

**SUPREME COURT OF NIGERIA**  
20TH DECEMBER, 1996. SC. 113/90  
**CORAM:- A. B. WALI, M. E. OGUNDARE, E. O. OGWUEGBU,**  
**U. MOHAMMED, A. I. IGUH, JJSC.**

CHIEF BABATUNJI OLOWOFOYEKU	..... PLAINTIFF/
AND	APPELLANT
1. THE ATTORNEY-GENERAL OF OYO STATE	
2. THE MILITARY GOVERNOR	... DEFENDANTS/
OF OYO STATE	RESPONDENTS
3. THE ATTORNEY-GENERAL OF OGUN STATE	
4. THE MILITARY GOVERNOR OF OGUN STATE	

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**AGENCY** - *Apparent or ostensible authority doctrine - Whether it operates to clothe the Governor of Oyo State - With authority to enter into agreement on behalf of others.*

**AGENCY** - *Implied or ostensible authority - Whether by virtue of any of these - The Governor of Oyo State can be an agent of other States.*

**APEALS** - *Concurrent findings - Sentiments - Cannot cause the Supreme Court - To disturb concurrent findings of lower courts.*

**CONTRACTS** - *Disposition of property - Whether a single Governor had valid power - To enter into agreement to deal with or dispose of any property - Jointly owned by three States.*

**CLAIMS** - *Dismissal - Claim for trespass by the appellant against respondents - Was quite correctly dismissed by lower courts - As respondents had acquired title in the property.*

**EQUITY** - *Purchase of property - On equitable grounds - Where no evidence was led to support the plea - It shall not be granted.*

**LAND LAW** - *Trespass - Action for trespass is at the suit of the person in possession - Appellant not being in possession cannot succeed in his claim for trespass.*

**LANDLORD & TENANT** - *Trespass and possession - Where the landlord has leased the property to a tenant - Whether Landlord who is not in possession - Can succeed in trespass.*

**LAND LAW** - *Trespass - Possession is good against the whole world - Save the person who can show a good title.*

**PRACTICE & PROCEDURE** - *Sentiments - The law does not recognize sentiments - The legal and not moral aspect of appellant's claim - Is the concern of the court.*

**PROPERTY LAW** - *Transfer of property - Where a property is vested in many persons - Consent of all is required - For an instrument of transfer to be valid.*

**STATUTES** - *Creation of States - Vesting of properties - In whom are the properties of the former Western State vested - After the creation of Ogun, Ondo and Oyo States.*

**TRUST** - *Trusteeship - After snaring the properties of the former Western State - Whether the Governor of Oyo State can still be a trustee - In respect of property belonging to Ogun State.*

### **FACTS**

The Plaintiff (herein appellant) who was the Attorney-General of the defunct Western State between 1963 to 1966 was upon the report of the Justice Somolu Assets Tribunal relieved of some properties including the subject-matter of this appeal. The appellant who challenged the order of the Tribunal in Court, later discontinued the action upon an understanding and on his own request that the forfeited properties be repurchased by him. During this process, the Western State, then, owner of the properties, was split into Ogun, Ondo and Oyo States and the property in dispute was portioned to Ogun State. However, all negotiations leading to the contract purporting to grant appellant the property was unilaterally granted by the former Governor of the Western State, then as Governor of Oyo State.

The Ogun State government took steps to assert its ownership of the property and the appellant instituted the action leading to this appeal against the 1st to 4th Respondents (as defendants) in the High Court Lagos State claiming - N5,000.00 General Damages against the 3rd and 4th Respondents for trespass and a Declaration that he (the appellant) is entitled to the document of title to the property in dispute from the 1st and 2nd Respondents. The case went to trial. At the end of hearing, the trial judge dismissed appellant's claim. Aggrieved by the decision of the trial court appellant appealed to the Court of Appeal which dismissed the

appeal in part. The appellant further appealed against the decision of the Court of Appeal, Lagos Division, to the Supreme Court raising 8 issues for determination. The apex Court however adopted the 5 issues formulated by the respondents as adequate.

**ISSUES FOR DETERMINATION**

*“(i) Upon the promulgation of Act 12 of 1976, in whom did the properties of the Appellant forfeited by W.S.L.N. 65 of 1969 vest.*

*(ii) After the promulgation of Act 12 of 1976 does the 2nd Respondent have exclusive right to deal with the forfeited properties of the Appellant not vested in him *lex situs* to the extent of entering into a unilateral contract with the Appellant for the sale thereof of the said properties to the exclusion of the other two states who are joint owners of the said property at the time of re-purchase agreement. Etc, See p. 2165*

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

***Creation of states - Vesting of properties***

1. From the above, it is clear that when the properties were forfeited, they were vested in the Military Governor of Western State of Nigeria and he held the properties in trust for the Government of Western State. But when the States were created and the Governor of Western Nigeria was re-appointed Governor of Oyo State his responsibility, as the appellant very well won, became limited to the geographical area of the new Oyo State. The is (Creation and Transitional Provisions) Act, 1977 (Act 17, 1977), which was made to commence as from 3rd February 1976, provided that immovable property of the Western state which was situated in the area of that State should vest in the Military Governors of Oyo, Ogun and Ondo and such properties would be held for the benefit of the respective state, the promulgation of Act 17 of 1977, it became clear that it did not cover other properties belonging to the former Western State which were he area of that state, particularly Lagos State. This I believe, was what brought about the enactment of States (Creation and Transitional Pro-(Amendment) Act, 1977 (Act 53 of 1977). This amendment provided for the vesting, of properties of the former Western State situated in the Old Colony Province of Lagos, jointly in the Military Governors of Oyo, Ogun and Ondo. (p. 2166 F)

***Whether Governor can still be a trustee***

2. I believe that the issue over the forfeited properties of the appellant is well settled. When the properties were forfeited they were made to vest

in Western State Government and when the three states were created they became successors jointly to all the assets of the former Western State. Those assets include Property D. I cannot see how, after the sharing of the assets and assigning Property D to Ogun State, Oyo State Governor would continue to hold the property in trust. It is a question to ask; in whose trust was the B Governor of Oyo State holding the property? If the Appellant says that a statute made the Governor of Western State a trustee to that property, that state no longer existed after Act 12 of 1976. And he cannot hold it in trust for Ogun State and Ondo States when the two states have their Governors who have been put in charge of assets they inherited from the former Western C State. This argument is without any basis whatsoever. (p. 2167 E)

***Disposition of property jointly owned***

3. The submission of the appellant on the trusteeship may be valid before three states were created from the former Western State. However, after D the promulgation of Act 12 of 1976 the former Governor of Western State, Brigadier Jemibewon, had no power or capacity to deal with any of tin properties vested in the three states without the concurrence of the Governors of Ogun and Ondo States. The combined reading of Acts 17 and 53 of 1977 establishes that after the creation of the three states any E property vested in the former Western State can only be disposed off by a joint instrument executed by the Governors of the three states. One Governor had no valid power to enter into any agreement for the disposition of any property jointly owned by the three States. (p. 2170 A)

***F Agency - Apparent or ostensible authority doctrine***

4. I do not see how the issue of agency could fit in, as the appellant has tried to do, in the case in hand. An agent is regarded as having “apparent” or “ostensible” authority where the doctrine of estoppel operates to give rise to the agency relationship, or to create some if not all of the effects G of that relationship. The agent’s authority is the product of the principal’s conduct, his representation that the agent has been authorised to act on his behalf. It is an authority which “apparently” exists, having regard to the conduct the parties. In a situation like the present case a reasonable person, which I have no doubt the appellant is, would be put upon in- H quiry as to the capacity of Governor Jemibewon to validly sell Property to him without the concurrence of the Governors of Ogun and Ondo States. Governor Jemibewon had no ostensible authority to enter into such agreement. (p. 2170 E)

***Governor of Oyo State is not an agent of other states***

5. I agree with the submission of learned counsel for the respondent that the issue in dispute here involved three distinct legal entities. Neither of the states is subordinate to the other nor can any of the States ever be regarded as an organ or department of the other state. The Governor of Oyo State can never be an agent of the other States by any authority B either fiduciary, residuary, implied or ostensible. The cases of Robertson v. Minister of Pensions and Hely-Hutchinson v. Brayhead Ltd. were all leading authorities on agency and are both irrelevant and of no help to the appellant in the prosecution of this appeal. (p. 2170 H)

C

***Property law - Transfer of property***

6. It is without doubt that the appellant assumed, at the time of his negotiations to repurchase Property D that the Governor of Oyo State was acting on behalf of his colleagues in Ogun and Ondo State. It is pertinent, however to point out that the appellant being a lawyer of standing knew D that if a property was vested in three persons it required the consent of all of them before an instrument of transfer could be validly executed. Act 17 and 53 of had made such consent a statutory pre-requisite. It is for the appellant to prove that the other joint owners had given their consent to the purported sale of Property to him. That he had failed to do. (p. 2171 G) E

***Trespass and possession***

7. It is however clear that before the appellant went to court and filed a claim for damages for trespass he was no more in possession of Property having leased the property to Total Nigeria Limited. It is trite law that F trespass is actionable at the suit of the person in possession of land. Possession means the occupation and physical control of land. Thus a tenant in occupation can sue, but not a landlord. Plaintiff who was not in possession of the land in dispute at the time he filed his claim cannot succeed in an action for trespass. (p. 2172 H) G

***Trespass - Possession is good save against holder of good title***

8. When I turn to the issue of title, it is plain that Ogun State Government had acquired title to the disputed land, and since, in a claim for trespass, possession is good against all the world except the person who can show H a good title, the appellant's claim against Ogun State Government was quite correctly dismissed by the two lower courts. (p. 2173 H)

***Purchase of property on equitable grounds***

9. The appellant pleaded that he should be left to purchase the house on equitable grounds. Referring to his claim in equity the Court of Appeal held that the appellant had adduced no evidence that he had been made to spend substantial amount of money on the premises. There was also no evidence that he accounted to the respondents the amount collected as rent in respect of Property to show that he was on the debit side. The appellant in his submission on this issue has tried, but in my view, in vain, to show how he disbursed his expenses on the reconstruction of the property (p. 2173 D)

***Concurrent findings***

10. The appellant knows better that the law does not recognize sentiments. In this appeal we are concerned with the legal aspect of the appellant's claim and not the moral aspect of it. Being a reputable lawyer, he should have considered all the consequences of his action before yielding to temptation. The withdrawal of his appeal has not improved his argument in support of this appeal and with all the relevant issues considered, the appellant has failed to convince me why I should disturb the concurrent finding of the two lower courts. (p. 2173 G)

**NOTABLE POINTS OF INTEREST****MOHAMMED JSC*****1. Assets vesting after state creation***

In view of the numerous exercises of States Creation in this country and method adopted in sharing the assets it is now a notorious fact that the assets vest jointly in the states carved out from the former one. Committees are established by the Federal Government for the sharing of the assets and unless a contrary enactment is made by a competent authority, all the assets vest jointly in the new states created. (p. 2168 C)

***2. Concurring opinion cannot be the Supreme Court's decision in a case***

I will go back to the judgment of Bello, CJN, where he made reference to the opinion of the Court of Appeal in Justice Dosunmu's case. It should be observed that Bello's judgment was a contribution to the lead judgment, in that appeal, which was written by Oputa JSC. Bello's judgment was not therefore the decision of this Court in that appeal. Secondly, the learned Chief Justice was only reviewing the judgments of the lower courts he quoted the opinion of the Court of Appeal which the appellant is relying heavily as an authority, that whatever the Governor of Oyo

State did between 3rd February, 1976 and 30th April, 1976 would be applicable to and Ondo States. (p. 2169 A)

*3. Reliance on inapplicable authority*

Going through the excerpt from the judgment and comparing it with the ratio decidendi in the case of Justice Dosunmu it becomes quite clear that the opinion of the Court of Appeal was not relevant in the determination of the appeal in that case. The main issues in Justice Dosunmu's case were the constitutional validity of the Edict which the Governor of Lagos State enacted on the policy of one person one plot, at Victoria Island; the competence of the Military Governor to make it and the Jurisdiction of the High Court to determine its validity. The opinion of the Court of Appeal was put as a hypothesis which indeed is not necessarily true or real. I will simply regard that opinion as obiter dictum and as such it has no binding effect. Thus, it is my respectful opinion that the decision in A.G. Lagos State v. Justice Lateef Dosunmu (supra) is not helpful and relevant to this appeal. (p. 2169 F)

*4. Where there is no contract - There can be no liability*

The property in issue was at the time Governor Jemibewon accepted appellants offer to repurchase it still jointly owned by the Government of Oyo, Ogun and Ondo States. It is trite law that:

*"Where a promise is intended to be made by several persons jointly, If any of those persons fail to enter into the agreement, or to execute the instrument of the agreement, there is no contract, and no liability is incurred by such of them as have entered into the agreement. "* (p. 2171 B)

*5. Trespass - What plaintiff must show*

In an action for trespass in which the issue of title is raised, to succeed, a plaintiff must be able to show a better title to be in possession of the land in dispute, than the defendant. (p. 2172 D)

**REPRESENTATION**

Hakim Bolaji Abina, for the Appellant,

O. Mabekoje, Ag. D.P.P. Ogun State for the 3rd and 4th Respondents.

**CASES REFERRED TO**

A. G. Lagos State v. Justice Lateef Dosunmu (1989) 3 N.W.L.R. 555 at page 591

Continental Nigeria Ltd. v. Ayatunji (1995) 9 NWLR (Part 420) 411

**2160 Olowofoyeku v. A-G Oyo State (1996) 12 KLR Mohammed JSC**

Saude v. Abdullahi (1989) 4 NWLR (Pt. 116)

Robertson v. Minister of Pensions (1949) 1 K.B. 227

Hely-Hutchinson v. Brayhead Ltd (1968) 1 QB 649

Lemomu v. Alli-Balogun (1975) 3 S.C. 87

Ogunde v. Ojomu (1972) 4 S.C. 105

B Military Governor of Lagos State v. Ojukwu (1986) All NLR page 233

Aromire v. Awoyemi (1972) 2 SC. 1

Aderibigbe v. Oki (1971) 1 All NLR 116 at 121-122

**STATUTES REFERRED TO:**

C Federal Military Government (Supremacy and Enforcement of Powers) Act,  
No. 20 of 1970.

States (Creation and Transitional Provisions) Act No. 12 of 1976.

States (Creation and Transitional Provisions) Act No. 17 of 1977.

States (Creation and Transitional Provisions) (Amendment) Act No. 53  
D of 1977.

Western State Legal Notice 65 of 1969.

**LEAD JUDGMENT BY MOHAMMED JSC**

Chief Babatunji Olowofoyeku was, between January 1963, and January, 1966, the Attorney-General of former Western Region of Nigeria. After the 1966 Military Coup, the then Military Government of the former Western State of Nigeria set up Somolu Assets Tribunal and empowered it to probe the assets of some key public officers, who were alleged to have committed unlawful enrichment during the course of their public duties.

F In July, 1969, following the release of Somolu Report, certain properties of Chief Olowofoyeku, the appellant, in this appeal, were forfeited to the former Western State of Nigeria, by virtue of the Public Officers and (Other Persons Forfeiture of Assets) Order, 1969 - WSLN, 65 of 1969. The properties are:

G (a) A piece of land at Commercial Reservation, Ibadan  
(b) A house at No.9 Queen Elizabeth II Road, Ibadan  
(c) A piece of land at Ojo Road, near Apapa, off Badagry Road,  
Lagos State.

(d) A house known as No. 101 Awolowo Road, S.W. Ikoyi, Lagos.

H The appellant soon after the release of Somolu's report instituted an action in the Lagos High Court and challenged the forfeiture order, contesting that not a single property of those listed above or any other property had been illegally or corruptly acquired by him. The case was still pending in court when the Federal Military Government enacted into

law the first ouster Decree with general application, to wit, the Federal Military Government (Supremacy and Enforcement of Powers) Act, No. 28 of 1970, which ousted the jurisdiction of courts from determination of any action Which challenges the legality of a Decree or an Edict and the powers exercised under them. The Act reads:

*“It is hereby declared also that -*

*(a) for the efficacy and stability of the government of the Federal Republic of Nigeria; and*

*(b) with a view to assuring the effective maintenance of the territorial integrity of Nigeria and the peace, order and good government of the Federal Republic of Nigeria -*

*(i) no civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Act or Law and if any such proceedings are instituted before, on or after the commencement of this Act the proceedings shall abate, be discharged and made void,*

*(ii) the question whether any provision of Chapter IV of the Constitution has been, is being or would be contravened by anything done or purported to be done in pursuance of any Act or a Law shall not be inquired into in any court of law, and, accordingly, no provision of the Constitution shall apply in respect of any such question.”*

After the promulgation of the Ouster Decree, the Federal Attorney-General applied for the action filed by the appellant to be struck out, for want of jurisdiction. The suit was accordingly dismissed. The appellant appealed to the Supreme Court, and pending the determination of his appeal, his application for stay of execution of the judgment of the High Court was granted. He was thus permitted to remain in occupation of his properties but on condition that he paid rents of (N2,000.00) per annum, for the use and occupation of all the properties involved, including No. 101 Awolowo Road, South West Ikoyi, Lagos, which is the subject of the action. It was the decision of the High Court in respect of this house which brought about this appeal.

Meanwhile, whilst the appellant’s appeal before the Supreme Court was pending he wrote to both the Federal and Western State Governments seeking for a review of the forfeiture order and release of his properties back to him. In a reply to his letters, the Western State Government headed by Governor Brigadier Jemibewon, wrote on 30th December, 1975, and explained that the appellant’s request for the release of his properties on compassionate grounds could only be given after he had produced satisfactory evidence showing that both the case he insti-

tuted and the appeal lodged in the Supreme Court have been discontinued.

In February, 1976 the Old Western State was divided into three states, namely, Oyo, Ondo and Ogun States. Brigadier Jemibewon remained in Ibadan but as governor of the new Oyo State. In March, 1977, the appellant wrote to Governor Brigadier Jemibewon of Oyo State, and offered to re-purchase all his B forfeited assets. By this time, the forfeited properties of the appellant had become vested jointly in the Military Governors of Oyo, Ogun and Ondo States as successors in title to the Military Governor of Western State, by virtue of States (Creation and Transitional Provisions) Act, 1977 (Act 17 of 1977) which was later amended by States (Creation and Transitional Provisions) (Amended) Act 1977 (Act 53 of 1977). C

Chief Olowofoyeku, the appellant, continued to press his request through the Governor of Oyo State, Brigadier Jemibewon, to permit him re-purchase his forfeited assets. The Governor wrote back and accepted the offer that the appellant could re-purchase the forfeited assets at the value D placed on them in the report which recommended their forfeiture. However, by now Brigadier Jemibewon had ceased to be the Governor of Western State. The letter dated 16th March, 1977 concluded thus:

*“Normally you would have been expected to purchase the said properties back at current market prices, but on compassionate grounds, E and having regard to the fact that you have been paying rent on some of the properties His Excellency the Military Governor has graciously acceded to your request and supplication and that you should be allowed to buy off the items of forfeited properties at the values placed on them in the Report which recommended their forfeiture.”*

F The appellant paid N51,000.00 for the forfeited assets. The house, 101, Awolowo Road, was valued at N18,200.00.

After the creation of Oyo, Ogun and Ondo States their respective Military Governors met and shared properties jointly owned by the three states. At the end of the meeting the property known as 101, Awolowo G Road, Ikoyi, Lagos was shared to Ogun State. It is the contention of the respondents that at the time the Military Governor of Oyo State wrote to the appellant, on 16th March, 1977 accepting the offer to allow the appellant to re-purchase 101, Awolowo Road, Ikoyi, he had no capacity to do so. In view of the reasons given above, Oyo State Government wrote H to the appellant to come and collect back the amount he paid in respect of the forfeited assets.

In a later development, the appellant wrote a letter to the Secretary to the Military Governor of Oyo State requesting him to liaise with his colleagues, the governors of Ogun and Ondo States in order to get his

forfeited asset, 101, Awolowo Road, Ikoyi, reconveyed to him. The letter was Exhibit 23 in the suit, which is the subject of this appeal and it reads as follows:

*“With reference to the discussion during my meeting with the Military Administrator earlier today, I must reiterate my gratitude to the Administrator for undertaking to convey to me No.9 Queen Elizabeth II B Road, Ibadan, one of my forfeited properties which the Oyo State Government had agreed that I could re-purchase and for which I had paid the agreed purchase price of N22,800.00 since 1977.*

*In pursuance of the said discussion, I shall make an appeal to the Administrators of Ondo and Ogun States to be graciously disposed to join in the reconveyance of my property in Lagos State without which the whole exercise would put me in a worse position - than I was when I was requested to withdraw my case from Court.*

*In the meantime, I shall be looking forward to receiving the necessary deed of conveyance.”*

It should be noted that the appellant had not communicated directly with the Military Governor of Ogun State over the property 101, Awolowo Road, Ikoyi. Meanwhile, he had let out the disputed house to Total Oil Company. On 14th September, 1979, the Government of Ogun State caused a sign-board to be placed on the Property 101, Awolowo Road, Ikoyi, (Property D) to show that, based on the sharing of assets made by the three Governors of Oyo, Ogun and Ondo, the property now belonged to Ogun State Government. The appellant protested to the Governor of Ogun State and, in a reply, the Attorney-General of Ogun State wrote back and explained to the appellant that the property 101, Awolowo Road, S.W. Ikoyi, Lagos, was now the property of Ogun State. In the letter the appellant was advised, in his own interest, not to attempt to remove the sign-board as such action would not only amount to unjustifiable usurpation of Ogun State's legal right to the property in dispute but also an actionable trespass. Following this the appellant went to Court and filed the following claim:

*“A. Against the 3rd and 4th defendants:*

*General damages in the sum of N5,000.00 for trespass committed by them their servants and agents in September, 1979 on the premises known as 101 Awolowo Road, S.W. Ikoyi, Lagos, which was in peaceful possession of the plaintiff.*

*B. Against the 1st and 2nd defendants: Declaration that the plaintiff by reason of the sale to him in March, 1977 is entitled to documents of title to the property referred to in paragraph 4 (a) and (b) of the Statement of Claim.*

*C. Such further or other relief as the Court may find just or equitable.”*

The parties duly filed their pleadings and the hearing in the case commenced on 2nd April, 1986. At the end of the hearing the learned trial Chief Judge, C.A. Johnson, dismissed the plaintiff’s claims against all the B defendants. Dissatisfied with the judgment of the trial High Court, the appellant went on appeal before the Court of Appeal, Lagos Division. The learned Justices, in a well considered judgment delivered by Akpata, J.C.A. (as he then was) with which Awogu and Kalgo, JJ.C.A, concurred, allowed plaintiff’s appeal against the 1st and 2nd defendants and dismissed C his appeal against the 3rd and 4th defendants. The appellant has now finally come before this court and supported his appeal against the Court of Appeal’s decision in respect of 3rd and 4th respondents, with eleven grounds of appeal. In the brief prepared by the appellant he raised the following issues for the determination of the appeal:

D *“1. Whether on the mere promulgation of Decree 12 of 1976, effective as of 3rd February 1977, the 2nd respondent as former Governor of Western State had become ‘functus officio’ as regards property outside the Western State which he was holding as trustee for that State by virtue of W.S.L.N. 65 of 1969.*

E *2. In either case, whether if 2nd respondent, being Governor of former Western State, were left in position to act for himself and his colleagues over property D and in the process sold the same to plaintiff the said colleagues can repudiate the act.*

F *3. Whether the Court of Appeal is correct in disregarding 2nd respondent’s statement in Exh. 33 that “the plaintiff has not been justly treated”, pointing to the probability of “the revelation of peculiar facts which will not portray any government in good light.”*

G *4. Whether the Court of Appeal is also correct in disregarding plaintiff’s pleadings and uncontradicted evidence about the Western State’s mendacious publication regarding plaintiff’s assets (Exh. II) and about Exh. 3, (the unpublished Report of Somolu Assets Tribunal extracted from that State Government in the course of the trial of Suit LD/270/69), showing that plaintiff had acquired nothing corruptly either for himself or his family, and particularly in view of the notorious fact that Justice Olujide Somolu, the Tribunal Chair-*  
H *man and then Chief Justice of the Western State, was soon after summarily relieved of his judicial office on being found guilty by a panel of his brother Judges of using “double standard” in the conduct of the said Assets Tribunal, and of forswearing himself about his age*

*5. Whether 3rd and 4th Respondents have proved any right to*

immediate possession of property D in September 1979, or at all. If so, whether they are entitled to summary recovery of possession thereof without a Court order.

6. Whether after 2nd respondent had sold the property to plaintiff and procured from him a release from Suit LD/270/69 pending in connection therewith wherein the learned trial Court had asked: B

*“Whoever said the plaintiff has corruptly or improperly enriched himself by virtue of his office or by any means in abuse of his office? ..... The report of the Tribunal .....never made any such suggestion”-*

the respondents or any of them can in equity repudiate the sale and still enjoy the benefit of the release. C

7. Whether the circumstances of the case have not raised an equity in plaintiff’s favour. If so, in what way should the equity be satisfied?

8. Whether 3rd and 4th respondents can lay claim at all to any interest in Property D by virtue of Act 53 of 1977. If so, whether the Court of Appeal was right in all the circumstances of the case in dismissing the appeal against 3rd and 4th respondents” . D

The 3rd and 4th respondents, in their joint brief of argument, filed by the learned counsel, J.Y. Akinwande (Miss), identified five issues for the determination of this appeal. The issues as formulated are as follows:- E

*“(i) Upon the promulgation of Act 12 of 1976, in whom did the properties of the appellant forfeited by WSLN 65 of 1969 vest.*

*(ii) After the promulgation of Act 12 of 1976 does the 2nd respondent have exclusive right to deal with the forfeited properties of the appellant not vested in him lex situs to the extent of entering into a unilateral contract with the appellant for the sale thereof of the said properties to the exclusion of the other two States who are joint owners of the said property at the time of the re-purchase agreement.* F

*(iii) Having entered into a unilateral contract with the appellant is the purported agreement made between the 2nd respondent and appellant binding on Ogun and Ondo States the other join owners who were not made parties to the said Agreement.* G

*(iv) Can the 2nd respondent be regarded under any circumstances as a trustee or agent in respect of property D not vested in him by Act 17 of 1977.* H

*(v) Can the appellant maintain an action in trespass against Ogun State in 1979, when Ogun State became sole owner of property D in 1978.”*

Looking through the issues raised by the appellant for the determination of this appeal one can easily conclude that sentiments and emo-

tions had hindered him from formulating what are obviously pertinent issues. It is quite clear that the issues raised by the learned counsel for the respondents cover, in fair formulation, all the points of law and fact put forward by the appellant in his grounds of appeal. I will therefore adhere to the respondents issues in this judgment and consider, of course, B all the submissions made by both parties in their respective briefs and arguments during the hearing of this appeal.

I will start with issue 1 where it has been asked; upon the promulgation of States (Creation and Transitional Provisions) Act 12, 1976, in whom did the properties of the appellant forfeited by Western State Legal Notice 65 of C 1969 vest? The appellant has not supplied a straight answer to this very important question. Instead, he came up with a submission that the Governor of Western State, after the promulgation of Act 12 of 1976, was holding all the properties of former Western State, including Property D, the house in dispute, in trust for the Western State. This in my view is a novel submission. In D answer to this submission counsel for the respondent referred to the decision of the Court of Appeal where it observed that there was no instrument after Act 12 of 1976, making the Governor of Oyo State a trustee of all the properties of the former Western State. The appellant, in supporting his contention took cover under the provision of clause 2 of W.S.L.N. 65 of 1969 to buttress his E argument that the Governor of Oyo State was holding properties in trust for the Western State of Nigeria. The provision of clause 2 of W.S.L.N. 65 of 1969 reads as follows;

*“The respective assets, ..... in the schedule hereto are hereby forfeited and shall ..... be vested in the Military Governor of the Western State of Nigeria to be held by him on behalf of or in trust for the Government of the Western State of Nigeria.”*

From the above, it is clear that when the properties were forfeited they were vested in the Military Governor of Western State of Nigeria and he held the properties in trust for the Government of Western State. But when G three states were created and the governor of Western Nigeria was re-appointed governor of Oyo State his responsibility, as the appellant very well knew, became limited to the geographical area of the new Oyo State. The States (Creation and Transitional Provisions) Act, 1977 (Act 17 of 1977), which was made to commence as from 3rd February 1976, provided that any H immovable property of the former Western State which was situated in the area of that state should vest in the Military Governors of Oyo, Ogun and Ondo and such properties would be held for the benefit of the respective state.

After the promulgation of Act 17 of 1977 it became clear that it did

**not cover other properties belonging to the former Western State which were outside the area of that state, particularly Lagos State. This I believe, was what brought about the enhancement of States (Creation and Transitional Provisions) (Amendment) Act, 1977 (Act 53 of 1977). This amendment provided for the vesting, of properties of the former Western States situate in the Old Colony Province of Lagos, jointly in the Military Governors of Oyo, B Ogun and Ondo.**

There is no dispute over the location of No. 101 Awolowo Road, S.W. Ikoyi (Property D). The W.R.L.N. 139 of 1954 clearly showed that Ikoyi was not part of Old Colony Province of Lagos. The Court of Appeal accepted that Act 53 of 1977, did not cover Property D since that property was not C part of the Old Colony Province of Lagos. The appellant's argument on the issue concerning Property D is that the Governor of Oyo State, being former Governor of Western State, held that Property in trust by virtue of W.S.L.N. 65 of 1969. His trusteeship extended to 3rd February 1976 and that Act 12 of 1976 which created new states did nothing to derogate D from that trust. The appellant argued further that Act 17 of 1977 extended the control of the Governor of Oyo State over property D. This is indeed a spurious argument. How Act 12 of 1976 and Act 17 of 1977 entrusted Property D in the Governor of Oyo State is a submission cloaked in a shroud of mystery. The appellant failed to cite any section of the law E which gave the Governor of Oyo State that authority.

**I believe that the issue over the forfeited properties of the appellant is well settled. When the properties were forfeited they were made to vest in Western State Government and when the three states were created they became successors jointly to all the assets of the former Western State. Those F assets include Property D. I cannot see how, after the sharing of the assets and assigning Property D to Ogun State, Oyo State Governor would continue to hold the property in trust. It is a question to ask; in whose trust was the Governor of Oyo State holding the property? If the appellant says G that a statute made the Governor of Western State a trustee to that property, that state no longer existed after Act 2 of 1976. And he cannot hold it in trust for Ogun and Ondo States when the two states have their governors who have been put in charge of assets they inherited from the former Western State. This argument is without any basis whatsoever.** H

Next, the appellant strongly attacked the opinion of the Court of Appeal, where Akpata, J.C.A. held that where states were created from a former state, the immovable properties of the former state, particularly those outside the geographical area of the former state, vest jointly in the

states created therefrom unless there is a contrary enactment by a competent authority. The appellant argued that Court of Appeal was wrong and gave example of Mid Western Region when it was created out of Western Region, by Act 19 of 1963, and Katsina and Akwa Ibom States, when they were carved out of Kaduna and Cross River States. Those new states took only what was given to them under their respective statutes. The appellant is right that those new states took what was given to them under the statute creating them. But with respect, this is exactly what Akpata said in his judgment. The learned justice gave a proviso to his opinion where he said, “unless there is a contrary enactment by a competent authority”. I do not see how Akpata had erred here.

In view of the numerous exercises of States Creation in this country and the method adopted in sharing the assets it is now a notorious fact that the assets vest jointly in the states carved out from the former one. Committees are established by the Federal Government for the sharing of the assets and unless a contrary enactment is made by a competent authority all the assets vest jointly in the new states created.

The next issue is based on a question which in a nutshell asked; after the creation of Oyo, Ogun and Ondo States, out of the former Western State by Act 12 of 1976, had the Governor of Oyo State power to enter into a contract with the appellant for the sale of any of the properties belonging to him which were forfeited to the former Government of Western State? The appellant hinged his argument on this issue on his earlier contention that Governor Jemibewon was holding all properties of former Western State in trust when he sold Property D to him. I have already rejected this argument in my judgment and I need not repeat it again.

The appellant made heavy weather of an opinion of the Court of Appeal which he said Bello, CJN, adopted. This was in the case of A.G. Lagos State v. Justice Lateef Dosunmu (1989) 3 NWLR (Pt.111) 552 at page 591. The argument of the appellant here is that when Act 17 of 1977 was gazetted it became clear that the Federal Government recognised that as former Governor of Western State, Governor Jemibewon had residuary role to play after 3rd February 1976, on behalf of his colleagues for months after the effective date, even in vital area of law making and this was recognised by the Court of Appeal itself in the case of A.G. Lagos State v. Justice L Dosunmu (supra). Accordingly all minor acts performed by Governor of Oyo State on behalf of his colleagues before the fiat of the Federal Government became known, including the re-purchase contract herein can properly be said to have been performed under Governor of Oyo State’s residuary authority.

I will go back to the judgment of Bello, CJN, where he made reference to the opinion of the Court of Appeal in Justice Dosunmu's case. It should be observed that Bello's judgment was a contribution to the lead judgment, in that appeal, which was written by Oputa, J.S.C. Bello's judgment was not therefore the decision of this Court in that appeal. Secondly, the learned Chief Justice was only reviewing the judgments of the lower courts when he quoted the opinion of the Court of Appeal which the appellant is relying heavily as an authority, that whatever the Governor of Oyo State did between 3rd February 1976, and 30th April 1976 would be applicable to Ogun and Ondo States. It is better understood if I reproduce the relevant part of the judgment of the former Chief Justice where the opinion of the Court of Appeal was quoted. It reads as follows:

*"Not satisfied with the decision of the trial Court; the present appellant appealed to the Court of Appeal upon several grounds of appeal, including the three issues on jurisdiction. The Court of Appeal decided the three issues in favour of the respondent. With respect to the issue relating to the States (Creation and Transition Provisions) Decrees Nos. 12/1976 and 17/1977 which the trial Judge failed to determine, Akpata, J.C.A., stated in his lead judgment and concurred by Babalakin, J.C.A. and Awogu, J.C.A.;*

*"It is obvious that this Decree (Decree No. 17 of 1977) was necessary to bring sanity to an otherwise confused state of affairs following the creation of 19 States in the Federation on 3rd February, 1976. For instance, the former Western State was broken into three States, Oyo, Ondo and Ogun. By this Decree, any Edict enacted or anything done by the Governor of Oyo State between 3rd February, 1976 and 30th April, 1977, even though Ogun and Ondo had been carved out from the Western State on 3/2/76, would be applicable to Ogun and Ondo States. As Chief Williams rightly pointed out this Decree was not applicable to States such as Bendel and Lagos States from which no State was carved out."*

Going through the excerpt from the judgment and comparing it with the ratio decidendi in the case of Justice Dosunmu, it becomes quite clear that the opinion of the Court of Appeal was not relevant in the determination of the appeal in that case. The main issues in Justice Dosunmu's case were the Constitutional validity of the Edict which the Governor of Lagos State enacted on the policy of one person one plot, at Victoria Island; the competence of the Military Governor to make it and the jurisdiction of the High Court to determine its validity. The opinion of the Court of Appeal was put as an hypothesis which indeed is not necessarily true or real. I will simply regard that opinion as obiter dictum and as such it has no binding effect: See *Afro-Continental Nigeria Ltd. v.*

Ayantunyi and Ors. (1995) 9 NWLR (Pt. 420) 411 - per Iguh, J.S.C. and Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387. Thus, it is my respectful opinion that the decision in A-G, Lagos State v. Justice Lateef Dosunmu (supra) is not helpful and relevant to this appeal.

**The submission of the appellant on the trusteeship may be valid before three states were created from the former Western State. However, after the promulgation of Act 12 of 1976 the former Governor of Western State, Brigadier Jemibewon, had no power or capacity to deal with any of the properties vested in the three States without the concurrence of the Governors of Ogun and Ondo States. The combined reading of Acts 17 and 53 of 1977 establishes that after the creation of the three states any property vested in the former Western State can only be disposed off by a joint instrument executed by the Governors of the three states. One Governor had no valid power to enter into any agreement for the disposition of any property jointly owned by the three States. The learned Justice of the Court of Appeal is not wrong therefore to opine thus:**

*“As at 7th March, 1977 when Exhibit “12” was written by the appellant, to Brigadier Jemibewon, the three states had been created out of the Western State. No law or instrument made the Military Governor of Oyo State the trustee of Property D; and there is no basis for one to imply from the circumstances of this case that he was a trustee or that he could validly act for his colleagues.”*

**I do not see how the issue of agency could fit in, as the appellant has tried to do, in the case in hand. An agent is regarded as having “apparent” or “ostensible” authority where the doctrine of estoppel operates to give rise to the agency relationship, or to create some if not all of the effects of that relationship. The agent’s authority is the product of the principal’s conduct, his representation that the agent has been authorised to act on his behalf. It is an authority which “apparently” exists, having regard to the conduct of the parties. In a situation like the present case a reasonable person, which I have no doubt the appellant is, would be put upon enquiry as to the capacity of Governor Jemibewon to validly sell Property D to him without the concurrence of the Governors of Ogun and Ondo States. Governor Jemibewon had no ostensible authority to enter into such agreement:**

**I agree with the submission of learned counsel for the respondent that the issue in dispute here involved three distinct legal entities. Neither of the States is subordinate to the other and nor can any of the States ever be regarded as an organ or department of the other State. The Governor of Oyo**

**State can never be an agent of the other States by any authority, either fiduciary, residuary, implied or ostensible. The cases of Robertson v. Minister of Pensions (1949) 1 KB 227 and Hely-Hutchinson v. Brayhead Ltd. (1968) 1QB 549 were all leading authorities on agency and are both irrelevant and of no help to the appellant in the prosecution of this appeal.**

B

The property in issue was at the time Governor Jemibewon accepted appellant's offer to re-purchase it still jointly owned by the Governors of Oyo, Ogun and Ondo States. It is trite Law that:

*"Where a promise is intended to be made by several persons jointly, if any of those persons fail to enter into the agreement, or to execute the instrument of the agreement, there is no contract, and no liability is incurred by such of them as have entered into the agreement." See Halsburys Laws of England, 4th Edition Volume 9 at page 135, para 257. See also section 2(a) of Act 17 of 1977 and Section 1(b) of Act 53 of 1977."*

The appellant brought in the issue about Exhibit 33, which was a letter written by the Solicitor-General of Oyo State to his counterpart in Ogun State intimating to him that Oyo State Military Administrator, acting for or on behalf of the Military Administrators of Ogun and Ondo States, had entered into a contract of sale of Property D with the appellant. This information was communicated to Ogun State two years after the purported sale of Property D to the appellant. It is expected that the Governor and A.G of Oyo State would, if Exhibit 33 was true, plead what had been said therein in their joint Statement of Defence. Such however was not pleaded and all the submissions on that issue shall be of no consequence. The fact that Exhibit 33 had been admitted in evidence does not improve the case of the appellant: See *Igbodim and Ors. v. Obianke and Ors.* (1976) 9 -10 SC. 179 and *Lemomu v. Alli-Balogun* (1975) 3 SC. 87.

The next issue seems to overlap into the matters already considered in this judgment. It has been asked therein

*"Having entered into a unilateral contract with the appellant is the purported contract made between Governor Jemibewon of Oyo State and the appellant binding on the governments of Ondo and Ogun States?" An answer has already been given to this question.*

**It is without doubt that the appellant assumed, at the time of his negotiations to re-purchase Property D that the Governor of Oyo State was acting on behalf of his colleagues in Ogun and Ondo States. It is pertinent, however to point out that the appellant being a lawyer of standing knew that if a property was vested in three persons it required the consent of all of them before an instrument**

H

**of transfer could be validly executed. Acts 17 and 53 of 1977 had made such consent a statutory pre-requisite. It is for the appellant to prove that the other joint owners had given their consent to the purported sale of Property D to him. That he had failed to do.**

*I now move to the issue dealing with the claim on trespass. The B claim of the appellant for damages for trespass was couched thus:*

*“A. Against 3rd and 4th defendants:*

*General damages in the sum of N5,000.00 for trespass committed by them, their servants and agents in September, 1979 on the premises known as 101, Awolowo Road, S.W. Ikoyi, Lagos, which was in peaceful possession of the plaintiff.”*

The appellant filed his claim against the 3rd and 4th respondents in October, 1979. In his pleadings, he averred, in paragraph 27, that the respondents committed the act of trespass when they entered Property D and erected a sign-board therein. The respondents pleaded in the statement of defence and proved before the trial Court that Property D was shared to Ogun State when the Governors of the three States met on 24th November 1978 and divided the properties of the former Western State. Thus, at the time the appellant sued the 3rd and 4th respondents Ogun State had already obtained title over Property D, viz 101 Awolowo Road, S.W. Ikoyi. In an action for trespass in which the issue of title is raised, to succeed, a plaintiff must be able to show a better title to be in possession of the land in dispute, than the defendant. Per Udo Udoma, J.S.C., in *Ogunde v. Ojomu* (1972) 4 S.C. 105. In the case of *Pius Amakor v. Benedict Obiefuna* (1974) 1 All NLR 119 at 114, this Court held:

*“It is trite law that trespass to land is actionable at the suit of the person in possession of the land. That person can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrongdoers except a person who could establish a better title”*

The appellant’s Property D was forfeited to the Government of Western State and, as I have mentioned earlier in this judgment the appellant had fought this forfeiture in the Courts and through administrative process. During these claims and petitions, he was allowed to remain in the premises pending the outcome of his actions. He was made to pay rents to the Government of Western State. This is where he obtained an equitable interest, being at the time in possession of the disputed property. **It is however clear that before the appellant went to court and filed a claim for damages for trespass, he was no more in possession of**

**Property D having leased the property to Total Nigeria Limited. It is trite law that trespass is actionable at the suit of the person in possession of land. Possession means the occupation and physical control of land. Thus a tenant in occupation can sue, but not a landlord. Plaintiff who was not in possession of the land in dispute at the time he filed his claim cannot succeed in an action for trespass - see Ekwere & ors. v. Iyiegbu and ors. (1972) 6 S.C. 116; (1972) B NSCC 438 at 444 and Okon Nyong Ekpenyong v. Effiong Nta Eyibio (1965) NSCC 288. When I turn to the issue of title, it is plain that Ogun State Government had acquired title to the disputed land, and since, in a claim for trespass, possession is good against all the world except the person who can show a good title, the appellant's claim against Ogun State Government was quite correctly dismissed by the two lower courts.**

The cases of Agbor v. Metropolitan Police Commissioner (1969) 1 WLR 703 and Military Governor of Lagos State v. Chief Emeka Ojukwu (1986) 1 NWLR (Pt 621) (1986) All NLR page 233, were both based on forcible eviction by using the police instead of resort to due process of law. This is not the case here.

**The appellant pleaded that he should be left to purchase the house on equitable grounds. Referring to his claim in equity, the Court of Appeal held that the appellant had adduced no evidence that he had been made to spend substantial amount of money on the premises. There was also no evidence that he accounted to the respondents the amount collected as rents in respect of Property D to show that he was on the debit side. The appellant in his submission on this issue has tried, but in my view, in vain, to show how he disbursed his expenses on the reconstruction of the property. He said that he was not accountable to anyone. But this is wrong. He was accountable, since the forfeiture of the property to the former Western State Government when he was allowed to remain in the house provided that he paid rents and after the creation of three States he was accountable to them being the successors to the former Western State Government.**

Finally, the appellant submitted, quite correctly, that he withdrew the appeal he filed in Suit LD/270/69 not because he desired to do so but because he was lured by the Governor of the former Western State to do so. **The appellant knows better that the law does not recognise sentiments. In this appeal we are concerned with the legal aspect of the appellant's claim and not the moral aspect of it. Being a reputable lawyer, he should have considered all the consequences of his action before yielding to temptation. The withdrawal of his appeal has not improved his argument in support of this appeal and with all the relevant issues considered, the appellant has failed to convince me**

**why I should disturb the concurrent findings of the two lower courts.**

In the result, this appeal, being devoid of any merit, fails and it is dismissed. The judgment of the Court of Appeal is hereby affirmed. The respondents are entitled to the costs of this appeal which I assess at N1,000.00.

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B

**WALI JSC**

I have had a preview of the lead judgment of my learned brother Uthman Mohammed, J.S.C. and I agree with his reasoning and conclusion for dismissing the appeal. I hereby adopt the same as mine. I abide by the consequential orders made in the lead judgment, including that of costs.

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**OGUNDARE JSC**

I have had the advantage of the preview of the judgment of my learned brother Mohammed, J.S.C. just delivered. I agree with him that this appeal has no substance and should be dismissed. I however, wish to add a few comments on the claims of the plaintiff/appellant.

In paragraph 29 of his amended statement of claim plaintiff claimed thus:-

E       “A. Against the 3rd & 4th defendants:

*General damages in the sum of N5,000.00 for trespass committed by them, their servants and agents in September, 1979 on the premises known as 101, Awolowo Road, S.W. Ikoyi, Lagos, which was in peaceful possession of the plaintiff.*

F       B. Against the 1st and 2nd defendants:

*Declaration that the plaintiff by reason of the sale to him in March, 1977 is entitled to documents of title to the property referred to in paragraph 4(a) and (b) of the Statement of Claim.”*

G       His claim A for damages for trespass was predicated upon the following averments in his pleadings, that is to say:

“5. The plaintiff instituted an action, namely, Suit No. LD/270/69 - B. O. Olowofoyeku v. Attorney - General, Western State, The Federal Attorney-General & Ors. in the Lagos High Court to challenge the forfeiture order contesting that not a single one of the said properties, and not  
H a single other property, had been illegally or corruptly acquired by him.

6. In the course of the trial an order for interim injunction was made against the defendants (therein) restraining them from interfering with plaintiff’s possession of the said properties pending the determination of the action.

x x x x x x

27. Surprisingly, on 6th September, 1979, the 3rd and 4th defendants in exercise of some misconceived power sent some workmen on the property at 101 Awolowo Road trying to plant a signboard thereon, whereupon they were warned off by the plaintiff's agents.

28. Nevertheless, the 3rd and 4th defendants are still wrongfully B claiming to be entitled to go on to the land and may do so unless restrained therefrom."

But he also pleaded:

"9. However, before Suit No. LD/270/69 could be listed for argument on the merits, Decree No. 28 of 1970 was promulgated and following a subsequent application by the Federal Attorney-General, the plaintiff's action was struck out and dismissed for lack of jurisdiction. C

x x x x x

13. At all material times, the plaintiff was residing at 101, Awolowo Road, Ikoyi S.W., Lagos, but rather than opt to get back his residence on compassionate grounds he went on with the court action striving to show that his assets had been illegally and maliciously forfeited to the Western State Government. D

x x x x x

16. In a reply dated 30th December, 1975, the Government stated E that consideration could only be given on 'compassionate grounds' after the plaintiff should have produced satisfactory evidence that both the case pending in the matter and the appeal lodged therein have been discontinued."

In his evidence at the trial, plaintiff testified thus:-

F

"I filed an application and applied for a stay.

I was then living in 101, Awolowo Road, S.W. Ikoyi.

I was granted a stay of execution conditionally. This is the Order. Tendered no objection admitted and marked Exhibit 5."

Later, he deposed

G

"In 1979 Ogun State Government went in (sic) my land at Awolowo Road, and put up a signboard."

Under cross-examination, he testified thus:

"I paid rent last in 1976 to Oyo State on 101, Awolowo Road, Lagos after the receipt of Exhibit 10. I ceased to live in 101, Awolowo Road, at the end of 1979. I have paid for the house. I repaired the property and let it out after I left the place..... I let the house to Total Co."

Exhibit 5 referred to in plaintiff's evidence concludes as follows:-

"I accordingly order that the plaintiffs be allowed to remain in

*possession of the properties situate at Awolowo Road, Ikoyi, South West Lagos and No.9, Queen Elizabeth Road, Oritamefa, Ibadan pending his appeal on the conditions*

*(1) that the plaintiff pays to the Treasury of Western State the sum of ₦31,000.00 per annum with effect from 1st January, 1972.*

B *The first payment to be made not later than 30 days from today (2) The plaintiff shall continue to live in the building on Plot 228, Awolowo Road, Ikoyi and members of his family shall continue as at present to live in the property at 9, Queen Elizabeth Road, Ibadan."*

Plaintiff withdrew his appeal to the Supreme Court following the C letter pleaded in paragraph 16 of his amended statement of claim. With the withdrawal of the appeal the order in Exhibit 5 lapsed. The plaintiff would, therefore, no longer have right to possession of the property in dispute unless and until the same was validly transferred to him by the Governments of Ogun, Ondo and Oyo States that then jointly owned the property.

D A claim in trespass implies that the plaintiff was in possession of the land in dispute at the time of the alleged trespass - *Aromire v. Awoyemi* (1972) 2 S.C. 1. On the evidence of the plaintiff and Exhibit 24 in which plaintiff's solicitors wrote to 3rd and 4th defendants that -

*"Re: Property at No. 101, Awolowo Rd.*

E *S. W. Ikoyi, Lagos*

*I have recently received a letter dated 10th instant from the Solicitors to my tenants of the above-named property stating inter alia as follows:-*

F *'Our clients Messrs Total Nigeria Limited have reported to us that on Thursday, 6th September, 1979, some people brought a signboard attached to a pole to No. 101, Awolowo Road, Ikoyi which our clients hold of you under sublease for a term of years. '*

*'On the signboard was written that the property belongs to the Ogun State Government.'*

G *'They started to dig a pole on the land with the intention of planting the pole therein. The people were challenged by staff members of our clients' company; but after some argument, they left and carried away the signboard.'* "

he was no longer in possession at the time the agents of Ogun H State Government came on the land to fix a signboard. On his evidence he had let the house to Total company whose staff were probably then in occupation. A person who is not in possession or has a right of possession cannot sue for trespass - *Aderibigbe v. Oki* (1971) 1 All NLR 116 at 121-122. And possession means the occupation or physical control of the land, either personally or

through an agent or servant. A tenant is not an agent or servant of the landlord for the purpose of possession that would entitle the landlord to sue for trespass. The facts here suggest that the plaintiff was neither in possession at the relevant time nor had he a right to possession because the order contained in Exhibit 5 had lapsed and in fact, he, on his admission, had ceased to pay rent as ordered in Exhibit 5, since 1976. On this ground alone, therefore, his claim in B trespass ought to be dismissed.

My learned brother Mohammed, J.S.C. has adequately dealt with claim (B). The purported sale by the 2nd defendant to the plaintiff being void, his claim (B) cannot succeed. The Ogun, Ondo and Oyo States were the successor states of the Western State on the creation, in February 1976, of C those three States out of the former Western State. The property in dispute, since it was not covered specifically by any of the Decrees promulgated to determine the vesting of the property of the former Western State in the three successor States, belonged jointly to the three states and could not be dis- D posed of by one of the States without the concurrence of the others. It is on record that the three states had, in sharing the assets of the former Western State, given the property in dispute to Ogun State. That being so, the property now belongs to that State and as that State has not sold it to the plaintiff, the plaintiff would have no title, or right to title, to the property.

For the above reasons and the fuller reasons given in the judgment E of my learned brother Mohammed, J.S.C., I too dismiss the appeal and abide by the order for costs made in the judgment of my learned brother.

### OGWUEGBU JSC

I read in advance the judgment of my learned brother Mohammed, F J.S.C. and I agree that this appeal fails, and I will only add a few observations in respect of the property at No. 101, Awolowo Road, Ikoyi.

The claim of the plaintiff is set out in paragraph 29 of the Amended G Statement of Claim. It reads:-

*"29. Wherefore the plaintiff claims:*

*A. Against the 3rd and 4th defendants:*

*General damages in the sum of N5,000 for trespass committed by them, their servants and agents in September, 1979 on the premises known as 101, Awolowo Road, S.W. Ikoyi, Lagos, which was in peaceful H possession of the plaintiff.*

*B. Against the 1st and 2nd defendants:*

*Declaration that the plaintiff by reason of the sale to him in March, 1977 is entitled to documents of title to the property referred to in*

paragraph 4(a) and (b) of the Statement of Claim.”

At the close of hearing after pleadings were filed and exchanged, the learned trial Judge dismissed the plaintiff’s claims against all the defendants. He found that there was no evidence that the Governments of Ondo and Ogun States concurred with the agreement between the Military Governor of Oyo State and the plaintiff to re-purchase the property at 101, Awolowo Road, S.W. Ikoyi. He said:-

“In such circumstances the Military Governor of Oyo State would appear to have acted unilaterally in a situation in which he was required to act jointly with the Military Governors of Ondo and Ogun to dispose of the property in issue. It is therefore my view that the Military Governor of Oyo State acted without authority, since at the time of the agreement the Military Governor of Oyo State was not the sole beneficiary of the property, he had nothing to offer solely to the plaintiff. Exhibit 33A, written long after the purported agreement to re-purchase, makes interesting reading. Interesting in one sense that the letter dated the 5th of January, 1979 from the Secretary to the Military Government and Head of Service of Oyo State to the Solicitor-General and Permanent Secretary of the same State, clearly stated that the property in issue had been inherited by Ogun State Government and called for due processes to be carried out to vest the properties as claimed to have been jointly disposed. Plaintiff in my considered view appeared to be in error in assuming that the Military Governor of Oyo State was acting for and on behalf of the other joint owners.”

The plaintiff appealed against the decision of the trial Judge to the Court of Appeal, Lagos Division. His appeal was dismissed hence the further appeal to this court.

With respect to Property “D”, the Court of Appeal observed as follows:-

“As at 7th March, 1977, when Exhibit 12 was written by the appellant to Brigadier Jemibewon, the three States had been created out of the Western State. No law or instrument made the Military Governor of Oyo State the trustee of Property D, and there is no basis for one to imply from the circumstance of this case that he was a trustee or that he could validly act for his colleagues.”

Learned counsel for the plaintiff submitted in his brief of argument that as at 7th March, 1979 when the plaintiff wrote Exhibit 12 to the 2nd respondent, the said 2nd respondent was acting for all the Governors in respect of the forfeited assets as one having authority to do so and that the others acquiesced. Learned counsel for the plaintiff referred

us to clause 2 of W.S.L.N. 65 of 1969 which vested in the Military Governor of the former Western State all forfeited assets set out in the schedule thereto to be held by him on behalf of or in trust for the Government of the Western State of Nigeria. It was further submitted that the States (Creation and Transitional Provisions) Act No. 12 of 1976 which created three States from the former Western State did not derogate from the trustee role of the former Western State over Property D. B

It was also contented that when the States (Creation and Transitional Provisions) Act No. 17 of 1977 was enacted, it became clear that the Federal Government recognised that as former Governor of Western State, 2nd defendant had a residuary role to play after 3:2:76 on behalf of his colleagues. It was his contention that the minor acts performed by the 2nd defendant on behalf of his colleagues before Act No. 17 of 1977 became known including the re-purchase contract of Property D, can be said to have been performed under the residuary authority of the 2nd defendant which was recognised by the Federal Government. D

Learned counsel for the 3rd and 4th defendants submitted in part:-

*“.....that Act 53 was enacted to vest in the three Governors of Oyo, Ondo and Ogun States the properties of the former Western State B, and which were not vested in the respective Governors by virtue of Act 17 of 1977. It is conceded that property known as 101 Awolowo Road is not within the Colony Province but it must be noted that Act 25 of 1967 referring to Colony Province was enacted before the appellants property were forfeited. Therefore, Act 53 should be read as applying to the properties not vested *lex situs* and they therefore vested jointly in the three States as successors to the former Western State.* F

*It is further submitted that unless Act 53 is read to cover at least by implication the property of the appellant at 101 Awolowo Road, Ikoyi, the said property would become *res nullius* after the extinction of the then former Western State.”*

The plaintiff agreed in his brief that Act 53 provided for vesting of property in the Colony Province; that Property D is admittedly outside the Colony Province and that this should be the end of the matter. G

The Court of Appeal had this to say about States (Creation and Transitional Provisions) (Amendment) Act No. 53 of 1977:-

*“Although Act 53 does not specifically cover Property D, it cannot however be said that the property vested only in Oyo State, one of the States created out of the former Western State. It cannot also be regarded as *res nullius*. I am of the firm view, and I think it falls to reason that where States are created from a former State, particularly those outside H*

*the geographical area of the former State, vest jointly in the States created therefrom, unless there is contrary enactment by a competent authority.”*

Property D is one of the properties of the plaintiff which was forfeited to the Western State Government by virtue of W.S.L.N. 65 of 1969. The States (Creation and Transitional Provisions) Act No. 12 of 1976 created Oyo, Ondo and Ogun States from the former Western State. These three States by virtue of Act No. 12 of 1976 became the successors of the former Western State. Whereas Act No. 17 of 1977 vested in the respective Governors of Oyo, Ondo and Ogun States the properties of the former Western State situate in the geographical area of the former Western State, States (Creation and Transitional Provisions) (Amendment) Act No. 53 of 1977, made provisions for the vesting of properties of the former Western State in the Colony Province of Lagos.

It is admitted by both parties that Property D is not within the Colony Province. It should also be noted that Act 25 of 1967 referred to in Act 53 of 1977 was enacted before the plaintiff's property was forfeited by W.S.L.N. 65 of 1969. Whether provision was made in Acts 17 and 53 for the vesting of Property D in the Military Governors of Oyo, Ondo and Ogun States or not, the fact remained that the property was owned by the former Western State which was succeeded by the Governments of the three new States. In the absence of any enactment by a competent authority to the contrary, it vested jointly in the three States as successors of former Western State.

Therefore, upon the promulgation of States (Creation and Transitional Provisions) Act No. 12 of 1976, all properties belonging to the former Western State including the properties of the plaintiff forfeited to that State vested in Oyo, Ondo and Ogun States. The Court of Appeal cannot be said to be amending the Constitution in so far as it found that Property D is jointly vested in the three States.

The next question is whether after the promulgation of Act No. 12 of 1976, the 2nd defendant had exclusive right to deal with Property “D” which is the subject matter of this appeal.

On 7:3:77, the plaintiff addressed a petition Exhibit 12 to “His Excellency Brigadier David Jemibewon, Military Governor of Oyo State” praying him to be allowed to re-purchase his four items of property which were forfeited. By Exhibit 13 dated 16:3:77, the Secretary to the Military Government of Oyo State conveyed the approval of the Military Governor of Oyo State to his request. By Exhibit 14 the plaintiff forwarded a certified cheque for N51,000.00 being the cost of the four items of property. In Exhibit 16 dated 22:4:77, the Secretary to the Government of

Oyo State informed the plaintiff that further action on the re-purchase of the property was stopped and advised the plaintiff to go and collect a cheque for the money he paid to the Government of Oyo State.

By a letter dated 12:6:78 (Exhibit 21) the plaintiff wrote to the Military Governor of Oyo State recapitulating the circumstances surrounding the forfeiture, his efforts to re-purchase the properties and the stoppage of B further action on the re-purchase. He ended this letter as follows:-

*"It may be that your Excellency would like to carry with you your colleagues, the Military Governors of Ondo and Ogun States in so far only as my Lagos house is concerned."*

In another letter dated 12:6:79 (Exhibit 23), addressed to the C Secretary to the Military Government of Oyo State, the plaintiff stated that he would appeal to the Military Administrators of Ondo and Ogun States to join in the reconveyance of his property in Lagos —

*"without which the whole exercise would put me in a worse position than I was when I was requested to withdraw my case from the court."* D

Going by Exhibits 21 and 23 alone, there is no doubt that the plaintiff knew that Property D belonged to the three States jointly and that none of them could validly dispose of it without the concurrence of the other two. There is no evidence that the Governor of Oyo State had the authority of the other two to enter into the agreement with the plain- E tiff on their behalf. Exhibit 33 written two years after the agreement did not cloak the Governor of Oyo State with that authority. This is a suspect document made for the purpose of this case and it was not even pleaded by any of the parties.

The plaintiff's counsel made the following submission in the brief:- F

*"The Court of Appeal appears to have overlooked the detailed provisions of Act 17 of 1977 referred to in part by the trial court which combined with those of W.S.L.N. 65 of 1969, gave 2nd respondent constitutional power to act for all the new States for sometime beyond 3rd February, 1976 as contended by the plaintiff."* G

*For instance, clause 2 of W.S.L.N. 65 of 1969 provides:-*

*"The respective assets ..... in the schedule hereto are hereby forfeited and shall ..... be vested in the Military Governor of the Western State of Nigeria to be held by him on behalf of or in trust for the Government of the Western State of Nigeria."* H

The learned counsel for the plaintiff misconstrued Act 17 of 1977. It did not give the Military Governor of Oyo State indefinite authority to act for the Military Governors of Ondo and Ogun States. The States (Creation and Transitional Provisions) Act No. 17 of 1977 in sec-

tion 2(1)(a) and (b), provides that between 3:2:76 and 30:4:76 all edicts and subsidiary legislations made, all contracts, all executive acts and judicial acts made in the name of or on behalf of any State created under the Principal Act shall be deemed to have been validly made or done and shall have effect as if they had been duly made or done by the Military Governor, Executive Council, Commissioner or Public Officer of the appropriate State created and no question as to the validity of such edict, instrument, contract, shall be inquired into in any Court of Law.

In the circumstance, the authority given to the Military Governor of Oyo State to act for the Military Governors of Ondo and Ogun States expired on 30:4:76 and unless the plaintiff can bring his purported contract within this period, he cannot be heard to contend that the Military Governor of Oyo State acted as trustee either for the former Western State from 3:2:76 or for Oyo, Ondo and Ogun States after 30:4:76. However, his alleged contract with the Military Governor of Oyo State started with Exhibit 12 which was dated 7:3:77 long after the period when the said Governor was empowered to act for the other Governors had expired.

The Military Governor of Oyo State is not the sole owner of Property D. The three States have unity of possession, unity of interest, unity of title and unity of time in Property “D” since they are joint owners. See *Shonekan v. Smith* (1964) 1 All NLR 168.

The plaintiff, a very experienced lawyer, knew very well that he was only dealing with the Military Governor of Oyo State and that the latter needed the consent of the Military Governors of Ondo and Ogun States. Exhibits 21 and 23 confirm this and plaintiff cannot turn round to plead agency and trust thereafter.

As to the trespass complained of, the 3rd and 4th defendants are joint owners of Property D. Paragraph 5 of the statement of defence of the 1st and 2nd defendants confirm it. It avers:-

*“5. The 1st and 2nd defendants further aver that some of the properties of the plaintiff referred to in paragraph 4 of the amended statement of claim which were forfeited to the Western State Government by W.S.L.N. 65 of 1969 became vested jointly in the Military Governors of Oyo, Ondo and Ogun States as successors-in-title to the Military Governor of Western State by virtue of the States (Creation and Transitional Provisions) Decree 1977 - Decree 17 of 1977 as amended by the States (Creation and Transitional Provisions) (Amendment) Decree 1977 - (Decree No. 53 of 1977).”*

In addition, Exhibit 25 which is a reply to Exhibit 24, Ogun State Government showed that Ogun State claimed Property D as its own. The 3rd and 4th defendants pleaded joint and sole ownership in their

statement of defence and led evidence in support of the averments: The courts below on the issue of possession and trespass held as follows:

The Trial Court:

*“When the owners refused to carry on with the purported agreement to purchase, as evidenced by Exhibit 16, plaintiff’s right to possession became limited. He cannot in my view on the facts available sustain a claim in trespass against the 3rd and 4th defendants (sic).”* B

The Court of Appeal:-

*“In effect, Ogun State Government had a better title to the property and could not be liable for trespass at the instance of the appellant.”*

I am in full agreement with the above views of the courts below. This is the correct conclusion on the facts and the law. The plaintiff cannot succeed against the 3rd and 4th defendants who showed a better title to the property (101, Awolowo Road, S.W. Ikoyi). It is trite law that trespass to land is actionable at the suit of the person in possession of the land. He can sue for trespass even if he is neither the owner nor a privy to the owner. This is because exclusive possession of the land gives him the right to retain it and to undisturbed enjoyment of it against all the world except the person who can show a better title. The 3rd and 4th defendants having shown a better title cannot be liable in trespass to property in which they are joint owners. D

The plaintiff exhibited a lot of sentiment in this case. Whether he corruptly or improperly enriched himself while in office or was unjustly treated is not an issue in the present proceedings. What is in issue is his purported repurchase of the property at 101 Awolowo Road, S.W. Ikoyi. E

It is for the above reasons as well as the fuller reasons set out in the judgment of my learned brother Mohammed, J.S.C. that I dismiss this appeal. The plaintiff’s claim is hereby dismissed with N1,000.00 costs to the 3rd and 4th defendants. F

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### IGUHJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Mohammed, J.S.C. and I agree entirely that this appeal is without substance and ought to be dismissed. I, too, dismiss the same and abide by the consequential orders including those as to costs therein made. H