

SUPREME COURT OF NIGERIA

13TH DECEMBER, 1996. SC. 169/1994

**CORAM: S. M. A. BELGORE, I. L. KUTIGI, M. E. OGUNDARE,
E. O. OGWUEGBU, Y. O. ADIO, JJSC.**

ALHAJA WULEMOTU AJIBONA APPELLANT
AND
ALHAJI SURAJUDEEN KOLAWOLE
YUNUSA DAVIES RESPONDENTS

APPEALS - Grounds of appeal - Omnibus ground that judgment is again the weight of evidence - Purpose and effect thereof.

APPEALS - Grounds of appeal - Where the conclusion reached by the trial court on the evidence was wrong - Whether substantive ground is regitin - Before Court of Appeal can intervene.

COURTS - Imaginary scale - Failure of the trial judge to place the two of facts on an imaginary scale - Whether unfair against the appellant.

EQUITY - Fraudulent concealment - To enter a land without the knowledge of the owner - Does not constitute concealed fraud.

LAND LAW - Possession - Where defendant has been in actual possession for over 12 years - Whether a case of exclusive possession is made out

LAND LAW - Limitation law - Knowledge on the part of the plaintiff - About the date defendant entered the land - Is not a condition precedent.

FACTS

Before the High Court of Lagos State, the plaintiff/appellant an action against the defendant claiming declaration of title, possession and injunction in respect of the land in dispute. The plaintiff pleaded certain conveyances, survey plan and a previous judgment which she never tendered in evidence. Plaintiff also failed to prove how the person to whom she traced her title got his own title to the land in dispute.

The trial court found in favour of the plaintiff. Defendant's appeal to the Court of Appeal was allowed, but that Court by a majority opinion held that the plaintiff's action is not barred by the Limitation Law. Being dissatisfied both parties have appealed to the Supreme Court raising several

grounds of appeal.

ISSUES FOR DETERMINATION

"1. Whether the learned Justices of the Court of Appeal were right in allowing the respondent's appeal to that Court on the basis that:

(a) The plaintiff did not tender plan and failed to established (sic) the land in dispute.

2. Whether the learned Justices of the Court of Appeal were right in seeking proof of admitted facts. Etc. see p. 2053

HELD (Unanimously dismissing the plaintiffs appeal and allowing the defendant's cross-appeal per lead judgment of **OGWUEGBU JSC**)

Courts - Imaginary scale

1. The Court of Appeal could not have come to a different conclusion having regard to the state of the pleadings and the evidence adduced by the parties. The learned trial judge failed to put the two sets of facts on an imaginary scale let alone weighing one against the other. The only evidence led by the Plaintiff was that of purchase supported by unreliable and insufficient documents. The purchase was not proved and his case failed. I will therefore say that he did not follow the fundamental procedure laid down in *Mogaji & Ors. v. Odofin & Ors.* (supra) and his approach is most unfair to the appellant. Had he followed the proper procedure, his finding would have been in favour of the defendant. (p. 2058 G)

Purpose of Omnibus ground of appeal

2. One of the grounds of appeal in the court below was that the judgment is against the weight of evidence. Since the issue of credibility did not arise, the court was in as good a position as the trial judge to evaluate the evidence. It did so, found that the decision was perverse and concluded that the decision was against the weight of evidence. An omnibus ground of appeal is therefore designed to allow a complaint on evaluation of evidence and it encompasses complaint of improper evaluation of evidence. It implies that the judgment of the trial court cannot be supported by the weight of the evidence adduced by the successful party which the trial judge either wrongly accepted or that the inference drawn or conclusion reached by the trial judge based on the accepted evidence cannot be justified. An omnibus ground, of appeal also implies that there is no evidence which if accepted would support the findings of the trial judge. (p. 2059 A)

Whether substantive ground is required

3. The conclusions reached by the trial court on the evidence before it was

wrong hence the intervention of the court below on the complaint of the respondent herein who was the appellant in that court. The complaint did not require substantive grounds of appeal as urged on us by the appellant. (p. 2059 E)

Actual possession for over 12 years

4. I am of the same view with Ayoola. J.C. A. The defendant has been in actual possession of this land for over twelve years and the plaintiff has been out of possession for the same period of time. This much was agreed by the learned trial judge and the court below. The defendant has made out a case of exclusive possession of this land by building and living on it for these number of years. Assuming that this parcel of land was originally the plaintiffs, which I do not concede, it is clear to me that she lost it by the uninterrupted possession of the defendant. When one looks at the whole circumstances, and the unquestioned enjoyment of the land by the defendant by doing what I have referred to above on the land, I have no doubt that the defendant has been in possession to the exclusion of the plaintiff. (p. 2061 C)

Land law - Limitation law

5. On a cumulative reading of the entire provisions of the Limitation Law and in particular sections 16, 17, 19 and 21 therefore, knowledge on the part of the plaintiff is not a condition precedent. The knowledge of the plaintiff is immaterial. The words of the Limitation Law of Lagos State are clear and unambiguous and must therefore be accorded their ordinary meaning. (p. 2062 C)

Equity - Fraudulent concealment

6. Apart from fraudulent concealment of right of action which itself furnishes a cause of action knowledge cannot be said to be relevant. In order to constitute such fraudulent concealment as would, in equity, take a case out of the law of limitation, it is not enough that there should be merely tortious act unknown to the injured party or the enjoyment of property without title while the rightful owner is ignorant of his right; there has to be some abuse of a confidential position some intention at imposition, or some deliberate concealment of facts. To enter a land without the knowledge of the owner does not constitute concealed fraud. Under the Limitation Law, the right to land is extinguished, in the absence of fraud, after discontinuance of possession for the period enacted in the law, although the owner so discontinuing possession was unaware that adverse posses-

sion had been taken. The question of fraudulent concealment did not arise in this case. (p. 2062 D)

NOTABLE POINT OF INTEREST

OGWUEGBU JSC

1. Appeals - When a complaint is against the weight of evidence

It must be stressed that when a complaint is against the weight of evidence the complaint is of necessity against the totality of the evidence adduced before the court and not on a finding of fact on a specific issue or document as the case may be. In the latter case, the finding should be raised as a substantive ground of appeal. It cannot be used to raise issues of or errors in law. The complaint questions the appraisal and evaluation of all the evidence adduced and not the weight to be attached to any particular piece of evidence. (p. 2055 H)

REPRESENTATION

Olu Josesph Tedema for the Appellant

P.O. Jimoh-Lasisi for the Respondents/Cross Appellant

CASES REFERRED TO

Chief Ejowhomu v. Edok Eter Mandilas Ltd. (1986)5 N.W.L.R. (Pt. 39)1 at 34

Ndiwe v. Okocha (1992)7 N.W.L.R. (Pt. 252)129

Chinwendu v. Mbamali (1980)3 - 4 S.C. 31 at 75

Are v. Ipaye (1990)2 N.W.L.R. (Pt. 132)298 at 308-309

Mgaji v. Odofin (1978)4 S.C. at 93

Anyaoke v. Adi (1986) NSCC (Part 11)799

Ogboda v. Adulugba (1971) A11 N.L.R. 70 (Reprint)

Nta v. Anigbo (1972) All N.L.R. 510 at 516 (Reprint)

Rains v. Buxton (1880)14 Ch. D. 537

Sosan v. Ademuyiwa (1986)3 N.W.L.R. (Pt. 27)241 at 256

Yusuff v. Dada (1990) 4 N.W.L.R. (pt. 146) 657

STATUTE REFERRED TO

Limitation Law Cap: 70 Laws of Lagos State ss. 16, 17, 21, 19

LEAD JUDGMENT BY OGWUEGBU JSC

The claims of the plaintiff/appellant in the High Court of Lagos State were for:-

“1. Declaration of title in fee simple against the defendant to the

piece or parcel of land, situate lying and being at Apesin Street, known as No. 27/29 Apesin Street, Idi-Araba, Surulere and therefore entitled to the statutory right of occupancy in respect of the said piece or parcel of land situate, lying, being and known as 27/29 Apesin Street, Idi-Araba, Lagos.

2. Possession of the aforesaid piece or parcel of land.

B *3. Injunction to restrain the defendants, his heir(s), successor(s), agent(s), servants and/or assigns from further interfering (sic) with the plaintiff's possessory rights as to the aforesaid land."*

The writ of summons was filed in Lagos at the Lagos Judicial Division of the High Court. Pleadings were ordered, filed, settled and exchanged and at the close of pleadings, the matter came up for hearing before Adeniji, J. After hearing evidence of witnesses called by the parties and addresses of counsel, the learned trial Judge gave judgment in favour of the plaintiff. He granted all the reliefs claimed by the plaintiff.

He observed and said:-

D *"The evidence of traditional history led for the plaintiffs and the supporting exhibits tendered by the witnesses were not effectively discharged by the defendant and I prefer it to that of defendant. I accept the traditional evidence led for the plaintiffs in this case. I hold that it is enough ipso for their claim for declaration to be granted.*

E *The defendants counsel relied on the equitable defences of laches and acquiescence. This argument is that the defendant erected his building on the land in 1953 and no (sic) such the plaintiffs are deemed to have slept on their right.*

F *In the case in question, the plaintiffs were not aware of the presence of the defendant on the land and the building on it until sometime after 1972.*

It seems to me that the delay on the part of the plaintiffs is not enough to justify the defence of laches and acquiescence set up by the defendant.

G *I hold that the plaintiffs have better title to the land in dispute, and the defendant is on the land without the permission of the plaintiffs, and the claim by the plaintiffs for a declaration of title against the defendant has been established and (sic) therefore grant the declaration. I also make an order for possession of the plots of the land situate and lying at Nos.27/*
H *29 Apesin Street, Idi-Araba, Surulere, Lagos. The defendant, his agent, heirs, successors are hereby restrained from future interference with the plaintiff's statutory right in respect of the said parcel of land."*

Being dissatisfied, the defendant appealed to the Court of Appeal and in his brief of argument raised the following issues for determination:

"1. Was the defence based on limitation law not made out on the evidence and ought it not to have succeeded and the plaintiff's claim to title barred and extinguished and her claims dismissed?"

2. Ought the equitable defences of laches and acquiescence not to have succeeded and the reliefs claimed by the plaintiff refused and her claims dismissed.

B

3. Is the judgment not against the weight of evidence?"

In an unanimous decision, the defendant's appeal was allowed and the plaintiff's action was dismissed. The three justices agreed that the plaintiff's claim should have been dismissed on the ground that she did not establish her title to the land in dispute. They disagreed on the operation of the Limitation Law. Uwaifo and Pat-Acholonu, J.J.C.A. were of the view that it did not operate against the plaintiffs. Ayoola, J.C.A. held that the plaintiff's claim was statute-barred and should have been dismissed on that score alone.

Both parties were dissatisfied and appealed to this court. The plaintiff appealed against the whole decision. The defendant appealed against that part of the decision where Uwaifo and Pats-Acholonu, JJ.C.A. held that the Limitation Law does not operate to bar the plaintiff's claims.

The questions for determination as framed and set out by the appellants are:

E

"1. Whether the learned Justices of the Court of appeal were right in allowing the respondent's appeal to that court on the basis that:

(a) The plaintiff did not tender plan and failed to established (sic) the land in dispute.

(b) The letter of administrative Ex. G1 did not cover immovable properties and that the plaintiff's vendor had no real property to sell.

(c) That the plaintiff failed to tender conveyance given by Cardoso to Ajibona.

(d) That the learned trial Judge erroneously accepted the traditional evidence of the plaintiff, when the above issues were neither canvassed before them nor were parties afforded the opportunity to address on the points.

2. Whether the learned Justices of the Court of Appeal were right in seeking proof of admitted facts.

3. Whether the learned Justices of the Court of Appeal were right in holding that the plaintiff never disproved or successfully contested the partition and sale of the family land to the defendant/respondent.

4. Whether an omnibus ground of appeal can cover findings of facts of trial court on specific issues of which there was no substantive

grounds of appeal.

The defendant cross-appellant identified the following two issues as arising for determination in the appeal.

"1. Whether the Court of Appeal was right when they (sic) held that the plaintiff failed to establish title to the land.

B *2. Whether the Court of Appeal (by Majority) was right in holding that the Limitation Law did (sic) operate to (sic) the claim of the plaintiff's claims (sic) because the plaintiff's knowledge of adverse possession is necessary to sustain the plea of limitation under the Limitation Law of Lagos State Cap. 70."*

C Both learned counsel adopted their respective briefs of argument and relied on them. The learned appellant's counsel submitted in his brief that the jurisdiction of the Court of Appeal is founded upon an appeal lodged to it by an appellant and that jurisdiction is limited to issues brought before it by way of grounds of appeal and if there is no appeal against D specific findings of fact by the trial judge, there is no issue before the court below to enable it evaluate any finding of fact made by the trial court. He cited and relied on the case of Chief Ejowhomu v. Edok Eter Mandilas Ltd. (1986) 5 N.W.L.R (Pt.39)1 at 34.

E It was further submitted in the appellant's brief that where a trial court makes a finding of fact on a specific issue before it, such an issue should be raised as a substantive ground of appeal by the appellant challenging the finding of fact and that it cannot be covered by an omnibus ground of appeal. He cited the case of Ndiwe v. Okocha (1992) 7 N.W.L.R. (Pt.252) 129 in support of his submission.

F On whether the appellant established his title to the land in dispute, learned counsel urged us to hold that the court below committed substantial error in its judgment which is apparent on the record and that the appeal should be allowed on this ground. He cited the cases of Chinwendu v. Mbamali & Or. (1980) 3-4 S.C. 31 at 75 and Are & Or. v. Ipaye & Ors. G (1990) 2 NWLR (Pt.132) 298 at 308-309.

Learned respondent's counsel submitted that when a judgment is said to be against the weight of evidence, it implies that the judgment of the trial court cannot be supported by the weight of evidence adduced by the successful party which the trial judge either wrongly accepted or that the H inference drawn or the conclusion reached by him based on the accepted evidence cannot be justified. He gave instances of the evidence led by both parties which the learned trial judge did not consider adequately or at all. For example, the failure of the plaintiff to tender at the trial the conveyance which Lawrence Antonio Cardoso got from Aboki family which was regis-

tered as No. 79 at page 201 in Volume 92, which was pleaded in paragraph 4 of the plaintiff's amended statement of claim and the extent of the land covered by the conveyance of 1915 is not known and without the survey plan in evidence it will be impossible to know the extent of the land sold to Abudu Salami Ajibona by Cardoso.

He also submitted that the plaintiff pleaded in paragraph 7(1) of the amended statement of claim a conveyance dated 1:8:1919 and registered as No.26 at page 26 in Volume 131 of the register of Deeds kept at Lagos Land Registry delivered to Ajibona by Cardoso but failed to tender it in evidence.

Learned respondent's counsel referred to the other portion of land in the possession of the defendant which falls outside the estate of Abudu Salami Ajibona which is pleaded in paragraphs 30-35 of the second further amended statement of defence and that the defendant led oral evidence and tendered Exhibits "M", "M1" and "M2" (deeds of conveyance of Alhaji A.W. Akibu and the judgment of the Supreme Court in favour of Akibu).

He further submitted that these and other pieces of evidence were not adequately considered by the learned trial judge and that the Court of Appeal was competent to examine both oral and documentary evidence on record and that in the instant case, it carefully weighed and considered them before coming to the conclusion that the plaintiff failed to establish her root of title. He cited and relied on the cases of *The Colonial Security Trust Co. v. Massey* (1896) 1 Q.B.D. 38, *Anyaoke & Ors. v. Adi & Ors.* (1986) 3 NWLR (Pt.31) 731, *Piaro v. Tenalo* (1976) 12 S.C. 31 at 41 and *Kano v. Oyelakin* (1993) 3 N.W.L.R. (1993) 3 N.W.L.R. (Pt.282) 399 at 422. Counsel concluded that the exercise carried out by the court below before coming to the conclusion that the plaintiff did not prove her root of title was covered by the omnibus ground of appeal.

The respondent who was the appellant in the court below complained in ground three of his grounds of appeal in that court that the judgment of the learned trial judge is against the weight of evidence. In his brief of argument in the said court, the third issue for determination is whether the judgment is not against the weight of evidence.

Before going into the merits of the argument, it is important to bear in mind the nature and scope of omnibus ground of appeal in civil cases. It must be stressed that when a complaint is against the weight of evidence, the complaint is of necessity against the totality of the evidence adduced before the court and not on a finding of fact on a specific issue or document as the case may be. In the latter case, the finding should be raised as a substantive ground of appeal. See *Ndiwe v. Okocha* (supra). It

cannot be used to raise issues of or errors in law. The complaint questions the appraisal and evaluation of all the evidence adduced and not the weight to be attached to any particular piece of evidence.

Thus, in *Mogaji & Ors. v. Odofin & Ors.* (1978) 4 S.c. 91 at 93, Fatayi-Williams J.S.C. (as he then was) said:

B *“When an appellant complains that a judgment is against the weight of evidence, all he means is that when the evidence adduced by him is balanced against that adduced by the respondent, the judgment given in favour of the respondent is against the weight which should have been given to the totality of the evidence before him. In other words, the totality*
C *of the evidence should be considered in order to determine which has weight and which has no weight at all.”*

The respondent who was the appellant in the court below complained that after the summary of the facts, the learned trial judge did not apply the principles enunciated in *Mogaji v. Odofin* (supra) before he found D for the plaintiff and that the said finding was not supported by the evidence before him.

The plaintiff's case as pleaded is that Aboki family which originally owned a vast area of land conveyed the said vast area to Lawrence Antonio Cardoso by an instrument dated 23:3:15 and registered as No. 79 E at pages 301 in volume 92. The plaintiff also averred that in 1917, Lawrence Antonio Cardoso sold the said land to Abudu Salami Ajibona for a total sum of 3380 pounds paid to Cardoso by Ajibona. The payment was evidenced by receipts which were admitted in evidence as Exhibits “A” and “B”. The said conveyance of 1915 was not tendered in evidence to enable F the court know the extent of the land covered by it which was sold to Abudu Salami Ajibona. Exhibits “M” and “M1” refer to plans attached to them. The said survey plans were not before the court.

The plaintiff pleaded a deed of conveyance dated 1:8:19 and registered as No. 26 page 26 in Volume 131 of the Register of Deeds kept at G Lagos Land Registry by which Cardoso conveyed the land to Ajibona. This deed of conveyance was not also produced in court. This conveyance was pleaded in paragraph 7(1) of the amended statement of claim. The plaintiff also pleaded in paragraph 9 of the amended statement of claim that H 1915 was the subject of litigation in Suit No. 176/51 and that the title of the said Lawrence Antonio Cardoso was confirmed by the judgment in that case. He neither tendered the conveyance of 1919 nor the court judgment in evidence.

The defendant pleaded as follows in paragraphs 12, 13, 30, 31,

32, 33, 34 and 35:-

“12. The Defendant avers that only a portion of the land occupied by him falls within the Estate of late Abudu Salami Ajibona.

13. The defendant avers that part of the land claimed by the plaintiffs falls outside the estate of Late Abudu Salami Ajibona.

30. With reference to the portion of the land in possession of the B defendant that falls outside the estate of late Abudu Salami Ajibona, the defendant avers that he entered upon the said land with the permission and licence of the owner of the property, one Alhaji A. W. Akibu.

31. The said A. W. Akibu derived his title to a vast area of land at Apesin Street, Idi-Araba, Mushin in the Lagos State under a Deed of conveyance dated the 5th day of August, 1959 which is registered as No.60 at page 60 in Volume 349 of the Deed Register kept at Lagos Land Registry.

32. The Defendant avers that by an Indenture dated the 15th day of December, 1961 registered as No.32 at Page 32 in Volume 392 Paul Cardoso and six other members of Cardoso Family further sold and conveyed the said property to Alhaji Akibu.

33. The defendant avers that Cardoso Family derived title to the land from their father Late Lawrence A. Cardoso who became owner of the land by virtue of the Deed of Conveyance dated the 23rd day of March, 1915 registered as No. 79 at Page 301 in Volume 92 of the Deeds Register E kept at Lagos Land Registry.

34. The defendant pleads that in Suit No. SC.358/73 between A. W. Akibu and Joseph Opaleye & Anor the Supreme Court of Nigeria affirms the title of Alhaji A. W. Akibu in the said property.

35. The defendant will at the trial of this action rely on the said F judgment in support of his ownership of portion of the land that falls outside the land within the estate of Late Abudu Salami Ajibona.”

The defendant tendered the conveyances pleaded in paragraphs 31 and 32 above as Exhibits “M” and “M 1”. He also tendered the judgment pleaded in paragraph 34 as Exhibit “M2”. The defendant did not G tender the conveyance pleaded in paragraph 33 which the plaintiff also pleaded and did not tender.

From the evidence before the learned trial judge, the root of title of Abudu Salami Ajibona is hinged on Exhibits “A” & “B” - the receipts given to him by Cardoso. Abudu Salami Ajibona died intestate and his eldest son H Jimoh Salami Ajibona, his cousin Arthur Akintola Mayne and Ashimi Akinbiyi (his brother) obtained Letters of Administration over his personal property.

The defendant pleaded and led evidence to show that the landed

property of late Ajibona was partitioned according to Yoruba native law and custom between the children in 1944. Jimoh Salami Ajibona along with the other Administrators conveyed his own portion of land to Mutairu Alabi Onibanjo and it was evidenced by a deed of conveyance dated 19:8:46 and registered as No.4 at page 4 in Volume 743 - Exhibit "G". The land conveyed by exhibit "G" was sold to the father of the defendants by Onibanjo. The conveyance dated 1:2:54 and registered as No.60 at page 60 in Volume 983 was admitted in evidence as Exhibit "H1". The land conveyed by Exhibits "G" and "H1" is part of the land in dispute. The conveyances in Exhibits "G" and "H1" are subsisting and were not challenged by the plaintiff. For the portion covered by Exhibits "G" and "H1" and more particularly verged blue in Exhibit "F1", the defendant relied on the title he derived from the plaintiff's family. The defendant also pleaded that the other portion was not part of the land owned by Ajibona and tendered Exhibits "M", "M1" (deeds of conveyance from Akibu) and the Supreme Court Judgment in favour of Akibu.

The court below reviewed the whole evidence and observed as follows:

"The law is that a plaintiff who seeks a declaration of title must prove his root of title. If he traces his title to a particular person, it is not enough to stop there. He must go further to prove how that person got his own title, or came to have the title vested in him. It was not enough for the plaintiff to lead evidence to the effect that Abudu Salami Ajibona owned the land in dispute. She must prove or show the root of title relied on by Abudu Salami Ajibona and the true extent of the land he acquired. A defendant who has not counter-claimed need not answer such plaintiff's claim at that stage upon such a defective evidence since the plaintiff would not have made out a prima facie case: See Aromire v. Awoyemi (1972) 2 S.C. 1..... I will therefore conclude that the learned trial judge did not consider the evidence before him properly. He did not appreciate the true nature of the evidence and therefore gave judgment against the weight of evidence."

The Court of Appeal could not have come to a different conclusion having regard to the state of the pleadings and the evidence adduced by the parties. The learned trial judge failed to put the two sets of facts on an imaginary scale let alone weighing one against the other. The only evidence led by the plaintiff was that of purchase supported by unreliable and insufficient documents. The purchase was not proved and his case failed. I will therefore say that he did not follow the fundamental procedure

laid down in Mogaji & Ors. v. Odojin & Ors. (supra) and his approach is most unfair to the appellant. Had he followed the proper procedure, his finding would have been in favour of the defendant.

One of the grounds of appeal in the court below was that the judgment is against the weight of evidence. Since the issue of credibility did not arise, that court was in as good a position as the trial judge to evaluate the evidence. It did so, found that the decision was perverse and concluded that the decision was against the weight of evidence.

An omnibus ground of appeal is therefore designed to allow a complaint on evaluation of evidence and it encompasses complaint of improper evaluation of evidence. It implies that the judgment of the trial court cannot be supported by the weight of the evidence adduced by the successful party which the trial judge either wrongly accepted or that the inference drawn or conclusion reached by the trial Judge based on the accepted evidence cannot be justified. An omnibus ground of appeal also implies that there is no evidence which if accepted would support the findings of the trial judge. See Anyaoku & Ors. v. Adi & Ors (1986) 3 NWLR (Pt.31) 731; (1986) 17 NSCC (Part II) 799; Chief Abah Ogboda v. Adulugba (1971) 1 All NLR 68 (reprint) and Nta & Ors. v. Anigbo & Ors. (1972) All NLR 510 at 516 (reprint).

The conclusions reached by the trial court on the evidence before it was wrong hence the intervention of the court below on the complaint of the respondent herein who was the appellant in that court. The complaint did not require substantive grounds of appeal as urged on us by the appellant.

The above issue having been resolved against the appellant and as this issue encompasses the other issues identified by the appellant. It is unnecessary for me to consider them. They will not add to or subtract from the conclusion I have reached on the omnibus ground.

I will now turn to the cross-appeal. In paragraph 36 of the further amended statement of defence, the defendant averred as follows:

"36. The defendant avers that the plaintiff's claim ought to fall (sic) on any of the following grounds inter alia:-

1(a) Title to the land is in the possession of the defendant

1(b) Long uninterrupted and adverse possession by the defendant and his predecessors-in-title

(f) Provisions of Sections 16(2) (a), 17 and 21 of the Limitation Law, Cap 70, Laws of Lagos State.

Particulars

i. As far back as and since 1946 the defendant's predecessors-in-

title have been in possession of the land in dispute exercising various act (sic) of ownership thereon including clearing the bush and cutting down trees and building thereon.

ii. To the knowledge of the plaintiff, two houses presently valued N100,000 were erected and completed on the land in dispute in possession of the defendant as far back as 1958 and the plaintiffs by their silence and inaction encouraged the defendant to incur the substantial expenditure of over 15,000 (N30,000) on the land in dispute."

In his evidence, the defendant who testified as D.W.1 stated:

"I started building on the land in 1953/1954..... . I have always lived there. They are two buildings. I obtained building plans for the houses. This is the plan for 1953/1954 building, tendered, no objection. Admitted and marked Exhibit "K".

D.W. 1 died in the course of the proceedings in the High Court and was substituted by his son Surajudeen Kolawole Yinusa Davies (D.W.3). He testified as follows:

"The land in dispute belongs to my father. My father inherited the land from his father. My grand father bought the land from Onigbanjo family.....My father started building on the 1st part of the plot in 1953/1954..... I knew the land from my childhood when I was 2 years old. I grew up in the house. In 1955/56, my father built a second building on the plot. There was a building plan for each of the buildings..... No one has disturbed our possession or title until 1977 when present plaintiff instituted action."

The court below found that the defendant had lived in the houses on the land in dispute for over twelve years before this action was instituted. The appellant in this court was the respondent in the court below. His counsel conceded in that court that the defendant was in possession of the land in dispute for up to 18 to 20 years before the action leading to this appeal was instituted. He however maintained that the plaintiff did not know the time the defendant went into the land.

The court below held as follows in its majority judgment:

"In the present case, there is evidence that the defendant had lived in his house on the land for over twelve years before action was brought: See Exhibits K, N84, N85, N92, N93 and N94. However, although it is quite amazing that the plaintiff claims not to have known of this till about 1970 (i.e. four years before this action was instituted), there is no evidence to show that she knew or ought to have known." per Uwaifo, J.C.A. Patts-Acholonu, J.C.A. agreed with this conclusion. Ayoola, J.C.A. was of a different view. He said:

"What is needed for the limitation period to commence is absence

of possession by the plaintiff and possession by the defendant. Right accrues once possession has been lost to the other party. In this case there cannot be any doubt on the evidence but that the defendant had been in possession of the land in dispute for over twelve years, before this action was brought. There is overwhelming evidence oral and documentary in support of that conclusion..... For my part, B I feel no hesitation in rejecting the plaintiff's contention that the defendant must prove plaintiff's knowledge of such adverse possession for time to start running or that the ignorance of the plaintiff of the defendant's presence on the land makes any difference to the success of the plea."

I am of the same view with Ayoola J.C.A. **The defendant has been C in actual possession of this land for over twelve years and the plaintiff has been out of possession for the same period of time. This much was agreed by the learned trial judge and the court below. The defendant has made out a case of exclusive possession of this land by building and living on it for these number of years.** D

Assuming that this parcel of land was originally the plaintiff's, which I do not concede, it is clear to me that she lost it by the uninterrupted possession of the defendant. When one looks at the whole circumstances, and the unquestioned enjoyment of the land by the defendant by doing what I have referred to above on the land, I have no doubt that the defendant E has been in possession to the exclusion of the plaintiff.

On the issue of knowledge by the plaintiff of the defendant's adverse possession for time to start running, I will refer to Sections 17, 19 and 21 of the Limitation Law Cap 118 Laws of Lagos State. They provide:

"17. Where the person bringing an action to recover land, or some F person through whom he claims, has been in possession thereof and has while entitled thereto been dispossessed or has discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

19(1) No right of action to recover land shall be deemed to accrue G unless the land is in the possession (in this section referred to as adverse possession) of some persons in whose favour the period of limitation can run.

(2) Where -

(a) Under the provisions of this Law a right of action to recover H land is deemed to accrue on a certain date; and

(b) No person is in adverse possession of the land on that date; the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

21. *On the expiration of the period fixed by this Law for any person to bring an action to recover land, the title of that person to the land shall be extinguished."*

On the reading of the provisions of the Limitation Law of Lagos State as a whole, they do not merely deny the right of action. They completely extinguish an existing right at the expiration of twelve years from the accrual of the right of action. In this case, there is no dispute that the defendant built two houses on the land between 1953/54 and 1955/56. There is also no dispute that the defendant has lived on the land for over twelve years from then. He made physical use of the whole land to the exclusion of the plaintiff and was therefore in adverse possession of it.

On a cumulative reading of the entire provisions of the Limitation Law and in particular, Sections 16, 17, 19 and 21 thereof, knowledge on the part of the plaintiff is not a condition precedent. The knowledge of the plaintiff is immaterial. The words of the Limitation Law of Lagos State are clear and unambiguous and must therefore be accorded their ordinary meaning.

Apart from fraudulent concealment of right of action which itself furnishes a cause of action, knowledge cannot be said to be relevant. In order to constitute such fraudulent concealment as would, in equity, take a case out of the law of limitation, it is not enough that there should be merely tortious act unknown to the injured party or the enjoyment of property without title while the rightful owner is ignorant of his right; there has to be some abuse of a confidential position some intention at imposition, or some deliberate concealment of facts. To enter a land without the knowledge of the owner does not constitute concealed fraud. Under the Limitation law, the right to land is extinguished, in the absence of fraud, after discontinuance of possession for the period enacted in the law, although the owner so discontinuing possession was unaware that adverse possession had been taken. See Rains v. Buxton (1880) 14 Ch.D.537. The question of fraudulent concealment did not arise in this case.

The Limitation Law and all laws of this description ought to receive beneficial construction. They should be construed liberally but not in such a way as to read into them words not intended by the law makers as the majority decision of the court below portrayed. All limitation laws have for their object the prevention of the rearing up of claims that are stale. To contend that the defendant must prove plaintiff's knowledge of such adverse possession for time to start to run, or the defendant's presence on the land is to import a strange condition into the Limitation Law. See Sosan &

Ors. v. Ademuyiwa & Ors. (1986) 3 NWLR (Pt.27) 241 at 256.

I therefore come to the conclusion that there has been a complete dispossession of the plaintiff by the defendant during the statutory period. The court below in its majority view was with greatest respect, in error in holding that the Limitation Law did not extinguish the title of the plaintiff, Ayoola, J.C.A. was right in holding that it did. B

For these reasons, the appeal of the plaintiff is dismissed and the cross-appeal succeeds. The plaintiff's claims are accordingly dismissed. The respondent cross appellants are entitled to costs which I assess at N 1,000.00.

C

BELGORE JSC

I read in advance the judgment of my learned brother Ogwuegbu, J.S.C. and the reasons contained therein to which I have nothing to add. I thereof adopt his judgment as also mine in entering a verdict of dismissal of the plaintiff's appeal and I allow the cross-appeal of the defendant. The respondent/cross appellants are awarded costs of N 1,000.00 against the plaintiff/appellants. D

E

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Ogwuegbu, J.S.C. I agree with him that the Court of Appeal was right when it dismissed plaintiff's claims having regard to the pleadings and the evidence led by the parties. I also agree that the defendant having lived in his house on the land in dispute for over twelve years before the suit was filed, the limitation period under the Limitation Law would in addition run in his favour whether or not the plaintiff was aware of such adverse possession by the defendant. The appeal is dismissed with N1,000.00 costs to the defendants/respondents. F

G

OGUNDARE JSC

I have read in advance the judgment of my learned brother Ogwuegbu, J.S.C. just delivered. For the reasons given by him in the said judgment, which I hereby adopt, I too dismiss the main appeal of the plaintiff and allow the cross-appeal of the defendant. The plaintiff's claims stand dismissed. H

I subscribe to the order for costs made by my learned brother.

ADIO JSC

I have had the advantage of reading, in draft, the judgment just read by my learned brother, Ogwuegbu, J.S.C. and I agree with his reasoning and conclusion. I too dismiss the appeal and allow the cross appeal. I
B abide by the order for costs.

The evidence of D.W.1, which was uncontracticted, was inter alia, that he started building on the land in 1953/54. He had always lived there and they were two buildings. What were on the land were not tiny huts. They were buildings said to be of the value of N100,000.00. There was,
C therefore, evidence which disclosed that the appellant had knowledge of facts that would enable the court to say that the appellant ought to have acquired the notice with which it was sought to affect her and that she could have acquired it but for her gross or culpable negligence. See Yusuf v. Dada (1990) 4 NWLR (Pt. 146) 657.

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