

THE SUPREME COURT OF NIGERIA'S DECISION IN THE REGISTERED TRUSTEES OF APOSTOLIC CHURCH OF CHRIST V. THE REGISTERED TRUSTEES OF GRACE CHURCH OF CHRIST (2021) LPELR-55340 (SC) REVISITED*

Abstract

The Pulpit and the Pew of the Church as an embodiment of the body of Christ are peopled by people and to say that people disagree with each other from time to time to the point of parting ways is saying nothing new though it is un-Christ like. Thus, the issue that is sought to be addressed in this article is this: What should a court take into consideration in determining in whom the title to the consecrated grounds of a church's property (ies) (that had been in the possession of members of a splinter group before or after being affiliated to a parent church) vest in instances where there is a discord between the splinter group and the parent church and the former decides to go its own way maybe with the belief though unscriptural that many are called and many may also be chosen? The resolution of this question and whether the parties before the Supreme Court were juristic persons form the main plank of this review.

Keywords: The Registered Trustees of Apostolic Church of Christ v The Registered Trustees of Grace Church of Christ, Supreme Court, Decision, Nigeria, Case Comment

1. Introduction

In the beginning was the Word, and the Word was with God, and the Word was God.¹ Ogebe, J.C.A., (as he then was), it was, that opined that² 'a church in its true definition is the body of Christ. One person cannot constitute the body of Christ; it connotes a congregation, an assembly of people. An individual cannot own a church. A church property must be the collective responsibility of all members.' It is however, the opinion of this writer as endeavored to be shown anon that the above opinion particularly the part that relates to the ownership of the property of the church should first and foremost depend on the construction of the provisions of the Constitution of the parent church which all the members of the congregation had subscribed to. The facts of the judgment of the Supreme Court of Nigeria in Appeal No: SC.270/2011 delivered on 7th day of May, 2021, were that the Appellant a Christian religious organization (having several branches including the Mushin Branch), was duly registered in 1963. In 1976, one Pastor Igbeare (a promoter and in the employment of the Appellant as resident Pastor in charge of the Mushin Branch), purportedly purchased a parcel of land at 23/25 Fayemi Street, Ejigbo Town near Mushin from the Agbeke family and held on to the purchase receipt. Subsequently, the said Pastor led a group that broke away (formed a rival church) from the Appellant, and was registered in 1996 as The Registered Trustees of Grace Church of Christ (the Respondent). Upon its incorporation, the Respondent applied to the Lagos State Government in its own name to ratify the 1976 transaction between the Appellant and the Agbeke family, using the purchase receipt he held on to. This application for ratification was due to the fact that the Lagos State Government had allegedly acquired the area of the disputed land for public purpose, divesting the Agbeke family of its title and interest *vide* a Lagos State Government Official Gazette No. 60 of 7th December, 1972. Consequently, the Respondent was issued with a Certificate of Occupancy (C of O) on the 24th August, 1997, after payment of the necessary fees.

The Appellant, however, instead of taking steps to object to the issuance of Certificate of Occupancy in favour of the Respondent, went ahead to issue a Notice of Revival Service scheduled to take place on the disputed land. The Respondent contended that each Branch of the church generated its own funds, and as such, all Branches were not subordinate to the Headquarters. It contended further that it had deposited building materials on the subject property, preparatory to the construction of a permanent site for its church, but the materials went missing. Despite warning letters written by the Respondent to the Appellant, there was no progress in this regard.

Consequent upon the foregoing, the Respondent instituted an action against the Appellant before the High Court of Lagos State, Ikeja, seeking various declaratory reliefs, inter-alia, that the Respondent is the body entitled to the Right of Occupancy over the subject property. The Appellant, however, counter-claimed against the Respondent, that it was the only person legally entitled to the Certificate of Occupancy in respect of the subject-matter, as all the Branches of the Appellant, including the Mushin Branch, were under the

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¹ See the Book of John 1:1.

² *Segun Ajayi & 2 ors Vs. The Registered Trustees of Ona Iwa Mimo C & S* (1998) 7 NWLR (pt. 556) 156 at 161.

control and authority of the parent body. The Branch Pastors, including the Pastor Igbeare, were trained by the Church and their salaries were paid by the parent body; hence, the funds with which the property was purchased belonged to the parent body, and the property was purchased in its name while the purchase receipt was kept in the custody of the said Pastor Igbeare, as the Vice President. The trial court, in a considered judgment, dismissed the Respondent's claim, declaring its Certificate of Occupancy null and void and of no effect. The trial court also granted the Appellant's Counter-claim in its entirety. Aggrieved by the decision of the trial court, the Respondent successfully appealed the decision of the trial court to the Court of Appeal. Dissatisfied, the Appellant appealed to the Supreme Court.

2. Issues That Were Raised For Determination before The Supreme Court

The following issues were considered by the Supreme Court:

1. Whether from the totality of the evidence before the Court, the Court of Appeal was right in setting aside the judgment of the trial court.
2. Whether the Court of Appeal was right in granting all the reliefs of the Respondent; particularly its claims for special and general damages which were not proved by credible evidence.
3. Whether the Court of Appeal set up a case, different from the one presented in the pleadings and evidence of the parties.
4. Whether the Court of Appeal's reference to a Cross-appeal in the judgment, occasioned a miscarriage of justice to the Appellant.

3. Supreme Court's Judgment and Rationale

Determining the first issue, the court stated that in an action for declaration of title, the onus is on the claimant to establish his title upon a preponderance of evidence or on the balance of probability, and must succeed on the strength of his own case and not on the weakness of the defence, if any, except where the Defendant's case supports his case and referred to the case of *Idundun v Okumagba*.³ Further, ratification is to put parties in the same position as they would have been, had the act ratified been previously authorized. Reference on this point was made to the case of *Vulcan Gases Ltd v Gessellschaft Fur Ind. Gasverwertung, A.G.*⁴ The act sought to be ratified by the Respondent in this case was the invalid sale by the Agbeke family; it was not an open application for allocation of a parcel of land. The document presented by the Respondent for ratification, was the purchase receipt from the Agbeke family issued in the Appellant's name in 1976. Where there are competing titles, which trace their root to the same source, the one who can show a better title prevails. It is also the law that Certificate of Occupancy is only a prima facie, not conclusive evidence of ownership of land to which it relates. Flowing from the above, the court held that having discovered that there was a defect in the title obtained from the Agbeke family, the Appellant was the proper party entitled to apply to the Lagos State Government for ratification of same, and for the grant of a Statutory Right of Occupancy in respect thereof. On the principle of *Nemo dat quod non habet*, the Respondent who was not in existence at the material time of the transaction (in 1976), could not have been held to acquire the title in 1976, which was ratified in 1997. At the time of the transaction with the Agbeke family, the Respondent was not in existence, and the promoter of the Respondent was still receiving instructions from the Appellant in his capacity as the Pastor of the Mushin Branch. As a Branch of the Appellant who relied on it for spiritual and contractual guidance as at 1976, the Respondent's promoter, Pastor Igbeare was merely an agent of the Appellant as his principal/employer at the time. What the Lagos State Government ratified in 1997 was for the holder of the title as at 1976, which was the Appellant. Deciding the second issue, the court held that the law is that special damages must be strictly proved by the person who claims to be entitled to them, the nature of the proof required depends on the facts and circumstance of the case, but the evidence must however, be credible. It referred to *Oshinjirin v Elias*.⁵ Guided by the authority above, the Supreme Court held that the Respondent did not establish the casual link between the Appellant and the loss sustained, neither was it stated in the pleading that the building materials were removed by the Appellant or its servant/agents. On the third issue, the court noted that though the Court of Appeal wrongly held that the Certificate of Occupancy was granted for overriding public purpose/a place of worship as Exhibit P2 clearly stated that the Certificate of Occupancy was granted for residential purposes, nonetheless, the Court of Appeal did not make out a case for the parties by raising the purpose for which the Certificate of Occupancy was granted. More so, the Appellant did not show how such pronouncement by the lower court occasioned a miscarriage of justice to it.

³ (1976) 9-10 SC 22.

⁴ (2001) 9 NWLR (Pt. 719) 610.

⁵ (1970) 1 ALL NLR 151 at 156

Deciding the fourth issue, the court noted that the reference by the Court of Appeal to a 'Cross-appeal' was a mere slip, as there was no attempt by the Court of Appeal to determine the said 'Cross-appeal'. Their Lordships held that for a miscarriage of justice to occur, the error must be fundamental and must have a crucial effect on the decision. The Appellant in this instance has not satisfied the above requirement which entails, the Appellant showing the damage suffered as a result of the error of the court. Finally, the Supreme Court allowed the appeal.

4. Case Review

In pursuance of the objective of this paper, the following issues would be the tripod upon which the discourse would rest.

1. Whether the Supreme Court was right in basing its decision on the proper party to apply for ratification of title on other considerations without taking cognizance of the Constitution of the parent church?
2. Whether the Supreme Court could raise *suo motu* the issue of the provisions of the Constitution of the parent church even if same was not in evidence before the lower court?
3. Whether the parties before the Supreme Court were juristic persons that could sue and be sued?

Issue 1: Whether The Supreme Court Was Right In Basing Its Decision On The Proper Party To Apply For Ratification Of Title On Other Considerations Without Taking Cognizance The Constitution Of The Parent Church?

In *Rev. Moses Folarin Lijadu & Ors v. Cornelius Emogbon & Ors*⁶, the building of a Church was started in Ondo some twenty-five years ago by certain Christians there who had formed themselves into the 'Mission of the Evangelists' Band' under the supervision of the Church Missionary Society and with the consent of the local Anglican Bishop. This organization was at its inception bound to the constitution of the Church of England. Before completion of the building, a quarrel arose between the Mission and the local Bishop with the result that there was a complete breach between the whole congregations of the Mission on the one hand and the Bishop and the Church Missionary Society on the other. The completed Church was consecrated and used as an independent Church of the Mission. Some years later the congregation of the Mission quarreled with their Minister who had been the leader in the secession from the Church Missionary Society and the Bishop. Thereupon the whole congregation of the Mission with the exception of the second and third plaintiffs (brothers) and the wife and young children of the second plaintiff reverted to the Church Missionary Society. The plaintiffs in this suit were the Minister and the two dissenting brothers and they claimed against the defendants, who represented the rest of the congregation, a declaration to the effect that the Church was built and dedicated by the Mission for the worship of God in accordance with their own principle and doctrine; an injunction against the defendants interfering with the plaintiffs and their adherents in their use of the Church for its original purpose; and in the alternative recovery of possession.

The court coram Jackson, Assistant Judge in His Lordship's judgment delivered at Okitipupa on 2nd November, 1937 held:

From 1902 onwards this new organization used its influence to obtain sites of land, in various villages of the present Okitipupa Division, that adherents to the faith might erect a Church, in which to worship, and schools for the education of their children. These sites included the one, upon which the present Church at Igbo-Tako was built, and, which is now the subject matter of this litigation.

A small Church was built on the present site in 1901 by the earliest converts. By 1913 the congregation had grown and the building of a Church upon a more ambitious scale was started. *The foundation stone was laid in 1913* and the adherents, of the Band of the Evangelists' Mission, in Igbo-Tako, by their labour and the spending of their money erected and completed a permanent and substantial Church building by the year 1923.

As regards the property in the land I am satisfied after a close study of the evidence, that the property in the Church and the lands upon which it is built, is held by those persons in immediate possession, i.e. the present defendants, holding it in a representative capacity, as property held as a common fund, on behalf of all who are working for the common cause. Upon the definition as to what is the common cause in matters as these, the law is clear that *'in the event of a schism among the members of such a body the nature of the constitution must alone be looked at as the guide, and the 'ratio decidendi' must be the inclusion in or exclusion from such constitution of an inherent power of alterations. The claims of those*

⁶ 13 N.L.R 167 at 168 and 171.

who adhere to the original constitution will be enforced... (Halsbury Laws of England, Vol. 11, 1586).

Italics ours for emphasis.

In *The Registered Trustees of the Nigerian Baptist Convention & Anor Vs. The Registered Trustees of the African Church Organisation & Ors*⁷, the facts of which were that over sixty years ago, there was only one Church in Saki, Oyo State, the Otun Baptist Church. In fact, the Christians in Saki were predominantly of the Baptist faith. A division later arose over the question of polygamy resulting in some members of the Baptist Church leaving the Baptist to join the African Church Organisation. Their members found the St. Luke's African Church Oke-Aje Saki. In 1952, a division again arose amongst the members of the St. Luke's African Church, this time because of political views. Members who were supporters of the defunct N.C.N.C left St. Luke's African Church and requested the Okere of Saki Oba Oladosu, to grant them a piece of land on which to build their church which they got. They built a church on it and named it Ebenezer Araromi African Church. After some time members of the Ebenezer Araromi African Church became dissatisfied with the way they were treated by the African Church Organisation. They complained to no avail. In 1976, some of the members left the African Church and became Baptists. They renamed their church Ebenezer Baptist Church and in 1985 started to construct a new church on the same land granted to them by Oba Oladosu. The members now with the Baptist Church prepared a survey plan describing the land in dispute as belonging to the Nigerian Baptist Convention. The plaintiffs/Respondents then brought an action claiming a declaration of title to the said land lying and being at Ajegunle Saki, damages for trespass and perpetual injunction. Pleadings were ordered and witnesses testified on behalf of both the appellants and respondents. In his judgment, the learned trial Judge found for the plaintiffs/respondents and gave judgment for them, granting all the claims. The defendants felt dissatisfied and appealed to the Court of Appeal. The Court of Appeal held on the extent of the right of ownership of the African Church over property occupied by one of its branches that – Where land is granted to a branch of the African Church Organisation such land and the buildings erected on it are deemed to have been vested in the Registered Trustees of the African Church Organisation by virtue of Section XIV of the Constitution of the African Church.

Muhammad J.C.A.⁸ held:

The African Church Organisation is registered as a corporate body. See Exhibit 'E' its Certificate of Incorporation. The Constitution of the African Church – Exhibit 'D' - at page 25 made provision for Registered General Trustees of the Organisation who shall have power to hold and acquire any land by instrument under common seal, to convey and assign and devise any land or any interests therein, hereinafter belonging to or held for the benefits of the Organisation.

Also, under Section XIV of the Constitution, titled Church property it is provided:

All real or movable property of the African Church such as land, farmland, buildings, houses, churches and all things whatsoever devised to the African Church or otherwise acquired, and all bequests, donations, endowments and gifts for the support of the church shall be vested in the Registered General Trustees for the use of the Churches (herein provided always that such Trustees shall hold all such properties subject to direction of the General Committee, and/or Conference).

All Ministers, Church Officers (holding offices under this Constitution) and other persons who are in occupation or possession of documents, plans church, houses, buildings, school buildings, or other properties of any kind whatsoever in the name of any Local Church in African Church or any portion thereof shall be deemed to be in occupation or possession or holding the same respectively as agents or servants of the African Church Organisation.' From the above, it is clear that all real or immovable property of the African Church is vested in the Registered General Trustees for the use of the Churches and that all ministers, church officers and other persons who are in occupation or possession of any property movable or immovable in the name of any Local Church in the African Church shall be deemed to be in occupation or possession or holding same as agents or servants of the African Church Organisation.

The Constitution of the African Church provides that in cases of secession, all properties movable and immovable belonging to the Church or parish automatically vests in the African Church. It then follows that the moment the members seceded, the land and the Church building vest in the African Church. Since the land was granted to the member of

⁷ (1992) 7 NWLR (pt. 251) 105

⁸ *Supra* at 116, paras B-G and 117.

the Ebenezer Araromi African Church, it is for the benefit of all members who adhere to the doctrine of the African Church. Any member who left the church or abandoned that doctrine cannot lay claim to any property of the said Church. In this case, the second defendants have left the Church and have indeed changed their doctrine of faith. The trial Judge was therefore right in holding that the land in dispute belongs to the respondents.

In *Segun Ajayi & 2 ors Vs. The Registered Trustees of Ona Iwa Mimo C & S⁹*, the Respondent sued the Appellants for a declaration that the appellants were trespassers, and injunction restraining the appellants from further trespass.

All the parties had been members of the 1st respondent church which was a registered church, with the first appellant as the prophet and general supervisor. At the beginning, a church hall was built on a piece of land given by the Okedara family. The Oba of Jebba later granted the Church six additional plots on which the permanent church was eventually built. The appellants and the respondents continued to worship together in the Church until the appellants unilaterally changed the registered name of the Church to 'New Ona Iwa Mimo C & S Church Onimajemu of Nigeria and Overseas.' This led to a division among the members and a dispute arose over the ownership of the land on which the church was built. The respondents claimed that the land on which the church was built belonged to the 1st respondent while the appellants claimed that the land was given to the 1st appellant in his personal name and therefore the church and the land belonged to him. At the conclusion of the trial, judgment was given in favour of the respondents. The appellants were dissatisfied and appealed to the Court of Appeal against the judgment. The Court of Appeal per Ogebe, J.C.A. (as he then was) held that: 'If the appellants were no longer in agreement with the constitution of the church, the only option for them was to move out of the church premises and establish their own elsewhere, rather than remain to disturb the peace of the existing church'.

To sum up the argument on this issue, it is opined that even The Holy Bible acknowledges the paramount role of a Constitution which is the product of the consensus of the members of the body of Christ in the administration of affairs in Christendom. This Ecclesiastical literature exemplifies this in 2 Chronicles 23:3 thus: 'They all gathered in the Temple, and there they made a covenant with Joash, the King's son. Jehoiada said to them, 'Here is the son of the late King! He is now to be King, as the Lord promised that King David's descendants would be.' The above to us serves as a celestial imprimatur to the forgoing arguments on issue 1. Though the above cited authorities including the Biblical one may be said to be persuasive and not binding on the Supreme Court, it is opined that they state the correct position of the law on this issue and that the answer to Issue 1 herein is that the Supreme Court (with due respect) was not right in basing its decision on the party entitled to the failed privately acquired interest in the property purchased from the Agbeke family and who should be the proper party entitled to apply for ratification of title from the Lagos State Government on other considerations without taking cognizance of the Constitution of the parent church. It is also our contention that where the Constitution of the parent church is silent on the issue of ownership of church properties where there is a split in the congregation or the Constitution is non-existent (which is improbable given the fact that it is one of the requirements for incorporation under the relevant statute), then the court may evaluate the relevant oral and documentary evidence before it in deciding in whom the title to the privately acquired property being sought to be ratified vests.

Issue 2: Whether The Supreme Court Could Raise Suo Motu The Issue Of The Provisions Of The Constitution Of The Parent Church Even If Same Was Not In Evidence Before The Lower Court?

In *Registered Trustees of Ifeloju v. Alhaja Bewaji Kuku*¹⁰, the appellant brought an action against the defendant for declaration of title to land, possession and injunction. He later filed notice of discontinuance of the action. Counsel for the defendant/respondent did not oppose the motion. The learned trial Judge granted leave to discontinue the action, struck out the suit on the condition that no subsequent suit shall be brought against the defendants/respondents. Dissatisfied with the order barring re-litigation, the plaintiff appealed to the Court of Appeal which held on when an appeal court can raise '*suo motu*' an issue not forming a Ground of Appeal that:

An appellate court has the jurisdiction to raise an issue not forming the Grounds of Appeal *suo motu* in the interest of Justice. The Court can exercise that jurisdiction in cases where jurisdiction and competence are in issue and failure to raise it could result in the nullity of the entire appellate proceedings.

⁹ *Supra* at 156.

¹⁰ (1991) 5 NWLR (pt. 189) 65.

Also, the Supreme Court Act in its section 22 provides that:

The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before final judgment in the appeal and may make an interim order or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court.

The Supreme Court gave a judicial nod to the above provisions in *Akinpelu v. Adegboire*.¹¹ It is our answer to this second issue that the Supreme Court could *suo motu* raise the issue of the provisions of the Constitution of the parent Church even if same was not in evidence before the lower court.

Issue 3: Whether The Parties Before The Supreme Court Were Juristic Persons That Could Sue And Be Sued?

The point here is whether the proper nomenclatures of the parties by the provisions of the Corporate and Allied Matters Act (CAMA) which regulates their incorporation should have been ‘Registered Trustees’ or ‘Incorporated Trustees’ and whether same affects their juristic personality and deprives the court of jurisdiction or is a mere misnomer?¹² Kolajo J.¹³ opines on the above issue thus:

Under Section 274 of the Companies and Allied Matters Act Cap.59 Laws of the Federation of Nigeria, 1990, the only party known to Law is ‘incorporated trustees’ and not ‘registered trustees’. Under Section 695 of the Act, all registered trustees are deemed to be registered under the Companies and Allied Matters Act and they are known as Incorporated Trustees. ‘The Registered Trustees’ of a Religious Organization is not a person known to Law. It is not a juristic person. A non-juristic person cannot sue or be sued. It is regarded as being non-existent.

To be able to sue or be sued, a religious body must be registered. Upon registration, the religious body shall be known and addressed with the prefix ‘Incorporated Trustees...’ ‘The Constitution of such a registered body shall state therein the name or title by which it was registered. The trustees of the religious organization shall from the date of registration become a corporate body by the name described in its certificate of registration and shall have perpetual succession, a common seal and the power to sue and be sued in its corporate name. The trustees or such a body corporate can also acquire, hold, transfer or dispose of any property or interests therein for the purpose of the registered organization.

It should be stated that from the facts of this case, that the CAMA applicable to this issue is CAMA, 1990 (as amended) even though sections 274 and 694 of CAMA 1990 are in *pari materia* with sections 825(1)(a) and 869(1) of CAMA 2020 respectively. Fortification for this is found in *Sun Ins. (Nig.) Plc v. Umez Engr. Constr. Co. Ltd*,¹⁴ where the Court of Appeal held that: ‘The applicable law is that which was in force at the time when the cause of action arose, and not that which was in force when the issue of jurisdiction was raised or challenged’. In *Mallam Abdullahi Hussein v The Registered Trustees of ECWA*¹⁵, it was held per Kolajo J. that:

¹¹ (2008) All FWLR (pt. 429) 413.

¹² Misnomer means the use of a wrong name. See *Mailafia v Veritas Insurance* (1986) 4 NWLR (pt. 38) 802 C.A.

¹³ See A.A. Kolajo, *Case Law on Religious Organisations*, (Brighter Star Law Series, Ibadan, 2003) 1-2.

¹⁴ (2008) All FWLR (pt. 426) 1976 at 1986.

¹⁵ (1995) 3 SRJK 48. This is a Ruling on a preliminary objection that this Suit should be struck out on the ground that there is no proper defendant before the Court. In arguing this preliminary objection, Mr. Karina Tunyan, the learned applicant’s counsel referred to section 274 of the Companies and Allied Matters Act Cap. 59 Laws of the Federation of Nigeria, 1990 under which he said the only party known to law is “incorporated trustees” and not registered trustees. He argued that the words Registered Trustees were applicable under the former law, that is, The Land (Perpetual Succession Act which had been repealed by Section 694 of the Companies and Allied Matters Act. According to the learned applicant’s counsel, under Section 695 of the Act, all registered trustees are deemed to be registered under the Companies and Allied Matters Act, and they are known as Incorporated Trustees under Section 674(1)(a) of the Act. He finally urged the Court to strike out the Suit since the defendant is unknown to law. In his reply, Mr. A.S. Usman, learned plaintiff/respondent’s counsel argued that Section 674(1) of the Companies and Allied Matters Act does not say that all Registered Trustees registered under the former Land (Perpetual

That the Registered Trustees of Evangelical Church of West Africa not being a person known to law, is not a juristic person. A non-juristic person cannot sue or be sued; In a case where there is only one defendant whose name has been struck out, the only remedy of the plaintiff is to institute a fresh action and not seek an amendment of the Writ of Summons and Statement of Claim; Non-compliance with substantive law is not a procedural matter which can be deemed to be waived once the defendant has taken some steps in the proceedings.

In *Registered Trustees of the Church of the Lord (Aladura) vs. Jacob Konah Sheriff*¹⁶, it was held per Ibiyeye, J.C.A¹⁷ that:

I entirely agree with the learned counsel for the respondent that 'The Church of the Lord (Aladura)' and the Church of the Lord (Aladura) Victory Chapel are not only different but they are situate in different locations and in the same vicinity. These two organisations, although slightly different in their nomenclatures, have a common disability. The disability is that neither of them is registered in accordance with sections 673 and 674 of 1990 Act and neither of them can sue and be sued in order to protect any proprietary interests of their organisations.

In *The Registered Trustees of the Apostolic Church, Ilesha Area, Nigeria, West Africa vs. Att.Gen. of Mid-Western State of Nigeria & 2 Ors*¹⁸, the appellants were plaintiffs at the High Court in the Mid-Western State in Suit No. U/10/68. On appeal, the Supreme Court held that:

We are in agreement with the learned trial Judge, that whatever may be the admission of the 3rd respondent of the status of the appellant, there is no evidence before the Court that the appellant was ever a corporate body. This could only be established as a matter of law by the production in evidence of the certificate of Incorporation; admission inter parties notwithstanding. The corporate status of appellants not having been established, then under Land (Perpetual succession) Act, no property could be vested in the named Trustees and neither could they sue or be sued. In the event, this appeal is dismissed.

It is our opinion on the third issue that the two parties are not juristic persons and cannot maintain the action whether at the trial court or on appeal.

5. Conclusion

From the foregoing, the Supreme Court may or may not have reached the right decision on the proper party entitled to apply for ratification in the case under review but the point being sought to be made in this paper is that the ratio for such a decision should have stemmed from a proper construction of the provisions of the Constitution of the parent church first before any other evidence and that the Supreme Court could even on appeal have raised the issue *suo motu*, call on counsel for the parties to address it on same and arrive at a decision one way or the other. It also opined that the court lacks the jurisdiction to entertain the appeal as the parties before it were non-juristic persons and do not possess the vires to sue and be sued. To cap it up, we say that sacred is the name of the Almighty the real owner of the church and all that is in it; Blessed is that church that is owned by God and has God in it; And infallible is an adjective of the Supreme Court of Nigeria in the exercise of its judicial powers for it is the commandment of the Nigerian Constitution that that court is the final court of appeal.

Succession) Act shall be known as Incorporated Trustees. He contended that the section deals with new applications. Learned respondent's counsel further argued that this objection is belated. He contended that since the objection does not go to jurisdiction, it should have been taken earlier. He cited *Jozebson V. Lardners* (1988) 7 SCNJ 93. In the alternative, Mr. Usman asks for time to amend the Writ of Summons and Statement of Claim. On this, Mr. Tunyan replied that since there is no proper defendant, there cannot be an amendment. If it is a mere misnomer, he conceded, there may be an amendment.

¹⁶(2000) 15 NWLR (pt. 689) 165. The appellant instituted an action against the respondent claiming an order of injunction restraining the respondent from using the name "The Church of the Lord (Aladura)" in the running, operation, organization and management of the respondent's church and N2,000,000.00 as damages. But in the statement of claim the appellant in addition to the order of injunction claimed N5,000,000.00 damages. No order of amendment was sought or obtained for the new claim. The respondent built a church some 50 yards away from the appellant's premises and named it "The Church of the Lord Aladura". At the trial the appellant called one witness who testified that the appellant is an incorporated organization. The witness gave the name of the appellant's trustees. The appellant's certificate of incorporation was admitted as exhibit K. The respondent who testified in person stated that on ejection by the appellant, he, being a minister of the Gospel of Jesus Christ was invited by a group of worshippers of the Church of the Lord, Aladura, Victory Chapel which was close to the appellant's Church to worship with them. At the conclusion of trial, the trial court in its judgment dismissed the appellant's claim. The appellant was dissatisfied with the judgment and it appealed to the Court of Appeal.

¹⁷ *Supra* at pages 178-179 paras H-A.

¹⁸ (1972) 4 SC 150.