

SUPREME COURT OF NIGERIA
25TH JUNE, 1993. SC.51/1990
CORAM:- A. G. KARIBI-WHYTE, S. KAWU, U. OMO,
I. L. KUTIGI, E. O. OGWUEGBU, JJSC

MRS HAWA GANKON APPELLANT
AND
UGOCHUKWU CHEMICAL IND. LTD. RESPONDENT

CIVIL CAUSES - Land law - vesting of title in a person - whether a matter of fact or law

EVIDENCE - Land dispute - claim for title - failure of plaintiff to establish the claim - whether plaintiff can succeed on the weakness of the defence

INTERPRETATION- Proper method - adherence to unambiguous ordinary OF STATUTES plain words of a statute - correct interpretation of s. 38 (1) of the Land Tenure Law

LAND USE ACT-Title to land - applicable provisions of the Act - relationship with the Land Tenure Law - when the transitional provision (s. 36) of the Act is not applicable

LAND LAW -Claim for title - burden of proof - on whom does it lie - what the Plaintiff must prove

LEGISLATION - Land Use Act - exercise of power conferred on the governor - proper application of certain sections of the Act

LEGISLATION -Land use Act - Power of the Local Government to grant customary right of occupancy - whether exercisable in respect of land within a designated urban area

MAXIM - Qui prior est tempore est jure (priority of estate) - when held not to arise

FACTS

The Plaintiff/Appellant brought an action before the Kaduna High Court against the Defendant/Respondent over a parcel of land claiming a declaration that she is the rightful owner and an injunction to restrain the Respondent from

trespassing on the land. Appellant claimed that she was one of those affected by a government displacement who was given the land in dispute in compensation.

She had since occupied and still remains in occupation of the Land. Appellant relied on a certificate issued to her by the District Head of Makera and a Certificate of Occupancy granted her by the Kaduna Local Government in proof of her ownership of the land. Respondent relied on a statutory right of occupancy granted to it by the State Government three years before the Appellant's Local Government right of occupancy was granted. Respondent contended that the Land in dispute forms part of the 8.5 acres granted to it for industrial purpose whilst the Appellant claimed it was not part of Respondent's said land.

The trial court found that at the time the Local Government issued certificate of occupancy to the Appellant, Makera being the area the land is situated has been declared an urban area, and that the Kaduna Local Government lacked jurisdiction. Appellant's claim was dismissed in its entirety. Her appeal to the Court of Appeal was also dismissed. On further appeal to the Supreme Court, it had to determine whether a local government can grant a customary right of occupancy with respect to the land in urban area, which of the parties certificate of occupancy takes priority; and, who has the burden of proof in an action for declaration of title.

HELD (unanimously dismissing the appeal)

1. Whether a person has the legal power to do a legal act is not merely a matter of fact but entirely a conclusion of law to be deduced from the facts as admitted. Vesting of a legal title in a person in respect of a piece of land is a matter of law which the Judge is entitled to determine from the facts before him (P180L34)
2. In the interpretation of the words of a statute, it is of crucial importance to adhere strictly to its ordinary plain words which are clear and unambiguous. (P182.L 1)
3. For the District Head of Makera to be able to exercise the Powers of a Native Authority under s. 38(1) of the Land Tenure Law, it must be shown that he comes within the definition of a Native Authority, that the land allotted to Appellant was within his jurisdiction and that the native authority entered the land to use it for public purposes. There was no such evidence before the trial court

- of any of these essential ingredients for the precondition to enable the exercise of the power. (P182 L 14)
4. With the Land Use Act coming into force, the provisions of the Land Tenure law shall have effect with such modifications as would bring it into conformity with the intendment of the Act. Since the issue in this case is the exercise of the powers of the District Head after the commencement of the Land Use Act, it is that Act which applies. (P182 L25)
 5. As Makera has been designated an Urban Area by the Governor under powers vested by s. 3 of the Land Use Act, Kaduna Local Government has no jurisdiction to grant any right of occupancy in respect of land therein. Thus, documents issued by the District Head of Makera purporting to grant rights of occupancy within the area, granted nothing having been issued without jurisdiction. (P182 L 10)
 6. On the commencement of the Land Use Act, it is an important ingredient for the application of the transitional provision (s. 36) that the land should be one used for agricultural purposes. Since the plots allocated were not held for agricultural purposes having been laid out in plots which is inconsistent with the express provisions and intendment of s. 36, it is difficult to conceive how the section applies to the facts of this case. (P183 L 24)
 7. A statutory right of occupancy automatically extinguishes all existing rights in respects of the parcel of land over which it is granted. However, Appellant's Counsel's wrongful submission that an existing customary occupancy must be revoked before a statutory right of occupancy can be valid does not arise in the instant case in view of the absence of any existing rights. (P 184 L 3)
 8. The Court of Appeal was right to hold that Appellant's two sources of acquisition of the disputed lands are illegal because the grantors had no legal right to issue her with the rights of occupancy she exhibited in support of her claim. (P184 L 13)
 9. Since the Appellant did not acquire any title, the maxim *qui prior est tempore potior est jure* is clearly not applicable as the Respondent's title is the only valid one. The Lower court was therefore correct in holding that the issue of priority of estate does not arise. (P. 185 L 15)

10. The onus is on the Appellant to show that the land in dispute is not part of the Respondent's land and that Respondent has trespassed into her land. In other words, it is Appellant's duty to establish the area of land in dispute so as to establish her title and trespass thereto. (P. 186 L27)
- 5 11. The Appellant will not succeed merely because the Respondent has not established its own claim, which may be a weakness in the Respondent's case that does not strengthen the Appellant's case. (P. 186 L34)
- 10 12. It is for the Appellant to establish her case on her evidence and she will fail for failure to establish the claim before the court. The claim of the Appellant remains unestablished as she has failed to establish that she has any title to the piece of land claimed (P. 187 L4)

15 **REPRESENTATION**

J.B. Daudu Esq, for the Appellant

Chief P.O. Esegbe, for the Respondent

CASES REFERRED TO

- 20 1. Lewis peat (NRI) Ltd. V. Akhmien (1976) 6 SC
2. Ogiamen V. Ogiamen (1967) NMLR 246
3. Adenji V. Adenji (1972) 4 SC. 10
4. Uwaifo V. A-G. (1982) 7 SC. 124
5. Governor of Kaduna State v. Datfa (1986) 4 NWLR 687
- 25 6. Abioye & Ors. v. Yakubu (1991) 5 NWLR 130
7. Idundum & Ors. v. Okumagba & Ors. (1976) 9 & 10 SC. 227, 249/50.
8. Onobruhire v. Esegrie (1986) 1 NWLR 799
9. Kuma v. Kuma (1934) 2 WACA 178
- 30 10. Kodilinye v. Mbanefo Odu (1935) 2 WACA, 236
11. Bello v. Eweka (1981) 1 SC. 101
12. Awole v. Owodunmi (No. 2) (1987) 2 NWLR 366
13. Ogunleye v. Oni (1990) 2 NWLR. 745
14. Onwuka v. Ediala (1989) 1 NWLR, 182
- 35 15. Totiloye v. Olupo (1991) 7 NWLR, 521
16. Baruwa v. Ogunsala (1938) 4 WACA 159
17. Udekwe Eboha & Ors. v. Ilkefuna Anakwenze & Ors (1967) NMLR 140
18. Elufisoye v. Alabetutu (1968) NMLR 298
19. Akinola & Anor v. Oluwo & Ors. (1962) WNLR 133

STATUTES

1. Land Tenure Law Cap. 59 Laws of Northern Nigeria SS.27 and 38
2. Land Use Act 1978, SS. 2, 3, 4, 5, 9, 36 and 48
3. Native Authority Law, Cap 77 Laws of Northern Nigeria, S. 2.

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LEAD JUDGMENT BY KARIBI-WHYTE JSC

On the 30th October, 1988, S.U. Mohammed, C.J. dismissed the claim of the plaintiff now the appellant, against the defendant, who is now the respondent. The claim is for,

1. *A DECLARATION that the plaintiff is the rightful and beneficial owner of a piece or parcel of land measuring 100 feet by 64 feet and known as Plot No. E 1A and 1B, lying and being at Ungwar Mission, Makera Kaduna-South in Kaduna Local Government Area and subject of Certificate of Occupancy No. 031198 dated 28th of October, 1982 in volume X at page 232 of the Lands Registry, Kaduna Local Government, Kaduna. The said Certificate of Occupancy is by virtue of Kaduna State Legal Notice KDSL.N. No. 8 of 1980 made pursuant to the provisions of Section 3 of the Land Use Act, 1978 and titled 'Kaduna State (Designation of Land in Urban Area) Order, 1980 (as amended); within an Urban Area whereof the High Court is seized with jurisdiction over same.* 10 15 20
2. *A PERPETUAL INJUNCTION restraining the defendant, its agents, servants or privies whomsoever from committing acts of trespass on the said piece of land or in any way interfering with the plaintiff's rights or interest therein.* 25

On the 10th July, 1988, Uthman Mohammed J.C.A., of the Court of Appeal, Kaduna Division, with whose judgment, Aikawa, and Achike J.J.C.A. concurred, dismissed the appeal of the appellant against the judgment of S.U. Mohammed C.J. of the High Court of Kaduna State sitting at Kaduna. This appeal is against the judgment of the Court of Appeal. 30

The facts of the case as disclosed by the pleadings and evidence at the trial are that appellant claimed that she was one of a number of persons living in an area acquired by the Federal Government in 1973 for the establishment of a Fertilizer Industry. She was among those, who were as a consequence of the displacement, compensated by the allocation of alternative plots of land by the Kaduna Local Government. She was allo- 35

cated plots E 1A and E 1B. She had since occupied those plots and still remains in occupation. The parcels of land so allocated measure 100 ft by 64 ft by 94 and are situate at Ungwar Mission Ward, Makera, Kaduna-South.

On the 28th October, 1982, the Kaduna Local Government granted
5 her a Certificate of Occupancy No. 031198 covering the piece of land. In her testimony appellant tendered and was admitted as Exhibit 1, a certificate by the District Head of Makera that she was given Plots No. E1A and E1B on 1719n3 and that she was now the rightful owner of these plots. She also tendered as Exhibit 2, a Certificate of Occupancy indicated above,
10 issued to her by the Kaduna Local Government. Appellant fenced the plots in 1974 and built a house thereon. She now relies on her title to these plots on these documents.

Appellant said in evidence that she first observed respondent near her plot in 1974. They had fenced their plots with barbed wire. In 1982,
15 she noticed respondents pulling down her own wall and barbed wire fence when they were in the process of erecting another gate on her plot. She confronted respondent's Manager, who told her that the plot belonged to them and asked her to vacate the plots. Respondents erected big iron-bars inside her plots to prevent entry into the plots.

20 The Lands Officer of Kaduna Local Government in charge of processing applications for plots testified for the appellant. He stated, relying on records in their office, that on 3/7/82, appellant applied for a customary right of occupancy in respect of the two plots on the strength of the letter given to her by the District Head of Makera. The Kaduna Local
25 Government in 1982 issued her with a Kaduna Local Government right of occupancy over plots E1A and E1B.

The case of the respondent is different. They applied in 1977 for an Industrial Plot, which was only granted in 1979. Also, a statutory right of occupancy No. 4494 dated 19/6/79 was issued by the State Govern-
30 ment. The respondent was granted a piece of land measuring 8.57 acres. When the respondent observed in 1982 that appellant was trespassing into its property, it wrote complaining to the Permanent Secretary, Ministry of Land and Survey, Kaduna, pleading with the Ministry to arrest the situation. On investigation by the Ministry of Lands and Surveys, it was discovered that appellant was among the over 200 people who had occupied
35 about 1/3 of the 8.57 acres of land granted to respondent.

Respondent then asked appellant not to do anything to disturb the access road of the company. Appellant notwithstanding this warning proceeded to block the access road to the respondent/company's factory, thereby

rendering access to the company's premises impossible. Respondent/company denied committing trespass on appellant's land. They are claiming the piece of land in dispute.

The case of the parties properly considered appears to rest on mutual claims to title to the land in dispute. Appellant's contention is that her two plots are distinct from and are not included in the 8.57 acres claimed by the respondent. Respondent's contention is that the land in dispute is part of the 8.57 acres allotted to them and covered by the Certificate of Occupancy issued to the company. Both parties rely on their titles to different granting authorities. Appellant relied on Exh 1, an allocation by the District Head of Makera in 1973 and a customary right of occupancy, Exhibit 2 granted by the Kaduna Local Government in 1982. Whereas respondent relied on an allocation by the Kaduna State Government in 1979 and a Certificate of Occupancy Exhibit 5, the same year by the State Government.

At the trial the learned Chief Judge of Kaduna State stated that he was concerned with the determination of what he regarded as the crucial question, namely, as he put it,

"Who was the first in time? In other words who was the first to be given title?" (See p. 45 lines 1972 record of proceedings)

In answering this question on which he relied for the determination of the case before him, he held that the document Exhibit 1 by which the District head of Makera, who had no powers to do so, certified that appellant was the owner of the plots stated therein, conferred no title. There was no evidence before him that the District Head had such powers. On the other hand, Exhibit 5 issued by the Kaduna State Government in 1979 conferred title on respondent/company. Exhibit 2 was issued to appellant by the Kaduna Local Government on 20/10/82 to take effect on 3/7/82. At the time of the issue of Exhibit 2, Makera was in an Urban Area and so designated by the Kaduna State (Designation of Land in Urban Area) Order 1980 and outside the jurisdiction of the Local Government. The Kaduna Local Government therefore had no statutory power to grant a right of occupancy for land in that jurisdiction.

Finally, learned counsel's submission that a State Government had no jurisdiction to grant a right of occupancy over a customary right of occupancy. Without first revoking that right was conceded, but in the instant case appellant did not prove any customary right of occupancy.

The claim was dismissed in its entirety. Four grounds of appeal were filed challenging the judgment of the learned Chief Judge. Four issues for determination were formulated from these grounds of appeal. All the

four issues relate to the operational scope of the Land Tenure Law Cap. 59 of Northern Region viz-a-viz the Land Use Act, 1978 with respect of the right to grant a customary right of occupancy, and the priority of two competing grants of title and the onus of proof in actions for declaration of title.

The Court of Appeal, dismissing the appeal, affirmed the learned trial Chief Judge's decision that the District Head of Makera, having not been shown to have the powers to grant a right of occupancy - Exhibit 1 created no title which could vest in the appellant. Section 27(a) and (b) of the Land Tenure Law, Cap. 59 did not confer any powers on the District Head or the Local Authority to allocate Land.

On the issue of priority, the Court below held that the question did not arise. Its reasoning was that Kaduna having been declared an urban area, under the Kaduna State (Designation of Land in Urban Area) Orders KD SLN. No.7 of 1982, the Kaduna Local Government had no power to grant a customary right of occupancy in Makera. There were therefore no competing titles as between the parties.

The Court held that appellant had not established that the land in dispute was not in an urban area. It was indeed found by the learned trial Chief Judge that appellant did not prove any customary right of occupancy.

The Court held that appellant could not claim possession of the land through an illegal grant in Exhibit 1. The Court below concluded as follows:

"In conclusion, it has been established through the evidence and land laws dealing with control and management of lands in Kaduna State that appellant's two sources of acquisition of the disputed lands are illegal, because the grantors had no legal right to issue her with rights of occupancy she exhibited in support of her claim. With such spurious rights of occupancy, I do not hesitate for a moment in dismissing this appeal(See pp. 136-137 record of proceedings).

Appellant further appealed to this Court, Four grounds of error were alleged in the notice of appeal filed. The first ground challenged the court for holding that Exhibit 1 issued by the District Head of Makera was illegal. The third ground was that the Court below held that appellant could not benefit from the saving provision of Section 36(1) and (4) of the Land Use Act on the ground that Makera - Kaduna was an urban district. The second ground is a complaint that the learned trial Chief Judge and the Court below failed to identify the real issues in dispute between the parties,

which was the question of the burden of establishing title to the land in dispute, and whether respondent proved that the land in dispute was part of the land covered by Exhibit 5. The fourth ground was on the refusal to grant the injunction sought.

Both counsels have formulated issues arising for determination in this appeal from the grounds of appeal filed. Learned counsel for the appellant formulated six issues, as against four by learned counsel to the respondent. It is important to emphasize this point which we have made in several earlier cases: This is that the principle governing formulation of issues for determination is that the issues so formulated must arise from the grounds of appeal filed. It is always the ideal in this case, clearly attainable to formulate an issue to cover a number of grounds of appeal governed by the same principle of law relied upon. The principle applied frowns against the proliferation of issues. It is also of crucial importance to ensure that the issue formulated must be related to and circumscribed by a ground or grounds of appeal before the Court.

I shall now set out the issues for determination formulated by the appellant which are as follows:

- "1. Whether the Court of Appeal was correct in affirming the learned trial Chief Judge's finding that Exhibit 1 (document showing allocation of plots to appellant) was issued without authority in view of the pleadings and unchallenged evidence and the antecedents leading to the issuance of Exhibit 'E'?
2. Whether Exhibit 'E' has any effect on the validity of the appellant's title to the disputed plots in view of the provisions of the Land Tenure Law and Land Use Act?
3. Whether it could be held, having regard to facts leading to this appeal that the Court of Appeal too, correctly considered the relevant issues which are;
 - (a) The question of whom the burden of establishing title laid
 - (b) Whether the respondents proved that the disputed land was part of that land covered by Exhibit 5-the Certificate of Occupancy issued by the State Government?

4. Who, as between the appellant and respondent has a better title to the disputed land in view of the Provisions of Sections 36 of the Land Use Act No.6 of 1978?
5. Assuming but not conceding that Exhibit 5 (Certificate of Occupancy issued to the respondent by the State Government) is relevant to the proceedings can it be held that the appellant's rights to hold and occupy the disputed land which is saved by Section 36 of the Land Use Act has been extinguished merely, because Exhibit 5 was issued by the State Governor?
6. Whether the appellant as a plaintiff seeking declaratory relief in a land dispute has satisfied the evidential and legal standards mandatory for her to fulfill in law before being entitled to such relief and whether the respondent, have by their pleadings and evidence in court adequately met the appellants case in such a way as to defeat it?

It is pertinent to observe that issues 1, 5 are not covered by any of the four grounds of appeal filed. In fact, an issue 3 and 6 both relate to burden of proof, and is unnecessary repetition. Accordingly, three issues can properly be formulated from the grounds of appeal filed.

Learned counsel to the respondents filed four issues for determination which are as follows:

1. *The operational scope of the Land Tenure Law, Cap. 59 when apparently in conflict with the Land Use Act, 1978 Sections 4 and 48 of the Land Use Act and whether by those provisions the Land Use Act of 1978 recognizes three authorities to issue Rights/Certificate of Occupancy namely:*
 - (a) *The Military Governor*
 - (b) *The Local Government and*
 - (c) *The District Head*
2. *Whether by the combined provision of Section 2 (1)(a), 5(1)(a), of the Land Use Act, 1978 and Section 2 of Kaduna State (Designation of Land in Urban Area) Order KD SLN No.8 of 1980 a Local Government can validly grant a customary right of occupancy with respect to Land in an Urban Area.*
3. *As between Exhibit 2 (Appellant Certificate of Occupancy dated 28/10/82 to take retrospective effect from 3/7/82 and Exhibit 5 (Respondent's Certificate of Occupancy*

dated 19/6/79 which one takes priority.

4. *In an action for declaration of title to land on who does the onus/burden of proof lie."*

Again, as with the appellant's formulation, but more acceptable, issue 1, is not related to any of the grounds of appeal filed, and therefore cannot be properly regarded as an issue arising from the determination of the appeal. Applying the above tests to the issue formulated by learned counsel in this appeal, I consider the formulation of the issues for determination by learned counsel to the respondents without issue I therein, more consistent with the grounds of appeal filed. They are therefore more appropriate, suitable, and adequate for the determination of this appeal. I will therefore renumber and adopt them for the purpose of the judgment.

The issues for determination in this appeal therefore are:

- (i) Whether by the combined provisions of Section 2(1)(a), 5(1)(a) of the Land Use Act, 1978 and section 2 of Kaduna State (Designation of Land in Urban Area) Order, KD SLN. No.8 of 1980 a Local Government can validly grant a customary right of occupancy with respect to land in an Urban Area. 15
- (ii) As between Exhibit 2 (Appellant Certificate of Occupancy dated 28/10/82 to take retrospective effect from 3/7/82 and Exhibit 5 (Respondent's Certificate of Occupancy dated 10/6/79) which one takes priority. 20
- (iii) In an action for declaration of title to land on whom does the onus/burden of proof lie. 25

I shall consider the issue formulated in the order in which I have stated them. What learned counsel for the appellant considers as issues 1 and 2 in his brief is the first issue in this judgment. It is the second issue as formulated in the brief of learned counsel for the respondent.

In his brief of argument which he orally expatiated upon before us, Mr. Daudu relied mainly on the pleadings of the parties to contend that respondents were stopped from raising the lack of capacity of the District Head of Makera to issue Exhibit 1. He argued that issue was not joined in respondent's pleadings and there was no cross-examination of the witness at the trial as to his capacity and authority to issue Exhibit 1. Learned counsel argued that the Court below did not properly consider the points raised by the appellant on the state of the pleadings on which the case of the parties was fought. Having not actually denied the lack of authority of the District Head in their pleadings respondents are on the authority of Lewis and Peat (NRI) Ltd v. Akhimien (1976) 7 SC. 157 deemed to have

admitted that there was authority.

It was further submitted that the question of lack of authority to issue Exhibit 1 was raised suo motu by the learned Chief Judge. The issue was not canvassed by the parties. He had no right to do so. Learned counsel referred to and relied on *Ogiamen v. Ogiamen* (1967) NMLR 245; *Adeniji v. Adeniji* (1972) 4 S.C. 10.

Learned counsel to the appellant submitted that the District Head of Makera as a Native Authority had authority to issue Exhibit 1. He relied for this submission on his interpretation of sections 2 and 38(1) of the Land Tenure Law, Cap. 59 Laws of Northern Nigeria.

Reference was also made to Section 2 of the Native Authority Law, Cap. 77 of Laws of Northern Nigeria. Finally, it was submitted that on the doctrine of the presumption of regularity, Exhibit 1 should be regarded as valid.

In his reply to the above submissions learned counsel to the respondent relied on his brief of argument. He referred to Section 2(1)(a), 5(1)(a) of the Land Use Act, 1978, Section 3 of the Land Use Act, 1978, and the Kaduna State (Designation of Land in Urban Areas) Order KD SLN No. 8 of 1980 as submit that a Local Government had no authority to issue a customary Certificate of Occupancy with respect to the piece of land in dispute which is within Kaduna Urban Area.

Furthermore referring to the invalidity of Exhibit 1, learned counsel submitted that the District Head of Makera, who issued Exhibit 1, could not be equated with a Native Authority which is the current equivalent of a Local Government.

An important and principal issue in the determination of this appeal is the validity of Exhibit 1. The case of the appellant rests essentially on the allocation of the plots of dispute to her, and the issuance to her of a right of occupancy by the District head of Makera. The contention that respondent having not joined issues on the validity of Exhibit 1, is not entitled to challenge the validity appears to me to ignore the reasons of the Courts below declaring the invalidity of Exhibit 1.

It is not merely a matter of fact whether or not a person has the legal power to do a legal act. It is entirely a conclusion of law to be deduced from the facts as admitted. There is no doubt that vesting a legal title in respect of a piece of land in a person, is a matter of law. Thus, the admission that a person has such power when indeed in law no such power exists cannot exclude the jurisdiction of the Court of determining the issue. Being

a matter of law entirely, its determination lies entirely within the exclusive domain of the judge. It is therefore not correct to say that the issue was raised suo motu by the learned Chief Judge. He only came to the conclusion of law from the facts before him.

Hence the court below was right when it held that, "it is not a matter of admitting or denying those paragraphs which the learned Judge considered. What the learned trial Chief Judge said, in his judgment about the allocation of the plots by the District Head, Alhaji Muhammadu Sani, is that there is no evidence adduced before him showing the power the District Head possessed to grant a right of Occupancy."

Before us, Mr. Daudu for the appellant has again repeated his argument before the Court below that the District Head derived authority from Section 38(1) of the Land Tenure Law and Section 2 of the Native Authority Law, Cap. 77.

I think it is better to reproduce Section 38(1) relied upon for the avoidance of any doubt, It reads as follows:

"38(1) it shall be lawful for a native authority to enter upon, use and occupy for public purposes any native lands within the area of its jurisdiction which are not:

(a) The subject of a statutory right of occupancy;

(b) Within an area which has been set aside by the Government for public purposes;

(c) The subject of any laws relating to minerals or mineral oils; and for that purpose revoke any customary right of occupancy on any such land."

Subsections(2), (3) and (4) are not applicable to the facts of this case.

Mr. Daudu also relied on the definition of the expression 'Native Authority' in section 2 of the Native Authority Law, Cap. 77. The definition provides,

"Native Authority" means a native authority appointed or deemed to be appointed under this law in respect of the specific area for which such Native Authority is appointed and includes unless the context otherwise requires a subordinate authority."

Mr. Daudu has relied on a reading of the two provisions for his conclusion that the District Head of Makera, who executed Exhibit 1, had the requisite statutory authority to do so.

It is of crucial importance in the interpretation of the words of a statute to adhere strictly to its ordinary plain words which are clear and unambiguous. The words of section 38(1) reproduced above appear to me very clear and should be given their ordinary literal meaning - See *Uwaifo v. A-G.* (1982) 7 S.C. 124. First, the section applies to the exercise of power by a Native Authority with respect to the occupation for public purposes of native lands within the area of its jurisdiction. Secondly, the section excludes from its jurisdiction, native lands, (a) subject of a statutory right of occupancy. (b) or lands within an area which has been set aside by the Government for public purposes, or (c) the subject of any laws relating to minerals or mineral oils. The express power vested in the Native Authority is to revoke any customary right of occupancy on any such land. In summary, my reading of the section enables a Native Authority to revoke any customary right of occupancy of land within its area of jurisdiction, and to enter and occupy such land for public purposes subject to the exceptions stated in(a) - (c) of Section 38(1). Thus for the District Head of Makera to be able to exercise the powers of a Native Authority for the purposes of Section 38(1), it must be shown that the District Head comes within the definition of Native Authority, and the land allotted to appellant was not only within his jurisdiction but that the native authority entered upon the land to use it for public purposes. There was no evidence before the trial judge of any of these essential ingredients for the precondition to enable the exercise of the power.

This section does not seem to me to vest any power in the Native Authority to exercise the power claimed by the appellant. It is important to bear in mind the provisions of section 4 of the Land Use Act that on its coming into force the provisions of the Land Tenure Law shall have effect with such modifications as would bring it into conformity with it or its intendment: - See *Governor of Kaduna State v. Dada* (1986) 4 NWLR (Pt.38) 687. The Land Use Act came into force on the 29th March, 1978. The exercise of the powers of the District Head purportedly under the Land Tenure Law in 1980 should now be brought in conformity with the provisions of the Land Use Act.

I have pointed out that even if the exercise of power was founded on the provisions of the Land Tenure Law, the District Head would not have complied with the preconditions enabling its exercise. Since we are here concerned with the exercise of powers after the commencement of the Land Use Act, it is that Act which applies. This is clearly stated by section 2(1), of the Act. Section 2(1) of the Land Use Act has provided for the

control and management of land and provides as follows:

"(a) all land in urban areas shall be under the control and management of the Governor of each State; and,

(b) all other land shall, subject to this Act, be under the control and management of the Local Government within the area of jurisdiction of which the land is situated."

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Section 5(1) of the Act has vested on the Governor the power to grant statutory right of occupancy to any persons in the State for all purposes. But Section 3 of the Act has vested in the Governor the power by order published in the State Gazette to designate the parts of the area of territory of the State constituting land in an Urban Area. Pursuant to this section, the Kaduna State Government published the Kaduna State (Designation of Land in Urban Area) Order 1980 KD SLN No.8 of 1980. This Order designated Makera as an Urban Area. On the strength of this notice Makera having been designated an urban area, the Kaduna Local Government has no jurisdiction to grant any right of occupancy in respect of land therein. The land is clearly under the control and management of the Governor of Kaduna State: See S.2 (1)(a). Accordingly, Exhibits E1A and E1B issued by the District Head of Makera purporting to grant rights of occupancy with respect to lands therein were issued without jurisdiction and therefore granted nothing. Mr. Daudu for the appellant also relied on the provisions of section 36 of the Land Use Act which applies to lands not in urban area immediately before the commencement of the Land Use Act. It is difficult to conceive how this section applies to the facts of this case. Even if it is conceded that the lands in dispute was not in an urban area before the commencement of the Land Use Act. On the commencement of the Act, it is an important ingredient for the application of the transitional provision that the land should be used for agricultural purposes. See S.36 (2). See *Abioye & ors v. Yakubu* (1991) 5 NWLR (Pt. 190) 130. There was no evidence that the land was developed: See S.36 (4). It is an important consideration for the application of S.36 (1) that *'No land to which this section applies shall be sub-divided or laid out in plots and no such land shall be transferred to any person by the person in whom the land was vested as aforesaid.* See S.36 (5).

The evidence of the appellant at the trial was that she was among a number of persons to whom plots were allotted in the area because of their displacement. The plots so allocated were held for agricultural purposes, and were laid out in plot inconsistent with the express provisions and intentment of section 36(2) and (5) of the Act.

Mr. Daudu has submitted that an existing customary occupancy

must be revoked before a statutory right of occupancy can be valid. This is a misreading of section 9(1)(b) of the Land Use Act.

A statutory right of occupancy automatically extinguishes all existing rights in respect of the parcel of land over which it is granted. - See
 5 Titiloye v. Olupo (supra). In the instant case in the absence of any existing rights the issue does not arise.

On the above reasons, I have no doubt in my mind that, and I hold that the District Head of Makera had no power to issue Exhibits E1A and E1B. Similarly, Exhibit 2 issued by Kaduna Local Government in 1982
 10 purporting to grant a customary right of occupancy when it had no jurisdiction so to do, is invalid.

The Court below was therefore right to hold that "appellant's two
 15 sources of acquisition of the disputed lands are illegal, because the grantors had no legal right to issue her with the rights of occupancy she exhibited in support of her claim." This disposes of the first issue which I answer in the negative.

I now turn to the second issue which relates to the priority as be-
 20 tween Exhibits 2 issued by the Local Government, and Exhibit 5 by the State Governor. This ground of appeal *stricto sensu* arises and is traceable to the judgment of the learned trial Chief Judge who said,

*"Now Exhibit 2 was issued on the 20th October, 1982 to take
 effect from 3/7/82 and Exhibit 5 was issued earlier than Exhibit 2.
 25 I am quite aware of the plaintiff's application on page 1 of Exhibit 4, but I am also of the considered view that it is not the date a person applies for a right of occupancy that confers title of the land to him. It is the date which that right is given to him i.e. the date on the certificate of occupancy. The legal maxim, first in time
 30 first, in law is appropriate here since the defendants were given the right earlier than the plaintiff they clearly have a better title."*

It was not one of the reasons given by the Court below. Mr. Dauda has contended, and quite rightly in my view, that the above dictum assumes the existence of two competing titles. His submission to us is that
 35 respondents did not show that their certificate of occupancy related to the land in dispute. To that extent there are no competing interests over the land in dispute. In the absence of any competing interest, appellant's claim should have been granted.

It was argued that the Courts below were in error in confusing a

right of occupancy to be issued by the Local Government and a certificate of occupancy issued by the State in holding that the Local Government had no jurisdiction to issue Exhibit 2. Learned counsel submitted that a certificate of occupancy i.e. Exhibit 2 is only a written proof of a new or existing right of occupancy.

With due respect to learned counsel, there seems to be fundamental 5 misunderstanding for the reasoning of the Court below on the grounds for the defect in Exhibit 2. The reasoning of the Court is that the land in dispute being in a place designated as an urban area is outside the jurisdiction of the Local Government which purported to have granted the right of occupancy. It is a matter of substance and jurisdiction. It is not a mere 10 matter of form as is being suggested. I have already held in this judgment that the land in dispute is in place designated as an urban area, and therefore outside the jurisdiction of the Local Government, accordingly Exhibit 1 was issued without jurisdiction.

Consequently, contrary to the submission of Mr. Daudu for the ap- 15 pellant, the appellant did not acquire any title by virtue of Exhibit 2. In the circumstances of this case the maxim *qui prior est tempore potior est jure*, is clearly not applicable. Since respondent's title is the only valid one, this has led to the conclusion of the Court below that,

"It is crystal clear therefore that the Kaduna Local Government 20 had no power whatsoever to grant a customary right of occupancy in Makera at the time it did so in favour of the appellant. Thus, the issue of priority of estate does not arise."

I entirely agree.

I now turn to the last issue which relates to the burden of proof in a 25 claim for declaration of title to land.

Mr. Daudu for the appellant stated the principles correctly when he submitted that the onus of proof is on a plaintiff seeking a declaration of title to land. He went on to submit that this onus is properly discharged 30 where the plaintiff proves the requirements stated in the well known decision of this Court of *Idundun & ors v. Okumagba & ors* (1976) 9 & 10 S.c. 227,249-250. In the instant case, he argued that

- (a) Appellant held the land bonafide in accordance with the Land Tenure Law.
- (b) Appellant possessed original authentic document of title 35
- (c) Appellant exercised acts of ownership by erecting buildings
- (d) Appellant had long possession.

It was submitted, respondent had none of those except the certificate of occupancy, Exhibit 5 over the same piece of land. Finally, it was

submitted, appellant was in possession, the onus is on the respondent to prove its ownership of the land.

Learned counsel to the respondent in his brief of argument submitted that appellant did not discharge the burden of proof on him to prove title to the land in dispute. Appellant has not proved that the land in dispute is not part of the 8.57 acres granted to the respondent in Exhibit 5. He cited several decided cases in support of his submission. Some of the cases cited are *Onobruhere v. Esegine* (1986) 1 NWLR (Pt.19) 799; *Kuma v. Kuma* (1934) 2 WACA 178; *Kodilinye v. Mbanefo Odu* (1935) 2 WACA 236, *Bello v. Eweka* (1981) S.C. 101. It was submitted that appellant can only succeed on the strength of his case, and not on the weakness of the respondent's case. - *Kodilinye v. Mbanefo Odu* (supra); *Awote v. Owodunni* (No.2) (1987) 2 NWLR (Pt. 57) 367; *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745 were cited and relied upon.

I have carefully considered the submissions of learned counsel on this issue. It is well settled law that appellant, who is the plaintiff, has the burden to establish his claim to title to the land in dispute. Appellant has relied on Exhibit 1 and 2 which have already been held to be invalid and vesting no title in the appellant. As against appellant's claim, the respondent relied on Exhibit 5, i.e. a certificate of occupancy issued by the State Government. It is important to observe that Exhibit 5, the certificate of occupancy purportedly granted by Kaduna Local Government. Again since appellant did not hold a customary title whatever was held was extinguished by the issue of Exh. 5 See *Onwuka v. Ediala* (1989) 1 NWLR (Pt.96) 182.

Appellant has argued that respondent should show that the land in dispute is part of the 8.57 acres granted in the certificate of occupancy Exhibit 5. I agree entirety with learned counsel to the respondents that rather, the onus is on the appellant to show that the land in dispute is not part of the respondent's land and that respondent has trespassed into his land. It is the duty of appellant to establish the area of land in dispute so as to establish his title and trespass thereto See *Titiloye v. Olupo* (1991) 7 NWLR (Pt. 205) 519; *Baruwa v. Ogunsola* (1938) 4 WACA 159.. It is not any weakness in the case of the respondent. Respondent has claimed that the plots claimed by the appellant are part of his 8.57 acres.

The appellant will not succeed merely because respondent has not established his own claim. It may be a weakness in respondent's case which does not strengthen the case of the appellant.

In *Udekwa Eboha & ors v. Ikefuna Anakwenze & ors* (1967) NMLR 140, this court citing and relying on *Kodilinye v. Mbanefo Odu* 2 WACA

336 held that the fact that the defendants (then plaintiffs) lost in their claim for title to the land in a previous suit does not help the plaintiffs, upon whom lies the onus to prove their case - See also *Elufisoye v. Alabetutu* (1968) NMLR 298.

Accordingly, it is for the appellant to prove his case on his evidence, and will fail if he did not succeed to establish the claim before the Court. 5 This is not the case where the case of the respondent supports and strengthens the case of the appellant and assists him in establishing his case. - See *Akinola & anor v. Oluwo & ors* (1962) WNLR 133. *Awote v. Owodunni* (No.2) (1987) 2 NWLR (Pt. 57) 367. The claim of the appellant remains unestablished, appellant having failed to discharge the onus to prove that 10 she had any title to the piece of land claimed.

All the issues for determination are therefore resolved against the appellant. The appeal fails and is accordingly dismissed. Appellant shall pay N1,000 as costs to the respondent.

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KAWU JSC

I have had the advantage of reading, in draft, the lead judgment of my learned brother. Karibi-Whyte, J.S.C, which has just been delivered. I 20 am in complete agreement with his reasoning and conclusion that the appeal lacks merit and should be dismissed. In this case the appellant relied on Exhibits E1A and E1B issued to her by the District Head of Makera but there was no evidence adduced at the trial to show that the said District 25 Head had the jurisdiction to make the grant. Similarly Exhibit 2 which was issued by Kaduna Local Government to the appellant purporting to grant her a customary right of occupancy is invalid as that Government had no jurisdiction to make the grant. I too will dismiss the appeal with N 1,000.00 as costs against the appellant in favour of the respondent.

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OMO JSC

In this appeal the appellant is seeking a reversal of the judgment of the court below which affirmed the judgment of the High Court of Kaduna State dismissing her claim for a declaration that she is the rightful and beneficial owner of a piece of land situate in Makera, within the Kaduna Urban Area; and also for an order of injunction to restrain the respondent or its servants or privies from further interference with the said land.

The appellant has relied in support of her case on two documents. The first, Exhibit 1, is a document purportedly issued by the District Head of Makera Dated 17/9/73; and second, Exhibit 2, customary certificate of occupancy dated 3/7/82 and issued by the Kaduna Local Government Authority. The respondent, on the other hand, relies on a statutory certificate
5 of occupancy dated 19/6/79 (Exhibit 5), which granted a total area of 8.57 acres to it, within which (it alleges) the land claimed by the appellant is situate.

In both the High Court and the Court of Appeal, it was held that Exhibit 1 and 2 were issued without jurisdiction and therefore conferred no
10 title on the appellant. Exhibit 1 is that defective, inter alia, because no law granted the District Head of Makera any authority to grant a customary right of occupancy of the land in dispute to the appellant. With regard to Exhibit 2, the Kaduna Local Government Authority could not issue such a document in 1982, since Makera, in which the disputed land is situate, had
15 become an urban area with effect from 1980 - vide Kaduna State (Designation of Land in Urban Area) Order, 1980 (as amended). On the basis of these findings, the claim of the appellant was dismissed.

On appeal to this Court, the appellant in her brief set out six issues for determination whilst the respondent framed only four issues. These are
20 set out in the lead judgment of my learned brother Karibi Whyte, J.S.C., and I have no intention of further setting them out in this judgment. I agree with him that the formulation of issues by the respondent, without issue 1, is more appropriate for a consideration of this appeal.

My learned brother, in the aforementioned judgment, of which I
25 have had a preview, has fully considered all the issues raised by the parties in detail. He has affirmed, inter alia, the above-stated concurrent findings of the trial High Court and the court below. I agree with him, for the reason he has set out, with which I am in entire agreement and adopt as mine that the appellant has failed to dislodge these findings and failed to convince
30 this Court that her claim is otherwise founded. I therefore also dismiss this appeal with costs to the respondent assessed at N1,000 only.

KUTIGI JSC

35 I have had the advantage of reading before now the judgment just delivered by my learned brother Karibi-Whyte, J.S.C., I agree with his reasoning and conclusions. Appellant's case was entirely based on Exhibits 1 & 2 - respectively allocation papers issued by the District Head of Makera and Kaduna Local Government while the case of the respondent was rooted

in Exhibit 5, a statutory right of occupancy issued by Kaduna State Government. There was clearly no evidence that the District Head of Makera had any power to issue Exh.1. Also at the time of issuance of Exh. 2, the area where the land in dispute is situated already formed part of Kaduna Urban Area and therefore outside the jurisdiction of Kaduna Local Government. On the other hand Exhibit 5 which is a statutory right of occupancy issued by the Kaduna State Government conferred title on the respondent because only the State Government had the power to deal with the land in dispute. The appeal therefore fails. It is hereby dismissed with N1,000 costs against the appellant.

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OGWUEGBU JSC

I have had the privilege of a preview in draft of the judgment just delivered by my learned brother Karibi-Whyte, J.S.C. and I am in complete agreement with the reasons and conclusion contained in the judgment. I adopt same as mine.

It is the duty of a plaintiff to prove his case by preponderance of evidence. The appellant herein failed to prove her case. She has only Exhibits "1" and "2". They are vague. Exhibit "1" issued by the District Head of Makera Kakuri in Kaduna State did not confer any title on the appellant. The District Head had no legal right to certify any property to any person by virtue of the Land Use Act, 1978 and Land Tenure Law Cap. 59 Laws of Northern Nigeria applicable in Kaduna State. Issue was joined in the pleadings as to the authority of the District Head to certify the property as that of the appellant. This, the appellant failed to prove.

Exhibit "2" was issued on 20th October, 1982 to take effect from 3rd July, 1982 long after Exhibit "5" - Certificate of Occupancy which was issued to the respondent on 19th June, 1979. The parcel of land became an urban area by virtue of Kaduna State (Designation of Land in Urban Area) Order, 1980. As at 28/10/82 (3/7/82), the Kaduna Local Government had no authority to grant a right of occupancy over the land in dispute - S.2 (1(a) of the Land Use Act, 1978. Exhibit "5" issued by the State Government validly vested title to the land on the respondent. The appellant could not succeed both on the law and the facts.

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For the above reasons and the more detailed reason contained in the lead judgment, the appeal is dismissed with N1,000.00 costs to the respondent.