

**SUPREME COURT OF NIGERIA**  
30TH SEPTEMBER, 1993 SC.177/1988  
**CORAM:- M. L. UWAI, S. KAWU, A. B. WALI,**  
**I. L. KUTIGI, U. MOHAMMED, JJSC.**

JOSEPH IGBONGIDI ..... APPELLANT

AND

JOHNSON UMELO ..... RESPONDENT

*ABANDONED - Instrument by virtue of which abandoned property  
PROPERTY is transferred to owner - whether it qualifies as an  
instrument under the Lands Instruments Registration Law.*

*APPEALS - Point not taken in the lower court - whether to be  
entertained on appeal*

*APPEALS - Court of Appeal's Decision on an exhibited Document -  
based on the issue and set of facts in evidence - whether  
such Decision is on a new issue.*

*EVIDENCE - Of purported original owner of house - at variance with  
purported document of sale - whether appellant has  
dependable cost of title.*

*EVIDENCE - Instruments of transfer of abandoned property -  
Gazette Notice confirming the transfer - whether  
sufficient proof that the house in dispute was an  
abandoned property.*

**FACTS**

The Respondent as Plaintiff at the trial Court sued the Appellant claiming inter alia, Special and general damages for wrongful collection of rents by the Defendant from his house in Port-Harcourt trespass and injunction. The Respondent's case was that he purchased the land in 1963 and built on it in 1964. In 1968, he abandoned the property and fled Port Harcourt at the outbreak of the Civil war. The Respondent retired to Port Harcourt after the civil war and the property was eventually released to him in 1974 by the Rivers State Abandoned Property Authority and published in the Government Gazette. He took possession of the house but the tenants refused to

pay rent to him. He then brought an action based on the demand for payment of rents collected by the Appellant from 1970 to 1975. In a well considered judgment, the learned trial Judge entered judgment for the Plaintiff. On appeal to the Court of Appeal, the appeal was equally dismissed. The Appellant then appealed to the Supreme Court. The Supreme Court had to determine among other things whether the house in dispute was rightly held to be abandoned property, whether the instrument of transfer was Registerable Instrument under the Land Instrument Registration Law and whether the Court of Appeal was right in declaring Exhibit "G" (the purported instrument of Sale of the house to the Appellant) void.

**HELD** (Unanimously dismissing the appeal).

1. It is trite law that save in exception of circumstances, a point not taken in the lower court will not be entertained on appeal. An example of such exception is where the point involves a substantive point of law and no further evidence could have been adduced which would affect it. (P75 L9)
2. The Court of Appeal was right to declare Exhibit "G" (Appellant's purported purchase document) void by virtue of Section 15 of the Abandoned Property (custody and Management) Edict 1969. Its decision on Exhibit "C" is a matter of law based on the issue and set of facts given in evidence and considerably canvassed during the trial. It is not a new issue. (P75 L16)
3. Going by the evidence adduced, it becomes clear that the Appellant's title had no dependable roots. The evidence of Chief John Amadi who claimed to be the original owner was that he sold the house to the Appellant in 1957 whereas Exhibit "G" shows the sales was in 1973. (P77 L12)
4. There is no reason to doubt that Exhibit B (the instrument transferring the property to the Respondent) and the Gazette Notice confirming the transfer of the house to the Respondent, are not suspect documents. It is therefore well established and proved that the house in dispute was an abandoned property. (P77 L31)
5. Since the person to whom the house was transferred was the owner of the Property the instrument of transfer (Exhibit 8) did not convey title to him because he never lost title to his property, though he lost possession during the civil war. Exhibit B is therefore not an instrument as defined under Section 2 of the Lands Instrument Registration Law, Cap72 Laws of Rivers State as rightly founded by the Court of Appeal. (P78 L23).

**REPRESENTATION**

J.M. Aseh, for Appellant

I.N. Akomas, for Respondent

**CASES REFERRED TO**

1. Onyema v. Ama (1988)1 NWRL (pt. 73)787
2. Aseimo v. Amos (1975)2 SC. 57
3. Oguma Associated Companies (Nig.) Ltd v. L.B.W.A. Ltd (1988)1 N.S.C.C 395 10
4. Kukoyi v. Ladunni (1976)11 SC. 245
5. National Investment and Property Co. Ltd. v. Thompson Organisation Ltd - (1969)1 N.M.L.R. 99.
6. Odofoin v. Mogaji (1978) N.S.C.C. 275
7. A.G. of Imo State v. A-G of Rivers State (1983)8 SC. 10 15

**STATUTES REFERRED TO**

1. Abandoned Property (custody and Management) Edict, 1969 Section 22, s.15
2. Interim Government (Basic Constitutional Provisions) Decree No.61 of 1993. s. 180(2).

**LEAD JUDGMENT BY MOHAMMED JSC**

The respondent, Mr. Johnson Umelo, instituted this action in the Port Harcourt Judicial Division of the High Court of Rivers State, by a writ of summons, endorsed with the following claim:

*The plaintiff's claim against the defendant is as follows:*

1. *.N8,942.00 (Eight thousand nine hundred and forty-two naira) being special and general damages for trespass in that between January, 1970 and August, 1975 the defendant entered the Plaintiff's house at No. 1, Nsu Street, Diobu Port Harcourt and falsely represented himself as the landlord whereupon the defendant wrongfully collected rents from the tenants within the period aforesaid.*
2. *Perpetual injunction restraining the defendant and or his agents or servants from further acts of trespass to the plaintiff's property situated at and known as No. 1, Nsu Street, Diobu Port Harcourt within the jurisdiction of this honourable Court."*

The case of the respondent, in brief, is that he purchased a piece of land from one Reuben Njoku, in 1963 and built a house therein, in 1964. He then put in tenants and was collecting rents until 1968 when, due to the outbreak of Nigerian Civil War. He abandoned the property and fled from Port-Harcourt. After the Civil War, Mr. Umelo returned to Port Harcourt and applied for the release of the property to him. The property was eventually released to him in 1974. The instruments of transfer signed by the Rivers State Abandoned Property Authority and the Rivers State Government Gazette No.43, Volume 6, of 17/10/74 both as evidence of release of the house to the respondent, were admitted as Exhibits during the trial.

Mr. Umelo took possession of the property soon after it had been released to him. He then identified himself to the tenants that he was the owner of the property and their landlord. The tenants ignored him and refused to pay rents to him. In order to convince the tenants that he was the real owner of the property he got the Abandoned Property Authority to paste the release notice on the wall of the house.

This suit is based on the demand for payment of rents collected by the appellant from 1970 to 1975. Witnesses were called by both parties, including the vendors from whom each party claimed to have purchased the land originally. In a well considered judgment, the learned trial Judge entered judgment for the plaintiff/respondent, but with a reduced award for general and special damages. On appeal against the judgment, the Court of Appeal found no merit in the appeal and dismissed it.

Dissatisfied with the decision of the Court of Appeal, the appellant came to this court on five grounds of appeal. The learned counsel for the appellant formulated the following four issues for the determination of the appeal:

- "(a) Whether the Court of Appeal was right in declaring Exhibit "G" void suo motu by virtue of Section 15 of the Abandoned Property (Custody and Management) Edict 1969 when none of the parties raised that issue.*
- (b) Whether the Court of Appeal was right by holding the property in issue as abandoned property.*
- (c) Whether the Instrument of Transfer issued under the Abandoned Property (Custody and Management) Edict 1969 is a registrable instrument.*
- (d) Whether in the totality of the evidence the respondent was able to prove his title to the property in issue."*

Similar issues were raised by the learned counsel for the respondent.

In his argument in support of the first issue, Mr. Aseh, learned counsel for the appellant, submitted that the Court of Appeal was in error to suo motu declare that Exhibit "G" was void being contrary to the provisions of section 15 of the Abandoned Property (Custody and Management) Edict, 1969.

5 The learned counsel argued that throughout the trial the respondent was aware that Exhibit "G" was the foundation of the appellant's case. He had every opportunity of raising the issue that the Exhibit was contrary to Section 15 of the Abandoned Property (Custody and Management) Edict and therefore void, but he did not do so.

10 To have raised the issue suo motu without giving the parties opportunity to offer arguments means that the Court of Appeal based its judgment on a legal point not raised on the pleadings, nor in any of the grounds of appeal. Counsel referred to the case of Onyenma v. Amah (1988) 1 NWLR (Pt.73) 772 at page 787 - a Court of Appeal decision and the case  
15 of Aseimo v. Amos (1975) 2 S.C. 57.

In reply to the above submission, Mr. Akomas, learned counsel for the respondent, submitted that the appellant had misconception of the findings of the Court of Appeal in relation to Exhibit "G". The learned Counsel then reproduced an excerpt from the judgment of the trial High  
20 Court in which the learned judge stated as follows:

*"I hold that Exhibit "G" as it does not establish or prove any sale of house to the defendant, and cannot convey one to him because it does not refer to any sale of house to the defendant, and also because  
25 2nd D/W John Amadi could not sell and convey to the defendant what he had not "nemo dat quod non habet." The purported sale to and claim by the defendant are not valid or tenable."*

From the above passage, it is clear that Exhibit "G" had been treated as an issue at the High Court. The learned counsel referred also to page 27, lines 1-33 of the record and submitted, quite correctly, that Exhibit "G" was  
30 seriously canvassed at the trial court. At page 28 of the record, lines 1-4, the learned counsel for the respondent pointed out to the trial court, that the date on the plan attached to Exhibit "G" was written as August. 1973, while Exhibit "G" was shown to have been executed on 25th May, 1973. This clearly establishes that from the record of proceedings the issue of  
35 validity of Exhibit "G" had been canvassed before the trial High Court. The address of the learned counsel for the respondent before the High Court from pages 26-30 was based on the argument that Exhibit "G" could not be valid in view of the inconsistencies in that document. For example at page 29 of the record, lines 25 to 29 learned counsel for the respondent made

the following submission to the trial court on the issue of Exhibit "G",

*"In the instant case Exhibit "G" is at variance with the Survey Plan which forms an integral part of Exhibit "G". This inconsistency renders Exhibit "G" void. The registration of Exhibit "G" therefore cannot cure or eliminate the inconsistency."*

I have considered the argument of the learned counsel for the appellant that the finding made by the Court of Appeal that Exhibit "G" was void in law was made suo motu. I however agree that the finding is a mere emphasis of what the trial judge said in his judgment that the purported sale of the house to the appellant was invalid and untenable. It is indeed trite law that a point not taken in the lower court will not, except under exceptional circumstances, be entertained on appeal. One such exception is where the point involves a substantive point of law and no further evidence could have been adduced which would affect it. See *Oguma Associated Companies (Nig) Ltd. v. I.B.W.A. Ltd.* (1988) 1 NWLR (Pt. 73) 658; (1988) 1 N.S.C.C. 395. See also *Kukoyi v. Ladunni* (1976) 11 S.C. 245. 15

It is pertinent to consider that the invalidity of Exhibit "G" is not a new issue. In fact it is the centre core of the plaintiff/respondent's case before the trial court. The decision of the Court of Appeal over Exhibit "G" is a matter of law and, what is more, it is based on the issue and set of facts given in evidence and considerably canvassed during the trial. The answer to the first question shall therefore be in the affirmative. The Court of Appeal was right to declare Exhibit "G" void by virtue of section 15 of the Abandoned Property (Custody and Management) Edict. 1969. 20

Going to the second issue, the learned counsel for the appellant referred to the definition of the term "Abandoned Property" and explained that it was any property, movable or immovable, belonging to a person whose home town or place of origin was not situate in Rivers State and whose owner left the Rivers State as a result of the Nigerian Civil War or the disturbances in the country leading to the war. The learned counsel submitted that the learned trial Judge had erred to hold that the disputed house was an abandoned property and that the Court of Appeal was wrong to affirm such decision. Counsel then referred to the evidence of Chief John Amadi, D.W.2, and Godwin A. Iwezor of Obiekwe family. D. W.3. He also mentioned Exhibit "G", the Deed of Conveyance evidencing the transaction between the appellant and the original owners of the house. 30 35

I have dealt with Exhibit "G" above and I need not repeat what I said about its relevance to the appellant's case. I will now look into the evidence of D.W.2 and D.W.3, as I am urged to do by the learned counsel for the respondent, in order to see whether there was evidence to ground

the trial court's decision.

The appellant in his evidence-in-chief made strenuous effort to convince the court that the property in dispute was his and that he bought it from one Chief John Amadi in 1973. He said he had made inquiries at the Land Office prior to buying the house. The property was later conveyed to him jointly by Chief John Amadi and Godwin Iwezor. However, the real problem of the appellant, in this case, in my view, is the question of Chief John Amadi's title to the land in dispute.

The evidence of the two witnesses upon which the appellant laid claim to the property in dispute, viz Chief John Amadi and Godwin Iwezor, is incongruous with the defence put up by the appellant and self-contradictory. Chief John Amadi who claimed to be the original owner of the property had the following to say in his evidence before the trial court:

*"I know plaintiff and defendant. My tenants at Nsu Lane refused to pay rents to me. Then I invited defendant to buy the house and the land. In fact I sold the house and land to him. I built the house in 1953 and sold it to defendant in 1957. I repeat I sold the house to defendant in 1957. The tenants in my house refused to pay rents to me in 1970. I had already sold the house prior to the time the tenants refused to pay rents to me in 1970. I sold the house to the defendant after the Nigerian Civil war. The house was a storey one. I sold the house and land to defendant for N12,000.00 twelve thousand naira. The land was Obiekwe family land and I am of Obiekwe family. I also got a member of the family to join in signing the document of sale he was Godwin Iwezor."*

The above excerpt from the evidence of Chief John Amadi is indicative of the type of vendor the appellant dealt with in purchasing the property in dispute. It is relevant to ponder, as the learned trial Judge had thought over, how one can sell a house in 1957 and continue to receive rents from the tenants, in the house, in 1970.

The second witness, Godwin Iwezor is another interesting character. He said Chief Amadi was his senior brother and that the Chief sold the house because, as a trader, the Chief was in short of money. He went further and said that when the Chief sold the house to the appellant for N12,000.00 he witnessed the agreement and joined in the conveyance of the property to the appellant. However, Iwezor further explained, the money realised was stolen from the Chief by swindlers or money doublers.

The learned trial Judge dismissed their evidence because Chief Amadi told the Court that he was a watchman and not a trader and that he sold the house to the appellant because his tenants were not paying rents to

him. The Chief again contradicted himself where he told the court that he sold the house to the appellant after the civil war. When asked about the papers of the house the Chief said that he had lost them all. The trial court found that the Chief was living, at the time of the trial, in a "captured" house, a term used by squatters in abandoned properties.

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In order to establish that the house was an abandoned property the appellant must establish that it belonged to a person whose home town or place of origin is not situate in the Rivers State. Such fact could only be established if the appellant convinced the trial court through credible evidence that the house in dispute was the lawful property of his vendor, Chief John Amadi. Looking at the evidence adduced by both Chief John Amadi and Godwin Iwezor it became crystal clear that the appellant's title had no dependable roots. To add more confusion to the appellant's case, the Chief told the court, in his oral testimony, that he sold the house to the appellant in 1957, whereas Exhibit "G" shows that the date of sale was in 1973.

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The respondent, on the other hand, had proved that the house in dispute was an abandoned property. The learned trial Judge in his judgment, agreed that the property was abandoned by the respondent and that the Abandoned Property Authority had returned it to him. The relevant finding of the learned trial Judge on that issue is as follows:

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*"I have seen Exhibit B. the instrument transferring the property to the plaintiff under the signature of the Chairman of Abandoned Property Authority and also Exhibit 'C' the Gazette Notice confirming the transfer to plaintiff. This transfer to plaintiff was made after the Abandoned Property Authority had been convinced and satisfied about the genuineness of plaintiff's claim to the ownership of the property. On all these points I hold that the property belongs to the plaintiff and it returned to his possession from the date of Exhibit "G" which is also the date in Exhibit C - 8 November, 1974."*

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I have no reason to doubt that Exhibit B. the instrument transferring the property to the respondent and Exhibit c., the Gazette Notice confirming the transfer of the house to the respondent, are not suspect documents. It is therefore well established and proved that the house in dispute was an abandoned property.

The third issue was formulated on the third ground of appeal. The appellant contended that Exhibit B, the instrument used in transferring the disputed property by the Abandoned Property Authority to the respondent

was a registrable instrument. Counsel for the appellant argued that since rights and interests on the land had been transferred to the respondent through Exhibit B, it is a registrable instrument. Failure on the part of the respondent to register the instrument as required by section 15 of the Instrument Registration Law, Cap. 72, renders the instrument inadmissible in law. Counsel referred to the case of National Investment and Property Co. Ltd. v. Thompson Organization Ltd. (1969) N.M.L.R. 99 at 104 and submitted that even where the Instrument had been admitted, in evidence Without any objection the trial court or the Court of Appeal should treat it as If it had never been admitted.

10 Mr. Akomas, in reply to the above submission referred to the provisions of section 18(c) of the Abandoned Property Edict No.8 of 1969, which reads thus:

15 *"By instrument of transfer to the owner of every abandoned property the right to occupy or to control and manage such property, provided that before so doing the Authority shall satisfy itself that the person to whom the transfer is intended to be made is the owner of such abandoned property in the same manner as it shall require proof for the purposes set out in section 13."*

20 The above definition is indicative of the fact that Exhibit B. only conveyed management and control of an abandoned property which hitherto was under the supervision of the Abandoned Property Authority. Since the person to whom the house was transferred was the owner of the property, the Instrument of Transfer did no convey title to him, because he had never lost title to his property. What he lost was the possession when he fled Port-Harcourt as a result of the civil war. I agree therefore, with the finding of the Court of Appeal that Exhibit B is not an Instrument as defined under section 2 of the Lands Instrument Registration Law, Cap. 72, Laws of Rivers State.

30 The question raised in issue (d) has been answered in other issues. The learned trial Judge considered the evidence adduced by both parties and the documents exhibited and came to a correct conclusion that the respondent was entitled to judgment with minor variation on the award of damages. I have looked into the evidence adduced by both parties and with respect I do not need to look for imaginary scale to weigh them *Odofin v. Mogaji* (1978) 4 S.C.91; (1978) N.S.C.C. 275) because the evidence adduced on behalf of the appellant's case is highly unreliable.

In sum, this appeal has failed, being devoid of any merit. I hereby dismiss it and affirm the judgment of the Court of Appeal. I award N1,000.00 costs in favour of the respondent.

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**UWAIS JSC**

I have had the opportunity of reading in draft the judgment read by my learned brother Mohammed, J.S.C. I agree that the appeal has no merit and that it should be dismissed. 5

Accordingly, the appeal is hereby dismissed and the decision of the Court of Appeal which confirms that of the High Court is hereby affirmed. 10

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**WALI JSC**

I have read before now, the lead judgment of my learned brother Mohammed, J.S.C. and I agree with his reasoning and conclusion for dismissing the appeal.

For those same reasons given in the lead judgment, I also hereby dismiss the appeal with N1,000.00 costs to the respondent against the appellant. 15

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**KUTIGI JSC**

I read in advance the judgment of my learned brother Mohammed, J.S.C. just delivered. I agree with the conclusion that this appeal lacks merit and ought to be dismissed. The plaintiff/respondent without doubt clearly established his title to the land in dispute as found by both the trial court and the Court of Appeal. The appellant and his witnesses were for obvious reasons disbelieved by the trial court. The appeal is dismissed with N1,000.00 costs against the appellant. Appeal dismissed. 25

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**UWAIS JSC (Pronouncement):**

The Hon. Justice Saidu Kawu who sat with us on the 5th day of July, 1993 to hear this appeal retired on the 10th day of August, 1993. He took part in the conference which we held on the case on the 7th day of July, 1993 and was of the opinion that the appeal should be dismissed as it had no merit.

In accordance with the provisions of the proviso to section 180 sub-section (2) of the Interim Government (Basic Constitutional Provisions) Decree, No.61 of 1993 and the decision in A-G. of Imo State v. A-G. of Rivers State (1983) 2 SCNLR 108; (1983) 8 S.C. 10 at pp.10-12 I hereby pronounce the opinion of Hon. Justice Kawu that the appeal be dismissed for the reason contained in the judgment read by Mohammed, J.S.C. 35