

SUPREME COURT OF NIGERIA
 12TH DECEMBER, 1997. SC 2/1994
CORAM:- S. M. A. BELGORE, A. B. WALL, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, JJSC

NATIONAL HORTICULTURAL
 RESEARCH INSTITUTE

DEFENDANT/APPELLANT/
 CROSS RESPONDENT

AND

ALHAJI MURAINAAYOADE & 4 ORS PLAINTIFFS/
 RESPONDENTS/CROSS APPELLANTS

LAND LAW - *Acquisition of land by government - Respondents that had no interest when the land was acquired - Are not entitled to either notice or compensation.*

LAND LAW - *Acquisition of land by government - Where there is evidence that compensation was paid to persons who applied - Respondents having no interest in the land at the relevant time - Are not entitled to statutory notices.*

LIMITATION OF ACTIONS - *Compulsory acquisition of land by government - Effect of Limitation clause on compensation - Applies to extinguish any valid right.*

FACTS

The plaintiffs/respondents filed an action against the defendant/appellant claiming N200,000.00 being special and general damages for trespass committed by the defendant on the plaintiffs' buildings and landed properties situate at Eleiyele Area Ibadan. They also sought injunction and claimed in the alternative N111,214.00 being the value of plaintiff's holding on the land in dispute. The land in dispute was part of the land acquired by the Western Nigeria Government for the use of the Federal Government. The Government caused compensation to be paid to those who applied for compensation. From the evidence, the respondents had no interest in the land as at the time it was compulsorily acquired by government.

The trial court after a consideration of all the evidence adduced, dismissed the respondents' claim. Their appeal to the Court of Appeal was allowed in part. The Appellant has now appealed to the Supreme Court raising 6 issues while the respondents cross appealed on 3 issues, but the apex Court

determined the matter on a major single issue.

ISSUE FOR DETERMINATION

"(1) Whether the acquisition of the land of the plaintiffs/respondents is valid.

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

Acquisition of land - Respondents that had no interest

1. Learned counsel clarified the submission further and said that at the time of the acquisition of the land in 1964 and the publication of the Notice No. 618 of 1975, the 1st and 2nd respondents had no interest in the land. They cannot, therefore, be said to be owners of the land and therefore persons entitled to the statutory notices under section 5 of the Public Lands Acquisition Law of Western Nigeria. I entirely agree with the learned counsel's submission that both the 1st and 2nd respondent could not be entitled to either the notice or compensation for the said acquisition since they had no interest in the land when it was acquired by the Government of Western Nigeria. (p. 1982 E)

Acquisition of land - Where there is evidence that compensation was paid

2. In conclusion, it is abundantly clear that all the lands purchased by the plaintiffs/respondents came into their possession several years after the same pieces of land had been compulsorily acquired by the Government of Western Region of Nigeria. The respondents, having no interest in the acquired land at the time, cannot be entitled to statutory notices under section 5 of the public Lands Acquisition Law of Western Nigeria. There is evidence that the Federal Government of Nigeria gave the then Western Nigerian Government, in 1972, a large sum of money as compensation for persons whose land was compulsorily acquired. There is also evidence that persons who applied for compensation were paid. (p. 1983 F)

Compulsory acquisition of land - Effect of limitation clause

3. From the foregoing, whether the vendor of the respondents had applied and were paid compensation for their land which had been acquired or not, under the provisions of Section 10(1) & (2) of Public Lands Acquisition Law, reproduced above, their right to claim for the compensation has been extinguished due to the effect of the limitation law on the right of their action. See Jimoh Adekoya Odubeko v. Victor Oladipo Fowler and Another (1993) 7 N.W.L.R. (part 308) 637. However, it is evidently clear that the compensation had in fact been paid to the vendors of the respondents. (p. 1984 C)

REPRESENTATION

F. N. Molokwu (Mrs.) D.C.L. Federal Ministry of Justice, C. Okpoko and D.A. Mohammed, with her, for the appellant.

S.A. Olanipekun, O. S. A. Afolabi, with him, for the respondents

CASES REFERRED TO

Bendel State & Ors. v. PCA Adeyemi (1986) 2 NWLR (Part 21) 175

Obikoya & Sons Ltd. v. Governor of Lagos State (1987) 1 NWLR (Part 50) 385

Odubeko v. Fowler (1993) 7 N.W.L.R. (Part 637)

STATUTE REFERRED TO

Public Lands Acquisition Law of Western Nigeria Cap. 105 ss. 5, 10(1) & (2)

LEAD JUDGMENT BY MOHAMMED JSC

This is from the decision of the Court of appeal, Ibadan, delivered on the 27th of May, 1993. The plaintiffs, hereinafter referred to as the respondents, filed an action against the appellant in the High Court, Ibadan, and claimed for the following reliefs:

"(a) The sum of Two hundred thousand naira (N200,000.00) being special and general damages for trespass committed by the defendant on the plaintiffs buildings and landed properties situate, lying and being at Eleiyele Area, Ibadan.

PARTICULARS:

SPECIAL DAMAGES:

1a. Loss of use of the plaintiffs holding on the said land

<i>1st plaintiff Residential Building -</i>	<i>N</i>	<i>K</i>
<i>N6,000.00 per annum for 6 years</i>	<i>36,000.00</i>	
<i>2nd plaintiff Residential Building -</i>		
<i>N6,000.00 per annum for 6 years</i>	<i>36,000.00</i>	
<i>3rd plaintiff A Shopping Complex -</i>		
<i>N3,600.00 per annum for 6 years</i>	<i>21,600.00</i>	
<i>4th plaintiff A Stretch of Land -</i>		
<i>N8,000.00 per annum for 6 years</i>	<i>48,000.00</i>	
<i>5th plaintiff Propose Fish Pond -</i>		
<i>N500.00 per annum for 6 years</i>	<i>3,000.00</i>	
TOTAL	=	144,600.00

GENERAL DAMAGES:

All Plaintiffs = *55,400.00*
N200,000.00

b. INJUNCTION restraining the defendant, its agents, servants and

all manner of persons that may be claiming through him from committing any or further act of trespass on the said land.

2. AND OR ALTERNATIVELY the sum of One Hundred and Eleven thousand, two hundred and fourteen naira (N111,214.00) being the value of plaintiffs holding on the land in dispute together with loss of earning as stated in 1(a) above.

PARTICULARS

1st plaintiff	Residential Building	N38,000.00
2nd, plaintiff	Residential Building	N57,00.00
3rd plaintiff	Shopping Center	N7,214.00
4th plaintiff	Blockwall Fence	N8,500.00
5th plaintiff	Proposed Fish Pond	<u>500.00</u>

N111,214.00".

At the end of the hearing the learned trial judge considered all the evidence adduced before him and, in a well considered judgment dismissed the respondent's claim.

Dissatisfied with the said judgment the respondents appealed to the Court of Appeal. The Court of Appeal made a detailed finding and concluded that the land in dispute was not validly acquired in that the acquisition did not comply with the provisions of the Public Lands Acquisition Law cap 105 Laws of Western Nigeria. The Court awarded N30,000.00 damages for trespass against the appellant and restrained it from committing any or further act of trespass on the respondents' land.

It is against that judgment that the appellant filed this appeal in this court. The respondents who were equally not satisfied with the judgment of the lower court filed a cross-appeal and complained against the following findings:

"(a) The Court endorsed the trial court's decision to disbelieve the testimonies of PW3 turned DW2-Mr. E.S. Ojoawo.

(b) The discrediting of the content of Exhibit D and failure to ascribe any probative value to its content.

(c) The confirmation of the way the trial court accepted and acted on the evidence of DW1 and Exhibit Z.

(d) The confirmation of the trial court's view that the cause of action arose before 1975 and that the cross-appellants could not feign ignorance of the acquisition".

Learned counsel for the respondents indicated in the respondents' brief that the respondents would by way of preliminary objection at the hearing of the appeal pray for the striking out of grounds of appeal, Nos. 3.02, 3.03 and 3.04 on the following grounds:

"(i) The points taken in the grounds are fresh points that were not raised at the Court below.

(ii) Leave to raise the new points was necessary but was never sought nor obtained by the appellant

(iii) A party that intend to raise a new point on appeal needs B special leave for same.

(iv) The Court below did not have the benefit of argument of all the parties on the fresh points".

However, when the appeal was heard the learned counsel did not move the court to strike out these grounds of appeal. The preliminary objection is therefore regarded as abandoned. It is accordingly struck out.

The appellant raised six issues for the determination of this appeal. The issues are:

"(1) Whether the acquisition of the land of the plaintiffs/respondents is valid.

D *(2) Whether the claim of the respondents is statute-barred.*

(3) Whether the Court of Appeal was right in granting General damages for trespass after it had struck out the respondents' ground of appeal against the High Court judgment dismissing their claim for trespass.

E *(4) Whether the Court of Appeal was right in granting the respondents' claim for injunction after it had struck out the respondents' ground of appeal against the judgment of the High Court dismissing their claim for injunction.*

(5) Whether the Court of Appeal was right in granting the sum of N30,000.00 as damages to all the respondents.

F *(6) Whether the respondents proved their case".*

The respondents on their part formulated the following three issues:

"(1) Whether the Court below was not right to have affirmed the finding of the trial court on the invalidity of the purported acquisition of the respondents' land.

G *(2) Whether the court below was not right to have awarded general damages of N30,000.00 to all the respondents and to have granted the injunctive relief having regard to the state of the parties cases on their pleadings and believed evidence tendered before the trial court.*

H *(3) Whether having regard to all the circumstances of the case, the case of the respondents was statute barred and whether the respondent did not prove their case to be entitled to judgment as found by the Court below".*

The main issue is the question of the validity of the acquisition. It is clear from the judgments of both the trial court and the Court of appeal that both courts agree that the land in dispute falls within the area of the land

acquired by the Western Nigeria Government for the use of the Federal Government. The Court of Appeal accepted the submission of the appellant that the land in dispute formed part of the land acquired by the Western Nigeria Government. This is clear in the lower court's judgment at pages 131 - 132 where it held as follows:

"The fact that the defendant did not make the identity of the land in dispute an issue by challenging the plaintiffs plan on it, as held supra is not the same as saying that the defendant accepted that the land in dispute was not within the land it acquired. It did not challenge the plan containing features of the land alright, but it pleaded that the land formed part of the land it acquired and adduced evidence to prove that averment vide the evidence of DW.1 supra. The averment as contained in paragraph (2) of the statement of defence states:

"The land, part of which is the subject matter of the plaintiffs' claim was acquired by the former Western Nigeria Government in 1964 and handed over to the National Fruit and Vegetable Research and Demonstration Centre which was the fore-runner of the National Horticultural Research Institute. The defendant will found on this acquisition and all the relative documents, records and plans thereto".

The learned trial judge believed the evidence of DW.1 and I think his finding on that is right, the fact that he could not superimpose Exh. p on Exh. Z as earlier stated (because a copy of the said Exh. p had not been deposited with the Ministry of Lands and Survey as should have been done) notwithstanding. D.W.1 was able to recognize a feature that was in Exh. p in Exh. Z, which assisted him in determining that the area covered by Exh. p is within that covered by Exh. Z."

The learned justice of the Court of Appeal, Aloma Mukhtar JCA 'who wrote the lead judgment, held that the acquisition of the respondents' land was invalid because the Western Nigeria Government did not give notices of the acquisition to the respondents as has been required by S.5 of the Public Lands Acquisition Law of Western Nigeria, Cap. 105. Cases of A.G. Bendel State & Ors. v. PCA Adeyemi (1986) 2 NWLR (Part 21) 175 and Obikoya and Sons Ltd. v. Governor of Lagos State (1987) 1 NWLR (part 50) 385 were referred to. Section 5 of Public Lands Acquisition Law of Western Nigeria reads:

"Whenever the Governor resolves that any lands are required for public purpose he shall give notice to the persons interested or obtaining or claiming to be interested in such lands or to the persons entitled by this law to sell or convey the same or to such of them as shall after reasonable inquiry be known to him (which notice may be as in form A in the schedule or to the like effect)".

Learned justice of the Court of Appeal referred to the judgment of the learned trial judge where he observed that the plaintiffs, if they were interested in the compensation, would have made their claim as required by section 10 (2), of the Public Lands Acquisition Law, Cap. 105 Laws of Western Region of Nigeria, within twelve months of the publication of the notices.

B The last notice was published on 18th December, 1975. The learned justice of the Court of Appeal pointed out that non-compliance with the provisions of section 5 of the public Lands Acquisition Law affects the validity of the acquisition and there is no evidence that such notices were served on the respondents.

C Learned counsel for the appellant, in the appellant's brief, submitted that none of the respondents was entitled to statutory notice as required by Section 5 of the Public Lands Acquisition Law. Counsel pointed out that by their pleadings the 1st and 2nd respondents purchased their own portion of the land in dispute in 1977. He referred to paragraph 4 of Amended Statement D of Claim to buttress his submission. I think the learned counsel is quite correct here, because paragraph 4 of the amended Statement of Claim reads:

"The 1st and 2nd plaintiffs obtained title to their portions of land by purchase under native law and custom sometimes in 1977 from the 5th plaintiff who had obtained title to the said land and other adjoining land E from Ajobiare family of Ibadan".

Learned counsel clarified the submission further and said that at the time of the acquisition of the land in 1964 and the publication of the Notice No. 618 of 1975, the 1st and 2nd respondents had no interest in the land. They cannot, therefore, be said to be owners of the land and therefore F persons entitled to the statutory notices under section 5 of the Public Lands Acquisition Law of Western Nigeria. I entirely agree with the learned counsel's submission that both the 1st and 2nd respondent could not be entitled to either the notice or compensation for the said acquisition since they had no interest in the land when it was acquired by the Government of West- G ern Nigeria.

Mrs. Molokwu, Deputy Director, Federal Ministry of Justice and Counsel to the appellant, pointed out also to the predicament of the case for the 3rd and 4th respondents. She argued that the time the 3rd and 4th respondents bought their portions of land was neither stated in the pleadings nor H given in evidence. I have looked through the pleadings and I agree with the learned counsel that the time the 3rd respondent purchased his land had not been pleaded. But the 4th and 5th respondents were said, in paragraph 6, of the Amended Statement of Claim, to have purchased their land 18 years before the filing of the Statement of Claim. This has put the time of purchase to be in

1969. However, in his evidence in chief the 5th respondent told the trial court that he bought his land in 1971.

There is another damaging evidence against the case of the 4th and 5th respondents. This came from their vendor, Alhaji Abudu Salami Akinola, who gave evidence as PW.5. In his testimony he said:

"I know Alhaji K.A. Yusuf. He lives with Busa family, who were granted land by my ancestor Ajebiare, who originally settled on the land. Th land granted to Busa family by our ancestor Ajebiare, is also at Eleyele. I do not know the extent of the land granted by Ajebiare to Busa family. I know that some compensation was paid to Alhaji Yusuf. But this was in respect of leasehold interest on the land. My family was also paid compensation at the same time in respect of my family leasehold interest in the land. My family is still expecting further compensation on the land. I do not know Alhaji Busari Adewuyi, I also do not know Lasisi Alawu. I do not know Onaolapo Durosinmi. I do not know Alhaji Gani Ileomo. I do not know Chief Bello Adeagbe.

My family received compensation in respect of leasehold interest about years ago. I became Mogaji of the family about 10 years ago".

This is clearly an admission from the vendor of 4th and 5th respondents that their land had been acquired and that compensation had been paid to the family. His testimony that the compensation was in respect of leasehold interest in the land was clearly an attempt to dodge telling the obvious truth that the compensation his family received was for their land which the Western Nigeria Government acquired. There was no pleading to support the clarification given by PW.5 during re-examination by Mr. Olanipekun that the land he was referring to was the one allegedly leased to Nigersol.

In conclusion, it is abundantly clear that all the lands purchased by the plaintiffs/respondents came into their possession several years after the same pieces of land had been compulsorily acquired by the Government of Western Region of Nigeria. The respondents, having no interest in the acquired land at the time, cannot be entitled to statutory notices under section 5 of the public Lands Acquisition Law of Western Nigeria.

There is evidence that the Federal Government of Nigeria gave the then Western Nigerian Government, in 1972, a large sum of money as compensation for persons whose land was compulsorily acquired. There is also evidence that persons who applied for compensation were paid.

Section 10(1) & (2) of public Lands Acquisition Law, Cap. 105, Laws of Western State of Nigeria provides as follows:

"10.(1) If for six weeks after the service and publication as aforesaid of such notice no claim shall be lodged with the Governor in respect of

such lands, or if the person who may have lodged any claim and the Governor shall not agree as to the amount of the compensation to be paid for the estate or interest in such lands belonging to such person, or which he is by this Law enable to sell and convey, or if such person has not given satisfactory evidence in support of his claim or if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the High Court, which court shall have jurisdiction to hear and determine in all cases mentioned in this section upon a summons taken out by the Governor, or any person holding or claiming any estate or interest in any lands named in any notice aforesaid, or enabled or claiming to be enabled by this Law to sell and convey the same".

From the foregoing, whether the vendor of the respondents had applied and were paid compensation for their land which had been acquired or not, under the provisions of Section 10(1) & (2) of Public Lands Acquisition Law, reproduced above, their right to claim for the compensation has been extinguished due to the effect of the limitation law on the right of their action. See Jimoh Adekoya Odubeko v. Victor Oladipo Fowler and Another (1993) 7 N.W.L.R. (part 308) 637. However, it is evidently clear that the compensation had in fact been paid to the vendors of the respondents..

The decision on the issue of validity of the acquisition of the respondents' land has determined this appeal. The success of the appellant on this issue has also brought about the failure of the respondents' cross appeal.

In the result, this appeal succeeds and ti is allowed. The judgment of the Court of Appeal is set aside. The judgment of the trial High Court dismissing the claim of the respondents is hereby restored. The cross appeal has also failed and it is dismissed. I award the appellant N10,000.00 cost against the respondents

G BELGORE JSC

There was clear evidence that those entitled to compensation did apply and were duly paid after complying with the provisions of S. 10(1) and (2) of Public Lands Acquisition Law of the Western State of Nigeria. All those who alleged a claim to the compensation but never claimed within the statutory period forfeited their rights. But the peculiar claim by the plaintiffs/ respondents in this case is that they were entitled to compensation, rather they posited that their vendors were not paid the compensation without explaining why those vendors were not party to this suit. I therefore agree with Mohammed J.S.C. that this appeal has great merit and I also allow it for the

reason adumbrated in his judgment indicating the errors made by the Court of Appeal.

I make the same consequential orders as to costs as in the said judgment.

B

WALI JSC

I have read before now the lead judgment of my learned brother Mohammed JSC and I entirely agree and endorse the reasons he gave for allowing the appeal. For same reasons I also hereby allow the appeal set aside the judgment of the Court of Appeal and restore the judgment of the trial court. I endorse the order of costs made in the lead judgment.

OGUNDARE JSC

I agree, for the reasons given by Mohammed JSC., that this appeal has merit. My learned brother has, in his judgment, set out the main issue calling for determination in this appeal and resolves that issue in favour of the Appellant. On the pleadings and evidence, the Court below was clearly in error to have held that the acquisition by the Western Nigeria Government, of the land in dispute was invalid. If the Court below had properly directed its mind to the evidence, particularly the date the land was acquired and the dates the respondents purported to acquire any interest in it, it would not have arrived at the conclusion that the acquisition was invalid for lack of notice of it being served on the Respondents. They could not have been served with such notice as required by section 5 of the public Lands Acquisition Law, Cap F 105 Laws of Western Nigeria 1959 as they had no interest in the land at the time of the acquisition. The Ajobiaro Family, the original owners of the land, knew of the acquisition and claimed compensation which was paid. See the evidence of PW5, Alhaji Abdul Salami Akinola.

As lack of notice was the main reason given by the Court below for upsetting the judgment of the trial High Court and as that reason is untenable, it follows that this appeal succeeds and it is allowed by me. The judgment of the Court below is set aside and, in its place, I restore the judgment of the trial High Court dismissing Respondents' claims.

I abide by the order for costs made in the judgment of my learned brother Mohammed, JSC.

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ONU JSC

Having had a preview of the judgment of my learned brother Mohammed, JSC just delivered, I agree with his reasoning and conclusion that the appeal is devoid of merit and must perforce fail. Accordingly, I too, dismiss it and make the same consequential orders as therein contained inclusive B of the costs assessed.

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