

JURISDICTION AND PROPER PARTIES IN NIGERIAN CIVIL LITIGATION: A REVIEW OF THE ADMIN. & EXEC. OF THE ESTATE OF ABACHA V EKE-SPIFF & ORS (2009) LPELR-3152 (SC)

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Abstract

The judicial decision of the Supreme Court in the case of the *Administrators/Executors of the Estate of Abacha v Eke-Spiff & Ors* is a *locus classicus* in Nigerian civil procedure. In this case, the Supreme Court affirmed the judgment of the trial Court while simultaneously striking out the appeal on the ground of jurisdiction. A major issue with this decision is the affirmation of the trial court judgment despite the appeal being struck out and the absence of any cross appeal by the respondent. This article aims to appraise the position of the Supreme Court in this case and examine whether it can stand the test of time against other decisions of the apex court. The doctrinal research method was adopted for this analysis. The article recommends, among other things, that the Supreme Court should reconsider its stance on affirming the judgment of the trial court when the appeal is struck out for want of jurisdiction. It also recommends that the heirs of the late General Sani Abacha should approach the trial High Court of Rivers State and institute an action for the declaration of title to land.

Keywords: Jurisdiction; Abacha; Necessary Parties; Proper Parties; Civil Litigation and Review

1.0 INTRODUCTION

Jurisdiction is the cornerstone of judicial power; it is the lifeblood of any litigation. Without it, a court's proceedings, no matter how well-conducted, are a nullity. The Supreme Court of Nigeria has consistently held, in a long line of authorities, that jurisdiction is a radical and crucial question of competence which can be raised at any stage of proceedings, even on appeal for the first time. It was against this backdrop that the decision in *The Administrators/Executors of the Estate of Abacha v Eke-Spiff & Ors*¹ (hereafter *Abacha v Eke-Spiff*) sent ripples through the Nigerian legal community.

The case, originating from the High Court of Port Harcourt, Rivers State, concerned a dispute over Plot 288, Diobu G.R.A. Phase II, Port Harcourt. The plaintiffs (now respondents) sought several declaratory reliefs and orders against the defendants, including the Estate of General Sani Abacha, challenging the legality of land grants and revocations. The trial court found in favour of the plaintiffs. The defendants appealed. At the Supreme Court, a fundamental issue was raised: were the appellants, the "Administrators/Executors of the Estate of Late General Sani Abacha," the proper parties to institute the appeal? The Supreme Court held that they were not, as the estate of a deceased person is not a juristic entity capable of suing or being sued. Consequently, the appeal was struck out for want of jurisdiction.

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¹(2009) LPELR-3152 (SC).

The perplexing twist, however, was the court's concomitant affirmation of the trial court's judgment. This act of affirming a decision in an appeal it had just declared incompetent forms the crux of this academic inquiry. This article argues that this outcome creates a procedural anomaly that undermines the very principle of jurisdiction the court sought to uphold. It leaves the respondent with a judgment affirmed by the highest court, yet obtained against an entity the same court declared a legal nullity.

This article is structured to first clarify the key conceptual frameworks of jurisdiction and parties to civil litigation. It will then present a factual synopsis of the *Abacha v. Eke-Spiff* case, followed by a critical analysis of the Supreme Court's decision. The article will juxtapose this decision with other Supreme Court authorities to highlight the jurisprudential tension. Finally, it will offer pragmatic recommendations and a conclusion.

2.0 CONCEPTUAL CLARIFICATIONS

A conceptual clarification is intended to lend meaning to some of the concepts used in this article to drive home the point and for a better understanding of the case under review.

2.1 JURISDICTION

Jurisdiction refers to the authority conferred upon a court by the constitution or a statute to hear and determine a cause or matter. It is the fundamental precondition for any valid judicial exercise. The Supreme Court in *Madukolu v Nkemdilim*² famously delineated the elements of jurisdiction as encompassing: (a) the *subject-matter* of the case, (b) the *persons* involved, (c) the *territorial scope*, and (d) the *time* or occasion for the exercise of jurisdiction. A defect in any of these elements renders the entire proceedings a nullity.

2.2 PARTIES TO A SUIT: NECESSARY V PROPER PARTIES

The question of who can sue or be sued is integral to the element of "persons" in jurisdiction. In legal parlance or proceedings, the parties generally speaking are the person whose names appears on the record as plaintiff or defendants or claimant or defendants as the case may be and when the suit has been filed the trial judge becomes *dominus litis* and then assume jurisdiction and has the duty and responsibility to ensure that the proceedings accord with the justice of the case by joining either as plaintiff or defendants all the persons who may be entitled to, or who claim same share or interest in the subject matter of the suit, or who may be likely to be affected by the results if those had not already been made parties. This joinder by the courts can be done *Suo motu* at any stage of the proceedings.³ In civil litigation, parties are generally classified into three categories: Proper parties, desirable parties, and Necessary parties, but in this article, we are concerned with necessary parties and proper parties.

Proper Parties are those who have a direct interest in the subject matter of the suit but whose presence is not essential for the court to adjudicate effectively. Their absence does not necessarily invalidate the proceedings, but the recent pronouncement of the apex court makes their absence in judicial proceedings a jurisdictional issue.

² (1962) 2 SCNLR 341.

³ *Green v Green* (1987) LPELR-1338 SC 13.

Necessary Parties, on the other hand, are those who are not only interested in the subject matter but against whom relief is sought, or who are necessary for the effective and complete determination of the question involved. As held in *Green v Green*⁴. A necessary party is one without whom no effective order can be made. Their absence is fatal to the suit.

2.3 JURISTIC PERSONALITY AND LEGAL CAPACITY

A foundational principle of law is that only legal persons (natural or artificial) can sue or be sued. An estate of a deceased person, unlike a corporate entity, lacks legal personality. It is a mere collection of assets and liabilities. Consequently, any action brought by or against "The Estate of X" is incompetent. The proper parties are the legal representatives (executors or administrators) who hold the estate's property in trust for the beneficiaries. This was the central procedural flaw in *Abacha v Eke-Spiff*.

3.0 SUMMARY OF THE FACTS OF THE CASE AND DECISION

The dispute concerned a landed property in Port Harcourt. The plaintiffs, David Eke-Spiff and another, claimed to have obtained a prior grant. The defendants included the Rivers State Government and "The Estate of General Sani Abacha." The plaintiffs sought and obtained declaratory relief at the trial High Court, essentially invalidating the grant to the late General Abacha and affirming their own title.

The defendants, dissatisfied, appealed. The notice of appeal and all subsequent processes were filed in the name of "The Administrators/Executors of the Estate of Late General Sani Abacha." At the Supreme Court, the respondents raised a preliminary objection, contending that the appellants lacked the legal capacity to appeal. They argued that an "Estate" is not a legal person and the named appellants were merely descriptive, not constituting a legal entity.

4.0 THE SUPREME COURT'S DECISION: A CRITICAL ANALYSIS

The Supreme Court, per Aderemi JSC, upheld the preliminary objection. The court rightly reaffirmed the trite law that an estate is not a juristic person and cannot sue or be sued. The named appellants were deemed to be non-existent in the eyes of the law for litigation. Having found that the appeal was filed by a non-existent entity, the court held it was incompetent and struck it out.

4.1 THE PARADOX: STRIKING OUT Vs. AFFIRMATION

The contentious part of the judgment followed immediately. After striking out the appeal, the court proceeded to state:

"In the circumstances, I have no alternative but to strike out the appeal. The judgment of the trial court is hereby affirmed."

This single sentence creates a profound legal conundrum. If the Supreme Court lacked the jurisdiction to hear the appeal because the appellants were a nullity, on what jurisdictional basis did it assume the power to affirm the judgment of the trial court? Affirmation is a substantive judicial act that implies the court has considered the merits of the case and found the lower court's decision to be correct. By its own logic, the Supreme Court, having found the appeal incompetent, was *functus officio* on the substantive matter.

⁴ Ibid.

4.2 THE ABSENCE OF A CROSS-APPEAL

The absence of a cross-appeal from the respondents further compounds this paradox. A cross-appeal is the mechanism by which a respondent who seeks to vary or affirm the judgment on grounds other than those relied upon by the lower court must approach the appellate court.⁵ By affirming the judgment without a cross-appeal, the Supreme Court effectively granted the respondents more than they asked for, without the respondents having invoked the court's jurisdiction to do so.

5.0 JUXTAPOSITION WITH ESTABLISHED PRINCIPLES

The decision in *Abacha v. Eke-Spiff* appears to stand in tension with other well-settled principles of the Supreme Court.

5.1 THE PRINCIPLE OF NULLITY

In *A.G. Lagos State v Dosunmu*⁶ the court held that a proceeding against a non-juristic person is a nullity. If the appeal was a nullity, the Supreme Court's act of affirmation, which is part of that null proceeding, should logically share the same fate.

5.2 JURISDICTION AS A THRESHOLD ISSUE

The case of *Okoya v Santilli*⁷ emphasises that jurisdiction is determined at the commencement of the suit. If the appeal was incompetent *ab initio*, the Supreme Court could not validly make any order that presupposes a valid appeal before it, other than to strike it out. A possible, albeit strained, justification for the court's action could be found in the principle of *res judicata*. The court might have intended to prevent the proper parties from re-litigating the matter. However, this is a pragmatic overreach that bypasses procedural due process. The proper course would have been to strike out the appeal, leaving the trial court's judgment intact but subject to a fresh, competent challenge by the right parties. The above raises critical issues as provided hereunder:

1. Did the High Court have jurisdiction to try the case?
2. Did the Supreme Court have jurisdiction to affirm the judgment of the trial court after striking out the appeal?
3. Are any remedies available to the heirs of General Sani Abacha?

6.0 ANALYSIS OF THE ISSUES

Three fundamental critical issues were raised. These issues have been stated hereinbefore. The findings of the court could therefore be analysed under three critical issues raised as follows:

6.1 DOES THE TRIAL HIGH COURT OF PORT HARCOURT HAVE THE JURISDICTION TO TRIAL THE CASE?

Jurisdiction is fundamental in law. It is determined by the claims of the plaintiff and must be satisfied before a court can validly adjudicate on a matter. The claim he seeks is the question of law, and once raised, it should be resolved quickly. It is so important that it can be raised at any time and even in the Supreme Court for the first time. If a Court has no jurisdiction to hear a

⁵ *Williams v Daily Times of (Nig) Ltd* (1990) LPELR-3487(SC).

⁶ (1989) 3 NWLR (Pt. 111) 552.

⁷ (1990) 2 NWLR (Pt. 131) 172.

claim, no matter how well the trial was conducted, the entire proceedings would amount to nullity⁸.

For a Court to have jurisdiction, the following conditions must be present.

1. The proper parties must be before the Court;
2. The subject matter falls within the jurisdiction of the Court;
3. The composition of the Court as to number and qualifications;
4. Suit commenced by due process of law and upon fulfilment of any condition precedent to assumption of jurisdiction.⁹

For the purpose of this case, it's apparent that condition (a) above has not been satisfied for the trial Court to have jurisdiction. At the time this case was instituted at the High Court of Port Harcourt, General Sani Abacha has already died and his family must be made a party for proper adjudication of the matter being them necessary party to the cause, since they will be affected by the outcome of the decision as the case may be since the administrators/executors of estate of General Sani Abacha (deceased) was held to be Non juristic personality. The trial Court, therefore, lacks the requisite jurisdiction to proceed and determine the case of the parties.¹⁰

It is trite in all trials, particularly civil proceedings, that persons against whom complaints are made or against whom judicial orders are sought must be made parties to that action. This is an elementary proceeding of law in the prosecution of civil claims: All necessary parties against whom the invocations of judicial powers are sought must be brought before the Court. This is to enable the Court to have jurisdiction over the parties for the purpose of determining whether or not to make the order sought¹¹

The litmus test for the determination of who may be a necessary Party to a suit is predicated on whether the judgment will affect the party. One of the reasons which makes it necessary to make a particular person a party to an action is that he will be bound by the result of the action and to put an end to parallel litigation.¹² Though it has been a long-standing principle of the Supreme Court that non-joinder or misjoinder of a party to proceedings will not defeat a party's case¹³ and the various high courts' Civil Procedure Rules contained provisions to that effect.¹⁴

However, careful scanning through various decisions of the Court of Appeal and the Supreme Court reveals that where a party ought to be joined and made a party to proceedings from the onset is a necessary party and its non-joinder will affect the jurisdiction of the court. The recent

⁸ *Modukolu v Nkemdilim* (1962) 2 SCNLR 341.

⁹ (n 1), p. 152.

¹⁰ A. A Akume 'The Supreme Court Revisit of The Registered Trustees of Amorc v Awoniyi' UDUSLJ (2001) (1) (3) 117. It is the view of the author in that article that the absence of a necessary party to a case is jurisdictional in nature, which robs the court of its jurisdiction. See also the case of Chief Yakubu Sani v Okene Local Government (2008) 7 NSCR 158 at 159-161. It is the holding of the Supreme Court that once a condition precedent exists, which must be fulfilled before a court can assume jurisdiction, it must be fulfilled.

¹¹ *Ibid.*

¹² *Fasole v Tamone* (2015) AFWLR (Pt. 786) 475.

¹³ *Green v Green* (1987) 3 NWLR (Pt. 61) 480. SC.

¹⁴ Order 13 Rules 16(1) of the Kebbi State High Court Civil Procedure Rules 2017. See also Order 13, Rules 14 of the National Industrial Court Civil Procedure Rules 2017; Order 9, Rule 14 of the Federal High Court Civil Procedure Rules 2019.

decision of the Supreme Court was aptly captured by *Adekeye, JSC*, in *G & T Invest. Ltd. v Witt & Bush Ltd*¹⁵ where he held thus:

It is a trite law that for a Court to be competent and have jurisdiction over a matter, proper parties must be identified. Before an action can succeed, the parties must be identified. Before an action can succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the Court, as it goes to the foundation of the suit in limine. Where proper parties are not before the Court, then the Court lacks jurisdiction to hear the suit¹⁶

The position of the rules of court in this respect conflicts with various decisions of the Court of Appeal and the Supreme Court¹⁷ not only that, the rules of the Court cannot override decisions of the Court of Appeal and the Supreme Court. In the case of *Bello Nasir v C.S.C*¹⁸ the Supreme Court held thus:

It is now settled that the issue of jurisdiction or Competency of a Court to entertain or deal with the issue before it is very fundamental; it is a point of law, and therefore, a Rule of court cannot dictate when and how such a point of law can be raised. Being fundamental and a threshold issue of jurisdiction, it can be raised at any point or stage of proceedings in any Court, including this Court. An appellant Court can even raise it *sum motu*.”

The Supreme Court went further and held thus: *Mandatory Rules of Court are not as sacrosanct as mandatory statutory provisions and therefore a Rule of Court cannot override statutory provisions of the law* (I can agree, less emphasis mine). Since the heirs of late General Sani Abacha are going to be affected by the outcome of the trial court decision, they must be made parties for the trial court to have jurisdiction, regardless of the position of the rules of court on joinder of parties. Recently, the Court of Appeal in *Patrick & Anor v Olufemi Esq*¹⁹ it was held thus:

It is equally trite that where it is established that proper parties are not before the court, the same will rob the court of its jurisdiction to hear and determine the case. The same is also applicable where it is established that the claimant lacks the *locus standi* to institute the action *ab initio*.

6.2 DID THE SUPREME COURT HAS THE JURISDICTION TO AFFIRM THE JUDGMENT OF THE TRIAL HIGH COURT AFTER STRIKING OUT THE APPEAL OF THE APPELLANT FOR NOT BEING A JURISTIC PERSONALITY AND IN THE ABSENCE OF ANY CROSS APPEAL?

¹⁵ (2011) 8 NWLR (Pt. 1250) 500 at 538 SC.

¹⁶ *Adeniran & Anor v Ibrahim & Anor* (2019) 16 WRN 81 at 91. It is the view of the Supreme Court that the Appeal is bereft of the necessary parties, and it invokes the spirit of the case of *Modukolu v Nkemdilim* (2001) 46 WRN 1.

¹⁷ *Ibid*.

¹⁸ (2010) 41 NSCQR (Pt. 1) 272.

¹⁹ (2019) 44 WRN 94 at 103.

Appeals generally are a continuation of the original action instituted at the trial Court²⁰ and where the trial Court lack the jurisdiction, it will not be too late for a party to raise it even for the first time at the Supreme Court²¹ and once it is raised and upheld, the appropriate order which the Supreme Court is competent to make in the circumstances is to strike out the case before it²² In the case under review, the Administrators of the Estates of General Sani Abacha, the only appellant before the Supreme Court were declared Non juristic personality; it is the holding of the Supreme Court, held thus:

As a general rule, only natural persons, that is to say, human and juristic or Atlantic personality or persons such as bodies corporate are complainant to sue and be sued before any law Court. In other words, no action can be brought by or against any party other than a natural persons or persons unless such parties have been given by instituting expressly or impliedly or by common law either as a legal personality under the name by which it sues or is sued or a right to sue or to be sued by that name.....this is because a law suit is in essence, the determination of legal rights and obligation is any given situation. Therefore, only such a natural person in whom the rights and obligations can be vested is capable of being a proper party to such a suit before the Courts of law. Following this general rule, where either of the parties is not a legal person capable of exercising legal rights and obligations under the law, the other party may raise this fact as a preliminary objection, which, if upheld, normally leads to or results in the action being struck out.²³

The juristic personality of the appellant was raised and upheld in this case, which robs the trial Court of the requisite jurisdiction to determine the case on merit as well as the Supreme Court at its appellate jurisdiction, since an appeal is a continuation of the original action as held in the case of *Ufikairo Monday Efet v Independent Electoral Commission and others*.²⁴ Therefore, for the Supreme Court to affirm the decision of the trial Court that was not properly constituted due to the absence of the proper parties is being in law and against the long established standing of the Supreme Court on matters of jurisdiction²⁵ I am in agreement with the Supreme Court for striking out this case, where it was held thus.²⁶

In conclusion, it is my judgment that this appeal lacks any merit. The persons or group of persons described as the appellant are unknown to the law. The appellant, who was described as the 3rd defendant, ought to have been struck out from the inception of this case. For avoidance of doubt, I hereby struck out the so-called 3rd defendant/appellant and consequently struck out this appeal brought by a person unknown to the law.

²⁰ *Chief Ufikairo Monday Efet v Independent National Electoral Commission and Others (2011)1 S.C.N.J. 179.*

²¹ *Gaji v Paye (2003) FWLR (Pt. 163) 1.*

²² *Wilson v AG Bendel State (1985) 1 NWLR (Pt. 4) 572.*

²³ (n 1) 51-52.

²⁴ (2011) 1 SCNJ. An appeal is generally taken to be a continuation of the original case stated at the first instance Court. It is not a new cause of action.

²⁵ (n 3) 47.

²⁶ (n16) 74-75.

However, the learned Law lord Aderemi JSC, who read the lead Judgment of the Court, with respect, summarily held after striking out the case to hold as thus: *For the avoidance of doubt again and in the interest of justice, I affirm the judgment of the trial court against the 1st and 2nd defendants.* The very parties who do not even cross appeal against the judgment of the Court below, the court ought to have struck out the appeal and, of course, the name of the appellant. With respect, affirming the decision of the trial Court by the Supreme Court after striking out the appeal against the only appellant is wrong and erroneous in law in the absence of a valid appeal or cross-appeal, in the case of *Olowo v. Abolare*.²⁷ It was held thus:

It is well settled that a cross-appeal is an appeal in its own right and does not depend on its existence or survival on the substantive appeal. A cross appeal against a decision derives its existence from a validly filed notice of appeal against the decision complained of. Hence, the dismissals of the substantive appeal do not affect the cross appeal.

The above decision of the Supreme Court has again reinforced the position of Law to the effect that the decision under review cannot stand against other decisions of the Supreme Court.²⁸ It is often argued by many commentators that Supreme Court decisions are sometimes driven by many considerations, such as politics and policy issues. I therefore can't agree less in the circumstances of the case, despite the Supreme Court agreement that there was no valid appeal and cross appeal, but affirms the decision of the trial court.

6.3 WHAT ARE THE REMEDIES AVAILABLE FOR THE HEIRS OF LATE GENERAL SANI ABACHA?

The judgment of the trial High Court, Port Harcourt, for not joining the heir of late General *Sani Abacha*, being a necessary and proper party, has robbed the trial Court of the necessary jurisdiction to try the case at the outset.²⁹ Flowing from the decision of the Supreme Court under review, the heirs of Abacha were never made parties at the trial high court of Rivers State, being them were necessary parties³⁰ therefore, the trial court will lack the necessary jurisdiction to proceed³¹ it may be argued that non-joinder or misjoinder of a party cannot rob the court of its jurisdiction.³² But it is a consequence of the lack of jurisdiction of the trial court, as held in the case of *Lakanmi v Adene*³³ The non-joinder or miss- joinder of a necessary party is only a procedural irregularity which can be corrected in the course of the proceedings by recourse to the relevant rules of courts and does not in any way affect the jurisdiction of the court or competence of the suit.

²⁷ (1993) LPELR-2663 (SC).

²⁸ *Arueze v Nwaukoni* (2019) 9 WRN 172 at 174-177.

²⁹ (n 3).

³⁰ *Green v Green* (1987) 3NWLR (Pt.61) 480.

³¹ Ibid.

³² *Ayanwoko v Okoye and Others* (2010) 41 (Pt. 1) NSCQR 46 at 67.

³³ (2003) 27 WRN at 24-26.

However, it is not in all circumstances where non joinder of necessary or proper parties to a cause may not affect the jurisdiction of the Court.³⁴ It has been an issue of judicial uncertainty in many of the decisions of the Supreme Court in this crucial area of the law on Joinder. It has been held that non-joinder of a party to the proceeding will render the judgment set aside on appeal and the case struck out, or remitting the case for retrial. The Supreme Court in *Okoye Supra* held thus:

In my view, failure to join a necessary party is an irregularity which does not affect the competence of the jurisdiction of the court to adjudicate on the matter before it. However, the irregularity may lead to unfairness, which may result in setting aside the judgment on appeal. Setting aside a judgment or making an order striking out the action or remitting the action for a retrial in such circumstances that will not be for lack of jurisdiction or on the bases of the judgment being a nullity. The trial itself is incompetent to review the judgment, more so another court of co-coordinate jurisdiction. The non-joinder or miss-joinder of a necessary party is only a procedural irregularity which can be corrected in the course of the proceedings by recourse to the relevant rules of courts and does not in any way affect the jurisdiction of the court or competence of the suit.³⁵

The above stated decision of the court acknowledges that cases could be struck out on appeal for lack of a necessary party at the trial, which, with respect, is an aspect of jurisdiction. However, in recent decisions of the Supreme Court, it categorically makes non-joinder of the proper parties or necessary parties in an action a jurisdictional issue.³⁶ The judgment of the trial High Court, Port Harcourt, for not joining the heirs of late General *Sani Abacha*, being necessary and proper properties, has robbed the trial Court of Necessary Jurisdiction to try the case at the outset.³⁷ However, the decision of the Court handed down on merit can only be set aside upon establishing a special circumstance. In an application for a court to set aside its previous judgment, the conditions which must be considered to have existed in the previous judgment sought to be set aside include:

1. The judgment is given per incuriam; or
2. That the judgment was erroneous in law; or
3. That the previous judgment is contrary to public policy or is occasioned a miscarriage of justice; or perpetuating injustice.³⁸

³⁴ *Awoniyi v The Registered Trustees of the Rosicrucian Order Amorc (Nigeria) (2000)2 (Pt. 1) NSCQR 692at 711-712*. In that case non- joinder of a necessary party was held to be jurisdictional in nature, therefore robs the court of the necessary jurisdiction to proceed.

³⁵ (n 32) 68.

³⁶ *Adeniran & Anor. v Ibrahim & Anor (2019) 16 WRN 81*. In the case *Odili JSC* held that “The present appeal being bereft of the necessary parties and invokes the spirit of the case of *Modukulu v Nkemdlin (2001) WRN 1; 1960 2SCNLR 341*. By making reference Modukulu’s case in the judgment, it is categorical that absence of necessary parties to a proceeding of court is jurisdictional in nature therefore robs the court of the necessary competence to proceed.

³⁷ (n 26).

³⁸ *A.G Fed. v Guadian Newspaper Ltd. (1999) 9 NWLR (Pt. 618) 187*.

More recently in *Stanbic IBTC Bank Plc. v L.G. C Ltd.*³⁹ The Supreme Court, per *Abba Aji*, JSC held *inter alia* that the Supreme Court has power to set aside its judgment and rehear same under the following circumstances:

1. Where there are clerical mistakes;
2. Where there is an error that arouse from accidental slips or omissions in the Judgment;
3. Where it becomes necessary to give effect to its real meaning, thereby making the intention plain;
4. Where the Judgment is obtained by fraud;
5. Where such a decision is nullity;
6. Where it is obvious that the court was misled into giving the decision a wrong belief that the parties consented to it;
7. When the judgment was given without jurisdiction;
8. Where the procedure adopted was such as to deprive the judgment of the character of a legitimate adjudication;
9. Where the writ or application was not served on the other party, or there is a denial of fair hearing;
10. Where the judgment is contrary to public policy and will perpetuate injustice.⁴⁰

Once a judgment of a Court of law is entered, it remains valid until set aside on appeal or upon an original action or application challenging its validity and there is an unqualified obligation of every person against whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged, it is so even in cases where the person affected by the order believes it to be irregular or even void. So long as the order exists, it must be obeyed to the letter⁴¹

Therefore, the decision of the trial High Court of Justice of Port Harcourt remains valid on record, and the same having been affirmed by the Supreme Court, the only available remedy to the heirs of Abacha is to approach the High Court of Rivers State⁴² by original action for a declaration of title to said piece of land since the said judgment, as affirmed by the Supreme Court, was against the 1st and 2nd defendants respectively and cannot therefore be pleaded against the heirs of General Abacha as *Res judicata*.⁴³

The case under review can only be set aside by the Supreme Court itself, and a party seeking the Supreme Court to overrule itself on any of the grounds as stated in *Stanbic IBTC Bank Plc. v L.G. C Ltd* supra or on any other ground, must raise and prove the same as prescribed by law, and the same must be raised as an issue in the brief of argument of the party seeking the court to depart from its previous decision. The Supreme Court has no jurisdiction to raise and resolve it itself. These principles were reiterated by the Supreme Court, Per *Owaifo, J.S.C. in Olafisoye v. Federal Republic of Nigeria*⁴⁴ as follows:

³⁹ (2020) 2 NWLR (Pt. 1707) 1 at 17.

⁴⁰ *Ibrahim v Guandu* (2015) 5 NWLR (Pt. 1451) P.I

⁴¹ *Okoye v Okonko* (2015) 5NWLR (Pt.1451).

⁴² *Olabanji & Ors v Adeote & Ors* (1961) ALL E. R 119.

⁴³ *Ayuya v Yonrin* (2011) 4 SCNJ.

⁴⁴ (2004) 4 NWLR (Pt. 864) 580 at 681-682 See also the cases *Adsokan v Adetunji* (1994) 5NWLR (Pt.346) 540; *Epevokum v University of Lagos* (1987) QLR1; (1986) 4 NWLR (Pt. 34) 162; *Dingyadi v INEC* (2011) 4 SCNJ 1 at

Before the Court will embark on considering to depart from its previous judgment, an appellant who desires to have this done, must comply with the necessary procedure provided by the rules... the appellant did not take steps in compliance with order 6 rule 5 (4) of the Supreme Court Rules (as amended in 1999) for this Court to depart from the said decision. The said rule reads: '5(4) if the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the briefs to which special attention shall be drawn, and the intention shall also be restated as one of the reasons; unless this is done, this Court will continue to feel bound by its earlier decision.

There is no indication whatsoever that the Supreme Court has referred to any of its previous decisions in its holding; this case is therefore *sui-generis* and indeed a master class in a class of its own, and at best can be described as a *locus classicus*. Should in case the trial High Court refuse to proceed on a fresh action when its earlier decision is challenged will be an opportunity for the heirs of Abacha to take it up to the Supreme Court and place before it to overrule itself on the case under review.

7.0 OBSERVATIONS

From the foregoing analysis of this case, it is observed as follows:

1. The heirs of the late General Sani Abacha were not made parties to the original proceedings, thereby contravening the principle of fair hearing and denying them the opportunity to be heard.
2. There was no valid or competent appeal filed from the decision of the Court of Appeal to the Supreme Court; hence, the apex Court lacked jurisdiction to entertain the matter.
3. The Supreme Court, having struck out the appeal on grounds of jurisdiction and in the absence of a valid cross-appeal, lacked the authority to affirm the decision of the trial Court; such affirmation amounts to a nullity in law.
4. The heirs of General Sani Abacha are competent to institute a fresh action at the High Court of Rivers State for a declaration of title to the land, being necessary, proper and interested parties.
5. The non-joinder of the heirs in the earlier proceedings renders any decision affecting their interests susceptible to challenge, particularly on jurisdictional grounds, which are fundamental and cannot be waived or defeated by the passage of time.
6. The proceedings at the trial Court and the appellate Court ought to have been struck out for want of jurisdiction, having failed to meet the constitutional threshold for proper adjudication.
7. The decision of the Supreme Court affirming the judgment of the trial Court, notwithstanding the absence of a valid appeal or cross-appeal, constitutes a miscarriage of justice and a violation of established judicial precedent.

8.0 RECOMMENDATIONS

14-15; *Olufuminse v Falana* (1990) 3NWLR (Pt. 136) 1; *Skenconsult Ltd v Ukey* (1981) 1SC 6; *Okafo & Ors v Anambra State* (1991) 6NWLR (Pt. 20000) 659 at 680; *Ojioko & Ors v Ogwenze* (1962) 1 SCNLR 112.

1. It is recommended that any future proceedings involving the disputed property should ensure that all persons with legal or equitable interests, including the heirs of Abacha, are duly joined as parties. This would safeguard the constitutional right to a fair hearing and forestall challenges premised on the denial of *Audi alteram partem*. The heirs should proactively assert their interest through appropriate fresh action.
2. Given the jurisdictional defect arising from the lack of a competent appeal, the heirs of Abacha should pursue a declaratory action at the appropriate High Court to settle issues of title and to obtain judicial pronouncements that are free from jurisdictional contamination. Additionally, they may seek an order of the court affirming that the previous appellate proceedings did not affect their legal rights due to incompetence.
3. It is recommended that the heirs Abacha consider initiating an action for nullification of any consequential orders arising from the Supreme Court's affirmation, on the ground that a court that lacks jurisdiction cannot validly make binding pronouncements. The reliefs should stress the principle that a decision issued without jurisdiction is a nullity, irrespective of the level of the court.
4. The heirs should proceed to file a fresh suit for the declaration of title at the High Court of Rivers State. The claim should be supported with all relevant documents, including historical records of ownership, possession, and other evidence establishing their locus standi and legal interest.
5. In light of the fundamental nature of jurisdiction, the heirs of Abacha should file an action seeking a judicial pronouncement that any decisions reached in their absence are void, as they were not accorded a fair hearing. This can be pursued either as a standalone originating action or as part of the reliefs in the fresh suit. Emphasis should be placed on the principle that jurisdictional defects cannot be cured by waiver, acquiescence, or lapse of time.
6. The heirs of Abacha should approach the high court of Rivers State by original action for a declaration of title to land since they were never made parties in the former case, should in case the Court decide not to proceed, it will allow them to go back to the supreme and invite it to depart from its earlier position on the case under review on affirmation of trial court decision despite lack of proper and necessary parties before the trial court which is jurisdictional in nature.
7. It is also recommended that the Supreme Court should, when presented with an appropriate opportunity, exercise its inherent power to depart from and overrule its decision in the instant case, to preserve the integrity of the judicial process and uphold the rule of law as the affirmation of the trial court decision despite striking out the appeal on the grounds of jurisdiction since the appellant were not juristic personality in the eyes of the law and in the absence of cross appeal. Even if they were is incompetent due to the absence of a valid appeal as filed by the appellant.

9.0 CONCLUSION

The decision in *Abacha v. Eke-Spiff* raises significant procedural and jurisdictional concerns. The Supreme Court's affirmation of the trial court's judgment after striking out the appeal for lack of juristic personality was legally inconsistent with its established jurisprudence. The non-joinder of the heirs of General Sani Abacha rendered the trial court proceedings incompetent for want of jurisdiction.

It has been a long-standing judicial position of the apex Court that where the question of the jurisdiction of the trial Court or appellate court is raised for the first time at the apex Court the only and appropriate order would be to struck out the appeal no more no less, until the decision of this case where the apex Court despite lack of a valid appeal and cross appeal affirmed the decision of the trial Court.

It is my considered view that the decision has created another crisis in the administration of justice; it has not taken into consideration other Supreme Court decisions that hold otherwise than the present position of this case, and the uncertainty created by the decision will go a long way in inflicting injury to the litigants where a situation of this nature may present itself.