

SUPREME COURT OF NIGERIA
12TH FEBRUARY, 1993. SC 282/1990
CORAM:- S. KAWU, P. NNAEMEKA-AGU, A.B. WALI,
E.O. OGWUEGBU, S.U. MOHAMMED, JJSC.

GREGORY OBIUDE PLAINTIFF/APPELLANT
AND
1. CLEMENT NWARA
2. ATTORNEY - GENERAL OF DEFENDANTS/RESPONDENTS
RIVERS STATE

ESTOPPEL - communication of a particular State of affair to
an other party - when estoppel applies - to stop
one from blowing hot and cold

INTERPRETATION

OF STATUTES - Statutes capable of dispossessing a citizen of his
right to his property - attitude of courts - in
constru ing such statutes

LAND LAW - Grant of state Lease - Lessee holding over after expi-
ra tion of lease - whether State can regain posses-
sion contrary to law

LAND LAW - State land compulsorily acquired from individuals
for public purposes - whether State can sell such
land in fee simple absolute in possession

LAND LAW - reversioner - sale of reversionary right in property -
whilst lessee holding over is still in possession -wheth-
er nemo dat quod non habet applies

LANDLORD & TENANT- tenancy at sufferance - tenancy by estop
pel - how created

LANDLORD & TENANT - Expiration of lease - tenant holding
over - whether forfeiture is automatic - whether
recovery of possession can be by self - help

LEGISLATION - Principles of common law - doctrines of eq
uity - Statutes of general application - in
force in England on 1st Jan. 1990 - when
appli cable to old Eastern Region

LEGISLATION Ude v. A-G Rivers State (1993) 3 KLR -
 Conveyancing law in the old Eastern Re-
 gion - where there is no local legislation -
 what law is applicable - s. 10 of the State
 land law interpreted

MAXIMS - Expiration of State lease - Lessee's build-
 ing still on the land quic quid plantatur
 solo solo credit - whether applicable
 or not

POWER OF ATTORNEY - Nature of - how construed - whether
 it can transfer title or not - whether
 tantamount to parting with possession
 without consent

RULE OF LAW - Public functionary - must act in
 accordance with the law - where no
 discretion is granted by the statute -lest
 arbitrariness be enthroned

TRESPASS - Claim for damages for trespass against
 the state - by a tenant in possession after
 expira tion of lease -when such claim is to
 be granted

WORDS & PHRASES - "May"-used in respect of public functionar-
 ies obligation to private citizens - whether
 to be construed as mandatory or not

FACTS

The Plaintiff/appellant was granted a State Lease in respect
 of a land situate at Port-Harcourt by the government for seven years,
 before the Nigerian Civil War. Appellant built on the said land, but
 the house was treated and managed by the State (2nd Respondent
 as an abandoned property during the war.

After the civil war, the property was released to the Appellant
 who now put in some tenants and collected rent. At the time of this

release, the lease had expired. Subsequently, 2nd Respondent sold the
 said land to the 1st Respondent as fee simple absolute in possession.
 The 1st Respondent came to the said property and harassed tenants
 of the Appellant.

Appellant then filed an action against the Respondents for
 a declaration that he is the Lessee of the said property. He further
 claimed damages for trespass, injunction restraining Respondents
 from acts of trespass and a declaration that the sale of the property
 to 2nd Respondent was null and void. Appellant's action succeeded
 save that the trial court refused the declaration that he was the Lessee
 since his lease having expired was not renewed.

Respondents appealed to the Court of Appeal which allowed
 their appeal and dismissed the Appellant's claim in toto. Appellant
 appealed to the Supreme Court. His Counsel contended that posses-
 sion was wrongfully taken from the Appellant by the Respondents
 in violation of the law. And that there was no legal authorisation for
 the sale of State Land perpetrated by the Respondents. Respondents
 sought to establish that since the Appellant's lease had expired, the
 land reverted to the State and that Appellant was not entitled to any
 compensation for his house on the land under the State Land Law.
 The Supreme; Court in allowing the Appellant's appeal refused to
 grant the declaration that he was the Lessee in respect of the property
 in dispute.

HELD (unanimously allowing the appeal)

1. By the applicable provisions of the High Court Law of Eastern
 Nigeria, for a proper interpretation of ss. 10 & 28 of the State Land
 law, principles of the common law, the doctrines of equity and statutes
 of general application in force in England as on the 1st of January 1
 990, must be taken into consideration, save where they have been
 varied by the State Law. (P 98 L. 1)

2. In trying to find out the law applicable in states carved out of the
 former Eastern Region on any point relating to conveyancing as there
 is no local legislation, English law must be resorted to. Where a local
 legislation does not go far enough on an issue, the gap ought to be
 filled from applicable English law. (p 98 L. 11)

3. By the provisions of s. 10 of the State Land law upon the determination of a state grant, any improvement on the demised property reverts to the State. Provided that where the lease is for less than 30 years the lessor is given three months from the termination of the lease to remove any improvement he made on the land or have it
5 sold to the government. (p 100 L. 10)

4. By the provision to the relevant law, the maxim quic quid plantatur solo sole cedit shall not apply in the instant case since Appellant's lease is for less than 30 years. (p 100 L. 21)

10 5. Since the appellant came into the land lawfully in the first place, he became a tenant at sufferance after the expiration of his statutory three months. This is because Appellant held over and remained in possession without the landlord's assent or dissent. (p 100 L. 37)

15 6. Where tenancy at sufferance has arisen by operation of law, acceptance of rent by the landlord from the lessee that is holding over would be deemed a renewal of the lease on the same terms and conditions as in the original. (p 101 L. 10)

20 7. As the Appellant did not pay rents, he remained a tenant at sufferance liable for use and occupation of the land. But he could rely on his possession of the land against the whole world pending the time the lessor recovers possession from Appellant in a manner authorised by law. (p 101 L.14)

25 8. To construe the relevant law as meaning that Appellant's building on the land passed over to the State on the maxim quic quid plantatur solo solo cedit without compensation is impossible since it will run contrary to the grain of s. 31 of the 1963 constitution. (p 101 L. 22)

30 9. Once the law has prescribed a particular method of exercising a statutory power, any other method of exercise is excluded. So in this case there can be no question of the State (lessor) recovering possession by right of re-entry or any other type of self-help. (p 101 L. 36)

10. Though the Law says that the "Lessor may enter a suit", it is now

the invariable practice of the courts to interpret 'may' as mandatory whenever it is used to impose a duty upon a public functionary to the benefit of a private citizen. (p.102 L. 3)

11. There can be no question of both the house and the land or either of them reverting to the State simply because the lease having
5 expired has not been renewed. (p 102 L. 33)

12. One important class of tenants at common law are tenants by estoppel. Under estoppel one is not allowed to blow hot and cold, to approbate and reprobate, or to affirm at one time and deny at
10 the other. (p103 L. 23)

13. Where the 2nd Respondent has purported to release the property in question formerly held as abandoned property to Appellant, it cannot be heard afterwards to say that the lease has infact expired before the said release. (p 104 L. 25) 15

14. A reversioner such as the 2nd respondent, cannot sell his reversionary interest as fee simple estate while another person is in possession of the land. He must recover possession first or sell subject to existing possession. (p 105 L. 26) 20

15. The 2nd Respondent could not validly grant to the 1st Respondent a fee simple when it was not in possession. This is because any holder of a particular interest who attempts to sell more than the quantum of his estate will be caught by the maxim nemo dat quod non habet (no one can give or sell what he has not) (p 105 L. 35) 25

16. State Lands are held in trust by the acquiring government for the public purpose of the acquisition and in accordance with the State's public policy as enshrined in its laws. (p.106 L. 6)

17. There is no law which supports the reconversion of State lands
30 into private land nor the selling of such lands as fee simple absolute in possession such as the Respondent's sought to do. (p 106 L. 11)

18. In the construction of statutes conferring powers, especially those

which may have the effect of dispossessing a citizen of his proprietary right, the courts will confine those exercising the power to a strict observance of the letter of the statute. (p 106 L. 15)

19. It is a necessary implication of the rule of law that except where
5 the law gives a discretion to a public functionary, he can only act in accordance with the law, since to do otherwise may enthrone arbitrariness. (p 106 L. 24)

20. Express authorization from a statute is required before the 2nd
10 Respondent could sell any State Land as fee simple absolute in possession to the 1st Respondent. (p 106 L.27)

21. The issuing of a power of attorney by the Appellant without 2nd
Respondent's consent cannot be a breach of the covenant not to part
15 with possession without consent if reference is made to the nature of a power of attorney. (p 106 L. 32)

22. A power of attorney is a document usually under seal whereby
the owner of an estate in land (the Donor) authorises his attorney
(the Donee) to do in his stead anything which he (the Donor) can
20 lawfully do as clearly spelt out in the power of attorney. Issued for valuable consideration or coupled with interest, a power of attorney can be absolutely irrevocable or for a limited period. (p. 106 L. 38)

23. A power of attorney is not an instrument which confers or alienates any title to the donee. Rather it could be a vehicle whereby
25 transfer of the property can be done by the donee to a third party for and in the name of the donor. (p 107 L. 10)

24. Even if a power of attorney authorises the donee to exercise any of the powers of transfer to any person including himself, the mere issuance of the power per se does not amount to parting with
30 possession. (p.107 L. 14)

25. Power of attorney being categorized as a document of delegation, it is only where the donee exercises the power to convey the property to any person including himself that there will be an alienation.

From the evidence, that stage has not been reached in the present case. (p.107 L. 18)

26. Until the donee exercises his power to convey or transfer the property, he incurs' no personal liability as long as he acts within the scope of the power of attorney. Any liability is that of the donor.
5 (P. 170 L. 22)

27. The breach of a covenant in a lease does not make forfeiture of the lease automatic. It is merely a ground for forfeiture, and the lessee may apply for relief. (p.107 25)

28. Since on the day 2nd Respondent purported to have sold the
10 land in dispute to 1st Respondent as fee simple absolute in possession, the Appellant was in possession as a lessee holding over after the expiration of his lease, the purported sale to the 1st Respondent was invalid. (p. 107 L. 29)

29. The courts below were right to have held that the Appellant was
15 not entitled to a declaration that he was a lessee of the property in dispute. But since the Appellant was at all material times in possession, the entry upon the land by the Respondents was in trespass. (p. 107 L 36)

PER Nnaemeka-Agu JSC "Possession it has been said is nine points
20 of the law. Our courts have in numerous cases moved in to protect possession." (p. 102 L. 19)

REPRESENTATION:

Philip Umeadi SAN with S.J. Ofoluwa for the Appellant. 25
R. A. Ogunwale for the 1st Respondent
S. R. Dapaa-Addo for the 2nd Respondent.

CASES REFERRED TO

1. Nwangu v. Nzegwu (1957) SCNLR 61
2. Laibru Ltd v. Building and Civil Engineering contractors (1962) 30
1 ALLNLR 387
3. Odume v. Nnachi (1964) 1 ALL NLR 329
4. Nokes v. Doncaster almagamated collieries Ltd 1940 A.C. 1014
5. Kenny v. Browne 3 Ridg, P.C. 462

6. Aigbe v. Edo Kpolor (1977) 2 S.C. 1
7. NEPA v. Mudasiru Amusa & anor (1976) 12 S.C. 99
8. Remon v. City of London Real Property Ltd (1921) 1 KB. 49
9. Meye v. Electric transmission Ltd (1942) Ch. 290
10. Chief J.O. Edewor v. Chief M. Uwegbo (1987) 1 NWLR 313
- 5 11. Mokelu v. Federal Commissioner of Works and Hosing (1976) 1 ALL NLR (pt 1) 276
12. Aluminium Manufacturing Co. (Nig) Ltd v. Nigerian Ports Authority (1987) 1 NWLR (pt 51) 475
13. Obi Koya & Sons Ltd v. Governor of Lagos State (1987) 1 NWLR (pt 50) 385
- 10 14. L.S.D.P.C. v Foreign Finance Corporation (1987) 1 NWLR (pt 50) 413
15. A.G. of Bendel State & ors v. P.L.A. Aideyan (1989) 4 NWLR pt (118) 646
16. Cane v. Mills (1862) 7 H & N 913
- 15 17. Jos Iga v. Ezekiel Amakri & ors (1976) 11 S.C. 1
18. Webb v. Austin (1844) 7 Man & G 701
19. Cuthbertson v. Irving (1860) 6 H & N 135
20. Rhul U.D.C. v. Rhyl Amusements Ltd (1959) 1 WLR 465
21. East Riding Country Gowned v. Park Estate (Bridlington) Lt (1957) A.C. 223
- 20 22. Pocklington v. melksham U.D.C (1964) 2 Q.B. 672
23. Birmingham & Midland motors Omni bus Company Ltd v. Worces-
tershire county council (1967) 1 WLR 409
24. Ifezue v. Mbadugha & anor (1984) 5. S.C. 79
25. R.V. Bishop of Oxford (1879) QBD 248
- 25 26. Caldlow v. Pixell (1877) 2 C.Pb 562

STATUTES AND RULES

1. State Lands law Cap 112 laws of Eastern Region of Nigeria ss. 10, 28 (1) & (2), 14, 16
2. High Court law of Eastern Nigeria (Cap 61) 1963s. 15 (1) & (2)
- 30 3. Lease's Act 1945
4. Conveyancing Act 1892
5. Conveyance Act 1881 s. 63, 8, 9
6. Property and conveyancing Law Cap 100 laws of Western Region 1959

7. Constitution of the Federal Republic of Nigeria 1963. s. 31(1)
8. Crown Lands Ordinance Cap 45 of 1948, Cap 122 of 1963.

BOOK

1. Megarry & Wade: The Law of Real property 4th Ed.
2. Hals law of England vol. 23, (3rd Edn)

LEAD JUDGMENT BY NNAEMEKA-AGU JSC

In a Port Harcourt High Court, by an action commenced by a writ of summons, the plaintiff claimed against the defendants jointly and severally as follows:

“1. A declaration that the plaintiff is the Lessee of the leasehold property situate at No.2, Ekpeye (Umuoji) Street, Diobu, Port Harcourt (Plot I, Block 261, Wobo Layout).

2. A declaration that the sale of the said property by the Rivers State Government to the 1st defendant is null and void and of no effect whatsoever.

3. N2,000.00 general damages for trespass.

4. A perpetual injunction restraining the defendants, their agents and/ or servants from further acts of trespass to the premises.

Dated this 26th day of October, 1983.

(Sgd.) SJ. Ofoluwa,
Solicitor for Plaintiff,
16, Abonnema Wharf Road,
Port Harcourt.”

Plaintiffs case as revealed by his statement of claim was that before the Nigerian Civil War he was granted a lease of a plot of land at No.2 Umuoji Street, Port Harcourt (now called No.2 Ekpeye Street), by the Rivers State Government. Through his attorney Mr. S.E. Anusionwu, he developed the plot by erecting a storey building on it. During the Civil War the property was treated as abandoned property by the Rivers State Government and managed by the Rivers State Abandoned Property Authority, but that it was duly released to him after the Civil War and, through his attorney, he managed the property and paid all necessary rates thereof. When the original lease

which was for 7 years expired on the 31st of December, 1971, the government promised the plaintiff, through his attorney, that it would renew the lease. In 1983 the 1st defendant came to the premises of the plot in dispute and interfered with plaintiff's possession of the property by harassing plaintiffs' tenants therein, claiming that he had
5 bought the property from the Government (2nd defendant). Hence the plaintiff sued the defendants, as I have stated.

1st defendant's case as revealed by his statement of defence is that the property in dispute was state land, the 7 - year lease of which to the plaintiff had expired on 31st December, 1971, and was
10 never renewed. He denied that plaintiffs attorney erected a building on the land. He contended, without admitting, that if the plaintiff gave a power of attorney to Mr. Anusionwu, it lapsed on the expiry of the lease. He denied that the property was released to the plaintiff, and contended that, if there was such a release, it expired on the expiry
15 of the lease and that the said management of the property and any payment of rates did not create any interest in the property in favour of the plaintiff. He denied that the Ministry of Lands ever agreed to renew the lease. Rather, the property reverted to the 2nd defendant. He had offered to purchase the property from the government in consideration of the sum of N52,000.00 and his offer was accepted, after which he paid the sum of N5,200.00 as part of the purchase
20 price; also N520.00 as legal fees and N40.00 as non-refundable deposit for forms to the Government. Thereafter he entered into an agreement with the Government to purchase the property.

The 2nd defendant repeated most of the averments of the 1st defendant. He further contended that the grant of a power of attorney by the plaintiff to Mr. Anusionwu without the consent of the
25 2nd defendant was in contravention of the mandatory provisions of the State Lands Law an Express covenant in the lease. It was also contended that the property in dispute had never in law been abandoned property: so it could not have been released to the plaintiff and its release to him by the Abandoned Property Authority could not be relied upon. On the expiry of the lease of the property, the 2nd
30 defendant was entitled to sell it and did sell it to the 1st defendant, he averred.

At the trial one witness each was called by each of the parties in proof of its case. Thereafter and after addresses by counsel, the

learned trial Judge made various findings of fact which he summarized as follows:

“(a) That the land comprised in the plot described in the lease (Exhibit ‘B’) registered as No. 7 at page 7 in Volume 398 of the Land Registry in the office at Enugu, formerly known as No. 2 Umuoji Street and now as No. 2 Ekpeye Street, was demised to the plaintiff
5 by the Governor of the former Eastern Nigeria on 17th July, 1964 for a term of 7 years commencing 1st January, 1965 and expiring on 31st December, 1971.

(b) that the plaintiff by his said attorney thereafter erected thereon the building or property, the subject-matter of this action.

(c) that the lease duly expired on the 31st day of December, 1971

(d) that on the 19th day of February, 1973 the Chairman of the Abandoned Property Authority Rivers State, by the instrument of transfer (Exhibit ‘C’) purported to transfer to the plaintiff the control and management of the said plot, together with the building or
15 property thereon on an order purported to have been made by the Military Governor of Rivers State dated the 28th day of July, 1972.

(e) that following the said transfer, the plaintiffs attorney went into occupation of the building or property and still remains in occupation and has paid to the Port Harcourt City Local Government property
20 rate and to the Utilities Board water rate in respect thereof.

(f) that by an agreement dated 16th August, 1983, made between the government of the Rivers State and the 1st defendant and registered as No. 90 at page 90 in volume 96 Of the Lands Registry in the office at Port Harcourt, the Government agreed to sell and the
25 1st defendant agreed to purchase the said building or property for the sum of N52,000.00.

(g) that the 15th defendant has paid to the Government of the Rivers State as part of the said purchase price the sum of N5,200.00 .

There is no evidence by the plaintiffs attorney that since the
30 purported transfer of the property to the plaintiff, he has paid any rent to the Government in respect thereof apart from the property and water rates he paid to the Port Harcourt City Local Government and the Utilities Board respectively. I do not believe the attorney's

evidence that he went to the Chief Lands Officer to ask for the renewal of the lease and that the latter, after he had shown him the instrument of transfer, Exhibit 'B', asked him to go and said that he would write him to come and collect the lease. He did not explain why he did not pay to the Government the plot rent in the same way as he paid to the Port Harcourt City Local Government and Utilities Board respectively the property and water rates pending the renewal of the lease."

In the end he dismissed plaintiffs claim for a declaration of title and found for him in his claims for trespass and injunction. On defendants' appeal to the Court of Appeal, the appeal was allowed and plaintiff's claim was dismissed in its entirety): hence his, appeal to this court.

Based on the ground, of appeal filed, the learned Senior Advocate for the appellants formulated the following issues for determination, namely:

(i) Is the Court of Appeal right that on the determination of the appellant's lease, the buildings and improvements on the said State automatically belongs to the Rivers State Government and by operation of law without complying with Sec. 28 of the State Lands Law?

(ii) Is the Court of Appeal right when it said that Secs. 10 and 28 of the State Lands Law are not in conflict? And

(iii) Is the Court of Appeal right that the trial court was wrong after refusing the first items of the appellant's claim to have set aside and declared void Exhibit M?

(iv) Is the Court of Appeal right that on the determination of a lease of State Land, that there is no distinction between the land and building by virtue of Sec. 10 of State Lands Law and its proviso?

(v) Is the Court of Appeal right to say that the respondents are not liable in trespass?"

Learned counsel for the 1st respondent formulated the issues thus:

ISSUES FOR DETERMINATION

"3.01 Whether by virtue of Ss.10 and 28(1) and (2) of State Lands Law cap. 122 Laws of Eastern Nigeria applicable to Rivers State, the appellant can take advantage of the exceptions in the legal maxim quic quid plantatur solo, solo cedit clearly pointed out by His

Lordship Fatai Williams, J.S.C. (as he then was) in *National Electric Power Authority v. Mudasiru Amusa & Anor.* (1976) 12 S.C. 99 at p.114. and the legal effect of Exhibit 'C' issued to the appellant by the Abandoned Property Authority.

3.02 Whether the respondents can be liable in trespass when the appellant's lease on the property has since expired by operation of Law and the 2nd defendant has since transferred his interest in the property to the 1st defendant by virtue of Exhibit 'M'. The effect of the word 'may' if any, in S.28 of the State Lands Law.

3.03 Whether Section 10 is in conflict with Section 28(1) and (2) of the State Lands Law as to entitle the appellant to compensation for the building on the demised premises after the expiration of the lease by effluxion of time."

On the other hand, learned counsel for the 2nd respondent formulated the issues thus:

"(i) Whether on the expiration of a lease granted under the State Lands Law, Cap. 122 Laws of Eastern Nigeria, 1963, the land together with any improvements thereon reverts automatically to the state.

(ii) If the answer to the above is in the negative must the state go to court under Section 28 of the same law before it can recover possession of such land?

(iii) Was the Court of Appeal right when it held that Exhibit 'C' the instrument of transfer gave nothing to the appellant.

(iv) What is the proper interpretation of Section 10 of the State Lands Law, Cap. 122, Laws of Eastern Nigeria, 1963 in relation to expired leases.

(v) Is the decision of the Court of Appeal right?"

I shall try as much as possible to deal with these issues together, as did learned counsel after adopting their briefs.

Learned Senior Advocate for the appellant, Chief Umeadi, submitted that there was no way the 2nd respondent could have wrested possession of the property in dispute without complying with the provisions or section 28(1) of the State Lands Law, that is by filing a suit in the High Court to recover possession. In his submission although the subsection says "may", it should be construed as "shall" for reasons he gave in his brief. As the law has directed how possession should he recovered, there is no room for self-help,

he submitted. Further he submitted that the State Lands Law has provided for lease of state land and suits for recovery of rents in section 14 and forfeiture for non-payment of rent in section 16. It has no provision for sale of such land: so Exh. M whereby the 2nd respondent purported to have sold the property in dispute to the 1st respondent is invalid, he submitted.

Learned counsel for the 1st respondent, Mr. Ogunwole, submitted that section 28 of the State Lands Law cannot be construed in isolation to section 10 which clearly states that on the determination of the lease, any buildings or other improvements on the land shall pass to the State without compensation. He therefore submitted that once the 7 year lease expired the buildings and other improvements on the land passed to the State without compensation. He admitted that there is no authority for sale of fee simple absolute of state land: but citing *Nwangwu v. Nzegwu* (1957) SCNLR 61, p.63 he submitted that the use of the word "fee simple" was immaterial.

On behalf of the 2nd respondent, the learned Director of Civil Litigation, Mr. Dappa - Addo adopted the submissions on behalf of the 1st respondent. He agreed that section 10 as construed is harsh and submitted it would apply only when the Minister has elected to purchase the building. On Exh. "C" he submitted that the release of a property as abandoned property could only have arisen where there was a valid and subsisting lease. He also agreed that the appellant held over as a tenant after the expiration of his lease.

It is necessary to begin a consideration of the above issues by adverting to the construction of sections 10 and 28 of the State Lands Law (Cap. 122) Laws of Eastern Nigeria, 1963, applicable in the Rivers State. Now section 10 provides as follows:

"10. In the absence of special provisions to the contrary in any lease under this law all buildings and improvements on State Lands, whether erected or made by the lessee or not, shall on the determination of the lease, pass to the State without payment of compensation:

Provided, however, that, in the absence of any special provision to the contrary in the lease, when land is leased for a term not exceeding thirty years the lessee shall be at liberty within three months of the termination (otherwise than by forfeiture) of such lease to remove any buildings erected by him on the land leased during the currency of such lease, unless the Minister shall elect to purchase such

buildings". In the event of the Minister and the lessee not agreeing as to the purchase price of such buildings, the same shall be determined by arbitration. The lessee shall make good any damage done to the land by any such removal;

Also it is provided in section 28 as follow:-

"28(1) When any person without right, title or licence or whose right, title or licence has expired or been forfeited or cancelled, is in occupation of state land, the Attorney-General, or the Principal Lands Officer, or some person appointed by the Attorney-General, may enter a suit in the High Court to recover possession thereof.

(2) If on the hearing of such suit the defendant does not appear, or appears but fails to establish an absolute right or title to the possession of the land, the court shall order that the possession of the land sought to be recovered shall be given by the defendant to the plaintiff, either forthwith or on or before such day as the court shall think fit to name, and shall issue such process as may be necessary for carrying such order into effect."

How then should I approach the construction of the above provision? Fortunately, this question has been clearly answered by law for any meaningful interpretation of the above provisions. I ought to be guided by the provisions of section 15(1) and (2)(a) of the High Court Law of Eastern Nigeria (Cap. 61) of 1963, applicable in the Rivers State, which provides as follows:-

'15(1) Subject to the provisions of this section and except in so far as

other provision is made by any law in force in the Region. The common law of England, the doctrines of equity and the statutes of general application that were in force in England on the first day of January, 1900, shall, in so far as they relate to any matter for which the Legislature of the Region is for the time being competent to make laws, be in force within the jurisdiction of the court.

(2)(a) All statutes of general application or other Acts of Parliament of the United Kingdom which apply within the jurisdiction of the Court by reason of this Law or any other written law shall be in force so far only as the limits of the local jurisdiction and local circumstances permit

(b) It shall be lawful for the court to construe such statutes

or Acts with such verbal alterations, not affecting the substance, as may be necessary to make the same applicable to the proceedings before the court.'

It appears to me to be the intendment of the above provisions of section 15(1) and 2(a) of the High Court Law that for a proper
5 interpretation of sections 10 and 28 of the State Lands Law. One must necessarily take into account the principles of the Common law, the doctrines of equity and statutes of general application which were in force in England as on the 1st of January, 1900, except in so far as they have been varied, or amended, or cut down by the express
10 provisions of the State Lands Law or any other local law. It cannot be too often repeated that in such circumstances, those principles of English law ought to apply save in so far as they have been concluded or modified by local legislation or by local customary law. In this respect, it is noteworthy that, subject to local legislation and custom, the Leases Act of 1845 and the Conveyancing Acts of 1881 and
15 1892, among others which are not relevant to these proceedings, are applicable in the States which have been carved out of the former Eastern Region of Nigeria. This is because, although Lagos and the former Western State (Ogun, Ondo, Oyo, Bendel, and Osun) by the Law of Property and Conveyancing Law Cap. 100 Laws of the Western Region 1959, have passed their own Conveyancing Laws,
20 the Eastern Region did not. So, in trying to find out the law on such a point in any State carved out of the former Eastern Region I must resolve the issue from the viewpoint of English law except in so far as it has been varied by local legislation or applicable native law and customs. Where a local legislation does not go far enough on an issue,
25 I ought to fill up the gap, if any, from applicable English law: for a similar approach on laws of procedure, see *Laibru Ltd v. Building & Civil Engineering Contractors* (1962) 2 SCNLR 118, (1962) 1 All NLR 387; *Odume v. Nnachi* (1964) 1 All NLR 329.

I should make yet another observation. Learned counsel for the
30 2nd respondent has invited us to interpret section 10 set out above to mean that if a person whose lease of state land for a period of less than 30 years has expired fails to remove his buildings on the land within three months, it shall be forfeited to the state without compensation. It is my view that such an interpretation will fall against the letters and spirit of section 31 of the Constitution of the Federal Republic

1963, The State Land Law first came into force as the Crown Lands Ordinance in 1918 which was cap 45 of 1948 and cap 122 of 1963. It was therefore an existing law at the time the Constitution of 1963 came into force. And section 1 of that Constitution has declared void to the extent of the inconsistency any law which is inconsistent with
5 the Constitution, I should not, if possible interpret that section out of existence by adopting such an interpretation in view of the maxim *Utresmagis valeat quam pereat*. Expatiating on the maxim in *Nokes v. Doncaster Amalgamated Collieries, Limited* (1940) A.C. 1014, Viscount Simon, L.C., stated at page 1022:

"If the choice is between two interpretations, the narrower of 10 which will fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

It is from the above principles that I shall now try to construe 15 sections 10 and 28 of the State Lands Law set out above. Now section 63 of the Conveyancing Act of 1881, as amended by that of 1892, provides that a conveyance (which by definition includes a lease) of land transfers to the grantee all the estate, right, title, interest, claim and demand which the grantor has on the land, subject only to a
20 contrary intention being expressed in the conveyance. Argument was raised as to whether or not the well-known common law maxim: *quid quid plantatur solo solo cedit* (whatever is affixed to the soil belongs thereto) has any application to state lands in view of the provisions of section 10 of the State Lands Law. Putting the question another way, it postulates that whatever is affixed to the land is subjected, to 25 the same rights as the land itself. This is a concept of great antiquity which dates back to the days of the Institutes of Justinian in the Roman times. It had such a sanctity that if a man build on his own land with another person's materials, the owner of the land became the owner of the building also, although by the action *de tigno juncto* the owner of the materials could recover double their value as compensation. 30 The ownership of the materials in any event remained that of the owner of the land. The concept under Roman Law was imported into the common law (see Bracton, C, 3, s. 4 & 6). But, as was the case with many common law concepts, equity moved in to remove

some of the harshness of the common law, Lord Chancellor Clare in the case of *Kenny v. Browne*. 3 Ridg., P.C., 462 at p.519 summed up the principle thus:

“As to the equity arising from valuable and lasting improvements, I do not consider that a man who is conscious of a defect in his title, and with that conviction in his mind expends a sum of money in improvements, is entitled to avail himself of it. If the person really entitled to the estate will encourage the possessor of it to expend his money in improvements, or if he will look on and suffer such expenditure without apprising the party of his intention to dispute his title, and will afterwards endeavour to avail himself of such the jurisdiction of a court of equity will clearly attach upon the case.”

It is from the above background that I shall now examine the provisions of section 10 of the State Lands Law of Eastern Nigeria setout above. Clearly the substantive part of the section says that upon the determination of such a lease any such improvements like the land itself reverts to the State. If the section had stopped there, it would have been said without argument that the section incorporated the principle of the maxim *quid plantatur solo, solo cedit*. But the proviso makes a special provision with respect to leases for periods of under thirty years. It gives a separate treatment to that and enables the lessee to remove such buildings and other improvements within three months of the termination of the lease, unless the Minister elects to purchase such buildings. In other words, it is the intendment of the proviso to Section 10 of the State Lands Law applicable in the Rivers State that the maxim *quid plantatur solo, solo cedit* shall not apply to buildings and other improvements on state lands such as the instant which have been leased for periods of less than thirty years.

This is, therefore, an exception to the application of the maxim. Similarly in Benin where, by notorious custom, the rubber trees planted on the land, are regarded as not forming a part of the land (for which see *Aigbe v. Edokpolor* (1977) 2 S.C. 1, Pp.7-8). So, this section is an example of the exceptions to the application of the maxim as adumbrated by *Fatayi-Williams, J.S.C.*, as he then was, in *National Electric Power Authority v. Mudasiru Amusa & Anor.* (1976) 12 S.C 99, at p.114. It must therefore be applied as an exception to the maxim. The law enables the appellant to stay on and remove the

buildings after the lease of the land has expired.

While the appellant was authorized by statute to stay on, there is yet another right at common law which then enured to him after the expiration of the statutory period of three months, that is that of a tenant at sufferance. As a lessee whose term of lease had expired but who held over and remained in possession without the landlord's assent or dissent (for which see: *Remon v. City of London Real Property Limited* (1921) 1 K.B 49,50), he became a tenant at sufferance, having come upon the land lawfully in the first place. This is categorized as a leasehold, even though there was no longer a grant: see *Megarry & Wade The Law of Real Property* (4th Edn) Pp. 44-45; 640. See also vol. 23 *Hals Laws of England* (3rd Edn) p.509.

It arises not by grant but by operation of law: see *Meye v. Electric Transmission Limited* (1942) Ch. 290. Once that situation arose in this case, if the lessee holding over paid rents and the landlord accepted it, it would be deemed to be a renewal of the lease on the same terms and conditions as the original lease. As the appellant paid no rents, he remained a tenant at sufferance, liable for use and occupation of the land but who could rely upon his possession of the land against the whole world until the lessor recovers possession from him in the manner authorized by law.

It is from a view of all the above applicable English statutes of general application and principles of the common law, that I shall now construe sections 10 and 28 of the State Lands Law (Cap. 122) Laws of Eastern Nigeria, 1963 applicable in the Rivers State. For the reason I have given, I cannot construe the substantive part of section 10 as meaning that the appellant's building on the land which, on the application of the maxim *quid plantatur solo, solo cedit*, became a part of the land, passed to the State without compensation for the simple reason that it would run contrary to the grant of section 31 of the 1963 Constitution. Without doubt, the proviso to section 10 gives the lessee whose lease has expired a statutory right to remain in possession. Although it was to be for a period of three months there is no provision as to what would happen thereafter and, furthermore, at common law he has also become a tenant at sufferance and so remains in possession. It is obviously because of this situation that section 28 has made provision for the manner whereby the lessor

could recover possession from him, that is by entering a suit in the High Court to recover possession. It is trite that once the law has prescribed a particular method of exercising a statutory power, any other method of exercise of it is excluded: so there can be no question of the lessor in this case recovering possession by resorting to a right of re-entry or any other type of self-help.

I agree with Chief Umeadi that although section 28(1) of the Law states that the lessor “may enter a suit”, “may” should be construed as mandatory i.e. as meaning “shall” or “must”. I believe that it is now the invariable practice of the courts to interpret “may” as mandatory whenever it is used to impose a duty upon a public functionary the benefit of which enures to a private citizen. See on this Chief J.O. Edewor v. Chief M. Uwegba & Ors. (1987) 1 NWLR (Pt.50) 313, at p.339; Mokelu v. Federal Commissioner of Works & Housing (1976) 1 All NLR (Pt.1) 276 at p.282; Aluminium Manufacturing Co. (Nig) Ltd. v. Nigerian Ports Authority (1987) 1 NWLR (Pt.51) 475, at p.487. Kotoye v. Central Bank of Nigeria & Ors. (1989) 1 NWLR (Pt.98) 419. It would be wrong, therefore, to hold that the duty to apply to court for possession was merely permissive or directory as the respondents have urged. Indeed in view of the state of the general law as to the position and right of a former tenant or lessee who holds over, such an interpretation will lead to absurdity and inconsistency as well as to injustice. Possession it has been said is nine points of the law. Our courts have in numerous decisions moved in to protect possession see, for example: Obikoya & Sons Ltd v. Governor of Lagos State (1987) 1 NWLR (Pt.50) 385, (1987) 1 NWLR (Pt.50) 413; A.-G. of Bendel State & Ors, v. P.L.A. Aideyan (1989) 4

NWLR (Pt.118) 646. The argument which has been inflicted upon us on behalf of the respondents in this case will, if accepted, be a reversal of this trend. Having said that much, I must say that I find it difficult to agree with the Court of Appeal that the procedure prescribed by s.28 the State Lands Law of Eastern Nigeria is discretionary. Clearly it appears to me that section 10, shorn of its unconstitutional element, is complemented by section 28 which sets out the procedure for recovering possession from the lessee who holds over after his term has expired. There can be no question of the house or the land or both automatically reverting to the 2nd respondent simply because the lease had expired and not been renewed.

Next, I shall consider the effect of issuance of Exh. C by the 2nd respondent’s Abandoned Property Authority. The relevant facts are not in dispute. By a

deed of lease, Exh. B. dated 17/7/64 (but effective from 1/1/65) the 2nd respondent granted to the appellant a 7-year lease of the plot in dispute. The appellant, through his attorney, developed the plot. During the Civil War, the 2nd respondent’s Abandoned Property Authority managed the property as an abandoned property. The lease expired on the 31st of December, 1971.

By a letter, Exh. C, dated 19th February, 1973, the 2nd respondent’s Abandoned Property Authority released the property in dispute to the appellant who installed rent - paying tenants in the premises. He paid rates thereon to the appropriate 2nd respondent’s authorities but paid no rents. While the appellant was in possession through his tenants the 2nd respondent on the 16th of August, 1983, purported to sell the property in dispute to the 1st respondent. The courts below held that Exh. C which was issued after the lease had expired was a useless document because, as the respondents contend, on the expiration of the lease, there was nothing to release. I have already held that the appellant still had lawful possession of the property. The question is whether the court below was right to have held that Exh. C was a useless document devoid of any force and effect. There is no way the appellant could have been allowed to remain in his house without being allowed continuous possession of the land in dispute. They were both comprised in the deed of grant.

While there can be no dispute that the deed of lease, Exh. B, expired on the 31st of December, 1971, and had not been renewed, serious issues have been raised as to the effect of Exh. C dated 19th February, 1973, whereby the Abandoned Property Authority stated that they had released the property in dispute to the appellant. Learned counsel for the appellant pointed out that the 2nd respondent assumed the authority to manage the property in dispute by reason of Section 18 of the Abandoned Property Edict of the 2nd respondents. They later released it to the appellant as such. They could, therefore, not be heard to say that it was not an abandoned property. They contended that the provision in the proviso to Section 10 of the State Lands Law was sufficient warrant for him to remain in possession after the expiry of the lease. In my opinion, the contention of the respondents has completely ignored one important class of tenants at common law, that is tenants by estoppel. By operation of the rule of estoppel a man is not allowed to blow hot and cold, to affirm at one time and deny at the other, or, as it is said, to approbate and reprobate. He cannot be allowed to mislead another person into believing in a state of affairs and then turning round to say to that person’s disadvantage that the state of affairs which he had represented does not exist at all or as represented by him: See *Cane v. Mills* (1862) 7 H. & N. 913, at pp. 927-928. Dealing with the broad principle of estoppel in *Joe Iga & Ors v. Ezekiel Amakiri & Ors.* (1976) 11 S.C 1, this court stated at pp.12-13:

“If a man by his words or conduct willfully endeavours to cause another to believe in a certain state of things which the first knows to be false and if the second believes in such state of things and acts upon the belief, he who knowingly made the false statement is estopped from averring afterwards that such a state of things does
 5 not exist at the time; again, if a man either in express terms or by conduct, makes representation to another of the existence of a state of facts which he intends to be acted upon in a certain way, in the belief of the existence of such a state of facts, to the damage of him who so believes and acts, the first is estopped from denying the existence
 10 of such a state of facts. Thirdly, if a man whatever his real meaning may be, so conducts himself that a reasonable man would take his conduct to mean a certain representation of facts and that it was a true representation, and that the latter was intended to act upon it in a particular way, and he with such belief, does act in that way to his damage, the first is estopped from denying the facts as represented.”

15 February, 1973, whereby the Abandoned Property Authority stated that they had released the property in dispute to the appellant. learned counsel for the appellant, pointed out that the 2nd respondent assumed the authority to manage the property in dispute by reason of section 18 of the Abandoned Property Edict of the 2nd respondents. They later released it to the appellant as such. They could, therefore, not be heard to say that
 20 it was not an abandoned property. They contended that the provision in the proviso to section 10 of the State Land, Law was sufficient warrant for him to remain in possession after the expiry of the lease.

Clearly by exhibit C, the 2nd respondent had represented
 25 to the appellant that it, as lessor of a subsisting lease, had released to him the property in dispute which had been held by it as an abandoned property. It cannot be heard afterwards to say that the lease had in fact expired before the issuance of Exh. C. It will be held by its representation and by estoppel by matter in pais. Now tenancy by estoppel is a well known principle of common law and
 30 equity. Under this principle, a landlord cannot question the validity of his own grant, nor can the tenant question it while he is enjoying possession of the land: see - Webb v. Austin (1844) 7 Man. & G 70 1; Cuthbertson v. Irving (1860) 6 H & N. 135. In the instant case, 2nd respondent cannot be allowed to say that it had released the

property in dispute to the appellant by Exh. C and then turn round to impugn the release on the ground that the lease thereof had in fact expired before the release. It would only have been allowed to repudiate the release if it was an act it could not have performed at all because it would be ultra vires: see Rhyl UD.C. v. Rhyl Amusements Ltd (1959) 1
 5 WLR465. On this ground alone, the court below should have found that the appellants possession continued. The court below was, therefore, in error to have held that Exh. C was a useless document.

I should now consider the position of the 1st respondent. His case is that the property in dispute had been purchased by him as per a deed of conveyance, Exh. M, dated the 16th day of August, 1983, which
 10 purports to have sold the property in dispute for a fee simple absolute in possession, free from all encumbrances with effect from the 16th day of August, 1983. To reinforce his position, he also referred to a letter from the Secretary to the Military Government, Exh. O, dated the 5th day of September, 1983, in which he declared that the property in dispute had
 15 ceased to be state land. Chief Umeadi has submitted that there is no power to sell state land as a fee simple. Relying on Nwangwu v. Nzekwu (1957) SCNLR 61, at p.63, learned counsel for the 2nd respondent submitted that the use of the words “fee simple” should be treated as immaterial. The important thing is that the 2nd respondents were entitled to deal with the property.

In my view the point raised by Chief Umeadi goes beyond a
 20 question of mere technicality. It involves a question of substance and public policy of the state as enshrined in its laws as well as the position of a person in possession of property in case of a sale by a reversioner. Dealing with the last point first, it appears to me to be the law that a reversioner, such as the 2nd respondent, cannot sell his reversionary inter-
 25 est, that is his particular estate, as fee simple while another person is in possession of the land. He must first either first recover possession from that other person in possession or sell his reversionary interest subject to that person’s possession. For what the reversioner has in such a case is the freehold reversion subject to the possession in another person and not a fee simple absolute free from incumbrances. It must be noted that
 30 interests in land, whether legal or equitable, are carved out as it were on a plane of time. Any holder of a particular interest or estate who attempts to sell more than the quantum of his estate will be caught by the maxim: nemo dat quod non habet (no one can give or sell what he has not). I am satisfied that the 2nd respondent could not validly grant to the 1st

respondent a fee simple when it was not in possession.

But Chief Umeadi has raised a more fundamental point. He has contended that the 2nd respondents could not, even if they were in possession, sell state land. Their powers under the law are limited to leasing them to diverse persons, and accepting forfeitures and surrenders of leases. There appears to be substance in this contention. State lands in Nigeria invariably originate from compulsory acquisitions of such lands from individuals or communities for public purposes. Such lands are held in trust by the acquiring government for use for the public purpose for which the land was acquired and in accordance with the public policy of the state as enshrined in the laws of the state. Now it has been conceded that there is no law which authorizes the reconversion of such lands into private lands nor any to support the selling of such lands as fee simple absolute in possession such as the respondents tried to do by Exh. M. One of the established principles for construction of statutes conferring powers, particularly by those which may have the effect of expropriating a citizen of his proprietary rights is that the courts will confine those exercising the power to a strict observance of the letters of the statute: see on this *East Riding Country Council v. Park Estate (Bridlington) Ltd.* (1957) A C 223; also *Pocklington v. Melksham U.D.C.* (1964) 2 Q.B. 673, at p.681. See also *Birmingham & Midland Motor Omnibus Company Limited v. Worcestershire County Council* (1967) 1 WLR 409. C.A.

It is also a necessary implication of the rule of law that excepting where the law gives a discretion to a public functionary he can only act in accordance with law, as to do otherwise may enthrone arbitrariness. I am of the clear view that the 2nd respondents required express authorization from a statute before they could have sold any state land as fee simple absolute in possession to the 1st respondent. As there was no such authorization, the purported sale by Exh. M is invalid.

It is left for me to deal with the second respondent's contention that by execution of the power of attorney, Exh. "A" without their consent the plaintiff/appellant had committed a breach of the covenant not to part with the possession of the demised property without the lessor's consent. To begin with, it appears to me that this thrust of the argument lost sight of the time nature of a power of attorney. A power of attorney is a document, usually but not always

necessarily under seal, whereby a person seised of an estate in land authorizes another person (the donee) who is called his attorney to do in the stead of the donor anything which the donor can do, lawfully usually clearly spelt out in the power of attorney. Such acts may extend from receiving and suing for rates and rents from, to giving seisin to, third parties. It may be issued for valuable consideration or may be coupled with interest, in either case it is usually made to be irrevocable either absolutely or for a limited period (see ss. 8 and 9 of the Conveyancing Act of 1881 which is still applicable in the Rivers State under Section 15 of the High Court Law). A power of attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and so is not an instrument which confers, transfers limits, charges or alienates any title to the donee: rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. So even if it authorizes the donee to do any of these acts to any person including himself, the mere issuance of such a power is not per se an alienation or parting with possession. So far, it is categorized as a document of delegation: it is only after, by virtue of the power of attorney, the donee leases or conveys the property, the subject of the power, to any person including himself then there is an alienation. There is no evidence in this case that that stage had been reached. Until that stage is reached and as long as the donee acts within the scope of the power of attorney, he incurs no personal liability. Any liability is that of the donor. The 2nd respondent's argument is also misplaced in another respect: It assumes that upon breach of a covenant in a lease, the forfeiture of the lease is automatic. It is, however, trite that a breach of a covenant is merely a ground for forfeiture. The lessee may, however, apply for relief.

The conclusion I feel bound to reach is that as on the 16th of August, 1983, the date when the 2nd respondent purported to have sold the land in dispute to the 1st respondent as fee simple absolute in possession, the appellant was in possession of the land in dispute as a lessee whose lease had expired but who was holding over, the purported sale to the 1st respondent was invalid. So, the appellant is still in possession even though his lease which expired on the 31st of January, 1971, has not been renewed. The learned trial Judge

as well as the court below was right to have held that the appellant was not entitled to a declaration that the appellant was a lessee of the property in dispute. But clearly, as he was at all material times in possession, the entry upon the land by the respondents to harass his tenants on the land in dispute was in trespass. So I allow the appeal and set aside the judgment of the Court of Appeal, including the order as to costs. I restore the judgment of the High Court. For the avoidance of doubt:

(i) As there is no subsisting lease of the property in dispute the claim for a declaration that he is the lessee fails and is dismissed.

(ii) I hereby declare that the sale of the property by the Rivers State Government to the 1st defendant is null and void and of no effect.

(iii) I award N100.00 as damages for trespass against the defendants jointly and severally.

(iv) I also make an order of injunction against the defendants, their agents, privies and servants from any further acts of trespass on the premises known as No.2 Ekpeye (Umuoji) Street, Port Harcourt. The appellant shall have the cost of this appeal which I assess at N1,000.00 against each respondent in this court and N500.00 against each respondent in the Court of Appeal.

KAWU JSC

I have had the advantage of reading, in draft, the lead judgment of my learned brother, Nnaemeka-Agu, JSC which has just been delivered. I am in complete agreement with him that this appeal ought to be allowed, and for all the reasons contained in the lead Judgment. I will also allow the appeal. I abide by all the consequential orders made in the lead judgment, including the orders as to costs.

WALI JSC

In the Port Harcourt High Court, Rivers State, the plaintiff sued the 1st and 2nd defendants jointly and severally asking for the following reliefs.

1. A declaration that the plaintiff is the Lessee of the Leasehold property situate at No.2, Ekpeye (Umuoji) Street, Diobu, Port Harcourt (Plot I, Block 261, Wobo Layout.)

2. A declaration that the sale of the said property by the Rivers State Government to the 1st defendant is null and void and of no effect whatsoever.

3. N2,000.00 general damages for Trespass.

4. A perpetual Injunction restraining the defendants, their agents and/ or servants from further acts of trespass to the premises”

Pleadings were filed and exchanged. The case proceeded, to trial at the end of which the learned trial Judge dismissed the claim by the plaintiff for a declaration that he is the lessee of the leasehold property situate at NO.2 Umuoji [now Ekpeye] Street, Diobu Port Harcourt [Plot I, Block 261 Wobo Layout]; but he granted him the relief claimed in items 2, 3 and 4 to wit a declaration that the sale of the said property by the Rivers State Government to the 1st defendant is null and void and of no effect: N100.00 damages against the 1st and 2nd defendants jointly and severally for trespass on the property in dispute and a perpetual injunction against the defendants, their agents and/or servants from further trespass and limited to such trespass only.

Aggrieved by the trial court’s decision, both the 1st as well as the 2nd defendant appealed separately against it to the Courts of Appeal, Port Harcourt Division.

In a unanimous judgment of the Court of Appeal delivered by Olatawura, J.C.A. (as he then was), he allowed the appeal, set aside the judgment of Dappa. J. and dismissed the plaintiff’s claim.

The plaintiff, who will henceforth be referred to as the appellant, has now appealed to this Court.

A resume of the facts in this case has been stated by my learned brother, Nnaemeka-Agu J.S.C. in his judgment and therefore need no further repetition by me.

It is my view that the success or failure of this appeal will largely depend on the interpretation of the provisions of Sections 10 and 28 of the State Lands Law of Eastern Nigeria applicable to the Rivers State. Section 10 of the State Lands Law (Cap 122) Laws of Eastern Nigeria, provides as follows -

“10. In the absence of special provisions to the contrary in any lease under this Law all buildings and improvements on State lands, whether erected or made by the lessee or not, shall on the determination of the lease, pass to the State without payment of compensation:

5 Provided however, that, in the absence of any special provision to the contrary in the lease, when land is leased for a term not exceeding thirty years the lessee shall be at liberty within three months of the termination (otherwise than by forfeiture) of such cease to remove any buildings erected by him on the land leased during the currency of such lease, unless the Minister shall elect to
10 purchase such buildings. In the event of the Minister and the lessee not agreeing as to the purchase price of such buildings, the same shall be determined by arbitration. The lessee shall make good any damage done to the land by any such removal”;

While Section 28 of the same law provides thus :-

15 “28(1) When any person without right, title or licence or whose right, title or licence has expired or been forfeited or cancelled, is in occupation of State land, the Attorney-General, or the Principal Lands Officer, or some person appointed by the Attorney General, may enter a suit in the High Court to recover possession thereof.

20 (2) If on the hearing of such suit the defendant does not appear, or appears but fails to establish an absolute right or title to the possession of the land, the court shall order that the possession of the land sought to be recovered shall be given by the defendant to the plaintiff, either forthwith or on or before such day as the court shall think fit to name, and shall issue such process as may be necessary
25 for carrying such order into effect.”

The first paragraph of Section 10 provides that where a lease granted under the said Law expires, then all buildings and improvements on such shall pass to the State without payment of compensation. This section does not stop there but goes, on to say
30 that where the lease granted is for a term not exceeding thirty years, then

(a) the lessee shall be at liberty within three months of the expiry to remove any building erected by him on the land;

(b) but where the Minister (Commissioner) elects to purchase such

building, both the Minister and the lessee shall agree on a price to be paid as compensation.

(c) If the Minister and the lessee are unable to agree on the amount of compensation to be paid, the matter shall be determined by arbitration.

It is a notorious fact that there was a Civil War in Nigeria⁵ affecting mostly the then Eastern Nigeria. The present Rivers State was at the time part of Eastern Nigeria. As a result of this Civil War, there was movement of people from one part of the country to which they were not indigene. This resulted in setting up committees to look after the properties, mostly landed properties, left behind unceremoniously by those fleeing from non-indigenous areas they were living,
10 to their indigenous areas. These committees were subsequently given statutory backing and recognition.

In the present case, it is not in dispute that the lease granted to the appellant was for seven years, a period not exceeding thirty years as provided in Section 10. Section 10 provides that where the
15 lease expires (as in this case) the lessee has an option to remove, within three months after the expiry his building and make good any damage that might have been done to the land as a result thereof. The Minister in charge of land matters is also given the option to purchase the building put on the land, and where the two cannot
20 agree on a price, arbitration to resolve that issue will be resorted to.

The Section 28(1) of the State Lands Law goes on to provide for a situation when a lessee remains in occupation of the land after the termination of his lease either by expiry, forfeiture or cancellation of the same. In fact, the opening of the section does not limit the procedure provided therein for the recovery of the occupied land
25 to a licensee or lessee only, it also makes it applicable to any other person who is occupying the land “without right, title or licence”.

The issue as to whether provisions in a statute are mandatory or directory has on several occasions come up for consideration in our courts. See particularly *Ifezue v. Mbadugba & Anor* (1984) 1
30 SCNLR 427, (1984) SC. 79. But on all these occasions no general rule was laid down and that in every case the object of the statute must be looked at. We must look first at the particular section within the statute that is to be interpreted. If the meaning is not clear, then we must look at other related provisions within the statute, or where

necessary, the statute as a whole, to see exactly what it means. See *R. v. Bishop of Oxford* (1879) QBD 245.

Although the word “shall” has been used in the first part of section 10, the proviso to that section provides options to the appellant as well as the 2nd respondent. If any of these options are
5 not exercised, then section 28 goes on to provide a procedure for the recovery of the land. And reading the two sections side by side, although the word “shall” has been used in the first part of section 10, both, the proviso to that section and section 28(1) leave no one in doubt that a directory meaning is meant to be ascribed to that
10 “shall” in that section.

It is now trite that it does not always necessarily follow that where the word “shall” is used, it is limited to that meaning only. It can be interpreted as “may” where the context admits that. Where there are two choices of interpretation. The court should always avoid the interpretation that would reduce the legislation to futility
15 and adopt the one that would bring about the effective result. See *Nokes v. Doncaster Amalgamated Collieries Ltd* (1940) AC 1014. The consequences that may result from holding a provision in a statute to be mandatory should be always taken into consideration. See *Caldow v. Pixell* (1877) 2 C.P.B. 562.

After the expiry of the lease, the appellant was put back into possession by the Abandoned Property Committee of the Rivers State, a statutory body set up by the then Military Governor. It was clear from the evidence that they were acting for the government of Rivers State and as such its agent. Whether or not they had authority to do what they did, is immaterial when the issue of trespass by the 1st and
20 2nd respondents comes to be considered, particularly when the mind is adverted to section 28(1) of the Law. In the circumstances of this case and in the context of the provisions of sections 10 and 28(1) of the State Lands Law. I shall ascribe the directory meaning to the word “shall” in section 10 and conclude that without following ‘the
25 proviso to section 10 and section 28(1), the 2nd respondent cannot take possession of the land in dispute and the building thereon, Section 10 does not, without more give the 2nd respondent power to automatically take over the land and the buildings thereon much less to assign it to 1st respondent. If that is meant to be so by the legislature, it would have neither made a provision of removal of
30

the buildings within three months after the expiry nor a provision for recovery where the lessee remains in occupation after the expiry of the lease.

For these reasons and the other reasons stated in the judgment of my learned brother Nnaemeka-Agu, J.S.C. I shall also allow the appeal, set aside the judgment of the Court of Appeal and restore that
5 of the High Court with an order of injunction against the 1st and 2nd respondents or their agents, not to interfere with appellant’s possession as long as the correct procedure for the recovery of possession laid down by the Law is not followed.

The appellant is awarded N1000.00 costs in this appeal and N500.00 in the court below.

OGWUEGBU JSC

I have read in draft the judgment of my learned brother, Nnaemeka-Agu, JSC just delivered. I agree with him that the appeal be allowed.

I accordingly allow the same. I also abide by all the consequential orders made by him including the order as to costs.