

SUPREME COURT OF NIGERIA

9TH JULY, 1993. SC. 17/1991

**CORAM:- A. G. KARIBI-WHYTE, S. M. A. BELGORE,
M. E. OGUNDARE, E. O. OGWUEGBU,**

1. ADENUGBA ADESINA

2. ALHAJI LAWANI

BALOGUN AWOYEMI

..... APPELLANTS

3. ALHAJI ABUDU AINA

(For themselves and on behalf
of Owarodo Otutubiosun Royal Family)

AND

1. MADAM TAWA KOLA & 18 ORS

..... RESPONDENTS

CIVIL CAUSES - Action for money had and received - whether maintainable against solicitor to the defendants - when conduct of a solicitor is declared unethical

CIVIL CAUSES - Compulsory acquisition of land by Government - claim determined by the Land Tribunal - whether the high court had jurisdiction - are the plaintiffs entitled to judgment - when they raised the issue of trial court's lack of jurisdiction

LAND ACQUISITION - By the State Government - under the public Lands Acquisition Law 1959 - proper time within which to make claims

FACTS

The plaintiffs/Respondents were farmers in the now Ogun State. Their farmland was acquired in 1974 by the State Government via publication of a Gazette Notice. Plaintiffs' claim properly submitted within the statutory period of one month for compensation in respect of the land and crops was eventually granted following an action filed by them before the Land Tribunal. The Plaintiffs own share of the compensation was paid to the 1st Defendant who refused to transfer it to them. Rather, the 1st Defendant paid the plaintiffs said share to the 2nd and 3rd defendants on behalf of the Owarodo Otutubiosun Royal Family, for the reason that the Family had claimed

Ownership to the farm land.

Being aggrieved, the plaintiffs filed an action before the High Court claiming the sum of N37,988.20 from the Defendants being money had and received on their behalf. The Defendants in their defence sought to establish ownership to the whole farmland claiming that the Plaintiffs had only farming rights but ownership belonged to the royal family. The plaintiffs' claim was dismissed by the trial court. On their appeal to the Court of Appeal, the Plaintiffs' claim was allowed, the defendants have now appealed to the Supreme Court. The court was called upon to determine inter alia, whether the Defendants who were not parties in the case before the land Tribunal (Exh. A) could be bound by that judgment into being estopped from defending the present case.

HELD (unanimously dismissing the appeal)

1. The gist of the Court of Appeals' decision is not that the Defendants were bound by Exhibit A, but rather that Owarodo/Otutubiosun family not being parties to the Plaintiffs' Suit before the land Tribunal (Exh. A) could not claim entitlement to compensation as ordered by that Tribunal. The sum of money paid to 1st Defendant could only be disbursed among claimants in Exhibit A and the plaintiffs as claimants are entitled to their own share of that sum. (p.51 L23)
2. If the Royal Family had any claim to any portion of land acquired by Government, they ought to have made a claim for compensation within 12 months from the publication of the Gazette notice. Not having done so, 2nd and 3rd Defendants' claim to any interest could no longer be entertained as provided by the relevant law. (p.51 L34)
3. The 1st Defendant's conduct in paying over to the family through 2nd and 3rd Defendants what rightly belong to the plaintiffs was to aid that family to circumvent the law and this is not ethical. (p.53 L7)
4. The plaintiffs claim was not for a determination of the amount of compensation due to each plaintiff but for payment over to them what 1st Defendant collected from the Government on their behalf

which he wrongfully paid to 2nd and 3rd Defendants. (p.53 L20)

5. At the time plaintiffs' suit (Exh. A) before the Land Tribunal was instituted and decided, only that Tribunal had jurisdiction and the High Court had no jurisdiction to determine the issue of compensation (and to whom) payable on land compulsorily acquired by Government, (p.53 L24)

6. The trial High Court has no jurisdiction to determine the issues raised by the Defendants in this action, notwithstanding that Plaintiffs action for money had and received was instituted in 1981 at a time jurisdiction had reverted to the High Court by virtue of the provisions of the 1979 constitution. (p.54 L21)

7. By virtue of the correct views expressed by the Court of Appeal and given the circumstances of this case, the Lower Court can award judgment in favour of the Plaintiff as it did, though they raised the issue of lack of jurisdiction of the trial High Court in land compensation cases. (p.55 L39)

8. In view of the facts of this case, as it is not in dispute that the 1st Defendant did not pay over to the Plaintiffs their own share of the compensation, he is liable together with the 2nd and 3rd Defendants in Plaintiffs' claim for money had and received as rightly held by the Court of Appeal. (p.57 L15)

REPRESENTATION

A. A. Adesina - 1st Appellant in person

O. Sofowora Esq. with K. A. M. Akintobi (Miss), for the Appellants

A. Adenowo Esq., for the Respondents

CASES REFERRED TO

1. Chief D. Allison Ibuluga & Tom Bambo Dikibo (1976) 6 S.C. 97

2. Amida & Ors v. Osoboja & ors (1984) 6 S.C 68

3. Cardoso v. Daniel (1986) 3 NWLR 1

4. Adesina v. Atoloye (1986) 1 NWLR 241

5. Bisiriyu Adesanya & ors v. Mil. Admini in result No. ALT. 4/79

(PT. 298) 182

6. Dosunmu & ors v. J.A. Ajagun & ors
7. Ohene Moore v. Akesseh Tayee 2 W.A.C.A 43
8. Zanner Bukar Mandara v. A.G. Federation (1984) 4 S.C. 8
9. Oduwobi v. Barclays Bank DCO (1962) 1 All NLR 143
10. Kelly v. Solari (1952) TR 26
11. Sinclair v. Broughan

STATUTES REFERRED TO:

1. Public lands Acquisition (Miscellaneous Provisions) Act No. 33 1976 553 (b), 13, 14
2. Public Lands Acquisition Law Cap.105 Laws of West. Nig., s.10(2)
3. Constitution of the Federal Republic of Nigeria 1979, s 236

LEAD JUDGMENT BY OGUNDARE JSC

The plaintiffs are farmers on Jomu farmland in Jomu village, Sagamu in Ogun State. By Gazette Notice No. 50 Volume 23 of 14th November, 1974 the Government of the now defunct Western State of Nigeria acquired an area of land in Sagamu which included the area of land on which the plaintiffs were farming. The plaintiffs, through their Solicitor, S.O. Oyefeso Esquire submitted claims for compensation for crops and land, to the Government. The matter was referred to the Lands Tribunal which looked into the claims and recommended the amount of compensation payable to each claimant. A claim survey plan was prepared on which was marked out the name of each claimant and the area acquired from him.

Meanwhile, Ogun State was carved out of the former Western State and on the failure of the Government of that State to make to the plaintiffs payment of the amounts adjudged to each of them by the Lands Tribunal, they sought to repossess their land. The Ogun State Government intervened and convened a peace meeting with all claimants, including the plaintiffs, to whom compensation had been recommended to be paid by the Lands Tribunal. A compromise was reached whereby the claimants agreed to accept compensation of N1,000.00 per hectare as against N1,500.00 per hectare award to them by the Lands Tribunal, provided immediate payment would be made to them by Government. The State Attorney-General and the Chief Lands Officer represented the Government at the meeting while S.O Oyefeso and representatives of the plaintiffs were present. The

1st defendant and those claimants he represented were equally present.

Following the meeting the 1st defendant by a letter dated and September, 1980 and addressed to the Permanent Secretary, State Ministry of Lands and Housing, submitted claims for 34 Claimants, including the 28 original plaintiffs.

5 The Plaintiffs at no time instructed 1st defendant to act for them and by their Solicitor's letter of 30th October, 1980, they re-
futed and repudiated 1st defendant's claim of any instruction to act
on their behalf. The State Attorney-General however persuaded plain-
10 tiffs' Solicitor, Mr. S.O. Oyefeso to agree to one cheque being issued
in the name of the 1st defendant for onward payment to all the
claimants including the plaintiffs. A cheque for N78,040.20 was is-
sued to the 1st defendant by Government out of which sum the 28
original plaintiffs claimed entitlement to N45,452.20. The 1st defen-
15 dant, however, did not pay over to the plaintiffs their own entitle-
ment. Rather he wrote a letter dated 26th November, 1980 to plain-
tiffs Solicitor (Mr. Oyefeso) informing the latter that he had paid the
entire sum of 78,040.20 to the Owarodo Otutubiosun Royal Family
through the 2nd and 3rd defendants for the reason that that family
20 had claimed ownership to Jomu land. When the 1st defendant would
not pay them their entitlement they, along with 9 others, instituted
the action leading to this appeal claiming from the three defendants
the sum of N45,452.20.

25 Pleadings were filed and exchanged. The defence of the de-
fendants was based on the following penultimate paragraphs of the
statement of defence of 2nd and 3rd defendants to wit:

30 *"3. The 2nd and 3rd defendants aver with reference to para-
graph 12 of the statement of claim that the action in Suit No. ALT/4/
79: Bisiriyu Adesanya and 149 others v. The Military Administrator of
Ogun State was brought without the knowledge and/or consent of
Owarodo Otutubiosun Royal Family which owned the Jomu farm-
land acquired for Sagamu Cement Factory.*

35 *4. The 2nd and 3rd defendants state that immediately judg-
ment was delivered in the said suit they Owarodo Orutubiosun fam-
ily gained knowledge about the case and immediately instructed their
solicitors Adenugba Adesina and Co. to protest to the Ogun State
Government warning the government not to treat with individuals in
respect of Jomu farmland as same was owned by the family and*

individuals who submitted claims for compensation had no right to do so as their only right was that of user.

5. *The 2nd and 3rd defendants aver that Jomu is a branch of Owarodo Otutubiosun Royal family.*

6. *In consequence of the protests made by the Owarodo Otutubiosun family the Hon. Attorney-General upheld the claim of the family to compensation for land whilst in pursuance of individual's right of user payment for individuals crops on the land claimed by such individual could be made to them and indeed was actually made and received by such individuals with the full consent and approval of the family.*

7. *The 2nd and 3rd defendants further aver that the claim of the family to compensation for land was supported by the Akarigbo of Ijebu Remo in his palace in the presence of the Attorney-General and some of the plaintiffs herein.*

8. *The 2nd and 3rd defendants state, that the arrangement for naming individuals on the claim plan was to facilitate the area of land occupied by each person for purposes of enumeration of crops on such land.*

9. *The 2nd and 3rd defendants will contend that each individuals whose names appear on the claims plan in respect of Jomu farmland were acting as trustees for Owarodo Otutubiosun family in so far as compensation to land was concerned but in exercise of their right of user as members of the family they were allowed to claim compensation in respect of crops on their respective holdings.*

13. *The 2nd and 3rd defendants admit that the 1st defendant received compensation totalling the sum of N78,040.20 on behalf of Owaroda Otutubiosun/Jomu family on the instructions of the said family and immediately paid same over to the family.*

15. *The 2nd and 3rd defendants will contend at the trial that the action is bad on the ground of misjoinder of parties and causes of action and that same is not maintainable in the present form and therefore ought to be dismissed with substantial costs."*

and paragraphs 10-13 of the statement of defence of the 1st defendant, which paragraphs read:

10. "With reference to paragraph 24 of the statement of claim 1st defendant admits that a total sum of N78,040.20 was paid to him

on behalf of Owarodo/Otutubiosun family who were the owners of Jomu farmland under Yoruba Native Law and Custom from time immemorial but denies any part of the said amount was received by him for and on behalf of the plaintiffs or any individual at all.

11. With reference to paragraph 29 of the statement of claim
 5 1st defendant denies that he received any sum for the plaintiffs and categorically denies ever receiving instructions from any of them or their agents for any purpose whatsoever and therefore shall contend at the trial that he is not liable to account to the plaintiffs or any of
 10 them.

12. With reference to para. 35 of the statement of claim 1st
 defendant admits that 2nd defendant is a member of Jomu family and that against his name for the portion of Jomu farmland occupied by him a sum of money was fixed as compensation payable but de-
 15 nies that the said sum was paid to and received by him in his personal or beneficial capacity as same belongs to Owarodo/Ototubiosun family.

13. The 1st defendant avers that he received instructions from the Owarodo/Otutubiosun family to enter a caveat against payments to any of the parties in suit No. ALT/4/79 and this was done by letter
 20 dated 7th November, 1979 vide Ref. No. AA/156/79."

Before the trial of the action 9 of the original plaintiffs withdrew their claims leaving the above 19 plaintiffs. Consequent on the withdrawal of some of the plaintiffs, the statement of claim was
 25 amended with the leave of court and by paragraph 40 of the amended statement of claim, the remaining 19 plaintiffs claimed a total sum of N37,988.20 with interest at 10% from 13th day of November, 1980 until full payment. After the conclusion of the trial of the action and addresses by learned counsel for the parties - 1st defendant repre-
 30 sented himself - the learned trial Judge, in a considered judgment dismissed plaintiffs' claims, holding as follows:

*"My conclusion therefore is that the plaintiffs knew and admitted that Jomu is a farmland belonging to Jomu as a family, that the 2nd and the 3rd defendants are members of Jomu family, and that
 35 to succeed in their individual claims in respect of individual holdings 'partition' of the family land must be pleaded and proved. Because the plaintiffs have failed to prove partition, their claim have not been established. Their claim is therefore dismissed."*

Being dissatisfied with this judgment the plaintiffs appealed to

the Court of Appeal (Ibadan Division) which Court allowed the appeal, set aside the judgment of the trial High Court and entered judgment in favour of the plaintiffs in the sum of N37,988.20 as claimed with costs. It is against the lower court's judgment that the defendants, with the leave of that court, have now appealed to this court upon the following four grounds of appeal: 5

"1. The Court of Appeal erred in law when it held that the judgment of the Lands Tribunal was a subsisting judgment binding on the Defendants/Appellants.

PARTICULARS OF ERROR

(a) The Defendants/Respondents not being parties to the said judgment cannot be bound by the said judgment as same is res inter alios acta as far as they are concerned. 10

(b) The said judgment which was varied with the consent of the parties thereto cannot be said to be still subsisting for any purpose whatsoever. 15

(c) The Defendants/Appellants not being parties to the said judgment nor privies of the parties thereto cannot be bound by the said judgment and no plea of estoppel per rem judicatam can be successfully raised against them. 20

(d) The decisions in Chief Daniel Allison Ibuluya v. Tom Bambo Dikibo (1976) 6 S.C. 97 at 104, Amuda & Ors v. Osoboja & Ors. (1984) 6 S.C. 68 - 108 at 76-77 and other similar cases relied upon by the Court of Appeal are not applicable to the facts and circumstances of this case and were therefore mis-applied by the court. 25

2. The Court of Appeal having held that the High Court had no jurisdiction to adjudicate on the matter in the light of the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 erred in law when it went on to find in favour of the Plaintiffs/Respondents on the claim which they filed before the High Court. 30

PARTICULARS OF ERROR

(a) Lack of jurisdiction renders decision of any court a nullity.

(b) The Plaintiffs/Respondents ought to have brought. Their claim in the Lands Tribunal against the Defendants/Respondents and therein go all over against the proof of their claim to ownership in their individual capacity as against the defence put up by the Owarodo Otutubiosun family, to the effect that family land does not vest in individual members of the family who merely have a right of user 35

and that alienation of family land belongs to the family exclusively.

3. The Court of Appeal misdirected itself on the facts and therefore erred in law when it held that the issue of partition of Jomu farmland had been decided by the Lands Tribunal.

PARTICULARS OF MISDIRECTION

5 *(a) The judgment of the Lands Tribunal dealt with payment of compensation to persons whose names appear on the claims plan before the court and the basis of calculating the compensation payable in addition to a claim for interest which was refused by Tribunal.*

10 *(b) No where in the originating summons before the Tribunal or the judgment of the Tribunal was anything said in respect of partition of Jomu farmland.*

The Court of Appeal erred in law when it held that the High Court sat as an Appellate Court over decision of the Lands Tribunal.

15 ***PARTICULARS OF ERROR***

(a) The Claim brought in the High Court by the Plaintiffs/Appellants is couched in the form of quasi contract.

(b) The parties joined issue on their pleadings and called evidence in proof thereof

20 *(c) The learned trial Judge carefully assessed the evidence in support of the pleadings and after careful evaluation came to a decision in favour of the Defendants/Appellants by dismissing the claim of the Plaintiffs/Respondents.*

25 *(d) The Court of Appeal substituted its own findings for those of the judge of first instance when the findings of the learned trial judge who heard the evidence and saw the witnesses are not manifestly unjust, perverse and repugnant to reason and common sense.*

30 *(e) It is a fundamental rule of law that a plaintiff on whom burden of proving his case lies must rely on the strength of his own case and not on the weakness of the case of his adversary. The Plaintiffs/Respondents failed to prove that they were entitled to the compensation in respect of Jomu farmland in their own individual rights as against the claim of Owarodo Otutubiosun family.*

35 *(f) The Plaintiff also failed to prove that the Attorney-General of Ogun State gave an undertaking to them or their Solicitor that 1st Defendant would pay over to them through their solicitor their share of what was paid to 1st Defendant in respect of Jomu farmland.*

(g) PW3 (Solicitor for Plaintiff/Respondent) having admitted in his evidence before the court that first Defendant/Appellant was not present when the payment was made in his own presence; failed to explain the reason or reasons why he should allow his clients' money to be paid to the first Defendant/Appellant who was acting for Owarodo Otutubiosun family and who received payment meant for his own clients after all other payments had been settled through Solicitors acting for their respective clients."

Pursuant to the rules of this court, the parties filed and exchanged their respective briefs. Originally, one joint appellants' brief was filed on behalf of three defendant. Subsequently three separate briefs was filed. In paragraphs 3.01-3.04 of 1st Appellant's brief he sent down the issues for determination in this appeal in these words:

"3.01 The main issue which falls for determination in this appeal is whether the Plaintiffs/Respondents who commenced their action in the High Court in a quasi contract form could be heard to complain that the High Court has no jurisdiction to entertain the action as same is prohibited under the Public Lands Acquisition (Miscellaneous Provisions) Act 1976.

3.02 The subsidiary issue raised is whether the Court of Appeal having held that the High Court had no jurisdiction to entertain the action of the Plaintiffs/Respondents could then turn round and award judgment in favour of the Plaintiffs/Respondents since the Court of Appeal could not confer upon the High Court any jurisdiction which the Court does not have.

3.03 Whether on the facts of this case as stated in evidence an action for money had and received was maintainable against the 1st defendant who never claimed that he was representing any of the Plaintiffs/Respondents other than Owarodo/Otutubiosun Royal family on whose behalf he received compensation paid for Jomu farmland and which money the family admitted having received from the 1st defendant.

3.04 Whether the plea of *res judicata* or *estoppel per rem judicatam* could successfully be raised against a party who was not a party or privy in a previous action between two different parties."

In the 2nd and 3rd Appellants' Briefs the following 3 issues are set down, to wit:

"(i) Whether the claim of the plaintiffs should succeed against the defendants in the light of the pleadings and evidence before the court;

(ii) Whether the defendants who were not parties in the case before the Lands Tribunal could be bound by the judgment therein
 5 *so as to estop them from defending the present case.*

(iii) Whether the Court of Appeal could award judgment in favour of the plaintiffs who raised the issue of lack of jurisdiction of the High Court in land compensation cases".

10 I must observe, however, that a joint Notice of Appeal was filed on behalf of all the three defendants/appellants. It would appear from the three briefs filed by the three appellants that the issues are:

1. Whether the defendants who were not parties in the case before the Lands Tribunal could be bound by the judgment therein
 15 so as to estop them from defending the present case.

2. Whether the Court of Appeal could award judgment in favour of the Plaintiffs who raised the issue of lack of jurisdiction of the court in land compensation cases.

3. Whether on the facts of this case as stated in evidence as
 20 action for money had and received as maintainable against the 1st defendant who never claimed that he was representing any of the plaintiffs other than Owarodo/Otutubiosun Royal family on whose behalf he received compensation paid for Jomu farmland and which
 25 money the family admitted receiving from the 1st defendant. During the pendency of this appeal, the 3rd defendant died.

In each of the Respondents' Briefs in reply to the Appellants' Briefs there is a long narration under the caption "ISSUE FOR DETERMINATION". As this is not in compliance with the rules of Court,
 30 I will ignore it and adopt the issues as deduced by me from the three appellants' briefs and set out in the immediate paragraph above, and which issues are covered by the grounds of appeal.

ISSUE (1):

It would appear that the defendants completely misconceived
 35 the action brought by the plaintiffs in this case. Government having acquired their land in accordance with the Public Lands Acquisition Law of Western Nigeria, the plaintiffs and others claimed compensation, obviously within the period laid down in Section 10 subsection

2 of the Law. As the plaintiffs and Government could not agree on the amount of compensation payable the matter was referred by the claimants, by originating summons, to the Lands Tribunal set up under the Public Lands Acquisition (Miscellaneous Provisions) Act 1976 No. 33 of 1976 (then in force at all times relevant to the claim). Judgment was given by the Lands Tribunal on 27th September, 1979⁵ in the following terms:

"(a) That immediate payment of compensation for the land acquired in Sagamu for Cement Factory be effected without further delay.

(b) That the payment should be computed at the rate of¹⁰ N1,500.00 per hectare for all the claimants in this action whose names appear in the claims survey plans. (Exhibits 'C' and 'C1').

(c) That the claim for interest is struck out."

Exhibit A shows that the Government was not represented at¹⁵ the hearing before the Lands Tribunal. After the judgment of the Tribunal, Government re-negotiated with the plaintiffs, among others, in consequence of which all the claimants agreed to accept N1,000.00 per hectare as compensation due under the judgment of the Tribunal. Pursuant to this compromise, compensation in respect²⁰ of Jomu land was paid to the 1st defendant on behalf of the claimants. Rather than pay the plaintiffs their own share of the sum paid to him the 1st defendant paid the sum to the 2nd and 3rd defendants on behalf of Owarodo/Otutubiosun Royal family. The claim of the²⁵ plaintiffs in this action is to recover from the defendants as money had and received on their behalf but not paid over to them, the sum of N37,988.20. The defendants did not dispute the above facts except that 1st defendant claimed that the sum paid to him by the Government was on behalf of the Owarodo/Otutubiosun Royal family³⁰ of the 2nd and 3rd defendants and not on behalf of the plaintiffs.

In his submissions in his brief the 1st defendant contended that the judgment of the Lands Tribunal (Exhibit A) was not binding upon the defendants who were not parties to Exhibit A. Relying on *Cardoso v. Daniels* (1986) 2 NWLR (Pt.20) 1 and *Atotoye v. Oke* No.2 (1986) 35 1 NWLR (Pt.15) 241, 1st defendant further contended that judgments of the Lands Tribunal in cases of compensation for compulsorily acquired land could not be pleaded in bar of subsequent actions

as they would not avail any party the plea of *res judicata*. The thrust of the arguments in the briefs of the other 2 defendants is to the same effect. With respect to 1st defendant and learned counsel for the 2nd and 3rd defendants, I think they completely misconceived what the Court of Appeal decided. That Court, per Onu, J.C.A. (as
5 he then was) observed: *"The next question is: who are the parties to Exhibit A? Surely, from the totality of the evidence before the trial court, the appellants by virtue of Exhibits A, F and G were claimants against the Military Administrator of Ogun State and parties to Exhibit A, the 1st, 2nd and 3rd respondents were and are not parties to*
10 *Exhibit A. While at the trial appellants represented themselves and other members of Jomu family, I cannot on the above premises see the basis for the trial court's finding at page 155 where it held thus:*

I infer from the totality of the evidence before the court that
15 *the Attorney-General paid what was due to Jomu family land to the 1st defendant because the 1st defendant made it clear that the Owarodo/Otutubiosun Royal family owned the land in question, that the plaintiffs (except plaintiffs numbers 8, 18 and 19) are all members of the family and that individual occupiers of the land are mere*
20 *customary tenants who have no claim to compensation payable in respect of land. This much (sic) contained in exhibit H..."*

From the above extract it is clear that payment had to do with compensation over the acquisition of land, that has reference to Exhibit A but that 1st respondent had been paid what was due to Jomu
25 family by the Attorney-General. That the payment was because 1st respondent had made it clear that the Owarodo Otutubiosun Royal family owned the land in question, etc., and finally that this much is contained in Exhibit H. Exhibit H is a letter 1st respondent wrote to
30 3rd PW (S.O. Oyefeso) former counsel to appellants on 26th November, 1980. The contents of exhibit H are clear - it seeks to show precisely that Jomu farmland is owned by Owarodo Otutubiosun Royal family and that compensation ordered in Suit No. ALT. 4/79 Bisiriyu Adesanya & 149 & Ors v. Military Administrator in Re:
35 Owarodo Otutubiosun Family i.e. Exhibit A, obtained over a year before, should be paid to Owarodo Otutubiosun Royal family. The trial court said the compensation was for Jomu family but 1st respondent said that it was for Jomu family who are a part of Owarodo

Olutubiosun Royal Family.

With due respect, the act of 1st respondent to say the least was belated. For action which was initiated in 1974 and came to fruition in November, 1979 culminating in the Lands Tribunal's judgment (Exhibit A): the Owarodo Otutubiosun must have woken up from a sleep to spring a surprise late in the day in 1980 to reap the benefit of Exhibit A. This, in my view, is unconsciousable. This is the more so when the parties which reared their heads representing this family, are strangers to Exhibits A. It is in this regard that 1st respondent who by Exhibit H sought to vary Exhibit A, in view, had the duty to have called the Attorney-General of Ogun State as a witness since he asserted there was a new agreement on compensation payable.

As a matter of fact the trial court ought to have asked the question:

'When did Owarodo Otutubiosun Royal family start to deal with the Government that acquired the land to enable them to be entitled to compensation for the land acquired. Failure on the trial court's part to so ask led in my view, to a miscarriage of justice. Owarodo Otutubiosun Royal family did not ask to appeal out of time against Exhibit A. For years they slept on their alleged rights. As there was no fresh agreement of a court of competent jurisdiction their action was belated. That judgment still subsists - See Chief Dosunmu & Ors v. J.A. Ajagun & Ors. (supra).' (Underlinings are mine)

I do not understand the above passage to mean that the court below held that the defendants were bound by Exhibit A but rather that Owarodo/Otutubiosun family, as represented by the 2nd and 3rd defendants, not being parties to it, could not claim entitlement to compensation as ordered therein. The sum of money paid to the 1st defendant by Government was in furtherance of Exhibit A and 1st defendant could only disburse it among the claimants in Suit No. ALT/4/79 (Exhibit A). The plaintiffs as claimants in that suit are entitled to their share of that sum. As the Owarodo Otutubiosun Royal family were not parties to that suit, they are not entitled to any sum under Exhibit A. The family represented by the 2nd and 3rd defendants, if they had any claim to any portion of the land acquired by Government in 1974, ought to have made a claim for compensation within 12 months of the publication of the Gazette notice with which the land was acquired. Not having done so within the prescribed period

their claim to any interest in the said land could no longer be entertained - see section 10(2) of the Public Land Acquisition Law Cap. 105 of the Laws of Western Nigeria, 1959) which provides:

"Subject to the provisions of section 20, no claim to any estate, interest or right in or to any lands in respect of which a notice
5 *has been served and published in the Gazette in accordance with section 9, or to any compensation or rent in respect of any such estate, interest or right, made after the expiration of twelve months from the publication of the notice, shall be entertained by any public*
10 *officer whose duty it is to receive such claim or by any court".*

What 1st defendant had done by paying over to the family through 2nd and 3rd defendants what rightly belonged to the plaintiffs was to aid that family to circumvent the Law. The 1st defendant's conduct cannot be described as ethical. I must conclude that the de-
15 fence put up by the defendants was not open to them in this case not because they were bound by Exhibit A or precluded by that judgment from claiming title to the land acquired by government but because, not being parties to it the family represented by 2nd and 3rd defendants could not take any advantage thereunder and also
20 they were precluded by section 10(2) of the Public Lands Acquisition Land from claiming, in 1981 (some seven years after the acquisition), compensation for any interest in the acquired land. The authorities cited by the defendants are not relevant to the facts of the matter before us.

25 **ISSUE 2:** Again, there is a clear misconception by the defendants of the judgment of the court below as regards the issue of jurisdiction raised by that court. They argued in their briefs that because the plaintiffs had contended in the Court of Appeal that the
30 High Court had no jurisdiction to entertain any claim to compensation in respect of the acquired land by the Owarodo/Otutubiosun family and the Court of Appeal agreed with that contention, that court should have struck out plaintiffs' case for lack of jurisdiction in the trial High Court. Plaintiffs' claim in the High Court and as en-
35 dorsed on their amended writ of summons read:

"The plaintiff's claim is against the 1st defendant for the immediate payment of the sum of N37,988.20 to the plaintiffs as set out by the Ministry of Lands and Housing Abeokuta in the list of claimants as computed by the Ministry being money had and received by

*the 1st defendant from the Ministry of Lands and Housing Abeokuta on 13th November, 1980 for and on behalf of the plaintiffs on the understanding that the 1st defendant will pay the said sum of N37,988.20 through their solicitor in person of S.O. Oyefeso since the plaintiffs have never given instruction to the 1st defendant to act for them in the compensation matter in respect of which the money*⁵
was paid to the 1st defendant.

*The 2nd and 3rd defendants are sued personally and as the representatives of Owarodo Otutubiosun royal family Sagumu from whom the 1st defendant claimed to have his instruction and to whom the 1st defendant allegedly and negligently paid the money had and received for and on behalf of the plaintiffs without the plaintiffs' knowledge, consent and/or authority. The defendants have jointly and severally refused and/or neglected to pay the sum of N37,988.20 to the plaintiffs, in spite of repeated demands, plaintiffs being lawful owners. Whereof the plaintiffs claim the said sum of N37,988.20 with interest at the rate of 10% per annum from 13th day of November, 1980 until full payment."*¹⁰
¹⁵

In paragraph 40 of that amended statement of claim they gave particulars of the amounts due to each plaintiff. Their claim, therefore, was not for a determination of the amount of compensation due to each plaintiff but for payment over to them what 1st defendant collected from the Government on their behalf but which he wrongfully paid to the 2nd and 3rd defendants. At the time ALT/4/79 was instituted and decided the High Court had no jurisdiction to decide the issue of compensation (and to whom) payable on land compulsorily acquired by Government; only the Lands Tribunal set up under the Public Lands Acquisition (Miscellaneous Provisions) Act, 1976 had jurisdiction to determine those issues-see sections 3, 13 and 18(1) of the Act, which read:

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*"3. Any claim in respect of compensation payable by virtue of the Public Lands Acquisition Act or the State Lands Act or any other enactment or law shall be determined in accordance with the provisions of this Decree, and any dispute arising from such claim shall be referable by any party to the dispute for adjudication by a lands tribunal established under section 12 below."*³⁵

"13. Notwithstanding anything to the contrary in any law a lands tribunal shall to the exclusion of any other court have power to

hear and determine -

(a) any question relating to or concerning the ownership, whether beneficial or otherwise, of any land to be compulsorily acquired by the Government for the public purposes of the Federation or of a state; and (b) any question relating to or concerning the
5 amount of compensation payable in respect of such acquisition and the persons entitled to such compensation."

"18(1) As from the commencement of this Decree and notwithstanding anything to the contrary in any law, the High Court of a
10 State or any other court having original jurisdiction in land matters shall not have jurisdiction to hear or determine-

(a) any question relating to or connection with the ownership, whether beneficial or otherwise, of any land to be compulsorily acquired by the Government for the public purpose of the Federation
15 or of a State; and (b) any question relating to or concerning any such and including the amount of compensation payable in respect of such acquisition and the persons entitled to such compensation, and no action whatsoever shall be brought in any such court in respect of
20 any such question, and if such action is pending in any such court or on appeal in any other court the action shall abate." (The proviso is not applicable to the matter on hand). The trial High Court would, therefore, have no jurisdiction to determine the issues raised by the defendants in this action, notwithstanding that plaintiffs' action for
25 money had and received was instituted in 1981 at a time when the Act had been repealed and jurisdiction had reverted to the High Court by virtue of section 236 of the 1979 Constitution. The law in force at the time the cause of action in this case for compensation, and to whom payable, arose, was the Act.

30 This is precisely what the court below said, per Onu JCA:

"It is well to assert as learned counsel for respondents did that appellants chose the venue of their claim and should not be heard to complain. But it was for money had and received to the appellants' use claimed by way of compensation on land acquired per se under
35 the Public Lands Acquisition (Miscellaneous Provisions) Act, 1976 that led to the case on appeal. Exhibit A had already become the end product of such an action arrived at by the Lands Tribunal which, to the High Court's exclusion, has jurisdiction to deal with the matter.

This then brings me to the question of jurisdiction. See 3(b)

and 18(b) of the Public Lands Acquisition (Miscellaneous Provisions) Act, 1976 (hereinafter referred to simply, as the Act) confer jurisdiction to determine the amount of compensation and persons entitled to such compensation only in the Lands Tribunal to the exclusion of any other court. And as to the powers of the Lands Tribunal Section 14 of the Act provides thus:-

'14(1) A lands tribunal shall be a superior court of record and shall in respect of matters on which jurisdiction is conferred on it under this Decree, have all the powers of the High Court of a state in its original jurisdiction.

(2) Subject to this Decree, the provisions of any law of a state, including the constitution, regarding the powers, practice and procedure of a High Court shall be applicable in relation to the lands tribunal established for a State as if the lands tribunal were duly established by and expressly mentioned in those laws.'

Further, by virtue of section 16(1) of the Act-

An appeal shall lie from the decision of any lands tribunal as if such decision were the decision of the High Court of State.'

From the above, since the Act ousts the jurisdiction of the State High Court-

(i) Exhibit A is a subsisting judgment of a court of competent jurisdiction - there was no appeal on it.

(ii) That rights created, preserved or determined in Exhibit A remain valid until set aside.

(iii) That the trial court is incompetent to vary and/or reject rights thus established by that court of competent jurisdiction.

(iv) That if there was any error on Exhibit A it is for the Court of Appeal to which an appeal lies to correct it or so declare - see Dosunmu's case (supra)'

In the particular circumstances of this case, the trial court constituted itself into an appellate court thus defeating the purpose for which the tribunal was set up, where there is no jurisdiction, it has been held that no court under any guise can confer one upon itself - see *Ohene Moore v. Akessen Tayee* 2 WACA 43 at 45 and *Zanner Bukar Mandara v. A.G. of the Federation* (1984) 4 S.C. 8."

I agree entirely with the above views and in the circumstances of this case, I resolve issue 2 in the affirmative.

ISSUE 3: The nature of the action for money had and received was

discussed by this court in *Oduwobi v. Barclays Bank, DCO* (1962) 1 All NLR 143 (1962) 1 SCNLR 226 (new edition) where at pages 146-147 Unsworth, FJ delivering the judgment of the Court said:

"The main ground of appeal was that no action for money had and received lay against the appellants at the instance of Barclays Bank. It was said that Barclays Bank might have some claim against their principals in London, or against the Colony Company, but not against the appellants who had received the money. In support of this argument Counsel submitted that no contract existed between the parties, and said that in these circumstances the money was not recoverable. He referred to the cases of Kelly v. Solari (1952) T.R. 26; Sinclair v. Brougham (1914) A.C. 398; Holt v. Markham (1923) 1 K.B. 504, 513; London Joint StockBank v. Macmillan & Arthur (1918) A.C. 777. The case of Brook's Wharf & Bull Wharf Ltd. v. Goodman Brothers (1937) 1 K.B. 534, was also referred to in the course of argument. The facts of the cases referred to above were different from those in the present case, but the cases are of assistance in considering the general principles relating to an action for money had and received. The action is based on what is generally described as quasi contract and which was explained by Lord Haldane, in Sinclair v. Brougham, (supra), at p.415, in this way:-

'Consideration of the authorities has led me to the conclusion that the action was in principle one which rested on a promise to pay, either actual or imputed by law. Moses v. Macferlan 2 Burr. 1005 is the leading case on this point. It was an action on the case for money had and received under circumstances where any notion of an actual contract was excluded. But Lord Mansfield explained how in such circumstances the law treated the defendant as being in the same position as if he had incurred a debt: 'If the defendant be under an obligation, from the ties of natural justice, to refund; the law implies a debt, and gives this action, founded on the equity of the plaintiff's case, as if it were upon a contract.'

Lord Mansfield, in the case of *Moses v. Macferlan* referred to above, said that the action lies 'for money paid by mistake; or upon a consideration which happens to fail, or for money got through imposition, express or implied; or extortion, or oppression; or an undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances.' In considering

the relationship that must exist between the parties in order to sustain an action for money had and received, Lord Wright M.R. in *Brooks Wharf & Bull Wharf, Ltd. v. Goodman Brothers* (supra) said this:-
*The obligation (to repay) is imposed by the court simply under the circumstances of the case and on what the court decides is just and reasonable having regard to the relationship of the parties. It is a debt*⁵
or obligation constituted by the act of the law, apart from any consent or intention of the parties or privity of contract." On the facts of this case, it is not in dispute that the compensation adjudged by the Lands Tribunal in Exhibit A in respect of Jomu farmland (as subsequently, as to amount, was compromised by the parties to the Suit
 No. ALT/4/79) was paid to the 1st defendant, as legal practitioner. It is equally not in dispute that while the plaintiffs were parties to Exhibit A, the Owarodo/Otutubiosun Royal family whom 2nd and 3rd
 defendants claim to represent were not such parties. Lastly, it is not in
 dispute that the 1st defendant did not pay over to the plaintiffs their
 own share of the compensation. In such circumstances, 1st defendant is liable, as rightly held by the Court of Appeal, in plaintiffs' claim for money had and received. And on the admission of the 2nd and
 3rd defendants that they received the money from the 1st defendant
 they are equally liable. The Court below is right in entering judgment
 against the three of them. I find no substance, whatsoever, in the
 submissions in the appellants' Brief on this Issue. 10 15 20

In conclusion, this appeal is completely bereft of any merit. I
 dismiss it and affirm the judgment of the Court of Appeal. I award
 N1,000.00 costs against each of 1st and 2nd defendants/appellants. 25

KARIBI-WHYTE JSC

I have read in draft the judgment of my learned brother Ogundare, J.S.C. I agree entirely with him. I hereby dismiss the appeal with N1,000 as costs against the 1st and 2nd appellants in favour of the Plaintiffs/Respondents. 30

BELGORE JSC

I read in draft the judgment of my learned brother, Ogundare, J.S.C., and I agree with him that his appeal lacks merit and ought to be dismissed in its entirety. Only those before the Land Tribunal in the cause ALT/4/79. Exhibit A, are entitled to its award and Owarodo/
5 Otutubiosun Royal Family were not parties to it and could not by any evidence on record benefit from the award. The statutory period for making any claim in land acquired by Gazette Notice is twelve months and this family has not up to now made any claim. They seem to ride on the success of the plaintiffs as contained in Exhibit A.
10 I find no merit in this appeal and I adopt the fuller reasons as contained in the lead judgment of Ogundare, J.S.C. in dismissing this appeal. I also award N1,000.00 as costs against each of 1st and 2nd appellants in favour of the plaintiffs/respondents.

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KUTIGI JSC

I have had the advantage of reading before now the lead judgment of my learned brother Ogundare, J.S.C. I am in complete agree-
20 ment with him that the appellants' appeal must of necessity fail. It was evident from the judgment of the Lands Tribunal (Exhibit A) that the Owarodo/Otutubiosun Royal Family which the 2nd & 3rd appellants claim to represent was not a party to that suit. They cannot therefore claim to be entitled to compensation under it (Exhibit A). It auto-
25 matically follows therefore that the money, N37,988.20, paid to the 1st appellant by the Government of Ogun State in terms of Exhibit A can only be disbursed among the respondents/claimants thereunder. It was also clear that the 1st appellant failed to pay the money to the
30 respondents but instead gave it to the 2nd and 3rd appellants. The Court of Appeal was therefore right when it found all the three appellants jointly and severally liable.

The said sum of money must be paid back to the respondents who are entitled to it. I will also dismiss the appeal with N1,000 costs
35 in favour of the respondents.

OGWUEGBU JSC

I have had the advantage of reading in draft the lead judgment just delivered by my learned brother Ogundare JSC. I am in complete agreement with him that this appeal should be dismissed. I accordingly dismiss it. I make the same order as to costs as made in the lead judgment. 5

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