

**SUPREME COURT OF NIGERIA**  
3RD FEBRUARY. 1995. SC 236/1986  
**CORAM: S.M.A. BELGORE, I.L. KUTIGI,**  
**S.U. ONU Y.O. ADIO, A.I. IGUH, JJSC**

MAKANJUOLA OLATUNJI	.....APPELLANT
AND	
ALHAJI MUIBI ADISA	..... RESPONDENT

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**APPEALS** - Inquiring into an issue not pleaded - By the Court of Appeal  
-When a miscarriage of justice is occasioned thereby

**APPEALS** - Trial courts evaluation of evidence - Held wrongfully interfered with - By Court of Appeal

**APPEALS** - Views of the facts expressed by trial judge - to shown to be perverse - Whether Court of Appeal was right in substituting its own views.

**COURTS** - Suo motu issue - Raised by the Court of Appeal - In respect of the validity and signatories to a deed of conveyance - Whether proper.

**EVIDENCE** - Hostile witness - Failure by defendant to treat its hostile witness as such - Evidence of such witness is an admission - Plaintiff can rely on as further reinforcement of his case.

**PLEADINGS** - Adjudicating on an issue that was not pleaded - By the Court of Appeal - Whether its decision will be set aside.

**FACTS**

Before the Oyo State High Court Ibadan, the plaintiff/appellant claimed declaration of Statutory Right of Occupancy and N500 damages for trespass against the defendant/respondent, in respect of the land in dispute Plaintiff averred that the land originally belonged to the Aduloju family, who sold it to one Lanihun and another vide a Deed of Conveyance (Exhibit "B"). The land was subsequently conveyed to plaintiff in 1975 by one Latunji. Plaintiff went into possession, regularly weeding the land. In 1979, he sought to commence building construction but was repulsed by the defendant, hence this action. Defendant denied plaintiff's claim. He averred that the land originally belonged to the Faniyi family from which defendant's Odukunle family emerged and that they have been in possession. That one Lanihu, one of the plaintiff's predecessor in title sought to survey the land,

but he was chased away. A witness called by the defendants testified in favour of the plaintiff's case and was not treated as hostile.

The trial court found for the plaintiff and granted the reliefs sought by him. Defendant's appeal to the Court of Appeal was upheld pursuant to unpleaded issue raised suo motu by that court. The plaintiff has now appealed to the Supreme Court to determine whether the Court of Appeal properly raised suo motu issue in view of the parties' pleadings.

***HELD*** (Unanimously allowing the appeal per lead judgment of ONUJSC)  
***Suo motu issue - Raised by Court of Appeal***

1. In the instant case, it was wrong of the court below to have found against the Plaintiff, thus reversing the learned trial Judge on exhibit 'B' in regard to its execution. This is the more so because by so doing, it was formulating its own issue and basing its decision thereon even though not raised by parties in their pleadings, in their briefs of argument or in their oral submissions. Thus, the inquiry by the court below into the validity of exhibit 'B' in relation to the capacity of the signatories thereto and its effectiveness in conveying Aduloju family land, was not a live issue before the court. (P. 329 C)

***Views of the facts expressed by trial judge***

2. Thus, as happened in the instant case, it is wrong for the court below sitting on appeal to have substituted its own views of the facts for those of the trial Judge whose province the ascription of probative value is to evidence. This is the more-so when it has not been shown that the trial court's decision is perverse or is the result of misapprehension of facts. (P. 330 G)

***Evidence - Hostile witness***

3. For this piece of devastating testimony detrimental to the cause of the Defendant, D.W. 1 was not treated as a hostile witness. In the case of *Adebambo v Olowosago* (1985) 3 NWLR (Part 11) 740 C.A. it was held that where witnesses called by a defendant gave evidence which supported the plaintiffs case and the defendant did not treat them as hostile witnesses, the evidence of such witnesses must be treated as an admission upon which the plaintiff is entitled to rely as further re-inforcement of his case. I adopt the same reasoning in the *Olowosago Case* (Supra) in my consideration of the instant case. (P. 331 E)

***Adjudicating on issue that was not pleaded***

4. It is trite law that the court is bound to decide only the case as formulated on the pleadings of the parties. It is not the province of a court to enter into any inquiry outside the pleadings or to adjudicate on any matter not put in issue by the pleadings. Where, as in the instant case, the court below formulated its own issue and based its decision thereon albeit that the issue was not raised by the parties on the pleadings, such a decision will be set aside. (P. 332 A)

***Appeals - Inquiring into an issue not pleaded***

5. In the instant case the court below by inquiring into the validity of exhibit 'B' in relation to the capacity of the signatories to it and its effectiveness in conveying Aduloju family land, was not embarking on an issue settled in the pleadings. The conclusion reached by it which led it to allow the appeal and dismiss the Plaintiffs claim therefore, occasioned a miscarriage of justice. (P. 332 D)

***Trial court's evaluation of evidence***

6. The learned trial Judge dispassionately assessed and evaluated the evidence of the parties and the court below interfered to upset it, quite wrongly, in my view. (P. 332 E)

***NOTABLE POINTS OF INTEREST******ONUJSC******1. When plaintiff need not prove his vendor's root of title***

This court has held in *Dosunmu v. Joto* (1987) 4 NWLR (Part 65) 297 at 312 that when a plaintiff proves a conveyance as his root of title, he does not need to go beyond his vendor and then proceed to prove the vendor's root of title as well unless the title of his/her vendor has become an issue in the case; in which case, the vendors will be joined as parties to prove or defend such title. (P. 334 E)

***2. Order of retrial would have been proper***

Moreover, should the argument be sustained that the Court below was right to formulate its own issue on the point, the issue was not the proper one for

the disposal of the appeal in that the two parties never traced their title to a common owner. In the alternative, asserting without conceding, as the court below erroneously did by saying that *“one major defect in the judgment appealed against is the failure of the learned trial Judge to resolve the main issue in controversy between the parties, and that is whether the land in dispute originally belonged to Aduloju family or Odukunle family”* the consequence ought not to have been a dismissal of the Plaintiffs claim but sending the case back for retrial or rehearing. (P. 334 F)

### **KUTIGI JSC**

#### **C 3. Proof of due execution of Deed of Conveyance - Not necessary**

It is patently clear from the pleadings above that the issue as to whether a conveyance was duly executed was not raised at all. The defence was simply that the land originally belonged to FANIYI family, and not to appellant's predecessor-in-title, the ADULOJU family, and so the issue of due execution is irrelevant. It is settled law that where a Deed of Conveyance is pleaded and its due execution is not an issue raised on the pleadings, then it will not be necessary to prove the signatories or its due execution. (P. 337 D)

### **REPRESENTATION**

E Akinloye Akinjide Esq. for the Appellant.  
O.A. Abiose Esq. with M.O. Kolawole Esq. for the Respondent.

### **CASES REFERRED TO**

- Ekpenyong v. Nyong (1975) 2 SC 71
- F Atolagbe v. Shorun (1985) 1 NWLR 360
- Overseas Construction Company (Nig) Ltd v Creek Enterprises (Nig) Ltd (1985) 3 NWLR (Pt. 13) 407
- Shitta-Bey v F.P.S.C. (1981) 1 S.C. 40
- Palogun v. Agboola (1974) 1 All NLR (Pt.2) 66
- G Anyaoke v. Adi (1986) 3 NWLR (Pt.31) 731
- B.T.C. Ltd v. Narumal (1986) 4 NWLR (Pt.33) 117
- Adebambo v. Olowosago (1985) 3 NWLR (Pt.11) 740 C.A.
- Akinola v. Olowu (1962) 1 All NLR 224
- Ekpenyong v. Ayi (1973) 1 NMLR 372
- H Ogia v. Oliha (1986) 1 NWLR (Pt.19) 786
- Sonekan v. Smith (1967) 1 All NLR 329
- Olaoye v. Balogun (1990) 5 NWLR (Pt.148) 24
- Ayoola v. Odojin (1984) 11 SC 72
- Akpan v. Udoetuk (1993) 3 NWLR (Pt.279) 94

- Dosunmu v. Joto (1987) 4 NWLR (Pt.65) 297  
 Total (Nig) Ltd v. Nwako (1978) 5 SC. 1  
 Okorie v. Udom (1960) 5 FSC 162  
 William v. The State (1975) 1 All NLR (Pt.11) 77  
 Amajideogu v. Ononaku (1988) 2 NWLR (Pt.73) 614 B  
 Solana v. Olusanya (1975) 6 SC 55  
 Margaret Ifop v. Central Bank (1984) SC 1  
 Ihezue v. University of Jos (1990) 4 NWLR (Pt.146) 598  
 Commissioner of Works Benue State v. Devcon Development Consultants  
 Ltd. (1988) 3 NWLR (Pt.83) 407 C  
 Olusanya v. Olusanya (1983) 3 SC 41  
 Oje v. Babalola (1991) 4 NWLR (Pt.185) 267

### **LEAD JUDGMENT BY ONU JSC**

D  
 By a writ of summons issued on 31st May, 1979, the plaintiff herein appellant, claimed from the defendant, herein respondent in the Oyo State High Court holden in Ibadan (per Babalakin, J. as he then was) as follows:-

*"1. Declaration to a Statutory Right of Occupancy in respect of land in dispute edged Red on Plan No. OK 65 drawn and signed by K.O. Ishola Licensed Surveyor on 10/8/72, and counter signed by Surveyor General on 25/9/72, attached to Deed of Conveyance dated 29th day of November, 1972, and Registered as No. 11 at page 11 in volume 1426 of the Lands Registry in the Office in Ibadan.*

*2. N500 (Five Hundred Naira), for general damages for trespass committed and still being committed by the defendant or his servants and Agents on the plaintiff's parcel of land.*

*3. Injunction to restrain the defendant, his servants, or privies or any one claiming through him from further acts of trespass on the said G parcel of land. "*

Pleadings having been ordered, filed and exchanged, the case went to trial.

The learned trial Judge in a considered judgment granted the plaintiff all his claims on the 18th of September 1981. The defendant being dissatisfied appealed to the court of Appeal sitting in Ibadan (herein after referred to as the court below).

A brief resume of the facts of the case may at this juncture be stated to afford an insight into it as follows:-

For the plaintiff, it is that the land in dispute which is shown verged 'red' on

Plan No: OK 65 made by K.O. Ishola Esq. Licensed Surveyor dated 10th May, 1972 and which is situated at Oredegbe Layout near Ibadan Grammar School, Molete, Ibadan formed part of a large parcel of land originally belonging to Aduloju family of Aduloju's Compound, Idi Arere, Ibadan by settlement many years ago. The said Aduloju Family, under and by virtue of a Deed of Conveyance dated 12th October, 1960 (Exhibit 'B') sold portions of the said land to one Hammed Adetunji Lanihun and one Popoola Okunola. The said Hammed Adetunji Lanihun and Popoola Okunola laid out the land into plot, and sold a portion thereof to Kolapo Olawuyi Ishola by virtue of a Deed of Conveyance dated 20th November, 1972 (Exhibit 'A'). By another conveyance dated 10th June, 1973 (Exhibit 'C') Kolapo Olawuyi Ishola sold the land in dispute to S.L.A. Latunji deceased. Before Latunji's death, he sold the land in dispute to the plaintiff by a conveyance dated 21st July 1975 (Exhibit 'D') and the plaintiff went into possession and was regularly weeding the same. In May, 1979, the plaintiff went on the land with his workers to commence building operations but was repulsed by the defendant. Thus the genesis of the case herein.

For the defendant it was a strong denial that the land in dispute originally belonged to Aduloju family of that plaintiff went into possession after purchasing same and that he disturbed the plaintiff on the land or at all.

The defendant then claimed that the land in dispute formed part of a portion of land which originally belonged to his ancestor, the Faniyi Family who settled thereon over 100 years ago. The land settled upon by Faniyi, he explained, is bounded by the Family lands of Ashiru Onipako, Gbadamosi Adefunke, Mrs. Ogunlesi and Chief E.A. Adeyemo. The Aduloju family land, he asserted, does not extend to the defendant's family land and the Aduloju family as such had no right to sell land belonging to the defendant's family that the conveyance referred to in the statement of claim is null and void; that defendant's family which is known as Odukunle family, had been in continuous and undisturbed possession of their family land until one Lanihun, a predecessor in title of the plaintiff, attempted to survey the land but that he was driven away. He further demonstrated how plots 33 and 35 were sold to him by his family under native law and custom and that he obtained a receipt dated 23rd March, 1979 as evidence of the sale. Since purchase, he had caused the land to be surveyed and that he was presently constructing a building thereon based on approved building plan. He finally maintained that it was the plaintiff that destroyed his building foundation and wall fence on the land in dispute rather than he chasing plaintiff therefrom.

At the hearing of the appeal in the court below, the defendant abandoned all the original grounds contained in the Notice of Appeal while his application to file and argue additional grounds of appeal was allowed. The court below in a unanimous decision of the Justices reversed the decision, thus dismissing the plaintiff's case on 30th January, 1986.

The appeal herein, premised on a Notice of Appeal dated 31st B January, 1990 and containing three grounds of appeal which later by leave of court and complemented by six additional grounds, is against that decision. Parties subsequently filed and exchanged briefs of argument; they each later amended them, in accordance with the rules of court.

The plaintiff formulated six issues for determination whereas the C defendant submitted three as arising for determination. By and large, however, I take the firm view that the crux of the plaintiff's complaint being founded on the examination made and decision arrived at in respect of Exhibit 'B' - there being in my view one and only one issue that disposes of the appeal herein to wit: Whether on the pleadings as settled, particularly D with reference to paragraph 9 of the statement of defence, it was open to the Court of Appeal to determine the appeal by examining the validity of Exhibit 'B' per se as opposed to whether Exhibit 'B' covers the land in dispute. I intend to consider same as follows:-

At the hearing of the appeal on 9th November, 1994 the learned E counsel for plaintiff abandoned ground 2 of the original grounds as well as additional grounds 2 to 7 respectively.

I will commence the consideration of this issue (the lone issue) which in my view, overlaps the three formulated by the defendant, by setting out firstly paragraphs 6, 7, 8 and 9 of the plaintiff's statement of defence thus: F

### **Statement Of Claim**

*"6. The said family under and by virtue of a Deed of Conveyance dated 12th October, 1960 and Registered as No. 19 at page 19 in Volume 415 of the Lands Registry in the Office at Ibadan, sold a larger area of land including the present land in dispute to Hameed Adetunji Lanahun and Popoola G Okunola for a consideration therein stated.*

*7. Under and by virtue of a Deed of Conveyance dated 20th November, 1972, the said Hameed Adetunji Lanahun and Popoola Okunola sold to Kolapo Olawuyi Ishola, the present land in dispute for a consideration therein stated.* H

*8. Under and by virtue of Deed of Conveyance dated 18th June, 1973, and Registered as No.4 at page 4 in Volume 1503 of the Lands Registry in the Office at Ibadan, sold the present land in dispute to Mr. S.L.A. Latunji, for a consideration therein stated.*

9. Under and by virtue of a Deed of Conveyance dated 21st July, 1973, and Registered as No. 42 at page 42 in Volume 1777 of the Lands Registry in the Office at Ibadan, Mr. S.L.A. Latunji sold the present land in dispute to Mr. Makanjuola Latunji, for the sum of three thousand Naira (N3,000.00)."

### B **Statement of Defence**

"9. The purported Deeds of Conveyance referred to in paragraphs 6, 7, 8 and 9 of the statement of claim purporting to transfer the defendant family property as Aduloju family property is null and void as Aduloju family (sic) does not extend to the land in dispute."

C Granted that there is an omission of the word "Land" between the words "Family" and "does" in the second to the last line in paragraph 9 of the statement of defence set out above, it was a departure by the court below from the pleadings to use that paragraph as a basis for the examination of the capacity of the signatories to Exhibit 'B' and other Exhibits D flowing from it.

Thus, when the court below held as follows:-

"He did not call anyone from the Aduloju Family to testify in proof of paragraphs 5 and 6. He, however, tendered the conveyance. Executed by some people in favour of Hammed Adetunji Lanihun and Popoola E Okunola; the conveyance is Exhibit B. In Exhibit 'B' the vendors therein named conveyed as "Beneficial Owners." It follows, therefore that if there was no evidence that the land of Aduloju family was ever sold to Lanihun and Okunola by the Aduloju family, there would be no title in Lanihun and Okunola which they could pass to Kolapo Olawuyi Ishola nor would there F be title which the latter could also pass to S.L.A. Latunji. And if Latunji has no title to the land in dispute there would (sic) none he could pass to the plaintiff."

It amounted in my respectful view, to the court formulating issues and answering same for the parties. This, it cannot do. See Ekpenyong & G Ors v. Nyong & Ors (1975) 2 S.C. 71 at 80-81 Adeniji v. Adeniji (1972) 4 S.C. 10 at 17 and Chief Registrar v. Vamos (1976) 1 S.C. 9. It must be borne in mind too that parties are to be bound by their pleadings. See Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360 and Oduka & Sons v. Kasumu (1968) NMLR 28.

H The issue in the appeal herein was not whether Aduloju family land was properly conveyed but whether the land in dispute originally belonged to Aduloju family or Odukunle family. Put the other way, the issue is not that those who executed Exhibit 'B' had no authority to do so but whether the land (Aduloju family land) does not extend to where it was

purported to have extended. See Overseas Construction Company (Nig.) Ltd v. Creek Enterprises (Nig.) Ltd & Another (1985) 3 NWLR (Pt.13) 407 in which the cases of Metalimpex v. A. - G. Leventis and Co. (Nig.) (1976) 2 S.C. 91 at 107; Emegokwe v. Okadigbo (1973) 4 S.C. 113 at 117-118 and George and others v. Dominion Flour Mills (1963) All NLR 71 at 77. In the latter case, it was held as follows:-

*"It is an essential principle of the rules of pleading in our adversary system of jurisprudence that each party is free to formulate his own case and once formulated he is bound by his pleadings and cannot be allowed without necessary amendment to urge a case differently from that formulated in his pleadings. The courts are bound to decide only the case formulated on the pleadings of the party. It is not within the office of a court to enter into any inquiry outside the pleadings or to adjudicate on any matter not put in issue by the pleadings. "*

In the instant case, it was wrong of the court below to have found against the plaintiff, thus reversing the learned trial Judge on Exhibit 'B' in regard to its execution. This is the more so because by so doing, it was formulating its own issue and basing its decision thereon even though not raised by parties in their pleadings, in their briefs of argument or in their oral submissions. See Overseas Construction Company (Nig.) Ltd case (supra) ; Adeniji v. Adeniji (supra) and Bashiru Alade Shitta-Bey v. The Federal Public Service Commission (1981) 1 S.C. 40 at 59. Thus, the inquiry by the court below into the validity of Exhibit 'B' in relation to the capacity of the signatories thereto and its effectiveness in conveying Aduloju family land, was not a live issue before the court.

Besides, Exhibit 'B' was a document over 20 years old at the time of trial and the trial court so found. Of Exhibit 'B' the learned trial Judge said inter alia:

*"On execution, Exhibit 'B' is more than 20 years old at the time of giving evidence and therefore its due execution is presumed and need not be proved. See Section 122 of the Evidence Act. See the case of Akanji v. Akande (1977) OYSHC Vol. ` Part 2, 161. Both PW1 and DW1 however gave evidence of execution of Exhibit 'B' in these proceedings which would appear superfluous."*

Continuing, the learned trial Judge held:

*"On the second point as to whether Exhibit 'B' is capable of transferring the interest of Aduloju family; there is no doubt that as submitted by Alhaji Adekola, that as worded, Exhibit 'B' is not capable of transferring the interests of Aduloju family land and it would therefore appear that paragraphs 5 and 6 of the plaintiffs statement of claim has (sic) not been*

proved. But Mr. Adekola himself changed the prima facie value of Exhibit 'B' when he called a witness, DW1 Salami Akinwale, the present head of Aduloju family apparently to prove paragraph 10 of his statement of defence which reads:

"Oyalowo and Salami Akinwale the immediate past and present heads of Aduloju family, knew that their family property does not extend as far as the defendant family property nor does it cover the land in dispute."

But instead did testify inter alia, that Exhibit 'B' was executed on behalf of Aduloju family, that Oyelowo Aremu Shittu was head of the family before him; that he is one of the signatories to Exhibit 'B' and that the name under which HE EXECUTED Exhibit 'B' is Akinwale Osunsanya Aduloju and that his co-signatories on Exhibit 'B' were Raufu Shittu Solaja, Suara Akinwale and Lawani Oyelowo. That the land sold by Exhibit 'B' was Aduloju family land. As a result of this evidence which I believe and accept what is otherwise cloudy about Exhibit 'B' was elucidated by the oral evidence of DW1 and that is permissible by law .....

I therefore hold that the land shown on the plan attached to Exhibit 'B' was validly transferred to the plaintiff's predecessor in title and that is the portion of this land that was transferred to the plaintiff by virtue of deeds of conveyance Exhibits 'A', 'C' and 'D' mentioned above. I therefore hold that the land shown on plan No. OK 65 dated 10th August, 1972 attached to the deed of conveyance Exhibit 'A' above is validly sold to the plaintiff."

(Italics above is mine)

The learned trial Judge having in the above extract, made these findings of fact that he as a result believed and accepted the evidence which cleared the cloud surrounding Exhibit 'B', the court below ought not to have interfered with it as it did. This is because the learned trial Judge who saw, heard and observed the demeanour of DW1 who supplied the missing link in evidence that Exhibit 'B' failed to provide, was better placed to ascribe probative value thereto, it being its own province so to do. See Balogun v. Agboola (1974) 1 All NLR (Pt.2) 66; Omeregie v. Idugiemwanye (1985) 2 S.C. 150; (1985) 2 NWLR (Pt. 5) 41 and Nzekwu v. Nzekwu (1989) 2 NWLR (Pt.104) 373. Thus, as happened in the instant case, it is wrong for the court below sitting on appeal to have substituted its own views of the facts for those of the trial Judge whose province the ascription of probative value is to evidence. This is the more-so when it has not been shown that the trial court's decision is perverse or is the result of misapprehension of facts. See Anyaoke v. Adi (1986) 3 NWLR (Pt.31) 731 and Nzekwu v. Nzekwu (1989) 2 NWLR (Pt.104) 373, when DW1, Salami Akinwale, defendant's own witness, testified for him he did not lend sup-

port to his (defendant's) case. Rather, his evidence supported the case of the plaintiff. Said DW1 among others in his evidence in chief:

*"My family land does not encroach on Odukunle's land at all. The boundary man to Aduloju family land and Ashiru Onipako and Iyalode Olubadan Abasi (sic). I do not know where the defendant is now erecting a building. I do not know the boundary man to Odukunle family land. Their own land is very far from our own. It is about a mile away from our own land."* (Italics above is mine)

As indeed transpired, the trial court accepted and believed the vital evidence of DW1, a matter which turned on the credibility of that witness. The court below was therefore wrong to have interfered with that finding. Where the verdict depends on the credibility of witnesses, then it is the exclusive preserve of the court of trial. See *N.B.T.C. Ltd. v. Narumal Ltd.* (1986) 4 NWLR (Pt.33) 117 at 126 and *Ugwu & Ors. v. Ogbuzuru & Ors* (1974) 10 S.C. 191 at 192. As this court had occasion to point out in *Motunwase v. Sorungbe* (1988) 5 NWLR (Pt.92) 90 and *Nnaji for & Ors v. Ukonu & Ors* (1985) 2 NWLR (Pt. 9) 686.

*"In matters of credibility based on demeanour of witnesses, a Court of Appeal cannot and ought not interfere - as it did not have the advantage of seeing such witnesses testify. If what is involved are finding based on inferences which the learned trial Judge has drawn from the evidence, the Court of Appeal is in as good position as the trial court and can make its own findings if in its own view the findings made by the learned trial Judge are wrong."*

For this piece of devastating testimony detrimental to the cause of the defendant, DW1 was not treated as a hostile witness. In the case of *Adebambo v. Olowosago* (1985) 3 NWLR (Pt. 11) 740 C.A. It was held that where witnesses called by a defendant gave evidence which supported the plaintiff's case and the defendant did not treat them as hostile witnesses, the evidence of such witnesses must be treated as an admission upon which the plaintiff is entitled to rely as further re-inforcement of his case. See *Akinola & Ors. v. Oluwo & Ors.* (1962) 1 SCNLR 352 (1962) 1 All NLR 224 at 227; *Okafor v. Idigo* (1984) 1 SCNLR 481 at 512 and *Akintola v. Solano* (1986) 2 NWLR (Pt.24) 598.

I adopt the same reasoning in the *Olowosago Case* (supra) in my consideration of the instant case. The court below would have been right to hold that *"One major defect in the judgment appealed against is the failure of the learned trial Judge to resolve the main issue in controversy between the parties, and that is whether the land in dispute originally belonged to Aduloju family or Odukunle family"* if the parties herein were claiming from

a common vendor. I shall come to this point shortly.

It is trite law that the court is bound to decide only the case as formulated on the pleadings of the parties. It is not the province of a court to enter into any inquiry outside the pleadings or to adjudicate on any matter not put in issue by the pleadings. Where, as in the instant case, the court below formulated its own issue and based its decision thereon albeit that the issue was not raised by the parties on the pleadings, such a decision will be set aside. See *Overseas Construction Company (Nig.) Ltd. v. Creek Enterprises Ltd. & Anors* (supra). *Adeniji v. Adeniji* (1972) 4 S.C. 10 at page 17 and *Bashiru Alade Shitta Bey's Case* (supra).

C In *Edem Ekpenyong and Others v. Akibo Etok Ayi* (1973) 1 NMLR 372, it was held that a defendant will be bound to base his defence on his pleading and if at the trial he sets up a defence different from that pleaded, the court will be justified to disregard it. See also *Ogida v. Oliha* (1986) 1 NWLR (Pt.19) 786, *Plateau Publishing Company v. Adophy* (1986) 4 NWLR (Pt.34) 205.

D In the instant case the court below by inquiring into the validity of Exhibit 'B' in relation to the capacity of the signatories to it and its effectiveness, in conveying Aduloju family land was not embarking on an issue settled in the pleadings. The conclusion reached by it which led it to allow the appeal and dismiss the plaintiff's claim therefore, occasioned a miscarriage of justice. See *A. F. Sonekan v. P.G. Smith* (1967) 1 All NLR 329 at 333 and *University of Lagos & Ors. v. Aigoro* (1985) 1 NWLR (Pt. 1) 143. The learned trial Judge dispassionately assessed and evaluates the evidence of the parties and the court below interfered to upset it, quite wrongly, in my view.

F In this regard, contrary to the view taken by the court below, the learned trial Judge resolved the issue of original ownership of the land in dispute as between Aduloju and Odukunle family. For instance,

(i) The trial court relied on Exhibit 'B' supported by the evidence of 1st D.W.

G (ii) Although the evidence of DW1 was contrary to the case of the defendant that called him, he was never treated as a hostile witness and no comment was made on his evidence even up to the address stage as I had earlier elucidated above.

(iii) Since the two parties trace their title to different original owners and the evidence of the plaintiff was preferred to that of the defendant, the issue of original owner, in my respectful view, was resolved without saying so in so many words, being in essence, superfluous.

The contention of the defendant on the other hand, if I understand him well is, inter alia, that following the case of *Olaoye v. Balogun*

(1990) 5 NWLR (Pt.148) 24 at page 34 this Court (Per Agbaje, J.S.C.) stated that “*when one of the main issues in a case is as between the plaintiff and the defendant who has proved better title to the land in dispute; resolution of this issue must necessarily involve consideration of the validity of the competing documents of title.*” He in addition contended that in Ayoola v. Odofin (1984) 11 S.C. 72, this court further stated among others, that a claimant can trace his root of title to a grant of land in dispute by someone who has the right and the capacity to make the grant to the purchasers therein. He argued further still that on the strength of the authorities referred to above, the court below was perfectly entitled to consider whether or not the vendors in Exhibit ‘B’ had capacity to make the grant to the purchasers and that indeed the High Court was also aware that the validity of Exhibit ‘B’ was in issue when it stated in effect that a document produced as evidence of title must also be capable of transferring the interest mentioned therein; the consideration of Exhibit ‘B’ along that line not being out of place. It is enough to say that the principle enunciated in Ayoola v. Odofin (supra) at page 116 followed by other decisions of this court such as Akpan v. Udoetuk (1993) 3 NWLR (Pt.279) 94, to the effect that “*where the radical title pleaded is not proved, it is not permissible to support a nonexistent root with acts of possession; it is not permissible to substitute a root of title that has failed with acts of possession which should have derived from that root*” has, in my respectful view, no application or relevance to the case in hand.

It is my respectful view here again that the argument proffered here is misconceived in that the court below in entering into an inquiry on the validity of Exhibit ‘B’ in relation to the capacity of the signatories to it, coupled with its effectiveness in conveying Aduloju family land, was not an issue as settled by the pleadings. In this regard, I can do no more than refer to another portion of the learned trial Judge’s findings of fact justifying how plaintiff had proved his case, having earlier quoted in extenso the reasoning of the learned judge. He said in his judgment:

*“I find as a fact that the title claimed by the defendant to the land in dispute cannot match the plaintiff’s own title in respect of the land in dispute. No legal title of Odukunle family has been transferred to the defendant.*

*There is evidence before me that the land in dispute is within Ibadan township. I therefore hold that the plaintiff has proved that he is entitled to declaration of Statutory Right of Occupancy in respect of the land in dispute.”*

Besides, Exhibit ‘B’ itself, a document of over 20 years old at the

time evidence regarding it was being given (the Vendors who were held out in the Habendum as Beneficial Owner's) and copied into the record states clearly under its recitals as follows:-

*"Whereas the vendors were well and sufficiently seised under Native Law Custom of the hereditaments hereinafter described and intended to be hereby granted for an estate of possession or its equivalent in land tenure free from encumbrances.*

*And Whereas the vendors have at the request of the Purchasers agreed to grant the fee simple of the said hereditaments to the Purchasers."*

C And as to whether Exhibit 'B' was duly executed or whether in the process its proof was not superfluous, the learned trial Judge put the matter beyond conjecture when he held inter alia:

*"I will now consider Exhibit 'B' along these propositions of law. On execution, Exhibit 'B' is more than 20 years old at the time of giving evidence and therefore its due execution is presumed and need not be proved. See section 122 of Evidence Act. See the case of Akanji v. Akande (1977) OYSHC Vol. 1 page 2,161. Both PW1 and DW1 however gave evidence of execution of Exhibit 'B' in these proceedings which would appear superfluous."*

E This court has held in *Dosunmu v. Jato* (1987) 4 NWLR (Pt.65) 297 at 312 that when a plaintiff proves a conveyance as his root of title, he does not need to go beyond his vendor and then proceed to prove the vendor's root of title as well unless the title of his /her vendor has become an issue in the case; in which case, the vendor will be joined as parties to F prove or defend such title.

It is in the light of the above that I hold that the authorities earlier cited above are inapposite and unhelpful. Moreover, should the argument be sustained that the court below was right to formulate its own issue on the point, the issue was not the proper one for the disposal of the appeal in G that the two parties never traced their title to a common owner. In the alternative, asserting without conceding, as the court below erroneously did by saying that "one major defect in the judgment appealed against is the failure of the learned trial Judge to resolve the main issue in controversy between the parties, and that is whether the land in dispute originally be- H longed to Aduloju family or Odukunle family" the consequence ought not to have been a dismissal of the plaintiff's claim but sending the case back for retrial or rehearing. (See *Total (Nig.) Ltd. & Anor. v. Wilfred Nwako & Anor.* (1978) 5 S.C. 1, and *Jude Ezeoke & Ors. v. Moses Nwangbo & Anor.* (1988) 1 NWLR (Part 72) 616 at pages 29-30. In the former case this court

held inter alia, at page 15 of the Report:

*"Where it is established before a Court of Appeal that vital issues which depend much on appraisal and evaluation of the evidence are left undetermined, a retrial is made out for such a failure has occasioned a miscarriage of justice."*

In the instant case the conclusion arrived at by the court below went beyond a mere matter of appraisal and evaluation of evidence. It is clearly a misdirection for the court below to have held suo motu that the learned trial Judge failed to resolve the main issue in controversy between the parties, to wit: whether the land in dispute belonged to Aduloju family or Odukunle family, where such an issue became a non-issue or was not a live issue as between the parties. It has been held in several cases by this court that where a misdirection does not occasion a miscarriage of justice an Appeal Court will not set aside the case on appeal to it. See Okorie v. Udom (1960) SCNLR 326; (1960) 5 F.S.C. 162; Adeniji v. Disu (1985) SCNLR 408; (1958) 3 F.S.C. 104 and Amadi v. Okoli (1977) 7 S.C. 57. Where however, as in the instant case, the misdirection has occasioned a miscarriage of justice, the decision of the court below cannot be allowed to stand; it will be set aside. See Asuquo William v. The State (1975) 1 All NLR (Pt.11) 77; Saka Atuyeye & 4 Ors. v. Emmanuel Ashamu (1987) 1 NWLR (Pt.49) 267 at 279-282; R. Lauwers Import Export v. Jozebson E Industries Co. Ltd. (1988) 2 NWLR (Pt.83) 429 at 442 and Amajideogu & 7 Ors. v. O. Ononaku & 6 Ors. (1988) 2 NWLR (Pt.78) 614 at 621.

The result of all I have been saying is that the single issue considered is resolved against the defendant. The one ground of appeal having succeeded, the plaintiff's appeal is accordingly allowed. The judgment of the High Court set aside by the court below is consequently restored.

The defendant shall pay costs of this appeal to plaintiff which I assess at N1,000.00 only.

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### **BELGORE JSC**

I read in advance the judgment of Onu, J.S.C. with which I am fully in agreement. For the reasons ably adumbrated in the same judgment which I completely adopt as mine, I also allow this appeal with the same consequential orders contained therein.

**KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Onu, J.S.C. and with which I agree. A careful reading of the judgment of the Court of Appeal would show that the main ground on which it proceeded to set aside the judgment of the trial High Court was the suo motu examination of the validity of the signatories of one of the Deeds of Conveyance, Exhibit B, pleaded and tendered in evidence by the plaintiff/appellant.

The appellant in paras. 3 - 9 of his Statement of Claim pleaded as follows

C     *"3. The land in dispute is verged Red in Plan No. OK 65, drawn by F.O. Ishola, Licenced Surveyor on 10th May, 1972, and attached to the Deed of Conveyance dated 20th November, 1974, and Registered as No. 11 at page 11 in Volume 1426 of the Lands Registry in the Office at Ibadan.*

D     *4. The said land in dispute is known as Plots 15, 16 17 and 18 of Oredegbe Layout, and situate and being and lying at Molete Ibadan, near Ibadan Grammar School, Ibadan.*

*5. The land in dispute forms part of a larger Area of land belonging to Aduloju Family, of Aduloju's Compound Idi Arere Ibadan, by settlement many years ago*

E     *6. The said family under and by virtue of a Deed of Conveyance dated 12th October, 1960 and Registered as No.19 at page 19 in volume 415 of the Lands Registry in the Office at Ibadan, sold a larger area of land including the present land in dispute to Hameed Adetunji Lanahun and Popoola Okunola for a consideration therein stated.*

F     *7. Under and by virtue of a Deed of Conveyance dated 20th November, 1972, the said Hameed Adetunji Lanahun and Popoola Okunola sold to Kolapo Olawuyi Ishola, the present land in dispute for a consideration therein stated.*

G     *8. Under and by virtue of a Deed of Conveyance dated 18th June, 1973, and Registered as No.4 at page 4 in Volume 1503 of the Lands Registry in the Office at Ibadan, sold the present land in dispute to Mr. S.L.A. Latunji, for a consideration therein stated.*

H     *9. Under and by virtue of a Deed of Conveyance dated 21st July, 1973 and Registered as No.42 at page 42 in volume 1777 of the Lands Registry in the Office at Ibadan, Mr. S.L.A. Latunji sold the present land in dispute to Mr. Makanjuola Latunji, for the sum of Three Thousand Naira (N3,000.00)."*

The respondent on the other hand pleaded in paras. 5, 6, 7, 8 & 9 of his Statement of Defence thus -

"5. The defendant asserts that the land in dispute forms part of a large tract of land originally settled upon by Faniyi the ancestor who came from Agbaa to settle in Ibadan over 100 years ago.

6. The land settled upon by Faniyi is bounded by Ashiru Onipako Family land, Gbadamosi Adefunke Family Land; Mrs Ogunlesi's Land and Chief E.A. Adeyemo's Land. B

7. Aduloju family land forms boundary with Ashiru Onipako's Family land and Gbadamosi Adefunke family land, and therefore does not extend to the defendants family land.

8. The land in dispute does not belong to the Aduloju family and Aduloju family has no right to sell the defendant's family land to Mr Lanahun C as asserted in paragraph 6 of the statement of claim or to any other person.

9. The purported Deeds of Conveyances referred to in paragraphs 6, 7, 8 & 9 of the statement of claim purporting to transfer the defendant family property as Aduloju family property is null and void as Aduloju family does not extend to the land in dispute. D

It is patently clear from the pleadings above that the issue as to whether a conveyance was duly executed was not raised at all. The defence was simply that the land originally belonged to Faniyi family, and not to appellant's predecessor- in-title, the Aduloju family, and so the issue of due execution is irrelevant. It is settled law that where a Deed of Conveyance is pleaded and its due execution is not an issue raised on the pleadings, then it will not be necessary to prove the signatories or its due execution (See: Solana v. Olusanya & Ors (1975) 6 S.C. 55) E

It is an established rule of pleadings that a defendant must specifically deny any averment that he does not admit in a Statement of Claim. F But a defendant can only be expected to make such specific denial where there is a specific averment' in the Statement of Claim as to the particular issue. In short there cannot be a categorical denial in the defendant's pleadings of what was not averred in the Statement of Claim. See Margaret Ifop v. Central Bank of Nigeria (1984) 4 S.C.1. So that whereas there is an G averment in the Statement of Claim that Aduloju family sold the land in dispute as per the deed of conveyance (Exh. B), that is no averment about the signatories or its due execution. In the absence therefore of any such averment by the parties, the appellant was relieved from proving same.

I am satisfied that this appeal succeeds. It is accordingly allowed. H The judgment of the Court of Appeal is set aside. The judgment of the Ibadan High Court delivered by Babalakin, J. on 17th July 1981 is hereby restored in toto. The appellant is awarded costs of N 1,000.00 only.

**ADIO JSC**

I have had the advantage of reading, in draft, the judgment just delivered by my learned brother, Onu, J.S.C., and I agree with it. The appeal has merit and it succeeds. I allow it and abide by the consequential orders, including the order for costs.

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**IGUH JSC**

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, Onu, J.S.C. and I am in full agreement with his reasoning and conclusions on the issues raised.

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The principal issue that arises in this appeal revolves on the essence and effect of pleadings in a suit.

The primary aims of pleadings have been stated time without number. These, inter alia, are -

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(i) To ascertain the various matters or issues in dispute between the parties as well as to identify those issues in which there is agreement between them.

(ii) To give fair notice of the case which has to be met so that the opposing party may direct or confine his evidence to the issues so disclosed and

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(iii) To provide a brief summary of the case of each party from which the nature of the claim and defence may be easily comprehended, and to constitute a permanent record of the questions raised in the action for the decision of the court.

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See *Ihezukwu v. University of Jos* (1990) 4 NWLR (Pt.146) 598 at 602. See too *Madam Safuratu Salami and others v. Sunmonu Eniola Oke* (1987) 4 NWLR (Pt.63) 1.

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In civil cases, both the parties as well as the trial courts are bound and guided by the issues as settled in the pleadings. See *Okechukwu Adimora v. Nnanyelugo Ajufo* (1988) 3 NWLR (Pt.80) 1. Indeed it is it fundamental principle of the determination of disputes between parties that judgment must be confined to the issues raised by the parties. It is not competent for the court suo motu to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before him. See *Commissioner for Works, Benue State & Another v. Devcon Development Consultants Ltd. & Another* (1988) 3 NWLR (Pt.83) 407, *Nigerian Housing Development Society Ltd. and Another v. Yaya Mumuni* (1977)2 S.C. 57, *Adeniji & Others v. Adeniji & others* (1972) 1 All NLR (Pt.1) 278 and *A.C.B. Ltd. v. A. G. Northern Nigeria* (1969) NMLR 231.

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Turning now to the appeal on hand, the facts have been ably

summarised by my learned brother in the lead judgment and no useful purpose will be served by my repeating them all over again. It suffices to state that the main issue as settled by the parties in their pleadings was not whether the Aduloju family land was properly conveyed but whether the land in dispute originally belonged to the Aduloju or the Odukunle family. The appellant had traced his title to the land in dispute to the Aduloju family as against the respondent who traced his own title to the same land to the Odukunle family.

The Court of Appeal appeared to have appreciated this main issue as settled in the pleadings of the parties hence in its unanimous judgment, it was observed as follows:-

*“One major defect in the judgment appealed against is the failure of the learned trial judge to resolve the main issue in controversy between the parties and, that is, whether the land in dispute originally belonged to Aduloju family or Odukunle family”* (italics mine) .

With profound respect, the court below fell into a serious error in the above passage of its judgment. This is because, the learned trial Judge, without doubt, did infact consider and did resolve the said main issue in his judgment and found as follows:-

*“The land which the land in dispute forms a part was originally owned by Aduloju family. Under and by virtue of a deed of conveyance dated 12th October, 1960, members of Aduloju family conveyed about five acres of their land to PW1, Alhaji Hameed Adetunji Olanihun and one Popoola Okunola of Akene compound. The deed of conveyance is admitted as Exhibit B “*

(Italics supplied for emphasis)

The learned trial Judge did therefore resolve in no mistaken terms that the original ownership of the land in dispute was in the Aduloju family. In my view, the finding of the learned Justices of the Court of Appeal to the contrary is, with respect, erroneous. That finding also marked the stage in which the court below materially derailed in its judgment and went off-course, as a result of which it was able to allow the appeal before it and to set aside the judgment of the trial court.

The Court of Appeal next went into an extensive investigation of inquiry into the validity of Exhibit B. By Exhibit B, members of Aduloju family conveyed some land of which the land in dispute formed part to Hameed. Adetunji Lanihu and Popoola Okunola who in turn conveyed the land in dispute to one Kolapo Olawuyi Ishola. The said Ishola by Exhibit C sold the land in dispute to the appellant. The Court of Appeal at the end of its exercise found that Exhibit B was void. Said the Court of Appeal -

*"Having held, therefore, that, Exhibit B is void, it follows that Lanihun and Okunola derived no title whatsoever which they could through intermediate vendors, pass to the plaintiff. This conclusion, in my view, should have put an end to plaintiff's case"*

B It further held that the due execution of Exhibit B was not proved by the plaintiff/appellant before the trial court and that this is fatal to his claims.

C With very great respect to the court below, it must be observed that neither the validity of Exhibit B nor its due execution was an issue before the trial court or the Court of Appeal. The Court of Appeal was therefore in grave error to have allowed the appeal before it and to have dismissed the plaintiff's case on the grounds that Exhibit B is void and that its due execution was not established as these matters were not in issue, in the case, it should be plain to appellate courts that when an issue is not placed before them, they have no business whatsoever to deal with it. See D Florence Olusanya v. Olufemi Olusanya (1983) 1 SCNLR 134; (1983) 3 S.C. 41 at 56 and Ochonma v. Unosi (1965) NMLR 321 at 323. These matters were raised suo motu by the Court of Appeal and it is, perhaps, necessary" to stress that on no account should a court raise a point suo motu, no matter how clear it may appear to be, and proceed to resolve it one way or the other without hearing the parties, particularly the party that E may be adversely affected as it result of the point so raised suo motu. See Oje v. Babalola (1991) 4 NWLR (Pt 185) 267 at 280; Okafor v. Nnaife (1972) 3 ECSLR 261; Ugo v. Obiekwe (1989) 1 NWLR (Pt.99) 566 at 581; Adegoke v. Adibi (1992) 5 NWLR (Pt.242) 410 at 420; Ejowhomu U. Edok-Eter v. Mandilas Ltd. (1986) 5 NWLR (Pt.39) 1. If it does so, it will be F in breach of the parties' right to fair hearing. See Sheldo v. Bromfield Justices (1964) 2 Q.B. 573 at 578 and Rex v. Hendon Justices, Ex Parte Gorchein (1973) 1 WLR 1502.

G In the present case the Court of Appeal raised the two issues in question suo motu without giving the parties an opportunity to be heard on the points. I entertain no doubt that the Court of Appeal was in gross error in this regard. Besides, where, as in the present case, the question as to whether a conveyance tendered and admitted in evidence was duly executed was not an issue raised in the pleadings, proof of its due execution must be H regarded as irrelevant and unnecessary. See Solano v. Josiah Olusanya and others (1975) 6 S.C. 55 at 62. The Court of Appeal was therefore in another grave error when it held that the due execution of Exhibit B was not proved by the plaintiff/appellant before the trial court and as a result of which it allowed the appeal and dismissed the plaintiff/appellant's action.

To conclude, it is my view that the decision of the court below which allowed the appeal before it and dismissed the plaintiff's claims cannot be allowed to stand in the face of the various substantial errors in law that I have indicated which necessarily occasioned a miscarriage of justice.

It is for the above and the more detailed reasons contained in the lead judgment of my learned brother, Onu, J.S.C. that I, too, allow this B appeal. I abide by the consequential orders in the lead judgment including the order as to costs therein contained. Appeal allowed.

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