

SUPREME COURT OF NIGERIA
22ND APRIL, 1994, SC 228/1990
CORAM:- S. M. A. BELGORE, A. B. WALI,
U. MOHAMMED, S. U. ONU, A. I. IGUH, JJSC

GABRIEL ADEWOLE TEWOGBADE APPELLANT
AND
MRS. V. A. OBADINA RESPONDENT

APPEAL - Forgery allegation in civil matters - Land dispute - Allegation by the defendant that a conveyance was forged - Concurrent finding of the two lower courts that the forgery was not established - Upheld by the Supreme Court.

EVIDENCE - Admissibility - Unregistered land conveyance - Inadmissible for nonregistration - Whether admissible as acknowledgment of the payment of money.

LAND LAW - Registration of instruments - Competing registered conveyances - The first to be registered - Is superior and has priority in terms of validity of purchase.

LAND LAW - Registered conveyance - Certified true copy thereof - Whether admissible without any other proof under the relevant law.

LAND LAW - Unregistered land instrument - Inadmissible for non-registration - Is admissible as a purchase receipt -By virtue of which equitable interest is acquired - Which said interest can be converted into a legal estate by specific performance.

LAND LAW - Title - Plaintiff's payment of purchase price coupled with going into possession - Where plaintiff's title is rooted in a conveyance that is registered prior to the defendant's registered conveyance - Whether plaintiff's title is superior to that of the defendant.

SUPREME COURT - Overruling previous decision - Invitation to Supreme Court to overrule its previous decision in Jules v. Ajani - Where no satisfactory reason has been shown - Whether the Court will depart from its said previous decision.

MAXIMS - Presumption of' regularity- Execution of land conveyance by illiterate vendors before a magistrate as required by law - Whether to be presumed rightly and regularly done - In fine with the maxim omnia praesumuntur rite esse acta.

FACTS

The Plaintiff/Respondent filed an action against the Defendant/Appellant before the High Court Ibadan, seeking a declaration that she is entitled to Statutory right of Occupancy in respect of the land in dispute. She also claimed N20,000.00 as special and general damages for trespass and sought a perpetual injunction against the Defendant. The Defendant in his statement of Defence counterclaimed against the Plaintiff for N1,000.00 being damages for trespass and also sought an injunction. Both parties traced their claim to the Ikolaba family, the original owners of the land. The Plaintiff who bought and repurchased the land from three separate parties did not secure any good title from two of the sources save one source. That is, by virtue of Exhibit A, a registered conveyance duly issued by the Ikolaba family to the Plaintiffs Vendor. The conveyance executed between the Plaintiff and her vendor. Exhibit E was not registered.

The Defendant's claim was based on Exhibit O, a conveyance executed by certain representatives of the Ikolaba family which was registered 6 years after Exhibit A (root of Plaintiff's claim) was registered. The Defendant alleged that the said Exhibit A which is a certified true copy of the original tendered by a Higher Deeds Registrar in the Ministry of Works Oyo State, is a forgery. The trial court found for the plaintiff, granted two of the reliefs sought, refusing to grant damages for trespass. The Defendant appealed to the Court of Appeal whilst the plaintiff cross appealed on the issue of damages for trespass. The Court of Appeal dismissed both appeals. Being still aggrieved, the Defendant/Appellant has further appealed to the Supreme Court to determine inter alia, whether the Plaintiff established her title to the land in dispute. The appellant urged the apex court to overrule its previous decision in *Jules v. Ajam* (1980) 5-7 SC 96 which established that tendering a certified true copy of a registered conveyance is sufficient for the proof of the execution of such conveyance.

HELD (unanimously dismissing the appeal)

1. Exhibit A which was executed and registered well over six years before Exhibit O came into being is in law superior to and must enjoy definite priority terms in of validity of purchase over Exhibit O. (P. 16 L6&P25 LI 4)

2. In accordance with the maxim omnia praesumuntur rite esse acta, there is the presumption that Exhibit A which ex facie was executed by the illiterate vendors before a Magistrate as required by law, was rightly and regularly done in the absence of any evidence to the contrary. (P.17 L 25)

3. The combined effect of the relevant provisions of the Land Instrument's Registration Law is that a duly certified true copy of a conveyance such as Exhibit A, registered in accordance with that Law will be admitted in evidence under S. 31(1)& (2) thereof without any further or other proof in civil cases. (P.17 L 32)

4. No cogent or satisfactory reason has been shown to the Supreme Court why it should depart from its decision in Jules v Ajani which represent good law. (P.21 L 6)

5. The two lower courts were quite unanimous on the vital issue that the Appellant failed to establish the forgery of Exhibit A. Their decisions on this point being totally in accordance with the facts of the case, and the law applicable thereto will not be faulted (P.22 L 26)

6. Exhibit E which ex facie qualifies as an instrument, being unregistered is not admissible in evidence to prove or establish title. Nonetheless, it is admissible as a purchase receipt or acknowledgment of the payment of money which coupled with possession raises the presumption that the purchaser entered into possession of the property under a contract of sale from which arose an equitable interest capable of being converted into a legal estate by specific performance. (P.25 L 26)

7. Upon the payment of N10,000.00 and issue of Exhibit E which is a receipt acknowledging the payment in respect of the land in dispute, the Respondent duly went into possession of the land And there is no doubt that the Respondent's title, which is firmly rooted in Exhibit A is patently superior to the Appellant's purported title, Exhibit O (P 25 L 37)

NOTABLE POINTS OF INTEREST

IGUH JSC

1. Power of attorney - Execution of document by donees of expired power - Effects

At all event, the donees of the power of attorney, Exhibit B, purport-

edly executed the conveyance, Exhibit C, after Exhibit B had expired and was no longer in force or operational. Under the circumstances, the respondent derived no title to the land in dispute from P.W.7 through Exhibits C or G. (P.15 L13)

5 *2. Tracing of title to same grantor - Implications*

Where two contesting parties trace their title in respect of the same piece of land to the same grantor, the applicable principle of law has always been that the latter in time of the two parties to obtain the grant cannot maintain an action against the party who first obtained
 10 a valid grant of the land from such a common grantor. The reason is obvious as a grantor having successfully divested himself of his title in respect of the disputed piece or parcel of land by the first grant would have nothing left to convey to a subsequent purchaser under the elementary principle of *nemo dat quod non habet* as no one may
 15 convey what no longer belongs to him. (P. 15 L 21)

3. Competing registered conveyances - Determination of priority

The law is well settled that where there exist two competing conveyances which have been duly registered, each takes effect as against
 20 the other from the date of registration so that the one executed earlier loses its priority if it was registered later in point of time.(P. 16 L 1)

4. Advancing a defence that conveyance is forged - Burden of proof

Party who claims that the original or, indeed, a certified true copy of
 25 such an original instrument is a forgery is not disqualified or estopped from advancing such a defence Such claimant in order to dislodge the presumption of regularity provided under Section 31 (2) of the Land Instruments Registration Law must be prepared to establish such forgery without any shadow of doubt as required by law.
 30 (P. 18 L7)

5. Whether there is conflict between s. 99 Evidence Act and as. 18 & 31 Land Instruments Registration Law

The provision of Section 99 of the Evidence Act does not override
 35 the provisions of the Land Instruments Registration Law. The provisions of both laws appear complementary' in that whereas Section 99 of the Evidence Act deals with documentary evidence generally, the Land Instruments Registration Law deals specifically with evidence which governs instruments as defined by that law. (P. 18 L 19)

6. *Stare decisis - The proposition in Jules v. Ajani.*

"I think it right to postulate that *Jules v. Ajani* is clear authority for the proposition that where a certified true copy of a registered deed of conveyance is properly received in evidence, this will be sufficient for the proof of due execution of such a conveyance pursuant to the provisions of section 31(2) of the Land Instruments Registration Law, 5 Cap. 56, Laws of Oyo State. It only remains for me to add that in the face of these string of decided cases on the same proposition of law, this court on the principle of *Stare decisis* is bound to adhere loyally to this principle of law enunciated in these decisions unless, of course, the court is clearly satisfied that the said principle is wrong" 10 (P. 18L39&P. 19L28)

7. *Considerations under which the Supreme Court will depart from it previous decision*

The underlining consideration of departing from a previous decision 15 by the Supreme Court are, inter alia, that the decision is impeding the proper development of the law or has led to results which are unjust or undesirable or which are contrary to public policy. And if such previous decision is inconsistent with the Constitution or is erroneous on point of law or that it was given per incuriam or that it is 20 occasioning miscarriage of justice or perpetrating injustice. (P. 20 L 1)

8. *Allegation of crime in civil proceedings - Burden or proof*

"Where, therefore, the commission of a crime is alleged in any proceedings, civil or criminal, it must be proved beyond reasonable doubt 25 and the onus of such proof rests on him who alleges the commission of such a crime. It seems to me that once Exhibit A was produced and tendered in evidence by the respondent, the onus immediately shifted on the appellant, then defendant before the trial court, to prove or establish beyond reasonable doubt, the forgery he alleged". 30 (P.21 L 28 & P. 22 L 1)

ONU JSC

9. *Allegation of forgery - Primary burden of proof is on defendant*

The law is clear and this court has stated times without number that 35 where forgery of a document, as in the instant case, is alleged there is no initial burden on the plaintiff to prove due execution but the primary burden is on the defendant who alleged forgery to prove the forgery alleged by him.(P. 31 L26)

10. Overruling previous decision - Duty of Court

“The effect of this Court overruling its decision in Jules v. Ajani (supra) is, in my respectful view, to render the provisions of the law useless and that is not the function of any court of law. The duty of any court of law is the interpretation of statutes and application of them to the case being tried” (P. 34 L 10)

REPRESENTATION:

Appellant absent and unrepresented.

J.O. A Ajakaiye Esq. with Dr. A.D. Obadina for the Respondent.

CASES REFERRED TO

- Jules v. Ajani (1980) 5-7 S.C. 96
- Cardoso v. Daniel (1966) 1 All N.L.R. 25
- Cardoso v. Daniel (1986) 2 S.C. 491
- 15 Boulos v. Odunai (1958) W.R.N.L.R. 169
- Amankra v. Zankley (1963) I All N.L.R. 304
- I.R.P. Nig. Ltd. v. Oriawe (1992) N.W.L.R. (Pt. 308) 637
- Odubeko v. Victor Fowler (1963) 1 N.W.L.R. (Pt. 308) 637
- Adelaja v. Fanoiki (1990) 3 S.C.N.J. 131 at 142
- 20 Oduye v. Nigeian Airways Ltd. (1987) 2 N.W.L.R. (Part 55) 126 at 129
- Egbe v. Yusu (1992) 6 N.W.L.R. (Part 245) 1 at 15
- Odi v. Osafire (1985) 1 N.W.L.R. (Part 1) 17 at 34
- Okwuarume v. Obabokor (1966) N.W.L.R. 47
- Ikokuwu v. Enoch Oli (1962) 1 All N.L.R. 194
- 25 Nwobodo v. Onoh (1984) 1 S.C.N.L.R. 1
- Ogunbambi v. Abowab (1951) 13 W.A.C.A. 222 at 224
- Lamidi Fakoya v. St. Pauls Church, Shagamu (1966) 1 All N.L.R. 74
- Sanyaolu v. Coker (1983) 3 S.C. 724
- Ajasin v. Omoboriowo (1984) 1 S.C.N.L.R. 108 at 143
- 30 Mogor and St. Mellons R.D.C. v. New Port Corporation (1952) A.C. 189, 19-191
- Chief Williams v. Daily Times of Nigeria Ltd (1990) 1 NWLR (Part 124) 1
- Federal Civil Service Commission v. Laoye (1989) 2 NWLR (Part 35 106) 665 at 701-702

STATUTES REFERRED TO

Land Instrument Registration Law Cap 56 Vol. 111, Laws of Oyo State of Nigeria 1978 ss. 31, 18, 27, 13, 29, 16, 30,

Evidence Act ss. 99, 96, 104, 108, 100, 111, 113, 122, 149, 137(2), 140, 148(c)

Land Instruments Registration Law of the former Western Region of Nigeria 1959 ss. 6, 7, 8, 9

Property and Conveyancing Law of Oyo State Cap. 99 s. 67

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LEAD JUDGMENT BY IGUH JSC

By a writ of summons filed in the Ibadan Judicial Division of the High Court of Justice, Oyo State, the plaintiff, who is now respondent, instituted an action against the defendant, now appellant, claiming as follows:-

10

“(a) Declaration that the plaintiff is entitled to Statutory Right of Occupancy to all that piece and parcel of land known as Plots 1 and 2, Alafia Layout, Ikolaba village, Ibadan, particularly shown on Plan No. MAY 95AD/76 dated 9th November, 1976, made by M.A. Laoye Esq., Licensed Surveyor, thereon edged red and all the right of way and easements attached thereto: 15

(b) N20,000.00 (TWENTY THOUSAND NAIRA) general and special damages for trespass and for the destruction of the wall fence made round the Plots of land by the plaintiff and also all other materials deposited thereon. 20

(c) Perpetual Injunction restraining the Defendant, his agents, servants, workers, privies and all persons whatsoever claiming through him.”

Pleadings were ordered in the suit and were duly settled, filed and exchanged. The defendant, in his Statement of Defence counter-claimed against the plaintiff for the following reliefs:- 25

“(a) N1,000.00 damages for trespass committed by the plaintiff sometime in 1980 on the parcel of land edged green which is within area edged red in plan No.AD234/81: 30

(b) Injunction restraining the plaintiff, her servants, agents et cetera from entering the land in dispute.”

The plaintiff duly filed a reply to the defendant's Statement of Defence and counter-claim. Issues were joined by the parties in their pleadings and the case proceeded to trial before Ibidapo Obe, J. sitting at the Ibadan High Court. 35

Both parties testified on their own behalf and called witnesses. At the conclusion of hearing, the learned trial Judge, after a careful review of the evidence on the 30th November, 1981, entered judgment for the plaintiff as the rightful owner of the disputed land and therefore entitled to a

certificate of occupancy in respect thereof in accordance with the provisions of the Land Use Act. An order of perpetual injunction was also issued restraining the defendant, his servants and/or agents from any further acts of trespass on the said land.

The defendant, being dissatisfied with the said judgment, lodged an appeal against the same to the Court of Appeal, Ibadan Division on the 2nd February, 1982. The plaintiff on the 10th February, 1982 also cross-appealed against that part of the judgment of the trial court which dismissed her claim for damages for trespass.

The Court of Appeal in a unanimous decision dismissed both the appeal and the cross-appeal. Aggrieved, by this decision of the Court of Appeal, the defendant has further appealed to this court on a six ground notice of appeal.

It is convenient at this stage to set out briefly the background facts to the dispute between the parties. It is common ground that the land in dispute to which both parties claim ownership was originally the property of the Ikolaba family of Ibadan. Both the plaintiff and the defendant claimed their root of title through the said Ikolaba family.

The plaintiff traced her title to the land from the Ikolaba family through a power of attorney, Exhibit 'B', which was given by the family to some of their members. It is the plaintiff's case as pleaded in paragraph 2 of her statement of claim that by virtue of the conveyance, Exhibit 'C', the Ikolaba family sold to PW.7. Alhaji Alimi Akinpelu, a large piece or parcel of their family land of which the land now in dispute "was claimed" to form a part. Following this claim on the part of Akinpelu, the plaintiff was obliged to purchase the land in dispute which comprised of two plots from him. This was by Exhibit 'G' and the consideration was N3,200.00.

It however transpired that the land conveyed to Akinpelu by Exhibit 'C' did not as a matter of fact include the land in dispute which he purportedly sold to the plaintiff. This is clearly indicated in the plaintiff's composite plan Exhibit 'D' as well as in the evidence of her witness, Williams Gascoyne who is PW.2 in this case. Akinpelu had no right therefore to deal with the said land in dispute as the same was patently outside the piece or parcel of land conveyed to him by the Ikolaba family in Exhibit C.

The plaintiff was in the process of developing the land in dispute when P.W.3 Joseph Olaoluwa Ayoola stopped her and claimed ownership of a large piece or parcel of land including the land in dispute by virtue of the power of attorney, Exhibit B, and the con-

veyance, Exhibit 'A'. Exhibit 'A' is dated the 16th September, 1968 and is duly registered. In the face of this development, the plaintiff had no option than to re-purchase the land in dispute from P.W.3. This is by Exhibit 'E' dated the 21st March, 1978 and the consideration therein in N6000.00.

Thinking that all was then well the plaintiff commenced building constructions on one of the two plots of land but was this time challenged by the Ikolaba family. Once again, the plaintiff by Exhibit 'H', settled with them by payment of N2000.00 to ratify her previous purchase of the land in dispute.

When the plaintiff settled down to the final development of the land, the defendant again surfaced and chased her with her workers out of the land by force of arms. It was this act of the defendant that precipitated this action.

It is important to stress that the grants by the Ikolaba family to Akinpelu and Ayoola, Exhibits 'A' and 'C' respectively, were based on a power of attorney. Exhibit 'B' which was irrevocable for four years from the 23rd April, 1965. By this power of attorney registered as No. 10 at page 10 in volume 832 of the Register of Deeds at Ibadan, seven persons, including the Mogaji Ikolaba, representing the four sections of Ikolaba family of Ibadan appointed Ladokun Ajao and five others their lawful attorneys to do and execute all or any of the acts and things therein set out. The first of the six acts the attorneys were authorised to do and execute was:

"To sign and execute any contracts, agreements, conveyances, transfers and leases on behalf of our family."

Exhibits 'A', 'B' and 'C' are the certified true copies of their originals and they were tendered in evidence by P.W.1, one Amos Fabunmi - a higher Deeds Registrar in the Ministry of Works, Oyo State.

The defendant, for his own part, claimed also to have derived title to the disputed from the Ikolaba family by virtue of the conveyance, Exhibit 'O' which is dated the 7th day of November, 1975. He denied that the land in dispute was at any time sold by the Ikolaba family to P.W.3, Ayoola, under or by virtue of Exhibit A. He further denied that the land in dispute was sold by the Ikolaba family to Akinpelu. He averred in paragraphs 9 and 35 of his statement of defence that the conveyances relied on by the plaintiff are forgeries. Indeed it is his case as testified to by his witness, Alhaji Lamidi Lawal, that Exhibit 'A' is also a forgery. But as I have already pointed out, the trial court after a thorough consideration of the evidence found for the plaintiff.

The defendant's appeal against this decision was dismissed by the Court of Appeal. This further appeal is against the said decision of the Court of Appeal, Ibadan Division.

The defendant's six grounds of appeal to this court, without their particulars, are as follows:-

5 *"(i) The Court of Appeal erred in law in following the decision of the Supreme Court in Jules v. Ajani (1980) 5-7 S.C. 96 to determine the question of due execution in this case. When, unlike that case, the original Deed of Conveyance involved in this case was not lost, and therefore inapplicable.*

10 *(ii) The Court of Appeal misdirected itself in law in holding that once Sections 31 (1) and 18(3) and (4) of the Land Instruments Registration Law are complied with, Exhibit "A" will by virtue of Section 31 (2) of the law be admitted in evidence without further proof or other proof of such matters as execution by the parties thereon; when:*

15 *(a) Exhibit "A" was not a conclusive proof of the due execution of the original by the parties named thereon.*

(b) By the provisions of Section 27 of the Land Instruments Registration Law, the mere fact of registration of the original Deed does not give to the document the effect that the parties named on the document were the executants of the original

20 *(c) The Supreme Court decision in Jules v. Ajani (1980) 5-7 SC.96 which the Court of Appeal followed was given per incuriam of the decision in Cardoso v. Daniel (1966) 1 All NLR 25 and ought not to be followed in this case.*

25 *(iii) The Court of Appeal erred in law and came to a wrong decision in relying on Jules v. Ajani (supra) to hold that once sections 31 (1) and 13(3) and 18(4) of the Land Instruments Registration Law are complied with Exhibit A will be admitted in evidence without further proof or other proof of such matters as execution by the parties named thereon; when*

30 *(a) the decision in Jules v. Ajani was decided per incuriam of the Supreme Court decision; in The Cardoso v. Daniel 1966 1 All NLR 35 and the unreported decision of Banobels v. Alade SC.327/1964 delivered on 11/3/66.*

35 *(b) the interpretation given to sections 18(3) and 18(4) of the Western Nigeria Land Instruments Registration Law 1959, (the provisions of which are identical with section 18(3) and 18(4) of the Oyo State Land Instruments Registration Law (1978) in Jules v. Ajani is in conflict with the provisions of section 99 of the Evidence Act, which is a Federal Law and therefore void to the extent of the conflict on proof of execution.*

(c) Compliance with sections 31(1) and 18(3) and 18(4) of the Land

Instruments Registration Law does not satisfy the provisions of sections 99 of the Evidence Act.

(iv) *The learned appellate justices erred in law in holding that the evidence of payment of purchase price of the land conveyed to the 3rd P.W. given by the 7th P.W., the agent of the 3rd P.W. was not an issue, and did not form part of the case of both parties, when, the case of the defence was that Ikolaba family did not sell land to the 3rd P.W. and the payment of purchase price of the land was in issue.*

(v) *The learned appellate justices erred in law when they held as follows:*

“But Exhibit ‘E’ is a receipt issued by P.W.3 to the plaintiff acknowledging the payment to him of the sum of N6,000.00 by the plaintiff in respect of the land in dispute. The plaintiff went into possession. Her title is firmly rested in Exhibit ‘A’ which is superior to Exhibit ‘D’. She has an equitable interest in the land in dispute and can always call on P.W.3 to convey the legal estate to her.”

(vi) *The learned appellate justices erred in law when they held that the allegation, of forgery of Exhibit A was not proved when the evidence called by the appellant in support of the allegation was of the standard required by law and the same ought to have been acted upon by the Court.”*

I shall hereinafter refer to the defendant in this judgment as the appellant and the plaintiff as the respondent.

The parties, acting pursuant to the rules of court, exchanged their briefs or argument. The four issues identified on behalf of the appellant which we are called upon to determine are as follows:-

“(i) Whether there was proof of due execution of Exhibit A.

(ii) Whether the decision of the Supreme Court in Jules v. Ajani (1980) 5-7 SC 96 on presumption of due execution ought not to be overruled in view of the earlier decision in Cardozo v. Daniel (1966) 1 All NLR 25.

(iii) Whether the plaintiff/respondent established her title to the land in dispute.

(iv) Whether there was proof that Exhibit ‘A’ was a forgery.”

The respondent for his own part set out five issues in his brief of argument as arising in this appeal for determination, namely -

“1. Whether the Court of Appeal was right in applying and relying on the decision in Jules v. Ajani (1980) 5-7 Sc. 96 to the facts of the present case.

2. Whether the Court of Appeal was right in its interpretation and application of the Provisions of Sections 18(3) & (4) and 31(1)

& (2) of the Land Instruments Registration Law of Oyo State with regard to admissibility and proof of due execution of Exhibit' A'.

3. Whether the Court of Appeal was right in holding that the payment of the purchase price of the land in dispute by 7th P.W rather than 3rd P.W. was not an issue and did not form part of the case of the parties.

5 *4. Whether the Court of Appeal was right in holding that the title of the plaintiff to the land in dispute is superior to that of the defendant.*

5. Whether the Court of Appeal was justified in holding that the allegation of forgery of Exhibit' A' made by the defendant was not proved."

A close study of the questions posed in the respondent's brief shows that
10 they are fully covered by the issues raised by the appellant in his own brief of argument. Besides, it seems to me that the questions raised in the appellant's brief are more consistent with the issues raised in his grounds of appeal. I shall therefore adopt in this judgment, the set of questions formulated in the appellant's brief for my consideration of this appeal. I shall
15 consider issues one and two together.

The first and second issues relate to grounds one, two and three of the appellant's grounds of appeal. It is the contention of learned counsel for the appellant that there was no proof of due execution of Exhibit A. It was argued that the learned trial Judge erred in law by holding that, due
20 execution of Exhibit A was established thus following the decision of this court in the case of Jules v. Ajani (1980) 5-7 Sc. 96. Learned counsel submitted that the burden of proving due execution of Exhibit' A' is on the respondent who affirms due execution. In this regard, he referred to section 99 of the Evidence Act. Exhibit' A' which is a certified true copy of the deed
25 of conveyance between the donees of the power of attorney, Exhibit 'B', and P.W.3 Joseph Olaoluwa Ayoola, was attacked on the ground that it is a forgery. Learned counsel criticised the finding of the Court of Appeal per Ogwuegbu, J.C.A. as he then was, to the effect that Exhibit' A' was properly admitted in evidence without further or other proof of such matter as
30 due execution. He argued that in the face of the evidence of D.W.6 who denied that he thumb-impressed Exhibit 'A', a case of forgery of the document was made out which should have led to the conclusion that the due execution of the document was not proved.

Learned counsel then dealt with the case of Jules v. Ajani, supra,
35 where the question of whether there was due execution of a certified true copy of a registered deed of conveyance, was considered. This court, after a careful examination of the provisions of the Land Instruments Registration Law of the former Western Region of Nigeria, 1959, held that such a copy was sufficient proof of due execution of the registered deed. He how-

ever argued that in the earlier case of *Cardoso v. Daniel* (1966) 1 All NLR. 25, this court had considered the provisions of section 29 of the Land Registration Act together with sections 96(1) (f), 96(2) (c) and 104 (1) (b) of the Evidence Act and held that it did not appear that a copy of a deed retained in the registry can be conclusive proof of the due execution of the original. It may establish that the original bore signatures or seals but not 5 who affixed them.

Continuing his submissions, learned counsel pointed out that the attention of this court was apparently not drawn to the decision in *Cardoso's* case when *Jules v. Ajani* was argued to enable the court consider whether the decision in *Cardoso's* case was good law. He conceded that an applica- 10 tion for a resolution of what he described as the conflict between *Cardoso's* case and *Ajani's* case was made to this court in the subsequent case of *Cardoso v. John Bankole Daniel* (1986) 2 SC. 491 (1986) 2 NWLR (Pt. 20). In that case, Chief F.R.A. Williams, SAN. had invited the court to overrule the decision in *Jules v. Ajani* on the ground that it was given per incuriam of the earlier decision in *Cardoso v. Daniel* (1966) 1 All NLR 25. 15 He explained that this court refused to accede to this application in view of the undisputed evidence in the case and the findings of the trial court. The learned trial Judge in that case had found that the certified true copy of the deed was admissible under Section 108 of the Evidence Act, that it was a 20 public record of a private document and that under Section 96(1) (c) and (f) of the Evidence Act, secondary evidence of the contents was admissible since the original was lost or destroyed.

He also found that there was no evidence before the court to rebut 25 any of the presumptions provided by law under Sections 100, 111, 113 122 and 149(1) of the Evidence Act. Learned counsel stressed that the Court of Appeal in the instant case relying on *Jules v. Ajani*, supra, and sections 18(1) to (5) and 31(2) of the Land Instruments Registration Law held that the mere tendering of Exhibit 'A', a certified true copy of the deed 30 of conveyance of PW.3 was conclusive proof of due execution of the original instrument. He argued that this view is contrary to the provisions of section 99 of the Evidence Act and tantamount to according a certified true copy of a deed a higher degree of evidence value superior to that attached to the original document were the latter to have been produced. 35 He finally invited this court to overrule the decision in *Jules v. Ajani* and the other decisions based thereunder which, he argued, were given per incuriam of the earlier decision in *Cardoso v. Daniel* (1966) 1 All NLR 25.

Learned counsel for the respondent, on the other hand, contended

on the issue of the due execution of Exhibit A that the learned trial Judge, reviewed the evidence and found that Exhibit 'A', having been produced from lawful custody by the Registrar of Deeds, was a genuine document. The trial Judge further held that from the pleadings and evidence adduced before the court, he was bound by the decision in Jules v. Ajani as the facts in both cases are similar. It was the view of the trial court that the burden of proof was on the appellant to establish the forgery of Exhibit 'A' which he alleged and that this burden he had failed to discharge. Learned counsel referred to sections 6,7,8 and 9 of the Land Instruments Registration Law of the former Western Region of Nigeria, 1959 and submitted that these presuppose that only executed documents shall be registered. He contended that Exhibit 'A' complied with section 8 of the said Land Instruments Registration Law before it was registered and that it was rightly admitted under section 16 and 30(2) of the said Law. He pointed out that Exhibit 'A' was executed in the presence of a Magistrate and that there is the presumption of regularity of due execution thereof under Section 149(1) of the Evidence Act. He conceded that the appellant was entitled to challenge the validity of Exhibit 'A' as he did in the present case but submitted that he failed to establish that the deed is a forgery.

Learned respondent's counsel then stressed that both the trial court and the Court of Appeal held that the appellant did not establish the forgery of Exhibit 'A'. These he contended, are concurrent findings of fact which this court may not be inclined to disturb unless special circumstances are shown or established. He argued that in the circumstances of this case, it could not be said that the respondent did not prove due execution of Exhibit 'A'.

On the issue of the invitation to this court to overrule the decision of Jules v. Ajani, learned respondent's counsel argued that the case of Cardoso v. Daniel and Another (1966) 1 All NLR. 25 which learned counsel for the appellant heavily relied on was duly considered by this court in the case of Paul Cardoso v. John Bankole Daniel and others (1986) 2 S.C. 491 (1986) 2 NWLR (Pt.20) 1. He explained that the facts in the latter case in so far as the due execution of the deed therein tendered was concerned were identical to those in the Jules v. Ajani case but that this court nevertheless declined to follow Cardoso v. Daniel (1966) 1 All NLR 25 or to overrule Jules v. Ajani, supra, on ground which I have already stated in this judgment. He emphasized that the facts in Jules v. Ajani are equally on all fours with the facts of the present case on appeal. He therefore contended that there is no reason for this court to depart from the decisions in Jules v. Ajani or Cardoso v. Daniel and others (1986) 2 SC. 491 (1986) 2 NWLR

(Pt.20) 1. He argued that the effect of overruling the decisions in Jules v. Ajani and the other cases which were based thereon is tantamount to rendering the provisions of the Land Instruments Registration Law meaningless and impotent which is not the function of any court of Law. He urged the court not to overrule the decision in Jules v. Ajani as the appellant has not satisfied the court that there is any cogent reason for doing so.

The first point that must be made is that the case before the learned trial Judge was, in the main, documentary. This involved a consideration of the validity and effects of certain vital documents of title tendered by the parties, namely Exhibits 'A', 'B', 'C', 'E', 'H' and 'O'. Exhibit '8' is admittedly an uncontroversial power of attorney in respect of which neither party to the case joined any issue. Exhibit 'C' was, rightly in my view, held by both the trial court and the court below to be ineffective and irrelevant as the area of land covered thereunder as indicated in the plan Exhibit 'D' does not cover the land in dispute in this case. At all events, the donees of the power of attorney, Exhibit '8', purportedly executed the conveyance, Exhibit 'C', after Exhibit '8' had expired and was no longer in force or operational. Under the circumstances, it seems to me clear that the respondent derived no title to the land in dispute from P.W.7 through Exhibits C or G This leaves me with Exhibits 'A', 'E', 'H' and 'O', which I will consider later on in this judgment.

Secondly, the point has already been made that both parties to this action claim their root of title to the land in dispute through a common grantor, that is to say, the Ikolaba family of Ibadan. Where two contesting parties trace their title in respect of the same piece of land to the same grantor, the applicable principle of law has always been that the latter in time of the two parties to obtain the grant cannot maintain an action against the party who first obtained a valid grant of the land from such a common grantor. The reason is obvious as a grantor having successfully divested himself of his title in respect of the disputed piece or parcel of land by the first grant would have nothing left to convey to a subsequent purchaser under the elementary principle of *nemo dat quod non habet* as no one may convey what no longer belongs to him. See *Boulos v. Odunsi* (1958) W.R.L.R. 169, *Coker v. Animashaun* (1960) L.L.R. 71, *Adams Akeya & Another v. Chief Suenu & Others* (1925) 6 NLR. 87 and *Okafor Egbuche v. Chief Idigo* 11 NLR 140.

The appellant claims his title to the land in dispute through Exhibit 'O' which is dated the 7th November, 1975 but registered on the 27th day of November, 1975. This conveyance is between the Ikolaba family as vendors and the appellant as the purchaser. The respondent for her own part claims her title to the same piece of land through Exhibits 'A', 'E' and'

H'. Exhibit' A is the deed of conveyance between the Ikolaba family as the vendors and Joseph Olaoluwa Ayoola as the purchaser. It is dated the 16th day of September 1968 but registered on the 8th day of May 1969. The law is well settled that where there exist two competing conveyances which have been duly registered. Each takes effect as against the other
 5 from the date of registration so that the one executed earlier loses its priority if it was registered later in point of time. See Rebecca Amankra v. Latey Zankley (1963) 1 All NLR. 304. In the circumstance Exhibit' A which was executed and registered well over six years before Exhibit 'O' came into being is in law superior to and must enjoy definite priority in terms of validity of purchase over Exhibit 'O'. I will now consider whether the trial court
 10 and the court below were both in error when they held that there was proof of due execution of Exhibit 'A'.

Exhibit 'A' is a certified true copy of the original deed of conveyance between the Ikolaba family and Joseph Olaoluwa Ayoola. The certification was made on the 11th day of September, 1981 by the Registrar of
 15 Deeds, Ibadan who also tendered the certified copy of the deed at the trial as Exhibit A. Being merely a certified true copy of the original deed of conveyance between the parties, Exhibit A bore no original thumb-impressions or signatures. It is the contention of learned counsel for the appellant that there must be evidence from the respondent of who signed or thumb-impressed which signature or thumb-impression on Exhibit A. He referred to
 20 Section 99 of the Evidence Act and submitted that the burden of proving due execution of Exhibit A is on the respondent who affirmed due execution.

It is true that section 99 of the Evidence Act provides as follows:-
 25 *"99. If a document is alleged to be signed or to have been written wholly or in part by any person the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting."*

But section 18 of the Land Instruments Registration Law of Oyo
 30 State, Cap 56, Volume III, Laws of Oyo State, 1978 provides as follows:-

"18(1) Any person desiring that any instrument shall be registered shall deliver the same together with a true copy thereof and the prescribed fee to the registrar at the office

(2) The registrar shall immediately after such delivery, place upon the instrument and upon the copy thereof a certificate, as in Form 8 in the First Schedule

(3) Unless the instrument is one which is declared by the Law to be void or the registration of which is prohibited by this Law, the registrar shall compare the copy of the instrument with the original and if he shall find

such a copy to be a true copy and to comply with any regulations made under this Law and for the time being in force he shall certify the same by writing thereon "certified true copy" and appending his signature thereto.

(4) *The registrar shall thereupon register the instrument by causing a copy so certified to be pasted or bound in one of the register books and by endorsing upon the original instrument a certificate as in Form C in the First Schedule, and upon such registration the year, month, day and hour specified in the certificate endorsed on the instrument in pursuance of subsection (2) shall be taken to be the year, month, day and hour at which the instrument was registered.*

(5) *The original instrument shall thereafter, upon application, be returned to the person who shall have delivered it for registration.*

Provided that if application for the return of the instrument is not made within twelve months after the date of registration the registrar may destroy the instrument" (Italics supplied)

Reference must also be made to Sections 31(1) and (2) of the Land Instruments Registration Law of Oyo State which provide as follows -

"31 (1) The registrar shall upon request give a certified copy of any entry in any such register, or of any filed document.

2. Every such certified copy shall be received in evidence, without any further or other proof in civil cases" (Italic supplied)

It seems to me indisputable that Exhibit A was issued pursuant to Section 31(1) of the Land Instruments Registration Law of Oyo State, Cap. 56, Laws of Oyo State 1978. No issue was joined at the hearing as to whether or not the original copy of the deed of conveyance in question was regularly registered as required by Section 18 of the Law. As a matter of fact, Exhibit A ex facie was executed by the illiterate vendors before a Magistrate as required by law. Thus, in accordance with the maxim omnia praesumuntur rite esse acta there is the presumption that the execution by the illiterates was rightly and regularly done in the absence of any evidence to the contrary. See *I.R.P. Nig. Ltd v. Oviawe* (1992) 5 NWLR (Pt.243) 572. In *Te Randle, Nelson & Anor. v Akofiranmi* (1962) 1 SCNLR 252 & *Jimoh Odubeko v. Victor Fowler* (1993) 7 NWLR (Pt.308) 637. I entertain no doubt that Exhibit A was lawfully, regularly and properly registered as required by law and that it is admissible in evidence pursuant to the provisions of Section 96(1)(f), 108, 110 and 111 of the Evidence Act. It is also my firm view that once the provisions of Sections 18(3) and (4) and Section 31(1) of the Land Instruments Registration Law are

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complied with, a duly certified copy of an instrument such as Exhibit
A shall be admitted in evidence without any further or other proof of
such matters such as execution by the parties in accordance with the provi-
sions of Section 31(2) of the Law. In other words, the combined effect of
Section 18(1) - (5), 31(1) and (2) of the Land Instruments Registration Law
is that a duly certified true copy of a conveyance or instrument registered in
5 accordance with Sections 18(3) and (4) will be admitted in evidence in
accordance with Section 31(1) of the Land Instruments Registration Law
and Sections 96(1)(f), 108, 110 and 111 of the Evidence Act; and pursu-
ant to the provisions of Section 31(2), "shall be received in evidence, with-
10 out any further or other proof in civil cases". This however does not mean
that a party who claims that the original or, indeed, a certified true copy of
such an original instrument is a forgery is disqualified or estopped from
advancing such a defence. All it means is that such claimant in order to
dislodge the presumption of regularity provided under Section 31(2) of the
Land Instruments Registration Law must be prepared to establish such
15 forgery without any shadow of doubt as required by law.

Learned counsel for the appellant relied heavily on the provisions
of Section 99 of the Evidence Act which I have quoted above and submit-
ted that the provisions of Sections 18 and 31 of the Land Instruments
Registration Law cannot override the provisions of the said Section 99 of
20 the Evidence Act. With respect to learned counsel, my answer to this sub-
mission is simply that the provision of Section 99 of the Evidence Act does
not override the provisions of the Land Instruments Registration Law. The
provisions of both laws appear to me complimentary in that whereas Sec-
tion 99 of the Evidence Act deals with documentary evidence generally, the
25 Land Instruments Registration Law deals specifically with evidence which
governs instruments as defined by that law.

I think it necessary to observe that the construction placed on the com-
bined reading of sections 18(1) - (5) and 31(1) and (2) above mentioned has
received judicial approval in the decision of this court in *Aiyedoun T. Jules v.*
30 *Raimi Ajani* (1980) 5-7 SC. 96. It is significant that the provisions of the said
section 99 of the Evidence Act together with section 18(1)-(5) and 30(1)-(2) of
the Land Instruments Registration Law of the former Western Region of Nigeria
which are *impari materia* with sections 18(1)-(5) and 31(1)-(2) of the Land
Instruments Registration Law of Oyo State, Cap. 56, Law of Oyo State, 1978,
35 were considered in that case per the lead judgment of *Nnamani, J.S.C.* with
which *Sowemimo and Bello, JJ.S.C.*, as they then were, together with *Eso and*
Uwais, JJ.S.C. agreed. This court held that a certified true copy of the deed in
issue in that case was admissible without any further or other proof by
virtue of the provisions of Section 29(1) and (2) of the Land Instruments

Registration Law which are in pari material with those of section 31(1) and (2) of the Land Instruments Registration Law of Oyo State. I think it right to postulate that *Jules v. Ajani* is clear authority for the proposition that where a certified true copy of a registered deed of conveyance is properly received in evidence, this will be sufficient for the proof of due execution of such a conveyance pursuant to the provisions of section 31(2) of the Land Instruments Registration Law, Cap. 56, Laws of Oyo State. 5

The case of *Jules v. Ajani* was followed by another decision of a full panel of this court in *Paul Cardoso v. John Bankole Daniel* (1986) 2 SC 491. In that case, learned counsel for the appellants Chief F.R.A. Williams, had invited the court to overrule its decision in *Jules v. Ajani* on the ground that it was given per incuriam the earlier decision of the court in *Cardoso v. Daniel* (1966) 1 All NLR 25. The full court found it unnecessary on the view of the law and facts taken in the appeal to reconsider *Jules v. Ajani* in the light of *Cardoso v. Daniel* (1966) 1 All NLR 25. The court, however, followed the decision in *Jules v. Ajani* as the facts of the two cases are admittedly identical. I may also mention that the facts in both cases are similarly identical with the facts of the present case on appeal. 10 15

The decision in *Jules v. Ajani* and *Cardoso v. Daniel* (1986) 2, S.C. 491 (1986) 2 NWLR (Pt.20) 1, have been applied and followed by this court in the recent cases of *Adelaji v. Fanoiki and Another* (1990) 3 SCNJ 131 at 142 (1990) 2 NWLR (Pt.131) 137, *Abiodun Amuroti v. Madam Agbeke* (1991) 6 SCNJ 54 at 63-64 (1991) 5 NWLR (Pt.189) 1 S.C. and *Jimoh Odubeko v. Victor Fowler and Another* (1993) 7 NWLR (Pt.308) 637. Thus it may now be taken as settled law that in the absence of any proof to the contrary, a duly certified true copy of an instrument of conveyance properly registered in accordance with Sections 18(3) and (4) of the Land Instruments Registration Law will be admissible in evidence in accordance with the provisions of section 31(1) of the same Law and sections 96(1) (f), 108, 110 and 111 of the Evidence Act, and pursuant to the provisions of section 31(2) of the Land Instruments Registration Law as aforesaid shall be received in evidence without any further or other proof of such matters as due execution by the parties. It only remains for me to add that in the face of these string of decided cases on the same proposition of law, this court on the principle of *stare decisis* is bound to adhere loyally to this principle of law enunciated in these decisions unless, of course, the court is clearly satisfied that the said principle is wrong. See *Oduye v. Nigerian Airways Ltd.* (1987) 2 NWLR (Pt.55) 126 at 129. I will now deal with the question of whether the decision of this court in *Jules v. Ajani* on the presumption of due execution ought not to be overruled in view of the earlier decision in *Cardoso v. Daniel* (1966) 1 All NLR. 25 as urged by learned counsel for the appellant. 20 25 30 35

Although it would do so with the greatest hesitation, this court has

ample jurisdiction and power to depart from or over-rule its previous decision. The underlining considerations for departing from a previous decision by the Supreme Court are, inter alia, that the decision is impeding the proper development of the law or has led to results which are unjust or undesirable or which are contrary to public policy. See *Egbe v. Yusuf* (1992) 5 6 NWLR (Pt.245) at 15 and *Akinsanra v. U.B.A. Ltd.* (1986) 4 NWLR (Pt.35) 237. This court may also depart from its previous decision if such previous decision is inconsistent with the Constitution or is erroneous on point of law or that it was given per incuriam or that it is occasioning miscarriage of justice or perpetrating injustice. See too *Odi v. Osafire* (1985) 10 1 NWLR (Pt.1) 17 at 34, *Cardoso v. Daniel* (1986) 2 NWLR (Pt.20) 1, *Bronik Motors v. Wema Bank* (1983) 1 SCNLR 296 and *Rossek v. African Continental Bank Ltd.* (1993) 8 NWLR (Pt.312) 382 at 431.

It seems to me necessary even at the risk of repetition to emphasise that the decision of this court in *Jules v. Ajani* has received the approval of 15 and was applied by the full court in the subsequent case of *Cardoso v. Daniel* (1986) 2 SC. 491. It is also significant that the application made to the full court in the case of *Cardoso v. Daniel* (1986) 2 SC. 491 for the overrule of the decision in *Jules v. Ajani* on the ground that it was allegedly given per incuriam of *Cardoso v. Daniel* (1966) 1 All NLR 25 was refused 20 by the full panel of this court.

The facts of the case in *Jules v. Ajani* supra are on all fours with the facts of the present case where the forgery of Exhibit A is alleged but was not proved. They are also identical to a large extent with the facts in *Cardoso v. Daniel* (1986) 2 SC 491. Dealing with the application in the 25 latter case for the overrule of the decision in *Jules v. Ajani*, the Supreme Court per Karibi-Whyte, J.S.C. dismissed the matter as follows:-

"Chief Williams has invited us to overrule our recent decision in Jules v. Ajani (1980) 5 SC 113. He contends that it was decided ignorant of Daniel v. Cardoso (1966) 1 All NLR 25. I do not consider it necessary on the view 30 of the law and facts I have taken in this appeal to consider Jules v. Ajani in the light of Cardoso v. Daniel (supra). Any such exercise will be academic and hypothetical. In Jules v. Ajani (supra), the defendant expressly denied that the conveyance in issue was executed and went further to allege that the deed relied upon was a forgery. Defendant on whom the onus to prove 35 forgery but failed to discharge it. Plaintiff was therefore held to have proved due execution on the strength of his case - Kodilinye v. Odu 2 W.A.C.A. 336. In the circumstance, there is sufficient statutory authority rendering proof of Exhibit B unnecessary"

I can only say, with due respect, that the above reasons given by the learned Karibi-Whyte, J.S.C. in declining the invitation of counsel for the overrule of the decision in *Jules v. Ajani* are in my view cogent, valid and equally applicable to the instant appeal in answer to the learned appellant's counsel's invitation for the overrule of the same case. 5

I am finally to observe that the decision in *Jules v. Ajani* seems to me to represent good law. No cogent or satisfactory reason has been shown to this court why it should depart from its decision in *Jules v. Ajani* or *Cardoso v. Daniel* (1986) 2 SC 491. In the circumstance, the answers to issues one and two above mentioned must be in the affirmative. I will now consider issue four which is related to the sixth ground of appeal and questions whether there was proof that Exhibit A is a forgery before I conclude with issue three. 10

It is the contention of learned appellant's counsel that Exhibit A on which the respondent relied is a forgery. This is specifically raised in paragraphs 9 and 35 of the appellant's statement of defence. There is also the evidence of the appellant's witness, Alhaji Lamidi Lawal, who testified that the said Exhibit A is a forgery. 15

I think it necessary in this connection to state straightaway that although it is true that in civil cases, the preponderance of probability may constitute sufficient ground for a verdict, this general rule, however, is subject to the statutory provision in section 137(1) of the Evidence Act which provides that where the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. There is also the provision of section 137(2) of the Evidence Act to the effect that the burden of proving that any person has been guilty of a crime or wrongful act is, subject to the provisions of Section 140, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action. Where, therefore, the commission of a crime is alleged in any proceedings, civil or criminal, it must be proved beyond reasonable doubt and the onus of such proof rests on him who alleges the commission of such a crime. See *Okwuarume v. Obabokor* (1966) NMLR 47. *Benson Ikokwu v. Enoch Oli* (1962) 1 All NLR 194, *Jim Nwobodo v. C.C. Onoh* (1984) 1 SCNLR 1 and *Anya v. ANN. Ltd* (1992) 6 NWLR (Pt.247) 319 at 333. 20 25 30 35

In the present case, the respondent, as plaintiff, tendered Exhibit A in proof of her title to the land in dispute from the Ikolaba family through Ayoola. Exhibit A was executed in court before Chief Magistrate Obileye as the grantors therein mentioned, including PW 7, were all illiterates. Accordingly there is the

presumption that the execution was done regularly in the course of official duty and that it was genuine. It seems to me that once Exhibit A was produced and tendered in evidence by the respondent, the onus immediately shifted on the appellant, then defendant before the trial court, to prove or establish beyond reasonable doubt, the forgery he alleged. The
5 next question that must naturally be asked is the extent to which the appellant succeeded in discharging the said onus of proof placed upon him by the law in the matter of the forgery he alleged.

This, the appellant did, by calling P.W.7 who merely claimed that Exhibit A is a forgery. This witness who thumb-printed the original for Exhibit
10 A stated under cross-examination that he was illiterate and therefore could not read or write. When Exhibit A was shown to him, he simply claimed that he did not execute it. The learned trial Judge after a close consideration of all the evidence before the court felt satisfied that Exhibit A is a “genuine document” and that “the defendant and his witnesses had not
15 discharged the burden on them that both conveyances (i.e. Exhibits A and C) are forgeries and that Ayoola’s, in particular, did not convey anything.”

The same allegation of the forgery of Exhibit A was made an issue before the Court of Appeal, Ibadan Division. Dealing with the evidence of the said P.W.7, the court below, per Ogwuegbu, J.C.A., as he then was,
20 had this to say-

“Not being able to read and write and there being no evidence of a finger print expert to probe that the thumb impression on Exhibit “A” is not his own, his claim that Exhibit “A” is a forgery is irrelevant. The appellant should have subpoenaed for the original of Exhibit “A” which he claimed
25 is in the possession of P.W.3 and that it is a forgery. He needed it to prove the forgery. This ground of appeal also fails.”

It seems to me therefore clear that both the trial court and the court below are quite unanimous on the vital issue that the appellant failed to establish the forgery of Exhibit A. I am, with great respect, of the firm
30 view that their decisions on the point are totally in accordance with the facts of the case and the law applicable thereto and may not therefore be faulted. See too Jules v. Ajani (1980) 5-7 SC 96, Cardoso v. Daniel (1986) 2 SC 491 (1986) 2 NWLR (Pt.20) 1, Famuroti v. Agbeke (1991) 6 SCNJ 54 (1991) 5 NWLR (Pt.189) 1 S.C. and Adelaja v. Fanoiki and Another (1990) 3 SCNJ 131 (1990) 2 NWLR (Pt.131) 137. In the circumstance the answer
35 to issue four must be in the negative.

The last issue for consideration in this appeal is whether the plaintiff/respondent established her title to the land in dispute. It is the third issue

as formulated by the appellant and relates to the 3rd, 4th and 5th grounds of appeal.

The main argument of the appellant on this issue is that the respondent's title documents, particularly Exhibits A, C & E were defective and conveyed nothing to the respondent. He argued that since the respondent's case is that the land she purchased from P.W.7 was subsequently repurchased from P.W.3 and was covered by Exhibit C, the said respondent's case ought to have collapsed in the face of the finding by the trial court that the land covered by Exhibit C did not fall within the land in dispute. The appellant finally contended that Exhibit E being an unregistered instrument is inadmissible in evidence and that the respondent at all events did not rely on any equitable title to the land in dispute as part of her case. He concluded by submitting that from the evidence before the court, the appellant in view of Exhibit O had a better title to the land in dispute than the respondent.

It may be necessary at the risk of repetition to summarise once more the facts of this case. The respondent both from her viva voce evidence and paragraph 2 of her pleading claimed that she bought the land in dispute from Akinpelu believing that the said land in dispute belonged to him by virtue of Exhibit C. She went into possession thereof and was developing it when P.W.3, Ayoola, challenged her right to be on the land. Ayoola apparently derived good title to the land in dispute from the Ikolaba family by virtue of Exhibit A dated the 16th September, 1968. In the circumstance and in order to avoid any problems, the respondent repurchased that land in dispute from Ayoola by virtue of Exhibit E.

Both the High Court and the Court below found that P.W.7, Akinpelu, derived no title to the land in dispute by virtue of Exhibit C as the land comprised in Exhibit C did not include the land in dispute, that title to the said land in dispute was in P.W.3, Ayoola by virtue of Exhibit A and that the said Ayoola, by virtue of the document, Exhibit E, surrendered all his interest on the land in dispute to the respondent. It seems to me clear that the respondent relied mainly on Exhibit A, B and E together with her possession of the said and in respect of her title thereto.

On this issue of whether the respondent established a superior title to the land in dispute than the appellant, the learned trial Judge after a painstaking review of the evidence observed as follows:-

"I have already held the view earlier in this judgment that Exhibit 'A' is a document of title which was duly executed. But, what of Exhibit 'E', the agreement between Joseph Olaolu Ayoola and Victoria Ararere Obadina dated 21st March, 1978? Although this document is not a conveyance of the disputed land, it was signed, sealed and delivered and in favour of the

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plaintiff. It is necessary to examine whether Exhibit 'O', which is the conveyance of the Defendant, raises a competing interest between the plaintiff and the Defendant of priority of purchase. It is my view that since Ayoola's conveyance is valid on the evidence before me, he is entitled in law to do what he pleases with his own. He can sell, transfer or give inter vivos his interest in the land as long as he complies with the property and Conveyance Law."

A little later in his judgment, the learned trial Judge continued as follows:

"Thus, where the plaintiff derives title to land from a vendor who himself has title from the original owners who had acted through a general power of attorney irrevocable for 4 years, the original owners cannot be heard some 13 years after that they did not give their consent to the donees of the power and that the conveyance is a forgery. Semble, the defendant who purchased a larger area of land (including the portion sold by the donees of the power) some 7 years after from the original owners of the land aforesaid cannot lawfully claim right of ownership of or title to the portion sold to the plaintiff."

It is clear from the above findings that the trial court entertained no doubt whatsoever on the issue that the respondent established a superior title to the land in dispute than the appellant.

The same issue, was again canvassed by the parties on appeal and the court below per Ogwuegbu, J.C.A., as he then was, treated the matter as follows:-

"The root title of the plaintiff is Exhibit "A". The power of attorney Exhibit "B" which formed the base on Exhibit "A" was not challenged by the defence. It was duly executed and registered. It was dated 16th September, 1968. It is Ikolaba family that gave the power of attorney - Exhibit "B". The power of attorney was effective when Exhibit "A" was executed on 7th November, 1975. It was also duly executed and registered. The same Ikolaba family or some members of the said family conveyed the land in Exhibit "O" to the defendant. Part of it is the subject of this suit. The area claimed by the plaintiff is also part of the parcel of land conveyed to P.W.3 by the donees of Exhibit "B". Exhibit "C" is ineffective to convey anything to the plaintiff since the persons who conveyed to P.W.7 acted when Exhibit "B" was no longer in force. In the circumstance, the plaintiff got nothing from P.W.7. But Exhibit "E" is a receipt issued by P.W.3 to the plaintiff acknowledging the payment to him of the sum of N6,000.00 by the plaintiff in respect of the land in dispute. The plaintiff went into possession. Her title is firmly rooted in Exhibit "A" which is superior to Exhibit "O". She has an equitable interest in the land in dispute and can always call on P.W. 3 to convey the legal estate to her. I cannot see how the learned trial Judge

could have sustained the counter-claim in view of the superiority of Exhibit "A" over Exhibit "O", Grounds four and five of the grounds of appeal equally fail. Ground 7 of the grounds of appeal is the usual omnibus ground. I agree with the learned counsel for the plaintiff/respondent that the plaintiff relied on Exhibits "A", "B" and "E" in proof of her case while the defendant/appellant relied on Exhibit "O". Exhibits "A" and "B" preceded Exhibit "O" and are superior to it. The evidence adduced by both parties were

carefully and adequately considered by the learned trial Judge. On the whole, all the grounds of appeal fail. There is no basis for the lower court granting the counter-claim of the appellant."

It is equally clear that the Court of Appeal from its above observations confirmed the findings of the learned trial Judge and awarded the land in dispute to the respondent. I can only say that I am in total agreement with the above views of the trial court and the Court of Appeal and with respect, endorse them.

In the first place, Exhibit A by which the Ikolaba family conveyed a piece or parcel of land of which the land in dispute forms a part is dated the 16th September, 1968 but was registered on the 8th May, 1969. Exhibit O by which the said Ikolaba family apparently conveyed the same piece or parcel of land to the appellant is dated the 7th November, 1975 but registered on the 27th November, 1975. It is therefore clear that the conveyance, Exhibit A, is first in time and must enjoy definite superiority in terms of validity than Exhibit O. P.W.3 as the lawful owner thereof was entitled, in the words of the trial court, to do whatever he pleased with it. Pursuant thereof, he sold the said piece or parcel of land to the respondent and surrendered all his interest in the land to her. In this regard P.W.3 issued Exhibit E to the respondent who accordingly went into possession of the land in dispute.

Exhibit 'E', ex facie qualifies as an instrument within the context of the provisions of the Land Instruments Registration Act. Being however unregistered, it is not admissible in evidence to prove or establish title. It is nonetheless admissible as a purchase receipt or an acknowledgement of the payment of money and coupled with possession, raises the presumption that the purchaser entered into possession of the property under a contract of sale from which arose an equitable interest capable of being converted into a legal estate by specific performance. See Isaac Ogunbamhi v. Ahowaha (1951) 13 WACA 222 at 224, Onasanmi v. Idowu 4 F.S.C.40, Lamidi Fakoya v. St. Paul's Church, Shagamu (1966) 1 All NLR 74 and Micheal Agboola v. Tairu Agoro and 3 others (1972) C.C.C.H.C./11/72 at 18.

Exhibit E is a receipt issued by P.W.3 to the respondent in acknowledgement of the payment of N6,000.00 by the said respondent in respect of the land

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in dispute. The respondent duly went into possession of the land and I
entertain no doubt whatsoever that her title which is firmly rooted in Exhibit
A is patently superior to the appellant's purported title which is Exhibit O.
On the law, the respondent has an equitable interest in the land in dispute
and may always call on P.W.3 to convey the legal estate in the property to
her. Accordingly the third issue must be answered in the affirmative.

5 On the whole, I find no substance in any of the points urged on
behalf of the appellant in this court to justify the reversal of the decisions of
the trial court or the court below. Consequently this appeal fails and it is
accordingly dismissed with N1000.00 costs to the respondent against the
appellant.

10

BELGORE JSC

I read in advance the judgment of my learned brother, Iguh
J.S.C. and I am in full agreement that this appeal has no merit and
ought to be dismissed. I adopt his reasons and conclusions as mine
and I also dismiss this appeal.

15

WALI JSC

20 I am privileged to have read in advance, a copy of the lead
judgment of my learned brother, Iguh, J.S.C. I agree with his reason-
ing and conclusion for dismissing the appeal. For those same reasons
which I hereby adopt as mine, I also dismiss the appeal and adopt
the consequential orders in the lead judgment.

25

MOHAMMED JSC

I am entirely in agreement with the judgment of my Lord
Iguh, J.S.C., that there is no substance in this appeal. My learned
brother has made a consideration finding over the issue of execution
of Exhibit A., the conveyance which is dated 16th September, 1968.
I also do not accept the invitation of the learned counsel for the re-
spondent that this Court should over rule the decision in Aiyedun T.
Jules v. Raimi Ajani (1980) 5 -7 SC 96. In that case this Court held
that once it has been shown that the provisions of section 18 of the
Lands Instrument Registration Law has been complied with there is
presumption that a certified true copy of the deed of conveyance
tendered was duly executed.

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An earlier attempt to get this Court over rule the decision
made in Jules v. Ajani (supra) was not successful when the full panel

Tewogbade v. Obadina (1994) 7 KLR Mohammed JSC 27
of this Court was moved in the case of Cardoso v. Bankole Daniel
(1986) 2 SC 491 (1986) 2 NWLR (Pt.20) 1. I agree that the appel-
lant has failed to prove that Exhibit A is a forgery.

Accordingly this appeal fails and it is dismissed. I also award
N1,000.00 costs in favour of the respondent.

5

ONU JSC

This appeal is sequel to the decision of the Court of Appeal, Ibadan
Division which on 26th May, 1988 dismissed the defendant/appellant's
appeal from the High Court of Oyo State (per Ibidapo-Obe,J) sitting in
Ibadan. The case, wherein both respondent and appellant traced their roots
of title to a common owner, the Ikolaba Family of Ibadan, was commenced
by a Writ of Summons which issued at the instance of the respondent in
1981 for -

10

*“(a) Declaration that the plaintiff is entitled to Statutory Right of
Occupancy to all that piece and parcel of land known as plots land 2
ALAFIA LAYOUT, IKOLABA VILLAGE IBADAN particularly shown on
plan No. MAY 95A8/76 dated 9th November, 1976, made by M.A. Laoye
Esq. Licensed Survey thereon edged red and all the rights of way and
easements attached thereto.*

15

*(b) N20,000.00 (Twenty Thousand Naira) general and special dam-
ages for trespass and for the destruction of the wall fence made round the
plots of land by the plaintiff and also all other materials deposited thereon.*

20

*(c) Perpetual injunction restraining the defendant, his agents, ser-
vants, workers, privies and all persons whatsoever claiming through him.”*

25

Pleadings were ordered, filed and exchanged by the parties with
the appellant in his Statement of Defence counterclaiming for damages for
trespass and an injunction. The appellant further alleged that the sale of
the land in dispute to the respondent by either P.W.3 or P.W.7, if at all and
in particular, that the transaction between her and P.W.3 was a forgery.

30

Being dissatisfied with the decision the appellants appealed to the
Court of Appeal while the respondent cross-appealed for failure of the trial
court to award damages to her in respect of claim (b) above. The appeal
and cross-appeal therein having been dismissed, the appellant alone has
further appealed to this court on a Notice of Appeal containing three origi-
nal grounds (See pages 231-233 of the Record of proceedings) Ground 3 of
the original grounds having been withdrawn and accordingly struck out, the
appellant later sought and was granted leave to argue three additional
grounds. Acting pursuant to the rules of court the parties filed and ex-
changed briefs of argument. When the appeal eventually came up for hear-

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ing on 25th January, 1994 it transpired that neither the appellant nor his counsel was present. Since the appellant had filed a brief of augment it was in his absence treated as having been argued pursuant to Order 6 Rule 8(6) of the Supreme Court Rules.

5 The case went to trial and the learned trial Judge in a well considered judgment accepted the respondent's case as the more probable, and in consequence awarded to her claims set out in (a) and (b) above.

I wish to pause at this point to set out the facts each party made out at the trial to afford one a better appreciation of the case in its proper setting.

10 The respondent's case was to the effect that-

(i) One Alhaji Alimi Akinpelu who testified for her as 7th P.W. became seised in 1970 of a parcel of land by virtue of Deed of Conveyance dated 2/3/70 and registered as No.2/2/1185 and granted by Ikolaba Family
15 - a portion out of which he (Akinpelu) later cut into a layout called ALAFIA LAYOUT.

That 7th P.W. (Akinpelu) transferred plots 1 and 2 of the said ALAFIA LAYOUT to respondent in 1976 and respondent after taking possession thereof fenced it round.

20 (ii) That P.W.3, Joseph Olaolu Ayoola, challenged the respondent on the land and this compelled her to repurchase plots 1 and 2 aforesaid from him - he, Ayoola having acquired title to a large piece of land including that in dispute by virtue of a conveyance made on 16th September, 1968 and registered as No. 30/30/1122 (Exhibit A) at the instance of the
25 owners of the land, the Ikolaba Family from, whom a POWER OF ATTORNEY (Exhibit B) was secured. The trial court and eventually the court below, found that Exhibit 'E', the document (receipt) evidencing the transaction between Ayoola and the respondent having a bearing on Exhibit 'A' and that Ayoola had surrendered his interest in the land in dispute to the
30 respondent who was put in possession by virtue of Exhibit 'E'.

(iii) That a large piece or parcel of land had been conveyed to 7th P.W. by the Ikolaba family by virtue of Exhibit 'C' - an area outside Exhibit 'D', the Composite Plan whose dimension overlapped Exhibit A.

35 (iv) That as respondent was developing plots 1 and 2 ALAFIA LAYOUT, members of Ikolaba Family disturbed her possession and she had to settle with them by paying all over for her plots, resulting in a Conveyance (Exhibit H).

(v) That as respondent thought her troubles were over and started developing the land the appellant trespassed thereon by chasing respon-

dent and her workers from the land by relying on a conveyance he purported to have got (Exhibit O) although clearly made after Exhibit' A' was in existence.

The appellant for his part proffered a case in which he denied emphatically the alleged sale of the land in dispute by the Ikolaba Family either to Akinpelu (7th P.W.) or P.W.3 (Ayoola) at any time. He asserted that there was no due execution of Exhibit A which he contended was a forgery. He showed also that following the Conveyance to him by the Ikolaba Family of Exhibit 'O' he took possession of the land comprised therein and exercised maximum acts of ownership thereto including cleaning, surveying, building of houses and sale of portions thereof to several people. The respondent, he concluded, later came to trespass on it leading to the action giving rise to this appeal wherein he set up a counter-claim for damages for trespass and injunction.

The four issues submitted for determination on appellant's behalf (respondent proffered five which in her brief she would seem to agree, symmetrically overlap those of the appellant) are:

1. Whether there was proof of due execution of Exhibit A?
2. Whether the decision of the Supreme Court in *Jules v. Ajani* (1980) 358 5-7 SC. 96 on presumption of due execution ought not to be overruled in view of the earlier decision in *Cardoso v. Daniel* (1966) 1 All NLR 25.

3. Whether the plaintiff/respondent established her title to the land in dispute?

4. Whether there was proof that Exhibit A was forgery.

I will now proceed to deal briefly with the issues one by one in order of sequence as follows:

ISSUES 1 and 2:

It is pertinent that in considering these two issues together emphasis ought to be laid first on the fact that while appellant based his root of title in Exhibit O, the respondents' is founded on Exhibit A. The finding of the learned trial Judge at page 91, lines 1-6 of the Record bears this out eloquently. Said he:

"With regard to Exhibit 'O' the conveyance of the defendant. It was dated 7th November, 1975 but the plan attached to it, drawn by M.A. Adeoti, was dated 25/9/75 whilst that in Exhibit' A' drawn by A.B. Apatira, licensed Surveyor, was drawn on 12/2/68 - some (7) years before Exhibit 'C'"

Clearly therefore Exhibit' A' is first in time although since the pillar coners in Exhibit' A' tally with those in Exhibit 'O' both parties

are undoubtedly talking of the same land in dispute. The learned trial Judge came to the above view after earlier arriving at the conclusion that the plan attached to Exhibit C did not fall within the disputed land. And as between Exhibit 'A' and 'C', he found no fault with Exhibit 'A' which indeed, he said passed on similar facts with this
5 Court's decision in Jules v. Ajani (supra) the appellant and his witnesses, had not discharged the burden on him that the conveyances respecting same were a forgery and that Ayoola's in particular, did not convey anything. What in effect he (appellant) was contending in respect of Exhibit 'A' is not whether or not Ayoola as purchaser relied
10 on it to dispose of it, rather it is whether the purported vendors executed same. It is his further contention that the trial court therefore failed to consider due execution by the vendors of Exhibit 'A' who would likely be charged with liability when the document came under challenge vide Section 67 of the Property and Conveyancing
15 Law of Oyo State, Cap. 99.

In relation to due execution of Exhibit 'A' my reading of the Record clearly indicates that the learned trial Judge reviewed the evidence (See page 89 lines 223) and found that Exhibit 'A' having
20 been produced from proper custody by the Higher Deeds Registrar (1st P.W.), was a genuine document and that going by the pleading and evidence adduced, he was bound by the earlier decision of this Court in Jules v. Ajani (supra), facts of which are similar to the instant case.

25 Further, the learned trial Judge's finding that the burden of proving forgery of Exhibit 'A' and that appellant failed to discharge the burden placed on him and his witnesses cannot, in my view, be faulted. On the appellant's submission that the respondent must of necessity produce the original of Exhibit 'A'. whereas 3rd P.W. (Ayoola), who merely sold a portion of his land to the respondent notwithstanding the fact that the document had been registered in the Lands Registry as a public document and a certified true copy of it could be obtained and is admissible in evidence
30 vide Section 115 of the Evidence Act. All that the Law requires (for which Section 18(3) and (4) of the Land Instruments Registration Law of Oyo State) is to register with the Deeds Registrar the Certified True Copy of the original i.e. Counterpart of such a Deed. And as Sections 6, 7, 8, and 9 of the Land Instruments Registration Law (ibid) presuppose that only executed documents need be registered, Exhibit A complies with Section 8 (ibid) as
35 to execution before it was registered. Exhibit A having been rightly admitted

under Sections 16 and 31(2) of the Land Instruments Registration Law, it is

by the same token presumed to be duly executed. The respondent having traced her root of title to Ayoola (one whose title to ownership has been established), the onus shifts on the appellant to show that his own possession vide Exhibit C, is of such a nature as to oust that of the original owner to wit Ikolaba Family. See Preston Holder v. Thomas (1953) 12 WACA 78; Sanyaolu v. Coker (1983) 3 SC 124; Dosunmu v. Joto (1987) 4 NWLR (Pt.65) 297 and Abinabina v. Enyimadu (1953) 12 WACA 207. And as between Exhibit 'A' and Exhibit 'C', the former being A first in time, the findings of fact by the trial court confirmed by the court below to the effect that respondent's case was more probable cannot, in my respectful view, be successfully impeached.

With regard to the challenge to the validity of Exhibit A, while the appellant is by law perfectly entitled to do so his challenge being that the document was forged, forgery being a criminal offence, the appellant indeed has a burden of proving his case beyond reasonable doubt. See Fabunmi v. Agbe (1985) 1 NWLR (Pt.2) 299; Ajasin v. Omoboriowo (1984) 1 SCNLR 108 at 143. In the instant case, the appellant failed to establish the forgery he averred the respondent perpetuated. See Abiodun Famuroti v. Madam S. Agbeke (1991) 6 SCNJ 54 at 63-64; (1991) 5 NWLR (Pt.189) 1 at page 13 and section 134(1) Evidence Act and both the two courts below so held. This is a concurrent decision of both courts which this Court will not disturb unless special circumstances are shown to the effect that the decision is perverse. See Famuroti v. Agbeke (supra).

The law is clear and this court has stated times without number that where forgery of a document, as in the instant case, is alleged there is no initial burden on the plaintiff to prove due execution but the primary burden is on the defendant who alleged forgery to prove the forgery alleged by him. See Jules v. Ajani (supra); Cardoso v. Daniel (1986) 2 SC 491; Adelaja v. Fanoiki & Anor (1990) 3 SCNJ 131; (1990) 2 NWLR (Pt.131) 137.

When the counsel for the appellant put the issue that Exhibit A was forged or not executed in 3rd P.W.'s favour 3rd P.W. had this to say at page 44, lines 6-10:

"The conveyances were not false I can identify my Vendors if I see them. I will be very much surprised if the Vendors come out to say they did not convey any land to me."

In addition to the above 7th P.W. testified at page 50 lines 29-34 thus:

"I know the plaintiff and the land in dispute. I am or was the agent of Ikolaba family, I know that the plaintiff bought land from Ikolaba family through me. We brought the representatives of the family to Court to execute a Deed of Conveyance, Ladokun Ajadi, Alhaji Lamidi and a few others."

7th P.W. when subjected to cross-examination at page 51, lines 6-7 of the Record had this to say:

"The conveyance of Ayoola is different from my own" and further at 10 lines 8-9 of the Record that:

"It was I who helped 3 P.W. to have his conveyance executed"

The above pieces of evidence went unchallenged at the trial and not having been discredited and the evidence required from the respondent to prove her case being that on the balance of probabilities, was sufficient in 15 proof of her case. Further, by the evidence, the burden of proving that Exhibit 'A' was a forgery to wit: that it was not executed by the parties who claimed to execute it, fell on the appellant who failed to discharge same.

Besides, as there was no evidence of forgery forthcoming from the appellant even though he admittedly pleaded in paragraph 9 of his State- 20 ment of Defence that Exhibit 'A' was a forgery, the learned trial Judge was justified to have found that it was a genuine document, relying on Jules v. Ajani (supra) whose facts are similar to those in the instant case. But See Cardoso v. Daniel (1966) 1 All NLR 25, a case in which a photocopy of a Conveyance (Exhibit A therein) was rendered inadmissible.

25 Learned Counsel for the appellant in further argument placed heavy reliance on the fact that the provisions of sections 99 and 129 of the Evidence Act have not been followed in Jules v. Ajani (supra) adding that the provisions of sections 18, 30 and 31 of the Land Instruments Registration Law cannot override the provisions of Sections 99 and 129 of the Evidence 30 Act. I agree with learned counsel for the respondent that both sections 99 and 129 of the Evidence Act (ibid) - two Sections also considered in Jules v. Ajani (supra) rather than being diametrically opposed to Sections 18, 30 and 31 of the Land Instruments Registration Law are complimentary thereto. Section 31 of the Land Instruments Registration Law makes provisions for 35 admissibility of a certified true copy just like Exhibit A herein and once it is admitted, the next consideration is the weight to be placed on it. In the instant case, the presumption of regularity or execution of Exhibit 'A' prevails by virtue of section 148(c) of the Evidence Act.

The Section states:

“148. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case, and in particular the court may presume -

(c) that the common course of business has been followed in particular cases” 5

Be it noted that Section 122 of the Evidence Act is not relevant to Exhibit A made in 1968 since it was not 20 years old at the date of the trial in the trial court on 28th September, 198.... But once it was shown to emanate from proper custody and it was shown prima facie to have been executed officially in the Magistrate Court, the trial Court took the view at the point and rightly too, that the burden of forgery of Exhibit 'A' was on the appellant who in paragraph 9 of his Statement of Defence pleaded forgery of Exhibit A which he failed to establish at the trial. There is no reason therefore why this court should be asked to depart from the decision in Jules v. Ajani (supra) or Cardoso v. Daniel (1986) 2 SC. 291 (1986) 2 NWLR (Pt.20) 1. This is because the decisions in these two cases were based on the facts that once it has been shown that the provisions of the Lands Instruments Registration Law, particularly Section 18 has been followed, there is a presumption that the certified copy tendered was duly executed and where there is as in the instant case by the defendant that it was a forgery, on the defendant lies the onus to prove the forgery. See Cardoso v. Daniel (1986) 2 SC 491 at 536-538; 573 lines 17-574, line 1-6 (1986) 2 NWLR (Pt.20) 1. In the instant case the forgery alleged not having been proved its facts are on fours with Jules v. Ajani (supra). 25

On whether the decision of this Court in Jules v. Ajani (supra) on presumption of due execution ought not to be overrule in view of the earlier decision of Cardoso v. Daniel (1966) 1 All NLR 25, to do so my view - in the first place, means this Court going through the crucible in overruling a host of other cases salient cases among which are Adelaja v. Fanoiki (1990) 3 SCNJ 131; (1990) 2 NWLR (Pt.131) 137; Cardoso v. Daniel (1986) 2 SC (1986) 2 NWLR (Pt.20) 1. and Famuroti v. Agbeke (supra). 30

Secondly, I adopt in their entirety the two questions posed in this regard by the respondent namely (a) would such overruling of these cases not create an abnormal situation for instance that a litigant who traces his title to several different people who have their respective conveyances as their roots of title, not of necessity at a trial involving those root of title, produce their original conveyances prove due execution of them to succeed? 35

(b) If a purchaser bought a small portion of a vendor's land, at

every litigation concerning his (vendor's) title, must he (purchaser) or necessity produce and prove due execution of his vendor's original conveyance in order to succeed, even though by law, he was entitled to produce a certified copy of it?

In providing answers to the above pertinent question, it is necessary to look with hindsight on why the Law was so couched as to make the production of a certified copy instead of the original of a Deed as satisfactory compliance with the law. One of the problems the Lands Instrument Registration Law was intended to solve was the requirement of the Registration of Deeds under Sections 6-8 of that Law to register only executed documents. Such that the production by such Registrar of the Certified Copy is sufficient compliance with the Law. The effect of this Court overruling its decision in Jules v. Ajani (supra) is, in my respectful view, to render the provisions of the Law useless and that is not the function of any court of law. The duty of any court of law is the interpretation of statutes and application of them to the case being tried. See Magor and St. Mellons R D.C. v. New Port Corporation (1952) AC 189-191. Besides, appellant has not offered any suggestion as to how the provisions of the Lands Instrument Registration Law are to be interpreted. The court below was therefore right to hold that the case of Jules v. Ajani (supra) was not decided per incuriam of the earlier decision in Cardoso v. Daniel (1966) 1 All NLR 25, having regard to the fact that the two cases have been reviewed by this Court in Cardoso v. Daniel (1986) 2 Sc. 491 wherein it declined the suggestion to overrule Jules v. Ajani (supra). It has been decided by this court that before it will overrule any of its previous decisions, it must be established that such previous decisions were erroneous and that they constituted vehicle of injustice. See Odi v. Osafire (1985) 1 NWLR (Pt.1) 17; Bucknor-Meclean v. Inlaks (1980) 8-11 SC. 1 and Chief F.R.A. Williams v. Daily Times of Nigeria Ltd. (1990) 1 NWLR (Pt. 124) 1. In the case of Oduye v. Nigeria Airways Ltd. (1987) 2 NWLR (Pt.55) 126 at page 129 this Court held as guiding principles on whether or not to overrule previous decisions:

"1. That the Court is bound to adhere loyally to former decisions unless clearly satisfied that they are wrong.

2. It is necessary that there is some appreciable and reliable amount of certainty in the law including the case law; Eperokun v. University of Lagos (1986) 4 NWLR (Pt. 34) 162 followed.

3. What is important in any decision is the principle it decided and that is what one has to look for in every decision and not the manner in which the Judge argued.

4. *The law grows and though the principles of law remain unchanged their application is to be changed with the changing circumstances of the time.*

5. *Where a rule of common law has been enacted with words intended as a departure from the common law it loses its meaning from the statute.”*

See also Federal Civil Service Commission (F.C.S.C.) v. Laoye (1989) 2 NWLR (Pt.106) 6652 at 701-702; Bronik Motors v. Wema Bank Ltd (1983) 1 SCNLR 296.

In the latter case, Nnamani, J.S.C. at page 317 ventured the view which I hold as apposite here when he stated that -

“I believe this Court is not unconcerned with the principle of stare decisis and the need to maintain certainty of the law. But it would not be obliged to perpetuate a decision if it is satisfied that such a decision is manifestly wrong or was given per incuriam on some relevant Constitutional provision.”

Issues 1 and 2 are accordingly answered in the negative.

Issue 3:

This issue which overlaps respondent's issues 3 and 4 must perforce be answered in the positive having regard to all I have said in Issues 1 and 2 above and my answer thereto in the negative. I need only add by way of clarification as follows:

“(i) Both the trial court and the court below found that Exhibit E, the document evidencing the transaction between 3rd PW. (Ayoola) and the respondent fell within Exhibit A; and that Ayoola had surrendered his interest in the land in dispute to the respondent who took possession thereof by virtue of Exhibit E.

(ii) The respondent relied on Exhibits A, B, and E but not C in proof of her case and trial court, rightly, in my view, found in her favour.

(iii) The claims of the respondent were based on Exhibit E coupled with possession. Exhibit E was tendered as a purchase receipt and representing as it does customary interest in land, it does not need registration. See Ogunbanbi v. Abawoba (1951) 13 WACA 222 at 224.

As this Court held in Adelaja v. Fanoiki (supra) at page 141, lines 34-42; 143, lines 21-144 lines 1-7.

“I think the law is now settled that every person in exclusive possession of land can bring an action for trespass against any person other than the true owner, or a person with a better title in respect of any interference with this possession. This is because exclusive possession gives the person in possession the right to remain in possession and to undisturbed

enjoyment to remain in possession and to undisturbed enjoyment of it against every other person who can establish a better title. It is nonetheless a trespass and not a defence that the person in trespass appears to have acquired title from a wrong person.”

Cardoso v. Daniel.

5 In the case in hand, Exhibit E was tendered as a purchase receipt and this Court held in (1986) 2 SC 491 at 570, lines 1 -12 thus:

“A purchase receipt being an unregistered Instrument is not admissible to prove title but is admissible as acknowledgment of the
 10 *payment of money and coupled with the plaintiff being in possession raised a presumption that he entered into possession under a contract of sale and from this arose an equitable interest capable of being converted into a legal estate by specific performance.....”*

 The trial court held that that title of the respondent is better
 15 than the appellant’s. The lower court on appeal confirmed the findings of the learned trial Judge and awarded her the land. These are concurrent findings of fact from the two courts below which this Court will not lightly disturb unless for exceptional circumstances, that it is perverse. See Mogo Chinwendu v. Nwanegho Mbamali (1980) 314
 20 SC 31 at 53; Ibodo v. Enarofia (1980) 5-7 S.C 42; Alade v. Alemuloke (1988) 1 NWLR (Pt.69) 207 and Okonkwo and I or v. Okolo (1988) 5 SC 220 at 259 (1988) 2 NWLR (Pt.79) 632. My answer to this issue is in the affirmative.

ISSUE 4:

25 This issue is concomitant with respondent’s Issue 5. In view of all I have said in my consideration of Issues 1 and 2 together which apply with equal potency hereto, my answer is rendered in the negative.

 For the reasons set out above and the fuller ones contained in the judgment of my learned brother Iguh, J.S.C with which I had
 30 hitherto expressed my concurrence, I too will dismiss the appeal and affirm the decision of the Court below with the same consequential orders as in the lead judgment.