

**SUPREME COURT OF NIGERIA**  
20TH JANUARY, 1995. SC. 69/1991  
**CORAM: M.L. UWAI, A.B. WALI, I.L. KUTIGI,**  
**U. MOHAMMED, A.I. IGUH, JJSC.**

THOMAS AWAOGBO & OTHERS	..... APPELLANTS
AND	
CHUKWU EZE	..... RESPONDENT

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*APPEALS - Findings of trial court - Where supported by evidence - Whether appellate court should interfere.*

*APPEALS - Miscarriage of justice - Court of Appeal's failure to advert to the issue of injunction - Whether appellants suffered any miscarriage of justice thereby.*

*COURTS - Error of trial court - When held not to affect its final decision.*

*EVIDENCE - Proper consideration - Whether the two lower courts properly considered the evidence placed before them.*

*LAND LAW - Registrable instrument that was not registered - Cannot be given in evidence - Rut equitable title can be based thereon.*

*LAND LAW - Customary tenancy - Whether respondent is a customary tenant for an indefinite period.*

*LAND LAW - Injunction - Whether the trial court was right in restraining appellants - From entering the whole area of land claimed by the respondent.*

*LAND USE ACT - Powers of a local government - To acquire land for public purposes - Whether land in dispute was acquired for any public purpose.*

**FACTS**

Before the Anambra State High Court, the plaintiff as respondent claimed against the defendants/appellants jointly and severally N100,000.00 general damages for trespass and an injunction. The defendants made a

customary grant of the land in dispute to the plaintiff. In 1959 for exploitation and cultivation. The consideration for the grant under native law and custom was a lump sum payment of N140.00 plus a reserved tribute of N20.00 per annum from the ninth year of occupation. An additional portion was granted to the plaintiff in 1964 upon the payment of N60.00. Plaintiff paid his annual tribute up to 1974 after which the community refused to receive further tribute on the ground that the customary tenancy had run out since 1968. Upon the promulgation of the Land Use Act in 1978, the defendants in connivance with the Ikwo Local Government misconstrued the Act as automatically divesting the plaintiff of his land and revesting same in the community and the local government.

Following some steps taken by the Local Government in respect of the land, defendants forcibly entered and took over control of the land in dispute. Defendants contested that the grant to plaintiff was for 8 years and thereafter from year to year until they terminated the tenancy. The trial court found in favour of the plaintiff and awarded N1,500.00 damages against the defendants. The defendants' appeal to the Court of Appeal was dismissed. Being dissatisfied, the defendants have further appealed to the Supreme Court to determine inter alia, whether the respondent's grant was founded under native law and custom and whether the respondent was a traditional grantee of lease for seasonal farming in each year.

***HELD*** (Unanimously dismissing the appeal per lead judgment of **KUTIGI JSC**)

*Finding supported by evidence*

1. The findings are clearly supported by evidence and the inferences drawn from the findings are quite proper. The circumstances under which we can interfere with those findings of fact or inferences drawn from them have not been shown to exist. It must be stated that even Exhibit 3 which the appellants heavily relied upon, because they pleaded it and tendered it, supported the findings of the trial court above, (P. 234 E)

*Registrable instrument that was not registered*

2. I agree with the learned trial judge that Exhibit 3 is an instrument within the meaning of section 2 of the Land Instrument Registration Law and that having regard to the mandatory provisions of section of the said law no registrable instrument which has not been registered should be given in

evidence. But it was probably too wide a statement for him to have concluded that “no title” could be based on Exhibit 3, Certainly not a legal title but equitable title or interest, yes. (P. 235 F)

*Error of trial court*

3. This apparent error did not however in any way affect the final decision arrived at by the learned trial judge which was undoubtedly based on the credible evidence of the witnesses who testified before him. (P. 236 C)

*Whether respondent is a customary tenant*

4. The answer to issue (1) therefore is that clearly the respondent is a customary tenant of the appellants for an indefinite period subject only to good conduct to avoid forfeiture. (P.236 D)

*Injunction on the whole land claimed - Any miscarriage of justice*

5. Evidence led at the trial related to the area of land verged pink claimed by the appellant and the judgment was in respect of the entire land claimed. And to make matters worse the appellants had their cultivated rice farms all over the land in dispute and not just the area verged green on the plan. Since the judgment is in respect of the entire land claimed and not part of it, it is only common sense that the Order of injunction must relate to the entire land won and not part therefore. The learned trial judge was therefore right to have so ordered and although the Court of Appeal did not advert to the point in its judgment, no harm or a miscarriage of justice was suffered by the appellants as a result of that omission. (P. 236 G)

*Evidence - Proper consideration*

6. I am clearly of the view that the two lower courts properly considered the evidence, documentary and otherwise, placed before them and rightly came to the conclusion which they did. (P.238 B)

*Acquiring land for public purposes*

7. I have read through the provisions of section 6(1)- (7) of the Act. They deal with powers of a Local Government in relation id land not in urban area. And section 6 (3) makes it lawful for a Local Government to enter upon, use and occupy any land within its area of jurisdiction for “public purposes”. There was no evidence that “Offia Okaji” farmland of respondent was required or acquired for any public purpose. (P. 238 F)

**NOTABLE POINTS OF INTEREST*****KUTIGLJSC****Findings of fact not to be easily disturbed*

1. It is settled that where a court of trial unquestionably evaluates the evidence and appraises the facts it is not the business of a court of appeal to substitute its own views for the trial court. It is equally settled that a court of appeal should not easily disturb the findings of fact of a trial judge who had the singular opportunity of listening to the witnesses and watching their performance although such findings of fact or the inferences drawn from them may be questioned in certain circumstances (P. 234 B)

*Part played by the Local Government*

2. As for the part played by the Ikwo Local Government in issuing the Public Notices (Exhibits 8 & 9) it suffices to say in the words of the learned trial judge that the Ikwo Local Government had no right, statutory or common law, to abolish the customary law agreement between the parties nor can it authorise an act of trespass. (P. 237 F)

*Whether Local Government acted under Land Use Act*

3. On the facts of the case I cannot see how the Ikwo Local Government could have claimed to have acted under any of the provisions of the Land Use Act 1978. And since the Local Government was not joined as a party to the action, I will say no more on, that. Suffice it however to repeat again that the Local Government has shown at least in Exhibit H above, that by its action it did not intend to deprive any of the parties herein of their customary or statutory right of occupancy to the land. (P. 239 D)

**REPRESENTATION**

G.I. Ofordile for the appellants.

Respondent absent and unrepresented.

**CASES REFERRED TO**

Fakoya v. St Paul's church Shagamu (1966) 1 All NLR 74

Debest Djukpan v. Orovuyonbee (1967) NMLR 287

Ejeanalonye v. Omabuike (1974) 2 SC. 33

Akintola v. Oluwo (1962) 2 All NLR 244

Fabumiyi v. Obaje (1968) NMLR 242

Fatoyimho v. Williams (1956) 1 FSC 87

Balogun v. Agboola (1974) 1 ALL NLR (Part 2) 66  
Okoye v. Dumez Nig. Ltd. (1985) SC. 3 Bello J.S.C.

**STATUTES REFKERREI) TO:**

- B Land Instrument Registration Law Cap. 72 vol. 4
- Laws of Eastern Nig. 1963 S. 15
- Land Use Act. 1978 SS. 28(3), 50, 6(l)(a),(b),(3)

**LEAD JUDGMENT BY KUTIGI JSC**

- C The plaintiff's claim against the defendants jointly and severally as contained in para. 28 of his statement of claim are:-

"(1) N100,000.00 general damages for trespass to that piece or parcel of land known as Offia Okaji, shown verged pink on Survey Plan No. L/D 556.

- D (2) An injunction restraining the defendants, their servants or agents from entering into or committing any further acts of trespass to the said plot of land shown verged pink on Survey Plan No. L/D 556."

E The defendants in their Joint Statement of Defence also counter-claimed against the plaintiff "*the sum of N10,000.00 being estimated value of the palm trees wrongfully destroyed and or tapped by the plaintiff and his agents.*" The counter-claim was however due to some technical reasons at the trial, withdrawn and was accordingly struck-out.

- F As usual the case proceeded to trial after the filing and exchange of pleadings by the parties. At the trial the plaintiff testified and called three other witnesses while four witnesses gave evidence for the defendants.

G The plaintiff's case in short was that in 1959 the defendants made a customary grant of a large tract of virgin bush called "*Offia Okali*" verged green in the Plan L/D 556 (Exh. 2 in the proceedings) to him for purposes of exploitation and cultivation. The consideration for the grant under native law and custom was a lump sum payment of N 140.00 plus a reserved tribute of N20.00 payable yearly from the ninth year of occupation. He claimed that the customary grant was made in two plots and that the additional portion granted in 1964 for a further consideration of N60.00 covered the area edged blue also in his Survey Plan No. L/D 556. He thereafter took effective control and proceeded to deforest the thick bush and developed it for modern farming at great expense. He paid the defendants annual tribute or rent up to 1974 as per receipt. It was during and after the

civil war that defendants' community hatched a plot to dispossess him of his farms. After 1974 the village community refused to accept the annual tribute of N20.00 any, longer from the plaintiff on the pretext that the customary tenancy had run out since 1969. Plaintiff tendered accrued tributes of 1975-1978 through accredited agents and also produced same publicly in the village square but it was rejected on both occasions. When the land Use Act came into force in 1978 the community "*conspired*" with the Ikwo Local Government to misconstrue the Act as automatically divesting the plaintiff of his land and revesting same in the community and the Local Government. The Ikwo local Government in July 1979 issued a Public Notice No. 20 of 1979 (Exh. 8) prohibiting the plaintiff and the entire community from further entry into the land. The local Government then proceeded to issue temporary occupation licenses to prospective farmers wishing to cultivate the "*Offia Okaji*" on payment to the council of N 1.25 per hectare, later however by another public notice No. 23 of 1979 (Exh. 9) the Public Notice No. 20 of 1979 (Exh. 8) was rescinded. Thereafter the defendants acting in concert forcibly entered and took over control and management of Offia Okaji farmlands belonging to the plaintiff.

In answer to the plaintiffs claim, the defendants said that the customary grant was for a specific terms of eight years and thereafter from year to year. They said the plaintiff had defaulted in the payment of the reserved annual rent and that the community lawfully terminated the customary grant. They relied on and tendered an agreement dated the 15th day of October, 1959 made between the parties which was received in evidence as Exhibit 3. They denied making another grant to the plaintiff in 1964. They admitted going on to the plaintiffs land but contended again that this time they were put there by the Ikwo local Government on payment of fees of N1.25 per hectare and that the plaintiff was not in possession to have entitled him to sue for trespass.

In a reserved judgment delivered on the 30th day of July 1982, the learned trial Judge, Adimora, J. after carefully reviewing the evidence adduced before him found in favour of the plaintiff when he said:-

*"I am satisfied that the plaintiff has proved his claim for trespass to Offia Okaji farmland in his peaceable possession and is entitled to both injunction and damages for trespass."*

The plaintiff was then awarded N1,500.00 damages against the defendants Jointly and severally. The defendants' servants or agents were also restrained by injunction from entering the Offia Okaji farmland as shown in the Survey Plan L/D 556 dated 10/11/80 - (Exh. 2).

Dissatisfied with the judgment of the trial High Court, the defendants appealed to the Court of Appeal, Enugu Division. The following issues were submitted for resolution:-

- B     *“(a) Whether the respondent’s tenure was a grant founded under the native law and custom having regard to the Memorandum of Agreement made on the 15th day of October, 1959 - Exhibit 3.*
- (b) If founded under native law and custom, whether the respondent was a customary tenant and not a traditional grantee of “lease” for seasonal farming in each year.*
- C     *(c) Whether by the combined effect of Section 2(1)(b) and Section 6(3) of land Use Act, 1978, the Ikwo local Government acted correctly by acquiring the land in dispute for public purpose and,*
- (d) Whether the grant made to the respondent amounted to any of the exceptions enumerated in section 6(3) of land Use Act, 1978.*
- D     *(e) The legal implications of the involvement of the Ikwo local Government and its effect on an action for trespass by the respondent.*
- (f) The proper order to make as to trespass, and injunction where evidence of possession was only in respect of a part of the land in dispute.*
- “

E     The Court of Appeal (Coram Ikwechegh, Katsina-Alu and Oguntade J.J.C.A.) considered the issues particularly those relating to the Land Use Act 1978 and in a reserved judgment came to the conclusion that the appeal lacked merit and dismissed it with N200.00 costs in favour of the plaintiff.

F     The defendants still aggrieved by the decision of the Court of Appeal have appealed to this Court. They will from now on be referred to as the “*appellants*” while the plaintiff will be referred to as the “*respondent*”. The appellants filed a brief of argument in accordance with the provision of rules of court. The respondent’s counsel however although served with the appellants’ brief and hearing notice of the appeal has failed to file his brief and in addition has put in no appearance at the hearing. The appeal will therefore be decided on the appellants’ brief alone which was adopted by their counsel Mr. Ofordile at the hearing.

G     On Page 4 of their brief the appellants have submitted the following issues for determination:-

- H     *“1. What was the exact nature and interest in and over the land in dispute granted to the father of the respondent? Was it customary tenancy for indefinite period or was it possessory right or mere licence personal to respondent’s father and not a hereditament?”*

2. *Whether the act or acts done by Ikwo Local Government Council in relation to the land in dispute is covered by Sections 6(3), 28(3) & 50 of the Land Use Act 1978.*

3. *Whether the failure by the Court of Appeal to consider Ground 6 of the appellants' ground of appeal to that court on the ground that it decided the appeal on narrow implications of Land Use Act 1978 was prejudicial to the appellants and amounted to a miscarriage of justice.* B

4. *Whether the learned trial Judge in the High Court and the learned Justices of the Court of Appeal correctly and sufficiently appraised and evaluated the evidence before them before they came to concurrent judgment."* C

The first issue is about the exact nature of the respondent's tenure over the land in dispute having regard to the memorandum of agreement dated the 15th October, 1959 (Exhibit 3) on which the appellants fought their case. The appellants in substance contended that the respondent was a grantee of land under traditional form of lease which was for a specific period of eight years (1960-1968), and which had expired. They said the respondent was not a customary tenant for an indefinite period as found by the trial court. Reliance was placed on para. 9 of the statement of claim, para. 8 of the statement of defence, Exhibit 3 and the following cases: *Fakoya v. St. Paul's Church Shagamu* (1966) 1 All NLR 74; *Debesi Djukpan v. Orovuyevbe & Anor* (1967) NMLR 287; *Ejeanalonye & Ors v. Omabuike & Ors* (1974) 2 S.C. 33. D E

Counsel also referred to respondent's petition Exh. 6A where it was alleged that the respondent himself admitted that the lease granted him by Exh. 3 was for eight years only. Counsel however did not tell us that in the same Exh. 6A the respondent said the appellants thereafter sold the land to him. So which is which? F

I will take up this point later.

Now, the respondent in paras, 9, 10, 11, 12, 13 & 14 of his Statement of Claim pleaded thus:- G

*"9. In October 1959, to the full knowledge of members of the Okpera Echara community in full compliance with native law and custom, and for the sum of 70 (Now N140.00) paid to the Okpera Echara Ikwo community, the Chief, Elders and community leaders granted the area verged green on Survey Plan No. L/D 556 to the plaintiff as a customary tenant under native law and custom.* H

*10. The parties estimated that it would take the plaintiff a period of eight years to deforest the land in dispute and to make it fit for cultivation.*

*11. The plaintiff, therefore further agreed with the Okpera Commu-*



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*nity that after the period of eight years, the plaintiff would start paying the community a perpetual yearly rent of N20.00 under native law and custom.*

12. *The plaintiff immediately went into possession of the said parcel of land, and began the arduous task of deforesting the jungle.*

B 13. *In 1964, for a further sum of 30 (now N60.00) the Okpera Community extended the area granted to the plaintiff to include the whole of the area shown verged blue on Survey Plan L/D 556 and agreed that the payment of rent should now start in 1969.*

C 14. *The plaintiff spent about 8 years and about N8,000.00 in deforesting the land in dispute and in developing it for farming."*

C The appellants in reply pleaded in paras. 8 & 9 of their Statement of Defence as follows:-

D "8. Paragraph 9 of the Statement of Claim does not altogether represent what transpired between the plaintiff and the defendants in October, 1969. By native law and custom, a portion of land was leased to the plaintiff on payment of 70 (now N140.00) for a period of eight years beginning from 1960 to 1969. This was supported by a memorandum of agreement dated 15th October, 1969. The plaintiff is hereby given notice to produce the original of the above mentioned agreement during the trial of their suit which is hereby pleaded.

E 9. Paragraphs 10, 11, 12, 13 & 14 of the Statement of Claim are false and so not admitted by the defendants who aver that plaintiff was not allowed the period of 8 years for deforesting the land in dispute. Deforestation and cultivation by the plaintiff went on simultaneously and immediately after the signing of 1959 memorandum of agreement signed by both parties to this suit.

F The defendants further aver that whatever it cost the plaintiff to deforest and cultivate the area leased to him is entirely his business, and they (defendants) did not extend the land granted to the plaintiff in 1959 for a further sum of 30 (now N60.00) in 1964 or at any other time."

G It is thus clear from the pleadings that the crux of the dispute is whether or the respondent's tenure was a grant founded under native law and custom having regard to the evidence of eye witnesses and the memorandum of agreement dated the 15th October, 1969- Exhibit 3 - which the appellants heavily relied upon.

H Exhibit 3 which was tendered by the appellants and which the respondent also admitted executing along with the appellants read as follows:-

*"Agreement made between Okpara People and S. Chukwu Eze & Co.*

*This agreement made the 15th day October, 1959 wherein the*

*undersaid members set in their hands. That the people of Okpara gave Offia Okaji on lease to S. Chukwu Eze & Co. for the period of 8 years (eight years) beginning from 1960-1968. The sum paid for period of the said lease is 70 (Seventy pounds). The tenant has to plant whatever crops he so desires provided the palms therein are not damaged.*

*The people saw the great need for erecting grass-houses for the teachers of the Okpera U.P.E. School hence this useful thought hatched this action whereby money could be procured for the work. Again, it has been the hope of the people, still to raise money for the future training of their rising children in education, academically and it has been proposed to farm the annual percentage on this land for this purpose, thus, after the expiration of the said eight years above Mr. S. Chukwu Eze and his group would be allowed to pay the sum of E10 (ten pounds) on the subsequent years beginning from 1969 thenceforth.*

*The dimension of the land is length..... Breadth.....*

*Read and Interpreted to the people in the vernacular and they affirmed it as being correct.*

*Signature of Landlords:*

- |                                      |   |
|--------------------------------------|---|
| <i>(1) H.R.T.I. Ogodo Igboke</i>     | <i>(1) sgd. S. Chukwu Eze</i>             |
| <i>(2) H.R.T.I. Nwonu Echem</i>      | <i>(2) sgd. Idika Ojike</i>               |
| <i>(3) H.R.T.I. Iyaka Azuogbu</i>    | <i>(3) sgd. Usang U. Ofu</i>              |
| <i>(4) H.R.T.I. Aduji Nwambara</i>   | <i>(Witness to Tenant)</i>                |
| <i>(5) H.R.T.I. Nwelaku Aloma</i>    | <i>(4) sgd. H.R.T.I. Kalu Ndem</i>        |
| <i>(6) H.R.T.I. Nwankweke Ongele</i> | <i>(5) sgd. D.U. Maduka</i>               |
| <i>(7) H.R.T.I. Nwori Okporo</i>     |   |
| <i>(8) H.R.T.I. Ezoko Otohe</i>      |   |
| <i>(9) H.R.T.I. Nwuna Ezaka</i>      | <i>Signature of Tenants By Chukwu (On</i> |

*Gratis)15/10/59"*

The learned trial Judge in his judgment on page 48 of the record had this to say:-

*"The defendants have contended that the length of the customary tenancy granted was only eight years and that thereafter the relationship metamorphosed to a yearly tenancy. From the evidence before me which I accepted it cannot be seriously said that a maximum duration of eight years was intended by the parties. Eight years seem to be the period allowed for deforestation of the thick virgin bush before effective farming could commence for the tenant to pay his annual tributes... I find as a fact that the grant was for a long indefinite period, not for any specific period. They had intended that the plaintiff should settle and work on the land as long as he wished and kept to his side of the bargain, with an option to give*

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up the land and return to his home, if he so wished. The bush was regarded as evil and uninhabitable, hence the landlords sold an adjacent plot to the plaintiff where he established a permanent residence. “

He had earlier found on page 41 of the judgment:

“I was very much impressed by the evidence of the plaintiff and his two witnesses and I have no hesitation in accepting their version of the incident as a true account of what transpired between the plaintiff and the defendants as regards the matters in controversy.”

It is settled that where a court of trial unquestionably evaluates the evidence and appraises the facts it is not the business of a Court of Appeal to substitute its own views for the trial court. It is equally settled that a Court of Appeal should not easily disturb the findings of fact of a trial Judge who had the singular opportunity of listening to the witnesses and watching their performance although such findings of fact or the inferences drawn from them may be questioned in certain circumstances (See for example Akinola v. Fatoyinbo Oluwo & Ors (1962) 1 SCNLR 352: (1962) 1 All NLR 244: Fabumiyi & Ors. V. Obaje & Anor (1968) NMLR 242: Fatoyinbo Williams (1956) SCNLR 274: (1956) 1 FSC 87.

The Court of Appeal had no difficulty in agreeing with the above findings of fact by the learned trial Judge. I agree with them too. The findings are clearly supported by evidence and the inferences drawn from the findings are quite proper. The circumstances under which we can interfere with those findings of fact or inferences drawn from them have not been shown to exist. (See Fabumiyi & Anor v. Obaje & Anor (supra): Balogun & Ors v. Agboola (1974) 1 All NLR (Pt. 2) 66. It must be stated that even Exhibit 3 which the appellants heavily relied upon, because they pleaded it and tendered it, supported the findings of the trial court above. This is what the learned trial Judge observed on page 45 of the judgment:-

“The facts of this case are not complicated. It is a common ground that the plaintiff has occupied the disputed farmland as the customary tenant of the defendants community since 1959. Except for the misconception as to the nature and effect of Exhibit 3 on the customary grant made to the plaintiff, the facts relevant to the claim before the court are short and fairly not controversial..... The argument about one or two grants does not take into consideration para 3 of the statement of claim which described the Offia Okaji land in dispute as shown verged pink in Exhibit 2 - the Survey Plan No. 556 filed by the plaintiff and para. 4 of the

*statement of defence which unreservedly admitted both the averment in para 3 of the said pleading and the correctness of the only Survey Plan. It is also not in dispute that the grant to the plaintiff was made by the local chiefs, elders and community leaders of the defendants' group who have the power under the local custom of Okpera Echera Ikwo Community to make binding disposition of their communal lands. "*

So clearly the trouble from the beginning was the appellants' misconception of the nature and effect of Exhibit 3. The learned trial Judge rightly in my view had rejected the appellants' version of the incident and preferred the respondent's version as outlined above. He gave his reasons. There is no reason to interfere. Specifically on the effect of Exhibit 3, the learned trial Judge had this to say on page 46 of the judgment:-

*"I must observe here that Exhibit 3 was called into being after the customary grant: it was neither registered nor did it comply with the provisions of Illiterate Protection Law Cap. 64, Law of Eastern Nigeria 1963, but because it was stamped and payment of a premium of (N140.00) is a common ground, I admitted it only as a receipt and evidence of transaction. As Exhibit 3 is an unregistered lease and no other registered instrument of lease has been pleaded and registered as required by law, the mandatory provision of section 15 of the Land Instrument Registration Law Cap. 72 Vol. 4 Laws of Eastern Nigeria 1963 has not been complied with and no title could be based on Exhibit 3 (see Patrick Ossai v. Victor Nwajide & Anor (1975) 4 S.C. 207."*

I agree with the learned trial Judge that Exhibit 3 is an instrument within the meaning of section 2 of the Land Instrument Registration Law and that having regard to the mandatory provisions of section 15 of the said law no registrable instrument which has not been registered should be given in evidence. But it was probably too wide a statement for him to have concluded that "no title" could be based on Exhibit 3. Certainly not a legal title but equitable title or interest, yes. In the case of Okoye v. Dumez Nigeria Ltd & Anor (1985) 1 NWLR (Pt.4) 783: (1985) 6 S.C. 3 Bello. J.S.C. (as he then was) delivering the lead judgment said on page 12 thus:-

*"It is trite law that where a purchaser of land or a lessee is in possession of the land by virtue of a registrable instrument which has not been registered and has paid the purchase money or the rent to the vendor or the lessor, then in either case the purchaser or the lessee has acquired an equitable interest in the land which is as good as legal estate and this equitable interest can only be defeated by a purchaser of the land for value*

*without notice of the prior equity. A registrable instrument which has not been registered is admissible to prove such equitable interest and to prove payment of purchase money or rent: Savage v. Sarrough (1937) 13 NLR 141; Ogunbambi v. Abowab (1951) 13 WACA 222; Fakoya v. St, Paul's Church, Shagamu (1966) 1 All NLR 74; Oni v. Arimoro (1973) 3 S.C. 163; Bucknor-Maclean v. Inlaks (1980) 8-11 S.C. 1 and Obijuru v. Ozims S.C. 48/1984 delivered on 4th April 1985 unreported yet.*

*It follows from the foregoing that the 1st respondent's lease under Exhibits E and F was as good as if the instruments had been registered. "*

So it is with Exhibit 3 in this case. This apparent error did not however in anyway affect the final decision arrived at by the learned trial Judge which was undoubtedly based on the credible evidence of the witnesses who testified before him. The answer to issue (1) therefore is that clearly the respondent is a customary tenant of the appellants for an indefinite period subject only to good conduct to avoid forfeiture.

This is probably a convenient point to deal with appellants' issue 3. The appellant contend that the learned trial Judge was wrong to have restrained them by injunction to the whole area of land "Offia Okaji" delineated and verged Pink on Survey Plan No. L/D 556 - Exhibit 2 - when they only admitted granting the area verged Green to the respondent in 1959 and denied making any grant to him in respect of the area verged Blue in 1964.

I think there is no substance in this contention. It has been demonstrated above that the respondent in para. 3 of his statement of claim described the Offia Okaji land in dispute as shown verged pink in Exhibit 2. It is the only Survey Plan in the suit. And by para 4 of their Statement of Defence the appellants unreservedly admitted the said para 3 of the Statement of Claim. Evidence led at the trial related to the area of land verged pink claimed by the appellant and the judgment was in respect of the entire land claimed. And to make matters worse the appellants had their cultivated rice farms all over the land in dispute and not just the area verged green on the plan. Since the judgment is in respect of the entire land claimed and not part of it. It is only common sense that the Order of Injunction must relate to the entire land won and not part therefore. The learned trial Judge was therefore right to have so ordered and although the Court of Appeal did not advert to the point in its judgment, no harm or a miscarriage of justice was suffered by the appellants as a result of that omission.

Issue 3 therefore fails.

Under issue (4) the appellants submitted that the failure by the learned trial Judge to consider documentary Exhibits tendered and admitted in evidence led to a miscarriage of justice and that equally the approach of the Court of Appeal to the Exhibits was wrong. The appellants however failed to indicate how and what approach adopted by the Court of Appeal was not correct. As for the trial court the only documentary evidence they alleged was not considered was Exhibit 6A where they said the respondent admitted that the grant to him was for eight years only, and Exh. 7 which they claimed justified the action taken by the Ikwo Local Government in declaring the land in dispute a prohibited area vide Public Notice (Exhibit 8).

There is no doubt that in Exhibit 6A paras. 1 & 2, the respondent stated that the tenancy was to last for eight years the essence of which was to enable him clear and deforest the land and render it cultivable. He went on to say that at the end of that period the appellants, people of Okpera, opted to sell the land to him wholesale and that the people of Okpera signed and the settled amount was paid to them. It appears, the appellants want to play a game of chess here. They want to claim that the lease was for eight years but want to deny in the same Exh. 6A selling the land to the plaintiff at the end of the term and collecting money from him. That was not what their Exhibit 3 was about. It was also not borne out by the credible evidence accepted by the learned trial Judge. The appellants also in their pleadings and evidence before the Court said the respondent paid them annual rent as provided in Exh. 3 up to 1974 and thereafter stopped payment thereby forfeiting his lease. They also claimed to have been put into possession by Ikwo Local Government. So I ask again - which is which? No doubt they were confused. This contention has no merit. As for the part played by the Ikwo Local Government in issuing the Public Notices (Exhibits 8 & 9) it suffices to say in the words of the learned trial Judge that:-

*"The Ikwo Local Government had no right, statutory or common law, to abolish the customary law agreement between the parties nor can it authorize an act of trespass."*

*But in the fairness to the Local Government it has made it absolutely clear in para. 4 of Exhibit 8 that -*

*"The present arrangement is not intended to deprive either the Okpera Community or Mr. Chukwu Eze of their customary or statutory right of occupancy .....*

*.....*

And para. 2 of Exhibit 9 also reads:-

*"All persons who have officially applied for land and who have paid the fee of N1.25 per hectare as specified are hereby advised to recover their payments from the Local Government Treasury."*

I am clearly of the view that the two lower courts properly considered the evidence, documentary and otherwise, placed before them and rightly came to the conclusion which they did. Issue (4) therefore fails.

The remaining issue left to be considered is issue (2) which again pertains to act or acts done by Ikwo Local Government. Briefly put those acts are principally:-

(1) Issuance of a Public Notice (Exhibit 8) declaring the area in dispute a prohibited area.

(2) Issuance of temporary occupation licenses to prospective farmers wishing to cultivate the "Offia Okaji" farmland of the respondent for payment to the council for a fee of N1.25 per hectare.

(3) Issuance of a Public Notice (Exhibit 9) rescinding the prohibition order of entry (Exhibit 8).

The appellants now contend that the actions of the Ikwo Local Government in relation to the land in dispute was covered by sections 28(3) and 50 of the Land Use Act, 1978.

As observed above the facts of the case are quite clear and simple. The Court of Appeal after setting out the relevant provisions of section 6(1)(a), (b) and section 6(3) of the Land Use Act concluded thus:-

*"The remedies provided under sub-sections (5), (6) & (7) of section 6 under reference here do not come into play until the Local Government has taken a proper and valid action under section 6(3) of the Act."*

I have read through the provisions of section 6(1) - (7) of the Act. They deal with powers of a Local Government in relation to land not in urban area. And section 6(3) makes it lawful for a Local Government to enter upon, use and occupy any land within its area of jurisdiction for "public purposes". There was no evidence that Offia Okaji farmland of respondent was required or acquired for any public purpose. The matter should have ended here in my view. But the Court of Appeal proceeded to consider the provisions of sections 28 & 50 of the Act and said:-

*"The Land Use Act 1978 has no doubt vested all lands in the Government, but to expropriate any person in possession of any lands, the government must act within the provisions of the Land Use Act 1978. I have seen Exhibits 8 & 9 in this matter .....nothing in Exhibit 8 has shown that any action of the Ikwo Local Government in relation to this land was pursuant to the said Land Use Act. For example the Local Gov-*

ernment did not take possession of the land for any of the specified needs which are described as “public purposes” in the Act.

*Exhibit 9 is of the same invalid nature as Exhibit 8 and has not conformed with what the Land Use Act 1978 provides shall govern the activities of a Local Government in its dealing with lands within its jurisdiction. Where such is the case, the act of the Local Government would, in my view, become void and would not operate to vest any person with authority to deal with land as opposed to the interest of a present and current occupier or possessor, of such land...*

*And until the Ikwo Local Government acts under section 6(3) and section 28(3) it cannot be said that the respondent has been dispossessed of the land in his possession, and until then the remedies in section 6 sub-sections 5, 6 & 7 do not come into operation. “*

I agree entirely. On the facts of the case I cannot see how the Ikwo Local Government could have claimed to have acted under any of the provisions of the Land Use Act 1978. And since the Local Government was not joined as a party to the action, I will say no more on that. Suffice it however to repeat again that the Local Government has shown at least in Exhibit 8 above, that by its action it did not intend to deprive any of the parties herein of their customary or statutory right of occupancy to the land. Issue (2) also fails. All the issues having been resolved against the appellants, this appeal fails. It is hereby dismissed with no order as to costs.

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### UWAIS JSC

I have had the advantage of reading in draft the judgment read by my learned brother Kutigi, J.S.C. I entirely agree with the judgment. The appeal is accordingly, dismissed. The decisions of the lower courts are hereby affirmed.

The respondent neither filed a brief of argument nor appeared or been represented at the hearing of this appeal. I therefore make no order as to costs.

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### WALI JSC

I have been privileged to have read in advance a copy of the lead judgment of my learned brother, Kutigi, J.S.C. I agree with his reasoning and conclusion in the judgment.

For the same reasons contained in the judgment of my learned



brother Kutigi, J.S.C. I also hereby dismiss this appeal.

Since the respondent neither filed brief nor appeared or was represented at the hearing, I made no order as to costs.

**MOHAMMED JSC**

I entirely agree with my learned brother, Kutigi, J.S.C. in the lead judgment whose draft he permitted me to read before now that since all the issues canvassed by the appellants have failed, the appeal must be dismissed. The appellants challenged two concurrent findings of fact of the Court of Appeal and the High Court and failed in their bid to drive the respondents out of the land they originally granted him in 1959 on payment of N140.00.

My learned brother has considered fully all the issues raised in this appeal.

I agree with his opinion and adopt it as mine. Accordingly, this appeal is dismissed.

**IGU JSC**

E I have had the opportunity of reading in draft, the judgment just delivered by my learned brother, Kutigi, J.S.C. and I agree with him that this appeal is without substance. Consequently, I too will dismiss this appeal. I abide by the consequential order made in the lead judgment.

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