

**SUPREME COURT OF NIGERIA**  
23RD APRIL, 1996. SC. 25/1990  
**CORAM:- M. L. UWAIS, A. B. WALI, I. L. KUTIGI,**  
**E. O. OGWUEGBU, U. MOHAMMED, JJSC**

ALHAJI ABUBAKAR SADIKWU ..... APPELLANT

AND

ALHAJI ABBA DALORI ..... RESPONDENT

---

**CONFLICT OF LAWS** - *Land Use Act 1978s. 39 - And Land Tenure Law s. 41(1) - That give original jurisdiction to High Court - In land matters touching on statutory right of occupancy - Whether there is any conflict*

**LAND LAW** - *Jurisdiction - In matters relating to statutory right of occupancy - Exclusive original jurisdiction belong to the High Court*

**LAND LAW** - *Jurisdiction - In proceedings involving customary right of occupancy - Granted by a local authority - Is conferred on area or customary court - And not the High Court.*

**LAND LAW** - *Urban area - Power of the governor under the Act to so designate an area - Where not exercised in respect of an area - Disputed land therein remains within the control of a local government.*

**FACTS**

The plaintiff/appellant claimed from the defendant/respondent ownership, damages for trespass and perpetual injunction in respect of the land in dispute situate along Baga Road Maiduguri. Four other defendants were later joined in the suit. Trial court gave judgment in favour of the plaintiff.

1st Defendant appealed to the Court of Appeal. He raised the issue that the High Court has no jurisdiction as the land in dispute was under the control of a local authority. The lower court allowed the appeal and declared the trial court's proceedings null and void for want of jurisdiction. Being dissatisfied, plaintiff has now appealed to the Supreme Court raising a lone issue.

**ISSUE FOR DETERMINATION**

*"Whether the learned Justices of the Court of Appeal were correct in holding that the trial High Court lacked jurisdiction to entertain the plaintiff's claim."*

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

***Jurisdiction - Land Use Act s. 39***

1. The provisions of both s. 39 of the Land Use Act 1978 and s. 41(1) of the Land Tenure Laws give exclusive original jurisdiction to the High Court in all matters affecting land subject to a grant of a Statutory right of Occupancy by the Governor. There is no any ambiguity or conflict either in or between the two sections of the Act and the Law. (p. 806 B)

***Jurisdiction - In proceedings involving customary right of occupancy***

2. In substance the purpose of s.41 of the Land Use Act, 1978 and s. 41(a) of the Land Tenure Law is the same. The provisions of the two Laws provide for conferment of jurisdiction on Area or Customary Court in respect of proceedings involving the statutory or customary right of occupancy granted by a Local Government or a Local Authority. In my view s. 17(1) of the High Court Law of Northern Nigeria applicable to Borno State goes to support s. 41 of the Land Use Act, 1978 and s. 41(2)(a) of the Land Tenure Law. I cannot therefore see how s. 17(1) of the High Court Law, by reading it with the provisions of sections 39 and 41 of the Land Use Act 1978 and s. 41 of the Land Tenure Law, can confer jurisdiction in land matters specifically excluded by those Laws. (p. 806 H)

***Land law - Urban area designation***

3. Section 3 of the Land Use Act has conferred power on the Governor of the State to designate any land under his management and control by virtue of s.2 of the Land Use Act, as an Urban Area. Where that is done the jurisdiction in respect of proceedings affecting such land become vested in the High court since the certificate granted or deemed granted “is a Statutory Right of Occupancy under the Act.” In the case before us there is no evidence of such a declaration under s.3 of the Land Use Act, 1978 in respect of the Area in dispute. The disputed area remains within the control of Borno Metropolitan Council which is for this purpose either a local authority or a local government. (p. 807 B)

**NOTABLE POINT OF INTEREST**

**WALI JSC**

***1. Existing laws - Applicability***

The Land Tenure Law s. 41(2) and the Land Use Act, 1978 s. 41 are all existing laws by virtue of s. 274(4) (b) of the 1979 Constitution as stated by the Court of Appeal, but I am afraid I disagree with the Court below when

it stated that “at the time the suit was instituted on 9th July 1979 in the High Court the applicable law would be the relevant provision of the Land Use Act since it was deemed to have been an Act of National Assembly, consequently s. 41 prevailed over section 41(2) (b) of the Land Tenure Law [supra].” Since both laws are existing laws by virtue of s. 274(4) (b), s. 41 of the Land Use Act shall only prevail over s.41(2) and (b) to the extent the latter is in conflict with the former. (p. 807 D)

### **REPRESENTATION**

Plaintiff absent not represented

Defendants absent not represented.

### **CASES REFERRED TO**

Soye v. A.G. of the Federation (1986) 2 NWLR (Pt. 24) 56 at 572 - 73

Jamal v. ACB (1977) 11 SC 77

Inland Revenue v. Rezcallah (1962) All NLR 1 at 7.

Ariyo v. Ogele (1968) 1 All NLR 1 at p. 8

Salati v. Shehu (1986) All NLR 53

### **STATUTES REFERRED TO**

Land Use Act 1978 ss. 41, 39(1) High Court Law Cap 59 Laws of Northern Nigeria s. 17(1)

Land Tenure Law Cap 49 Laws of Northern Nigeria 1963 s. 41(2)

Constitution of the Federal Republic of Nigeria 1979 s. 274(4) (b)

### **LEAD JUDGMENT BY WALI JSC**

The plaintiff's claims as per paragraph 21 of his Further Amended Statement of Claim are as follows:

*“Wherefore the plaintiff claims from the defendants jointly and severally the following:-*

*(a) That the plaintiff is the lawful owner of the piece of land measuring 100ft x 300 ft along Baga Road Maiduguri.*

*(b) N20,000.00 damages for trespass.*

*(c) A perpetual injunction against the defendants restraining these (sic) servants, or agents or privies from committing any further acts of trespass on the said land (d) That in the alternative the plaintiff is entitled to a possessory title against anyone except anyone who can prove a superior title to the said land.”*

Originally only one defendant was sued, but later on in the course of the

proceedings, the plaintiff sought for and was granted leave by the trial court to join the 2nd, 3rd, 4th and 5th defendants respectively.

Pleadings were ordered, filed and exchanged. Issues were also joined in the pleadings.

After taking evidence from both sides, Kolo J (as he then was) entered judgment for the plaintiff as follows:- .

*“So having compared and contrasted the basis of claim of each party to this suit, I am now satisfied that the plaintiff has established a valid and, therefore a better title to the land in dispute to wit:*

*the land situate to the North of the Motor Park along Baga Road measuring 90 x 30 metres or in terms of feet measuring 300 ft x 100 ft bounded by three roads to wit:*

*on the west, south and east and by a house owned to Alhaji Abba Kyari on the north.*

*I so enter judgment for the plaintiff in respect of the said plot against all the five defendants with cost. The title to the said land is vested in the plaintiff to the exclusion of all the defendants in this suit.*

*Consequently, I order all the defendants including the 5th defendant company to give a vacant possession of the land in question to the plaintiff.*

*I order that all structures erected or constructed within the said land measuring 90 x 30 metres by the defendants or any of the defendants or their servants or agents or persons claiming through the defendants be demolished within 90 days from today unless the plaintiff agreed to settle this issue with the defendants or persons affected by this order out of court. Should the defendants or the defendants fail to demolish the structures and the buildings erected or constructed in the said land the plaintiff is free to demolish all the structures and buildings on his land measuring 90 x 30 metres after the expiry of the 90 days and sue the defendants for the expenses he incurred in so demolishing the structures and the buildings.*

*No doubt the defendants have trespassed into the plaintiff's land and trespass is actionable per se. No special damages are proved. Plaintiff is, however, entitled to general damages against the defendants for trespassing into his land, defacing his land by constructing structure and building and also for disturbing the plaintiff from quiet possession of his land. The defendants are, therefore, liable to the plaintiff and I hereby order the 1st, 2nd, 3rd and 5th defendants each to pay N1,000.00 as damages to the plaintiff. The total being N4,000.00.”*

Aggrieved by the judgment of the trial court, the 1st and 5th defendants filed separate Notices of Appeal in the Jos Division of the Court of Appeal. However the record of proceedings filed in this court showed that

only the appeal filed by the 1st defendant was pursued and prosecuted to conclusion.

Both the 1st defendant as appellant and the plaintiff as respondent filed and exchanged briefs of arguments.

B        One of the issues raised in the appellant's brief in the Court of Appeal to wit issue (f) and related to ground 8 in the Notice of Appeal, challenged the jurisdiction of the trial court for entertaining the case. It reads thus:-

          “(f) Whether the trial court had jurisdiction to entertain the plaintiff's case.

C        The Court of Appeal considered issue (f) first in which the jurisdiction of the trial court was challenged and came to a unanimous conclusion as follows:-

*“It is worth mentioning here that the appellant in paragraph 7 of his statement of defence raised the issue of jurisdiction. Counsel who represented the parties addressed the lower court on the issue, yet the learned trial Judge in his judgment omitted to make any comments or ruling on the question of jurisdiction. Be that as it may, I am guided by the views expressed by the learned Justices of the Supreme Court in Salati v. Shehu (supra) which I have already, reproduced above. For the reasons already given the answer to issue (f) and (b) in the briefs of the appellant and respondent respectively is in the negative. Consequently ground 8 to which they relate succeeds.*

*In the result the proceedings including the judgment of the Bornu State High Court in Suit No. BOM/8/79 dated 24th February, 1995 is hereby declared null and void by me for lack of jurisdiction. Therefore it is unnecessary for me to consider the other issues raised in this appeal.”*

F        The plaintiff has now appealed to this court against the decision of the Court of Appeal.

G        Parties filed and exchanged briefs of argument; and henceforth the plaintiff and the 1st defendant shall be referred to in this judgment as “the appellant” and “the defendant” respectively.

In the appellant's brief filed in this court, the only issue raised which is related to the only ground of appeal filed, reads as follows:-

H        *“Whether the learned Justices of the Court of Appeal were correct in holding that the trial High Court lacked jurisdiction to entertain the plaintiff's claim.”*

This solitary issue formulated by the appellant in his brief was adopted by the respondent.

On the date the case came up for hearing the parties did not show

up in court. When the court became satisfied that the parties were served with the hearing notices, the appeal was deemed as properly argued by virtue of the provision of Order 6 Rule 8(6) of the Supreme Court Rules, 1985 (as amended) since briefs of arguments has been filed and exchanged.

It is worth to mention at this stage that although the issue of the trial court's jurisdiction to entertain the suit was raised by the respondent as 1st defendant in paragraph 7 of the Statement of Defence, it was pursued in the trial court hence "*The learned trial Judge did not rule*" on it either as a preliminary point during the proceedings or in his judgment after the proceedings were completed. However learned counsel for the respondent raised it again in ground 8 of the Notice of Appeal he filed in the Court of Appeal.

It was the contention of learned counsel for the appellant in his brief that the Court of Appeal was wrong in law in holding that the trial High Court had no jurisdiction to entertain the appellant's case by virtue of S.41 of the Land Use Act, 1978 when by the time, the appellant's case was filed in the High Court, the 1979 Constitution had not become operative and as such, the relevant laws applicable at the time were:-

(i) High Court Law (Cap. 59) Laws of Northern Nigeria 1963, (applicable to Borno State)

(ii) Land Tenure Law (Cap. 49) Laws of Northern Nigeria, 1963, (applicable to Borno State)

(iii) Land Use Act, 1978.

It was the submission of learned counsel for the appellant that since S. 41 of the Land Use Act, 1978 prevails over S.41(2) of the Land Tenure Law, 1963 by virtue of the former being an Act deemed to have been enacted by the National Assembly while the latter is an existing Law deemed to have been enacted by the Borno State House of Assembly, therefore the only provisions of the laws relevant for consideration to resolve the issue raised in this appeal are S.17(1) of the High Court Law of Northern Nigeria and S. 41 of the Land Use Act read in conjunction with S. 39 of the same Act. Learned counsel argued that S.17(1) of the High Court Law is subject to the provisions of both sections 39 and 41 of the Land Use Act, and that unlike S. 31(I) of the Act which vests exclusive original jurisdiction in the High Court in proceedings in land which is subject of a Statutory Right of Occupancy granted by the Governor or deemed granted, the provision of S.41 of the Act which confers jurisdiction on Area Courts, Customary Courts or other courts of equivalent jurisdiction in respect of proceedings involving land subject of a customary right of occupancy granted by a local govern

ment, does not make the jurisdiction conferred on those courts exclusive to them. He said this is so because the phrase “*exclusive original jurisdiction*” is omitted in S.41 of the Act unlike in S. 39(1) of the same Act where it has been expressly stated. He concluded that the combined effect of S. 39(1) and S. 41 of the Land Use Act is that the High Court as well as the Area Courts and Customary Courts have concurrent original jurisdiction in respect of a land matter that involves a customary right of occupancy by a Local Government. Learned counsel referred to and relied on the following cases to further support his arguments:- Soye v. A.G., Federation (1986) 2 NWLR (Pt.24) 560 at 572-73; Jamal v. A.C.B. (1977) 11 S.C. 77 and Inland Revenue v. Rezcallah (1962) All NLR 1 at 7.

He urged this court to allow the appeal, set aside the decision of the Court of Appeal and restore the judgment of the trial court.

In reply to the submissions above, learned counsel for the respondent contended that S. 41 of the Land Use Act, contrary to the appellant’s submission, did not expand the jurisdiction of the High Court to cover matters in land subject to customary right of occupancy, and that the omission of phrase “*exclusive original jurisdiction*” in that section, unlike in S. 39(1)(a) of the same Act, is deliberate in order to preserve the jurisdiction of Grades I, II and III Area Courts on the one hand and Upper Area Courts on the other hand. Learned counsel also submitted that jurisdiction or power of a court must be expressly provided as it is not a matter of inference. He cited Ariyo v. Ogele (1968) 1 All NLR 1 at p. 8 in support, and then went on to say that both sections 39 and 41 of the Land Use Act, 1978 were considered by the Supreme Court in the case of Bakin Salati v. Shehu (1986) 1 S.C. 332; (1986) 1 NWLR (PU5) 198 wherein it concluded that there is no ambiguity in the two sections as regards the original jurisdiction of the High Courts under S. 39 of the Act viz-a-viz that of the Area Courts/ Customary Courts under S. 41 of the same Act. Learned counsel therefore urged us to hold that S.17(1)(a) of the High Court Law does not inhibit the jurisdiction conferred on that court by S. 39(1)(a) of the Land Use Act but that as a matter of practice and procedure in that court, it ousts the exercise of the original jurisdiction by it in respect of land subject to the jurisdiction of the Area/Customary Courts. He urged the court to dismiss the appeal for want of merit.

It is common ground as contained in the pleadings of the parties that the land in dispute lies along Baga Road within the area named Balori Layout, acquired by the Bomu Local Authority which later became Maiduguri Metropolitan Council, for both residential and commercial pur-

poses. See paragraph 5 of the appellant's Amended Statement of Claim in which it was averred that:-

*"Between 1972 and 1973 Borno Local Authority Maiduguri acquired a large area of land along Baga Road for residential and commercial purposes;"* B

paragraph 3 of respondent's Statement of Defence:-

*"The 1st defendant avers. that between 1972 and 1973 Borno Local Authority Maiduguri acquired a large area of land along Baga Road for residential and commercial purposes;*

*and paragraph 4 of the 2nd defendant's Statement of Defence:-* C

*"The 2nd defendant says that between 1972 and 1974 the Maiduguri Township Authority, or statutory body created by the North Eastern State Government, and not Borno Local Authority Maiduguri, acquired a large area of land along Baga Road for residential and commercial purposes."*

Paragraph 4 of the 3rd defendant: Statement of Defence is almost word for word the same as paragraph 4 of the 2nd defendant's Statement of Defence. It needs no further reproduction here. The 4th defendant averred that he is the Managing Director of the 5th defendant and the 5th defendant also averred in paragraph 4 of its Amended Statement of Defence as follows:- D

*"...the said land in question..... is situated along Baga Road Maiduguri ....."* E

In the paragraph 9 of the further Amended Statement of Claim, the appellant averred that the Local Authority Maiduguri allocated to him a plot of land along Baga Road within the Balori Layout and measuring 100 ft by 300 ft for which the Maiduguri Metropolitan Council issued him under the Land Tenure (Native Authority Central Settlements) Regulations, with a certificate of occupancy No. 000156. The respondent also said he applied for and was allocated a plot, measuring 100 ft by 50 ft. The Maiduguri Township Authority in the same Balori Layout, for which he was given a Certificate of Occupancy by Maiduguri Metropolitan Council. The 2nd and 3rd defendants applied to the same authority and each one of them was allocated a plot by the authority in the same Bolari Layout. The 4th defendant averred that he neither claims any personal right or interest in the land in dispute but that he is the Managing Director of the 5th defendant which applied for and was granted allocation of the said land by the Borno State Ministry of Land and Survey, along Baga Road, Maiduguri, Balori Layout, followed by issuance to it by the same Ministry with a Certificate of Statutory Right of Occupancy. While considering issue (f) formulated in the 1st defendant/appellants brief, the Court of Appeal observed in its judgment as F

G

H



*"It is common ground as pleaded by the respondent and the appellant that between 1972 and 1973, the Borno Local Authority Maiduguri acquired a large area of land along Baga Road for residential and commercial purpose."*

*“It is clear from the pleadings that the parties rely on allocation made to them by the Maiduguri Metropolitan Council, followed by Certificate of Occupancy dated 20/1/78 in respect of the respondent and the one dated 4/6/79 in respect of the appellant.”*

*"There is no doubt that at the time the said allocation or grant was made to the respondent, the governing law was the Land Tenure Law Cap. 59 of the Northern Nigeria. Under that law the Governor of Northern Nigeria or the Minister charged with that responsibility is empowered to grant a statutory right of occupancy to a person under Section 6 of the aforesaid law as defined by Section 2 thereof."*

*“A careful scrutiny of Section 41(2) of the Land Tenure Law (supra) reproduced above shows that ordinarily it is the area court which has original jurisdiction to entertain the matter by virtue of the undisputed fact that the allocation in 1974, be it oral or documentary, was made by the Maiduguri Metropolitan Council which was a Local Authority as clearly shown by the respondents claim. However, it is worth mentioning that the respondent filed his action on the 19th July, 1979 long after the Land Use Act 1978 came into operation on 29th March, 1978.”*

*"It is clear to me that Section 41 (2) of the Land Tenure Law (supra) and Section 41 of the Land Use Act (supra) reproduced above are existing laws by reason of Section 274(4)(b) of the 1979 Constitution.*

*It follows that at the time this suit was instituted on 19th July, 1979 in the High Court, the applicable law would be the relevant provision of the Land Use Act (supra) since it was deemed to have been an Act of the National Assembly, consequently Section 41 prevailed over those of Section 4 I(2) and (b) of the Land Tenure Law (supra)."*

*"In the result the proceedings including the judgment of the Borno State High Court in Suit No. BOM/8/79 dated 24th February, 1985 is (sic) hereby declared null and void by me for lack of jurisdiction."*

It is not in dispute that the parcel of land now in dispute is situate in Balori Layout along Baga Road, Maiduguri, Borno under the Control of

Metropolitan Council. The grant to both appellant and the respondent of the said parcels of land in dispute were made by the Metropolitan Council which issued to each one of them with a Certificate of Customary Right of Occupancy. The appellant pleaded and led evidence to show that he applied to the Ministry of Works to convert the Customary Right of Occupancy into a Statutory Right of Occupancy, but without succeeding, as neither him nor any of the witnesses who testified for him said so. B

So the only Certificate of Occupancy adduced by the appellant was "Exhibit A," issued to him by the Metropolitan Council as evidence of a piece of land in Balori Layout.

On the respondent side, his evidence was that the land allocated to him by the Metropolitan Council and now in dispute is in Balori Layout, Baga Road. He did not plead that he made any attempt to convert the customary grant into a statutory one. C

With this background, I shall now proceed to examine the provisions of the laws referred to by counsel for the appellant in support of his contention that the High Court had jurisdiction to adjudicate in the matter. D

Section 39(1) and (2) of the Land Use Act, 1978 reads as follows:-

*"39(1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings:-*

*(a) Proceedings in respect of any land the subject of a statutory right of occupancy granted by the Military Governor or deemed to be granted by him under this Decree; and for the purpose of this paragraph proceedings includes proceedings for a declaration of title to a statutory right of occupancy;* E

*(b) Proceedings to determine any question as to the person entitled to compensation payable for improvements on land under this Decree.* F

*(2) All laws, including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section."* G

There is no ambiguity in this section that it confers exclusive original jurisdiction on the High Court in all proceedings concerning land the subject of a statutory right of occupancy:-

(i) Granted or deemed to be granted by the Governor; and proceedings for a declaration for a title to a statutory right of occupancy involving such land. H

Subsection 2 of S. 39 of the Land Use Act made provision for the application of the procedural laws applicable to the High Court but with such modification where necessary, to give effect to the provisions of this section, i.e. S. 39.

Section 41 (1) of the Land Tenure Law (Cap. 59), Laws of Northern Nigeria 1963 and applicable to Borno State provides thus:-

*“(1) The High Court shall have exclusive original jurisdiction in the following proceedings:*

- (a) Proceedings in which the right of the Governor or the Minister to grant a statutory right over any land is in dispute;*
- (b) Proceedings by way of petition of right;*
- (c) Proceedings by the Attorney-General under the provisions of subsection (1) of section 39.”*

The provisions of both S. 39 of the Land Use Act 1978 and S. 41 (1) of the Land Tenure Laws give exclusive original jurisdiction to the High Court in all matters affecting land subject to a grant of a statutory right of occupancy by the Governor. There is no any; ambiguity or conflict either in or between the two sections of the Act and the Law.

On land subject to customary right of occupancy, section 41 of the Land Use Act provides as follows:-

- “41. An area court or customary court or other court of equivalent jurisdiction in a state shall have jurisdiction in respect of proceedings in respect of customary right of occupancy granted by a Local Government under this Decree; and for the purposes of this paragraph, proceedings includes proceedings for a declaration of title to a Customary Right of Occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section.”*

while S. 2 and subsection (a) of S. 41 of the Land Tenure Law provide thus:-

- “2. An area court of competent jurisdiction shall have jurisdiction in the following proceedings:-*

- (a) Proceedings in respect of any land the subject of a statutory right of occupancy granted by a local authority or of a customary right of occupancy where all the parties are subject to the jurisdiction of area courts; subject nevertheless to the provisions of paragraph (b) of ss (3). “*

The provisions of S. 3(b) referred to in S. 2(a) supra confer jurisdiction in the High Court and or in District Court; the latter within the limits prescribed in the District Court Law, to exercise jurisdiction in proceedings affecting land in similar situations as stated in S. 2(a) where one or more of the parties are not subject to the jurisdiction of Area Court or where there is no Native or Area Court of competent jurisdiction to entertain the proceedings.

In substance the purpose of S. 41 of the Land Use Act, 1978 and S. 41 (2)(a) of the Land Tenure Law is the same. The provisions of the two

laws provide for conferment of jurisdiction on Area or Customary Court in respect of proceedings involving the statutory or customary right of occupancy granted by a Local Government or a Local Authority. In my view S. 17(1) of the High Court Law of Northern Nigeria applicable to Borno State goes to support S. 41 of the Land Use Act, 1978 and S.41(2)(a) of the Land Tenure Law. I cannot therefore see how S.17(1) of the High Court Law, by reading it with the provisions of sections 39 and 41 of the Land Use Act 1978 and S. 41 of the Land Tenure Law, can confer jurisdiction in land matters specifically excluded by those laws. B

Section 3 of the Land Use Act has conferred power on the Governor of the State to designate any land under his management and control by virtue of S. 2 of the Land Use Act, as an Urban Area. Where that is done the jurisdiction in respect of proceedings affecting such land become vested in the High Court since the certificate granted or deemed granted “*is a Statutory Right of Occupancy under the Act*”. C

In the case before us there is no evidence of such a declaration under S. 3 of the Land Use Act, 1978 in respect of the Area in dispute. The disputed area remains within the control of Borno Metropolitan Council which is for this purpose either a local authority or a local government. D

The Land Tenure Law S. 41(2) and the Land Use Act, 1978 S. 41 are all existing laws by virtue of S. 274(4)(b) of the 1979 Constitution as stated by the Court of Appeal, but I am afraid I disagree with the court below when it stated that “*at the time the suit was instituted on 19th July, 1979 in the High Court the applicable law would be the relevant provision of the Land Use Act since it was deemed to have been an Act of National Assembly, consequently S. 41 prevailed over Section 41(2)(a) of the Land Tenure Law (supra).*” Since both laws are existing laws by virtue of S. 274(4)(b), S. 41 of the Land Use Act shall only prevail over S. 41 (1) and 2(1) to the extent the latter is in conflict with the former. See Salati v. Shehu (1986) All NLR 53 (1986) 1 NWLR (Pt.15) 198 at 211 particularly at 61 where Uwais, J.S.C. (as he then was) admirably and thoroughly dealt with an issue or a similar nature as in this case which involved the interpretation of sections 39 and 41 of the Land Use Act and S. 41 (1) and 2(a) of the Land Tenure Law relating to proceedings in respect of land subject to a statutory or customary right of occupancy granted either by the Governor or the Local Government, as the case may be. E F G

The appeal lacks merit and it is dismissed. The order of the Court of Appeal declaring the proceedings in the High Court null and void is hereby affirmed. The case is therefore struck out. H

The respondent is awarded N1,000.00 costs in this appeal and

N300.00 in the High Court.

***UWAIS CJN***

I have had the privilege of reading in draft the judgment read by my learned brother Wali, J.S.C. I agree that the appeal lacks merit.

Accordingly, it is hereby dismissed and the decision of the Court of Appeal is affirmed with N1,000.00 costs to the respondent.

***KUTIGI JSC***

It is common ground that the land in dispute was allocated to the plaintiff and the 1st defendant in January 1978 and June 1979 respectively by the Maiduguri Local Authority or Maiduguri Metropolitan Council. Each of them was separately issued with a Certificate of Customary Right of Occupancy by the Authority or Council. Photo-copies of the two certificates were respectively tendered in evidence as Exhibits A and Z. There was no evidence that any of the two Certificates has been converted into a Statutory Right of Occupancy nor was there any evidence that the area where the land in dispute is situated has been designated an Urban Area (see 2 & 3 of the Land Use Act 1978).

With the above background I agree with the judgment of the Court of Appeal as confirmed by the lead judgment of my learned brother Wali, J.S.C. which I read before now, that the Maiduguri High Court lacked jurisdiction to entertain the suit, and that it is an Area or a Customary Court which has jurisdiction in the instant case (see *Salati v. Shehu* (1986) 1 NWLR (Pt.14) 198 at 211).

The judgment of the High Court Maiduguri was therefore clearly a nullity.

Since the court lacked jurisdiction the appropriate order is one striking out the suit. It is accordingly Struck out and this shall be the order of the High Court. I endorse the order for costs.

***OGWUEGBU JSC***

I have had the advantage of reading in advance the draft of the judgment just delivered by my learned brother Wali, J.S.C. and I agree with him that the appeal lacks merit and should be dismissed.

The order of the court below declaring the judgment of the Borno State High Court in Suit No. BOM/8/79 dated 24th February, 1985, null and void is hereby affirmed by me.

I abide by the order as to costs contained in the lead judgment.

**MOHAMMED JSC**

I agree with my learned brother, Wali, J.S.C., that this appeal ought to be dismissed. I agree that the land in dispute is still within the control of the Local Government or the Borno Metropolitan Council since there was no Edict from the State Government declaring the land as an Urban Area. B

Thus, only the area or customary courts have jurisdiction to adjudicate in matters concerning the possession of the land in dispute. See: Salati v. Shehu (1986) 1 NSCC 134.

I therefore dismiss this appeal and affirm the decision of the Court of Appeal, Jos Division. I abide by the consequential orders made in the lead judgment. C

D

E

F

G

H