

SUPREME COURT OF NIGERIA
7TH MARCH, 1997. SC. 142/1992
CORAM:-S.M.A. BELGORE, I.L. KUTIGI, U. MOHAMMED,
S. U. ONU, A. I. IGUH, JJSC.

IRABOR OVIawe APPELLANT
(By his Attorney Godwin Irabor)
AND
1. INTEGRATED RUBBER PRODUCTS 1ST RESPONDENT
NIG LIMITED
2. ATTORNEY-GENERAL, BENDEL STATE
(Now Attorney-General, Edo State) 2ND RESPONDENT

APPEALS - *Findings of trial court - That is not based on the pleadings - Will be discountenanced.*

LAND LAW - *Compulsory acquisition of land by government - Whether it is for public purpose.*

LAND LAW - *Compulsory acquisition - Issuance of notice and not service thereof - Vests the land in the government.*

PLEADINGS - *Purpose of pleadings - Is not to take the other party by surprise - Whether trial judge properly raised an issue - That was not pleaded.*

FACTS

The plaintiff/appellant before the Benin City high court, filed an action against the 1st respondent/defendant claiming declaration of title, damages for trespass, nullification of 1st respondent's certificate of occupancy and perpetual injunction. The land in dispute being property of the appellant, was compulsorily acquired by the Bendel State Government who granted certificate of occupancy to the 1st respondent to use the land for industrial purposes.

In the course of trial, suo motu intervention by the trial judge made the appellant reluctantly amend his pleadings thereby bringing in the 2nd defendant/respondent as a party. The trial court found in favour of the appellant after its consideration of some matters that were not pleaded. Respondents' appeal to the Court of Appeal was allowed. Appellant has now appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

1. Whether the issue of the invalidity of the compulsory public acquisition of the land in dispute was properly raised for determination on the pleading before the trial court. Etc, see p. 475

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

Purpose of pleadings - Trial judge not to raise issue not pleaded

1. You have to plead material facts which would permit the judge to apply the law to the facts or take judicial notice of it. If the appellant has pleaded that notice of the acquisition of the land in dispute was not published in at least two national daily newspapers circulating in the area where the land is located, the respondent would join issue on it. The aim of pleadings is to give parties notice of the case to be met in court to enable them prepare their case before hand, in order not to be taken by surprise - George v. Dominion Flour Mills (1963) 1 All NLR 71. But if the trial judge, *suo motu*, without any pleading raised on the issue, takes judicial notice of the failure to publish notice of acquisition of the land in dispute, in at least two national daily newspapers, he has taken the case completely out of the realm contemplated by the parties. He has travelled outside the pleadings and evolved a case which is not what the party pleaded. (p. 478 A)

Whether land was acquired for public purpose

2. It is therefore plain that compulsory acquisition of land for industrial purpose falls within the definition of acquisition for public purpose. (p. 479 A)

Appeals - Findings of trial court

3. The appellant's counsel contended that specific findings made by the trial High Court against the 1st respondent were not made a subject of appeal before the Court of Appeal and are therefore subsisting and binding. This is why the learned judge found thus:

"I find as a fact that the first defendant without consent of the plaintiff (i.e. Appellant) stubbornly devastated the land of the plaintiff".

This decision was made against all rules of pleadings. The learned counsel for the appellant had failed to point out the paragraphs in the Statement of Claim where such a decision could be hinged. (p. 479 C)

Compulsory acquisition - Issuance of notice

4. I am in full agreement that what is material to the vesting of land in the Government under the Act is not the service of the Notice but the issuance of notice of intention to acquire the land. The meaning of the Statute is crystal

and clear and I can see no other meaning to be attributed to it other than its ordinary and clear meaning. One can read S.20 of the Decree many times over and still agree that the issuance of the notice of intention to acquire the land and not the service of it is material to the vesting of the land in the Government. The cross-appeal therefore succeeds. (p. 481 D)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. Construction of unambiguous statute

The rule of construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in the natural and ordinary sense. The words themselves alone, do in such a case, best declare the intention of the lawgiver. (p. 480 H)

BELGORE JSC

2. Court not to amplify or reduce the parties' pleadings

When parties, by their pleadings, present the issues they intend to fight, it is not the business of the Court to amplify or reduce the issues. By the pleadings of the parties the matters in controversy were clear but learned trial judge without being moved by any of the parties advised the appellant to amend his pleading. Though reluctant to heed this advice, the appellant, under some pressure it seems, succumbed and not only amended but added more to what he was advised to do. This singular act of the trial judge did not manifest his holding an even balance and is hereby deprecated. (p. 481 H)

REPRESENTATION

Dr. M. Odje SAN and A. B. Ajayi, with him for the appellant
Chief F.R.A. Williams, SAN, T. E. Williams and Chief A. B. Thomas, with him
for the 1st Respondent
B. O. Kalu (Mrs.) D. C. L. Ministry of Justice Edo State for the 2nd Respondent

CASES REFERRED TO

Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157
Adebisi v. Oke (1967) N.M.L.R. 64
Finnih v. Imade (1992) 1 NWLR (Pt. 219) 511
George v. Dominion Flour Mills (1963) 1 All NLR 71
Ereku v. Military Governor of Mid-Western State (1974) 1 All NLR 695
Emegokwe v. Okadigbo (1973) 4 S.C. 113

Awolowo v. Shagari (1979) All NLR 120

Becke v. Smith (1836) 2 M & W 191 at page 195

L.S.D.P. v. Banire (1972) 5 NWLR (Pt. 243)

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

Lemonu v. Balogun (1975) 3 S.C. 169

B Shell B. P. v. Abedi (1974) 1 All N.L.R. 1

STATUTES REFERRED TO

Public Lands Acquisition Law Cap. 105 s. 9(3)

Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 s.

C 20

Public Lands Acquisition Law Cap.136

Laws of Bendel State 1976 s. 2(h)

LEAD JUDGMENT BY MOHAMMED JSC

D The central issue for the determination of this appeal is the question whether or not there has been a valid compulsory acquisition by the Government of Bendel State (now Edo State) of a parcel of land over which the appellant, who was plaintiff before the trial High Court, claims that he is entitled to a Statutory Right of Occupancy. The appellant contended that the E purported compulsory acquisition of the land in dispute was null and void. The claims of the appellant before the High Court are as follows:

"(a) A declaration that before the Land Use Decree 1978 at all material time the plaintiff is under Bini Customary Law and custom the owner and is in possession of the parcel of land measuring 400ft x 400ft at F Ekae village Benin City within the jurisdiction of this Honourable Court, and therefore entitled to a statutory Right of Occupancy in and over the said land. A survey plan delineating the said land having been filed in Court.

(b) N100,000 (One hundred thousand Naira) being special and general damages against the Defendant in that on or about the month of G October, 1986 the Defendant broke into the whole land in physical possession of the plaintiff destroyed his farm land, economic and cash crops thereon and commenced development thereon without the consent and permission of the plaintiff purporting the said land to be his (defendant) own

(c) A declaration that the purported Certificate of Occupancy No. H 6190 of 22nd August, 1986 granted to the Defendant by the Bendel State over the said land is null and void.

(d) A perpetual injunction to restrain the Defendant, his servants and/or agents from any further or continued acts of trespass on the said land."

Pleadings were ordered and duly filed. It is relevant to observe that at the commencement of the trial of this action the 1st Defendant, hereinafter referred to as 1st Respondent, was the only defendant in this case. After six witnesses had testified for the plaintiff the case for the plaintiff was closed. Mr. Okeaya-Inneh for the Integrated Rubber Products, Nigeria, Limited opened the case for the defence. Three witnesses gave evidence. Thereafter the learned counsel applied for adjournment to bring up an application to amend the Statement of Defence. The application was granted. The learned trial judge, without being asked by the plaintiff and without any prior application for such amendment suo motu ordered as follows:

"The plaintiff in light of the defence shown, should file an amended statement of claim within thirty days making the Attorney-General a defendant and adding an alternative claim for compensation to enable all issues in the case to be effectually and completely settled under Order 7 Rule 10(2) of the High Court (Civil procedure Rules) 1970."

Mr. Osifo, learned counsel for the appellant, was not happy with the Court's order joining the Attorney-General to the suit. So, on the next adjourned date he applied to the court to vacate that order. The learned trial judge, without waiting for a reply from the defence counsel intervened and explained to Mr. Osifo that the idea of the alternative prayer is to get compensation where possible. It is clear that the issue of compensation was brought into the case by the learned trial judge. It was not then part of the appellant's claim. Learned trial judge by this act would not easily be seen as holding an even balance between the parties, for he was, suo Motu, amplifying the claim of the appellant against what he initially voluntarily pleaded,

Mr. Osifo was still unconvinced. He asked for time to consult his clients. After the consultation the learned counsel told the court that his client did not support the joinder of the Attorney-General and that they were not asking for compensation unless it was warranted within the appellant's statement of claim. The learned trial judge refused to vacate the order he made and directed that if the appellant failed to carry out the suggested amendment within the thirty days given he could continue the case on the basis of the existing statement of claim.

Mr. Osifo succumbed to the pressure, amended the Writ of summons and made the Attorney-General the 2nd defendant. He now claims jointly and severally against the two defendants. He also added the following head of claim:

"(1b) A declaration that the purported compulsory acquisition of plaintiff's land measuring 400ft X 400ft at Ekae Benin-City vide Bendel State of Nigeria Gazette No. 44 Vol. 13 of 25th day of August, 1976 is null

and void OR in the ALTERNATIVE N1,000,000.00 (One million Naira) damages for compulsory acquisition of plaintiff's land aforesaid".

In the Amended Statement of Claim, he introduced two new paragraphs which were clearly beyond the amendment authorized by the court. The two new paragraphs read as follows:

B "26. The plaintiff will contend at the trial of this suit that there cannot be compulsory acquisition of land by the Government without paying compensation to the respective owners of the land and/or developers.

27. The plaintiff will also contend at the trial of this action that even where there is effective acquisition of land by the Government for public purpose absolutely, the Government cannot subsequently use the land for private purpose or give the private concern for private purpose. The plaintiff hereby pleads the Articles and Memorandum of Association of the 1st defendant company. It will be founded upon at the trial of this action. The 1st defendant company is hereby given notice to produce in court during the trial of this action the original of the said Articles and memorandum of Association of the 1st defendant".

Although the learned trial judge had given an order for the joinder of the Attorney-General as the 2nd defendant and Mr. Osifo had filed the amended Writ of summons and Statement of claim, the trial continued without the Attorney-General. In fact, it was after the close of the case for 1st Defendant and the adjournment for judgment that a Principal State Counsel from the Attorney-General's chambers, one Mrs. B. O., Kalu, appeared before the court and applied for leave to defend the action and file a Statement of Defence. The application was not opposed and the court granted the prayers sought. One F witness gave evidence as D.W.5 and the defence closed its case.

After considering all the evidence adduced the learned trial judge made the following findings of fact.

1. The appellant was not served with any notice of acquisition in respect of the land.

G 2. The requirement of publishing the acquisition notice in the national newspapers is mandatory. Section 9(3) of the Public Lands Acquisition law Cap. 105 provides that:

"All notices served under the provisions of this law shall be published once at least in the Bendel State Gazette, and at least two national H daily newspapers circulating in the area".

3. Non compliance with the provision of Public Lands Acquisition law makes the acquisition incomplete and invalid and the land did not vest in the 2nd defendant and no property passes under it. The learned trial judge concluded his judgment in favour of the appellant with the following declara-

tions:

A. It is therefore declared that before the promulgation of the Land Use Decree in March 1978, the plaintiff under Bini Customary law was owner in possession of the parcel of land measuring 400ft x 400ft at Ekae Village, Benin City and so entitled to a certificate of occupancy of the said land. B

B. It is also declared that the purported compulsory acquisition of the said land measuring 400ft x 400ft at Ekae Village as published in the Bendel State of Nigeria Gazette No. 44 Volume 13 of 25th August, 1976 was not completed and so invalid and void.

C. N50,000.00 general damages against the 1st defendant for breaking and entering the said land of the plaintiff against stiff opposition from him and destroying his farm land, economic trees and cash crops and the ruins of his grandfather's grave. C

D. The 1st defendant, its servants and or agents are hereby restrained from further and continued acts of trespass on the said land. The order is attached to Exhibit 'A' with the plan No. AAA/BD/543/86." D

Dissatisfied with the judgment of the trial High Court the 1st and 2nd Defendants appealed to the Court of Appeal. The Court of Appeal, in a well considered judgment, allowed the appeal on the ground that the trial court was in error to have found in favour of the plaintiff on facts not pleaded. The Lower Court also rejected the 1st Respondent's alternative argument relating to the validity of the compulsory acquisition of the land in dispute by the Bendel State Government. The argument of the 1st Respondent was based on the provisions of section 20 of the public Lands Acquisition (Miscellaneous Provisions) Decree, No. 33 of 1976. E

With the leave of the lower court Dr. Mudiaga Odje, SAN., appearing for the appellant, filed this appeal and supported it with three grounds of appeal. Two more grounds were added with the leave of this court. From those five grounds of appeal the following issues have been raised for the determination of the appeal: F

1. Whether the issue of the invalidity of the compulsory public acquisition of the land in dispute was properly raised for determination on the pleading before the trial court. G

II. Whether the land in dispute was on the evidence validly compulsorily acquired, and/or required for public purposes absolutely. H

III. Whether the Court of Appeal was justified in allowing the appeal and dismissing the appellant's claim.

The 1st Respondent is also not satisfied with the decision of the Court of Appeal in rejecting the company's alternative argument relating to

the validity of the compulsory acquisition of the land in dispute by the State Government. Hence, Chief Williams, S.A.N., with the leave of this court filed a cross-appeal against that decision. Against the single ground of appeal filed by the 1st Respondent in support of the Cross-appeal Dr. Mudiaga Odije, S.A.N., formulated the following question as the lone issue for the determination of the cross-appeal:

"Whether on the evidence and circumstances of this case, section 20 of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 could be invoked with respect to the vesting of title to the land in dispute in the 2nd Respondent".

C Chief F.R.A. Williams, S.A.N., relied on the issues raised by the appellant in his submissions relating to this appeal. In issue 1 Dr. Mudiaga Odje, S.A.N., submitted that the appellant had duly raised the issue of the invalidity of the alleged compulsory public acquisition of the land in dispute in paragraphs 23, 25, 26 and 29 of his amended statement of claim. He also argued D that the 1st Respondent joined issue with the appellant on the question of validity of the said compulsory public acquisition of the land in dispute in paragraphs 4 and 4(a) of the Statement of Defence and the 2nd Respondent did not so in Further Amended Statement of Defence, paragraphs 4 - 6, 12(a) and 12(b). Dr. Odje further explained that the relevant law on the pleading of E invalidity of acquisition is that a party challenging the validity of revocation of right of occupancy or compulsory acquisition of land need only plead the invalidity of the revocation or acquisition, and not the reasons or grounds of such revocation or acquisition which are matters of evidence. He referred to the case of Osho & Anor. v. Foreign Finance Corporation & Anor. (1991) 4 F NWLR pt. 184) 157 where Obaseki, JSC., in his lead judgment in that appeal, held:

"If on the pleadings an issue of validity of the revocation is joined and evidence is led to establish the invalidity of the revocation, the court cannot escape the duty of declaring the revocation invalid notwithstanding G the fact that those reasons or grounds were not pleaded. Invalidity having been pleaded, failure to plead the evidence is not fatal. See Peenok Investment Ltd. v. Hotel Presidential Ltd. 1982 NSCC Vol. 13 page 477; (1983) 4 NCLR 122; (1982) 12 S.C. 17".

H Chief Williams, S.A.N., contended that the case of Foreign Finance Corporation, cited above, was not an authority for the proposition advanced above by Dr. Odje, SAN. I think Chief Williams is right because the case of Foreign Finance Corporation did not deal with the issue of compulsory acquisition of land and the issue of pleading invalidity of the revocation of a right of occupancy was not in dispute there. In that judgment Obaseki, J.S.C found

that invalidity of the revocation had been pleaded and as such the case cannot be an authority where a party fails to plead material facts that the compulsory acquisition was invalid. It is pertinent to look at paragraphs 23, 25 and 26, which Dr. Odje referred to and submitted that the issue of invalidity of the compulsory public acquisition of the land in dispute had been pleaded there. Those paragraphs read:

"23. The plaintiff avers that he was not aware that his land (i.e the land in dispute) had been compulsorily acquired by either State or Federal Government until 1st defendant wrote to him to say so; nor was compensation paid to him for the developments and/or improvements on the land.

25. The plaintiff will contend at the trial of this action that the 1st defendant has not title to the land in dispute and therefore has nothing to be covered by a certificate of occupancy referred to in paragraph 24 above.

26. The plaintiff will contend at the trial of this suit that there cannot be compulsory acquisition of land by the Government without paying compensation to the respective owners of the land and/or developers".

Paragraph 29 is the claim of the appellant as given in the amended Writ. I have earlier in this judgment reproduced paragraph (1b) which is the new addition after the learned trial judge ordered for the amendment of the appellant's pleading. I have perused paragraphs 23, 25 and 26 and in my considered view it cannot be correct to say that the issue of invalidity of compulsory public acquisition of the land in dispute has been pleaded there. As a matter of fact, invalidity of compulsory acquisition is not the case of the appellant before the trial court. His case was based on lack of knowledge about the compulsory acquisition. If, as the learned trial judge had found, that notice of the acquisition was not published in at least two daily newspapers circulating in the area and that the plaintiff was not served with the notice of the acquisition the appellant must plead those material facts. A trial judge must not import into his judgment issues not pleaded or raised at the trial. See Lawal Adebisi and others v. Salihu Oke (1967) N.W.L.R. 64. It is not the legal result which Chief Williams argued to have been omitted in the appellant's pleadings it is those material facts which would ascertain the validity of the legal result which must be pleaded. See Peenok Investment Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. 1.

In the alternative argument Learned Counsel for the appellant submitted that even if the issue of the invalidity of the acquisition is not pleaded it is the contention of the appellant that the provisions of the law relating to such issue (i.e. The Public Lands Acquisition Law,) sections 5,8 and 9, cap. 136, Laws of Bendel State 1976 are essentially matters in respect of which the courts are enjoined to take judicial notice in accordance with section 74 (1) (a)

of the Evidence Act. - Finnih v. Imade (1992) 1 NWLR (Pt. 219) 511. This submission is too elementary. I have given answer to this submission above.

You have to plead material facts which would permit the judge to apply the law to the facts or take judicial notice of it. If the appellant has pleaded that notice of the acquisition of the land in dispute was not published in at least two national daily newspapers circulating in the area where the land is located, the respondent would join issue on it. The aim of pleadings is to give parties notice of the case to be met in court to enable them prepare their case before hand, in order not to be taken by surprise - George v. Dominion Flour Mills (1963) 1 All NLR 71. But if the trial judge, suo motu, without any pleading raised on the issue, takes judicial notice of the failure to publish notice of acquisition of the land in dispute, in at least two national daily newspapers, he has taken the case completely out of the realm contemplated by the parties. He has travelled outside the pleadings and evolved a case which is not what the party pleaded.

I now move to issue II. The question raised in issue II is whether the land in dispute was on the evidence validly compulsorily acquired, and/or required, for public purposes absolutely. Learned Senior Advocate Dr. Odje submitted that there is no dispute over the customary title of the appellant to the land in dispute. Also, it is common knowledge that the 1st respondent is a viable private liability company carrying on profitable business of rubber processing into tyres, tubes and other finished products for industrial, household and personal uses. Dr. Odje pointed out that by the purported notice of acquisition headed: Bendel State Notice No. 380, dated 25th August, 1976, the land in dispute was ostensibly required by the Government for public purposes absolutely. Yet the same land was subsequently granted to the 1st respondent for its private business and commercial use. Learned counsel further submitted that the subsequent grant to 1st respondent had invalidated the public acquisition. He referred to a number of cases. I will mention only two of them. Ereku v. Military Governor of Mid-Western State & Ors. (1974) 1 All NLR 695 and L.S.D.P. v. Banire & Ors. (1992) 5 NWLR (Pt. 243) 620 at pp. 639 - 641.

Chief Williams, SAN., in answer to the submission of Dr. Odje, SAN, on whether the land was acquired for public purpose, drew our attention to the definition of "Public Purpose" in the Public Lands Acquisition Law, Cap 136, Laws of Bendel State 1976. In section 2(h) acquisition for public purpose includes:

"(h) for or in connection with housing estates, economic, industrial, or agricultural development and for obtaining control over land required for or in connection with such purposes".

It is therefore plain that compulsory acquisition of land for industrial purpose falls within the definition of acquisition for public purpose. The cases cited by Dr. Odje are not relevant for the determination of this appeal. Ereku v. Military Governor of Mid-Western State (supra) was decided under the old law - Public Lands Acquisition Law, Cap 105 of Western Region 1959 applicable at that time to the Mid-Western State. The case of L.S.D.P. v. Banire B (supra) is a decision of the Court of Appeal and the facts of that case are distinguishable from the case in hand. In Banire's case L.S.D.P. acquired privately developed properties and let it out to traders. This I agree is against the intentment of Public Lands Acquisition Act.

The appellant's counsel contended that specific findings made by the trial High Court against the 1st respondent were not made a subject of appeal before the Court of Appeal and are therefore subsisting and binding. This is why the learned judge found thus: C

"I find as a fact that the first defendant without consent of the plaintiff (i.e. Appellant) stubbornly devastated the land of the plaintiff". D

This decision was made against all rules of pleadings. The learned counsel for the appellant had failed to point out the paragraphs in the Statement of Claim where such a decision could be hinged. See Emegokwe v. Okadigbo (1973) 4 S.C. 113.

Finally I will now consider the cross-appeal. Chief Williams, S.A.N., E filed a single ground in support of his argument that the Court of Appeal was in error to reject the 1st respondent's alternative argument relating to the validity of the compulsory acquisition of the land in dispute by Bendel State Government. The ground of appeal reads:

"The court below erred in law in refusing or declining to uphold the submission that even if the non-compliance with Section 9(3) of the Public Lands Acquisition Act was properly pleaded the plaintiff was not entitled to judgment by virtue of Section 20 of Decree No. 33 of 1976.

Particulars of Error

(a) *Section 20 of Decree No. 33 of 1976 stipulates that on the expiration of six weeks from the date of notice of intention to acquire land, title to such land in fee simple shall vest in the Military Governor of the State.* G

(b) *In the premises the court below should have upheld the aforementioned submission."* H

The simple argument put forward by Chief Williams in support of this cross-appeal is based on correct interpretation to the provisions of Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976. Chief Williams submitted that what is material to the vesting of land in the Govern-

ment under that law is not service of the Notice of Acquisition but the making of the Notice of intention to acquire the land. He referred to S.20 of the Decree which reads:

"On the expiration of six weeks from the date of the notice of intention to acquire land under section 5 of the Public Lands Acquisition Act or under the appropriate provision of the equivalent State law title to the land in fee simple shall vest in the Head of the Federal Military Government in trust for the Federal Military Government, or as the case may be, in the Military Governor of the State in trust for the Government of the State, free from all adverse or competing rights, titles or interests whatsoever:

C Provided that nothing in this section shall affect the right of the owner of the land to compensation as provided under this Decree".

Chief Williams submitted further that if the attention of the High Court had been drawn to the provisions of this enactment, it could not possibly have come to the conclusion to which it did regarding the validity of the compulsory acquisition. On the contrary the conclusion that the land became vested in the Government of Bendel State in fee simple with effect from the date when the notice of intention to acquire came into existence was inescapable. He concluded that the Court of Appeal failed to give effect to the plain meaning of the enactment.

E Dr. Odje, S.A.N., in answer to the above, argued that the cross-appeal fails and should be dismissed because the learned trial judge made specific findings as to the invalidity of the purported acquisition on the grounds inter alia of non service of the notice on the appellant. Secondly, there has been no appeal by the respondents against the specific findings referred to

F above. Learned counsel finally submitted that section 20 of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 could only be invoked with respect to lands validly acquired. He referred to the cases of Obikoya & Sons v. The Governor of Lagos State & Anor. (1987) 1 NWLR The Attorney General of Bendel State and 2 ors. v. P.L.A. Aideyan (1989) 4

G NWLR (Pt. 118) 646 at 673-676.

The arguments of Dr. Odje could be tenable if the appellant had pleaded material facts ascertaining invalidity of compulsory acquisition of the land in dispute. In the consideration of the question raised for the determination of this cross-appeal I have considered the general rule of interpretation of Statutes. The rule of construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in the natural and ordinary sense. The words themselves alone, do in such a case, best declare the

intention of the lawgiver..... Per Tindal, C.J., when advising the House of Lords on the Sussex Peerage claim (1844) CL & Fin 85 at 143. In the case of Chief Obafemi Awolowo v. Alhaji Shehu Shagari and 2 ors. (1979) ALL NLR 120 Obaseki J.S.C., referred to the decision of Parke B in the case of Becke v. Smith (1836) 2 M & W 191 at page 195 in which he held:

"It is a very useful rule in the construction of Statute to adhere to B the ordinary meaning of the words used and to the grammatical construction unless that is at variance with the intention of the legislature, to be collected from the Statute itself, or leads to any manifest absurdity or repugnance in which case the language may be varied or modified so as to avoid such inconvenience, but no further". C

The provisions of section 20 of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 which is the subject of interpretation is clear and unambiguous. One does not require any magnifying glass to read its meaning and intendment. The Court of Appeal, in my view, is in error to say that it did not carry the meaning which chief williams urged us to accept as the correct interpretation to its provisions. **I am in full agreement D that what is material to the vesting of land in the Government under the Act is not the service of the Notice but the issuance of notice of intention to acquire the land. The meaning of the Statute is crystal and clear and I can see no other meaning to be attributed to it other than its ordinary and clear meaning. One can read S.20 of the Decree many times over and still agree that the E issuance of the notice of intention to acquire the land and not the service of it is material to the vesting of the land in the Government. The cross-appeal therefore succeeds.**

I have not referred to the submissions of the learned counsel for the F 2nd respondent in this judgment because during the hearing of this appeal Mrs. B. O. Kalu for the 2nd respondent associated herself with all the submissions of Chief Williams, S.A.N.

In the result, the main appeal fails and it is dismissed. The cross-appeal succeeds and it is allowed. The respondents are entitled to the costs G of this appeal and I award each of them N1000.00.

BELGORE JSC

When parties, by their pleadings, present the issues they intend to H fight, it is not the business of the Court to amplify or reduce the issues. By the pleadings of the parties the matters in controversy were clear but learned trial judge without being moved by any of the parties advised the appellant to amend his pleading. Though reluctant to heed this advice, the appellant,

under some pressure it seems, succumbed and not only amended but added more to what he was advised to do. This singular act of the trial judge did not manifest his holding an even balance and is hereby deprecated. Had this incident been made a ground of appeal and pursued, this Court will certainly visit the entire proceedings differently. But the main issues in controversy, by the nature of this case, could be separated from the act of the trial judge explained above without in least doing injustice, the matter is therefore better left to rest.

It is a notorious principle of our system of civil litigation that pleadings are to contain and contain only succinct statements of facts the parties rely upon for their claim. Thus evidence by which those facts set out in the pleadings will be proved will be left for the hearing and should not be part of the pleadings. Similarly law is not pleaded. Failure to publish in two newspapers circulating in the state (Bendel State) was not pleaded and thus no issue was joined on it; similarly the assertion that no notice of compulsory acquisition was served on the holder of the land was not pleaded and could therefore not form part of the dispute between the parties. The purpose of pleadings is to let the adversaries know what they face in their dispute; and matters not pleaded cannot form part of the case because prosecution of civil cases should not be by way of an ambush whereby a party is surprised by facts entirely unpleaded (Ferdinand George vs Dominion Flour Mills Ltd. (1963) 1 ALL NLR 71).

Section 2(h) Public Lands (Acquisition) Law, Cap 136, Laws of Bendel State 1976 is clear as to the definition of "public purpose". to wit, for housing estates, economic, industrial or agricultural development and for obtaining control over land required for or in connection with such purposes". The cases of Ereku vs Military Governor of Mid-Western State & Ors. (1974) 1 ALL NLR 695 and L.S.D.P. vs Banire & Ors. (1972) 5 NWLR (pt 243) were decided in the light of the subsisting statutes then i.e. Laws of Northern Nigeria 1963 and Laws of Lagos State, the 1976 Laws of Bendel State had changed the nature of "public purpose" and these cases are no more applicable.

I find no merit in this appeal and I therefore dismiss it. The cross-appeal succeeds and I adopt entirely the reasoning in the judgment of my learned brother, Uthman Mohammed, JSC, in dismissing the main appeal and upholding the cross-appeal. I make the same consequential order as to costs.

KUTIGIJSC

I read in advance the judgment just delivered by my learned brother Mohammed J.S.C. I agree with his reasoning and conclusions. The issue of the validity of the compulsory acquisition of the property in dispute was not raised for determination on the pleadings. The learned trial judge was therefore in error to have given judgment to the plaintiff on the basis of what was not pleaded and the Court of Appeal acted rightly when it set aside that judgment. The appeal therefore fails and it is hereby dismissed. B

As for the cross-appeal, I agree with Chief Williams that having regard to the provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree No.33 of 1976, land compulsorily acquired by the government vested in the Governor of Bendel state upon the making or coming into existence of the notice of intention to acquire the land and not when the notice of acquisition was served. I also agree with him that the grant of the land in dispute by the former Government of Bendel State to the 1st Defendant did not invalidate the compulsory acquisition. The cross-appeal therefore succeeds and is allowed. The Respondents are awarded costs of one thousand (N1,000.00) naira each. D

ONUJSC

I am in full agreement with the judgment just delivered by my learned brother Mohammed, J.S.C, a preview of which I was privileged to have before now. The appeal lacks merit and ought therefore to fail. It is accordingly dismissed while the cross-appeal being meritorious, is hereby allowed by me. E

I, too, endorse the consequential orders inclusive of those as to costs respectively ordered. F

IGUHIJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Mohammed, J.S.C. and I agree entirely with the reasoning and conclusions therein. G

A close study of the pleadings filed in the suit makes it clear that the question of the validity of the compulsory acquisition of the property in dispute was not therein raised as an issue for the determination of the court. It cannot be over-emphasized that parties are bound by their pleadings and that evidence which is at variance with the averments in the pleadings goes to no issue and should be disregarded by the court. See Emegokwe v. Okadigbo (1973) 4 S.C 113, Ekpenyong and others v. Chief Ayi (1973) 5 S.C 169, Kalu

Njoku and others v. Ukwu Eme and others (1973) 5 S.C. 293.

It is also trite that it is not open to a party to depart from his pleadings and to put up a different case nor, equally, is it open to the trial court to depart from the case pleaded by the parties and to found its judgment on matters which are neither pleaded nor constitute issues as settled in the pleadings.

B See too Lemonu v. Balogun (1975) 3 S.C.169.

The learned trial Judge based his judgment for the appellant on the premise that the acquisition of his land was invalid in that there was non-compliance with Section 9 (3) of the Public Lands Acquisition Law of Bendel State, a matter which did not constitute an issue before him as per the pleadings of the parties. No where in the Statement of Claim of the appellant was any reference made to the Notice of Acquisition or to the failure of the then Bendel State Government to publish such Notice as required by law. It is patently plain to me that the learned trial Judge was in error to have entered judgement for the appellant on the basis of facts which were neither pleaded nor constituted issues for determination in the case. So, too, the court below was clearly right to have reversed the decision of the trial court on the invalidity of the compulsory acquisition of the property in dispute as the point was not an issue properly raised in the pleadings. See too shell B. P. Ltd. v. Abedi (1974) 1 ALL N.L.R. 1 and Yisa Oseni v. Julian Akinbinu (1992) 1 S.C.N.J.1

E On the question of whether or not the land in dispute was acquired for public purpose" is defined in Section 2(h) of the Public Lands Acquisition Law, Cap. 136, volume 5, Laws of Bendel State, 1976 to include use of land -
 "2(h) *for or in connection with housing estates, economic, industrial or agricultural development and for obtaining control over land required for or in connection with such purposes.*"

F It is not in dispute that the 2nd respondent allotted the land in dispute to the 1st respondent for the purpose of establishing an industrial venture. This, in my view, conforms with the public purpose envisaged by the law notwithstanding the fact that the respondent is a Limited Liability Company. I therefore find it difficult, with respect, to accept the submission of learned Senior Advocate of Nigeria, Dr. Madiaga Odje, to the effect that the grant to the 1st respondent of right over a plot for the "business of rubber processing into tyres, tubes and other finished products" is contrary to the public purpose for which the property was "ostensibly" acquired.

H There is finally the issue of whether the land in dispute was, on the evidence, validly compulsorily acquired. The argument of learned Senior Advocate of Nigeria, Chief F.R.A Williams, is that even if the non-compliance with section 9(3) of the Public Lands Acquisition Law was properly pleaded, an issue he clearly did not concede, the appellant's action was still liable to fail

by virtue of the provisions of Section 20 of the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976. This submission did not find favour with the Court of Appeal. Said the court below -

"Section 20 which provides for vesting of compulsorily acquired land does not, in my respectful view, affect the mode of acquisition laid down in the various Public Lands Acquisition Laws. The validity of a compulsory acquisition could only be determined under those laws and not under the Act No. 33 of 1976. Nor would section 20 vest land invalidly acquired under the Acquisition law in the Governor of a State. If on the pleadings the learned trial Judge had rightly decided that the compulsory acquisition of respondent's land was invalid, section 20 of the Act 33 of 1976 could not be resorted to nor called in aid to validate what otherwise would have been null and void under the Public Lands Acquisition Law."

With profound respect, I am unable to accept that the Court of Appeal is right in the above proposition of law.

Section 20 of Decree No. 33 of 1976 provides as follows -

"On the expiration of six weeks from the date of the notice of intention to acquire land under section 5 of the Public Lands Acquisition Act or under the appropriate provision of the equivalent State law, title to the land in fee simple shall vest in the Head of the Federal Military Government of the State in trust for the Government of the State, free from all adverse or competing rights, titles or interests whatsoever. Provided that nothing in this section shall affect the right of the owner of the land to compensation as provided under this Decree."

There is nothing ambiguous in the above provisions which, in my view, are absolutely plain and straight forward. The clear intention of the Decree is the vesting in the Federal Military Government or the Government of a State, as the case may be, title to the land acquired in fee simple on the expiration of six weeks from the date of the notice of intention to acquire such land under section 5 of the Public Lands Acquisition Act or under the appropriate provision of the equivalent State law. Nothing is said therein about service or publication of the acquisition notice. I agree entirely with Chief Williams, S.A.N., that failure or delay in serving the notice or publishing it cannot halt or suspend the operation of Section 20 of Decree No. 33 in the matter of the vesting of land on Government on the expiration of the given six weeks from the date of the notice of intention to acquire the land. Perhaps, it may be desirable that there should be service or publication of such notice of intention to acquire the land by Government. This, however, is merely an exercise in what the law ought to be as against what the law infact is. In my opinion the issue of service or publication of such notice of intention to

acquire land by Government, in so far as the law now stands, is immaterial and totally irrelevant. It is only the notice of intention to acquire land that needs be validly issued and no more and failure to serve or publish the same, though desirable, is not fatal to the acquisition under section 20 of Decree No. 33 of 1976.

B It is for the above and the more elaborate reasons contained in the leading judgment of my learned brother, Mohammed, J.S.C that I, too, dismiss the main appeal and allow the cross-appeal . I subscribe to the consequential orders, including those as to costs, therein made.

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