J.C.A.(President); Muritala Aremu Okunola, J. C.A., simeon Adebayo oduwole J.C .A. (Read the leading judgment); Appeal NO; CA/K/14/89

Date of judgment: Wednesday, 28<sup>th</sup> July, 1993

Name of Counsel: Chief Osho – for the Appellants

Yusuf Ali – for the Respondent

High Court:

*Name of the High Court*: High Court of Kwara state, ilorin

*Name of the Judge*: Oyeyipo, C. J.

*Suit No.:* KWS/146/77

*Dote of Judgment*: Tuesday, 30<sup>th</sup> May, 2000

*Names of Counsel*: Chief Fonsho Adaranml.i

*Plaintiff*

Mr. Gboyega Awololo – for the *Defendants*

**Counsel:**

Mr. Yusuf O. AH, SAN (*with him*, Sola Idowu, S.A oke , T, Hammad, Alex Akoja and A. Udochukwu [Miss]- for the *Appellants*

Mr. R. O. Yusuf -*for the Respondent*

**MUHAMMAD, J.S.C. (Delivering the Leading Judgment)**; the claim of the respondent herein, as plaintiff before the High court of justice, Ilorin (trial court): was as follows:

"Whereby the plaintiff claims as follows:

1. for the following declarations:-
  - a) That the cash receipt No. 001 of 14<sup>th</sup> August, 1973 for the sum of N2,000.00 purportedly being compensation for transfer of ownership of land by the plaintiff to defendant could not and did not confer any title in respect of the land described therein on the first defendant.
  - b) That the cash receipt No. 001 of 14<sup>th</sup> August, 1973 for the sum of N2000.00 purportedly being compensation for transfer of

ownership of land by the plaintiff to the defendant is null and void and of legal effect as it was not duly stamped.

- c) That said cash receipt no 001 of 14<sup>th</sup> August, 1973 for the said sum of N2000.00 purportedly being compensation for transfer of ownership of land by the plaintiff to the defendant did not comply with the provisions of sections 2, 7 and 8 of the illiterates protection law and is thereby null and void and of no legal effect.
- d) That the application for a permit to alienate land dated 10<sup>th</sup> August, 1973 and signed by the plaintiff was obtained by fraud and is therefore null and void and of no legal effect, and did not comply with sections 2, 7, and 8 of the illiterate Protection Law, Chapter 51.
- e) That the Customary Right Of Occupancy No. OLGA/W/31/6/73 of 10<sup>th</sup> August, 1973 granted to the defendant by the Oyun Local Government Authority based on the said application referred to in paragraph (e) above is null and void and of no effect.
- f) That the land described in the said Customary Right of Occupancy No. OLGA/W/31/6/73 of 10<sup>th</sup> August, 1973 is and remains the property of the plaintiff and has never passed to the defendant.

*b) Particulars of Special Damages*

- (I) N 1000.00 for the 583 Kola nuts destroyed
- (I i) N500.00 for the 50 oil palm tree-destroyed
- (iii) N200.00 for the 219 Coffee destroyed
- (IV) N100.00 for the 10.300 cassava plains
- (v) N100.00 for the 62 Oranges destroyed
- (iv) N150.00 for the 27 Cashew trees destroyed.

(c) General damages

- (i) N50, 000 for unlawful and exploitation.
- (ii) N 10,000.00 for aggravated trespass.
- (iii) N 10,000.00 for the fraud

Pending the determination of the suit, and injunction to restrain the I<sup>s1</sup> defendant from doing or causing the doing of any act of claiming any right of ownership or possession on, or waste, alienate or cultivate the said land. And the plaintiff claims the said sum N72, 950.00 from the defendant and severally."

The appellants herein, as defendants at the trial court joined issues with respondent on all the salient averments in the statement of the claim. . After a protracted trial which lasted for over a decade, the trial court in dismissed the claim of the respondent in its entirety. The respondent was dissatisfied and filed an appeal to the Court of Appeal Kaduna, division (court below). The appeal was allowed on the issue of lack of jurisdiction founded on ground 8 of the additional grounds of appeal. Accordingly, suit No. KWS/146/77 was struck out. The appellants were dissatisfied with the decision of the court below and they appealed to this

court on six grounds of appeal vide a Notice of Appeal dated 19<sup>th</sup> of October, 1993 and filed on the same day. The respondent was equally dissatisfied with the decision of the court below. He therefore, filed a Notice of cross-appeal dated 27<sup>th</sup> of October, 1993.

For the purposes of clarity in this appeal. I think there is need to point out that the respondent had at the lower court, as appellant, filed two original grounds of appeal including the omnibus ground. Later on and in the course of the proceedings in the court below, the respondent sought leave of that court to file and in fact, did file seven additional grounds of appeal. Thus, there were nine grounds of appeal before the court below as filed by the respondent. The appellants as respondents in the court below in their brief of argument gave a notice of preliminary objection against all the grounds of appeal filed by the respondent on the ground of incompetency. The arguments on the preliminary objection were incorporated into the appellants' brief of argument. There was no reply brief filed by the respondent. By an application dated 7<sup>th</sup> of April, 1993. The respondent sought leave of the court below to amend the Notice of Appeal by filing an additional ground 8. The application was granted by the court below on the 25<sup>th</sup> of April, 1993. Again, briefs of argument were filed and exchanged in respect of the additional ground of appeal filed by the court below on the 25<sup>th</sup> of April, 1993. Again, briefs of argument were filed and exchanged in respect of the additional ground of appeal filed by the respondent. The appellants raised a preliminary objection to the competence of the additional ground of appeal which objection and argument thereon were incorporated in the respondent's brief of argument in answer to appellants' additional brief of argument.

The court below in its judgment upheld the preliminary objections of the appellants and held that the grounds of appeal filed by the respondent, save the additional ground 8 were incompetent and struck them out accordingly. On the omnibus ground, the court below found that no issue was formulated to cover it and was deemed abandoned and struck it out. On the additional ground 8, the court below held that the objection of learned counsel for the appellants on that ground lacked merit and it dismissed same. The court below went ahead to consider the appeal based on additional ground 8. The court below found in favour of the respondent on this additional ground and allowed the appeal. In his brief of arguments, the learned SAN for the appellants formulated two issues as follows:

1. Whether the Court of Appeal was not wrong in Considering the argument based upon additional ground 8 of the respondent's grounds of appeal when there was no valid notice of appeal before the court upon which the purported additional ground 8 could have been predicated and more so, when the said additional ground 8 was not filed in accordance with well established principles of law and the rules of court.
2. Whether the Court of Appeal was right in the manner it misconstrued and misapplied the provisions of section 17(1) of the High Court Law, Cap 49. Laws of N.N. 1963 and section 41(2) and (3) of the Land Tenure Law. Cap 49, Laws of N. N. 1963 and section 41(2) and (3) of the land Tenure Law. Cap 59. Laws of N.N. 1963 when there was no ground of appeal challenging the trial court's finding on the matter and there were

insufficient materials on record to sustain the application of the provisions of the laws aforesaid to the case."

Two issues were as well formulated by learned counsel for the respondent. They are as follows:

- (a) Whether the lower court was right in allowing the appeal before it against the judgement of the trial court based on additional ground 8 challenging the jurisdiction of the trial court to entertain the claim before it.
- (b) Whether the lower court properly construed and the applied the provisions of section 17(1) of the high court of, Northern Nigeria, 1963 and section 41(2) and (3) of the Law of Tenure Law, Cap. 59, Law of Northern Nigeria Law 1993 before arriving at the decision that the trial court had no jurisdiction to entertain the suit before it"

Learned counsel for the appellants argued the issues seriatim so also the learned counsel for the respondent. Issues for the appellants cover issues for the respondent. This appeal will be considered on the appellants' issues for determination.

The learned counsel for the appellants after giving a summary of the facts giving rise to this appeal submitted that the law is now firmly settled that a notice of appeal is the foundation upon which an appeal is based. It is, he said, the originating process which set the ball rolling for the proper, valid and lawful commencement of an appeal. Where the notice of appeal is found to be defective or invalid for whatever reason, the appeal falls to the ground and must be struck out. He referred to the following cases: *Cooperative bank. (E.N) Ltd. v. Ogwiiru* (1991) 1 NWLR (Pt.168) at 458; *enang v. Obeten* (1997) 11 NWLR (pt. 528) 255 at 265-266.

Learned counsel submitted further that for a notice of appeal to be valid, it must contain valid or competent grounds of appeal where the grounds of appeal are held incompetent and are struck out, the notice of appeal and the whole appeal must be dismissed by the court. The court below learned counsel contended. Was in error in holding that additional ground 8 of the respondent was valid and arguable, after having found that the original grounds of appeal including the omnibus ground were incompetent and stuck out same and there was no longer any valid notice of appeal before the court below on which additional ground 8 could have been hinged. The cases of *dahuwa v. Adeniran* (1986) 4 NWLR (pt. 34) 264 and *A.C.B plc v Ohiniami Brick & Stone (Nig.) Ltd. (No. 2)* (1993) 5 NWLR (pt. 294) 399 were cited. Learned counsel argued that the defect in the notice of appeal could not be cured by an application for amendment of the notice of appeal by filling and additional ground of appeal or other additional grounds. It then follows that there was no valid nor competent notice of appeal on which additional ground 8 could not be predicated. Learned counsel urges this court to hold that the court below was in error to have based it's decision on additional ground 8 of the respondent's grounds of appeal and that this court should declare that decision to be a nullity.

On the issue of jurisdiction relating to issue No. 1, the learned counsel for the appellants submitted that the issue of lack of jurisdiction of the trial court was raised in paragraph 23 of the amended statement of defense of the 1<sup>st</sup> defendant. There was no

reply to that effect filed by the respondent. No issue was thus joined by the parties on the issue of lack of original jurisdiction of the trial court to entertain the claims. Learned counsel submitted that the issue of lack of original jurisdiction of the trial court was a fresh point which was raised by the respondent for the first time in the court below. There was need therefore, for the respondent to seek leave of the court below before he could raise and argue the fresh issue of jurisdiction. He relied on the cases of *Agbaje v. Adigu (1993) 1 NWLR (Pt. 269) 261 at 270 - 271*; *Uor v. Loko (1988) 2 NWLR (pt. 77) 430*. Learned counsel argued that the court below was error in allowing additional ground 8 to be filed and argued by respondent when no leave had been sought and granted by that court. He however, conceded later that an issue of jurisdiction, because of its fundamental nature, can be raised at any stage of the proceedings and even for the first time at the Supreme Court. Learned counsel urged this court to answer issue No. 1 in the positive and allow grounds 1, 2, 3, and 4 on which the issue is premised.

Learned counsel for the respondent, on the other hand. Submitted that on issue of jurisdiction, no leave of court is required to raise it. He cited the case of *Management Enterprises Ltd. v. otusanya (1987) 1 NSCC. p. 577 at 583*; *(1987) 2 NWLR (Pi. 55) 179*, *sofekun v. Akinyemi & ors. (1980) 5 - 7 SC 1 at pp 86-87*. The submission of learned counsel for the appellants, he argued was misconceived. He cited the case of *Obiakor r. the Stale (2002) 10 NELR (pt. 776) 612 at 626*. Learned counsel for the respondent added that being a civil appeal, the omnibus ground of appeal is competent and it is the bedrock upon which additional ground of the notice of appeal is predicated.

Let me express my displeasure in the manner the record of appeal was compiled. Reference was made particularly by the learned counsel for the appellants to Vol II" for the compiled record, speaking for myself, I could not see any "Vol. 11 for this appeal. It was totally misleading. Secondly, there is no consistency in the pagination of the only record made available to me. The pagination was done at random and sporadically. This is quite unacceptable. It makes following of the record in relation to the argument proffered by the learned counsel very difficult, tasking and absurd. I think, it is important to reiterate that records of appeal, whether compiled by the court's registry from where the appeal originates or by a party who was granted leave by way of departure from the rule of the court to so compile, should represent a neat/tidy, complete and properly paginated and certified bound copies of all the necessary documents required by the rules of that court which shall form the record of appeal. Anything less is not helping the appeal court in the quick dispensation of justice. The parties to an appeal, especially the appellant, have a responsibility to ensure that a whole packaged record of appeal which is really worth that name is the only one made available to the appeal court.

Let me observe again that there is said to be a cross-appeal by the respondent in this matter. Learned counsel for the appellants made reference to that and he said:

"The respondent was equally dissatisfied with the decision of the lower court and filed a cross-appeal dated 27<sup>th</sup> October, 1993. The Notice of cross-appeal is at pages 97-99 Vol. II of the record of proceeding"

In the only record of appeal before me, I have noticed two pages bearing "97" one in the proceedings of the trial court which bears an affidavit in support while the other page is immediately after the notice of appeal filed by the appellants. The latter, though not titled as

Notice of Cross-Appeal, appears to be the one filed by the respondent as it was signed by learned counsel Mr. Oshe. Appellant's counsel in the cross-appeal. Ground No. 1 of the cross-appeal challenged the holding of the court below that the appellant, (cross-appellant) abandoned his omnibus ground of appeal on the alleged reason that no issue was formulated on it. From the record of this appeal. I could not trace any brief of argument filed by the cross-appellant to cover his grounds of appeal as set out in the notice of the cross-appeal. I must take it that the cross-appellant decide to abandon the cross-appeal. The law is settled that where no brief of argument has been filed in respect of an appeal by the appellant which includes a cross-appellant, that appeal is deemed abandoned and must be struck out. See: *Akibu & ors v. Oduntan & Ors.* (2000), 7 SCNJ 189 (pt. 737) 13 NWLR (Pt. 685) 446; *Sparkling breweries ltd & ors v. Union bank of Nigeria. Ltd.* (2001) 7 SCNJ 321, (2001) 15 NWLR (pt 737) 539, *Josiah Cornelius Ltd. & Ors. v. Ezenwa* (2003) 4 SCNJ 123; (2002) 18 NWLR (Pt. 793) 298, *Nkado & Ors. V. obiano & Anori* (1997) 5 SCNJ 33; (1997) 5 NWLR (Pt. 503) 31. Accordingly the notice of cross-appeal which covers pages 97-99 of the record of appeal is hereby struck out.

Now turning to issue No.1 of the main appeal as formulated by the learned counsel for the appellants, it is pertinent to state at the risk of repetition, some of the salient facts of the appeal. The respondent in this court was the appellant in the court below. He was dissatisfied with the decision of the trial court. He filed his notice of appeal to the court below. That Notice of Appeal is contained in page 235-236 of the record of appeal. It bears two original grounds of appeal including the omnibus ground. Later on, and in the course of the proceeding in the court below, the respondent sought leave of the court below to file some additional grounds of appeal. The motion to that effect was moved and granted by the court below on the October, 1990. This is an unnumbered page of the record but the motion was heard and granted by Achike, Mukhtar and Adio, JICA (as they then were) in application no. CA/K/14M/89. Thus, the total number of the grounds of appeal rose to 7 in the notice of appeal. Meanwhile, briefs were settled by the parties. Before hearing of the appeal, however, another motion on notice was filed on the 8<sup>th</sup> of April, 1993 praying, among others, for leave to be granted to the applicant/appellant to further amend the notice of appeal by adding ground eight which was annexed to the affidavit as exhibit 'B' and to deem same also as duly filed and served. The said motion contained a prayer for enlargement of time within which to file additional brief m annexed as Exhibit 'C' to the affidavit in support and to deem same as duly filed and served. The motion was taken and granted by the court below on the 25<sup>th</sup> day of April. 1993. By granting the reliefs sought, the number of grounds of appeal in the notice of appeal has now risen to eight.

The appeal was heard on the 25<sup>th</sup> day of April, 1993 and judgment was reserve. Judgment was subsequently delivered on the 28<sup>th</sup> day of July, 1993, whereby the appeal was allowed on the Issue of jurisdiction formed on ground 8 of the additional ground of appeal and suit No. KWS/146/77: yusuf olabisi v. J.A aderibigbe & Anor was struck out.

Appellants' issue No. 1 questions the propriety and validity of the court below's holding that additional ground No. 8 was valid and arguable when it is the same court that held the two original grounds of appeal and the other (7) additional grounds filed by the respondent were incompetent and struck same out. The hold holding of court below in respect of the preliminary objections raised by the appellants as respondents reads as follows:

"I think it is apposite before attempting to go into the issues for resolution to deal first with the preliminary objections which are two parts embodied in the respondents' briefs of argument filed on the 22<sup>nd</sup> October, 1990 and 22<sup>nd</sup> of April, 1993 respectively. The former concerns two original grounds of appeal and seven additional grounds of while the latter relates only to the 8<sup>th</sup> additional ground of appeal deemed to have been filed on 28<sup>th</sup> of April, 1993 and if they succeed, that much will brevi manu dispose appeal wholly or for as much as may be, that is pro-tanto.

Leaving the omnibus ground which is ground (1) of the original grounds of appeal at the moment objection to ground 2 of the original ground(s) of appeal is simply that neither the nature nor the particular of the errors and misdirection alleged have been specified in the said ground.

I must say with dismay even though I realized that the briefs have changed hands in this case that In my over three decades of combined experience at the bar and Bench I have never seen any ground of appeal, be it that of error or misdirection so vague and meaningless as ground (2) above. The purported particulars given under this vague ground of appeal are in their bare from no more than quotations in the judgment of the learn trial judge at pages 230 - 231 and 232 respectively of the printed record. It is trite law that a ground of appeal containing mere quotations from passages of a judgment without specifying the nature of the error in law or misdirection is incompetent and ought to be struck out suo motu by the application of a respondent.....

The attack on all the additional grounds of appeal save ground 8 with which I shall deal with later in this judgment centered on the nature of the misdirection or error alleged in each of the said grounds of appeal and the particulars of which were neither specified nor fully or substantially given.

I have with great care and concern gone through all the said additional grounds of appeal supra and besides quoting substantially or stating passages where the alleged errors and/or misdirection's have occurred nothing else as regards the real nature of such errors or misdirection's are specified and in some particulars are not supplied.....

Alas! Such is the case as far as these additional grounds of appeal stated supra are concerned. They are therefore incompetent.

Now coming back to the omnibus ground which the respondents' learned counsel contended is of no.....there being no issue formulated on it by

the appellant. I entirely agree with this submission. Authorities also ... .that an issue in an appeal has to be raised from the grounds of appeal. See: ...

At this juncture, I think it is germane in addition to my finding above on all the grounds filed by the appellant save ground 8 of the additional grounds of appeal that lumping together grounds of appeal alleging errors and misdirection also make such grounds defective and therefore incompetent and ought to be struck out.....

Also by reason of the lumping together ground of error and misdirection as expatiated above, all the additional grounds of appeal are equally defective and therefore incompetent."

Towards the tail end of the judgment, Oduvvole. JCA. Concluded as follows:

"In conclusion, the two original grounds of appeal as Well as all the additional ground of appeal save ground 8(additional) is struck out."

On additional ground No. 8 the court below observed:

"This takes me to the 8<sup>th</sup> additional ground filed with leave of court only few months ago by the appellant and to which the respondents had taken serious objection by fining serious notice of preliminary objection which was incorporated in their brief of argument additional brief of argument." The court below after some analysis of some point of law overruled the objection raised by learned counsel for the appellants and went on to consider the issue formulated on additional ground 8 of the appeal. The court below allowed the appeal. It stated in its words:

"The appeal succeeds and it is allowed on the issue of lack of jurisdiction founded on ground 8 of the additional grounds of appeal. According, suit no. KWS/46/77 Yusuf Olabisi and J.A. Aderigbe and another is accordingly struck out."

I think the fundamental legal question put by learn counsel for the appellants is whether an additional ground can be sustained where the original ground of appeal has been found to be incompetent and struck out.

I think too, the whole question has to do with the validity and subsistence of a Notice of Appeal. A Notice of Appeal is the spinal cord of an appeal. It is the foundation upon which an appeal is based. It is the originating process which sets the ball rolling for the proper, valid and lawful commencement of an appeal. Where the notice of appeal is defective, no proper appeal can stand. It will certainly collapse. See: in re; *Otuedon* (1995) 5 SCNJ 217, (1995) 4 NWLR (Ft.392) 655; *Thor Ltd r. First City Monument Bank Ltd* (2002) 2 SCNJ 85; (2002) 4 NWLR (Pi. 757) 427, *Ebokam v. Ekwenibe.& Sons Trading Co. Lid.* (1999) 7 SCNJ 77; (1999) 10 NWLR (pt. 622) 242. A notice of appeal can be competent and valid if it contains at least one valid ground of appeal. Sec: section 233(2) of the Constitution of the Federal Republic of Nigeria, 1999: *Erisi & ors v. Idiku & Ors.* (1987) 4 NWLR (Pt. 66) 503 at page 516. A bare notice of appeal without any ground or grounds of appeal is valueless and incompetent. See *Akeredou Ors. Akinremi & Ors. (No.2)(1986)* 4 SC 325 at page 372: (1986) 2 NWLR (Pt. 25) 7 10. It is incurably bad. The defect cannot be cured in amendment. See: *global transport oceanic s.a & free enterprises nig ltd* (2001) 2 SCNJ 224; (2001) 5 NWLR (pt. 706) 426

In these original grounds 1 and 2 were struck out by the court below having found same to be incompetent. (See the concluding part of judgment of Oduwole, JCA, no exact page number to cite). The same result affected all the additional grounds of appeal save additional ground No. 8. In allowing additional ground 8 to scale through, the learned justices of the court, particularly the judgment of Oduwole JCA, relied on two points as adumbrated by learned counsel for the appellant/respondent in his reply brief. Below is what the honorable Justice said:

“The first is that the issue of jurisdiction was not being raised for the first time in this court as it was earlier raised at the trial court by the respondents in their pleadings and later orally at the trial and consequent on which the learned trial judge held inter alia in his judgment that he had jurisdiction. The second is that issue of jurisdiction is an issue of law which can always be raised without leave.”

I totally agree with the learned justice of the court below who delivered the leading judgment that, that is the correct position of the law, I will even go further to say that where a ground of appeal raises a question of law alone, that ground can be filed and argued without any leave of court first sought and obtainable. See: *Comptroller, Nigeria Prisons Services, Ikoyi, Lagos, & Ors. v. Femi Adekanye & Ors.* (2002) 7 SCNJ 399; (2002) 15 NWLR (pt. 790) 332, *Obatoyinbo v. Oshatoba* (1996) 5 SCNJ 1; (1996) NWLR (pt. 450) 531. Even counsel for the appellants conceded to that in his brief of argument. He stated:

“It is conceded that an issue of jurisdiction because of its fundamental nature can be raised at any stage of the proceedings and even for the first time at the Supreme Court”

Ground No. 8 which was titled "Additional Ground Eight" as contained in exhibit "B" annexed to the affidavit in support of the motion reads, (shorn of its particulars) as follows:

“The trial High Court erred in law in exercising original jurisdiction in the present case which raises an issue as to title to land, the subject of a statutory right of occupancy granted by a local government

I am in total agreement here also, with the court below that the issue of jurisdiction was not being raised for the first time at the below as it was earlier raised at the trial court by the defendants in their pleadings and later orally at the trial and consequent upon which the learned trial judge held that he had jurisdiction. (Refer paragraphs 22 and 23 of the 1<sup>st</sup> defendant's amended statement of defense -page 180 of the record). Thus, additional ground No. 8 was purely on jurisdiction. The court below, I would say, was right to some extent in overruling the objection of the learned counsel for the respondents/appellants in that regard.

My difficulty with the decision of the court below appears that the same court blew both hot and cold. It rather, approbated and reprobated. This is what I mean: The court found two original grounds incompetent as it struck out same. It also found all the additional grounds of appeal save ground No. 8 as INCOMPETENT and struck out same. It is clear from the scenario that from the very moment the original grounds of appeal found to be incompetent and struck out as a result, there was no more valid notice of appeal. The act of striking out the incompetent appeal rendered the notice of appeal to be bare. And it is the law that a bare notice of appeal is valueless and incompetent. See: *Akeredolu v. Akinremi (supra)*. It is incurably defective the defect cannot be cured by amendment. See: *Global Transport Oceanico S.A. & Anor v. Free Enterprises Nig. Ltd. (supra)*. *Nwaigwe & 2 Ors. v. Okere* (2008) 5-6 SC (Pt. 11) 93 at page 115, (2008) 13 NWLR (Pt.1105) 445. Thus, granting leave to file an additional ground or grounds which are already incompetent cannot cure the vice which has incurably infected the original grounds.

Thus, in the present situation, there was no subsisting notice of appeal upon which to place additional ground No. 8.

And hence, it has been tagged "additional" the connotation is that there must be a valid and subsisting ground(s) of appeal the court. It is to be noted in this case that when the below granted the reliefs in the motion which brought about ground No. 8 into existence, the applicant therein prayed for leave to amend the Notice of Appeal by adding ground eight. It is not that he asked for leave or extension of time within which to appeal. So where there exists no valid appeal before the court below, the additional grounds filed, including additional ground No. 8 even though within time extended, all became naught. The law is that one cannot build something on nothing and it to stand. It will certainly collapse. See *mackyfoy v. U.A.C Ltd (1962) A.C. 152*.

The argument by learned counsel for the respondent in his brief argument that ground one of the respondent's notices of appeal, appeal, and as omnibus ground, is competent and it is the bed rock upon which additional ground of the notice of appeal is predicted upon, cannot, in my view, be of any assistance to him. I say so because: Ground one of the grounds of appeal, though omnibus struck out by the lower court. There is no cross-appeal indent by the respondent. The law is settled that where a respondent did cross-appeal on a point, he cannot be allowed to raise that point on appeal as of right. See: *United Marketing Co. v. Kara (1963) 1 WLR 523 at 524 Ahamath v. Umma (1931) AC 799, 802-803; Singh v. Singh (1907) IR 34 Ind. App - 164 (Privy Council)*. It has been pointed out earlier that the cross-appeal filed was abandoned by the cross-appellant. Further, several authorities abound that where original notice of appeal is defective; no additional ground(s) could be hung on it. I will cite few instances:

In the case of *Awhinawhi & Anor v. Oteri & Ors (1984) 5 SC 38 at 42*, this court, per Nnamani, JSC, (of blessed memory) had this to say:

"However, if the original notice of appeal was defective, no additional grounds could be hung on it... in view that there was no appeal before the Court of Appeal and the proceedings there were null and void."

Again, in the case of *Orakosim v. Menkiti (2001) 5 SCNJ 1 at page 10 ; ( 2001) 9 NWLR (Pt. 719) 529, Ogundare, J.S.C, held as follows:*

"All the four grounds contained in the notice of appeal being incompetent, the appeal itself is also incompetent. And being incompetent, the additional ground will have no appeal to be anchored on."

Thus, it was wrong of the court below to have based its decision on non-existing appeal. They lacked jurisdiction to embark upon that exercise.

Finally, this appeal succeeds and it is allowed by me on this issue alone. There is no need for me to consider the other issue formulated on the merit of the case. Accordingly, I set aside the decision of the COURT BELOW BEING a nullity and make an order striking out the appeal before the court below.

Each party to bear its own costs in this appeal.

**TOBI, J.S.C:** I have read in draft the judgment of my learned brother, Mohammed JSC and I agree with him. The appeal centres on the use by the court of appeal of the additional ground 8 on jurisdiction. It reads:

"The trial High court erred in law in exercising original jurisdiction in the present case which raises an issue as to title to land, the subject of a statutory right of occupancy granted by a local government."

As my learned brother has beautifully presented the scenario that led to the filing of the additional ground of appeal, I will not repeat it. I should however emphasise that the Court Appeal held that all the seven grounds of appeal filed were incompetent were accordingly struck out. That court found additional ground 8 a saviour and made use of it to salvage the appeal. The court said inter alia:

"At this juncture, I think it is germane in addition to finding above on all the grounds filed by the appellant save ground 8 of the additional grounds of appeal that lumping together grounds of appeal alleging errors and misdirections also make such grounds defective and therefore incompetent and ought to be struck out... In conclusion the two original grounds of appeal as well as all the additional grounds of appeal save ground 8 (additional) are struck out."

It is this aspect of the decision that is the crux of this appeal. Issues were formulated on it by the parties. It is the argument of counsel for the appellants that the Court of Appeal was wrong in resorting to ground 8 when the same court struck out the two original grounds as well as the other additional grounds. Counsel raised preliminary objection which was overruled.

Learned counsel for the respondent did not see anything wrong with the position taken by the Court of Appeal. With respect, I see something wrong with it. The noun "addition" means adding numbers together. The adjective "additional" involves the idea of joining or uniting one thing to another thereby forming one aggregate and so the thing in whole exists as one aggregate. According one can only add to an existing thing. One cannot add to a non-existing thing. It is both a legal and factual impossibility. And so when all the grounds, (original and additional) were struck out. The additional ground 8 had no standing in terms of increasing the number seven ground by one. This is because one can only add something to something. One cannot add something to nothing. In the latter case, as there is nothing to hold or support the something, it will fall or crumble. That is the way I see the situation here. Ground 8, the so called additional ground, has nothing to support it and so it crumbles. The court of appeal, with great respect, was in error in trying to save it.

I entirely agree with my learned brother that the notice of appeal is the spinal cord of an appeal. It does not only place the appeal in its proper perspective, it is the cynosure or fulcrum of the appeal. There cannot be a valid appeal without a notice of appeal or more accurately without a valid notice of appeal. The most valid requirement of a notice of appeal is the ground of appeal. There cannot be a valid appeal without valid ground or grounds of appeal. This is because the ground of appeal is the basis of the complaint by the appellant against the judgment of the court.

I want to say one last word. The court of appeal had the jurisdiction to raised the issue of jurisdiction suo motu and if the court had done that to arrive at the decision, I

should have not faulted the court, but the court, instead of doing so, relied on ground 8 which has no legs to stand.

It is for the above reasons and the abler reason given by my learned brother that I too allow the appeal, I set aside the judgment of the court of appeal and strike out the appeal in the court of appeal. I also abide by his order as to costs

**OGUNTADE J.S.C.:** I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Muhammad J.S.C. I agree with him that this appeal has merit. I would also allow it. The court below having struck out all the grounds of appeal raised by the appellant in his original notice of appeal had no jurisdiction to determine the appeal on the basis of the additional grounds of appeal which raise the question of the jurisdiction of the trial court.

It is a valid notice of appeal, which activates the jurisdiction of an appellate court. A notice of appeal which carries no valid ground of appeal cannot be valid and is incapable of activating the jurisdiction of the Court of Appeal. Whilst it is correct to say that the question as to jurisdiction of a court could be raised to any state of a case and even for the first time on appeal, the court before which the issue of jurisdiction is raised, must first possess the jurisdiction to hear the totality of the appeal; and such court cannot have the jurisdiction without a valid notice of appeal.

It was an error on the part of the court below to have proceeded to determine the issue of the jurisdiction of the trial court which was raised vide an additional ground of appeal when the original notice of appeal which represented the pivot upon which the jurisdiction of the court of appeal stood had destroyed. I would also allow the appeal. I make no order as to costs.

**OGBUAGU, J.S.C.:** This is an appeal against the decision of the Court of Appeal, Kaduna Division (hereinafter called the court below") delivered on 28<sup>th</sup> July, 1993 allowing the appeal to it by the respondent against the judgment of the trial court- per oyeyipo CJ. Of the High Court of Kwara State delivered on 30<sup>th</sup> may, 2006.

Dissatisfied with the said decision, the appellant has appealed to this court on (6) six grounds of appeal all substantially, relating to the propriety of the court below, relying on an additional ground 8 in the Notice of Appeal filed by the respondent in the court below. The appellants formulated two issues for determination namely,

- "1. Whether the Court of Appeal was not wrong considering the argument based upon additional ground 8 of the respondent's grounds of appeal where there was no valid notice of appeal before the court upon which the purported additional ground 8 could have been predicated and more so when the said additional ground 8 was not filed in accordance with well established principles of law and the rules of court.
2. Whether the Court of Appeal was right in the manner I misconstrued and misapplied the provision of section 17(1) of the High Court Law, Cap 49, Laws of N.N 1963 and section 41(2) and (3) of the Land tenure law, Cap 59, Laws of N.N. 1963 when there was no ground, of appeal

challenging the trial court's finding on the matter and there were insufficient material on record to sustain the application of the provisional of the laws aforesaid to the case."

on his part, the respondent has also formulated two issues for determination which read as follows:

"(a) whether the lower court was right in allowing the appeal before it against the judgment of the trial court on additional ground 8 challenging the jurisdiction of the trial court to entertain the claim before it

(b) Whether the lower court properly construed and applied the provisions of section 17(1) of the high court of northern Nigeria, 1963 and section 41(2) & (3) of the land tenure law, cap 59, laws of northern Nigeria law 1963 before arriving at the decision that the trial court had no jurisdiction to entertain the suit before it."

**Observation ;** It seems or appears to me that both learned counsel for the parties, did not bother to vet the records, the reading by me shows that it is a bundle of confusion on the paging, also some of the pages are blurred and not clear. Then to this appeal.

I note that ground I in the respondent's notice of appeal at page 235 of the records, is the omnibus ground, it is settle that an appeal predicated on the omnibus or general ground, is not at large and therefore, cannot be used to raise issue of law which must be raised as a separate ground of appeal and not made an adjunction to it. See the case of *Onaga & ors. v. Micho v. Co.* (1961) 2 SCNLR 101; (1961) 2 ANLR 209; (1961) All NLR 324 and *Davies v. Powell duffryn associated Collieries Lid.* (1942) A.C. 601 @ 616-617 both referred to in the case of *Calabar East Co-operative Thrift & Credi society ltd. & 3 ors. v. Ethn E. Ikot* (1999) 14 NWLR (Pt. 638) 225: (1999) 12 SCNJ 321 @ 338. This is why, an omnibus ground of appeal, can sustain an appeal because, it implies that the judgment of the trial court, cannot be supported by the weight of the evidence adduced by the successful party or that the trial judge, either wrongly accepted evidence or the inference he drew or the conclusion he reached based on the accepted evidence, cannot be justified. See the case of *Engr. Osolu v. Engr. Uzodinma osolu & ors.* (2003) NWLR (Pt. 832) 608 @ 631-632. 645-646; (2003) 6 SCNJ. 162 @ 186.

But if no issue is formulated on it, as in the instant case leading to this appeal, then it it of no moment. This is because, it is settled that an issue has to be raised from a ground of appeal. See *Nwosu v. Udeaja* (1990) 1 NWLR (pt. 125) 188 (1990) 1 SCNL 152; chief agbaisi & 3 ors. V. ebikorefe & 6 ors. (1997) 4 NWLR (pt. 502) 0630; (1997) 4 SCNJ. 147 @ 157 and Gabriel adah v. john adah (2001) 2 SCNJ. 90 @ 97; (2001) 5 NWLR (pt. 705) I just to mention but a few. This must be so because and this is also settle, an appellate court, can only hear and decide an issue raised on the grounds of appeal filled before it.

It does not deal with grounds of appeal, but with issue or issues formulated for determination. This is why a ground of appeal in respect of which no issue has been raise or formulated, is deemed to have been abandoned and such a ground and all the arguments based on it, must be struck out. See the cases of *Onifade v. Olayiwola* (1990) 7 NWLR (Pt. 161) 130; (1990) 11 SCNJ. 10; *Ndiwe v. Okoclm* (1992) 7 NWLR (Pt. 252) 129; (1992) 7 SCNJ. 355 and *Aromolarau v. Kupolnyi* (1994) 2 NWLR (pt. 325) 221 and many others.

This is why it is also firmly established that when an issue is not placed before a court, such a court, has no business whatsoever, to deal with it as the decisions of a court of law, must not be founded on any ground in respect of which it has neither read argument from or on behalf of the parties before it nor even raised by or for the parties or either of them.

So said this court -per Musdapher, JSC in the case of *Krans Thompson Organisation Ltd. v. Unn Calabar* (2004) 4 SCNJ. 21 @ 133; (2004) 9 NWLR (Pt 829) 631 citing the cases of *Shitta-Bey v. Federal Public Service commission* (1981) 1 SC 40 and *Alhaji Saude v. Abdullahi* (1989)4 NWLR (pt. 116) 387; (1989) 7 SCNJ. 216.

I note that in paragraphs 3.05 and 3.06 of the respondent's brief, the following are stated:

"3.05 Ground one of the respondent's notice of appeal before the lower court was that:

"3: The judgment is against the weight of evidence

"3.06 Being a civil appeal, the omnibus ground of appeal is competent and it is *the bedrock* of which (sic) additional ground of the notice of appeal is *predicated upon*". (Italics mine)

On the said main or original ground having been struck out by the court below on 28<sup>th</sup> July, 1993 in its judgment, the said additional ground 8, naturally and with respect, commonsensical, goes with it and therefore, there is nothing left in the said notice of appeal more so, as all the rest of the seven additional grounds of appeal were equally struck out by the court below. See page 18 of its said judgment. In other words, the court below, with profound humility And respect, was clearly in error, when it "clung to additional ground 8 in coming to its said decision of initially, allowing the respondent's appeal having regard to the fact that there was no "foundation" on which the notice of appeal which was therefore, bare, valueless, unimportant and incompetent, could stand, see the case of *mackyfoy v. U.A.C Ltd.* (1962) A.C 162

In the words of Nnamani, JSC (of blessed memory) in the case of *chief o. awhinahi & anor. v. Chief S.E. Oteri & Ors.* (1984) 5 S.C 38 @ 42

" ..... if the original notice of appeal was defective, no additional grounds could be hung on it I am also of the view that there was no appeal before the court of Appeal and the proceedings there was null and void..... "

As I have show above in this judgment, in fact, the second ground was actually struck out as being so vague and meaningless by the court below. Page 10 of the said judgment. So, if the additional grounds which.....ground 8 of the notice of appeal, had been struck out, the effect is there was no notice of appeal showing any valid ground of appeal. See the case of *Azeez Akeredolu & ors. V. Akinremi (No.2)* (1986) 4 SC 325 @ 372; (1986) 2 NWLR (Pt.25) 710. Per Whyte, JSC.

Again, I note that in dealing with or considering the said ground 8, the court be low, ultimately or finally, held that the trial court had no jurisdiction to entertain the said suit or action which it consequently, struck out. So, whichever way I or one looks at it, this appeal is numerations and fails.

It is from the foregoing and the more detailed lead judgment of my learn brother, Muhammad, JSC just delivered and which had the advantage of a preview, that I too, allow the appeal. I abide by all the consequential orders contained in the said judgment including that in respect of costs.

OGEBE J.S.C.: I read before now the lead judgment of my learned brother Muhammad JSC and I agree entirely with Ins reasoning and conclusion and adopt the judgment as mine.

