**IN THE COURT OF APPEAL OF NIGERIA**
**IN THE ENUGU JUDICIAL DIVISION**
**HOLDEN AT ENUGU**

**ON TUESDAY THE 21ST, DAY OF JULY, 2026**

**BEFORE THEIR LORDSHIPS:**

**HON. JUSTICE JOSEPH EYO EKANEM = JUSTICE, COURT OF APPEAL**
**HON. JUSTICE ZAINAB B. ABUBAKAR = JUSTICE, COURT OF APPEAL**
**HON. JUSTICE NEHIZENA I. AFOLABI = JUSTICE, COURT OF APPEAL**

**CA/E/215/2023**

**BETWEEN**

1. **OBIORA UDE**
2. **CHUKWU EZOKA UDE**
3. **EJIOFOR UDE**
4. **DAVID UDE**
5. **CHUKWUDI UDE**
*(Suing for themselves and the entire family of late Gabriel I. Ude of Nawfia Njikoka L.G.A. of Anambra State)*

**APPELLANTS**

**AND**

1. **ANENE OKONKWO**
*(Suing for himself and the entire family of Ben Okonkwo family)*
2. **MICHAEL IKECHUKWU ANYAFUNA**
*(Suing for himself and the entire family of Late Zachius Aniafuna of Abakaliki town, Ebonyi State)*
3. **PROBATE REGISTRAR HIGH COURT OF JUSTICE, EBONYI STATE**

**RESPONDENTS**

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COURT OF APPEAL
30 JUL 2026
REVENUE
ENUGU DIVISION

## JUDGMENT
## (DELIVERED BY ZAINAB BAGE ABUBAKAR, JCA)

This appeal is against the judgment of the High Court of Ebonyi State delivered on the 15th November, 2022, wherein the trial court dismissed the suit of the Plaintiffs (Appellants) and granted the counter claim of the 1st Defendant (1st Respondent)

**Facts of the Case**

The Appellants (as Plaintiffs) commenced the action that led to the instant appeal against the Respondents (as Defendants) at the trial court and claimed ownership of certain developed properties known as No. 8, Ogoja Road, No. 8 New Market Road (also known as No. 7 Old Market Road) and No. 4, Owerri Street, Abakaliki together with the then empty plot of land situated at Inyimaju layout, on the ground that the said properties were acquired by their father (Gabriel I Ude) before his death in 1960.

That their late father developed the properties and reside at No. 8, Ogoja Road Abakaliki with his entire family including late Eunice Ude, his fist wife and maternal grandmother of the 1st Respondent. That after the death of their father Eunice Ude took over the management of the properties to the exclusion of the Appellants until her death in 1984. After her death, her daughters took over the management of the properties until 2005 when the Appellants instituted this action at the trial court. The Defendants filed their respective defence to the action including a counter claim by the 1st Respondent. At the conclusion of trial, the lower court dismissed the suit of the Appellants on the ground that it was statute barred, however granted the counter claim of the 1st Respondent. Aggrieved by the said judgment, the Appellants filed the instant appeal.

In the Appellants' Brief of Argument five (5) issues were distilled for determination as follows:

1) ***Whether there was in the Appellants' pleading and evidence that Eunice Ude the late 1st wife of late Gabriel I. Ude's started managing late Gabriel I Ude properties as her own to the absolute exclusion of the 7 wives of late Gabriel I. Ude and their children? (Distilled from ground 1 of the Notice of Appeal).***
2) ***Whether the trial court properly evaluated evidence over fraud, concealment and mispresentation. (Distilled from grounds 4 and 6 of the Notice of Appeal).***
3) ***Whether in view of the facts of this suit before the trial court the suit was statute barred? (Distilled from grounds 3 and 9 of the notice of appeal)***
4) ***Whether the trial court properly evaluated the counter claim and possesses the requisite jurisdiction to grant same? (Distilled from grounds 7 and 8 of the Notice of Appeal).***
5) ***Whether the trial court was right when it granted the counter claim of the 1st Respondent when the same court has declared the main claim statute barred. (Distilled from ground 2 of the Appellants ground of appeal).***

In the 1st Respondent's brief of argument two issues were formulated, to wit;

1) ***Whether the trial court's dismissal of the Appellants' case for being statute barred is justified by the extant pleadings and evidence before it? (Grounds 1, 3, 4, 6 and 9 of the Notice and Ground of Appeal).***

2) ***Whether the grant of the 1st Respondent's counter claim by the trial court is justified by the pleading and evidence before it.***

The 2nd Respondent adopted the five issues for determination as formulated by the Appellants but argued only issues 1, 2 and 3 therein.

The Appellants also filed Reply Briefs of Argument in response to the 1st and 2nd Respondents' respective brief of argument.

**ARGUMENTS OF THE APPELLANTS' COUNSEL**

**ISSUE NO. ONE**

***Whether there was in the Appellants' pleading and evidence that Eunice Ude the late 1st wife of late Gabriel I. Ude started managing late Gabriel I. Ude properties as her own to the absolute exclusion of the 7 wives of late Gabriel I. Ude and their children. (Distilled from ground 1 of the Notice of Appeal).***

In arguing this issue, learned counsel to the Appellants submitted that this issue is predicated upon part of the holding of the trial court as contained at pages 60 – 61 of the supplementary record of Appeal.

Counsel reproduced relevant part of the Appellants' statement of claim to show that there is no where the Appellants pleaded what is contained in the holding of the trial court. He submitted that the finding of fact by the trial court which cannot be supported having regard to the evidence is perverse, that a perverse finding ignores the facts of evidence led before the court and when considered as a whole amounts to miscarriage of justice. Counsel referred this court to the case of ***Lagga Vs Sarhuna (2008) 16 NWLR (Pt. 1114) Pg 42 at 474 Paras D – 4.*** That finding not based in fact before the court is perverse and must be set aside, counsel further referred this court to paragraph 15 – 19 of the Statement of Claim at pages 265 – 268 of the record of appeal, that the above quoted finding of the court at pages 256 – 268 is not part of the witnesses statement of PW1, Chukwudi Ude, PW2 Nwafor David Ude and PW3 Samuel Ude.

Counsel submitted that it is settled law that an appellant seeking to have the decision or findings of the lower court set aside have the onus to show or establish one or more of the following in his favour, i.e

That the trial judge failed to make use of his opportunity of seeing, hearing and observing the witness;

2) That the trial judge failed to exercise his discretion properly and judicially;

(3) That the findings on the evidence are perverse. Counsel referred this court to the case of ***Chief D.B. Ajibulu Vs Major General D.O. Ajayi (Rtd) (2014) 2 NWLR Pt. 1392 483 at 502 Paras D – A to 503A***

Counsel further submitted that the trial court's findings as contained in ground one which forms the basis for issue one did not emanate from the pleadings of the Appellants at the trial court, that the Appellants never pleaded in their pleadings at the trial court that late Eunice Ude was in possession as the owner of the properties of late Gabriel I. Ude, that there is no place in the testimony of the Appellants witnesses that testified that Late Eunice Ude was in possession of as the owner of the properties, that therefore, the finding of the trial court is without evidence.

Counsel further referred this court to the statement on oath of Samuel Ude at page 1107 of the Record of appeal and the Appellants' reliefs in their statement of claim at page 1105 of the Record of appeal and therefore, urged this court to resolve issue one in favour of the Appellants against the Respondents as the Appellants are in possession of some of the properties.

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**ISSUE NO. TWO**

***Whether the trial court properly evaluated evidence over fraud, concealment and mispresentation? (Distilled from grounds 4 and 6 of the Notice of Appeal).***

Arguing issue two, the learned counsel to the Appellants submitted that the Appellants by their pleadings before the trial court pleaded fraud and concealment of the documents of landed properties of their late father (late Gabriel I. Ude) and particulars of fraud were pleaded before the trial court and supported by written witnesses statements and exhibits, yet the trial court chose to look away from the glaring facts pleaded and the testimonies of the witnesses of the Appellants. The learned counsel further submitted that the Appellants in proving fraud called one

Samuel Ude who personally went for search at the National Achieves to find out the fraud done by Mrs. Eunice Ude. Counsel contended that late Gabriel I. Ude acquired on the 23/1/1933 property known as Achenwe Iji situate at Abakaliki measuring about 7042.2 square yard with Deed of Conveyance which was admitted as Exhibit G of which late Eunice Ude falsified and made a Deed of Lease in 1971 as Exhibit P. Counsel referred this court to the said documents that was allegedly falsified and further submitted that it has long been established that it is in cases of concealed fraud that the statute of limitation become inoperative. He referred this court to the case of ***Alfa Arowosaye Vs Felix Oluwaseun Ogedengbe & Anor (2008) LPELR – 3701.*** That the trial court agreed with the Appellants that they had no knowledge of falsification (fraud) until 2003 when the documents were handed over to them, but would rather prefer the Appellants to change their cause of action to recovery of possession. Counsel referred this court to the finding of the trial court in page 63 of the record of appeal and the decision in the case of ***Ehejuru Vs Dental Practitioner Investigation Pause & Ors (2017) LPELR – 42616.*** He finally urged this court to resolve issue two in favour of the Appellants against the Respondents.



**ISSUE NO. THREE**

***Whether in view of the facts of this suit before the trial court, the suit was statue barred? (Distilled from grounds 3 and 9 of the notice of appeal)***

On this issue, the learned counsel for the Appellants submitted that, the court looks at the processes filed by the Appellants to determine whether an action is statute barred or not. Counsel maintained that in an action commenced by writ of summons, it is the Writ of Summons and statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and comparing the date with the date the writ of summons was filed. That the court has no recourse to the defendant's statement of defence or any evidence in determining when the cause of action arose for the purpose of limitation of action. Counsel referred this court to the decision in ***Abdulazzez Vs Shittu (2023) 14 NWLR (Pt. 1904) 293,*** and further referred this court to **paragraphs 39 to 43 of the further statement of claim.** On the cause of action, counsel submitted that it was the year 2003 that the Appellants were availed some of the authentic land documents respecting the parcels of land in dispute, that the cause of action accrued. Counsel referred this court to **Section 331(a) and (c) of the Limitation Law of Ebonyi State 2009**.

Counsel further submitted that courts have held in plethora of cases that where the cause of action involved fraud, concealment and or mistakes, the period of limitation commences from when the plaintiff discovers the fraud or deceit or concealment. That where there is an act of fraud or deceit leading to a transaction, the court will not fold its hands and allow a party to hide under the statute of limitation to enforce illegality. He referred this court to the decision in ***Orire Vs Idomi & Ors (2018) LPELR – 46119 CA.***

The learned counsel stated that Section 3 of the Limitation Law of Ebonyi State 2009 contemplates recovery of land not issue of inheritance of which properties are still occupied by the Appellants and further stated that the Limitation Law of Ebonyi State 2009 does not provide for retrospective application, as same is not applicable in this appeal and was not applicable at the trial court and therefore, urged the court to resolve this issue in favour of the Appellants against the Respondents.

**ISSUE NO. FOUR**

> ***Whether the trial court properly evaluated the counter claim and possesses the requisite jurisdiction to grant same? (Distilled from grounds 7 and 8 of the Notice of Appeal).***



Arguing, this issue, the learned counsel submitted that any claim by way of counter claim is deemed to be a separate action and have been commenced on the same date as the action in which the counter claim is pleaded. He referred this court to the decision in ***Poatson Graphic Arts Vs NDIC (2019) 7 NWLR (Pt. 1672) 442.*** Counsel maintained that the trial court ignored and refused to properly evaluate the evidence and testimony of the Appellants' witnesses as well as the exhibits tendered at the trial court **(i.e Exhibit A – I)**. He further submitted that the trial court granted the counter claim of the 1st Respondent including relief 3 that is inconsistent with the authority relied upon. That the Appellants are in possession of the said property, both the authorities and the facts makes the reliefs in the counter claim not grantable as the court cannot approbate and reprobate at the same time, as the trial court held in the main claim that Eunice Ude was in exclusive possession as her own. That a court of law or tribunal has no right to blow hot and cold at the same time, counsel referred this court to ***Garba Vs Galadima (1993) 4 NWLR (Pt. 285) 72 at 84 Paras F*** and urged this court to resolve this issue in favour of the Appellants against the Respondents.

***ISSUE NO. FIVE***

> ***Whether the trial court was right when it granted the counter claim of the 1st Respondent when the same court has declared the main claim statue barred? (Distilled from ground 2 of the Appellants ground of appeal).***

On issue five, the Appellants' counsel maintained that the law is that writ of summons, statement of claim being void or statute barred, counter claim filed alongside the originating process is also void having been predicated on a statute barred processes. Counsel referred to the decision of this court in ***Integrated Merchants Limited Vs Ogun State Government & Anor (2011) LPELR – 8803.*** Counsel maintained that counter claim is a separate and independent claim in the same action with the plaintiff, not as a matter of action, but in relation to proof and distinct treatment in adjudication. That when the court lacks the jurisdiction to entertain the main claim, a counter claim cannot stand on its own. He finally urged this court to resolve issue five in favour of the Appellants against the Respondents and hold that the court lacks the jurisdiction to entertain the counter claim in the first place.

## ARGUMENTS OF THE 1ST RESPONDENT

## ISSUE NO. ONE

***Whether the trial court's dismissal of the Appellants case for being statute barred is justified by the extant pleadings and evidence before it? (Grounds 1, 3, 4, 6 and 9 of the Notice and Ground of Appeal).***

In arguing issue one the 1st Respondent counsel contended that the decision of the lower court to dismiss the Appellants' claim for being statute barred is justified, either soley on the basis of the Appellants' extant pleadings and evidence, or upon the consideration of the totality of the pleadings and evidence of both parties before it. Counsel further submitted that the appellants' submission on issue one is misleading as they completely refused to reckon with some paragraphs of their pleadings and evidence in the record of appeal which amply justified the conclusion of the trial court that their suit became statute barred as at 2005 when it was instituted. Counsel referred this court to paragraphs 19, 20 and 56 of the Appellants' consequential amended statement of claim filed on 1/6/2022 and paragraphs 3 and 14 of the Appellants defence to counter claim filed on 23/5/2022, the 1st Respondent counsel further outlined paragraphs 19, 20, 56, of the Appellants Amended Statement of Claim and paragraph 5, 6 and 14 of the 1st Respondents' Statement of Defence. Counsel further contended that it was the Appellants' pleadings and evidence that informed their position and stance in paragraph 2.2 and 2.3 of their written address at the trial court, and the possession of the properties by Eunice Ude after the death of Gabriel Ude in 1960, which was against the will and consent of the Appellants, hence the erupted dispute which was arbitrated to no avail by their Esike kindred. Learned counsel further argued that Obiora Ude who was the only Appellants' witness that made the written statement on oath pursuant to the Appellants' reply of 14/2/2017 at page 270 – 279 of the record of appeal, did not testify at the trial, that PW1 and PW2 that testified at the trial for the Appellants adopted their written statements on oath made on 23/5/2022 and 1/6/2022 as their evidence in chief respectively at pages 1294 and 1301 of the Records of Appeal, these two written statements on oath unarguably arose from the appellants' defence to counter claim of 23/5/2022.

Counsel submitted that, the PW3 on his own part at page 1308 of the Record of Appeal adopted only his written statement on oath of 21/7/2022 as his evidence in chief at the trial, the bottom line is that the Appellants clearly abandoned their said reply of 14/2/2017, having not accommodated it in any of the adopted written statements on oath of PW1, PW2 and PW3 and cannot turn around to rely on it in this appeal.

Learned counsel further submitted that the trial court was legally justified in reckoning with the whole pleadings and evidence of all the parties before it for the purpose of determining the defence of statute barred at the conclusion of the case before it, that this approach is apt in this appeal where the 1st Respondent pleaded the statute of limitation in his pleading as part of his defence to the Appellants' case against him.

Counsel stated that the 1st Respondent became entitle in law to join issues with the Appellants in his statement of defence by showing that their said cause of action had accrued much earlier when Eunice Ude and himself were in adverse possession of the disputed properties.

Counsel further stated that it will be patently unfair under the principle of *audi alterem partem* for pleadings and evidence of the 1st Respondent in response to the very issue raised by the Appellants in their statement of claim to be jettisoned or discountenanced in the final judgment of the trial court, counsel stated that the assumed overt acts of possession exercised by Eunice Ude and the 1st Respondent in the properties are reckoned with in considering when adverse possession thereof arose for the purpose of determining the accrual of the Appellants' cause of action under **section 9(1) of the Limitation Law Cap 102 Laws of Ebonyi State 2009**, and further referred this court to all the Exhibits tendered by the 1st Respondent of the trial court.

Again, counsel submitted that the Appellants' reliance on the fraud allegedly perpetrated by Eunice Ude at paragraphs 5 – 13 and paragraph 6.5 of the Appellants' Brief of Argument was evasive and diversionary for the purpose of avoiding the application of the limitation law on their case especially when they did not claim any relief in redress of the alleged falsified documents of title which was rightly discountenance by the trial court.

Learned counsel finally submitted on this issue that the Appellants' contention that the limitation law of Ebonyi State has no retrospective application and cannot apply to this case where the Appellants' cause of action was adjudged by the trial court to have accrued in 1960, is irredeemably flawed. He referred this court to the decision in ***Chigbu Vs Tonimas (2006) 9 NWLR (Pt. 984) 189 at 211 Paras A – B*** and urge this court to resolve issue one against the Appellants.

**ISSUE NO. TWO**

> ***Whether the grant of the 1st Respondent's counter claim by the trial court is justified by the pleading and evidence before it?***

On issue two, counsel maintained that the 1st Respondent is fortified by the prevailing state of pleadings and evidence of the parties before the trial court on his ownership of the property known as plot 41 in block C Abakpa Layout (No. 4 Owerri Street) Abakaliki. Counsel contended that the 1st Respondent in proof of his counter claim of the said property traced his root of title to the registered lease obtained by his predecessor in title (Mrs. Eunice Ude) from the Agbaja Unuhu Community who had been the indigenous owners of Abakpa Layout wherein the said property is situate from time immemorial. Counsel referred this court to page 838 of the record of appeal and paragraphs 9 and 9A of the 1st Respondent's further Amended Statement of Defence and Counter Claim at the same page 838 of the Record of Appeal. Counsel contended that the 1st Respondent had by the above proof of ownership to the said property through Exhibit Q, validated his insistence that it was Eunice Ude that allowed the 4th Appellant and his mother to occupy part of the said property rent free, which they abused and capitalized upon till now and asserted adverse claims thereto, hence his counter claim for its recovery from them at the trial court. Counsel further argued that the 1st Respondent having successfully traced his claim to the said property through the grant of the lease in Exhibit Q by the Agbaja Unuhu Community to Eunice Ude who exercised the act of ownership of collection of rents from tenants through Exhibit U4, that the 1st Respondent had proved a better title to the said land, and has discharged the onus on him in proof of his counter claim because, it is now settled that where there are two competing claims of ownership of a parcel of land, and each contestant is relying on act of ownership and actual possession, any one of them who can prove title, is in actual possession and the other a trespasser. Counsel referred this court to the case of ***Aminu Vs Ogunyebi (2004) 10 NWLR (Pt. 882) 457 at 478, Para C – D.*** He finally, urged this court to resolve this issue two in favour of the 1st Respondent.

**ARGUMENTS OF THE 2ND RESPONDENT**

As I have earlier stated, the 2nd Respondent's counsel adopted all the Appellants' counsel issues for determination in this appeal, but argued only issues 1, 2 and 3 respectively.



**ISSUE NO. ONE**

***Whether there was in the Appellants' pleading and evidence that Eunice Ude the late 1st wife of late Gabriel I. Ude started managing late Gabriel I. Udes' properties as her own to the absolute exclusion***

***of the 7 wives of late Gabriel I. Ude and their children? (Distilled from ground 1 of the Notice of Appeal).***

The 2nd Respondent counsel on this issue one submitted that the primary duty of a trial court is to evaluate all the evidence before it, whether given by an expert or not, before coming to a conclusion as to the preponderances of the evidence adduced by the parties. Counsel referred to the decision of this court in ***Ezemonye Okwara Vs Dominic Okwara (1929) 11 NWLR (Pt. 5276) 160 ratio 3 at P5 169 – 170, Paras G – A.***

Counsel further submitted that the learned counsel for the appellants in a bid to mislead this court failed to appreciate and take cognizance of the fact that the writ of summons, statement of claim, witnesses sworn statement and other processes were filed in 2005 which processes have been severally amended. Counsel referred to the appellants pleading i.e paragraphs 2727, 32 and 34 and the extract from the cross – examination of PW1, PW2 and PW3 to show that the Appellants witnesses evidence are ad idem with the facts contained in Exhibit K, U10 and T and the findings of the lower court to imply and mean the exact words contained in the Appellants pleading and evidence, that the trial court is at liberty to make deductions and draw interference from the facts of a case and evidence before it.

Counsel maintained that late Eunice Ude took over and was in adverse possession of the properties of late Gabriel I. Ude as contained in the Appellants' reliefs after his death in 1960 to the exclusion of the Appellants and their respective mothers.

Counsel submitted that it is the law that, it is within the province of the trial court to evaluate evidence and make finding of facts, that a trial judge cannot perform his function effectively to give meaning to contested facts unless he is able to break these facts down with some rationality, give them probative value that they deserve draw proper and acceptable interferences which is a product of a legal mind and not indulgence in speculation. He referred to the decision of this court in ***Benedict O. Nwoti Vs TOC Mbonu (1991) 7 NWLR (Pt. 206) 737 at 745,*** and urged this court to discountenance and disregard the arguments and submissions of learned Appellants' counsel on issue one as it is of no moment.

**ISSUE NO. TWO**

***Whether the trial court properly evaluated the evidence over fraud, concealment and mispresentation? (Distilled from grounds 4 and 6 of the Notice of Appeal).***

On issue two, counsel submitted that the law is trite that it is within the ambit of a trial court which had the advantage and opportunity to hear and watch the demeanor of witnesses during trial, to evaluate the evidence. That the Appellate Court will not allow any appeal merely because the verdict reached by the trial court is challenged on the ground of it being contrary to the weight of evidence. The Appellate court will only intervene if it can be shown by the Appellant that the judgment reached by the trial court will not reverse the verdict or decision of the trial court if there are no reasonable and cogent evidence to support the position, counsel referred this court to ***Dele Gabriel Vs State (2010) 6 NWLR (Pt. 1190) 280 at 279*** and also the case of ***Francis Ojo Ogunjemila Vs James Agibade (2010) 11 NWLR (Pt. 1206) 559 at 568***

Counsel posited that the trial court properly evaluated evidence of the alleged fraud, concealment and mispresentation by late Eunice Ude as contained in the testimonies of PW1, PW2 and PW3.

Counsel further submitted that the Appellants failed woefully to prove the allegation of fraud/forgery allegedly perpetrated by Eunice Ude and that the burden which is statutorily enshrined in section 139 of the evidence Act 2011 (as amended) cannot be said to have been discharged until the guilt of an accused person is properly and clearly disclosed by credible evidence. Counsel referred to the case of ***Bello Vs The State (2007) 10 NWLR (Pt. 1043) 364 Ratio 2.*** He urged this court to resolve this issue against the Appellants.

## ***ISSUE NO. THREE***

***Whether in view of the facts of this suit before the trial court, the suit was statute barred? (Distilled from grounds 3 and 9 of the notice of appeal)***

On this issue, counsel submitted that when a plea that, an action is statute barred is raised at the trial court, the court should determine when the cause of action arose and when the suit was filed, the court must do this by looking into the statement of claim to ascertain the date when the cause of action arose and the writ of summons was filed. That where there is dispute as to date by the parties, the trial court should not determine the issue of when the cause of action arose until evidence had been called on the issue. Counsel referred this to the decision in ***Ezeani Vs NPC (2015) 3 NWLR (Pt. 1445) P. 139 at 160, Ratio 14***

Counsel further submitted that Section 16(2)(a) of the limitation law cap L67 Laws of Lagos State which is similar to Limitation Law of Ebonyi State place a time limit of 12 years on action for recovery of land to include an action claiming a declaration of title to land, counsel referred to the decision of ***J.K.K. Ltd Vs Government, Lagos State (Supra) at Page 166 Ratio 2.***

Counsel contended that it is trite law that to determine whether an action is statute barred, the court will examine the originating process, statement of claim, together with the evidence on record where that has taken place, to know when the wrong in question occurred and compare it with the date the originating process was filed in court, counsel referred to the case of ***Asaboro Vs Pan Oceanic Oil Corporation (Nig) Ltd (2017) 7 NWLR Pt. 1563 42 at 68 Para A.***

Counsel submitted that for the doctrine of statute barred to apply, time begins to run where there is in existence a person who can sue and another to be sued and all events are in place, counsel referred to the decision in ***Okafor Vs Bende***

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***Divisional Union, Jos Branch (2017) 5 NWLR Pt. 1559 Pg. 385 at 417 Para E – F***

Counsel further submitted that the law is clear that, a party claiming a legal right must act quickly to avoid a situation where the other party would have acted in the belief that no one was offended or hurt by his act, that where a party who claims a right does not act quickly, it would be difficult or inequitable to request the adverse party to revert to his previous position, counsel referred to the decision in ***Adejumo Vs Olawaiye (2014) 12 NWLR (Pt. 1421 Pg 252 at 280 – 281 Para G – C.***

Counsel further submitted that the Appellants have a cause of action but which cannot be enforced, he referred this court to the case of ***Buremoh Vs Akande (2017) 7 NWLR (Pt. 1563) Pg 74 at 105, Para A – B.***

Counsel finally argued that an enactment such as statute of limitation which affect procedure and practice of the courts apply retrospectively, therefore presumption against its application retrospectively does not apply to such a procedural enactment and urged this court to resolve all the issues in favour of the 2nd Respondent.

**RESOLUTION**

Now, based on the issues formulated and the arguments of the learned counsel for the respective parties recounted above, the issues that call for determination, in my view are:

1. **Whether the trial court was right in dismissing the case of the Appellants for being statute barred?**
2. **If issue No. 1 is determined in the negative, whether the Appellants have proved their case and entitled to the grant of the reliefs sought?**

3. **Whether the trial court properly evaluated the counter claim of the 1st Respondent and possess the requisite jurisdiction to grant same?**

**ISSUE NO. ONE**

**Whether the trial court was right in dismissing the case of the Appellants for being statue barred**?

Now, the effect of limitation law is that where a statute of limitation prescribes a period within which an action must be commenced, legal proceedings cannt be properly or validly instituted or commenced after the expiration of the prescribed period. Where an action is statute barred, a plaintiff who might otherwise have had a cause of action loses the right to enforce the cause of action by judicial process, because the period or the time allowed by the limitation law for instituting such an action had elapsed. See **SHELL PET. DEV. CO. V. FARAH (1991) 3 NWLR (PT. 382) 148 at 185, paras. C-E.**

Now, in determining whether an action is statute barred, it is the originating processes filed by a plaintiff or Claimant that the court is enjoined to look at. In an action commenced by a Writ of Summons, it is the Statement of Claim that the court should scrutinize to determine when the cause of action arose and compare that date with the date the Writ of Summons was filed. The court has no recourse to the Defendant's Statement of defence or any evidence in determining when the cause of action arose for the purpose of limitation of action. See **ABDULAZEED V. STATE (2023) 14 NWLR (PT. 1904) 293.** However, where there is dispute by the parties regarding the date the cause of action arose, the court is enjoined not to determine the issue of when the cause of action arose until evidence had been taken on the issue. See **EZEANI V. N. R. C. (2015) 3 NWLR (PT. 1445) 139 at 160, Ration STATOIL (NIG) LTD V. INDUCON (NIG) LTD (2021) 1 NWLR (PT. 1774) 1 at 58-59, paras. G -B and C.B.N. V. AHMED (2001) 1 NWLR (PT. 724) 369.**

In the instant case, by the pleadings of the parties as gleaned from the Records, the issue as to when the cause of action arose was disputed by the parties. This explains why the trial court adopted the procedure of considering the pleadings and evidence of all the parties in determining the issue of statute bar in the final judgment which procedure is validated by the decisions of the apex court, in the case **of KARSHI V. GWAGWA (2022) 9 NWLR (PT. 1834) 139 at 161, paras. C-D,** where the court held:

> **"Where the objection that the suit is statute barred is considered and determined after the conclusion of evidence by both sides, then the court cannot ignore the evidence before it and pretend it does not exist and determine the objection only on the basis of the originating processes. At the stage, all the processes and evidence before the court must be considered, especially where the objection is determined as part of or along with the final judgment on the merit of the dispute in the case."**

Thus, by the above decision, the pleadings and evidence of the 1st Respondent in his defence of the Appellants' case being statute barred should be reckoned with by the trial court before arriving at a decision.

Now, in paragraph 42 of their Further Amended Statement of Claim, at page 1101 of volume 3 of the Record, the Appellants themselves averd that their cause of action arose in 2003 following their discovery of the fraudulent changes done by late Eunice Ude on the title documents belonging to their late father which has been in her possession. The 1st Respondent joined issues with the Appellants in his Statement of Defence on the above averment (para. 42) by showing that the Appellants' cause of action accrued much earlier than 2003 when Eunice Ude and himself were in adverse possession of the disputed properties. See paras. 5, 11, 14

– 22 of the 1st Respondent's Further and Better Amended Statement of Defence and Counter Claim at pages 1050 – 1055 of the Records.

Now as found by the trial court in its judgment at pages 60 – 62 of the supplementary Record, it was the pleadings and evidence of the Appellants that their father, late Gabriel I. Ude was the owner of the properties now in dispute. That their said father died in 1960 and his 1st wife, late Eunice Ude took possession and started managing the said properties as her own to the absolute exclusion of their father's co-wives, who were seven (7) in number and also to the total exclusion of the children of the co-wives including the Appellants, who were still young and tender as at 1960. That when they became old enough to challenge the exclusive possession of the properties by late Eunice Ude, they could not do so because the said late Eunice Udeh hid the documents to those properties from them. That when she (Eunice Udeh) died in 1984, her first daughter continued hiding the said documents from them (Appellants) as a result of which they could not file a suit to challenge that exclusive possession until 2003 when the documents of the properties were handed over to them.

Undoubtedly, the grouse or complaint of the Appellants which led to the institution of this suit at the trial court, is the exclusive adverse possession of their late father's listed properties by late Eunice Udeh and those who claimed through her since the demise of their father in 1960.

In my view, as found by the trial court, the Appellants' cause of action arose in 1960 after the death of Gabriel Udeh (their father) and late Eunice Udeh started exercising exclusive and adverse possession over the properties, to the knowledge of the Appellants' mothers, that is the Seven (7) Co-wives of their late father and did nothing since that 1960, even after the demise of Eunice Udeh in 1984 and the 1st Respondent started managing the property, until 2003 when the Appellants filed the first suit which they subsequently withdrew. From the evidence of the parties at the trial court, including that adduced by the Appellants themselves, it is very clear that, the possession of the properties in dispute by late Eunice Udeh and those who claimed through her including the 1st Appellant, was not hidden. There was no misrepresentation regarding the exclusive and adverse possession and influence over the properties by late Eunice Udeh and those who claimed through her, particularly the 1st Respondent. The co-wives and the Plaintiffs who came of age before 1984 were aware of acts of possession over the properties by the late Eunice Udeh and those who claimed through her and were also aware that they were making adverse claims over the properties, yet they did nothing to challenge or stop them in court until 2003 when they instituted the withdrawn suit.

Now, section 3 of the limitation law, cap 102, Laws of Ebonyi State, 2009 provide:

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

The above provision which is impari materia with Section 4 of the Limitation Law of Kwara State, 1994, in relation to land has been interpreted by the Supreme Court in the case of **BUREMOR V. AKANDE (2017) 7 NWLR (PT. 1563) 74 at 79, Ratio 5,** where it held:

> **"By virtue of Section 4 of the limitation law, Cap. 89, Laws of Kwara State of 1994, no action shall be brought by any person to recover any land after the expiration of ten years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person. Being clear and unambiguous, the section does not brook of any subtle clever or deviant interpretation. It is an undoubted fetter to court's assumption and exercise of jurisdiction"**

It is undisputed by the evidence adduced at the trial court including the documentary exhibits (Exhibits "R" to "U" series) tendered by the Respondent, that the overt acts of adverse possession exercised by the said 1st Respondent and late Eunice Udeh over the disputed properties had exceeded 10 years before the institution of this suit by the Appellants in 2005, contrary to the provisions of Section 3 of the Limitation Law of Ebonyi State (Supra).

Furthermore, as I found earlier in this judgment, fraud, concealment, misrepresentation do not apply in the instant case, as what the Appellants are challenging is the exclusive adverse possession by Eunice Udeh and those claiming through her of the properties in dispute which was to their knowledge, and not the alleged falsification of documents which they were not even aware of until they were allegedly made available to them in 2003.

Now, what is made clear by the evidence adduced at the trial court is that, even though the Appellants were aware of the adverse possession of the properties in dispute by late Eunice Udeh and those claiming through her, they stood by and failed to challenge same in court and thereby allowed the said Eunice Udeh, according to the Appellants to sell the land which is part of the properties they are claiming to the father of the 2nd Appellant, who built a house on same, where the 2nd Appellant is still living with his family till date. The Appellants also did not challenge the 1st Appellant in court over possession of the properties and allowed him to expend money renovating one of the properties (No. 8, New Market Road) where the said 1st Appellant lives till date. In the case of **AYORINDE V. KUFORIJI (2022) 22 NWLR (PT. 1843) 43 at 67, Ratio 42,** the apex court held:

> **"Where a person has expended money on land of another in the expectation, induced and encouraged by the owner of the land, that he would be allowed to remain in occupation, an equity is created, such that the court would protect his occupation."**

By the above decision the 1st and 2nd Respondents who are shown to be in possession of the properties in dispute are deemed to be the owners of the said properties, who are entitled to the protection of their occupation of the properties by the court. This is because their adverse and exclusive possession of the properties in question has ripened to ownership, since the Appellants who assert or claimed ownership of the properties have all the time material were aware of the adverse possession of the Respondents but never took any step to quit them from the properties or demand payment of any sort from them of rent. The Appellants not only admitted that the Respondents were in exclusive possession of the land in dispute, but they further admitted that the Respondents were in adverse possession and had even sold part of the land in expression of their ownership right. See **AKINBADE V. BABATUNDE (2018) 7 NWLR (PT. 1618) 366 at 372, Ratio 6**.

In view of the foregoing, I agree absolutely, that the suit of the Appellants at the trial court was statute barred and the said trial court was right in dismissing the suit. Consequently, this issue is determined in the positive and resolved in favour of the Respondent and against the Appellants.

Having determined Issue No. 1 in the affirmative this court is precluded from considering issue No 2. because it has no jurisdiction to so do in view of the fact that the action of the Appellants is statute barred, which means their right to institute same *ab initio* was extinguished by operation of law.



**ISSUE NO. THREE**

**Whether the trial court properly evaluated the counter claim of the 1st Respondent and possesses the requisite jurisdiction to grant same?**

Now the contention of the learned counsel for the Appellants is that the trial court had no jurisdiction to entertain the courter claim of the 1st Respondent for the reason that, the Writ of Summons and Statement of claim of the Appellants was statute barred and thus, the counter claim of the 1st Respondent that was predicated on the said Writ of Summons and Statement of claim is also void.

In response, the learned counsel for the 1st Respondent submitted that, the Appellants' cause of action being statute barred, it only relieved them of the right to the judicial enforcement of their claimed reliefs. That it is only the Appellants' cause of action that was deactivated for being statute barred without voiding the claim, the legal effect of which is that the Appellants' claim is only incapable of judicial enforcement without being vitiated.

Now, in determining this issue, it is necessary and proper to first determine whether the trial court possesses the requisite jurisdiction to grant the counter claim before considering whether the said trial court properly evaluated the counter claim.

Indeed, it is settled law that, the main claim and a counter claim are separate and distinct actions which are tied together having been brought in the same proceedings for convenience and to avoid multiplicity of actions. Undoubtedly, the main claim is the source of the counter claim and thus, there cannot be a counter claim without the main claim being filed in the first place, but the counter claim is nevertheless an independent or separate action that mut be considered separately by the court and deliver a separate judgment in respect of the counter claim.

I think it needs to be understood that, a counter claim is a separate and independent claim in the same action with the Plaintiff's claim, not as a matter of action, but in relation to proof and distinct treatment in adjudication. Thus, when the court lacks jurisdiction to entertain the main claim, a counter claim cannot stand on its own. In the case of **FEDELITY BANK PLC V. SAGECOM CONCEPTS LTD (2025) 9 NWLR (PT. 1994) 435 at 479, PARAS. B -C,** the Supreme Court, Per, Jauro, JSC held:

> **"Although it is indisputable that a counter claim has a life of its own and the decision therein is not dependent on the decision in the main claim, these principles are however,**

**not without exceptions. For instance, where a counter claim is predicated on a claim that was incompetent ab initio by reason of the fact that it was not commenced by due process of law, the incompetence of the main claim will rub off on the counter claim which will itself be rendered incompetent."**

Now, the breach of substantive law renders an action not having been properly constituted by due process of law, a nullity ab initio. See **BRAITHWAITE V. SKYE BANK PLC (2013) 5 NLWR (PT. 1346 1 at 18 Paras. E -F and 22, Para G. (SC).**

In the instant case, it will be recalled that the suit of the Appellants was filed in breach of section 3 of Limitation Law of Ebonyi State (supra), which rendered the suit statute barred and was consequently dismissed by the trial court, which decision I affirmed elsewhere in this judgment. Certainly the suit of the Appellants upon which the counter claim of the 1st Respondent was rested or predicated was incompetent having not been commenced by due process of law, the incompetence of the said suit or main claim of the Appellants has rubbed off on the counter claim of the 1st Respondent and rendered it incompetent as well, which divested the trial court of jurisdiction to entertain same. See again **FEDELITY BANK PLC V. SAGECOM CONCEPTS LTD (SUPRA).**

I agree with the submissions of the learned counsel for the Appellants that since the trial court lacked jurisdiction to entertain the main claim, it also lacked jurisdiction to entertain the counter claim since it cannot stand on its own.

Furthermore, since the trial court had no jurisdiction to entertain the counter claim, the question of whether it properly evaluated the counter claim does not arise. This issue is therefore, resolved in favour of the Appellants against the 1st Respondent.

Now having resolved issue No. 1 in favour of the Respondents while issue No. 2 in favour of the Appellants, it means this appeal succeeds in part and it is also allowed only in part, as it affects the judgment of the trial court on the counter claim of the 1st Respondent. The said judgment of the trial court on the counter claim of the Respondent is hereby set aside, having been granted by the trial court without jurisdiction. While the decision of the trial court that the suit of the Appellants is statute barred is affirmed.

Parties to bear their own costs.

**ZAINAB BAGE ABUBAKAR,**

**JUSTICE, COURT OF APPEAL**

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Date 30/7/2026

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COURT OF APPEAL
30 JUL 2026
REVENUE
ENUGU DIVISION

**APPEARANCE:**

- **Mohammed Danjuma Esq., for the Appellants**
- **C. A. Okeke with Nwigwe Esq., for the 1st Respondent**
- **E. E. Anosike Esq., for the 2nd Respondent**

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CA/E/215/2023

(JOSEPH EYO EKANEM, JCA)

I read before its delivery the leading judgment of my learned brother, Z.B. Abubakar, JCA, which has just been delivered.

For the reasons stated therein, I agree that the appeal succeeds in part and I allow it in part as specified in the leading judgment.

I abide by the consequential orders in the leading judgment.

JOSEPH EYO EKANEM

JUSTICE COURT OF APPEAL

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COURT OF APPEAL
30 JUL 2026
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ENUGU DIVISION

CA/E/215/2023

**NEHIZENA IDEMUDIA AFOLABI, JCA**

I have had the benefit of reading in draft the lead judgment of my learned brother, **Zainab Bage Abubakar, JCA.** I am in complete agreement with the reasoning and the conclusion that the Appellants' suit is statute-barred and consequently, the counter-claim must also be set aside. I wish only to add a few words to underscore the importance of the principles of jurisdictional competence applied herein.

The core of our judicial authority is rooted in the procedural competence of the proceedings. As firmly established by the Supreme Court in **Fidelity Bank PLC v. Sagecom Concepts Ltd (2020) LPELR-50369(SC),** the competence of an originating process serves as the bedrock upon which all subsequent proceedings, including counter-claims, must rest. It is a well-settled principle of our law that jurisdiction is the life-blood of a trial; where the foundation is removed as is the case here, where the action is caught by the clear, mandatory provisions of the Limitation Law. The entire proceeding is rendered incompetent, losing its legal character.

The Respondents, in their attempt to salvage the counter-claim, rely on the notion of the independence of such processes. However, this argument fails to account for the nature of a counter-claim, which, while distinct in its trial, is procedurally linked to the main suit. The 1st Respondent seeks to rely on the counter-claim, an action inherently connected to the original suit to assert a legal right. Yet, the very suit from which that counter-claim draws its life has been declared statute-barred. A party cannot claim that a suit is 'alive' enough to support a counter-claim for title, while simultaneously acknowledging that the court lacks the jurisdiction to entertain the originating process itself. By seeking to uphold the counter-claim, the 1st Respondent is essentially attempting to extract a right from a proceeding that the law has already rendered legally barren. Jurisdiction is either present or it is not; it cannot be partitioned to suit the convenience of a party.

To permit the survival of a counter-claim within a suit that the law has deemed unenforceable would invite a dangerous practice of *"procedural bootstrapping."* If the court lacks the jurisdiction to entertain a suit because it is statute bar, it then follows logically that it lacks the jurisdiction to adjudicate any ancillary claims derived from the same originating process. The Limitation Law is not merely a technicality; it is a substantive statutory policy designed to ensure the repose of title and the finality of litigation. By failing to initiate their action within the prescribed period, the Appellants have effectively foreclosed the court's power to intervene. It would be a contradiction in terms for this Court to dismiss the main suit for want of jurisdiction while simultaneously asserting jurisdiction to grant reliefs on a counter-claim arising from that same voidable foundation.

I agree with my learned brother that the trial court was correct to decline further jurisdiction, and I also agree that there exists no merit in attempting to resurrect a counter-claim from a procedurally barren suit.

**NEHIZENA IDEMUDIA AFOLABI,**

JUSTICE, COURT OF APPEAL

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