

**SUPREME COURT OF NIGERIA**  
17TH JANUARY, 1997. SC. 199/1990  
**CORAM:-1. L. KUTIGI, M. E. OGUNDARE,**  
**S. U. ONU, Y. O. ADIO, A. I. IGUH, JJSC.**

K. A. ONAMADE & ANOR ..... PLAINTIFFS/APPELLANTS  
AND  
AFRICAN CONTINENTAL BANK LTD ..... DEFENDANT/  
RESPONDENT

---

**APPEALS** - *Error in judgment - Must be substantial - To warrant appellate court's interference*

**APPEALS** - *Issue - That is against trial court 's judgment - Cannot be entertained by the Supreme Court.*

**EQUITY** - *Estoppel - Illegality - No estoppel can be allowed - To stop a party from bringing statutory illegality to court's notice.*

**EQUITY** - *Estoppel - Whether there is any conduct from the respondent - That has misdirected the appellants unto detriment - To justify the plea of equitable estoppel.*

**EQUITY** - *Estoppel - Where respondent made no representation - It cannot be accused of going back on any conduct.*

**LAND USE ACT** - *Applicability - Where the Land Use Act is applicable - Any other inconsistent law or Act relating to land is void.*

**MORTGAGES** - *Governor's consent - Where not secured before transferring rights in an existing mortgage - The instrument of transfer is null and void.*

**PRACTICE & PROCEDURE** - *Fraud - Allegation of fraud in a civil matter - That was neither pleaded nor proved - Goes to no issue.*

**PLEADINGS** - *New points - That were not pleaded nor canvassed before the trial court - Cannot be raised by the appellants.*

### **FACTS**

The 1st plaintiff took a loan from the defendant/respondent which was secured by legal mortgage. By virtue of an internal arrangement between the 1st and 2nd plaintiffs/appellants, the 2nd plaintiff paid off the balance of the loan vide a cheque drawn in favour of the respondent. The plaintiffs forwarded a document to the respondent to execute (Exh. C), for a discharge of the mortgage. The said Exh. C was prepared in a manner that is tantamount amount to transferring an interest in the mortgage without the Governor's consent. The respondent refused to sign Exh. C for being illegal and in contravention of the Land Use Act.

Plaintiffs filed an action before the Oyo State High Court seeking to compel the respondent to sign Exh. C. The trial court dismissed the plaintiffs' claim. Their appeal to the Court of Appeal was also dismissed. Being dissatisfied, plaintiffs have further appealed to the Supreme Court Raising 5 issues.

### **ISSUES FOR DETERMINATION**

*"1. Whether the appellants have not made out a case entitling them to succeed on the issue of estoppel raised for preliminary decision in paragraphs 2 and 3 of the Reply to Statement of Defence. Etc. see p. 59*

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

### ***Estoppel - Whether respondent misdirected the appellants***

No doubt, when a man by his words or conduct has led another to believe in a particular state of affairs or where it would be unconscionable for a party to be permitted to deny that which he has allowed or encouraged another to assume to his detriment, he will not be allowed to go back on it if it will be unjust and inequitable for him to do so. With respect, however, I can see no words or conduct on the part of the respondent in the present case which had led the appellants or either of them to believe in any particular state of affairs as a result of which they suffered any detriment. I am also unable to identify any act on the part of the respondent by which it allowed or encouraged the appellants to assume any particular posture to their detriment and for which it cannot be allowed to go back on as it would be unjust or inequitable so to do.

(p. 65 C)

***Esto be accused of going backppel - respondent cannot***

2. It seems to me that the appellants having agreed inter se that the 1st appellant's indebtedness should be paid by the 2nd appellant to the respondent which decision they communicated to the respondent, the respondent was perfectly entitled to cash the 2nd appellant's cheque as it did without any obligation. The point that ought to be emphasized is that at no time did the respondent make any representation, whether expressly or impliedly to the appellants for whatever purpose and it will be entirely idle and utterly speculative to accuse the respondent, on the facts of the case, with going back on any conduct, whether just or unjust, equitable or inequitable on its part. (p. 65 H)

***Allegation of fraud in a civil matter***

3. It is significant that the issue of fraud was nowhere pleaded or raised by the appellants against the respondent before the trial court. It is also clearly not the basis on which the appellants' preliminary point of law was argued. But this notwithstanding, it is settled law that an imputation of fraud must, to succeed, be pleaded with the utmost particularity. Indeed, no rule is more clearly established than that fraud must be distinctly alleged and proved and that it is not permissible to leave fraud to be inferred from the facts. I am in agreement with the court below that the alleged fraud against the respondent not having been pleaded, went to no issue and was clearly not established. (p. 66 C)

***Mortgages - Governor's consent***

4. It is plain to me that the purport of Exhibits B and C is to confer on or transfer to the 2nd appellant, the rights of the respondent as a mortgagee under the mortgage. In other words, it purports to create a new mortgage in favour of the 2nd appellant or otherwise to transfer the rights and benefits under the relevant mortgage from the respondent to the 2nd appellant without the consent of the Military Governor of Oyo State first had and obtained. Such an arrangement, without doubt, is a contravention of the provisions of the Land Use Act. This is because a transfer of the rights and benefits of the respondent under the mortgage requires the Governor's consent under section 22(a) of the Land Use Act. Accordingly by virtue of the said section 22 of the Act, Exhibit C is unlawful and by virtue of section 26, it is null and void. (p. 67 G)

***Estoppel - Statutory illegality***

5. In my view, the respondent cannot be estopped from refusing to be a

party to the contravention of the Act. Indeed, the issue is well settled that no estoppel will be allowed which precludes the party against whom it is sought from asserting and bringing to the notice of the court, the statutory illegality of such actions and instruments which are sought to be validated by acceptance of the estoppel pleaded. (p. 68 A )

***Where land Use Act is applicable***

6. I need only state that since the enactment of the Land Use Act, 1978, any Act or Law relating to land in any State of Nigeria inconsistent with the provision of the Land Use Act is to the extent of such inconsistency void by virtue of the provisions of section 274(5) of the Constitution of the Federal Republic of Nigeria, 1979. I entertain no doubt that the provisions of the Land Use Act, 1978 apply to the transaction in issue and that Exhibit C which was prepared by the appellants for execution by the respondent is inappropriate and in contravention of the provisions of the said Land Use Act. I agree entirely with both the trial court and the court below that the form of Release as presented in Exhibit C is unlawful and in contravention of the Land Use Act and that the respondent is not estopped from raising the obvious illegality surrounding the draft document in answer to the appellants' claims. Issues 1 and 2 are therefore resolved against the appellants. (p. 68 D)

***Pleadings - New point***

7. There can be no doubt that most of the issues presented before the court below by the appellants were entirely new points which were neither pleaded nor canvassed before the trial court. At the trial, a party is bound by the pleadings and shall not be permitted to set up a different case. It is not open to a party to depart from his pleadings and put up an entirely new case. Matters not pleaded go to no issue and should not be admitted in evidence and, if admitted, should be ignored or discountenanced in the absence of an amendment of the pleadings. In the present case, the appellants introduced various fresh points neither pleaded nor canvassed before the trial court as set out in its judgment without leave. I entirely agree with the Court of Appeal that the appellants were not entitled to do this. (p. 69 D)

***Error in judgment***

8. At all events, it is not every mistake or error in a judgment that will result in the appeal being allowed. It is only when the error is substantial in that it has occasioned a miscarriage of justice that the appellate court is bound to interfere. No miscarriage of justice has been occasioned by the

observation of the court below that the return of the title deeds to the 1st appellant during the pendency of the appeal had put an end to the dispute. I resolve issue 4 against the appellants. (p. 70 C )

***Issue - That is against trial court's judgment***

B 9. Issue 5 relates to a complaint against the judgment of the trial court and is totally unconnected with the decision of the court below. This court has no jurisdiction to entertain direct appeals against the judgments of Trial High Courts. Issue 5 is therefore incompetent and is hereby struck out. (p. 70 F )

C

**REPRESENTATION**

Appellants absent and not represented

R. U. Afangide for the Respondent

D

**CASES REFERRED TO**

Lemboye v. Ogunsiji (1990) 6 N.W.L.R. (Part 155) 210 at 232

Moorgate Mercantile Co. Ltd. v. Twitchings (1975) 3 All E.R. 314 at 323

Davey Bros v. Garrett (1879) 7 Ch. D. 499

E A-G Bendel State v. The A-G of the Federation (1981) 1 ALLN.L.R. (Part 2) 1 at 82-83

Njoku v. Eme (1973) 5 S.C. 293

Anyanwu v. Mbara (1992) 5 N.W.L.R. (Part 242) 386 at 398

Zango v. Governor of Kano State (1986) 2 NWLR (Part 22) 409

F Ekpenyong v. Nyong (1975) 2 S.C. 71 at 80

**STATUTES & RULES REFERRED TO**

High Court Civil Procedure Rules of Oyo State 0. 23 rr. 2 & 3, 0. 21 r. 1

Land Use Act ss. 22, 26

G Supreme Court Rules 0.6 r. 8(6)

Property and Conveyancing Law Cap. 99 Laws of Oyo State s. 135 (2)

Constitution of the Federal Republic of Nigeria 1979 s. 274 (5)

**LEAD JUDGMENT BY IGUH JSC**

H            By a writ of summons issued on the 22nd day of May, 1986, the plaintiffs, who are appellants herein, instituted an action against the defendant, who is now respondent, at the High Court of Justice, Oyo State claiming as follows -

“1. *The plaintiffs’ claim is against the defendant for an order*

*directing the defendant to release*

*(a) The 1st plaintiff's deed of title to the 2nd plaintiff.*

*(b) Document acknowledging the receipt of the sum of N29,912.53 (Twenty-nine thousand, nine hundred and twelve naira, fifty-three kobo) to the 2nd plaintiff duly executed.*

*2. The plaintiffs also claim against the defendant the sum of B N50,000.00 (Fifty thousand naira) being special and general damages for the wrongful detention of or refusal to surrender the said documents.*

*3. The plaintiffs also claim N500.00 (Five hundred naira) per day from date of writ until documents are released."*

The facts of this case are not very much in dispute. In 1977, the C 1st plaintiff obtained a loan from the defendant which was secured by legal mortgage over his landed property situate at Mokola, Ibadan. In February, 1986, the plaintiffs entered into an agreement, Exhibit B, whereby the 2nd plaintiff was to pay the defendant the balance, then outstanding, under the loan agreement and the 1st plaintiff agreed that the documents D of title in respect of the mortgaged property deposited with the defendant should be released to the 2nd plaintiff. On the 26th February, 1986, the 1st plaintiff by his letter, Exhibit A, forwarded to the defendant, the 2nd plaintiff's cheque for N29,912.53, Exhibit J, being the outstanding balance in respect of the said loan. Attached to Exhibit A, also, were Exhibit E B, a copy of an agreement between the two plaintiffs regarding payment of the said outstanding balance and a draft deed, Exhibit C, headed "Form of Receipt of Discharge of a Mortgage" which ex-facie is a draft deed of acknowledgment in respect of the receipt of the said N29,912.53 by the defendant coupled with a transfer of the rights and all the benefits of the F aforementioned mortgage by the defendant to the 2nd plaintiff.

The defendant duly cashed the cheque Exhibit J but refused to sign the Deed of release, Exhibit C in the form prepared by the plaintiffs or release the 1st plaintiff's documents of title to the 2nd plaintiff. It is as a result of this refusal that the plaintiffs filed this action against the defendant. G

Pleadings were ordered in the suit and were duly settled, filed and exchanged.

By paragraphs 4, 11, 12 and 15 of the plaintiffs' Statement of Claim, it was averred as follows - H

*4. Sometime in 1977 the 1st plaintiff took a revolving loan of N50,000.00(Fifty thousand naira) from the defendant for its business undertaking and mortgaged his property at N6/316C Oyo Road, Mokola, Ibadan with the defendant as per Deed of Mortgage dated 14th April,*

1977 and registered as No.18 at page 18 in Volume 1142.

11. In order to save the 1st plaintiff's house from going under the hammer of the defendant's auctioneer the 1st plaintiff agreed that the 2nd plaintiff should payoff the outstanding mortgage debt by paying the sum of N29,912.53 to the defendant to redeem the mortgaged property.

B 12. On the 26th February, 1986 the 1st plaintiff wrote to the defendant, attaching a copy of the agreement between 1st and 2nd plaintiffs. 2nd plaintiff's cheque for N29,912.53 (Twenty-nine thousand nine hundred and twelve naira fifty-three kobo) and a prepared document acknowledging the receipt of the said sum in triplicate to be executed by the defendant.

C 15. When after a while the defendant further refused to surrender the said documents to the 2nd plaintiff, the 2nd plaintiff went to meet the Manager of the defendant in his office at Ibadan on several occasions and orally demanded the release of the said documents but the documents were not released.

D The defendant, by paragraphs 4,5,6,7,11,12,13,14,15,16 and 17 of its Statement of Defence pleaded thus -

4. The defendant says with respect to paragraph 4 of the plaintiffs' Statement of Claim that the Deed of Legal Mortgage dated 14th April, 1977, and registered as No.18 at page 18 in volume 1142, has not been released despite attempts by the defendant by preparation of a Deed of Release handed over to the plaintiffs through the second plaintiff for same to be executed, registered and released on payment of the defendant's costs.

5. The defendant says the parties to the Deed of Legal Mortgage referred to above were the first plaintiff and the defendant.

F 6. The defendant says the second plaintiff did not secure the overdraft facilities granted to the first plaintiff by the defendant and thereby was and still (sic) no property of the second plaintiff under any mortgage to the defendant.

G 7. The defendant says with respect to paragraphs 12, 13, 14, 15, 16 and 17 of the plaintiff's Statement of Claim it is not a party to any arrangement between the first plaintiff and the second plaintiff as to the payment of any indebtedness of the first plaintiff to the defendant.

H 11. The defendant avers that it has to prepare the Deed of Release in the name of the first plaintiff as the Mortgagor and not in the names of the first plaintiff and the second plaintiff together as no property of the second plaintiff was secured under the said Legal Mortgage.

12. The defendant avers that it prepared the Deed of Release in the name of the first plaintiff and sent same to the second plaintiff who by a letter dated 24th June, 1986 informed the defendant through his letter of that date

that the Deed of Release sent to the plaintiff was unsuitable.

13. The defendant says that its Deed of Release referred to in paragraph 11 above is the appropriate document.

14. The defendant says the plaintiffs insist without justification that it ought to execute the plaintiffs' document titled "Form of Receipt of Discharge of a Mortgage" dated 28th February 1986; which provides that the said document shall "operate as a transfer of the benefit (if the Mortgage to" the second plaintiff.

15. The defendant avers that it cannot lawfully transfer the mortgage executed by the first plaintiff with it to the second plaintiff.

16. The defendant says it can only lawfully release the said Deed of Legal Mortgage by the Deed of Release sent to the 1st plaintiff.

17. The defendant says it refuses to execute a defective document.

The plaintiffs in paragraphs 2 and 3 of their reply to the defendant's Statement of Defence, raised the issue of estoppel and averred as follows-

"2. The plaintiffs say, with reference to paragraphs 6 and 7 of the Statement of Defence, that the defendant is estopped from denying the right of the 2nd plaintiff having elected to take benefit under the letter dated 26th February, 1986 by accepting the repayment from 2nd plaintiff with knowledge of agreements dated 28th February, 1986, receipt for discharge of Mortgage sent to defendant for execution.

3. With reference to paragraphs 11-19 of the Statement of Defence, the plaintiffs say that the defendant is estopped from approbating and reprobating having elected to accept payment of the mortgaged debt by the 2nd plaintiff with knowledge of the agreement and its legal consequences."

Following the averments in paragraphs 2 and 3 of the reply to the Statement of Defence, the plaintiffs on the 13th November, 1986 filed a motion on notice seeking the following reliefs-

"(i) .....

(ii) setting down for hearing an issue of estoppel raised by the plaintiffs in paragraphs 2 and 3 of their reply pursuant to Order 23 Rules 2 and 3 High Court Civil Procedure Rules of Oyo State.

(iii) entering judgment for the plaintiffs on the 1st leg of their claims or as the plaintiffs may be entitled to on the ground that the defendant has no defence to the action pursuant to Order 21 Rule 1 High Court Civil Procedure Rules of Oyo State.

And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances."

Dismissing the application, the learned trial Judge held -

(i) That under the provisions of Section 22 of the Land Use Act,

*it is unlawful for the holder of a statutory right of occupancy to create a mortgage without the consent of the Governor.*

(ii) *That under Section 26 of the Land Use Act, any transaction contravening the provisions of the Act is null and void.*

(iii) *That the form of Release in Exhibit C which the plaintiffs B required the defendant to execute created a new mortgage in favour of the 2nd plaintiff without the consent of the Governor and is therefore a contravention of the Land Use Act and the defendant is not estopped from raising the illegality in answer to the plaintiff's claim.*

(iv) *That a Deed of Release by the defendant without the con- C sent of the Governor was only possible in the context of the present transaction to the 1st plaintiff under Section 22(b) of the Land Use Act.*

(v) *That Exhibit C which the plaintiff wanted the defendant to execute being a transfer of the mortgage interest to the 2nd plaintiff without the Governor's consent is in contravention of the Land Use Act.*

(vi) *That on the pleadings, the defendant did not deny knowl- D edge of the agreement between the plaintiffs but contended that it was not a party thereto, maintaining that the proper and legal Deed of Release must be in the name of the 1st plaintiff to conform with the provisions of the Land Use Act.*

(vii) *That the form of the Deed of Release Exhibit C insisted E upon by the 2nd plaintiff was unlawful, and the plaintiffs entire claims rested on that issue, the suit failed and was dismissed.*

Dissatisfied with this decision of the trial court, the plaintiffs lodged an appeal against the same to the Court of Appeal, Ibadan Division F which in an unanimous judgment dismissed the appeal on the 21st day of July, 1988 and affirmed the decision of the trial court. Delivering the judgment of the Court of Appeal with which Omololu-Thomas J.CA. and Ogwuegbu, J.CA., as he then was, agreed, Sulu-Gambari, J.CA. concluded as follows-

G *"On the whole, it is sufficient to say that most of the matters canvassed before us were examined and rejected by the learned trial judge for reasons on which I cannot improve and to which I do not desire to add, except, perhaps, to say that whether taking separately or together, none of the points urged upon us by the learned counsel for the appel- H lants would, in my view, justify any interference with the findings and decision of the learned trial judge."*

Aggrieved by this decision of the Court of Appeal, the plaintiffs have further appealed to this court. I shall hereinafter refer to the plaintiffs and the defendant in this judgment as the appellants and the respondent respectively.

Originally, ten grounds of appeal were filed by the appellants. These were subsequently amended with the leave of this court and, without their particulars, they are as follows-

1. The learned Justices of the Court of Appeal erred in law in confirming the ruling of the learned trial Judge dismissing the appellants' application and consequently the appellants' claims. B

2. The learned Justices of the Court of Appeal erred in law in holding that the contentions of the appellants as to the combined legal effects of Exhibits A, Band C are "all irrelevant for the purposes of this appeal" on the ground that "all these matters were not pleaded." and thereby came to a wrong conclusion. C

3. The learned Justices of the Court of Appeal erred in law when they said:-  
*"The 2nd appellant cannot be allowed to make a different case on appeal other than the one he presented before the learned trial Judge."* and thereby occasioned a miscarriage of justice and led to a wrong conclusion D

4. The learned Justices of the Court of Appeal erred in law and misdirected themselves when they said:-  
*"It follows in effect that the arguments presented under Ground 1 are not sufficiently substantiated by the learned counsel for the appellants. The learned trial Judge treated the purported transfer of the benefit of the mortgage to the 2nd appellant as a purported alienation of the mortgaged property which required the consent of the Governor having been first had and obtained. This has not been directly attacked by the counsel for the appellants under this ground and therefore the decision of the learned trial judge cannot be said to have been faulted."* E F

5. The learned Justices of the Court of Appeal erred in not holding that the learned trial Judge was in error:-  
 (a) in not holding that the respondent is estopped from denying knowledge of 2nd plaintiff's interest having taken benefit under Exhibit B with knowledge that 2nd plaintiff was the one paying off the mortgage debt.  
 (b) in holding that the respondent is not estopped from raising the illegality of the document in answer to the plaintiff's claims.  
 (c) in holding that the ground had not been substantiated on the ground that points canvassed under ground 1 of the grounds of appeal H were not substantiated because they were not pleaded.

6. The learned Justices of the Court of Appeal erred and misdirected themselves in law when they said:-  
*"The short answer to all these fanciful propositions are that they*

*are all new points which were neither pleaded nor canvassed at the court below .....ineffectual”*

7. *The learned Justices of the Court of Appeal erred in law when they said:-*

*“It therefore follows that whatever form that were prescribed by the B Property and Conveyancing law stands repealed or altered by the forms prescribed pursuant to Section 48 of the Land Use Act 1978 and that the decision of the learned trial Judge that the form prescribed in Land Use Act must apply in the circumstances of this case, has not been faulted.”*

8. *The learned Justices of the Court of Appeal erred in not holding that C the learned trial judge erred in dismissing the appellants’ claims without hearing evidence and thereby occasioned a miscarriage of justice.*

9. *The learned Justices of the Court of Appeal erred in law when they said:-*

*“If the learned trial Judge is right in her finding that without the D consent of the Governor having been first had and obtained the title deed cannot be transferred to the 2nd appellant, she would be right in holding that no estoppel will operate on the respondent to carry out an illegal act.”*

10. *The learned Justices of the Court of Appeal erred in law in holding that the matter has been overtaken by events by the delivery of E the documents by the respondent to the 1st appellant.*

The parties pursuant to the rules of this court filed and exchanged their written briefs of argument.

The five issues identified on behalf of the appellants which this court is called upon to determine are as follows –

F *“1. Whether the appellants have not made out a case entitling them to succeed on the issue of estoppel raised for preliminary decision in paragraphs 2 and 3 of the Reply to Statement of Defence.*

2. *Whether the learned Justices of the Court of Appeal were right in confirming the judgment of the learned trial Judge that Exhibit G C is in clear contravention of the Land Use Act by virtue of Section 22 and is null and void and that the respondent is not precluded from raising the illegality of the document in answer to the plaintiffs’ claims when the respondent is making unconscionable use of the Land Use Act.*

*Arising from these 2 main issues are subsidiary issues namely:-*

H *(a) Whether it was proper to allow the issue of illegality of Exhibit C to be raised by the respondent while respondent’s approval to the transaction was being sought and had not yet been given by the respondent and the respondent did not raise it until after it had been sued.*

*(b) Whether the respondent with knowledge that consent of Mili-*

tary Governor was necessary was right in not applying for the consent and in insisting that the mortgage must be discharged and documents released to 1st appellant with knowledge of 2nd appellant's interest.

(c) Whether or not the learned trial Judge as well as the learned Justices of the Court of Appeal erred in holding that Form of Release LUD (Ch3) relied upon by the respondent is the proper document to be signed as opposed to Exhibit C having regard to the fact that the person paying off the mortgage debt is not the mortgagor but somebody who wants the mortgage to be kept alive for his benefit and the Mortgagor had given this indication to the respondent.

3. Whether or not the learned Justices of the Court of Appeal were not in error in holding that arguments proffered in reply to points raised by way of objection to the application by respondent or against the conclusions of the learned trial Judge on legal consequences of an act should be pleaded.

4. Whether the release of documents while the case was on appeal has put an end to appellants' claim for damages, when the issue of respondent's liability for detinue for refusal to surrender the documents has not been considered and determined.

5. Whether the learned trial Judge was not in error in dismissing the appellants' claims without hearing evidence when the plaintiffs' cause of action is refusal to execute Exhibit C and to surrender the 1st appellant's title deed to 2nd appellant where it was the respondent who was acting unreasonably by its insistence on FORM LUD (Ch3)."

The respondents, on the other hand, contended that the only two issues which call for determination in this appeal are -

"1. Whether having regard to the pleadings of the parties, the application for setting down for trial the plaintiffs/appellants' preliminary point of law, the affidavits, counter affidavits the further affidavit, counter affidavits the further affidavit, and Exhibits attached thereto, the learned Justices of the Court of Appeal were not right in dismissing the appellants appeal in the court below.

2. Whether the provisions of land Use Act 1978 apply in the matter and in effect whether Form of Release Form LUD (CH3) relied upon by the respondent as opposed to Exhibit C prepared by the second appellant for execution by the respondent is the appropriate form."

I have closely examined the issues set out in the respective briefs of the parties and it is clear to me that the two issues identified in the respondent's brief are adequately covered by the issues raised in the appellants' brief which I find sufficiently comprehensive for the determination of this appeal. I shall, therefore, adopt in this judgment, the set of issues formu-

lated in the appellants' brief for my consideration of this appeal.

At the oral hearing of the appeal before us, the appellants were absent and unrepresented but served with notice of the hearing. The respondent was duly represented. Pursuant to Order 6 Rule 8(6) of the Rules of this court, the appeal was taken as having been argued on the B briefs of argument filed by the parties.

I think I should point out that the respondent in its brief of argument indicated its intention to raise a preliminary objection at the hearing of the appeal to all the grounds of appeal filed. The indication was, firstly, that the said grounds of appeal are couched as grounds of law when in C reality they are grounds of mixed law and fact and no leave was obtained before they were filed. It was indicated, secondly, that the respondent would object to the appellants arguing issues unrelated to their grounds of appeal. This preliminary objection was however not argued in the respondents' brief of argument. It was therefore not pursued before us D by learned counsel for the respondent. An issue or a preliminary objection in respect of which no argument is advanced in the brief of argument and therefore not canvassed before the court must be deemed abandoned. see *Lemboye v. Ogunsiji* (1990) 6 NWLR (Pt.155) 210 at 232; *Ajibade v. Pedro* (1992) 5 NWLR (Pt.241) 257; *Are v. Ipaye* (1986) 3 E NWLR (Pt.29) 416 at 418. I will accordingly treat the said notice of preliminary objection as abandoned and the same must be and is hereby struck out. I will now proceed to consider the issues in contention between the parties. I will take the first two issues together.

The appellants' main contention with regard to issues 1 and 2 are F that the repayment by the 2nd appellant of the balance of the 1st appellant's mortgage debt of N29,912.53 must operate as an estoppel against the respondent, thus preventing it from raising the question of illegality in answer to the appellants' claims. They submitted that the respondent, having accepted the tender of the aforesaid sum of money from the 2nd appellant with knowledge G of Exhibits A, Band C must be bound by the contents of the said documents. They argued that the respondent is therefore caught by the doctrine of equitable estoppel as it cannot approbate and reprobate with the same breath, having accepted payment of the balance of the mortgage debt from the 2nd appellant. They urged the court to hold that the respondent had acted in such H a way as would make it fraudulent and unconscionable for it to set up its legal right or raise the issue of illegality.

For the respondent, it was argued that it did not deny that the 1st appellant had liquidated his indebtedness. The contention is that the respondent is not a party to the private arrangement between the appellants

in connection with the liquidation of the 1st appellant's mortgage debt by the 2nd appellant. The respondent did not refuse to return the 1st appellant's title deeds. The main issue which is the cause of this action is the respondent's refusal to execute Exhibit C in its form and to surrender the 1st appellant's deeds to the 2nd appellant. The respondent argued that the form of Release as represented in Exhibit C which the appellants required B it to execute is in contravention of the Land Use Act and that it cannot be estopped from raising the illegality of the document and/or transaction in answer to the appellants' claims.

I think it is necessary for easy reference to set out Exhibits Band C in this judgment. C

These are as follows

Exhibit B

*"Dated this 28th day of February, 1986*

*Between:*

*Kolawole Adetola Onamade* D

*and*

*Yekini Aderibigbe Agbaje*

**AGREEMENT TO REPAY MORTGAGE**

*Prepared by:*

*Olalekan S. Agbaje* E

*Legal Practitioner*

*Agbaje & Agbaje Solicitors,*

*Alafia Chambers,*

*N6A/769 Yekini Agbaje Road,*

*Opposite Cocacola Factory,* F

*G.P.O. Box 3,*

*Oyo Road,*

*Ibadan.*

*THIS AGREEMENT is made this 28th day of February, 1986 BETWEEN Mr. Kolawole Adetola Onamade of N6/316C. Oyo Road, G Mokola, Ibadan of the one part and Mr. Yekini Aderibigbe Agbaje of N6A/769 Yekini Agbaje Road, Cocacola, Ibadan of the other part.*

*WHEREAS thesaid Mr. Kolawole Adetola Onamade has mortgaged his leasehold premises at N6/316C, Oyo Road, Mokola, Ibadan to Messrs African Continental Bank Ltd. as per Deed of Mortgage dated H 14th April, 1977 and registered as No. 18 at page 18 in Volume 1142 in the office at Ibadan.*

*AND WHEREAS the sum of N29,912.53 (Twenty-Nine Thousand Nine Hundred and Twelve Naira and Fifty-Three Kobo) is now out-*

*standing on the said mortgage and the said Mortgagor has agreed that the said Mr. Yekini Aderibigbe Agbaje should payoff the said outstanding sum of N29,912.53 (Twenty-Nine Thousand, Nine hundred and Twelve naira and Fifty-Three kobo) to the Mortgagee.*

*NOW THIS AGREEMENT WITNESSETH that in pursuance of the said agreement and in consideration of the said Mr. Yekini Aderibigbe Agbaje paying the said sum of N29,912.53 (Twenty-nine thousand nine hundred and twelve naira and fifty three kobo) to the said Messrs African Continental Bank Ltd., the Mortgagor hereby agrees to the release of all documents deposited with the bank to the said Mr. Yekini Aderibigbe Agbaje.*

*IT IS FURTHER provided that the Mortgagor shall repay the said sum of N29, 912.53 together with all costs of transfer on or before the 31st day of May, 1986.*

*UPON the Mortgagor well and truly repaying the said sum of N29,912.53 (Twenty-nine thousand nine hundred and twelve naira and fifty-three kobo) together with all costs to the said Mr. Yekini Aderibigbe Agbaje, the said Mr. Yekini Aderibigbe Agbaje shall acknowledge receipt thereof and surrender all such documents instruments released by the said Mortgagor to the Mortgagor.*

*The said Mortgagor hereby promised not to sell, alienate, mortgage or otherwise deal with the said property without the prior written consent of the said Mr. Yekini Aderibigbe Agbaje until full repayment is made.*

*IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and the year first above written.*

*Signed by the within named  
Mr. K.A. Onamade*

*Sgd  
Mr. K.A. Onamade  
Sgd.*

*Mr. Yekini Aderibigbe Agbaje*

*In the presence of  
Signature: Sgd .  
NAME: Samuel Balogun Awe  
ADDRESS: N6/316C, Mokola, Ibadan  
OCCUPATION: Accountant*

*Prepared by:  
Agbaje & Agbaje  
Solicitors,  
Alafia Chambers,  
N6/769 Yekini Agbaje Road,*

*Opposite Cocacola Factory,  
P.O. Box 3,  
Oyo Road,  
Ibadan.*

*Exhibit C*

*"Dated this 28th day of February, 1986*

B

*Between:*

*African Continental Ban Ltd. (Mortgagee)*

*and*

*Yekini Aderibigbe Agbaje*

*(Payer)*

C

*RECEIPT OF DISCHARGE OF MORTGAGE*

*Prepared by:*

*Olalekan S. Agbaje*

*Legal Practitioner*

*Agbaje & Agbaje*

D

*Solicitors,*

*Alafia Chambers,*

*N6/69 Yekini Agbaje Road,*

*Opposite Cocacola Fac-*

*tory,*

E

*G.P.O. Box 3,*

*Oyo Road,*

*Ibadan.*

*Form of Receipt of Discharge of a Mortgage*

*THIS MESSRS AFRICAN CONTINENTAL BANK LTD. OF 139 F*

*OLADIRAN ESTATE, YABA, LAGOS hereby acknowledge that it has  
this 28th day of February, 1986 received the sum of N29,912.53 (Twenty-  
Nine Thousand Nine Hundred and Twelve Naira and Fifty-Three Kobo),  
representing the aggregate balance remaining owing in respect of the  
principal money, secured by Mortgage dated the 14th day of April, 1977 G  
and registered as No.18 at page 18 in Volume 1142 in the office at Ibadan  
and made between Kolawole Adetola Onomade (hereinafter referred to  
as the Mortgagor) of the one part and messrs. African Continental Bank  
Ltd. (hereinafter called the Mortgagee) of the other part, together with  
all interests and costs, the payment having been made by the within- H  
named Yekini Aderibigbe Agbaje of N6/69 of Yekini Agbaje Road,  
Cocacola Area, Ibadan. AND IT IS HEREBY expressly provided that  
this receipt shall operate as a transfer of the benefit of the said Mortgage  
to the said Yekini Aderibigbe Agbaje.*

*IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and the year first above written.*

*SIGNED AND SEALED with the Seal of the above named Mortgagee*

.....  
*African Continental Bank Ltd.*

B *In the presence of*

*SIGNATURE:* .....

*NAME:* .....

*ADDRESS:* .....

*OCCUPATION:* .....

C *SIGNED by the within-named*  
*Mortgagor*

*Sgd.*

\_\_\_\_\_  
*Kolawole Adetola Onamade*

*In the presence of*

D *SIGNATURE:* *Sgd.*

*NAME: Samuel Balogun Awe*

*ADDRESS: N6/316C, Mokola, Ibadan*

*OCCUPATION* .....

E *SIGNED by the within-named*  
*Transferee*

\_\_\_\_\_  
*Yekini Aderibigbe Agbaje*

*In the presence of*

*SIGNATURE:* *Sgd.*

F *NAME: Olawumi Yussuph Yunusa*

*ADDRESS: N6A/769, Yekini Agbaje Road,*

*Opp. CocaCola Factory, Ibadan*

*OCCUPATION: Typist*

*PREPARED BY:*

*Agbaje & Agbaje*

*Solicitors,*

*Alafia Chambers,*

*N6/769 Yekini Agbaje*

*Road,*

H  
*tory,*

*Opposite CocaCola Fac-*

*G.P.O. Box 3,*

*Oyo Road,*

*Ibadan."*

The first point that must be stressed is that Exhibit B is a duly executed agreement between the two appellants regarding the liquidation by the 2nd appellant of the 1st appellant's outstanding debt to the respondent. The respondent is neither a party nor privy thereto. There is also no suggestion that the respondent had anything to do with this private arrangement between the two appellants with regard to the 1st appellant's indebtedness to the respondent. It seems to me clear, on the evidence, that the respondent is in no way connected therewith.

Learned counsel for the appellants, Chief Y.A. Agbaje S.A.N. has in his brief assembled with very great industry a number of English decided cases in support of his contention on the issue of estoppel but, in my view, none of them appears relevant to the facts of the present case. **No doubt, when a man by his words or conduct has led another to believe in a particular state of affairs or where it would be unconscionable for a party to be permitted to deny that which he has allowed or encouraged another to assume to his detriment, he will not be allowed to go back on it if it will be unjust and inequitable for him to do so. See *Moorgate Mercantile Co. Ltd. v. Twitchings* (1975) 3 All E.R. 314 at 323, *Ives Investments Ltd. v. High* (1967) 1 All E.R. 504 at 507 - 508. With respect, however, I can see no words or conduct on the part of the respondent in the present case which had led the appellants or either of them to believe in any particular state of affairs as a result of which they suffered any detriment. I am also unable to identify any act on the part of the respondent by which it allowed or encouraged the appellants to assume any particular posture to their detriment and for which it cannot be allowed to go back on as it would be unjust or inequitable so to do.**

The appellants' contention is that by accepting the cheque, Exhibit J with knowledge of Exhibits A and C, the respondent had conducted itself by acquiescence or representation that it consented to the transaction and that it is estopped and would not be heard to question its legality. Again, with respect, I am unable to subscribe to this view. Exhibit A is a mere letter by which the 1st appellant advised the respondent that he had agreed that the balance of his indebtedness under the mortgage deed should be paid by the 2nd appellant. Although the latter's cheque, Exhibit J together with an already executed agreement between the appellant's, Exhibit B, and the draft deed of release, Exhibit C, were also forwarded to the respondent, there was no express or implied condition under which the respondent was to accept or cash Exhibit J. **It seems to me that the appellants having agreed inter se that the 1st appellant's**

indebtedness should be paid by the 2nd appellant to the respondent which decision they communicated to the respondent, the respondent was perfectly entitled to cash the 2nd appellant's cheque as it did without any obligation. The point that ought to be emphasized is that at no time did the respondent make any representation, whether expressly or impliedly to the appellants B for whatever purpose and it will be entirely idle and utterly speculative to accuse the respondent, on the facts of the case, without going back on any conduct, whether just or unjust, equitable or inequitable on its part.

Learned counsel for the appellants also submitted that the respondent had acted in such a way as would make it fraudulent and unconscionable for it to set up its legal rights. With profound respect, no evidence of fraud or unconscionable conduct was led by the appellants against the respondent. **It is significant that the issue of fraud was nowhere pleaded or raised by the appellants against the respondent before the trial court. It is also clearly not the basis on which the appellants' preliminary D point of law was argued. But this notwithstanding, it is settled law that an imputation of fraud must, to succeed, be pleaded with the utmost particularity. Indeed, no rule is more clearly established than that fraud must be distinctly alleged and proved and that it is not permissible to leave fraud to be inferred from the facts.** See *Davey Bras v. Garrett* (1878) 7 Ch.D. 499. See too E *United Africa Co. Ltd. v. Taylor* (1936) 2 WACA 70 at 71 and *Usenfowokan v. Idowu and Salami* (1969) 1 NMLR 77 at 81. **I am in agreement with the court below that the alleged fraud against the respondent not having been pleaded, went to no issue and was clearly not established.** I will now turn to Exhibit C.

F As I observed earlier on in this judgment, the main issue in controversy between the parties is the respondent's refusal to execute Exhibit C in its form and to surrender the 1st appellant's title deeds to the 2nd appellant. Whereas the appellants insisted on the respondent's execution of Exhibit C, a form adopted from Section 135(2) of the Property G and Conveyancing Law Cap. 99, Laws of Oyo State, the respondent contended that since the promulgation of the Land Use Act, 1978, the appropriate form to be used is LUD (CH-3).

It is beyond dispute that since the coming into operation of the Land Use Act, no alienation of a statutory right of occupancy whether by H assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the Military Governor first had and obtained shall be lawful. Exhibit C follows the Form set out in the Third Schedule to the Property and Conveyancing Law of Oyo' State, 1978 but, as the learned trial Judge rightly observed, with one vital additional con-

cluding paragraph which reads thus -

*“AND IT IS HEREBY expressly provided that this receipt shall operate as a transfer of the benefit of the said mortgage to the said Yekini Aderibigbe Agbaje”*(Italics supplied for emphasis)

Section 22 of the Land Use Act provides as follows -

*“22. It shall not be lawful for the holder of a statutory right of occupancy granted by the Military Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession; sub-lease or otherwise howsoever without the consent of the Military Governor first had and obtained:*

*Provided that the consent of the Military Governor.* C

*(a) shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Military Governor;*

*(b) Shall not be required to the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the Military Governor.*

*(c) To the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sublease containing an option to renew the same* E

*2. The Military Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Military Governor in order that the consent given by the Military Governor under subsection (1) may be signified by the endorsement thereon.”* F

Similarly by Section 26 of the Act, any transaction which contravenes the provisions of the Act is null and void. G

**It is plain to me that the purport of Exhibits Band C is to confer on or transfer to the 2nd appellant, the rights of the respondent as a mortgagee under the mortgage. In other words, it purports to create a new mortgage in favour of the 2nd appellant or otherwise to transfer the rights and benefits under the relevant mortgage from the respondent to the 2nd appellant without the consent of the Military Governor of Oyo State first had and obtained. Such an arrangement, without doubt, is a contravention of the provisions of the Land Use Act. This is because a transfer of the rights and benefits of the respondent under the mortgage requires the Governor’s consent under Sec-** H

tion 22(a) of the Land Use Act. Accordingly by virtue of the said Section 22 of the Act, Exhibit C is unlawful and by virtue of Section 26, it is null and void. In my view, the respondent cannot be estopped from refusing to be a party to the contravention of the Act. Indeed, the issue is well settled that no estoppel will be allowed B which precludes the party against whom it is sought from asserting and bringing to the notice of the court, the statutory illegality of such actions and instruments which are sought to be validated by acceptance of the estoppel pleaded. See *The Attorney-General of Bendel State v. The Attorney-General of the Federation and others* (1981) 3 NCLR C 1; (1981) 1 All NLR (Part 2) I at 82-83.

I should perhaps mention that the appellants, in their brief of argument, have contended that Exhibit C, a Form adapted from Section 135(2) of the Property and Conveyancing Law, Cap.99, Laws of Oyo State is the appropriate form for use in the circumstances of the present D case. The respondent, on the other hand, argued that since the promulgation of the Land Use Act, 1978, the proper form to be used in this case is as prescribed in Form LUD (Ch-3) pursuant to the Land Use Act. I need only state that since the enactment of the Land Use Act, 1978, any Actor E Law relating to land in any State of Nigeria inconsistent with the provision of the Land Use Act is to the extent of such inconsistency void by virtue of the provisions of Section 274(5) of the Constitution of the Federal Republic of Nigeria, 1979. I entertain no doubt that the provisions of the Land Use Act, 1978 apply to the transaction in issue and that Exhibit C which was prepared by the appellants for execution by the respondent F is inappropriate and in contravention of the provisions of the said Land Use Act. I agree entirely with both the trial court and the court below that the form of Release as presented in Exhibit C is unlawful and in contravention of the Land Use Act and that the respondent is not estopped from raising the obvious illegality surrounding the draft document in answer to G the appellants' claims. Issues 1 and 2 are therefore resolved against the appellants.

Issue 3 deals with certain submissions of learned appellants' counsel and questions whether the learned Justices of the Court of Appeal were not in error by dismissing the said submissions as new points H and fanciful propositions which were neither pleaded nor canvassed before the trial court. Said the Court of Appeal

*"The contention by the learned counsel for the appellants that the combined effect of Exhibits A, Band C does not involve the alienation of any right of occupancy; that it was merely an agreement to redeem the property*

*and to prevent same from being sold by the respondent, was to create a lien; or was to keep alive the mortgage for the benefit of the third party who paid or to tender the mortgagee a trustee for the person who paid off the mortgage debt are all irrelevant for the purpose of this appeal.*

*All these merits were not pleaded. It was not pleaded that the respondent becomes the trustee of the 2nd appellant; it was not pleaded B that a lien is created in favour of the 2nd appellant nor was it pleaded that Exhibit B was intended to redeem the property and to prevent sale by the respondent as alleged. Not only were all these 1 1997 11 NWLR not pleaded, the 2nd appellant did not even mention anything like these in his address before the court. He predicated his case at the trial court on the issue that C Exhibit C titled "Form of Receipt of Discharge of a Mortgage" was the appropriate document with which the respondent should release the title deeds to the 2nd appellant and with which to transfer the benefit of the said mortgage to the 2nd appellant in accordance with the provisions of and as set out in 3rd schedule to the Property Conveyancing Law which, according D to the appellants, was the applicable law and not the Land Use Act."*

**There can be no doubt that most of the issues presented before the court below by the appellants were entirely new points which were neither pleaded nor canvassed before the trial court. At the trial, a party is bound by the pleadings and shall not be permitted to set up a different case. It is not open to a party to depart E from his pleadings and put up an entirely new case. Matters not pleaded go to no issue and should not be admitted in evidence and, if admitted, should be ignored or discountenanced in the absence of an amendment of the pleadings. See Njoku and others v. Eme and F others (1973) 5 S.c. 293; Okafor and others v. Okitiakpe (1973) 2 SC 49; EmegokWue v. Okadigbo (1973) 4 SC.113 etc.**

**In the present case, the appellants introduced various fresh points neither pleaded nor canvassed before the trial court as set out in its judgment without leave. I entirely agree with the Court G of Appeal that the appellants were not entitled to do this.** I concede that it is not necessary to plead law before reliance can be placed on it. It is sufficient to plead material facts which will lead to a certain legal result, and once sufficient material facts have been pleaded, the inference to be drawn H from such pleaded facts and the particulars of the law to be relied upon for such an inference need not be pleaded. See Vandervell's Trust (No.2), White v. Vandervell Trustees Ltd. (1974) 3 All E.R. 205 at 213; Anyanwu v. Mhara (1992) 5 NWLR (Pt. 242) 386 at 398 etc. This principle will however operate in favour of the appellants in respect of their submission before the court below

that the mortgagee became a trustee for the 2nd appellant who paid off the mortgage debt. This is because the submission is a mere legal consequence that arose from the facts pleaded, in respect of which the appellants could legitimately proffer arguments on irrespective of the fact that such legal consequence was not pleaded. it is however clear to me that the court below B rightly dismissed the trusteeship issue as irrelevant for the purpose of the appeal as it did not advance the appellants' case in any way. Accordingly issue 3 is hereby resolved against the appellants.

Issue 4 hardly arises for consideration as the arguments proffered by the respondent on the question of liability was upheld by the C court below. The court below upheld, rightly in my view, the decision of the trial court that liability was not established by the appellants against the respondent. In the circumstance, the court below did not strictly speaking need to consider the claim for damages. **At all events, it is not every mistake or error in a judgment that will result in the appeal being allowed. It D is only when the error is substantial in that it has occasioned a miscarriage of Justice that the appellate court is bound to interfere.** See Onajobi v. Olanipekun (1985) 4 S.C. (Pt.2) 156 at 163; Oje v. Babalola (1991) 4 NWLR (Pt.185) 267 at 282; Ukejianya v. Uchendu (1950) 13WACA45 at 46; Azuetonma Ike v. Ugboaja (1993) 6 NWLR (Pt.30 1)539 at 556; Ahiodun Famuroti v. Madam E Agbeke (1991) 5 NWLR (Pt.189) 1; (1991) 6 S.C.N.J. 54 at 64 etc. **No miscarriage 1 of justice has been occasioned by the observation of the court below that the return of the title deeds to the 1st appellant during the pendency of the appeal had put an end to the dispute. I resolve issue 4 against the appellants.**

F **Issue 5 relates to a complaint against the judgment of the trial court and is totally unconnected with the decision of the court below. This court has no jurisdiction to entertain direct appeals against the judgments of trial High Courts. Issue 5 is therefore incompetent and is hereby struck out.**

G All the issues having been resolved against the appellants, this appeal fails and it is hereby dismissed with costs to the respondent against the appellants which I assess and fix at N 1000.00.

---

H **KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Iguh, JSC He has adequately dealt with the issues canvassed before the court and I do not find it necessary to say more. The appeal is clearly devoid of merit. I affirm the decisions of both the High Court and

the Court of Appeal. The appeal is therefore dismissed with N1 ,000.00 costs in favour of the respondent.

### OGUNDARE JSC

I have had the privilege of reading in advance the judgment of my learned brother Iguh JSC just delivered. For the reasons given by him, which I adopt as mine, I too dismiss this appeal and affirm the judgment of the court below with costs as assessed in the lead judgment.

### ONU JSC

C

I have had the privilege to read in draft the judgment of my learned brother Iguh, J.S.C just delivered and I am in full agreement with him that this appeal lacks merit and should fail.

I wish to add by way of expatiation that in so far as the respondent herein was never a party to the private arrangement between the appellants inter se in relation to the liquidation by the 2nd appellant of the mortgage debt the 1st appellant owed the respondent, albeit that there was tacit information sallying forth from 2nd appellant to the respondent through correspondence pertaining to the modus of the liquidation of the mortgage debt, no argument howsoever prolix, sweet and smooth can with conviction, turn around the legal position in the 2nd appellant's favour. In this wise, the respondent's refusal to execute Exhibit 'C' in the form it is and the demand for the respondent to surrender 1st appellant's title deeds (Exhibit 'B') to the 2nd appellant when the 2nd appellant was not a party to the contract between the 1st appellant and the respondent which cannot be faulted, will amount to an infringement of the provisions of the Land Use Act. To insist upon such an arrangement is, to say the least, the encouragement or indeed, the enthronement of illegality. see *Zango v. Governor of Kano State* (1986) 2 NWLR (Pt.22) 409; *Sodipo v. Lemminkainen* or (1986) 1 NWLR (Pt 15) 220; *Ekwunife v. Wayne (W.A.) Ltd.* (1989) 5 NWLR G (Pt122) 422 at 450 and *Ayo Solanke v. Abed & 2 ors* (1962)NNLR 92 at 94; (1962) 1 SCNLR 371. In this regard too, it ought to be borne in mind that none of the parties to an illegal contract is entitled to any remedy or relief from a court of law. What the 2nd appellant was urging the trial court and a fortiori, the court below to do, is not only illegal but unenforceable in law. See Sections 22 and 26 H of the Land Use Act, 1978. See also *Ukejianya v. Uchendu* (1950) 13 WACA 45; *Etim Ekpenyong & 3 Ors. v. Inyang Ejijiong Nyong & 6 ors.* (1975) 2 SC 71 at 80; *Abel O. Woluchem v. Dr.Charles Iko-Tariah Wokoma* (1974) 3 SC. 153 and *Abubakri & Ors. v. Abudu Smith & Ors.* (1973) 6 SC 31 at 44.

The decisions of the two courts below which constitute concurrent findings of fact, are in my view, unimpeachable and I so hold. I will decline to disturb them, they being not perverse.

For these reasons and the more elaborate one contained in the judgment of my learned brother Iguh, J.S.C., a preview of which I had, I too  
B will dismiss this appeal and affirm the decisions of the two courts below.  
I make the same consequential orders inclusive of those as to costs.

---

**ADIO JSC**

C            I have had the advantage of reading, in draft, the judgment just  
read by my learned brother Iguh, J.S.C., and I agree that this appeal fails.  
I too dismiss the appeal. I abide by the order for costs.  
Appeal dismissed

D

E

F

G

H