

**SUPREME COURT OF NIGERIA**  
3RD OF OCTOBER, 1995. SC. 269/1991  
**CORAM: - M. L. UWAIS, A. B. WALI, E. O. OGWUEGBU,**  
**U. MOHAMMED, A. I. IGUH, JJSC.**

JOYT. WAKAMA ..... APPELLANT  
AND  
1. ADOLPHUS KALIO  
2. THE CHIEF LAND OFFICER ..... RESPONDENTS  
PORT HARCOURT, RIVERS STATE

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**APPEALS** - Concurrent findings of fact - By two lower courts - Where no exceptional circumstance has been shown - Supreme Court will not disturb them.

**JUDGMENTS** - Relief- Whether the relief granted by the Court of Appeal - Is different from that sought by 1st respondent.

**LAND LAW** - Sale - Offer of land with options on mode of payment - Where the option accepted by purchaser has no time limit -Whether payment was made within time.

**LAND LAW** - Sale - Where misdirected purchase price cannot be justified - For being too low - It will be inequitable to bind the Seller.

**LAND LAW** - Sale -Subsequent erroneous sale of land - Whether the vendor is bound thereby - As to defeat a prior valid sale.

**FACTS**

The appellant was the defendant in an action instituted in the High Court of Rivers State, Port Harcourt by the 1st respondent. The 1st respondent therein claimed:- (1) a declaration of title to no. 184 Bonny Street, Port Harcourt being a house managed by the Abandoned property Implementation Committee (A.P.I.C.), (2) a declaration that the purported sale of same property to the appellant is null and void and (3) an injunction restraining the appellant or any claimant through her from interfering with the 1st respondent's right over the property. The 1st respondent's claim to the disputed property was founded on his having won same in an open ballot conducted by the A.P.I.C. where upon he was offered the terms of payment by a letter of 22-8-77.

The 1st respondent having accepted one of the options of payment, made part payment of same. However, the same A.P.I.C. by a letter of 15-11-77 offered the same property to the appellant at an incredibly low price, which price, the appellant hurriedly paid. The A.P.I.C. issued a lease agreement to the appellant but later revoked the said lease to the appellant through a letter of 17-3-79 and issued the 1st respondent the lease of the said property. The interference of the appellant with the property was the subject of the 1st respondent's action. The trial judge upon facts found by him held in favour of the 1st respondent.

Dissatisfied with that decision, the appellant appealed to the Court of appeal Port Harcourt Division, which dismissed the appeal. The appellant has further appealed to the Supreme Court raising 5 issues.

**ISSUES FOR DETERMINATION**

1. Did the Plaintiff/Respondent accept the offer made to him by the Abandoned Properties Implementation Committee (A.P.I. C) for the sale of No. 184, Bonny Street, Port Harcourt on the 22nd August, 1977

2. Could the payment of the Assessment Fee of N118.00 made by the Plaintiff/Respondent on 20th October, 1977 and/or the payment of N720.00 on the 17th November 1977 as part payment of the 10% of the cost of the property constitute an acceptance of the offer of the Abandoned Properties Implementation Committee made to the Plaintiff/Respondent either on the 22nd August 1977 or at any other time thereafter? Etc, see p. 2023

**HELD** (Unanimously dismissing the appeal per Lead Judgment of **MOHAMMED JSC**)

***Offer of land with options on mode of payment***

1. This submission is not correct. Mr. Kalio said in evidence that he paid N200 as part of the 10% of the cost of the building on 8/9/77. This payment is definitely within the time stipulated in paragraph 4 of Exhibit A. Be that as it may, the judgment of the trial court is based on the second option which A.P.I.C. gave to Mr. Kalio in paragraph 5 of Exhibit A. The learned trial judge observed earlier in his judgment that the Federal Mortgage Bank had given a guarantee to assist Mr. Kalio with a loan to purchase the house. (p. 2024 F)

***Concurrent findings of facts***

2. There are therefore two concurrent findings of the two lower courts on this issue. Learned counsel for the appellant has not succeeded in showing where the two lower courts had erred in construing that paragraph 5 of Exhibit A disclosed no time limit for the completion of the alternative loan arrangement.

Appeals to Supreme Court are governed by Section 213 of the Constitution of the Federal Republic of Nigeria and in considering the scope governing the complaint on concurrent findings of fact by both High Court and the Court of Appeal, except where exceptional circumstances have been shown, the well established practice of this Court is not to disturb such a finding. (p. 2025 B)

***Subsequent erroneous sale of land***

3. It has been explained by the A.P.I.C. that the subsequent sale of the property to the appellant was an error which happened due to a misleading information. One can easily agree with the A.P.I.C., because the purchase C price could not be justified under any circumstances. It will be inequitable to bind the A.P.I.C. to this contract of sale. I agree with the Court of Appeal that this Court being court of law and equity, it would amount to injustice to say that A.P.I.C. is bound by the purchase and lease agreement entered with the appellant. (p. 2025 E)

***Right to claim declaration***

4. It is quite clear that even before Mr. Kalio went to court the Abandoned Properties Implementation Committee had already communicated to the appellant, through exhibit C, that the erroneous offer given to her had been revoked. Thus Mr. Kalio is quite right to claim for a declaration that the purported sale and issue of Lease of the property to the appellant is null and void. The decision of the A.P.I.C. has given Mr. Kalio the right to possess the property because section 1 of Decree 90 of 1979 has validated all transactions of the A.P.I.C. (p. 2025 G)

***Relief granted by court***

5. I have looked into the relief sought by the 1st respondent before the trial court and the relief granted by the Court of Appeal and with respect to the submission of the learned counsel for the appellant I do not see any difference between the two. If the complaint of the learned counsel is on the address of the property which the Court of Appeal gave in its judgment, he should read paragraph 4 of the statement of claim which was admitted in paragraph 5 of the Statement of Defence. That will answer the issue raised on relief granted which was not claimed by the 1st respondent. (p. 2026 C)

**NOTABLE POINTS OF INTEREST**

**MOHAMMED JSC**

***1. Justification of lower courts' decision***

I may decide otherwise if the decision of the two lower courts is not justified by the evidence or by the surrounding circumstances of this case. The surrounding circumstances of this case put the defence of the appellant in shambles. It is inconceivable that a property valued at N11,800 would within two and a half months be offered for sale to another person for only N2,090.00.

B (p. 2025 D)

**WALLJSC**

***2. Appellant's transaction is null and void***

The fact that the appellant had a lease of the disputed property through a wrong offer made to her by the Committee of A.P.I.C. after the 1st respondent had earlier accepted the offer made to him by the same committee, for which he had paid consideration, is not enough to justify and legalize the lease issued to her. There was no evidence that the 1st respondent's transaction was complete by the time the second transaction was contracted with the appellant. It is therefore null and void. (p. 2030 D)

**REPRESENTATION**

Chief A. A. Adesanya with O. T. Oduwobi for the Appellant  
Respondent absent, represented by his son.

E

**CASES REFERRED TO**

Omoboriowo v. Ajasin (1984) S.C.N. L.R. 108

Enang v. Adu (1981) 11-12 S.C. 25

Lokoyi v. Olojo (1983) 2 S.C.N.L.R. 127

F Okubule v. Oyagbola (1990) 4 NWLR (Part 147) 723

**STATUTES REFERRED TO**

Decree No. 90 of 1979, s. 1

Constitution of the Federal Republic of Nigeria 1979, s. 213

G

**LEAD JUDGMENT BY MOHAMMED JSC**

The present appellant was defendant to an action instituted against her by the 1st respondent, as plaintiff, in the High Court of Rivers State sitting at Port Harcourt. In the action the 1st respondent claimed for a declaration of title to a house being managed by the Abandoned Properties Implementation Committee. The House is situated at 184, Bonny Street, Port Harcourt. The 1st respondent, in addition, claimed that the purported sale and issue of building lease of the disputed property to the appellant by the 2nd respondent is null and void. He also claimed for an injunction restraining the appellant, her ser

vants or agents from interfering with his rights over the said property.

The facts, nutshell, disclose that a sale of the disputed property was conducted through an open ballot by the Abandoned Properties Implementation Committee, hereinafter referred to as A.P.I.C. The 1st respondent, Mr. Adolphus Kalio, won the ballot and was notified by A.P.I.C. in its letter dated B 22<sup>nd</sup> August, 1977. The letter stipulating the terms of the offer is exhibit A before trial High Court and it reads:

*“Abandoned property Implementation Committee,*

*C/o Governor’s Office,*

*Port Harcourt.*

*22<sup>nd</sup> August, 1977.*

*Adolphus Kalio,*

*77 Niger Street,*

*Port Harcourt.*

C

*Letter of Offer*

D

*Plot Block 148 Layout Township*

*(No. 184 Bonny Street, PH)*

*I am pleased to inform you that you won the above mentioned property in the open ballot on sales of abandoned property conducted at the Port Harcourt City Council on 18th August, 1977. The price of the said building excluding Deed and valuation fees is N11, 800.00 (eleven thousand eight hundred naira). The valuation fee is N118.00.*

*2. You are required to pay the costs of the building and the valuation fee to the Account of the Federal Pay Officer credited to the Deposit Account Head 1502 at the Central Bank, Port Harcourt.*

F

*3. On payment you will obtain a letter from the Central Bank which you will present at 13 Liberation Drive, Port Harcourt. The Federal Pay Officer will issue you necessary treasury receipts to be tendered before the Committee not later than 08 September;77.*

*4. You are to please note that where you fail to complete this payment before or on 08 Sept. 77 you will forfeit the property and it will be allocated to another person.*

*5. Where you require a loan, you are to present a copy of this letter to Mortgage Bank at No. 37 Ikwerre Road, Port Harcourt or to any other Bank with which you have negotiated personally and inform this office H accordingly.*

*D.A.B. Mark,*

*Major”*

On 15th November, 1977, a similar letter was addressed to the appel

lant offering the same property for only N1900.00. The valuation was put at N190.00. The appellant hurriedly paid N2, 090.00 to cover the cost and valuation fee of the house and on 18th May, 1978, a Lease Agreement was issued to her. In a later development A.P.LC. wrote a letter, dated 25th August, 1978, to the Ministry of Lands and Survey explaining that they were misled into allocating the disputed property to the appellant at a value of N2,090.00. The Committee directed that the Lease issued to the appellant be cancelled because the house had been won by the 1st respondent at a ballot and that Mr. Kalio had since paid 10% deposit together with valuation fee. Also, the Federal Mortgage Bank had given a guarantee for a loan to assist Mr. Kalio to buy the house.

In another twist to this confused situation a letter was sent by the A.P.LC. on 14th September, 1978, to the Ministry of Lands and survey to collect the balance of N9,710.00 from the appellant if she intended to retain the disputed house. The appellant denied ever receiving that letter and therefore made no payment of the balance. On 17th March, 1979, another letter was written by A.P.LC. to the Ministry of Lands and Survey requesting the Military Administrator to issue a Lease of the disputed property to Mr. Kalio. A copy of the letter was endorsed to the appellant with the following remarks:

“*The offer of above property if ever made to you is hereby revoked ....*”

The learned trial Judge after considering all the facts and the exhibits referred to above found that the 1st respondent, Mr. Kalio, having opted to seek a loan from the Federal Mortgage Bank is not limited on the face of the offer to a time limit within which to complete the transaction and pay for the disputed property. It was against this judgment that the appellant appealed to the Court of Appeal. In a unanimous decision the Court of Appeal, Port Harcourt Division, coram Kolawole, JCA., Onu, JCA. (as he then was) and Jacks, JCA., dismissed the appeal. Kolawole, JCA., who wrote the lead judgment held:

“*Having considered all the submissions addressed to us by Counsel for both parties I have come to the irresistible conclusion that this is a case in which the rules of equity ought to prevail having regard to all the surrounding circumstances of the case. I have held that there is a contract of sale between the respondent and the Abandoned Properties Implementation Committee consequently the respondent has acquired a prior equitable right over the property over the appellant who has none. As against her the respondent is entitled to an injunction to protect that right or its violation.*”

Dissatisfied with the above judgment, Joy T. Wakam, further appealed to this Court. Learned counsel for the appellant, Mr. Abraham Adesanya, formulated

five issues for the determination of this appeal. The issues are as follows:

*“1. Did the Plaintiff/Respondent accept the offer made to him by the Abandoned Properties Implementation Committee (A.P.I. C) for the sale of No. 184, Bonny Street, Port Harcourt on the 22nd August, 1977?*

*2. Could the payment of the Assessment Fee of N118.00 made by the Plaintiff/Respondent on 20th October, 1977 and/or the payment of N720. 00 on the 17th November 1977 as part payment of the 10% of the cost of the property constitute an acceptance of the offer of the Abandoned Properties Implementation Committee made to the Plaintiff/Respondent either on the 22nd August 1977 or at any other time thereafter?* C

*3. Has the Plaintiff/Respondent locus standi to institute this action against the 1st Defendant/Appellant seeking the Court’s Order to set aside a contract to which he is not a party?*

*4. Is the Court of Appeal right in construing Exhibit C1 against the Defendant/Appellant when she is neither the maker nor the person to whom the document was addressed, without considering the contradicting effect of the contradicting oral and documentary evidence of the person who tendered same in support of his case?*

*5. Is the Court of Appeal right in framing and granting a relief not sought for by the plaintiff without affording the Defendant the opportunity of being heard on the reframed relief?”* E

Learned counsel for the 1st respondent adopted the above issues. He however raised a preliminary objection that the appeal presently constituted by the notice of appeal filed on 21st December, 1992 is incompetent having been construed and noted upon as validating an incompetent appeal F and secondly, that the notice of appeal and appellant’s brief of argument filed in the name of a dead person - late Mr. Adolphus Kalio is void.

I think learned counsel for the respondent has not got his information about the filing of this appeal, in this court, correctly. On 4th May, 1992, motion for enlargement of time to appeal was withdrawn and this court G struck it out. On 7th December, 1992, another motion for enlargement of time of appeal was granted. The notice of appeal was filed on 21/12/92 and it retained the earlier suit number SC.269/1991. It is not correct therefore to say that there were two notices of appeal being heard at the same time. Even if, through inadvertence, the first notice of appeal was not struck out, since this court H granted an application to file the second notice of appeal it goes without saying that the first notice could not be used to prosecute this appeal. This objection is without any merit and it is dismissed.

The second point, that the notice of appeal and the appellant’s brief

of argument were void because they bore the name of a dead person, to wit, Adolphus Kalio, is another technical objection. Since at the chambers of Respondent's counsel the name Adolphus had been changed to read Abigail, I do not see the point of raising this preliminary objection. In any event learned counsel for the respondent is not also out of this error, because in the Respondent's brief he wrote the name of 1st respondent as Adolphus Kalio and not Abigail Kalio. So what is the fuss about the wrong name. This objection is also baseless and I reject it.

I now turn to the main appeal. Learned counsel for the appellant argued all the issues formulated for the determination of this appeal together. The pith of the learned counsel's argument which is the centre core of this appeal is the interpretation made by the trial court which was affirmed by the Court of Appeal of the terms of the letter of offer written by A.P.L.C. to Mr. Adolphus Kalio. I have reproduced that letter earlier in this judgment. The vital paragraphs in the letter are paragraphs 4 and 5 which read:

D       *"4. You are to please note that where you fail to complete this payment before or on 08 September, 77 you will forfeit the property and it will be allocated to another person.*

E       *5. Where you require a loan, you are to present a copy of this letter to the Mortgage Bank at No. 37 Ikwere Road, Port Harcourt or to any other Bank with which you have negotiated personally and inform this office accordingly.*

Learned counsel for the appellant submitted that by the terms of the offer to the 1st respondent the acceptance could only be by the payment of the Assessment fee of N118.00 and 10% of the cost before or on the 8th September, 1977. But all payments mentioned above were made outside the 8th September, 1977, stipulated by the offer. This submission is not correct. Mr. Kalio said in evidence that he paid N200 as part of the 10% of the cost of the building on 8/9/77. This payment is definitely within the time stipulated in paragraph 4 of Exhibit A. Be that as it may, the judgment of the trial court is based on the second option which A.P.L.C. gave to Mr. Kalio in paragraph 5 of Exhibit A. The learned trial judge observed earlier in his judgment that the Federal Mortgage Bank had given a guarantee to assist Mr. Kalio with a loan to purchase the house. He thereafter found as follows:

H       *"It will be observed that the letter of offer contains two optional forms of payment. One is by a direct payment of the whole amount due in which case, a time limit applies and the other by a loan from the Federal Mortgage Bank in which case no time limit for the completion of the transaction is stipulated. The plaintiff opted to seek a loan from the Federal Mort*

*gage Bank and is therefore not limited on the face of the letter of offer to a time limit within which to complete the transaction and obtain the money.*

In his submission learned counsel for the 1st respondent argued that the learned trial judge correctly construed the contents and intendment of the terms in exhibit A, the letter of offer and the Court of Appeal has accepted the construction given by the trial judge. There are therefore two concurrent findings of the two lower courts on this issue. Learned counsel for the appellant has not succeeded in showing where the two lower courts had) erred in construing that paragraph 5 of Exhibit A disclosed no time limit for the completion of the alternative loan arrangement. Appeals to Supreme Court are governed by Section 213 of the Constitution of the Federal Republic of Nigeria and in considering the scope governing the complaint on concurrent findings of fact by both High Court and the Court of Appeal, except where exceptional circumstances have been shown, the well established practice of this Court is not to disturb such a finding. See Omoboriowo v. Ajasin (1984) S.C.N.L.R. 108 and Etowa Enang and others v. Fidelis Adu (1981) 11 - 12 S. C. 25.

I may decide otherwise if the decision of the two lower courts is not justified by the evidence or by the surrounding circumstances of this case. See Lokoyi v. Ololo (1983) 2 S.C.N.L.R. 127. The surrounding circumstances of this case put the defence of the appellant in shambles. It is inconceivable that a property valued at N11, 800 would within two and a half months be offered for sale to another person for only N2,090.00! It has been explained by the A.P.L.C. that the subsequent sale of the property to the appellant was an error which happened due to a misleading information. One can easily agree with the A.P. I.C., because the purchase price could not be justified under any circumstances. It will be inequitable to bind the A.P.L.C. to this contract of sale. I agree with the Court of Appeal that this Court being court of law and equity, it would amount to injustice to say that A.P.L.C. is bound by the purchase and lease agreement entered with the appellant.

It is quite clear that even before Mr. Kalio went to court the Abandoned Properties Implementation Committee had already communicated to the appellant, through exhibit C, that the erroneous offer given to her had been revoked. Thus Mr. Kalio is quite right to claim for a declaration that the purported sale and issue of Lease of the property to the appellant is null and void. The decision of the A.P.L.C. has given Mr. Kalio the right to possess the property because section 1 of Decree 90 of 1979 has validated all transactions of the A.P.L.C. in the following provision:

*“Every sale or disposition of abandoned property conducted by*

*the A.P.I.C. shall be deemed to have been lawfully and properly made and every Instrument issued by the Committee which purports to convey an estate or interest in land shall be deemed to have been validly issued and shall have effect according to its tenor and intendment."*

B On issue 5 learned counsel for the appellant submitted that the relief granted by the Court of Appeal is a complete departure from the relief sought for by the plaintiff. It is not in accord with the plaintiff's claim and as it has been emphasized times without number the court should not grant a relief not applied for. Counsel referred to Okubule v. Oyagbola (1990) 4 NWLR. (Part C 147) 723 and Awoyegbe v. Ogbeide (1988) 1 NWLR (Part 73) 695. I have looked into the relief sought by the 1st respondent before the trial court and the relief granted by the Court of Appeal and with respect to the submission of the learned counsel for the appellant I do not see any difference between the two. If the complaint of the learned counsel is on the address of the property which D the Court of Appeal gave in its judgment, he should read paragraph 4 of the statement of claim which was admitted in paragraph 5 of the Statement of Defence. That will answer the issue raised on relief granted which was not claimed by the 1st respondent.

In the result, this appeal fails. The judgment of the Court of Appeal in E which it dismissed the appellant's appeal from the decision of Port Harcourt High Court is hereby affirmed. The 1st respondent is awarded N1000.00 costs.

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**UWAISJSC**

I have had the advantage of reading in draft the judgment read by my F learned brother Mohammed, JSC. I agree that the appeal has no merit and that it should be dismissed.

Accordingly, the appeal is hereby dismissed. I abide by the order in the said judgment.

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**WALI JSC**

G I have had a preview of the lead Judgment just delivered by my learned brother, Uthman Mohammed JSC, and I find myself in complete agreement with the reasoning and conclusions reached therein.

H Save for the Confusion created by the Abandoned Properties Implementation Committee, hereinafter referred to as A. P. I. C. and which it explained was due to misleading facts presented to it, the facts involved in the case are simple and straight forward. These facts have been sufficiently stated by my learned brother in his lead judgment and therefore need no further repetition.

From the facts both the appellant and the 1st respondent were clients of the A. P.I.C. in connection with the purchase of the abandoned landed property to wit - No. 184, Bonny Street, Port Harcourt. The first offer was made to the 1st respondent as per Exhibit A which has been reproduced in the lead judgment. It was dated 22nd August 1977.

As a result of Exhibit A, particularly paragraphs 2 and 5 thereof which provide that –

*“2. You are required to pay the costs of the building and the valuation fee to the Account of the Federation Pay Officer credited to the Deposit Account Head 1502 at the Central Bank Port Harcourt .....*

*5. Where you require a loan, you are to present a copy of this letter to the Mortgage Bank at No. 37 Ikwerre Road, Port Harcourt or to any other Bank with which you have negotiated personally and inform this office accordingly.”*

The respondent in compliance with paragraphs 2 and 5 above paid for the valuation fee of N118.00 as per Exhibit B and the 10% value of the property. See Exhs B -B4. It was part of the 1st respondent’s evidence that payment of 10 of the value of the house entitled him to the lease of the house. As correctly stated by the learned trial judge, Exh. A gives the first respondent two options for the purchase of the house. These are -

1. Direct payment of the whole amount due and in which case a time limit is provided, or

2. By a loan through the Federal Mortgage Bank in which case no time is stipulated.

The 1st respondent opted for the 2nd alternative. He negotiated with the Mortgage Bank for a loan to purchase the property as a result of which the Mortgage Bank issued him with Exhibit C2.

In Exh. CI, the A.P.I.C., through its committee wrote to the Ministry of Lands and Survey confirming the cancellation of latter sale of the same property by Exh. AI. Exhibit “CI” reads thus –

*“As a result of the misleading information to us by the Ministry, the above property was allocated to Miss Joy T. Wakama at a value of N20, 090.00 whereas the original owner has not been paid his compensation. Notice of your issue of a Lease on the above property to Miss Wakama should therefore be cancelled on the following grounds.”*

One of the grounds reads thus:-

*The house was balloted and won by one Mr. A. Kalio who had since on the 22<sup>nd</sup> August, 1977 paid the required deposit of 10% and the valuation fee as well. The Federal Mortgage Bank has given a guarantee to assist with*

*a loan to enable Mr. Kalio buy the house.”*

The letter then proceeded as follows:-

*“As a result of the above, the Committee is inclined to let Mr. A. Kalio retain the property. Miss Wakama has to get the refund of her money back or she may be considered for another allocation.”*

B Exhibit C was written on 25th August 1978. Unfortunately the same committee wrote another letter dated 14th September 1978 - Exh. C3 advising the same Ministry of Lands and Survey to collect the balance of N9,710.00 from the appellant for the simple reason that she had been put in possession of the property in dispute. The appellant did not make the payment. And as a C result of the non-payment of the said balance by the appellant, the committee of the A.P.L.C. wrote a letter dated 17th March 1979 - Exh C4, to the Ministry of Lands and Survey to inform the Ministry that it had advised the Military Administrator to issue the lease of the property to the 1st respondent who had earlier won it in the ballot and had also mortgaged the same to the Federal D Mortgage Bank.

In resolving the issues raised in this case, the learned trial judge in his judgment observed as follows:-

*“It will be observed that the letter of offer contains two optional forms of payment. One is by a direct payment of the whole amount due in E which case, a time limit applies and the other by a loan from the Federal Mortgage Bank in which case no time limit for the completion of the transaction is stipulated. The plaintiff opted to seek a loan from the Federal Mortgage Bank and is therefore not limited on the face of the letter of offer to a time limit within which to complete the transaction and obtain the money.*

F . *There can therefore be no forfeiture. The ‘Committee’ in its Exhibit ‘C1’ disclosed that the plaintiff had paid the required 10% and valuation fee and had also secured a guarantee of the Federal Mortgage Bank for the loan. It is clear therefore that the subsequent offer of the same house to the 1st defendant was not in exercise of a right of forfeiture by the Lease. The 1st G defendant says she saw the address of the house in a list of unpaid houses, in the office of the ‘Committee’. She does not say it was a list of houses forfeited for non payment of their cost and the list itself is not tendered in evidence. The house was valued at N11, 800.00 less valuation fee of N118.00. The 1st defendant paid N1, 900.00 and a valuation fee of N190.00. If there was in fact H a forfeiture, the price would not have reduced and the valuation fee increased. “*

The learned judge then concluded -

*“Whether or not this provision applies to the present suit depends on whether or not there is a subsisting sale or disposition of the house in*

question by the committee to the 1st defendant. The sale made to her is stated to have been so made under some misleading information. She had already been issue with a lease. The position was sought to be rectified by a written demand in Exhibit 'C3' for her to pay the balance of N9, 710.00 if she wanted to keep the house. She ignored this demand and made no payment thereby seeking to retain the house for which she has made no complete payment. B The 'Committee' by Exhibit 'C' then revoked the letter of offer and cancelled the Lease. On these facts there cannot be a valid and subsisting disposition of the house to her and the provisions of Section 1 of Decree No. 90 of 1979 cannot apply.....

A claim to title to property presupposes the exercise by the claim- C ant of exclusive acts of ownership sufficient to raise the inference that he is the owner. It is unlike a claim for an injunction which is designed to protect possessory or propriety rights. Where therefore some right to property is established a claim for an injunction to protect the right over that property can succeed even though a claim to title over that property has failed Oluwa D vs. EnioLa (1967) N.M.L.R. 339.

In the present action title to the house has not been proved because the plaintiff is not in possession of its Lease but he has shown that he has an exclusive right to buy the house having won it in a ballot and having secured a guarantee for a loan to buy it. An order of injunction can therefore E be available to him to restrain anyone interfering with his right of purchase of the house. His claim for an injunction therefore succeeds and I hereby order an injunction against the 1st defendant, her servants or agents from interfering with plaintiff's right of purchase over the house.

He also claims a declaration that the Lease issued by the 2nd defen- F dant to the 1st defendant is null and void. The A.P.I. C. is the appropriate statutory body to sell or dispose of any abandoned property. This body has itself revoked the offer of sale of the house and also cancelled its lease issued on a misleading information to the 1st defendant. The Lease therefore has no validity and is hereby declared null and void." G

"The present appellant appealed to the Court of Appeal against the judgment of the trial court. In a well considered judgment of the Court of Appeal by Kolawole JCA, with which Onu JCA, (as he then was) and Jacks JCA, agreed, the learned Justice after reviewing the case came to the follow- H ing conclusions and made the following orders -

"I have held that there is a contract of sale between the respondent and the Abandoned properties Implementation Committee consequently the respondent has acquired a prior equitable right over the property over the appellant who has none. As against her the respondent is entitled to an

*injunction to protect that right or its violation. To that extent I shall slightly amend the relief of injunction granted by the learned trial judge to fall in line with the claim of the respondent. Accordingly, the appeal is dismissed. I affirm the judgment of the learned trial judge in terms of the claim thus -*

1. The plaintiff is hereby granted a declaration that the purported sale of land the issue of Building lease in respect of the property situate at Plot F Block 148 Layout Township, 184 Bonny Street, Port Harcourt dated 18 May, 1978 and registered as No. 52 at page 52 Volume 70 of the Land Registry at Port Harcourt tendered as Exhibit G1 in these proceedings is null and void and it is hereby set aside.

2. The plaintiff is hereby granted perpetual injunction restraining the defendant, her servants, agents and assigns from interfering with the rights of the plaintiff in and over the said building situate at Plot F Block 148 Layout Township 184 Bonny Street, Port Harcourt. “

The appeal challenges the concurrent findings of the two lower courts which are both amply supported by the evidence. They are unimpeachable.

The fact that the appellant had a lease of the disputed property through a wrong offer made to her by the Committee of A.P.L.C. after the 1st respondent had earlier accepted the offer made to him by the same committee, for which he had paid consideration, is not enough to justify and legalize the lease issued to her. There was no evidence that the 1st respondent’s transaction was complete by the time the second transaction was contracted with the appellant. It is therefore null and void.

It is for these and the fuller reasons contained in the lead judgment that I too hereby dismiss the appeal and subscribe to the consequential orders contained therein.

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### OGWUEGBUJSC

I had read in draft the judgment of my learned brother Mohammed, JSC. I agree with him that this appeal should be dismissed. Accordingly, I too dismiss it with costs to the respondent assessed at N1, 000.00.

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### IGUHIJSC

I have had the advantage of a preview of the judgment of my learned brother, Mohammed, JSC just delivered. I agree with him that this appeal lacks merit and should be dismissed. For the same reasons given by him in the said judgment, I too, dismiss it and affirm the decision of the court below. I subscribe to the consequential orders therein made.