

SUPREME COURT OF NIGERIA
6TH MAY, 1994. SC. 167/1988
CORAM:- M. L. UWAIS, O. OLATAWURA,
M. E. OGUNDARE, S. U. ONU, Y. O. ADIO, JJSC

ALHAJIA. ALIYU DEFENDANT/APPELLANT

AND

DR. J.A. SODIPO PLAINTIFF/RESPONDENT

EVIDENCE - Admissibility of survey plan - Survey plan tendered without surveyor generals counter signature - may be admitted in evidence - If good cause is shown to court.

EVIDENCE - Weight to be attached to admitted document - No evidence challenging correctness or authenticity of document - Whether due weight is to be placed on the document.

LAND LAW - Survey plan attached to registered deed of conveyance - Subsequently countersigned by surveyor General before final registration - Whether defective - Whether lack of countersignature renders a plan void.

LAND LAW - Deed of conveyance - Registered by the registrar in exercise of his discretion - Whether there was substantial compliance with statutory requirements - To render the Deed admissible.

LAND LAW - Acts of ownership - Title to land - Whether plaintiff has shown sufficient acts of ownership - As to be entitled to judgment.

PRACTICE & PROCEDURE - Allegation of fraud by the defendant - Without leading evidence to that effect - Whether the allegation is supportable.

FACTS

The Plaintiff/Respondent bought the land in dispute in 1956 from the children of one Fashola (deceased). Fashola bought the land from the Ifadu Alase

family of Ajuwoye in Mushin district of Lagos State. The children of Fashola joined the accredited representatives of the Ifadu Alase family in conveying the land to the Plaintiff vide Exhibit 8, the Deed of conveyance. The survey plan (Exhibit 2), is attached to the Deed which was executed before a magistrate because of the illiteracy of some of the vendors. The plaintiff caused the Deed together with the attached plan to be registered in the lands registry. It would seem the survey plan was not initially countersigned by the Surveyor-General as required by S.3 of the survey Law which led to the Registrar's return of the plan to the surveyor. It was eventually countersigned and registered. The plaintiff took possession upon the conveyance of the land to him and exercised various acts of ownership.

Sometime in 1976, the Defendant commenced building on a portion of the land and claimed it was sold to him by the head of Fashola family. The Plaintiff filed an action against the defendant claiming a declaration that he is the owner of the land in fee simple. He also claimed damages for trespass and sought a perpetual injunction against the Defendant. The trial Judge found in favour of the Plaintiff and entered judgment in terms of his claims. The Defendant's appeal to the Court of Appeal was dismissed. On further appeal by the Defendant, the Supreme Court had to determine inter alia, whether the Deed of Conveyance together with the survey plan (Exhibits 8 & 2) relied upon by the plaintiff for his title were rightly admitted.

HELD: (Unanimously dismissing, the appeal)

1. Where a survey plan is tendered per se but does not conform with the requirements of s. 3 (1) (b) of the Survey Law (countersignature of the Surveyor-General) it may nevertheless be admitted in evidence if good cause is shown to the court for non-compliance. (P. 75 L 22)
2. Assuming that the counter-signature of the Surveyor-General is a sine qua non to the admissibility of the survey plan in question attached to Exhibit 8 (the Deed of Convergence), the fact that it was subsequently countersigned by the Surveyor-General before the final registration of Exhibit 8 would cure whatever defect there might be. Lack of counter-signature does not render the plan void. (P. 75 L 29)
3. The Court of Appeal was right in its conclusion that the Plaintiffs Deed of convergence (Exh.8) was admissible. There was substantial compliance with the Statutory requirements for its registration and the registrar's exercise of his discretion to register it has not been set aside by any order of a High Court. (P. 76 L 16)

4. The defendant led no evidence whatsoever in support of the plea of fraud raised in his statement of defence. He seems to rely on the defects appearing on the face of exhibit 8. But there is no evidence that could support a holding that these defects were as a result of fraud perpetrated by the plaintiff or any other persons. (P. 76 L 24)

5. In the absence of any evidence challenging the correctness or authenticity of exhibits 8 and the plan attached thereto, the Courts below are right to give it due weight and to find in plaintiff's favour on the strength of it. (P. 77 L 7)

6. Although Exhibit 8 is sufficient evidence to support the award of title, the Plaintiff has however, further shown that since going into possession he has exercised acts of ownership on the land. And on the welter of evidence on the record, the courts below are right in holding that the Plaintiff established sufficient acts of ownership to entitle him to judgment. (P. 77 L 11)

NOTABLE POINTS OF INTEREST

OGUNDARE.JSC

Awomuti's case compared and contrasted

1. "In *Awomuti v. Salami* (supra) this Court held that a defective plan attached to a deed of conveyance and the conveyance to which it was attached are both worthless. This Court in that case, however, came to its decision without the benefit of argument (defendant's counsel conceded the point) and without considering either the Land Instruments Registration Law or an earlier decision of this Court in *Erinosho v. Owokoniran* (1965) NMLR 479 ..." (P. 71 L 29)

Failure of defendant to lead evidence

2. The unchallenged evidence of the Plaintiff and PW3 is to the effect that the plan was attached to the Deed at the time of its execution. No evidence has been led to show that the Ifadu/Alase/Fashola families sold to the Plaintiff land lesser in extent than was shown on the plan attached to exhibit 8. (P. 76 L 37)

Sufficient act of ownership varies as to situation of the land

3. It must be remembered that the land in dispute is in an urban area and the acts of ownership that will suffice to establish title to it will not necessarily be the same were the land an agricultural land for instance. (P. 77 L 23)

REPRESENTATION:

A. Salman Esq. SAN, with A. Hanafi for the Appellant
Kayode Sofola Esq. for the Respondent.

CASES REFERRED TO

Awomuti v. Salami (1978) 3 SC. 105 at 109
Alase & Ors. v. Olori-Ilo (1964) 1 ANLR 390; (1965) NMLR 65 at page 71
Bucknor-Maclean & Anor v. Inlaks Ltd (1980) 8-11 SC. 1
James v. Chief S.O. Lanlehin (1985) 7SC (pt. 1) page 404
Akano Fashina Agboola v. Abimbola (1969) 6 NSSC 263
Ojiako v. Oguese (1962) 1 All NLR 58
Idundun v. Okumagba (1976) INMLR 200 9/10 SC. 227

STATUTES REFERRED TO

Survey Law of Western Region of Nigeria Cap. 121 s. 3 (1) (a) & (b)
Land Instruments Registration Law ss. 3(1), 8, 10, 16

LEAD JUDGMENT BY OGUNDARE JSC

The Ifadu Alase family of Ojuwoye in Mushin district of Lagos State owned a large area of land at Idiroko near Maryland Ikeja. Some years ago the said family sold a part of their land to one Fashola (who had since died) under customary law. In 1956 the children of Fashola sold portion of their father's land which he bought from Ifadu Alase family to the plaintiff, Dr. John Adewumi Sodipo and joined the accredited representatives of the Ifadu Alase family in conveying the land to Dr. Sodipo. It appears that at the time the conveyance was executed the plan attached to it and showing the delimitations of the land sold to Dr. Sodipo was not counter-signed by the Surveyor-General of Western Region as required by section 3 of the Survey Law of Western Region of Nigeria Cap. 121 then applicable in the area where the land is situate. The conveyance was presented for registration at the Registry office in Ibadan. According to the evidence of the surveyor who surveyed the land at the instance of Dr. Sodipo and who presented the Deed on registration at Ibadan, the Registrar of Deeds on noticing that the attached plan to the Deed of conveyance was not counter-signed by the Surveyor-General returned the same to the Surveyor for counter-signature of the Surveyor-General. The surveyor later procured the counter-signature of the Surveyor-General and re-

turned the deed to the Registrar of Deeds who thereafter registered it as No.19 at page 19 in Vol.145 of the Lands Registry Ibadan. Dr. Sodipo took possession of the land jointly conveyed to him by the families of Ifadu Alase and Fashola. After the land had been conveyed to Dr. Sodipo and he had taken possession, he noticed in 1957 that one Sinotu trespassed on the land and he sued her and had judgment given in his favour. In 1961, he partitioned the land into three pieces marked A, B and C. He fenced round the whole land and built on a portion of it. Portion A was subsequently leased to a construction company which appeared not to have gone into possession. Sometime in 1976 Dr. Sodipo noticed that some workmen came on portion A and commenced building thereon. On enquiry made by him he discovered that it was one Lt. Col. A. Aliyu that was developing the land. He challenged Lt. Col. Aliyu who claimed that the land was sold and conveyed to him by one Yesufu Salami Okunade, the head of the Abdul Salami Okunade family or Fashola family. When Lt. Col. Aliyu would not desist from continuing with his building on the land, Dr. Sodipo instituted the action leading to this appeal, claiming:

“1. A declaration that the plaintiff is the owner in fee simple of all that piece or parcel of land situate, lying and being at Idiroko Village, Ikorodu Road in Ikeja Division of Lagos State which land is more particularly described and delineated on the plan attached to a Deed of Conveyance in favour of the plaintiff dated the 30th day of June, 1951 and was registered as No.19 at page 19 in Volume 145 of the Land Registry in Ibadan now in Lagos.

2. N200 damages against the defendant for trespass committed on the land by the said defendant, his agents, servants and/or privies during the period of January to September 1976.

3. A perpetual injunction restraining the defendant, his agents servants and/or privies from committing further Acts of trespass on the land.”

Pleadings having been ordered, filed and exchanged the action proceeded to trial. The learned trial Judge in a considered judgment found in favour of the plaintiff and entered judgment for him in terms of his claims with costs. Being dissatisfied with this judgment, the defendant Lt. Col. Aliyu (also known as Alhaji A. Aliyu) appealed unsuccessfully to the Court of Appeal (Lagos Division). Being dissatisfied with the judgment of the Court of Appeal, he has further appealed to this court, with leave of this court, upon three original and three additional grounds of appeal. The additional grounds are numbered 4-6. Both parties filed and exchanged their respective Briefs of

Aliyu v. Sadipo (1994) 8 KLR Ogundare JSC 61
Argument and in the defendant/appellant', Brief, the following questions are set down for determination:

“1. Whether the survey plan attached to Exhs. 8 and 2 was valid and admissible in evidence without the counter signature of the Surveyor General when Exhs. 8 and 2 registered by the Registrar of Deeds and the effects of its inadmissibility under Laws of Western Nigeria 1959 Cap. 121 and Cap. 56 if that Law was the applicable law at the time (Ground 1).” 5

2. Whether Exhs. 8 and 2 clearly show the land conveyed to the plaintiff/respondent without the plan annexed to it. (Ground 1).

3. Whether the defendant/appellant and his witnesses proved in their evidence the fraud alleged. (Ground 1).

4. Whether the importation of evidence on processes by which Exhs. 8 and 2 went through made by the Court of Appeal was wrong in law and adversely affected the judgment of that court (Grounds 4 and 5). 10

5. Whether the Court of Appeal was right in upholding the decision of trial Judge that Exh. 4 proved acts of ownership in the absence of execution by a third party or the lessee therein stated (Ground 3). 15

6. Whether the Court of Appeal was right in agreeing with the trial court that the evidence of the defendant and his witnesses did not show that the land sold to the plaintiff/respondent did not include the land in dispute i.e. that the land sold to the plaintiff/respondent was less than what the plaintiff/respondent claimed and registered in Exhs. 8 and 2 with the plan. (Ground 6). 20

7. Whether considering the totality of the evidence before the trial Judge, the Court of Appeal was right in dismissing the appeal. (Ground 7).”

The plaintiff/respondent on his part set out in his Brief two issues, to wit: 25

“1. Whether the parcel of land sold to the plaintiff by the Fashola family was as extensive as claimed in Exhibits 2 and 8 or whether the grant was enlarged by the fraud allegedly perpetrated by the plaintiff.

2. Whether the Court of Appeal was right in affirming the decision of the lower court granting judgment in favour of the plaintiff.” 30

The issues set out in the appellant's Brief are rather prolix while those formulated by the respondent do not meet all the issues raised in the grounds of appeal. The issues raised by the appellant can be classified as hereunder:

1. Whether Exhibits 2 and 8, the Deed of conveyance relied on by the plaintiff for his title, were rightly admitted; 35

2. If the deed was rightly admitted, what is the weight to be attached to it:

3. Whether defendant proved the fraud pleaded by him; and

4. Whether plaintiff established enough acts of ownership to entitle him to

judgment.

Admissibility of Exhibits 2 and 8

This perhaps is the crucial issue in this appeal. The two exhibits are the original and copy of the Deed of conveyance whereby Ifadu Alase family and Fashola family allegedly transferred title to the plaintiff in respect of the
5 land in dispute. I say “allegedly” because the case of the defendant was that these two families did not grant to the plaintiff as much land as was shown on the plan attached to the Deed of conveyance. The plaintiff pleaded as follows:

“3. *The plaintiff is the lawful owner of a parcel of land situate, lying and being at Idiroko near Maryland Ikeja by virtue of a Deed of Conveyance*
10 *dated the 30th day of June, 1956 registered as No.19 at page 19 in Volume 145 of the Lands Registry at Ibadan now in Lagos.*

4. *The plaintiff avers that the original owners of the land in dispute are the Ifadu Alase family of Ojuwoye Mushin, who sold and conveyed the said land to him in 1956.*

15 5. *The plaintiff states that the accredited representatives of the said family and Fashola’s children such as, Aina Edu Alashe, Moriamo Ibironke Ayilago, Salu Oke Ajaiye, Ogundimo Oyatogun Anjorin, Fatumo Omopariola Fashola, Muniratu Omotayo Fashola, and Yesufu Salami Fashola otherwise known as Yesufu Salami Okunade executed the said Deed of Conveyance in*
20 *respect of this land in his favour in 1956.*

x x x x x x x x

7. *The plaintiff avers that as soon as he bought the said parcel of land he commissioned a Licensed Surveyor Mr. S. Akanbi Alaka to survey the land which he did and produced plan No.AL.68/1956. A dated the 15th*
25 *day of June, 1956 which is attached to the Conveyance executed in favour of the plaintiff by the Ifadu Alase family on the 30th day of June, 1956.*

8. *The plaintiff avers that the parcel of land conveyed to him by Ifadu Alase family and the children of Fashola in 1956 a portion of which is now in dispute is properly and accurately delineated on the said Survey*
30 *plan by the pillars Nos. DB.630, DB.3299, DB. 3300, DB.3301, DB. 3302, Y. 1485, Y. 1486, S. 807 and S. 806 inclusive which Survey Plan is numbered AL 68/1956, a copy of which is attached and marked ‘A’.*”

The defendant, on the other hand, pleaded in paragraphs 19-23 of his amended statement of defence in the following manner:

35 “19. *At the trial of this action the defendant will contend that Plan No.AL/68/56 is not a PLAN and is not in existence on the 23rd of June, 1956.*

20. *At the trial of this action the defendant will contend that plaintiff was and is never in possession of portion A plan No.LA/99/1961.*

21. *At the trial of this action the defendant will contend that the*

plaintiff is not the owner of the parcel of land on which the defendant erected his building.

22. The defendant will also contend that the portion on which the defendant erected his buildings was not part of the portion sold to the plaintiff by Alashe and Okunade family.

23. With further reference of the purported Deed of Conveyance of plaintiff referred to in paragraph 3 of the plaintiff's statement of claim, the defendant avers that the said deed of Conveyance is tainted with fraud:

PARTICULARS OF FRAUD

a. The Deed of Conveyance was executed on 23/6/56 and not on 30/6/56 as claimed by the plaintiff.

b. The plan referred to in the habendum clause of the Deed of Conveyance was not in existence on the 23/6/56.

c. The plan was not physically attached to the Deed of Conveyance on 23/6/56 at the time of the execution of the Deed of Conveyance.

d. The plan covered a greater area of land than members of Okunade family agreed to sell to the family.

e. The plaintiff alone prepared the so called deed of Conveyance and brought it to the vendors for their signature/ thumb impressions."

At the trial, the plaintiff gave evidence and deposed inter alia as follows:

"The land in dispute is part of a vast area of land measuring about 3.4 acres. The land is in the left side of the main road on going to Lagos from Maryland. I am the owner of the land in dispute. In 1956 I made contact with one Fashola Family, whose family representatives were (1) Fatimo Fashola (2) Muniratu Fashola and (3) Yesufu Salami Fashola otherwise known as Yesufu Salami Okunade. These people took me to the persons who they say were the original owners of the land in dispute. The persons were of Ifadu Alase Family. I met four persons, who were the accredited representatives of the Ifadu Alase Family. I remember that one of these four persons is Aina Edu Alase. He is the oldest. I can not remember the names of the other persons.

The representatives of Fashola family showed the land to me. I requested one Alhaji S. A. Alaka to carry out the survey of the area. He was to produce the plan of the area. I instructed my counsel to prepare the Conveyance Deed of the area. My Solicitor who prepared the conveyance was late K.A. Kotun. The conveyance was executed in a Magistrate Court before a Chief Magistrate late A. Mumuni in Lagos.

After the execution of the conveyance I fenced the land, planted some vegetables on the land."

Further in his evidence he added:

5 *"I remember I have told court that I have asked one Alaka to prepare a plan in respect of the land. The plan was prepared and if I see it, I can recognise. The original copy of the plan has been tendered in one other suit in another court. I can recognise a certified true copy of the plan. Here it is."*

A copy of the Deed of Conveyance was admitted in evidence as
10 exhibit 2. Cross examined by learned counsel for the defendant the plaintiff testified thus:

"The late Fashola never told me that only plots B and C and a portion behind these plots that were sold to me. I do not agree that the plan attached to Exhibit 2 was not in existence when Exhibit 2 was executed."

15 To further questions the plaintiff answered:

"I can see Exhibit 2 and I repeated the site plan was physically attached to it by the time it was executed."

*I do not agree that the area of land sold to me by the Fashola Family was not as large as the one shown on Exhibit 2. I agree I instructed
20 my lawyer to prepare Exhibit 2."*

P.W.3. Alhaji Salisu Akanbi Alaka is the Licensed Surveyor who prepared, on the instruction of the plaintiff, the plan attached to the Deed of Conveyance. He testified thus:

25 *"I remember I received instructions about the land in dispute from the plaintiff. He instructed me to survey his Estate which included the land in dispute. I did so. I produced a plan. The plan I produced is the one now attached to Exhibit 2. The plan attached to Exhibit 2 was made in 1956. It was the first one. The number on the plan is AL/68/1956 dated 15.6.56. I went on the land before I prepared Exhibit 2."*

30 *When I got to the land it was bushy. There was no structure or any building on the land at that time. Because the plaintiff is my friend, I sent Exhibit 2 together with the site plan to Ibadan Land Registry for Registration. It was registered. It was returned to me and I returned it to the plaintiff. The plan now attached to Exhibit 2 was the one that was with it to Ibadan."*

35 *When the Deed and the plan got to Ibadan the Registrar of Deeds requested for the counter signature of the Surveyor-General. The counter-signature was done before the Registration."*

Cross-examined, witness deposed thus:

"I did not know anything about the land in dispute until the plaintiff

instructed and took me there to survey it. None of the vendors was present when the plaintiff showed me the land to survey it. I know that with the provision of the Survey land at my time a prepared site plan must be counter signed by the Surveyor-General. At that I prepared the plan Exhibit 2, in 1956, the law was on that it must be counter signed. Exhibit 2 is stamped at the stamp Duty Office but I did not take it there for the stamp duty. I took Exhibit 2 to Ibadan for registration. I did not take it there myself but I sent it through someone. The Registration stamp is on Exhibit 2 and the date is also there as 10/7/56.

I cannot remember whether or not Exhibit 2 has been counter-signed by the Surveyor-General at the time I sent it for registration in Ibadan. I can see on Exhibit 2 that it was countersigned on 6/8/56. The site plan was already attached to Exhibit 2 when I sent the Deed for registration at Ibadan.

I can see this document. It is a certified true copy of the Deed I sent to Ibadan for registration and I can see the plan attached to it. I compare it with the plan on Exhibit 2 and say that it is the same plan as that in Exhibit 2.”

To further questions the witness answered:

“I agree that at the time I surveyed the land in dispute in 1956 there was a thorough fare between the land I surveyed and Okupe land, in the area.

On Exhibit 2, I showed an adjoining land to the plaintiff land I surveyed. The adjoining land bears registration No.AL/63/50. The registration number is alright I did not survey the land in 1950. I only showed the number as an information on my plan Exhibit 2. My number on exhibit 2 is AL/68/56.

I now say that I surveyed the adjoining land for another person in 1950 and that is the reason why it bears my registration number. In 1956 when I surveyed plan in the same area, I showed it as information.”

Plaintiff also called Chief Karimu Ajayi the Alase, who was at the time of the trial, the head of the Ifade Alase family. He confirmed in his evidence that the deed of Conveyance to the plaintiff was executed in his presence and before a Magistrate by the then head and principal members of the Ifadu Alase family and that the deed was read over to the signatories before execution.

He testified that the land in dispute belonged to the plaintiff and claimed that he knew the land. He affirmed under cross-examination that he was in the court room when the Conveyance was read and interpreted to the parties before it was executed by them and that he followed the parties into the Magistrate’s chambers. He testified that the extent of the land sold to the

plaintiff was about 4 acres. He deposed thus:

“I know the extent of the land and I know that is about 4 acres. It was only the size owned by the Fashola and this is 4 acres that was sold to the plaintiff by them. The land sold to the plaintiff is about 4 acres. The land of the Alashe family in the area is a large one. I bow that it is the whole 4 acres
5 of the land that was sold to the plaintiff.”

The original Deed of Conveyance to the plaintiff was admitted in evidence through one Alhaji Jimoh Farry an exhibits clerk in the High Court of Lagos, and was marked exhibit 8.

The defendant testified in his defence and claimed that he bought
10 the land in dispute through one Yesufu Okunade in 1976. Yesufu Okunade was the same person as Yesufu Fashola a member of the Fashola family. Yesufu Okunade executed the deed of conveyance in favour of the defendant. A copy of the deed was tendered and admitted in evidence and marked exhibit 10. The land was vacant at the time the defendant was put in possession by Yesufu.

15 D.W.2 who claimed that he worked with a lawyer, testified how he and Yesufu Okunade took the defendant to the land in dispute which was later sold to the defendant by Okunade.

Testifying further he said:

“I know that plaintiff has property opposite the land in dispute. It is
20 the Fashola family that sold the land to the plaintiff. It was in 1956 that plaintiff was sold the land. I was present at the transactions and I know the portion actually sold to the plaintiff. Plaintiff’s land is on the left hand side of the area in which the land in dispute is situated.”

D.W.3 in his own evidence testified inter alia thus:

25 “I am familiar with the survey laws in the old Western Region of Nigeria. I know that a plan is considered ready when it has been signed by a surveyor and countersigned by the Surveyor-General.”

This same witness admitted that the area edged red on the plaintiff’s plan was the same as the area verged red, the plan attached to the plaintiff’s
30 Deed of Conveyance, Exhibit 8. The last witness for the defendant is one Chief Micheal Akinola, a member of the Alase family.

He testified thus:

“I knows the plaintiff and I know the defendant. I know the land in dispute between them. The land in dispute is situated on Ikorodu Road. The
35 land is now divided into two by a road. Dr. Sodipo’s portion is on the right hand side while that of Colonel Aliyu is in the left.”

I have set out the evidence given by the witnesses for both parties in order to show whether or not it is established

(1) that the plan attached to exhibit 8 (as well as exhibit 2 shows a larger

area of land than was admittedly sold and conveyed to the plaintiff by the Ifedu Alase Fashola families;

(2) whether fraud pleaded by the defendant was proved.

The issue of the admissibility of exhibit 8 (as well as exhibit 2) was 5
hotly contested by learned counsel for the defendant in his final address at
the trial. It was learned counsel's submission that at the time of the execution
of the Deed of Conveyance, the plan attached to it not having been counter-
signed by the Surveyor-General as required by section 27 of the Surveyor Law
Cap. 121 Laws of Western Nigeria, the Deed of Conveyance was not admis- 10
sible. He cited the case of Awomuti v. Salami (1978) 3 SC.105 at 109 in support
of his contention. He further submitted that the plan could not have been the
plan attached to the Deed at the time of its execution and cited Idowu Alashe
& Ors. v. Sanya Olori-Ilu (1964) 1 All NLR 390; (1965) NMLR 66 at page 71 in
support of his submission. Learned Counsel observed that the plan did not 15
carry the endorsement of the Magistrate before whom the Deed was executed.
He referred to other defects in exhibit 8 such as that the commencement date
was put at 30th June, 1956 whereas the plan was not counter signed until 6th
August, 1956. It was counsel's submission that with these defects, it should
be inferred that exhibit 8 did not contain the plan now attached to it and that, 20
therefore, there was uncertainty as to what land was actually sold to the
plaintiff. On the issue of fraud pleaded in paragraph 23 of the amended state-
ment of defence, counsel was of the view that if the particulars of the fraud
given in the pleadings were found to be proved, then the validity of exhibit 8
could not be sustained. He cited a number of authorities in support. 25

Learned counsel for the plaintiff for his part, submitted that the plan
attached to exhibit 8 was in existence before the Deed was executed. He con-
tended that it was for the defence to prove the contrary and submitted that
there was no evidence that the plan was not in existence at the time of the
execution of exhibit 8. Learned counsel conceded certain defects such as (a) 30
that the plan was not countersigned before the Deed was submitted for regis-
tration, (b) that exhibit 8 did not bear the date on which it was registered and
(c) that the date on it was the date it was presented for registration; he how-
ever, submitted that on the authority of *Mrs. Bucknor-Maclean & Anor v.*
Inlaks Ltd. (1980) 8-11 S.C.1, all these defects were cured by the registration of 35
the Deed, exhibit 8.

The learned trial judge observed, and quite rightly in my view, that
the principal issue joined between the parties was the authenticity or other-
wise of exhibit 8 especially of the plan attached to it and put the onus on the

plaintiff not only to show that exhibit 8 was properly executed but that everything connected with it was admissible. After a review of counsel's submissions and authorities cited, the learned trial Judge found :

"The evidence of 1st plaintiff witness and 4th plaintiff witness show that exhibit 2 was executed. Despite the rigorously (sic) cross-examination of 4th plaintiff witness by the defence as to where exhibits 2 was executed, I believe plaintiff's evidence and that of 4th plaintiff witness that exhibit 2 was executed.

"He also found, after a review of the evidence, as follows:

"I believe the plan of the plaintiff's land in this case possesses these 10 characteristics.

'draw or attached hereto and therefore edged "RED".

I believe and I so find that the Magistrate must have read this part of the Habedum in the Deed and he must have seen the plan there before appending his signature. The plan is dated and signed by the surveyor as 15 15/6/56, exhibit 2 to which it is attached is executed by the magistrate as shown by the date and signature of the Magistrate to be 23/6/56. The endorsement by the magistrate on Exhibit 2 also shows the illiterate jurat as all the signatories thereon the thumb impression. I believe therefore and I so find as evident by the facts before me that the plan as exhibit 2 was there 20 when exhibit 2 was executed by the Ifadu Alashe family and Fashola Okunade families before the Magistrate in June, 1956." (Italics is mine).

He finally made this finding of fact-

"I believe exhibit 2 was properly executed. It complied with the provision of the Registration of Land Ordinance 1948 with regard to its 25 being executed before Magistrate and its registration was done in accordance with the law, the plan attached to exhibits 2 has been found to be so annexed at the time of execution and registration." (Italics is mine)

It was on these findings that he finally entered judgment for the plaintiff.

On appeal to the Court of Appeal, learned counsel for the defendant/ 30 appellant once again vigorously fought the issue of the admissibility of exhibit 8. Learned counsel for the plaintiff/respondent before that court submitted the case of Kola James v. Chiefs S.O. Lanlehin (1985) 7 S.C. (Pt.1) page 404; (1985) 2 NWLR (Pt.6) 262 has put an end to the arguments of learned counsel for the appellant. Ademola J.C.A. in the lead judgment of the Court of Appeal 35 observed:

"On the attack made on the plan attached to Exhibit 8 by the appellant in his brief, I am in complete agreement with the respondent contention that the appellant has confused the issue of admissibility of Exhibit 8 under the Land Instrument Registration Law with the question of admissibil

ity of the plan per se under the Survey Law; hence the appellant's reliance on the case of Gilhert Akinduyin Awoti v. Alhaji Jimoh Salami (1978) 3 SC page 105 at page 110 and other cases noted above in his brief. I think the matter has been settled beyond any shadow of doubt by the judgment of this court in Chief S. O. Lanlehin v. Kola James reported FAC/L/157/83 delivered on 26th 5 day of March, 1984 where I said as follows:

'It is clear that what the court was dealing with there is not the admissibility of the document of conveyance there (Exh. E) but the worthlessness weight to be attached to Exhibit E there as admitted. Worthlessness presupposes the recognition of the existence of a thing. You cannot talk of an inadmissible document being worthy or worthless. I do not read the Awomuti's 10 case as deciding that the Exhibit E there is inadmissible or the plan attached to it. Much is being read into that case by the learned counsel here. The problem here is the admissibility of the conveyance of 1920 which was registered and pleaded in the Statement of Claim. It is a matter governed 15 entirely by Section 15 of the Land Instrument Registration Law. The Section 23 of the Survey Act has no part in this. Alashe & 2 others v. Olori -llu & Others (supra) is not applicable here to the plan attached to conveyance. The admissibility of a plan was a straight issue in the Alashe's case as plan sought to be tendered there contravened sections 23 of the Survey Act (Cap 20 194). The Land Instrument Registration Law was not even considered or mentioned in the Alashe's case.'

The above statement is very much apposite here. This judgment was upheld on appeal in Kola James v. Chief S. O. Lanlehin (1985)7 SC. Page 404 where Bello J.S.C., (as he then was), said as follows:- 25

"In my view, the decision of the Court of Appeal is in accord with the judgment of this court in Erinoshio v. Owokoniran (1965) NMLR 479 wherein it was held that non-compliance with the requirements of the Survey Act did not render a plan annexed to a registered instrument inadmissible in evidence. My learned brother, Karibi Whyte J.S.C. has stated fully 30 his reasons for holding that the plan attached to the registered conveyance in the case on appeal before us is admissible. I adopt his reasons on the issue of its admissibility."

These judgments, in my view are complete answers to the contentions of the appellant in this appeal." 35

The same arguments are again raised in the further appeal by the defendant to this court.

I shall now examine the cases relied on both parties. In Exhibit 8, the two families of Ifadu Alashe and Fashola conveyed unto the plaintiff "ALL

that piece or parcel of land situate lying and being at Idiroko Village, Ikorodu Road, Ikeja District together with all the rights, easements and appurtenances or reputed to be appurtenant thereto and which is more particularly
 5 described and delineated with its dimensions and abutments on the plan drawn or attached hereto and thereon edged Red". The courts below found, and I am not persuaded to disagree with them, that the Plan No. AL.68/1956 was the plan attached to Exhibit 8 at the time of its execution. It is not in dispute that the plan was not counter-signed by the Surveyor General of the Western
 10 Region at the time of the execution of Exhibit 8. It is contended for the defendant that this lapse rendered the plan inadmissible under the Survey Law of Western Nigeria and that this admissibility also extended to Exhibit 8, the Deed. Reliance is placed on the case of Awomuti v. Salami (supra).

Learned counsel for the plaintiff contends that the fact that Plan No.
 15 AL.68/1956 attached to Exhibit 8 was not countersigned by the Surveyor-General at the time of the execution of the Deed would not affect the admissibility of the deed and relies on Kola James v. S. O. Lanlehin (Supra).

Now section 3 of the Survey Law of Western Nigeria applicable in this case provided as follows:

- 20 "3(1) No map, plan or diagram of land-
 (a) if prepared after the 1st day of June, 1918, shall be accepted for registration with any registrable instrument which is required by any written law to contain a map, plan or diagram; and
 (b) if prepared after the 20th day of October, 1897, shall, save for
 25 good cause shown to the court, be admitted in evidence in any court, unless the map, plan or diagram-
 (i) has been prepared and signed by a surveyor or is a copy of a map, plan or diagram so prepared and signed and is certified by a surveyor as being a true copy; and
 30 (ii) has been examined by the Survey Department and bears the counter signature of the Surveyor-General."

Sections 3 dealt with the admissibility in evidence of maps, plans or diagrams of land prepared after 1897. The admissibility in evidence of instruments affecting land was, however, governed by a different law. It was the
 35 Land Instruments Registration Law. I shall set out the relevant sections of the latter Legislation relating to registration of instruments. These were:-

3(1) There shall be in the Region a land registry with an office or offices at such place or places as the Governor may from time to time direct.

8. No instrument executed in Nigeria after the commencement of this Law, the grantor, or one or more of the grantors, whereof is illiterate, shall be registered unless it has been executed by such illiterate grantor or grantors in the presence of a magistrate or justice of the peace and is subscribed by such 5 magistrate or justice of the peace as a witness thereto.

10 (1) No instrument executed after the commencement of this law, other than a power of attorney, shall be registered unless it contains a proper and sufficient description, and, subject to the regulations, a plan, of the land affected by such instrument. 10

The decision of the registrar as to the adequacy of the description and plan of any land in any instrument for the purpose of identification shall be final, subject to any order of the High Court.

(2) No Crown grant executed after the 1st June, 1918, and no instrument executed after the said date affecting land the subject of a Crown grant executed after the said date shall be registered unless the plan of the land affected by such Crown grant or instrument is signed by a surveyor and is countersigned by the Survey-General or is a copy of a plan so signed and countersigned. 15

(3) No instrument executed after the 1st June, 1918, having thereon or attached thereto a plan of the land affected shall be registered unless the plan is signed by a surveyor or is a copy of a plan which has been signed by a surveyor. 20

(4) In this section the terms "surveyor" and "Surveyor-General" have the meanings assigned to those terms by the Survey Law. 25

16. No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered in the proper office as specified in section 3.'

The proviso is omitted as it is not relevant here. In *Awomuti v. Salami* (supra) this court held that a defective plan attached to a deed of conveyance and the conveyance to which it was attached are both worthless. This court in that case, however, came to its decision without the benefit of arguments (defendant's counsel conceded the point) and without considering either the land Instrument Registration Law or an earlier decision of this court in *Erinsho v. Owokoniran* (1965) NMLR 479 where this court had held that: 30

(1) Once an instrument is registered under the Land Instruments Registration Law or Act, it should be admitted in evidence as a registered instrument. If, however, the plan annexed thereto is in fact defective in any way, a different question will arise as to its evidential value; 35

(2) When a plan is tendered as a plan issues as to its admissibility will be governed by sections 3 of the Survey Law or section 23 of the Survey Act (both provisions are in pari materia)

At page 484 Idigbe J.S.C. delivering the judgment of the court had
5 observed:

“In this court learned counsel for appellant has argued that since the deed of conveyance was duly registered the provisions of Cap. 56, Land instruments Registration Law Western Nigeria (see Vol. 3, 1959 edition of the Laws of Western Region) became applicable and not the Survey Law
10 Cap. 121 aforesaid; he therefore submitted that the document should have been received in evidence by virtue of the provisions of sections 16 of Cap. 56 aforesaid. We think that it should be pointed out that the Laws Cap. 56, Land Instruments Registration Law, and Cap. 121 the Survey Law -are clearly intended for different purposes. Section 3 of Cap. 121 is intended to control
15 the admission in evidence of all plans, maps or diagram of land prepared after 1987; Cap. 56 is clearly intended, among other things, to control the admission in evidence of instruments - defined in section 2 of that law- which were registered after 1925 the commencement date of that law (see sections 10 and 16 of Cap. 56). The document in question (Exh. 6 rejected) comes
20 within the definition of the term ‘instrument’ in section 2 of Cap. 56 aforesaid. Even if Cap. 56 applied to it, all questions relating to the adequacy or sufficiency of the plan annexed to that instrument are matters within the competence of the Registrar appointed by the Governor under section 4 of that law subject, of course, to any order of the High Court (section 10(1) Cap. 56 refers). Therefore it would appear that once the instrument is registered under Cap. 56 it should be admitted, as a registered instrument, in evidence (see section 16 cap. 560); if, however, the plan annexed thereto is in fact defective in any way a different question will arise as to its evidential value. When a plan is tendered in evidence as a plan, issues as to its admis-
25 sibility will be governed by section 3 of Cap. 121 aforesaid, if that plan was prepared after 1897. In the present case, the instrument (Exh.6 rejected) was registered in 1917, and as already pointed out, Cap. 56 cannot apply to it, since the document was already registered when that Law Cap.56 came into force (Sec. 10(1) Cap. 56 refers). In our view the learned trial Judge erred
30 when he refused to admit the document which was offered in evidence as a conveyance Blaize got from Morinatu Oladiran.”

In Kola James v. Chiefs S.O. Lanlehin (supra) this court reaffirmed its earlier decision in Erinosh v. Owokoniran and went on to distinguish Alase v. Olori-Ilu (1965) NMLR 66 relied on in Awomuti v. Salami. In Alase v. Olori-Ilu

what was sought to be tendered in evidence but rejected was a plan per se that did not conform with the provisions of the Survey Law. Commenting on the decision in *Erinsho v. Owokoniran Obaseki J.S.C.* in *Kola James v. Chief Lanlehin* (supra) observed at page 409 of the Report that:

"This decision saves the court the confusion of its role as a court hearing evidence in a disputed land matter with the role of a registrar considering whether the plan attached to an instrument is adequate for the purpose of registration. The roles are quite distinct, and, but for the decision-making process, quite different."

In *Kola James v. Chief S.O. Lanlehin* (supra) the facts are almost on all fours with the facts here except that in that case the learned trial Judge admitted in evidence the deed of conveyance but rejected the plan attached to it that was not signed by the surveyor that made it nor countersigned by the Surveyor-General as required by the Survey Law. On appeal to the Court of Appeal (Lagos Division) that court allowed the appeal and admitted the plan as well as in evidence. On further appeal to this court, the decision of the Court of Appeal was affirmed. *Karibi-Whyte J.S.C.* delivering the lead judgment of the court in the case explained the decision of this court in *Awomuti v. Salami and Alase v. Olori-Ilu*. He observed at pages 441-444 thus:

"Surely it cannot be contested that a registrable instrument validly registered is not rendered inadmissible in evidence merely because a defective plan was annexed to it. The converse seems to be the contention of counsel for the appellants who relies on Awomuti v. Salami & Ors. (1978) 3 S.C.105 for his submission. On a careful reading and analysis of the judgment in Awomuti v. Salami (supra), that case decided no such principle of law. It was obvious in that case that their Lordships were not questioning the admissibility of the conveyance, Exhibit E, in respect of which there seemed to be no doubt, being a registered registrable instrument. What the opinion expressed amounted to was the weight to be attached to the conveyance which was described as worthless by Kayode Eso, J.S.C. at p.110. In Awomuti v. Salami & Ors. (supra) the conveyance was registered and was admitted in evidence. There was no reference to any feature on the land by means of which the land would have been identified by means of the conveyance. The conveyance merely referred to the plan. The plan which was conceded by counsel as having not been countersigned by the Director of Surveys at the time of the registration of the deed of conveyance was held to be inadmissible. The deed of conveyance was described as worthless because Apart from referring to the inadmissible plan, there is no reference to any

feature on the land by means of which the land would have been identified with the deed of conveyance.’(see p.110).

It is important to state that Their Lordships considered Exhibit E, the deed of conveyance and actually admitted it in evidence. But with respect to the plan annexed, it was observed that the plan was countersigned by the Director of Surveys on 13th July, 1956, whereas the deed of conveyance was executed on the 15th March, 1956. The court then agreed with counsel for the appellant that ‘this shows clearly that at the time of the execution of Exhibit E, the plan (If any) attached to it cannot be the plan now attached to the certified true copy of the Deed.’ (See p.109). Concisely stated the true reason for rejecting the plan was that the plan now attached to the deed of conveyance was not the plan attached to it at the execution.

The case is therefore different from the case of *Alase v. Ilu* (supra) where only the plan was in issue, or the instant case where the only issue is that the plan attached was not signed and countersigned as required by section 3 of the Survey Law, Cap. 132. It is also different from *Lydia Erinoshov. Owokoniran* (supra) where the instrument was executed together with the plan attached. There is therefore no conflict between *Awomuti v. Salami* (supra) and *Erinoshov. Owokoniran* (supra). I think the observation of the Court of Appeal on the *Awomuti* case was correct when it said, at p.150:

‘It is clear that what the court was dealing with there is not the admissibility of the document of conveyance there (Exh.E) but the worthlessness of the Exh. so admitted. It was a matter of weight to be attached to Exhibit E there as admitted. Worthlessness presupposes the recognition of the existence of a thing. You cannot talk of an inadmissible document being worthy or worthless.’ *Awomuti v. Salami* (supra) cannot be read to mean that a registered instrument will be rendered inadmissible in evidence merely because there is annexed to it a plan which at the time of its execution did not comply with the mandatory statutory requirements for its admissibility in evidence. *Alase v. Olori-Ilu* (supra) relied upon by counsel for the appellant did not in fact arise.”

I pause here a little to compare the facts in *Awomuti v. Salami* with the facts in the case on hand. It would appear on the surface that the facts are the same but while in *Awomuti* the trial court held that “at the time of execution of Exhibit E, the plan (if any) attached to it can not be the plan now attached to the certified true copy of the deed”, in the case on hand there is the definite finding of the two courts below (and I agree with that finding on the evidence)

that the plan No. AL.68/1956 was attached to Exhibit 8 at the time of its execution. There is thus this difference, and an important one for that matter, between this case and Awomuti's case. The facts in the present case are akin to the facts, as regards the execution of the deed of conveyance, in *Akano Fashina Agboola v. Angeline Abimbola* (1969) 6 NSCC 263; (1969) 1 All NLR 287 where 5 a plan attached to a conveyance was not countersigned at the time of its execution but four months afterwards. Application for registration of the grantee's title was made to the Registrar of Titles and this was objected to. The objection was upheld. On appeal to the High Court, the Registrar's decision was upheld. But on further appeal to this court, it was held, per Coker Ag. 10 CNJ at page 296 that:

"The Registrar seemed to have exaggerated the effect of the lateness of getting the plan attached to Exhibit D counter- Signed by the Director of Federal Surveys in pursuance of the provisions of the Survey Act. Clearly on the fact of it and as indeed was found by the Registrar, the plan 15 was made by the appellant's surveyor on the 3rd July, 1963. The conveyance was executed on the 9th July, 1963, so that when exhibit D was executed the plan was already in existence although not yet counter-signed. The requirements for countersignature relate to matters of evidence and the production of the document in evidence and a non-compliance, at any rate at that stage, 20 with the Survey Act does not render the plan void or useless."

I need add that where a plan is tendered per se but does not conform with the requirements of section 3(b) of the Survey Law (or Act), it may nevertheless be admitted in evidence "if good cause (is) shown to the court" for non-compliance. In the case on hand, Exhibit 8 had attached to it at the time of 25 its execution a plan duly signed by a surveyor (P.W.3) thus complying with the provisions of section 10(3) of the Land Instruments Registration Law and as registered by the Registrar under section 10(1) of the Law.

Even assuming that the counter-signature of the Surveyor General is a sine qua non to the admissibility of Plan No. AL.68/1956 attached to Exhibit 30 8, the fact that it was subsequently counter- signed by the Surveyor-General before the final registration of Exhibit 8 would cure whatever defect there might be. Lack of counter-signature does not render the plan void. I have support for this view in the decision of this court in *Ojiako & Ors. v. Ogueze & Ors* (1963) 1 SCNLR 112; (1962) 1 All NLR 58 (Reprint) where this court allowed 35 the tendering party to obtain the necessary counter-signature and to produce the plan later as additional evidence. Brett, FJ. said at page 63 of the Report:

"After the appeal had been adjourned for judgment, it was observed

that the plaintiff's plan, Exhibit A, had not been countersigned by the Director of Survey, as required by S.23 of the Survey Act. This section is mandatory and the court is obliged to take the point of its own motion. As, however, the plan was filed in May 1955, when ignorance of S.23 of the survey Act was general, I would follow the course adopted in a number of previous appeals by reopening the appeal and adjoining it for six weeks to give the plaintiffs the opportunity of having their plan countersigned and filing a motion to produce it as additional evidence. If this is done and the motion is granted I would dismiss the appeal with costs assessed at 25 guineas."

This was precisely what the Registrar did in the case on hand when he allowed P.W.3 to take away Exhibit 8 for counter-signature of the Surveyor-General on the plan attached to it before its final registration. Ojiako & Ors. v. Ogueze & Ors. (supra) is a case where the plan was tendered per se and its admissibility coming under the Survey Law or Act- a worse case than here.

After a careful consideration of the arguments proffered by learned counsel for the parties, I am satisfied that the lower court was right in its conclusion that the plaintiff's Deed of conveyance was admissible. There was substantial compliance with the statutory requirements for its registration and the Registrar's exercise of his discretion to register it has not been set aside by any order of a high court- see section 10(1) of the Land Instruments Registration Law.

Other Issues

I must say that the defendant led no evidence whatsoever in support of the plea of fraud raised in paragraph 23 of his amended Statement of Defence. He seems to rely on the defects appearing on the face of Exhibit 8. There is no evidence from which one could hold that those defects were as a result of fraud perpetrated by the plaintiff or any other person. The evidence of P.W.3 the Surveyor who prepared the plan attached to exhibit 8 and who was responsible for presenting the Deed for registration remains unchallenged. The evidence of this witness was accepted by the learned trial Judge and it has not been satisfactorily shown before us that the evidence was not worthy of any credit. That evidence explained convincingly most of the particulars of fraud given in paragraph 23. It is not in dispute that the Deed, exhibit 8 was executed on the 23rd of June, 1956 and from the evidence of P.W.3 the plan attached to the deed was in existence before that date.

The unchallenged evidence of the plaintiff and P.W.3 is to the effect that the plan was attached to the Deed at the time of its execution. No evidence has been led to show that the Ifadu Alase/Fashola families sold to the

plaintiff land lesser in extent than was shown on the plan attached to exhibit 8. On the contrary, the evidence of P.W.4, the head of the Ifadu Alase family was to the effect that the land sold to the plaintiff was about 4 acres in area and that it was the totality of Fashola family's land in the area. With all these pieces of evidence the defendant's plea of fraud was not borne out and was rightly 5 rejected by the courts below.

In the absence of any evidence challenging the correctness or authenticity of exhibits 8 and the plan attached thereto, I must hold that the courts below are right to give it due weight and to find in plaintiff's favour on the strength of it. 10

On the authority of *Idundun v. Okumagba* (1976) 1 NMLR 200; (1976) 9/10 S.C. 227 exhibit 8 is sufficient evidence to support the award of title in plaintiff's favour. Plaintiff has, however, further shown that since going into possession, he has exercised acts of ownership on the land. One of these is the successful action he instituted against Madam Sinotu in 1957 when the 15 latter came on the land. He was not challenged on this. It is significant also to note that his ownership of portion B and C of exhibit 3 was not challenged. He claimed that he leased out portions to a construction company which never took possession. I will not give much weight to this but on the welter of evidence on the record, the courts below are right in holding that the plaintiff 20 established sufficient acts of ownership to entitle him to judgment.

It must be remembered that the land in dispute is in an urban area and the acts of ownership that will suffice to establish title to it will not necessarily be the same were the land an agricultural land, for instance. 25

From all I have been saying above, I must conclude that this appeal fails and it is hereby dismissed by me. The two courts below came to the right decision on the evidence before them and I hereby affirm their decision. I award N1,000.00 costs of this appeal to the plaintiff/respondent. 30

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree with the judgment. I too dismiss the appeal and affirm the decision of the Court of Appeal with N1,000.00 costs against the appellant in favour of the respondent. 35

ONU JSC

Having been privileged to read before now the judgment of my learned

brother Ogundare, J.S.C. just delivered, I am in complete agreement with his reasoning and conclusion that this appeal lacks merit and ought to be dismissed.

I accordingly dismiss it and make the same consequential orders inclusive of those as to costs.

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ADIO JSC

I have had the opportunity of reading, in draft, the judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree with it. I dismiss the appeal with N1,000.00 costs to the respondent.

UWAIS JSC (PRONCEMENT)

The Honourable Justice Olajide Olatawura, who sat with us on the 14th day of February, 1994 to hear this appeal, retired on the (Uwais, J.S.C.) 3rd day of May, 1994. Before his retirement, he took part in the conference which we held on the 23rd day of February, 1994 on the appeal and he was of the opinion that the appeal should be dismissed.

In accordance with the provisions of the proviso to section 258 subsection (2) of the Constitution of the Federal Republic of Nigeria, 1979 Cap. 62 of the Laws of the Federation of Nigeria, 1990, and the decision of this court in A.-G. of Imo State v. A.G. of Rivers State, (1983) 8 S.C.10 at p.10-12; (1983) 2 SCNLR 108. I hereby pronounce the opinion of Hon. Justice Olatawura that the appeal be dismissed for the reasons contained in the judgment read by my learned brother Ogundare, J.S.C. the draft of which he read before his retirement.

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