

SUPREME COURT OF NIGERIA
12TH DECEMBER, 1997. SC. 21/1994
CORAM:- S. M. A. BELGORE, A. B. WALL, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, JJSC

OLUFEMI FASESIN	DEFENDANT/APPELLANT
AND		
DR. J. P. O. OYERINDE	PLAINTIFF/RESPONDENT

EQUITY - Declaratory reliefs - Where the hard facts are uncontradicted and appellant behaved without equity - Court will be on the side of truth and law in support of the case

JUDGMENTS - Declaratory judgment - Much discretion is required - And must be granted judiciously having regards to the facts and equity of the case.

LAND LAW - Prior right on land - Party who was fixed with notice of another's prior right but chose to ignore it - Cannot be availed by equity.

FACTS

The plaintiff/respondent before the High Court sitting in Lagos claimed against the defendant/appellant for a declaration of title to the land in dispute and damages for trespass.

Both parties relied for their root of title on a common vendor to wit: Ikeja Real Estate Limited; the appellant by a deed of variation of March, 1978, while the respondent relied on an earlier deed of conveyance of 12th November, 1974.

The appellant commenced a building project on the land but when the respondent discovered this he posted a notice on the land and subsequently confronted the appellant with his claim of right on the land. The appellant ignored all these and hurriedly completed the building. At the completion of trial, judgment was entered in favour of the plaintiff/respondent. The appellant's appeal to the Court of Appeal was dismissed. Dissatisfied, he has further appealed to the Supreme Court canvassing four issues

ISSUES FOR DETERMINATION

(1) *"Whether the Court below was not in error when in all the circumstances of this case it held that the learned trial Judge was right to have exercised his discretion in favour of the Respondent to make a declaratory order as claimed.*

(2) *Whether on the facts and in the circumstances of this case, the court below was right in holding that it could not interfere in the exercise by the learned trial Judge of his discretion in making in favour of the Respondent the declaration sought by him.*

(3) *Whether the Court below was right when it upheld the learned trial Judge that the Respondent was entitled to Statutory Right of Occupancy to the land in dispute in this case under the Land Use Act.*

(4) *Whether the Court below was not in error when it upheld the learned trial Judge's refusal to re-open the case of the Appellant in order to be able to admit in evidence the Layout plan which is relevant in this case".*

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

Prior right on land

1. The appellant was first given a plot of land by the Common vendor which he discovered was vested in some person already. This has been notice enough for him to be cautious in the alternative plot for the person who comes to equity or intends to resort to equity must be vigilant - vigilantibus, non dormientibus, jura subveniunt. The laws will aid those who are watchful and not those who go to sleep. On being intimated that he could have been twice bitten the appellant accelerated his building operations on the disputed land to completion. He certainly started building around February 1978 and it was the same month the respondent discovered this and took every steps reasonably expedient to discover the person on the land and warn him. The appellant was not the one to be stopped. He certainly took a risk. (p. 1993 D)

Declaratory judgment

2. It is true much discretion is required in declaratory judgment. In itself discretion is part of equity and must be granted judiciously having regard to the facts and equity of the case. All declaratory reliefs must be granted on a thorough consideration of all the facts before the Court including defences and objections advanced by the parties. (p. 1993 G)

Declaratory reliefs - Where the facts support the case

3. But where the hard facts are uncontroverted, the applicant (plaintiff) has no equity on his side and has behaved recklessly the Court will be on the side of the truth and law in support of the case. The appellant has no equity on his side because he had adequate notice and chose to ignore it. The Courts in this instance have no reason on the facts placed before them to do otherwise than to grant the respondent's prayers because the appellant behaved with-

out equity on his side. Whoever comes to equity must have clean hands and thus do equity. The facts in the cases ably researched by learned senior advocate have facts in support of their decisions, it is the opposite in this case. (p. 1993 H)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Declaratory relief sought - Did not offend any equitable principle

The Ikeja Real Estates Ltd. had no right whatsoever to give to the Defendant in 1978 the land it had conveyed to the Plaintiff in 1974. The defendant acquired no title to the land in dispute and was a trespasser when he entered thereon in 1978 without plaintiff's permission. The evidence does not disclose any lapse on the part of the plaintiff to justify equity depriving him of the declaration he sought. The grant of the declaratory relief he sought did not offend against any equitable principle. Having established his title to the land in dispute and there being no equity against him, title was rightly declared in him. (p. 1994 F)

ONU JSC

2. Competing interest in land

As between the Respondent's Deed of Conveyance (Exhibit 'A') dated 12/11/74 and the Appellant's purported Deed of Conveyance (Exhibit 'H') dated 16/2/77 as well as the purported Deed of variation (Exhibit J.) dated 24/3/78, there are competing priorities. Accordingly, Exhibit 'A' which I have hitherto held to be validly executed and registered well over four years before Exhibits 'H' and 'J' came into being is, in law, superior to and must enjoy definite priority over Exhibit 'H' and 'J' in terms of validity and I so hold. (p. 1998 B)

REPRESENTATION

Kehinde Sofola, S.A.N., Esq. with Abubakar Idris for the Appellant
No appearance for the Respondent

CASES REFERRED TO

Ibeneweka v. Egbuna (1964) 1 WLR 219

Barclays Bank v. Ashiru (1978) 6-7 SC. 99

Onuoha v. Okafor (1983) 2 SCNLR 244

Emenimaya v. Okoroji (1987) 3 NWLR (Pt 80) at p. 7

Egbunike v. Muonweoku (1962) 1 ALL N.L.R. 46 51

Lokoyi v. Olojo (1983) 8 SC. 61 at 68-73

Lamai v. Orbin (1980) 5-7 SC. 88

Ezewani v. Onwordi (1986) 4 NWLR (Part 33) 27

LEAD JUDGMENT BY BELGORE JSC

The appellant, Mr. Fasesin, a legal practitioner, was the defendant at the trial court and the appellant at the Court of Appeal. The respondent, Dr. Joshua Popoola Oyewole Oyerinde is a medical practitioner. The suit leading to this appeal, relates to a piece of land at Ire Akari Estate, Isolo Isaga, Ikeja, Lagos. By a deed of conveyance dated 12th day of November 1974, the Ikeja Real Estates Limited conveyed the said piece of land to the plaintiff/respondent (hereinafter referred to as "the respondent") in fee simple absolute in possession. The land in question is marked PLOT NO 13 BLOCK XIV AKARI ESTATE, ISOLO, ISAGA, IKEJA. The layout of the estate was approved by the Lagos State Ministry of Works and Planning for the Ikeja Real Estates Limited on 17th day of September 1977 in a letter of that date, the layout being numbered TPA0633. On the 30th day of November, 1977 the respondent had his building plan for the land approved by the appropriate authority.

The appellant in his statement of Defence based his right to possession of the plot in dispute to:

- (i) Authority of the Ikeja Real Estates Limited.
- (ii) Deed of conveyance dated 16th February 1977 registered as No 85 page 85 in volume 1609 of the Register of Deeds and Deed of Variation dated the 24th day of March, 1978 registered as No 35 page 35 volume 1753 of the Register of Deeds.
- (iii) Actual possession, which surfaced by normal implication.

By virtue of the aforementioned he commenced building on the land without let or hindrance by any one. It was only in March 1978 when he had almost completed the building on the land that the respondent surfaced and claimed that the plot was his. He concluded his statement of defence by relying on "estoppel by conduct, laches, acquiescence, standing by and other legal and equitable defence".

During his evidence in defence, the appellant who gave his full name as "Christopher OLUFEMI FASESIN Kupoluyi" claimed that the land in dispute was his, relying on the points enumerated earlier in this judgment. Thus, both the appellant and respondent relied for their root of title on Ikeja Real Estate Limited; the former by a deed of variation of March 1978, whilst the latter is by an earlier deed of conveyance of 12th November 1974 as evidenced later by the approved layout of 1977.

By further amended statement of defence the appellant averred that the original plot granted and conveyed to him had already been allocated to someone else and he had to approach the vendor who gave him an alternative

plot by a deed of variation on 24th March 1978; this happens to be the plot now in issue.

Meanwhile the respondent who had constantly visited the plot, was indisposed around January/February 1978, and could not make the routine visits during that period. However by February 1978, when he paid a visit, he discovered someone had not only entered into the land but a building was being erected on it. He made several efforts to locate the intruder. The workers at the site were not helpful and the vendors were not also forthcoming. He had to contact his solicitors who made the normal routine investigations. Apparently, the appellant obtained the deed of variation of his conveyance after the respondent had made this visit to the site after March 1978. Each party gave evidence in line with his respective pleadings and it boiled down to a single question for the learned trial judge to answer: Who was with the lawful title to the plot in dispute? The answer in the learned trial judge's judgment is that the appellant was in unlawful possession, and that he trespassed on the land in dispute. The judgment was upheld by the Court of Appeal. After the suit was filed, the Land Use Decree came into existence and in accordance with it the judgment was to the effect that the respondent was the one entitled to a right of occupancy over the land

In the appeal to this Court learned counsel for the appellant, Kehinde Sofola, S.A.N., after setting out the claim as at the trial Court, submitted that the appellant faced only the claim for declaration that the land in dispute was the respondent's and also the damages for the trespass on the same land. He therefore, upon the claim and the battles fought by the parties in the courts below formulated the following issues for determination:

(1) *"Whether the Court below was not in error when in all the circumstances of this case it held that the learned trial Judge was right to have exercised his discretion in favour of the Respondent to make a declaratory order as claimed.*

(2) *Whether on the facts and in the circumstances of this case, the court below was right in holding that it could not interfere in the exercise by the learned trial Judge of his discretion in making in favour of the Respondent the declaration sought by him.*

(3) *Whether the Court below was right when it upheld the learned trial Judge that the Respondent was entitled to Statutory Right of Occupancy to the land in dispute in this case under the Land Use Act.*

(4) *Whether the Court below was not in error when it upheld the learned trial Judge's refusal to re-open the case of the Appellant in order to be able to admit in evidence the Layout plan which is relevant in this case".*

Learned Senior Advocate, relying on a line of decisions contented that a

declaratory judgment is found in "equity and not in law". He cited Russian Commercial & Industrial Bank vs. British Bank for Foreign Trade (1921) 2 AC 438; Ibeneweka vs Egbuna (1964) 1 WLR 219; Barclays Bank vs Ashiru (1978) 6-7 SC. 99 and Onuoha vs Okafor (1983) 2 SCNLR 244 as authorities for this proposition. It is submitted that if even a party has put forward enough evidence to support his claim for a declaration in law, there may be circumstances in equity which will hold the hand of the Court in making the declaration. This, according to learned counsel, the courts must bear in mind so as not to defeat the justice of a matter. He contended that the Courts below dealt with the suit as a claim for legal right whereas it was not; rather it was a claim in equity being a declaratory judgment necessitating exercise of discretion even where evidence supports the claim. As a result of this misconception, the counsel posits, there was a miscarriage justice because the claim ought not to have been granted. Thus, the appellant is now asking that the concurrent findings of the Courts below, even though based on the facts before them, were perverse because they were based on discretion without advert- ing to equity. The respondent, whose counsel never appeared but filed a brief of argument that was deemed argued formulated the following issues for determination:

"In the Respondent's considered view, the main issues for determination by this Court in this appeal are as follows:

- (i) *Whether the finding of facts and the exercise of her discretion- ary powers by the trial Judge based on the totality of the evidence before her and the affirmation of such finding by the Court of Appeal were perverse.*
- (ii) *Whether the Common Owner (Ikeja Real Estates Limited) having conveyed the land in dispute Plot No.13 in Block XIV, Ire Akari Estate to the Respondent in 1974 could have validly and lawfully conveyed again the same land to the Appellant in 1978.*
- (iii) *Whether in view of the uncontroverted evidence of the Re- spondent at the Court below, the trial court and indeed the Court of Appeal have rightly rejected the equitable defences of estoppel by conduct, laches, acquiescence, standing-by and other legal and equitable defences.*
- (iv) *Whether the Courts below have correctly interpreted sec- tions 1, 34 subsections 1 to 3 and section 50 of the Land Use Act 1978 in relation to the evidence adduced at the trial."*

In arguing these issues the respondent's brief of argument relief on time honoured principle that the Supreme Court will not interfere with the concurrent findings of fact by the lower Courts if those findings are based on lawful evidence before the Court and cited Emenimaya & Ors vs Okoroji & Anor, (1987) 3 NWLR (Pt 80) at p. 7. The appellant had sufficient warning that

the land he was erecting a building upon could lead to litigation as he admitted under cross-examination that he saw the notice the respondent posted on the land when he discovered the construction being undertaken. He ignored this warning and perhaps never took steps to make adequate searches about the title or right to possession. The respondent made several efforts to locate the appellant, and when he succeeded, he was confronted with the respondent's claim of right on the land. The appellant also ignored this and with great rush continued erecting the building on the land to completion. The structure is a storey building and it was completed in about six months. The land was conveyed to the respondent in 1974 as explained earlier and he was in possession since. What the appellant was first given was discovered to be void as it was already vested in someone else; the second assignment, now subject of this suit on appeal, was no better either, as it was already vested in the respondent.

It must be pointed out that learned counsel for the appellant has not disputed the facts of this case as put before the trial Court on which its decision, and that of the Court of Appeal, were based. What he questions in his forceful brief of argument is that the Courts below never adverted to equity of the case before arriving at their decisions. To my mind this argument might have some validity but for the glaring facts of this case. **The appellant was first given a plot of land by the Common vendor which he discovered was vested in some person already. This has been notice enough for him to be cautious in the alternative plot for the person who comes to equity or intends to resort to equity must be vigilant - vigilantibus, non dormientibus, jura subveniunt. The laws will aid those who are watchful and not those who go to sleep. On being intimated that he could have been twice bitten the appellant accelerated his building operations on the disputed land to completion. He certainly started building around February 1978 and it was the same month the respondent discovered this and took every steps reasonably expedient to discover the person on the land and warn him. The appellant was not the one to be stopped. He certainly took a risk.**

It is true much discretion is required in declaratory judgment. In itself discretion is part of equity and must be granted judiciously having regard to the facts and equity of the case. All declaratory reliefs must be granted on a thorough consideration of all the facts before the Court including defences and objections advanced by the parties. But where the hard facts are uncontroverted, the applicant (plaintiff) has no equity on his side and has behaved recklessly the Court will be on the side of the truth and law in support of the case. The appellant has no equity on his side because he had adequate notice and chose to ignore it. The Courts in this instance have no

reason on the facts placed before them to do otherwise than to grant the respondent's prayers because the appellant behaved without equity on his side. Whoever comes to equity must have clean hands and thus do equity. The facts in the cases ably researched by learned senior advocate have facts in support of their decisions, it is the opposite in this case. (See Barclays Bank B vs Ashiru (1978) 6 - 7 SC.99, 130, 131; Ibkife Ibeneweka & Ors vs Peter Egbuna & Anor. (1964) 1 WLR 219, 224; Russian Commercial & Industrial Bank vs British Bank for Foreign Trade (1921) 2 A.C. 438; Egbunike vs Muonweoku (1962) 1 All N.L.R. 46, 51).

I find no merit in this appeal for the reasons set out in this judgment C and I dismiss it with N10,000.00 costs to the respondent.

WALI JSC

I have the privilege of reading in advance, the lead judgment of my D learned brother Belgore, JSC, and I entirely agree with it.

Having nothing more useful to add, I adopt as mine, the reasons contained in the judgment and dismiss the appeal for want of merit. The judgment of the courts below are affirmed with N10,000.00 costs to the respondent.

E

OGUNDARE JSC

For the reasons given in the judgment of my learned brother, Belgore JSC a preview of which I had ere now, I am of the view that this appeal is F completely bereft of any merit.

On the findings of fact made by the learned trial judge and affirmed by the Court below - which findings are not challenged in this appeal, judgment was rightly entered in Plaintiff's favour. The Ikeja Real Estates Ltd. had no right whatsoever to give to the Defendant in 1978 the land it had conveyed G to the Plaintiff in 1974. The defendant acquired no title to the land in dispute and was a trespasser when he entered thereon in 1978 without plaintiff's permission. The evidence does not disclose any lapse on the part of the plaintiff to justify equity depriving him of the declaration he sought. The grant of the declaratory relief he sought did not offend against any equitable principle. H Having established his title to the land in dispute and there being no equity against him, title was rightly declared in him.

I dismiss this appeal and affirm the judgments of the two Courts below with costs of this appeal as assessed in the lead judgment of my learned brother Belgore JSC.

MOHAMMED JSC

I entirely agree with the opinion of my learned brother, Belgore J.S.C., in the judgment written by him that this appeal has no merit and ought to fail. I think there is no answer to the fact that the Ikeja Real Estates Limited having conveyed the land in dispute, Plot No.13 in Block XIV, Ire Akari Estate, to the Respondent in 1974 could not have validly and lawfully convey the same land B to the appellant, in 1978. At the time of the second conveyance the Ikeja Real Estates Limited had no title to the land in dispute to pass over to the appellant - Nemo dat qui non habet.

For the reasons given by my learned brother in the lead judgment I too dismiss the appeal and affirm the judgment of the court below. I abide by C the order made on the award of costs.

ONU JSC

Having before now read in draft the judgment of my learned brother D Belgore, JSC just delivered, I am in full agreement with him that this appeal lacks merit and ought therefore to fail.

Of the four issues which each of the appellant and the respondent has submitted for our determination. I find issue No.1 on either side similar and sufficient to dispose of this appeal. The appellant's issue No. 1 is couched E in the following terms:-

"(1) Whether the court below was not in error when in all the circumstances of this case it held that the learned trial judge was right to have exercised his discretion in favour of the Respondent to make a declaration order as claimed."

The Plaintiff, now Respondent had on 1st December, 1978 in the High Court sitting in Lagos taken out a writ of summons against the Defendant, herein Appellant, for:

"1. Declaration of Title that thee land known as plot 13 Block XIV Ire Akari Estate layout Isolo Ishaga, Ikeja registered as No.69 at page 69 in G volume 148 of the Register of Deeds at the land Registry Office Lagos, is the bona fide property of the Plaintiff.

2. N5,000.00 damages for trespass committed by the Defendant entering the land of the Plaintiff known as Block XIV Ire Akari Estate Lay-out, Isolo, Ishaga, Ikeja.:"

After suffering several adjournments and being before different judges coupled with an amendment made to claim 1 on March 18, 1986 to the effect that the Respondent was entitled to a statutory right of occupancy in respect of the said land, the case was finally heard before Fafiade, J. who, after H

listening to the addresses of counsel, gave judgment in respect of claim 1 and awarded N2,500.00 as damages for trespass in his (Respondent's) favour in respect of claim 2.

She held, in what I consider to be a well considered judgment, inter alia thus:

B *"Whereas the land in Exhibit J is the same as the land in Exhibit A, Exhibit H tendered by the defendant has attached to it a site plan marked plot 16 Isolo-Ishaga - Ikeja Division. By virtue of Section 34 of Land Use Act, 1978, both plots 13 and 16 were at the time they were registered developed land. Exhibit J was executed on 24/3/78 and registered on 4/10/78. C The stamping and registration of Exhibit J without the defendant obtaining the consent of the Military Governor of the Land Use Act became law is void ab initio. Defendant's holding is inconsistent with provisions of Section 26. Having sold the same land to Plaintiff in 1976 the Company had nothing to sell or convey or assign in 1978. Exhibit J should be rejected on the principle of Nemo dat quod non habet....."*

D *That Exhibit J as registered cannot cure its defect in the root of title of the defendant. Exhibit J cannot ratify Exhibit H as defendant himself told the Court that Plot No.16 was conveyed to him..... Defendant by Exhibit H or J cannot claim a superior title to that of Plaintiff. Plaintiff's title E is clearly stated in Exhibit A, dated 1974. Plaintiff has successfully presented the nature of his title to thee land in dispute by Exhibit A, Exhibit B - B8 and his oral evidence. Exhibit A, B - B8 and Exhibit J, evidence of the Surveyors and parties show the extent and boundary of the land in dispute." And later down in the judgment, the learned trial judge further held as follows:-*

F *"That notwithstanding, I agree that the land in dispute is a developed land and having found that thee plot is vested in plaintiff, I find plaintiff is entitled to the declaration sought. He is therefore declared entitled to statutory right of occupancy in respect of the parcel or piece of land situate, G lying and being at plot 13 Block XIV Ire-Akari Estate Layout, Isolo, Ishaga, Ikeja. Plaintiff is also claiming N5,000.00 damages for trespass committed by defendant in entering the plot of land. Defendant has not denied entering the land"*

H *An action for trespass can be maintained only by a person in possession. I have found earlier that Plaintiff was in possession of the land until the defendant entered the land. I also found that plaintiff has a better title than defendant, although issue of title is quite independent of claim for trespass. I therefore find that plaintiff can maintain this action for trespass. On the admission by the defendant that he entered the said Plot 13, Block*

XIV and erected a building, I find trespass proved against him."

The Appellant appealed to the court below which minced no words in confirming the trial court's decision though reducing the damages awarded for trespass to N500.00 only; hence the appeal to this court.

As there is no dispute whatsoever as to the identity of the land as in Exhibit A, namely: Plot No. 13 in Block XIV Ire Akari Estate Layout, which is the same as the land in Exhibit 'H and J' that originally was bought by each party from a common owner - the Ikeja Real Estate's Limited - the act of the Appellant being subsequently issued with a deed of variation (Exhibit J) after he had reported the matter to the former, ought to have extinguished Appellant's claim thereto. Thus, the findings of fact and the exercise of her discretionary powers in favour of the Respondent by the trial court and the affirmation thereof by the court below, ought not to be disturbed or interfered with unless shown to be perverse. See Oladipo Maja v. Leandro Stocco (1968) NMLR 372. This is the moreso, as in the instant case, where the decisions of the two courts below constitute concurrent findings of fact. (See Lokoyi v. Olojo (1983) 8 SC. 61 at 68-73; Lamai v. Orbih (1980) 5-7 SC. 88; Ezewani v. Onwordi (1986) 4 NWLR (Part 33) 27 and Western Steel Works v. Iron & Steel workers Union (1987) 1 NWLR (Part 49) 284). Indeed, this court in its recent decision in Ukaegbu v. Ugoji (1991) 6 NWLR (Part 196) 127 similarly held that concurrent findings of fact will not be disturbed unless they are perverse, patently erroneous or special circumstances are shown. See also Orwujuba v. Obienun (1991) 4 NWLR (Part 83) 16, at 25-26 and Broadline Enterprises Ltd. v. Maritime Corporation (1995) 9 NWLR (Part 417) 1. Thus, as was fully acknowledged by the learned trial Judge in her judgment, Mr. Seweje, the surveyor who prepared the approved layout and the beacons sheet in Exhibit J, conceded that the plot in Exhibits A and J both bear No. 13, but that the corner beacons are different. Even though the size of the land in Exhibit A was diversely given as 120' x 70' and that in Exhibit J. it is 120' x 60', Mr. Seweje had admitted that both plans were made by different surveyors. It is for this reason that this court in William Eybuomwan & ors. v. Jonathan Elema & ors. (1994) 11 KLR 323 (1994) 6 NWLR (Pt. 53) 638 at page 641 in circumstances similar to the instant case where measurements of the land in dispute did not rhyme with any degree of certainty owing to the different surveyors enlisted to survey them, observed as follows:-

"The filing of a Survey Plan pursuant to an undertaking in the pleading alone is not conclusive on the question of there being sufficient evidence before the court in relation to the identity or extent of the land in dispute. This is because, if the parties did not join issues on the identity or extent of the land in dispute, a superfluous undertaking in the pleading to

file a survey plan which undertaking was eventually not fulfilled could not warrant the dismissal of the plaintiff's claim on that ground alone. So what is important and very crucial in a land dispute is the availability before the court sufficient evidence, whether oral and/or documentary concerning the identity and extent of the land in dispute."

B Being satisfied that the two courts below exercised their discretionary powers both judicially and judiciously on the evidence adduced before arriving at the conclusion they did, I will rather than disturb the decision herein on appeal, affirm it. See Bakare v. A.C.B. Ltd (1986) 3 NWLR (Part 26) 47 at 55.

As between the Respondent's Deed of Conveyance (Exhibit 'A') dated C 12/11/74 and the Appellant's purported Deed of Conveyance (Exhibit 'H') dated 16/2/77 as well as the purported Deed of variation (Exhibit J.) dated 24/3/78, there are competing priorities. Accordingly, Exhibit 'A' which I have hitherto held to be validly executed and registered well over four years before Exhibits 'H' and 'J' came into being is, in law, superior to and must enjoy definite D priority over Exhibit 'H' and 'J' in terms of validity and I so hold. See Tewogbade v. Obadina [(1994) 7 KLR 1] (1994) 4 NWLR (Part 338) 326 at 331 and 339; Otitoju v. Governor of Ondo State [(1994) 7 KLR 77] (1994) 4 NWLR (Part 340) 518 at 522 and Ogbuokwelu & ors. v. Umeanafunkwa & Anor. [(1994) 8 KLR 79] (1994) 4 NWLR (Part 341) 676 at 686.

E My answer to the lone issue considered is therefore in the negative.

For these reasons and the fuller ones contained in the lead judgment of my learned brother Belgore, JSC I too, dismiss this appeal and make the same consequential orders inclusive of those for costs contained therein.

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