

SUPREME COURT OF NIGERIA

30TH MAY, 1997. SC. 218/1993

**CORAM:- S. M. A. BELGORE, A. B. WALL, I. L. KUTIGI,
M. E. OGUNDARE, E. O. OGWUEGBU, Y. O. ADIO, A. IGUH, JJSC**

ISAAC OGUALAJI APPELLANT
AND
THE ATTORNEY GENERAL OF
RIVERS STATE & ANOR. RESPONDENTS

EVIDENCE - Admission - Unchallenged and uncontradicted evidence -
Should be admitted.

EVIDENCE - Rejection of evidence - Will only be a ground for reversing a -
If it occasioned a miscarriage of justice.

LAND LAW- Fee simple conveyance - Cannot be granted - Under the State
Lands Law or Land Use Act.

LAND LAW - Lease - Determination of state lease by expiration of time -
Right to removal of any building on the land - Where not exercised - within
the statutory 3 months - Whether to be deemed waived.

LAND LAW- Leases - Tenant at sufferance - Appellant that came possession
lawfully - Becomes a tenant at sufferance after expiration of the lease - Until
lessor recovers possession in the manner authorized by law.

LAND LAW- Leases - Recovery of possession - By the State at the expiration
of a lease - Must be done in the manner prescribed by the law.

LAND LAW - Leases - Sale to a 3rd party upon the expiration of the lease -
Is invalid - Since appellant was still in possession - And holding over though
his lease had expired.

LANDLORD & TENANT- Possession - Occupation of a house by tenants - Is
in law regarded as occupation by the landlord who puts the tenants there.

FACTS

The plaintiff/appellant filed an action against the defendants/respon-
dent before the Port Harcourt High Court claiming that the purported sale of

the building in dispute by the State to the 2nd defendant is unconstitutional, null and void and of no effect whatsoever. A lease in respect of the land in issue was originally granted to one Mr. Briggs by the then government of Eastern Nigeria. The unexpired term of the lease was assigned by Mr. Briggs to the plaintiff. At the time of the sale of the property by the Rivers State government to the 2nd defendant in fee simple estate, the lease had expired and was not renewed. But the plaintiff was still holding over and the State did not recover the property vide the method provided within the law.

The trial court found against the plaintiff on the ground that on the expiration of the lease granted to Mr. Briggs, which was subsequently assigned to the plaintiff the plaintiff ceased to have any interest in the land in dispute or the building thereon. Plaintiffs appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court raising 5 issues.

ISSUES FOR DETERMINATION

“(1) Was the Court of Appeal right in holding that the rejection of the instrument of transfer by the court of trial is no longer appealable being that the appellants consented to it.

(2) Did the refusal of the Court of Appeal to consider the issue of the rejection in evidence of the instrument of transfer and did the rejection of the instrument of transfer in evidence by the trial court occasion a miscarriage of justice to the Appellants? Etc see p. 1091

HELD (Unanimously allowing the appeal per lead judgment of **ADIO JSC**)
Unchallenged and uncontradicted evidence

1. Evidence, which is unchallenged, uncontradicted and in respect of which there is nothing showing that it is incredible should be admitted. See Adejumo v. Ayantegbe, 3 N.W.L.R (pt. 110)417. The aforesaid evidence led by the 1st respondent was therefore, rightly admitted. (p. 1092 G)

Rejection of evidence

2. It is not enough to complain that evidence was wrongfully rejected. Wrongful rejection of evidence will not alone constitute a good ground for reversing a decision. The party complaining must also show that if the evidence had been admitted the decision in question would have been otherwise. In this case, if the evidence of the release of the property in question by the appropriate authority to the appellant as an abandoned property had been admitted, the decision would not have been the same. The court below would have, in the circumstances which were similar to those in Ude’s case, supra, come to the same conclusion reached by this court in Ude’s case, supra. The respondents would not have been able to rely on the expiration of the term of the

lease to defeat the claim of the appellant. The rejection of the evidence of release of the property to the appellant as an abandoned property occasioned a miscarriage of justice to the appellant. (p. 1093 D)

Fee simple conveyance

3. The question was whether the Court of Appeal was correct in holding in its judgment that the sale of the property to the 2nd respondent was valid. The learned counsel for the appellant pointed out that the alleged conveyance of the land in dispute by the 1st respondent to the 2nd respondent in fee simple absolute was wrong and invalid. The learned counsel for the 1st respondent conceded the point and argued that a fee simple absolute in relation to a parcel of land could not be granted under the State Lands Law or under the Land Use Act. I think that the point was well taken. An absolute ownership of land is vested in the Governor of each State. An individual person can only have or acquired possessory title, statutory or customary. (p. 1093 H)

Determination of a State lease

4. On the determination of the lease when the time for which it was granted expired the right or interest of appellant, if any, was prima facie, limited by section 10 of the Law to the removal of any building erected by him on the land leased during the currency of such lease. Since the Minister did not elect to purchase the buildings it may be argued that the appellant should be deemed to have waived his right or interest, if any, to remove the buildings because of his failure to remove them within three months of the expiration of the period of the unexpired portion of the original lease. That will be a simplistic view of the matter which ignores the fact that the Law itself enabled the appellant (as tenant under the original lease) to stay on and remove his buildings within three months after the expiration of the lease, and the fact that after the expiration of the aforesaid statutory period of three months the appellant stayed on, held over, and remained in possession without the assent and dissent of the 1st respondent. (p. 1095 D)

Tenant at sufferance

5. The appellant thus became a tenant at sufferance having come into possession of the land lawfully in the first place. He was, as such liable for use and occupation of the land but he could rely upon his possession of the land against the whole world until the lessor recovers possession from him in the manner authorized by law. The foregoing was the interest, if any, and the extent of the interest of the appellant in the property, in dispute, at the time that the 1st respondent purported to sell it to the 2nd respondent. (p. 1095 G)

Recovery of possession - By the State

6. The provisions of section 28 of the Law then become relevant. The section provides for the manner whereby the lessor could, in the circumstance, recover possession. If the Law prescribes a particular method of exercising a statutory power, any other method of exercise of it is excluded. There could, B therefore, be no question of the lessor, in this case, recovering possession by resorting to a right of re-entry or any other type of self-help see Ude's case supra, at p. 661. Section 10 of the Law is complemented by section 28 which sets out the procedure for recovering possession from a lessee who holds over after his term has expired. There could be no question of the house or the C land or both automatically reverting to the 1st respondent simply because the lease had expired and had not been renewed. (p. 1096 A)

Sale to a 3rd party - While appellant was still in possession

7. What then is the position of the 2nd respondent who alleged that he bought D the property in dispute which was sold to him by the 1st respondent in fee simple absolute? The contention of the appellant was that, apart from other things, he (appellant) was in possession of the property at the material time because the building was occupied by his (appellant's) tenants. The occupation of a house by a tenant or tenants put there by a landlord is, in law, E regarded as the occupation of the house by the landlord who puts the tenants there. When the 1st respondent purported to sell the property in dispute to the 2nd respondent in fee simple absolute, the appellant was in possession of the property in dispute as a lessee whose lease had expired but who was holding over. The appellant was still in possession though his lease which F had expired had not been renewed. In the circumstances, the appeal of the appellant succeeds. (p. 1096 C)

NOTABLE POINTS OF INTEREST

OGWUEGBUJSC

G 1. *When the word "may" is imperative and not discretionary*

The word "may" when used in a statute such as the State Lands Law of Eastern Nigeria, 1963, generally imports a discretion. It is sometimes or in some instances construed as not discretionary but imperative. In other words, "may" can mean "shall". It is the duty of courts to try and get at the real H intention of the legislature by carefully attending to the whole scope of the statute to be construed. Reading the whole provisions of the State Lands Law Cap. 122, Laws of Eastern Nigeria, 1963, applicable in the Rivers State, there is no doubt that from the context of section 28 (1), the Word "may" as used there imposes a duty upon the State Government to institute an action in the High

Court to recover possession from the appellant who continued to be in possession after his lease had expired. (p. 1 100 A)

IGUH JSC

2. Finding that appellant was not in possession is perverse

The learned trial judge was therefore in gross error when, in the face of the above overwhelming evidence from the appellant and the respondents alike, he was still able to hold that the appellant was not in possession of the property at the time the cause of action in the suit arose. This finding is, in my view, entirely perverse, unsupported by evidence and was reached as a result of a wrong approach to the evidence. It cannot, in the circumstance, be allowed to stand. In my view the court below was clearly in error by failing to set aside. (p. 1104 D)

3. Recovery of possession - Must be as prescribed by law

Recovery of possession of such land may only be obtained as prescribed by the law, that is to say, by the entry of a suit in the High Court against the lessee holding over the demised premises as a tenant at sufferance. In the present case, no such suit for the recovery of possession of the land in Impute was filed against the appellant before his property in dispute was purportedly sold contrary to the provisions of section 28 (1) of the said State Lands Law. In my view, both Courts below were in gross error by holding that the appellant had no interest in the property in dispute after the expiration of the lease on the 31st December, 1968. (p. 1108 D)

REPRESENTATION

A Nwaiwu Esq. and O. C. Okoro Esq. for the appellant
M .U . Wakama (Mrs.) D. L. Rivers State for the 1st respondent
E. M . Wifa Esq. for the 2nd respondent

CASES REFERRED TO

Adejulo v. Ayantegbe (1993)3N.W.L.R. (pt. 110)417.
Ude v. Nwara(1993) 3 KLR 83
Uludun v. Okumagba. (1976) 9 - 10 S.C. 227.
Makanjuola v. Balogun (1989) 3 N.W.L.R(pt. 108) 192.
Abioye v. Yakubu(1991) 5 N.W.L.R (pt. 190) 130 at p.223
Udoh v. Orthopedic Hospital Management Board (1993) 10 KLR 67; (1993)7 N.W.L.R (pt.304)139.
Odubeko v. Fowler (1993)11 KLR 106
Mogaji v. Cadbury Fry export Ltd. (1972) 1 All N.L.R (pt. 1) 81 at p. 88.

Lord Advocate v. Young & Or. (1987) 12 App. Cas. 544 at 556.

STATUTES REFERRED TO

Evidence Act s. 22(2)

State Lands Law Cap. 122 Laws of Eastern Nigeria 1963 ss. 10, 28

B

LEAD JUDGMENT BY ADIO JSC

In the High Court of Justice, Port Harcourt Judicial Division of the Rivers State of Nigeria, the appellant, as plaintiff, sued the respondents. The appellant claimed against the respondents the following reliefs:-

C

“(1) A declaration that he plaintiff is the owner of the building known as and called plot 18 Block 256 Orije Layout, Port Harcourt or No. 67 Sangana Street, Port Harcourt or No. 61 Ikot Ekpena Street, Port Harcourt.

D

(2) A declaration that the purported sale of the said property by the Ministry of Housing and Environment, Port Harcourt to the 2nd defendant without the consent of the plaintiff is unconstitutional, null and void and of no effect whatsoever

E

(3) An injunction restraining the 2nd defendant from entering, trespassing or doing anything whatsoever on the said property which is against the proprietary interest of the plaintiff in the said property.”

E

The evidence led by the appellant was that the parcel of land on which he built a house, which is now in dispute, was assigned to him by one Mr. Briggs who got an original lease of it from the then Government of Eastern Nigeria. According to the appellant, when war broke out in Nigeria in 1967, he (appellant) left Port Harcourt. After the end of the civil war the house was returned to him by an instrument of transfer dated 17/1/73 by the abandoned Property (Custody and Management) authority of the Rivers State Government. The appellant took possession of the property, renovated it and put some persons there as his own tenants.

F

G

The 1st respondent led evidence that the lease of the said property was originally granted to one Mr. Briggs who assigned his residual interest in the lease to the appellant. The residual interest assigned to the appellant expired on 31/12/68. It was contended for the 1st respondent that on the expiration of the original lease on 31/12/68 the land reverted to the Government of the Rivers State. It was also contended for the 1st respondent that the land did not really become an abandoned property and that the Government of the Rivers State eventually sold it to the 2nd respondent.

H

The 2nd respondent led evidence that the land in dispute belonged to him. He purchased it from the Rivers State Government.

After consideration of the evidence led by the parties and of the submissions of their learned counsel, the learned trial Judge dismissed the appellant's claim. He held that on the expiration of the lease granted to Mr. Briggs, which was subsequently assigned to the appellant, the appellant ceased to have any interest in the land in dispute or in the building thereon. He also held that, in the circumstance, the Government of the Rivers State was perfectly entitled to sell the land in dispute to the 2nd respondent. B

Dissatisfied with the judgment of the learned trial Judge, the appellant lodged an appeal against it to the Court of Appeal. The court below dismissed the appeal. The court below affirmed the decision of the learned trial Judge that at the time that the Government of Rivers State sold the land in dispute to the 2nd respondent, the appellant no longer had any interest in the land in dispute as the lease granted to one Mr. Briggs which was subsequently assigned to the appellant had expired. It also held that the property in dispute was not really an abandoned property. C

Dissatisfied with the judgment of the court below, the appellant has lodged a further appeal to this court. The parties duly filed and exchanged brief. The appellant filed an appellant's brief and each of the respondents filed a brief. The appellant filed a reply brief to the brief of each of the respondents. When the appeal came before us the learned counsel for each of the parties made oral submissions to us. Several issues for determination were raised by the parties in their briefs. In my view, most of them were minor issues because the resolution of them in favour or against any of the parties would not necessarily result in this appeal being determined in favour of that party. For example, there was a complaint against the rejection of an alleged instrument (If transfer of the property in dispute to the appellant as an abandoned property. Altogether four issues were raised in connection with that aspect of the appeal, namely, issues No. 1,2,3, and 5 in the appellant's brief. Be that as it may, the issues raised by the appellant in his briefs will be used for the determination of this appeal. They are as follows:- D

"(1) Was the Court of Appeal right in holding that the rejection of instrument of transfer by the court of trial is no longer appealable being that the appellant consented to it. E

(2) Did the refusal of the Court of Appeal to consider the issue of the rejection in evidence of the instrument of transfer and did the rejection of the instrument of transfer in evidence by the trial court occasion a miscarriage of justice to the Appellant? F

(3) Did the failure of the court of Appeal to consider the issue of the refusal the trial court to grant leave to the appellant to amend his statement of claim or pleadings particularly paragraph 11 to reflect a G

Rivers State Government Official Gazette No. 39, Volume 4 of 1st August, 1972, occasion any miscarriage of justice to the appellant?

(4) *Was the Court of Appeal correct in holding in its judgment dated 16th February, 1973, affirming the decision of the court of trial as per the judgment of Justice Fiberesima, J, delivered on 9th July, 1986 that at the time of the sale of property in dispute by the 1st respondent to the 2nd respondent in 1982, the appellant no longer had any interest in the property as by effluxion of time his interest or title had expired as at 1st January, 1969.*

(5) *Did the refusal of the trial court to grant leave to the plaintiff/appellant to amend his statement of claim to reflect the said Rivers State Government Official State Gazette No. 39 Volume 4 of 1st August, 1992, occasion any miscarriage of justice to the appellant?*

(6) *Whether the court of Appeal was correct in holding in its judgment that the sale of the property to the 2nd respondent was valid."*

I consider issues numbers 1,2,3 and 5 together. All the aforesaid issues concerned the alleged purported transfer of the property in dispute to the appellant as an abandoned property. The contention made for the respondents was that the purported transfer of the property by an instrument executed in favour of the appellant and the publication thereof in the Government of Rivers State Gazette were all based on the erroneous belief or ground that the property in dispute was an abandoned property under the appropriate or relevant legislation. The evidence, which was unchallenged and uncontradicted, led by the 1st respondent was that the original lease of the land in dispute, which was granted to the predecessor-in-title of the appellant, one Mr. Briggs who assigned it to the appellant, was to run from 1st January, 1959, to 31st December, 1965, and was initially for a period of seven years. In 1963, the lease was extended for another five years. The unexpired portion of the lease was assigned by Mr. Briggs to the appellant. The unexpired portion of the lease aforesaid assigned to the appellant expired on the 31st December, 1968 and the appellant did not apply to the Rivers State Government for a renewal of the lease at any time. **Evidence, which is unchallenged, uncontradicted and in respect of which there is nothing showing that it is incredible should be admitted. See Adejumo v. Ayantegbe, 3 N.W.L.R. (pt. 110) 417. The aforesaid evidence led by the 1st respondent was therefore, rightly admitted.** The fundamental issue raised under issues 1,2,3 and 5 was that the appellant was wrongly deprived of the opportunity to prove that the appropriate authority released the property in question to him as an abandoned property. According to the appellant, by wrongfully making it impossible for him to prove that the property was released

to him as an abandoned property what the court below did had occasioned a miscarriage of justice to him. This aspect of this case appears to make an issue which arose in Ude v. Nwara (1993) 2 N.W.L.R. (pt. 278) 638 relevant in this case. In Ude's case, supra, the property in question was released to the appellant though it was later alleged that at the time of the release the lease originally granted to the appellant in that case had expired. That was also the allegation in the present case. In Ude's case, this court held, inter alia, that by operation of the rule of estoppel a man is not allowed to blow hot and cold. He cannot affirm at one time and deny at the other or to approbate and reprobate. He cannot be allowed to mislead another person into believing in a state of affairs and then turn round to say to that person's disadvantage that the state of affairs which he had represented does not exist at all or as represented by him. In the circumstance, the appropriate authority could not be heard to say that he had released the property in dispute to the lessee by an instrument of transfer and turn round to impugn the release on the ground that the lease thereof had expired before the release. The contention made for the appellant was that there was no good reason why the same conclusion should not be reached in this case. **It is not enough to complain that evidence was wrongfully rejected. Wrongful rejection of evidence will not alone constitute a good ground for reversing a decision. The party complaining must also show that if the evidence had been admitted the decision in question would have been otherwise.** See Idundun v. Okumagba. (1976) 9-10 S.C.227. The judgment of the Court below cannot be reversed merely because of the rejection of the alleged evidence. It must appear to the court on appeal that had the evidence, so excluded, been admitted it may reasonably be held that the decision could not have been the same. See section 22 (2) of the evidence Act. **In this case, if the evidence of the release of the property in question by the appropriate authority to the appellant as an abandoned property had been admitted, the decision would not have been the same. The court below would have, in the circumstances which were similar to those in Ude's case, supra, come to the same conclusion reached by this court in Ude's case, supra. The respondents would not have been able to rely on the expiration of the term of the lease to defeat the claim of the appellant. The rejection of the evidence of release of the property to the appellant as an abandoned property occasioned a miscarriage of justice to the appellant.**

The next question is the question raised under the sixth issue. **The question was whether the Court of Appeal was correct in holding in its judgment the sale of the property to the 2nd respondent was valid. The learned counsel for the appellant pointed out that the alleged conveyance of the land in dispute by the 1st respondent to the 2nd respondent in fee simple absolute**

was wrong and invalid. The learned counsel for the 1st respondent conceded the point and argued that a fee simple absolute in relation to a parcel of land could not be granted under the State Lands Law or under the Land Use Act. I think that the point was well taken. An absolute ownership of land is vested in the Governor of each State. An individual person can only have or acquire possessory title, statutory or customary. See Makenjuola v. Balogun, (1989) 3 N.W.L.R (pt. 108) 192. This court, per Obaseki, J.S.C., in Abioyev. Yakubu (1991) 5 N.W.L.R (Pt. 190) 130 at p. 223 clarified the position when he stated, inter alia, as follows:-

"It has been said that the Land Use Act 1978 has revolutionized the land tenure system in Nigeria and has removed the radical title from individual Nigerians and vested the land in the Military Governor of each State in trust for the use and benefit of all Nigerians (see section 1). The expressed provision of section 1 of the Act gives credence to this statement. Having removed the radical title from Nigerians, it has vested the control and management of the land in each State in the Military Governor in the case of land in the urban areas (see section 2 (1) (a)) and in the Local Government in the case of non-urban areas (see section 2(1) (b)). The only interests in land the Military Governor and the Local Government can lawfully grant are rights of occupancy. (See sections 5 and 6). These rights of occupancy fall into two categories, namely (a) statutory right of occupancy. (See section 5 (1) and (2)), customary right of occupancy (see section 6 (1) (a & b). They cannot grant absolute interests or fee simple absolute to any person."

The answer to the question raised under the 6th issue is in the negative.

If the sale of the land in dispute was invalid, did the appellant have any proprietary interest in the building known and called Plot 18, Block 256 Orije Layout, Port Harcourt? What one has to make clear is that the unexpired part of the lease of the land, on which a building was erected and which was granted to the appellant by one Mr. Briggs had expired. The appellant had not applied to the 1st respondent and the 1st respondent never granted the renewal of the lease. Ordinarily, when a lease expires the relationship of a lessee and a lessor between the grantee and grantor ends unless there is any agreement or statutory provisions to the contrary. In the present case, the main issue is the effect of sections 10 and 28 of the State lands law, Cap. 122 of the Laws of Eastern Nigeria, 1963, applicable in Rivers State. Section 10 of the Law provides as follows:-

"In the absence of special provisions to the contrary in any lease under this Law all buildings and improvements in State Land, whether erected or made by the lessee or not, shall on the determination of the lease, pass to

the State without payment of compensation:

Provided, however, that in the absence of any special provision to contrary in the lease, when land is leased for a term not exceeding thirty years the lessee shall be at liberty within three months of the termination (otherwise then by forfeiture) of such lease to remove any buildings erected by him on the land leased during the currency of such lease, unless the Minister shall elect to purchase such buildings. In the event of the Minister and the lessee not agreeing as to the purchase price of such buildings the same shall be determined by arbitration. The lessee shall make good any damage done to the land by any such removal."

The foregoing provisions of section 10 of the State Lands Law are very clear and unambiguous. Where the words used in the provisions of a legislation are clear and unambiguous it is the words used that govern. The words should be given their ordinary meaning. See Abioye v. Yakubu, *supra*, Udoh v. Orthopaedic Hospital Management Board & Ors. (1993) 7 N. WL.R (pt. 304) 119, and Odubeko v. Fowler (1993) 7N.WL.R (pt. 308) 637. It is, therefore, not clear why the appellant and the 1st respondent, the previous lessee and the lessor, respectively, of the property in dispute were behaving as if the provisions of sections 10 and 28 of the State Lands Law, Cap. 122 did not apply to the expired lease. **On the determination of the lease when the time for which it was granted expired the right or interest of the appellant, if any, was prima facie, limited by section 10 of the Law to the removal of any building erected by him on the land leased during the currency of such lease. Since the Minister did not elect to purchase the buildings it may be argued that the appellant should be deemed to have waived his right or interest, if any, to remove the buildings because of his failure to remove them within three months of the expiration of the period of the unexpired portion of the original lease. That will be a simplistic view of the matter which ignores the fact that the Law itself enabled the appellant (as tenant under the original lease) to stay on and remove his buildings within three months after the expiration of the lease, and the fact that after the expiration of the aforesaid statutory period of three months the appellant stayed on, held over, and remained in possession without the assent and dissent of the 1st respondent. The appellant thus became a tenant at sufferance having come into possession of the land lawfully in the first place. He was, as such liable for use and occupation of the land but he could rely upon his possession of the land against the whole world until the lessor recovers possession from him in the manner authorized by law. The foregoing was the interest, if any, and the extent of the interest of the appellant in the property, in dispute, at the time that the 1st respondent purported to sell it to the 2nd respondent.**

The provisions of section 28 of the Law then become relevant. The section provides for the manner whereby the lessor could, in the circumstance, recover possession. If the Law prescribes a particular method of exercising a statutory power, any other method of exercise of it is excluded. There could, therefore, be no question of the lessor, in this case, recovering possession by resorting to a right of re-entry or any other type of self-help see Ude's case, supra, at p. 661. Section 10 of the Law is complemented by section 28 which sets out the procedure for recovering possession from a lessee who holds over after his term has expired. There could be no question of the house or the land or both automatically reverting to the 1st respondent simply because the lease had expired and had not been renewed.

What then is the position of the 2nd respondent who alleged that he bought the property in dispute which was sold to him by the 1st respondent in fee simple absolute? The contention of the appellant was that, apart from other things, he (appellant) was in possession of the property at the material time because the building was occupied by his (appellant's) tenants. The occupation of a house by a tenant or tenants put there by a landlord is, in law, regarded as the occupation of the house by the landlord who puts the tenants there. See Mogaji v. Cadbury Fry Export Ltd., (1972) 1 All N.L.R. (pt. 1) 81 at p. 88. When the 1st respondent purported to sell the property in dispute to the 2nd respondent in fee simple absolute, the appellant was in possession of the property in dispute as a lessee whose lease had expired but who was holding over. The appellant was still in possession though his lease which had expired had not been renewed. In the circumstances, the appeal of the appellant succeeds. I allow the appeal and set aside the judgment of the High Court and of the Court of Appeal including the order for costs. For the avoidance of doubt:-

(1) I grant a declaration that the appellant is the owner of the building known as and called Plot 18, Block 256, Orije Layout, Port Harcourt or 61 Sargana Street or No. 61 Ikot Ekpene Street, Port Harcourt.

(2) I grant a declaration that the purported sale of the said property, mentioned in paragraph (1) above, by the Ministry of Housing and Environment, Port Harcourt to the 2nd respondent without the consent of the appellant was unconstitutional, null and void and of no effect whatsoever.

(3) I make an order of injunction restraining the 2nd respondent from entering, trespassing or doing anything whatsoever on the said property which is against the proprietary interest of the appellant in the said property.

(4) N1,000 is awarded to the appellant as costs in this Court and N500.00 awarded to him as costs in the courts below.

BELGORE JSC

I have the privilege of reading in advance the judgment of my learned brother, Adio, J. S.C. and I agree with his conclusion based on his consideration of all the issues in this appeal. For the same reasons in the said judgment I also allow the appeal with the consequential orders therein. B

WALI JSC

I have had a preview of the lead judgment of my learned brother Adio JSC, and the concurring judgment of my learned brother Iguh JSC, and for the reasons stated therein, I shall also allow this appeal. C

Both the provisions of Sections 10 and 28 of the State Lands Law (Cap 122) Laws of Eastern Nigeria, 1963, applicable in rivers State of Nigeria, and which are most relevant to the decision of this case have been well considered and interpreted by this court in Ude v. Nwara & Anor. (1993) 2 NWLR (Pt 278) 638 when dealing with a situation similar D to the present one.

It is beyond any iota of doubt that from the evidence adduced and accepted by the trial court and the Court of Appeal the appellant was in possession of the property in dispute at the time of its purported sale by the Government of Rivers State to the 2nd Respondent. Since appellant was in possession of the property, the 1st respondent must strictly follow the procedure laid down in s. 28(1) of State, Lands Law (supra) before he could exercise any right over it. The 1st respondent has failed to do that and what he did could he likened to resorting to self-held under the executive might to take over the property. Where a statute has provided procedure for doing a thing under its provision, the procedure so laid must be followed and failure to do so will render the exercise of the power provided in the state void. See ude v. Nwara & Anor. (supra). E F

The purported take-over of the property in dispute by the rivers State Government i.e. 1st Respondent and its subsequent sale to the 2nd Respondent in contravention of sections 10 and 28(1) and (2) of the state Lands law (supra) are both irregular and unlawful and lack legal validity. G

With this short comment and the more detailed reasons contained in the lead Judgment of my learned brother Adio, JSC and the concurring judgment of my learned brother Iguh, JSC, I also hereby allow this appeal and endorse the consequential orders made in the lead judgment. H

I award N1,000.00 costs in this court, N500.00 costs each in the Court of Appeal and the trial court respectively in favour of the appellant against the respondents.

KUTIGI JSC

I had the privilege of reading in advance the judgment just delivered by my learned brother, Adio, JSC. I agree with his reasoning and conclusions. The appeal is meritorious and ought to be allowed. I therefore allow it. The judgments of the lower courts are hereby set aside and judgment entered for the plaintiff/appellant in terms of his claims. I endorse the consequential orders in the lead judgment including the order for costs.

OGUNDARE JSC

I agree with the lead judgment of my learned brother Adio JSC and the illuminating concurring judgment of my learned brother Iguh JSC. I have nothing more to add. On the authority of Udev. Nwara(1993) 2 NWLR 638 which is on all fours with the present case, I too allow this appeal and set aside the judgment of the two Courts below. I subscribe to the consequential orders (including the order for costs) made by my learned brother Adio, JSC.

OGWUEGBUJSC

I have had a preview of the judgment just delivered by my learned brother, Adio, J.S.C. I am in complete agreement with him that this appeal ought to be allowed.

The facts of the case and the main arguments have been fully stated in the lead judgment. It is therefore needless to repeat them. There is no doubt in my mind that the courts below were in grave error when they held that at the time of the sale of the property by the 1st respondent to the 2nd respondent, the appellant no longer had any interest in the subject matter. They came to this conclusion when they wrongly assumed that on the expiration of the lease on 31: 12:68, the appellant ceased to have any interest in the property.

The facts if the case if Udev. Nwara & Or. (1993) 2 N.W.L.R. (pt. 278) 638 decided by this court a few days before the court below delivered its judgment in the proceedings leading to this appeal are on all fours with the facts of the present proceedings. I have no doubt that the decision of the court below would have been different if Ude's case (supra) had been brought to its attention.

At the time the rivers State Government purported to transfer the property to the 2nd respondent, the appellant's tenants were occupying the house, and he saw them when he went to inspect the building. Granted that the lease expired on 31: 12:68. the appellant was in possession of the property through his tenants up to 1982 when the cause of action arose. See Mogaji &

Ors v. Cadbury Fry (Export) Ltd. (1972) All N.L.R. 84 and lord Advocate v. Young & Or. (1887) 12 App. Cas. 544 at 556.

Neither the appellant nor the rivers State Government took advantage of the provision of section 10 of the State Lands Law, Cap. 122, Laws of Eastern Nigeria, 1963 applicable in the Rivers State. The said section 10 provides as follows:

“10. In the absence of special provisions to the contrary in any lease under this Law all buildings and improvements on State lands, whether erected or made by the lessee or not, shall on the determination of the lease, pass to the State without payment of compensation: Provided, however, that, in the absence of any special provision to the contrary in the lease, when land is leased for a term not exceeding thirty years the lessee shall be at liberty within three months of the termination (otherwise then by forfeiture) of such lease to remove any buildings erected by him on the land leased during the currency of such lease, unless the Minister shall elect to purchase such building. In the event of the Minister and the lessee not agreeing as to purchase price of such buildings, the same shall be determined by arbitration. The lessee shall make good any damage done to the land by any such removal.”

The appellant has remained in possession beyond three months after the lease has come to an end. He becomes a tenant at sufferance and section 28 of the State lands Law of Eastern Nigeria, 1963 applicable in the Rivers State makes provision for the recovery of possession of the property from such a lessee holding over. It provides:

“28 (1) when any person without right, title or licensee or whose right, title or licence has expired or been forfeited or cancelled, is in occupation of State land, the Attorney-General, or the Principal Land Officer or some person appointed by the Attorney-General, may enter a suit in the High Court to recover possession thereof

(2) If on the hearing of such suit the defendant does not appear, or appears but fails to establish an absolute right or title to the possession of the land the court shall order that the possession of the land sought to be recovered shall be given by the defendant to the plaintiff, either forthwith or on or before such day as the court shall think fit to name, and shall issue such process as may be necessary for carrying such order into effect.”

Under section 10 of the State Lands Law, the appellant has a statutory remain in possession for at least three months and having held over after that period with the consent of the rivers State Government, the latter can only recover possession by the State Attorney-General or the Principal Land Officer or somebody appointed by the Attorney-

General instituting an action in the High Court in accordance with section 28 (1). At the hearing of the suit, the onus is cast on the plaintiff to establish an absolute right or title to the possession of the land. The word “may” when used in a statute such as the State lands Law of Eastern Nigeria, 1963, generally imports a discretion. It is sometimes or B in some instances construed as not discretionary but imperative. In other words, “may” can mean “shall”.

It is the duty of courts to try and get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. See Liverpool Borough Bank v. Turner (1861) 45 E.R 45ch. 715. Reading the whole provisions of the State Lands Law Cap. 122, C Laws of Eastern Nigeria, 1963, applicable in the Rivers State, there is no doubt that from the context of section 28 (1), the Word “may” as used there imposes a duty upon the State Government to institute an action in the High Court to recover possession from the appellant who continued to be in possession after his lease had expired. See Edeworv. Uwegba & Ors. (1987) 1 N.W.LR (pt. 50) 313 & Ude v. Nwara & Ors. D (supra). An order for recovery of possession can only be made by the court if the defendant fails to appear at the hearing or if he appears, fails to establish an absolute right or title to the possession of the land. Where the lessee does establish such right or title, an order for possession will not be made by the court. Since possession is not automatic even if the E State Government institutes an action, the mandatory nature of the word “may” in section 28 (1) cannot be over emphasized.

In the circumstances, the appellant has interest in the property in dispute which is protected by the law even after the expiration of his lease and he holds over. Since the appellant was still in possession, the F purported sale of the property to the 2nd respondent cannot therefore be lawful moreso, when he has knowledge that there are tenants of the appellant in the property.

For the above reasons and the fuller reasons contained in the judgment of Adio, J.S.C. I, too, allow this appeal and set aside the G decisions of the High Court and the Court of Appeal. I adopt all the orders made in the said judgment of my learned brother Adio, J.S.C. including the order as to costs.

H **IGUH JSC**

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Adio, J.S.C. and I am in total agreement that this appeal is meritorious and ought to be allowed.

I propose, however, to make a short comment, by way of amplification only, on issue 3 as formulated in the appellant’s brief of

argument. This question whether the Court of Appeal was right by holding that at the time of sale of the property in dispute by the 1st to the 2nd respondent in 1982, the appellant no longer had any interest in the said property, by virtue of the fact that the term of his lease expired on the 31st day of December, 1968.

The facts of this case have been adequately covered in the leading judgment and I need only recount that the land in dispute was in 1963 lawfully assigned to the appellant by one Gilbert Briggs, the original State lessee thereof. The lease was for an initial term of 7 years, in the first instance, commencing from 1st January, 1959 to the 31st December, 1965. In 1963, the lease was extended for another five years expiring on the 31st December, 1968.

The appellant immediately went into physical possession of the property by erecting a permanent residential building thereon and paying the property rates and other outgoings in respect thereof. He also put in tenants on the property.

In 1967, however, as the Nigeria Civil War was raging, the appellant was obliged to leave Port-Harcourt and to return to his State of origin, as a result of which the premises was designated abandoned property and was managed by the Abandoned Property (custody and Management) Authority of the Rivers State. On the 24th August 1972, the property was returned to the appellant by the Rivers State Government. Consequently, the appellant immediately retook possession and control of his house and let the same to tenants.

Sometime in 1982, the Ministry of Housing and Environment purported to sell the property in issue to the 2nd respondent for a paltry sum of N13,020.00 without any notice to the appellant. The appellant also discovered that the 2nd respondent in 1983 served notices to quit on the appellant's tenants on the premises. It was following these developments that the appellant's action against the respondents claiming as fully set out in the leading Judgment.

At the conclusion of hearing, the learned trial Judge, Fiberesima, J. held as follows:-

"In my finding I hold that plaintiff ceased to have any legal interest on the property on December 31st, 1968 when the lease of the property expired. The Government was perfectly entitled at the date to grant lease or dispose of the property to anybody.

Plaintiff claims that the property was released to him by the Abandoned property authority in January, 1973; that was a transaction that was fraught with misconception: before January 1973 Government had become owner of the property so that in August, 1969 when the Abandoned Property authority Edict became operative the property could not have been vested in the Authority since

it was owned by Government and not abandoned, so that the Authority could not transfer or release property it did not control:

“Nihil dat qui non habet. “Similarly the City Council was collecting rates from the wrong person or from a person who had misrepresented himself as a true tenant of the Government. It seems to me that plaintiff obtained Exhibits 4,5 and 6 from unsuspecting City Council, as a calculated design for the purpose of the claim in this suit.”

He accordingly dismissed the appellant's claims.

The above views of the trial Court would appear to have found favour with the Court of Appeal as Ndoma-Egba J. C.A, in his leading judgment with which Onu, J.C.A, as he then was, and Edozie, J.C.A. agreed, after some treaties on the concept of the word justice concluded thus:-

“I think the argument of learned counsel for the appellant is more of a discourse on morality and platitudes and not as the objective of the States Laws (Rivers State).”

Onu, J.C.A., in his concurring judgment, was of the view that by effluxion of time, the appellant as far back as the 31st December, 1968, lost title to the property in dispute when his lease expired.

With profound respect to the Court of Appeal, I find it difficult to accept that the appellant ceased to have any legal interest in the property in dispute from the 31st December, 1968 on which date his lease expired. In the first place, paragraphs 9, 10, 11 and 12 of the appellant's Statement of claim averred as follows:-

“9. The plaintiff took over possession of the said property paying all the rates and taxes and building on it.

10. The plaintiff continued to be in possession of the said property until in 1967 during the Nigerian Civil War when the property was designated an abandoned property and was managed by the Abandoned Property (Custody and Management) Authority of the Rivers State.

11. On the 24th of August, 1972 the then Military Government of Rivers State of Nigeria made an order transferring the said property back to the plaintiff. The said decision of the Government of rivers State of Nigeria transferring the said property back to the plaintiff was communicated to the plaintiff by an INSTRUMENT OF TRANSFER dated the 17th day of January, 1973. The plaintiff shall at the trial found upon this instrument of transfer.

12. The plaintiff took back possession of the said house and let in tenants into the said property.”

The 1st respondent in his statement of Defence merely denied the above paragraphs of the statement of Claim, contending that the property was never an Abandoned property and that the same reverted

to the State on the expiration of the lease on the 31st December, 1968 in accordance with the provisions of Section 10 of the State Lands Law.

The 2nd respondent to whom the property was alleged sold was himself unable to admit or deny the averments in paragraphs 9 and 10 of the Statement of Claim. He however denied paragraphs 11 and 12 of the said statement of Claim, claiming that the appellant lost title to the property from the 31st December, 1968 on the expiration of his lease. He further claimed that he purchased the premises in 1982 from the 1st respondent.

At the hearing, the appellant gave copious evidence in respect of his possession of the land in dispute. He said:-

“The house became an abandoned property after the civil war, it was released to me as the owner in 1973 and gazetted. I was in control of the plot up to 1982. When the building fell into a state of disrepair, I applied to the city council for permission to renovate the building. I was permitted to do so and I was issued with a permit, admitted as Exhibit 6. After receiving Exhibit 6, I went to renovate the building but I was obstructed by 2nd defendant who claimed the building to my surprise. He said he had bought the building met some tenants in the house who showed me a letter to them that the house had been sold to the 2nd defendant. I took possession of the letter. I took the letter to my counsel who wrote to the City Council to ask to know the position. This is the letter my lawyer wrote, admitted as Exhibit 7 there was a reply to the letter, this is the reply, admitted as Exhibit 8. I was consulted before the building was sold. Before Exhibit 8, I had had no dispute over the property with any person.....It was vacant land. I built on it”

Earlier on, the appellant had testified on how he purchased this plot of State land as a vacant piece of land, how he developed it by the erection of a permanent residential building thereon and how he let the same to tenants.

It should be noted that D.W.1, Jackson Iragunima, Lands Officer, who represented and was the only witness called by the 1st respondent testified under cross - examination as follows: -

“After the civil war, the property was returned to the plaintiff. The Government returned the building to the plaintiff and later sold it to the 2nd defendantSince this case, I have heard opportunity to visit the place. It is a tenant building, with a common kitchen at the back house. I have not entered to check the number of rooms.”

(Underlining supplied for emphasis)

In the same vein, the 2nd respondent under cross-examination made the following material admissions:-

“Before I paid, I inspected the building. The building was old and

even dilapidated. I saw occupants in the building. I introduced myself (to them as the owner. The occupants did not tell me anything. I did not find from the Government the original owner of the property. The property was offered to me. So I paid for it. I did not know that in 1973 the property had been transferred back to the plaintiff" (Underlining supplied for emphasis)

It therefore seems to me clear that the appellant was at all material times in possession and absolute control of the property in dispute which he bought when it was still a vacant piece of land. He proceeded to develop it, erected a residential building thereon and let the same out to tenants. Although he left Port-Harcourt temporarily during the civil war, he returned thereafter and the State Government, on his application, returned his property to him in 1972. He retained his tenants on the property up to and immediately before the 2nd respondent purportedly bought the building. Indeed, on the evidence of the 2nd respondent, the building was inspected by him before he paid the alleged purchase price of the property in 1982. He also saw the tenants in the building and introduced himself to them as the owner of the property. The learned trial judge was therefore in gross error when, in the face of the above overwhelming evidence from the appellant and the respondents alike, he was still able to hold that the appellant was not in possession of the property at the time the cause of action in the suit arose. This finding is, in my view, entirely perverse, unsupported by evidence and was reached as a result of a wrong approach to the evidence. It cannot, in the circumstance, be allowed to stand. In my view the court below was clearly in error by failing to set it aside. See *Okpiri v. Jonah* (1961) ALL N.L.R. 102 at 104 - 105, *Maja v. Stocco* (1968) 1 ALL N.L.R. 141 at 149, *Woluchem v. Gudi* (1981) 5 S.C. 291 at 295 - 296 and 326, 329. I will now turn to sections 10 and 28 of the state lands Law, Cap. 122, Laws of Eastern Nigeria, 1963 applicable in the Rivers State of Nigeria.

Section 10 of the State Lands Law provides as follows:-

"10. In the absence of special provisions to the contrary in any lease under this law all buildings and improvements on State Lands, whether erected or made by the lessee or not, shall on the determination of the lease, pass to the State without payment of compensation:

Provided, however, that, in the absence of any special provision to the contrary in the lease, when land is leased for a term not exceeding thirty years the lessee shall be at liberty within three months of the termination (otherwise then by forfeiture) of such lease to remove any buildings erected by him on the land leased during the currency of such lease, unless the Ministry shall elect to purchase such buildings. In the event of the Minister and the lessee not agreeing as to the purchase price of such buildings, the same

shall determined by arbitration. The lessee shall make good any damage done to the land by any such removal."

There is next the provision of Section 28 of the said State Lands Law which states as follows:-

"28 (1) When any person without right, title or licence or whose right, title or licence has expired or been forfeited or cancelled is in occupation of state land, the Attorney - General, or the Principal Lands Officer, or some person appointed by the Attorney - General, may enter a suit in the High Court to recover possession thereof,

(2) If on the hearing of such suit the defendant does not appear, or appears but fails to establish an absolute right or title to the possession of the land, the Court shall order that the possession of the land sought to be recovered shall be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court shall think fit to name, and shall issue such process as may be necessary for carrying such order into effect."

Dealing with the above 2 sections of the state Lands Law, Cap. 112, Laws of Eastern Nigeria, 1963, this Court per Nnaemeka Agu, J.S.C explained as follows-

"Without doubt, the proviso to section 10 gives the lessee whose lease has expired a statutory right to remain in possession. Although it was to be for a period of three months, there is no provision as to what would happen thereafter and, furthermore, at common law he has also become a tenant at sufferance and so remains in possession, it is obviously because of this situation that section 28 has made provision for the manner whereby the lessor could recover possession from him, that is, by entering a suit in the High Court to recover possession. It is trite that once the law has prescribed a particular method of exercising a statutory power, any other method of exercise of it is excluded: So there can be no question of the lessor in this case recovering possession by resorting to a right of re-entry or any other type of self-help. I agree with Chief Umeadi that although section 28 (1) of the Law states that the lessor "may enter suit," "may" should be construed as mandatory i.e. as meaning "shall" or "must". I believe that it is now the invariable practice of the Courts to interpret "may" as mandatory whenever it is used to impose a duty upon a public functionary the benefit of which ensures to a private citizen".

He went on- *"It would be wrong, therefore, to hold that the duty to apply to Court for possession was merely permissive or directory as the respondents have urged. Indeed in view of the state of the general law as to the position and right of a former tenant or lessee who holds over, such an interpretation will lead to absurdity and inconsistency as well as to injustice. Possession, it*

has been said, is nine points of the law. Our courts have in numerous decisions moved in to protect possession. See, for example: Obikoya & Sons Ltd.v. Governor of Lagos State (1987) 1 N. W.L.R. (pt. 50), 385 L.S.D.P. C. v. Foreign Finance Corporation (1987) 1 NWLR (part 50) 413; A-G of Bendel State & Ors v. P.L.A. Aideyan (1989) 4 NWLR (part 118) 646. The argument which has been inflicted upon us on behalf of the respondents in this case will, if accepted, be a reversal of this trend. Having said that much, I must say that I find it difficult to agree with the Court of Appeal that the procedure prescribed by section 28 of the State Lands Law of Eastern Nigeria is discretionary. Clearly it appears to me that section 10, shorn of its unconstitutional element, is complemented by section 28 which sets out the procedure for recovering possession from the lessee who holds over after his term has expired. There can be no question of the house or the land or both automatically reverting to the 2nd respondent simply because the lease had expired and not been renewed.” See Gregory Obi Ude v. Clement Nwara and Another (1993) 2 N. W.L.R. (part 278) 638. It therefore seems to me settled that although Section 28 (1) of the State Lands Law of Eastern Nigeria, applicable in Rivers State provides that the lessor “may” enter a suit for recovery of possession on expiration of the lessee’s lease, the word “may” in that section must be construed as mandatory and/or as meaning “shall” or “must” since it imposes a duty upon a public functionary for the benefit of a private citizen. In the same vein, a careful reading of sections 10 and 28 of the State Lands Law side by side would also reveal that although the word “shall” is used in the first part of section 10, both the proviso to that section and section 28 (1) make it clear that the word “shall” therein ought to be construed as directory. I will later in this judgment return to the provision of section 28 (1) of the State Land Law under consideration.

In the present case, the term of the lease was for an initial period of less than 30 years. Accordingly under the proviso to section 10 of the State lands law, Cap. 122 Laws of Eastern Nigeria, 1963, applicable in the Rivers State, the appellant was entitled within the three months of the termination of the lease to remove any buildings erected by him on the land during the currency of the lease unless the Commissioner of Lands elected to purchase such buildings and/or improvements. It is not in dispute that the term of the lease in issue terminated on the 31st December, 1968. It is equally incontestable that the proviso to section 10 of the State Lands Law enabled the appellant to stay on and to dismantle and remove his buildings or improvements on the demised land for an extended period of three months after the expiration of the lease on the said 31st December, 1968. It cannot therefore be right, as both Courts below held, that the appellant as from the 31st December, 1968

when the term of his lease expired lost all proprietary title or possession in the property leased.

Secondly, while the appellant under the said State Lands Law was entitled to a further use and possession of the demised property for three months after the expiration of his lease, he remained, at common law, a tenant at sufferance of the property in dispute until he was lawfully ejected or sued for possession by the lessor. This is because, where a tenant, having entered the dismissed premises lawfully or under a valid tenancy in the first place, holds the same over at the expiration of the lease and remains in possession thereof without the landlord's assent or dissent, he automatically becomes a tenant at sufferance. See Remon v. City of London Real Property Co. Ltd. (1921) 1 K.B.49 at 58. This class of lease or tenancy arises only by operation of law and not by express grant for it assumes an absence of an agreement between the lessor or Landlord of the one part, and the lessee or tenant of the other part. Meye v. Electric Transmission Ltd. (1942) Ch. 290. It is nonetheless well recognized in law as a special class or tenancy or leasehold, enjoying, as it were, its attendant rights and privileges and terminable by the lessor or Landlord by the ejection of the lessee or tenant by the due process of law. This generally, takes the form of Court action against such a lessee or tenant for possession of the demised premises.

In the present case, there is, as I have already observed, a large measure of agreement to the effect that although the appellant took refuge in his home State during the Nigeria civil war, he subsequently returned to Port-Harcourt at the end of hostilities and got the property in dispute duly returned to him by the Government of Rivers State. There is also a large measure of agreement that the appellant took possession of the house he erected on the premises and put tenants therein. He was therefore in possession of the property, and as admitted by the 2nd respondent, right up to the time the property was allegedly "sold" by the 1st to the said 2nd respondent. I entertain doubt that the appellant having lawfully entered that premises in the first place under a valid lease, held the same over at the expiration thereof and remained in possession of the land without the landlords' assent or dissent until the same was purportedly sold to the 2nd respondent. It is clear to me that the appellant at the time of the alleged sale of his premises was a tenant at sufferance thereon. It is equally clear to me that the appellant had at all material times legal interest in the property after the date of the expiration of his lease on the 31st December, 1968 right up to the time of its alleged sale to the 2nd respondent during which period he was still in lawful possession thereof and held the same over as, a tenant at sufferance. He thus became liable for the use and occupation of the land but was

entitled under the law to rely upon his possession of the land against the whole world until the lessor recovered possession of the property from him in the manner prescribed by law.

In the third place, attention has been drawn to the decision of this Court in the Gregory Obi Ude v. Clement Nwara and Another supra, to the effect that the word “may” in section 28 (1) of the State Land Law of Eastern Nigeria should be construed as mandatory and not merely permissive, directory or discretionary. That section of the Law prescribes the entry of a suit in the High Court for the recovery of possession of land from a tenant holding over after the expiration of his lease or tenancy. Where, as in the present case, the law has prescribed a particular method for exercising a statutory power, the procedure so laid down must be followed and any other method of its exercise must be deemed excluded. See Gbadamosi Lahan v. Attorney-General of the Western Region (1963) 1 All N.L.R. 226 and Gregory Obi Ude v. Nwara, supra. There can therefore be no question of the lessor recovering possession of the State Land in dispute by any other means such as resorting to a right of re-entry or any other type of self help. Nor did the question of the demised land, together with the building thereon, reverting automatically to the lessor simply because the lease had expired and had not been renewed arise in the circumstances of this case. Recovery of possession of such land may only be obtained as prescribed by the law, that is to say, by the entry of a suit in the High Court against the lessee holding over the demised premises as a tenant at sufferance.

In the present case, no such suit for the recovery of possession of the land in dispute was filed against the appellant before his property in dispute was purportedly sold contrary to the provisions of section 28 (1) of the said State Lands Law. In my view, both Courts below were in gross error by holding that the appellant had no interest in the property in dispute after the expiration of the lease on the 31st December, 1968. Definite interest, in the property after the 31st December, 1968, he had, as a tenant at sufferance and cannot accept that the alleged sale of the property in dispute was either valid, lawful or constitutional.

It is for the above and the more elaborate reasons contained in the leading judgment of my learned brother that I, too, allow this appeal. The decisions of both Courts below are hereby set aside and in substitution thereof, judgment is hereby entered for the appellant against the respondents jointly and severally as follows:-

“(a) A declaration that the appellant is the owner of the building known as and called plot 18 Block 256 ORIJE LAYOUT

PORT HARCOURT OR NO. 61 SANGANA STREET PORT-HARCOURT OR NO. 61 IKOT EKPENE STREET PORT-HARCOURT.

(b) A declaration that the purported sale of the said property by the Commissioner of Housing and Environment Port-Harcourt to the second respondent without the consent of the appellant is unconstitutional null and void and of no effect whatever. B

(c) An injunction Restraining the respondents, their servants and/or agents from entering, remaining or doing anything whatever on the demised property against the proprietary interest of the appellant.”

There will be costs to the appellant the appellant against the respondents which I assess and fix at N500.00 in the trial court, N500.00 in the Court below and N1,000.00 in this court.

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