

**SUPREME COURT OF NIGERIA.**  
4TH JULY, 1997. SC. 57/1990  
**CORAM:-M. L. UWAIJ CJN, A. B. WALL, M. E. OGUNDARE,**  
**S. U. ONU, Y. O. ADIO, JJSC**

MADAMASIMOWU ODUSOGA & ANOR ..... APPELLANTS  
AND  
L. L. RICKETTS ..... RESPONDENT

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***CONTRACTS** - Specific performance - Purchase price - Where purchase price is not fully paid and purchaser sues for specific performance - Right to specific performance cannot be enforced*

***CONTRACTS** - Part payment - Where purchaser made part payment but defaults in payment of the balance - The vendor has right to rescind the contract and resell.*

***LAND LAW** - Sale - Essential requirements of a valid sale of land under customary law.*

***LAND LAW** - Sale - Validity - Where purchase price is not fully paid and purchaser goes into possession - The sale is not valid and therefore cannot defeat the title of the vendor.*

***LAND LAW**-Conveyancing-Where a vendor has executed a prior valid conveyance - There remains no more right to be transferred to another party.*

**FACTS**

The land in dispute was part of the estate of late Babatunde Jemi-Alade sold to the Respondent. The Respondent upon part payment made to the vendor went into possession, surveyed the land and developed a part of it leaving the other part undeveloped. In 1971, the vendor after repeated demand to the Respondent to pay the balance failed, sold the undeveloped part of the land to the Appellants. The two sales were evidenced in exhibits "G" and "B". The Respondent sued the Appellants claiming ownership of the entire plot of land, damages for trespass and perpetual injunction. At the end of the trial the trial court dismissed the Respondent's claim.

On appeal to the Court of Appeal, it set aside the judgment of the trial court and gave judgment for the Respondent. The Appellants have now appealed to the Supreme Court against the judgment of the Court of Appeal.

**ISSUE FOR DETERMINATION**

Whether the plaintiff acquired title to the 4 plots of land sold to him in 1965 by the administrator and administratrix of the estate of Jemi-Alade deceased the previous owner of the land in dispute notwithstanding that the plaintiff did not at the time pay the full purchase price to his vendors.

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

***Land law - Requirements of a valid sale***

1. To constitute a valid sale of land under customary law, three essential ingredients are required viz-

- (i) Payment of the purchase price
- (ii) Purchaser is let into possession by the vendor
- (iii) In the presence of witnesses. (p. 1281 B)

***Sale - Validity***

2. It follows, therefore, that where, the purchase price is not fully paid there can be no valid sale, notwithstanding that the purchaser is in possession. That possession cannot defeat the title of the vendor. Where however, part payment of the purchase price was made and the balance is tendered within the stipulated time or, in the absence of a stipulated time, within a reasonable time, the vendor cannot resile from the contract of sale and the purchaser in possession will be entitled to a decree of specific performance, (p. 1281 D)

***Contracts - Specific performance***

3. Viewed even from the standpoint of the common law, payment of purchase price coupled with possession gives the purchaser an equitable title and he is entitled to seek an order of specific performance to compel the vendor to convey legal title to him. But where the purchase price is not fully paid, the purchaser will have no right to enforce specific performance, (p. 1282D)

***Part payment - Vendor has right to rescind***

4. Where the purchaser who has made a part-payment of the purchase price is in default of payment of the balance, there is right in the vendor to rescind the contract of sale and re-sell the property. (p. 1282 H)

***Where Vendor has executed a prior valid conveyance***

5. Having executed Exhibit G in favour of the 1st Defendant in 1972, Mrs. Bucknor no longer had the legal estate in the land in dispute which she could transfer to the plaintiff in 1976. Exhibit B, by which she conveyed the 4 plots of

land (including the land in dispute) to the plaintiff in 1976 was ineffective to transfer the legal estate in the land in dispute to the Plaintiff. In the circumstance, the learned trial Judge was right to have held that the 1st Defendant/Appellant had better title to the land in dispute and to have consequently Plaintiffs claims. (p. 1283 F)

## **NOTABLE POINTS OF INTEREST**

### **ONU JSC**

#### ***1. Sale of land under customary law - Importance of a witness***

I wish first of all to observe that it is settled law that it is for a party to a contract to take all necessary precautions in order to avoid a bad bargain. See Owo v. Kasumu (1932) 11 NLR. 116; the maxim is caveat emptor (let the buyer beware). It is the vendor's duty, however, to disclose defects in his title. The law is that in a transaction of sale of land under customary law, once there is payment of the purchase price of the land to the purchaser in the presence of witnesses, title in the land passes to the purchaser. (p. 1292 G)

#### ***2. Land law - Creation of valid title under customary law***

An agreement between the seller and purchaser, payment of the full purchase price and the delivery of possession in the manner required by native law and custom create a valid title to a parcel of land under native law and custom. See Ogunbambi v. Abowab 13 W. A.C.A. 222; Cole v. Folami (1956) 1 F.S.C. 66; and Akingbade v. Elemosho (1964) 1 A11N.L.R. 154. (p. 1294 A)

#### ***3. Application of the maxim nemo dot quodnon habet***

As Exhibits "B" and "G" were from the same source and as Exhibit "G" took priority over Exhibit "B", the Latin maxim, nemo dat quod non habet became applicable in favour of the appellant. When a person that has no legal title to a parcel of land purports to convey the land to another person, the Latin maxim aforesaid applies and the purported conveyance is void. (p. 1294 D)

## **REPRESENTATION**

Chief D. K. Solesi for the Respondent

No appearance for the Appellants

## **CASES REFERRED TO**

Odufuye v. Fatoke (1977) 4 SC. 11

Cole v. Folami 1FSC 66

Akingbade v. Elemosho (1964) 1 ALL NLR 154

Ogunbambi v. Abowaba 13 WACA 222,225

Olooto v. Administrator-General 12 WACA 176

Howe v. Smith (1884) 27 Ch D 89

Amankra v. Zanklay (1963) 1 All NLR 304

Owo v. Kasumu (1932) 11 NLR. 116

B Ashaye v. Akerele (1968) NMLR 199

Chief J.O. Lahan v. Lajouetan (1972) 6 SC. 190 at 205

Anyaduba v. Nigerian Renowned Trading Co. Ltd. (1992) 5 N.W.L.R (Pt. 343) 535

C **LEAD JUDGMENT BY OGUNDARE JSC**

The appellants are defendants in an action instituted by L.L. Ricketts now deceased. Ricketts claimed:

(i) *a declaration that the plaintiff is the beneficial owner of the property situate lying and being at Thomas Drive and forming part of a larger area of land covered by a deed of conveyance registered as No.9 at page 9 in volume 1547 of the Lands Registry, Lagos and that the plaintiff is entitled to a certificate of occupancy of the same property (hereinafter called 'the land in dispute);*

(ii) *N1,000.00 damages for trespass committed by the defendants, servants and agents on the said piece or parcel of land on or about the 29th day of April, 1980.*

(iii) *Perpetual injunction restraining the defendants, servants and/or agents from further acts of trespass on the land in dispute."*

The land in dispute is a portion of the land (4 plots) sold by the administrators of the estate of Babatunde Jemi-Alade deceased in 1965 to the plaintiff. Mr. Ricketts paid part of the purchase price to the vendors but failed to pay the balance. He went into possession and surveyed the land, (the entire 4 plots). He however developed only a part of it leaving the part now in dispute undeveloped. He built on the portion of the land developed by him but left the undeveloped part vacant. He bought the 4 plots of and for 950.00pounds (nine hundred and fifty pounds) but made a part payment of 700.00 (seven hundred pounds) for which he was given a receipt. This was in 1965. He did not pay the balance of the purchase price despite repeated demands from the vendors.

H In 1971 one Mr. S.O. Adenuga went on the land in dispute. He was challenged by the plaintiff, Mr. Ricketts. Mr. Adenuga disclosed to Mr. Ricketts that he was supervising the building on the land on behalf of Madam Asimowu Odusoga the 1st defendant/appellant. The plaintiff sued Mr. Adenuga and Mrs. Ebun Bucknor the sole surviving administratrix of Jemi-Alade in suit No.

LD/414/72 for damages for trespass. It was disclosed in the course of proceedings that Mrs. Ebum Bucknor had sold the land in dispute to the 1st defendant/appellant in the present proceedings following the failure of the plaintiff to pay the balance of the purchase price of the 4 plots of land sold to him in 1965. The plaintiff was non-suited in the action. Thereafter, he instituted the proceedings leading to this appeal against the above-named appellants claiming as herein-before mentioned.

Pleadings having been ordered, filed and exchanged the action proceeded to trial. At the conclusion of trial and after addresses by learned counsel for the parties, the learned trial judge (Hotonu J.) in a reserved judgment, found that the plaintiff was in possession of the land in dispute at the time that the defendants came on it to build. He also found that although the plaintiff paid a part of the purchase price in 1965 he did not pay the balance of the purchase price of the land sold to him, until 1976. He found also that the land in dispute was conveyed to the 1st defendant in April 1972 by Mrs. Ebum Bucknor the sole administratrix of the estate of Jemi-Alade family. The learned trial judge also found that the deed of conveyance executed in favour of the plaintiff in 1976 by Mrs. Ebum Bucknor after the plaintiff paid the balance of the purchase price was ineffective to pass the title to the land in dispute to the plaintiff in that by the earlier conveyance in 1972 in favour of the 1st defendant the estate of Jemi-Alade had divested itself of any title to the land in dispute that could be passed to the plaintiff. He finally found that the 1st defendant had better title to the land in dispute and consequently dismissed the plaintiff's claims in toto.

Being dissatisfied, the plaintiff (Mr. Ricketts) appealed successfully to the Court of Appeal. That Court (Lagos Division) found as follows:

*“(i) In law exhibit A is transaction of sale of the 4 plots from Jemi-Alade estate of which the document is a receipt that money had passed. The appellant was put into possession. It follows that under customary law the legal personal representatives of Jemi-Alade estate have transferred ownership to the appellant.”*

*“(ii) ‘The execution of the deed of conveyance later in 1976 exhibit is a confirmation of the sale that has validly taken place under customary law as far back as 1965. It is up to administrator and administratrix of Jemi-Alade estate to sue for the balance of their money before exhibit B was executed.’”*

*“(iii) ‘Since they have sold in 1965 they have no more interest in the 4 plots or in the remaining two plots of land which is the subject matter of the dispute in this case. Their right was only to recover the balance of*

250pounds.

*The learned judge used delay and negligence to defeat the appellant's title. Let me say right away that delay and 'negligence do not come into play here because the sale of the land had already been effected and what is open to the appellant was to demand a deed of conveyance after he had paid the balance.'*

(iv) *"Such being the law as I understand it Exhibit G cannot validly convey anything to the respondent as it was not even given by persons entitled in law to execute an instrument that can pass title from Jemi-Alade's estate.*

(v) *"The finding for possession in favour of the appellant is quite in order. It matters very little whether the survey pillars were hidden in the bush that had grown over the land in dispute. What matters is the fact that the appellant's pillars were there at the time the respondent's surveyor surveyed the land for the respondent."*

On these findings the Court below allowed the plaintiff's appeal, set aside the judgment of the trial High Court and entered judgment in favour of the plaintiff on the three reliefs sought by him.

The defendants were, quite naturally, unhappy with this judgment and have now appealed to this court upon 10 grounds of appeal. The appellants in their brief formulated 10 questions for determination based undoubtedly on their 10 grounds of appeal. The plaintiff/respondent in his brief formulated 5 questions. Having regard to the judgment appealed against and the grounds of appeal, I am of the view that the main issue calling for determination in this appeal is as to whether the plaintiff acquired title to the 4 plots of land sold to him in 1965 by the administrator and administratrix of the estate of Jemi-Alade deceased the previous owner of the land in dispute notwithstanding that the plaintiff did not at the time pay the full purchase price to his vendors. If the answer to this question is in the affirmative as decided by the Court below that would be the end of this appeal. If, however, the answer to this question is in the negative as decided by the learned trial judge then the judgment of the learned trial judge must be restored. There is a subsidiary issue and that is: whether Exhibit G, the deed of conveyance in favour of the 1st defendant/appellant is valid.

The plaintiff died before this appeal came up for oral hearing. On the application of the appellants, Chief Solesi for the respondent not opposing, Akinola Ricketts, Mrs. R. A. Ricketts, Mrs. Omolara Ajele and Segun Ricketts who are the administrators of the estate of the plaintiff - L.L. Ricketts were, by order of this court made on 8/4/97, substituted for the plaintiff as respondents to this appeal.

The 1st appellant was absent but 2nd appellant was present at the hearing of this appeal. Their counsel was also absent. Learned counsel for the appellants wrote to the Court to the effect that he had diarrhoea in consequence of which he was unable to be present in Court. He asked for adjournment. We were of the view that the reason for the application was frivolous. This appeal was entered in this Court in 1990 and briefs of argument had been filed and exchanged by the parties since that year. Counsel for the appellants could have arranged for some other counsel to appear but did not, rather he sent a letter to the Court. Pursuant to the rules of Court, the appeal was taken as argued on the brief of the appellants already filed in court. Chief Solesi for the respondent in a short address relied on the respondent's brief. He observed that Exhibit G was executed by three persons acting for themselves and on behalf of Babatunde Jemi-Alade family. He also observed that Exhibit B was executed by one person, the sole administratrix of the estate of Babatunde Jemi-Alade. He submitted that the vendors in Exhibit G had no power to convey a legal estate to the land in dispute and, therefore, Exhibit G was valueless. He urged the Court to dismiss the appeal.

I will begin the consideration of this appeal by disposing of the submission made by Chief Solesi on the validity of Exhibit G. I pause here to observe that Exhibit G is the deed of conveyance executed in favour of the 1st Defendant in 1972. Exhibit B on the other hand is the deed of conveyance executed in favour of the plaintiff in 1976. Exhibit G was executed by Mrs. Ebun Bucknor described in the deed as the sole surviving administratrix of the estate of Babatunde Jemi-Alade (deceased) and Modupe Afolabi Alade and Abiodun Olayinka Kuye (Nee Alade), both of 140 Clifford Street, Yaba, Lagos and both of whom acted for themselves and on behalf of all members of the Babatunde Jemi-Alade family. The three together were referred to in the deed as the vendors. It is the submission of Chief Solesi for the respondents that Modupe Afolabi Alade and Abiodun Olayinka Kuye not being administrator/administratrix of the estate of Jemi-Alade (deceased) could not join in conveying the legal estate in the land in dispute to the 1st defendant/appellant and that, therefore, Exhibit G is invalid.

Exhibit G, in part, reads:

*"THIS INDENTURE is made the 4th day of April, 1972 BETWEEN EBUN OLAJUMOKE BUCKNOR of 20, Elleshin Street, Lagos the sole surviving administratrix of the Estate of BABATUNDE JEMI-ALADE, deceased H MODUPE AFOLABI ALADE and ABIODUN OLA YINKA KUYE (Nee ALADE) both of 140, Clifford street, Yaba, on the Mainland of Lagos for themselves and on behalf of all members of the BABATUNDE JEMI-ALADE FAMILY (all together hereinafter called the vendors) of the one part and MADAM*

ASIMOWU ODUSOGA, Trader of 13 Solanke Street, Akoka, Yaba, Lagos State (hereinafter called the "Purchaser") of the other part."

The recitals, in part, also read:

"AND WHEREAS on the 28th day of October, 1961; Letters of Administration of his Estate were granted by the High Court of Lagos to the B said EBUN OLAJUMOKE BUCKNOR and TUNJI ALADE late of 28, Moloney Street, Lagos.

AND WHEREAS under and by virtue of Suit No.M/38/1962, the power to deal with the realty of the said Estate was granted to the said EBUN OLAJUMOKE BUCKNOR and the said Tunji Alade by the High Court C of Lagos on the 16th day of April, 1962. AND WHEREAS under and by virtue of a Deed of Conveyance dated the 21st day of August, 1964 and registered as No. 49 in Volume 774 of the Land Registry in the Office at Ibadan the personal representatives of the said Estate became seised of the said large parcel of land.

D AND WHEREAS the said letters of Administration granted on the 28th day of October, 1961 to the personal representatives of the said Estate were resealed on the 8th day of August, 1967 by the Probate Registrar of the Western State of Nigeria.

E AND WHEREAS the said TUNJI ALADE, died intestate in Lagos on the 29th day of January, 1971.

AND WHEREAS the said TUNJI ALADE, deceased, and EBUN OLAJUMOKE BLCKNOR as Administrator and Administratrix respectively of the Estate of BABA TUNDE JEMIALADE deceased agreed with the Purchaser for a sale to her of the said hereditaments for the sum of 'a3300 (Three F Hundred Pounds) but no conveyance was executed .

AND WHEREAS the said MODUPE AFOLABI ALADE and ABIODUN OLAYINKA KUYE both being beneficiaries of the Estate of the said BABA TUNDE JEMI-ALADE, have been appointed by the other beneficiaries of the Estate as Accredited representatives of the said BABA TUNDE JEMI-ALADE G FAMILY."

The habendum states:

"NOW THIS CONVEYANCE WITNESSETH that in pursuance of the above premises and in consideration of the sum of 'a3300 (Three Hundred Pounds) paid by the Purchaser to the Vendors before the execution of these H present (the receipt whereof the Vendors hereby acknowledge) the said EBUN OLAJUMOKE BUCKNOR as personal representative and the said MODUPE AFOLABI ALADE and ABIODUN OLAYINKA KUYE as beneficial owners hereby convey UNTO the Purchaser....."

In dealing with the issue of the validity of Exhibit G the learned trial

judge said:

*“The position is that by the deed of conveyance exhibit G the legal state in the land in dispute has been properly conveyed to the 1st defendant in April, 1972. It was the contention of the learned counsel for the plaintiff that since this document was executed by Mrs. Bucknor the surviving administratrix of the estate of Jemi-Alade along with other two people it was void. I do not support this view. Mrs. Bucknor as the only remaining administratrix of the estate had full right to sign the deed of conveyance. The mere fact that other two people, Modupe Afolabi Alade and Abiodun Olayinka Kuye, who are beneficiaries of the estate ..... document does not make it void.”*

But the Court below, per Ademola, JCA. observed:

*“The next question is about the two deeds of conveyance. Are the exhibits B and G given by a common vendor or vendors as the case may be? Here exhibit B was given to the appellant by Mrs. Bucknor who at the time she executed it was the only surviving administratrix of the Jemi-Alade estate, whereas exhibit G was given by vendors namely:-Mrs. Bucknor, Mr. Jemi-Alade and Mrs. Kuye who described themselves as selling on behalf of Jemi-Alade family land which has been vested in the Administrator and Administratrix of the estate of Jemi-Alade.*

*So it is quite patent and admit of no argument that the vendors to the 1st respondent are not the same as the vendor of the appellant. Therefore the instruments exhibits B and G are not from a common source, so even if one were to apply them to the appropriate section under the Land Instrument Registration Law as to priorities, one would still say that the finding of the trial judge that the interest of the appellant have been defeated by the earlier registration of the instrument of the respondent (exhibit) in this matter is erroneous.*

*To talk of competing interest, there must be a common base first and thereafter loss of priority of interest can follow. I am of the view that Exhibit B and Exhibit G have no common base, therefore no question of priorities can arise between the two instruments.”*

Ademola, J.C.A. went on, later in his judgment, to say:

*“.....Exhibit G cannot validly convey anything to the respondent as it was not even given by persons entitled in law to execute an instrument that can pass title from Jemi-Alade’s estate.*

*Exhibit G therefore has no place as a document of title in this case.”*

With profound respect to their Lordships of the Court below, I think they were wrong in their view of Exhibit G. Mrs. Ebun Olajumoke Bucknor executed Exhibit G not as a beneficiary but in her capacity as the sole surviv-

ing administratrix of the estate of Babatunde Jemi-Alade, deceased. As the legal estate to the land in dispute was then in her, she could validly alone execute the deed of conveyance in favour of the 1st defendant/appellant. The fact that two beneficiaries of the estate joined in executing Exhibit G would not make the deed void or ineffective to pass title to the 1st defendant. Their executing the deed was superfluous and unnecessary. Since they had no title to the land, there was nothing they could pass to the purchaser. Had Mrs. Bucknor executed the deed in any capacity other than as administratrix of the estate of Jemi-Alade, such as the capacity in which the other two joined, a different situation would have arisen and I would not then have hesitated in agreeing with the Court below that Exhibit G was valueless. Title to the land was, by virtue of the deed of conveyance dated the 21st day of August, 1964 and recited in Exhibits B and G, vested, not in the beneficiaries but in the personal representatives of the deceased Jemi-Alade and only they or the sole survivor of them could pass title to a third party.

As Mrs. Ebun Bucknor executed Exhibit G in her capacity as the administratrix of the estate I hold that Exhibit G was validly made and was from common source as Exhibit B. Being prior in time to Exhibit B, Exhibit G took priority over Exhibit B, as, rightly in my view, was decided by the learned trial judge. This conclusion disposes of the subsidiary question arising for determination in this appeal.

I now turn to the main question arising for determination in this appeal. The learned trial judge was of the view that as the plaintiff failed to pay the full purchase price of the land sold to him, he would not be entitled to a decree of specific performance against his vendors even though he was in possession of the land he bought in 1965. The Court of Appeal was of a contrary view. In his lead judgment, with which the other Justices agreed, Ademola J.C.A. observed:

*"Since they (id est, the vendors) have sold in 1965 they have no more interest in the 4 plots or in the remaining two plots of land which is the subject matter of the dispute in this case. Their right was only to recover the balance of 'a3250.00 the sale of the land had already been effected and what is open to the appellant (id est, the plaintiff) was to demand a deed of conveyance after he had paid the balance."*

(brackets are supplied by me)

What, in effect, their Lordships of the Court below seem to be saying is that once there is an agreement under customary law to sell land and the purchaser has paid part of the purchase price, he, has acquired title to the land and is entitled to have legal title conveyed to him on his paying the balance of the purchase price, notwithstanding that he may have defaulted in paying this

balance, within the time agreed to by the parties or, in the absence of agreement, within a reasonable time. The vendor, according to their Lordships, has lost his title to the land and cannot refuse to convey to the purchaser; his only interest is in the balance of the purchase price which he can recover in an action.

With profound respect to their Lordships of the Court below they are clearly in serious error. For a sale under customary law, such as the sale to the plaintiff in 1965, this Court has in *A.O. Odufuye v. Jacob Adeoye Fatoke* (1977) 4 SC. 11, accepted the proposition of law that where the purchaser fails to pay the full purchase price there is no valid sale. This must be so, for **to constitute a valid sale of land under customary law, three essential ingredients are required, viz:**

- (i) Payment of the purchase price
- (ii) Purchaser is let into possession by the vendor
- (iii) In the presence of witnesses

See: *Aboyade Cole v. S.R.. Folami* (1956) SCNLR 180; (1956) 1 FSC 66; *Akingbade v. Elemosho* (1964) 1 All NLR 154; *Ogunbambi v. Abowaba*, 13 WACA 222, 225. It follows, therefore, that where the purchase price is not fully paid there can be no valid sale, notwithstanding that the purchaser is in possession. That possession cannot defeat the title of the vendor - See: *Oloto v. Administrator-General & Ors.* 12 WACA 76. Where however, part payment of the purchase price was made and the balance is tendered within the stipulated time or, in the absence of a stipulated time, within a reasonable time, the vendor cannot resile from the contract of sale and the purchaser in possession will be entitled to a decree of specific performance - see: *Kabba & Frank Fraser v. Daniel S. Young*, 10 WACA 135. My attention was drawn in the course of researching for this judgment to a statement in Oluyede's *Modern Nigerian Land Law* to the effect that:

*"Once the purchaser is put in possession after paying part or all of the purchase price, the land is thereafter his. Even if he fails to pay the balance, the vendor cannot repudiate and transfer the land to a third party. The case of Seteolu v. Solebi (1959) Suit No. 103/59 Abeokuta Grade 'A' Customary Court (See also Akinrinsola v. Jesiku (1961) suit No. 79/C1/61 Ondo Central Grade A Customary Court) is a good example. In this case, the purchaser agreed to pay N100 for the purchase of the land but paid only N40.00. It was held that failure to pay the remaining N60.00 did not affect the title of the purchaser. In effect, if the vendor purported to sell to a third party he had no title to pass. The President of the court asked a rhetorical question:*

*If then a person has sold land in the customary way to another*

person, can he take it back because of non payment of the balance? I think not.

*It is interesting to note that in the case of Ajao Camp v. Adeyebu (1961) Suit No, 28/C1/61 Ondo Central Grade 'B' Customary Court, where the plaintiff sued the defendant to show cause why he trespassed on his B cocoa farm which was sold to the plaintiff by the defendant the defendant pleaded that the plaintiff did not pay the balance of N25 of the purchase price,*

*The court held 'if the plaintiff failed to pay him (the vendor) he should seek his remedy in court by suing for the debt. Judgment was therefore given in favour of the plaintiff.'*

This statement in my respectful view, does not represent good law. The cases cited in support of the proposition therein are decisions of the Grade's A & B Customary Courts which must be taken to have been overruled by this Court in Odufuye v. Fatoke (supra).

**D Viewed even from the standpoint of the common law, payment of purchase price coupled with possession gives the purchaser an equitable title and he is entitled to seek an order of specific performance to compel the vendor to convey legal tile to him. But where the purchaser price is not fully paid, the purchaser will have no right to enforce specific performance - see E Hewe v. Smith (1884) 27 Ch D 89, a case relied on by the learned trial judge.**

In Howe v. Smith, the purchaser, on a sale of real estate, paid 'a3500 "as a deposit, and in part payment of the purchase money." The contract of sale provided that the payment should be completed on a day named, and that if the purchaser should fail to comply with the agreement the vendor should F be at liberty to re'97sell and to recover any deficiency in price as liquidated damages. The purchaser was not ready with his purchase money, and after repeated delays, the vendor re'97sold the property for the same price. On an action by the original purchaser for specific performance, the Court of Appeal (England) held, affirming the decision of Kay J. that the purchaser had lost by G his delay his right to enforce specific performance. It was also held (but we are not concerned with that in this appeal) that the deposit, although to be taken as part'97payment if the contract was completed, was also a guarantee for the performance of the contract, and that the plaintiff, having failed to perform the contract within a reasonable time, had no right to a return of the deposit.

**H Where the purchaser who has made a part'97payment of the purchase price is in default of payment of the balance, there is right in the vendor to rescind the contract of sale and re'97sell the property '97 see: Howe v. Smith (supra); Mayson v. Clouet (1924 )A.C. 980 at 985 where the purchaser paid not only the deposit but also part of the purchase price but failed to pay**

the balance of the price at the stipulated time, the vendor rescinded the contract. On appeal to the Privy Council Per Lord Dunedin, delivering the judgment of the Council observed:

*‘The law is quite plain. If one party to a contract commits a breach then if that breach is something that goes to the root of the contract, the other party has his option, He may still treat the contract as existing and sue for specific performance; or he may elect to hold the contract as at an end - i.e., no longer binding on him - while retaining the right to sue for damages in respect of the breach committed. The test in this case as to whether such an election had been made is a very simple one. Could the vendors on January I have sold to someone else without subjecting themselves to action at the instance of Sim Choon Kee for specific performance? Their Lordships are of opinion that they clearly could.’*

In an attempt to distinguish *Howe v. Smith* from the case on hand, the Court below, per Ademola, JCA was of the opinion that payment made by plaintiff and receipted for in Exhibit A was not a deposit but part-payment. I cannot see what difference this distinction makes in this case. The factual situation here is that plaintiff did not fully pay for the land he bought from the family of Jemi-Alade in 1965 and the family in 1972 resold the undeveloped part of it to the 1st defendant, after repeated demands made to the plaintiff to pay had yielded no results. On the authorities, there was neither a valid sale in 1965 under customary law nor had the plaintiff in 1972 equitable title to the land under the Common Law, such as would entitle him to a decree of specific performance. The question of whether what was paid was a deposit or part-payment only becomes relevant when determining the right of the purchaser to a refund of what he had paid. That issue does not arise in this case. The administratrix of Jemi Alade was entitled to sell and convey the land in dispute to the 1st defendant/appellant in 1972, following the failure of the plaintiff to pay the balance of the purchase price, despite repeated demands.

**Having executed Exhibit G in favour of the 1st defendant in 1972, Mrs. Bucknor no longer had the legal estate in the land in dispute which she could transfer to the plaintiff in 1976. Exhibit B, by which she conveyed the 4 plots of land (including the land in dispute) to the plaintiff in 1976 was ineffective to transfer the legal estate in the land in dispute to the plaintiff. In the circumstance, the learned trial judge was right to have held that the 1st defendant/appellant had better title to the land in dispute and to have consequently dismissed plaintiff’s claims.**

The conclusion I reach is that this appeal succeeds and it is hereby allowed. The judgment of the Court of Appeal is set aside together with the order for costs made therein. In its stead I restore the judgment of the trial

High Court dismissing plaintiff's claims. The defendants/appellants are entitled to the costs of this appeal and of the appeal in the Court below which I assess at N1,000.00 and N750.00 respectively.

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B

**UWAIS CJN**

I have had the advantage of reading in draft the judgment read by my learned brother Ogundare, JSC. I entirely agree with the judgment.

Accordingly I too hereby allow the appeal. The decision of the Court of Appeal is set aside. The decision of the High Court is hereby restored. I adopt the order as to costs as contained in the aforementioned lead judgment.

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**WALI JSC**

D

I have the privilege of reading in advance, a copy of the lead judgment of my learned brother Ogundare, JSC and I agree with him that the appeal has merit and therefore succeeds.

The facts in this case have been sufficiently stated in the lead judgment of my learned brother Ogundare JSC, and need not be restated by me. I E however wish to add the following by way of emphasis.

It is common ground that in 1965, Mr. L.L. Ricketts bought 4 plots of land from the administrators of the estate of Babatunde Jemi-Alade (now deceased) for 'a3950.00 and made part payment of 'a3700.00 of the purchase price. He was issued with a receipt (Exhibit "A") for the part payment. The F respondent developed part of the land and the rest was left undeveloped. The undeveloped portion is the land in dispute in this case. Despite repeated demands by the administrators of the estate of late Babatunde Jemi'97Alade, the respondent failed to pay up the balance.

As a result of the respondent's failure to pay the balance of the G purchase price, the administrators of the estate sold the portion of the land in dispute to the 1st defendant/appellant and executed a deed of conveyance Exhibit G. in her favour. Exhibit G was executed on 4th April, 1972 and she was put in possession of the land in dispute. In 1976, the respondent paid the sum of 'a3250 being the balance of the purchase price and a deed of conveyance H for the land purchased, including the land in dispute was executed in his favour. It was admitted in evidence as Exhibit "B".

Based on the pleadings filed by the parties and the evidence adduced before him, the learned trial judge found that:-

*"The identity of the land in dispute is quite clear. There is evidence*

not disputed that plaintiff holds a purchase receipt exhibit A in respect of the four plots of land which include the land in dispute. There is a deed of conveyance exhibit B conveying the four plots of land to the plaintiff. On the part of the defendants there is evidence vide deed of conveyance exhibit G, that the land in dispute was conveyed to the first defendant in consideration of the sum of 'a3300 (N600.00) paid by her. There is also evidence from the parties that they are all in possession of the land in dispute. It appears that the main issues arising which are to be resolved are quite simple. I have to decide whether it is the plaintiff or the first defendant that owns the land in dispute. In this regard decision has to be taken as to who was really in possession of the land as there is nothing like concurrent possession in law. To be considered also, is the nature and validity of the parties interest, equitable or legal, on the land having regard to the priority of the registered interest in the land under section 52(1) of the Registered Land Law."

After reviewing the evidence adduced, the learned trial judge made "the following findings:

"Looking at the survey plan attached to exhibit B it will be observed that the plaintiff's buildings have been evenly located on a greater part of the land. In order to be in possession it is not necessary for him to build houses on every part of the four plots which were not laid out. In this situation it appears clear that the plaintiff has been in physical control of the substantial part of the whole land. I am again of the firm view that the plaintiff is in possession of the land in dispute notwithstanding the fact that the defendants are building house on it."

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"Evidence shows that the plaintiff made part payment in 1965 and did not pay the balance of purchase price of the land until 1976. This is a period of eleven years which, in my view, is too long notwithstanding that there was no agreement as to the time the balance should be paid. Delay defeats equity. If the plaintiff could afford to build houses on part of the land after paying part of the purchase price of the land surely he would be expected to be in position to pay in time the balance which is just about a quarter of the whole purchase price. He was simply negligent.... consequence of the delay in paying the balance of purchase price.

I am of the view that the plaintiff is not entitled to the equitable remedy of specific performance which is only granted to those who are ready and prompt. (portion left blank not legible) Accordingly he cannot by evidence of being in possession and payment of part of the purchase price be successful in obtaining a declaration as beneficial owner of the land in dispute."

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“Mrs. Bucknor as the only remaining administratrix of the estate had full right to sign the deed of conveyance. The mere fact that the other two people, Modupe Afolabi Alade and Abiodun Olayinka Kuye who are beneficiaries of the estate of the said Babatunde Jemi-Alade signed the document B does not make it void.”

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“The two deeds of conveyance exhibits G and B were duly registered on 4th April, 1972 and 12th March, 1976 respectively. As regards priority of registered interests in land section 52(1) of the Registered Land C Law provides that:

“Subject to the provisions of this section interest appearing in the register shall have priority according to the order in which the instruments creating them were presented for registration irrespective of the dates on the instrument, and no person shall be concerned to see that registration is D completed on the date of presentation of the relative instrument”.

In the case of *Rebecca Amankra v. Latey Zankley* (1963) 1 All NLR 304 it was held by the Supreme Court that of two competing conveyances which have been registered each takes effect as against the other from the date of registration which means that one executed earlier loses its priority if it was E registered later. Considering their dates of registration it is quite clear that the deed of conveyance exhibit G takes priority over the deed of conveyance Exhibit B.”

“The first leg of the plaintiff’s claim which is declaration that he is the beneficial owner of the land in dispute cannot succeed. I have found that F he is in possession of the land but the issue of possession is separate from the issue of radical title. Possession in itself is good title as against everyone except the true owner. See *Fagbemi Akana v. Moses Alabi Okunade & Ors.* (1978)3 SC 129 at 137. Having now found the first defendant to be true owner of the land in dispute the plaintiff’s possession against her G is ousted and he cannot succeed in his claim of damages against her for trespass. The second leg of the claim therefore fails. For the same reasoning the third leg of the claim which is perpetual injunction cannot also succeed.”

Aggrieved by the trial court’s decision the respondent appealed H against it to the Court of Appeal, Lagos Division. The Court of Appeal after making the following observations and findings that:-

“Although there was no stipulation as to the exact time for payment of the balance nevertheless the learned judge rightly held the view that it would be paid within a reasonable time. Indeed delay for 11 years is hope-

lessly unreasonable.”

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*‘The learned trial judge used delay and negligence to defeat the appellant’s title. Let me say right away that delay and negligence do not come into play here because the sale of the land had already been effected and what is open to the appellant was to demand a deed of conveyance after he had paid the balance.’*

On Exhibits B and G the Court of Appeal opined thus:-

*“Are the exhibits B and G given by a common vendor or vendors as the case may be? Here exhibit B was given to the appellant by Mrs. Bucknor who at the time she executed it was the only surviving administratrix of the Jemi-Alade estate, whereas exhibit G was given by vendors namely:-Mrs. Bucknor. Mr. Jemi-Alade and Mrs. Kuye who described themselves as selling on behalf of Jemi-Alade family land which has been vested in the administrator and administratrix of the estate of Jemi-Alade.*

*So it is quite patent and admit of no argument that the vendors to the 1st respondent are not the same as the vendor of the appellant. Therefore the instruments exhibits B and G are not from a common source, so even if one were to apply them to the appropriate section under the Land Instrument Registration Law as to priorities, one would still say that the finding of the trial judge that the interest of the appellant have been defeated by the earlier registration of the instrument of the respondent (exhibit) in this matter is erroneous.”*

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*“All I need to say here is that I agree with the appellant’s submission on this issue and to point out that what appellant paid in Exhibit A is not the deposit for the purchase of the land nor did the exhibit A stipulate that it was a deposit. What exhibit A said was that the appellant bought 4 plots paid so much and has a balance of 250pounds to pay.*

*In law exhibit A is transaction of sale of the 4 plots from Jemi-Alade estate of which the document is a receipt that money has passed. The appellant was put into possession. It follows that under customary law the legal personal representative of Jemi-Alade estate have transferred ownership to the appellant.*

*The execution of the deed of conveyance later in 1976 exhibit B is a confirmation of the sale that has validly taken place under customary law as far back as 1965. It is up to the administrator and administratrix of Jemi-Alade estate to sue for the balance of their money before exhibit B was executed. They failed to do so.”*

With these observations and findings, the Court of Appeal unani-

mously allowed the appeal and set aside the trial court's decision and entered judgment for the plaintiff/respondent.

The defendants/appellants have now appealed to this court against the Court of Appeal judgment.

Both parties filed and exchanged briefs of argument.

B From the issues raised in this appeal it can be discerned that the determinant ones can be re-formulated as follows:-

1. Whether, the respondent having failed to pay the full price of the land sold to him under customary law, but was put in possession, the vendor has forfeited all rights other than an action for the payment of the balance of the purchase price, notwithstanding the fact that the respondent had failed to pay the balance within a reasonable time, despite repeated demands.

2. If issue( 1) is answered in the negative whether the vendors rightly exercised their equitable right of lien over the land by selling its undeveloped part.

D 3. Whether the sale of the land in dispute to the 1st appellant by Mrs. Bucknor the sole surviving administratrix of Jemi-Alade and conveying the same to the 1st appellant by a deed of conveyance Exhibit G executed by Mrs. Bucknor along with two other beneficiaries of the estate in April, 1972 is valid and that Exhibit B, the deed of conveyance executed by the same surviving E administratrix in 1976 in favour of the respondent after he had paid the balance of the purchase price is ineffective.

For a sale of a parcel of land under customary law, and which will transfer the legal estate from the vendor to the purchaser, the following conditions must co-exist:

F (a) payment of the full purchase price to the vendor by the purchaser and

(b) the delivery of the parcel of land to the purchaser by the vendor in the presence of witnesses.

See: Ogunbambi v. Abowaba 13 WACA 222. The fact that the respondent made part payment to the vendors for which he obtained a receipt Exhibit A did not pass the legal estate of the land in dispute to him. Where a purchaser, as in this case, paid only part of the purchase price of a parcel of land which was demarcated into plots before the sale, went into possession, developed substantial part of the land while leaving the rest bushy and undeveloped, the legal estate of the undeveloped part still remained with the vendor, particularly when the purchaser had failed to pay the balance of the purchase price after several repeated demands. See Akingbade v. Elemosho (1964) 1 All NLR 154. All that the respondent might have in the undeveloped part was equitable interest given to him by Exhibit A, coupled with taking

possession on the same. See Cole v. Falami (1956) SCNLR 180; (1956) 1 FSC 66 at 69 where Jibowu Ag. F.C.J (as he then was) stated the law as follows :

Exhibit J shows that Chief Oloto purported to sell the land in dispute to the appellant on 13th December, 1949. A mere receipt of purchase did not confer legal estate to the land in dispute on the appellant, but would confer an equitable interest in the land if the chief was acting for the B family.....Even if it is assumed for the sake of argument that Exhibit “J” conferred an equitable interest in the land on the appellant, the legal estate still remained in the Oloto chieftaincy family until it is conveyed to the appellant.”

For the reasons stated above, I answer issue I as reframed by me in C the negative.

It is also common ground in this case that Mrs. Bucknor is the sole surviving administratrix of Mr. Jemi-Alade. The argument of learned counsel for the appellant is that the sale of the land in dispute to the appellant for which he paid the full price to the administratrix as a result of which a deed of conveyance - Exhibit G, was executed in his favour by the sole surviving D Administratrix along with two other beneficiaries to the estate is legally valid and effective as it is prior in time to Exhibit B, the deed of conveyance executed by Mrs. Bucknor, the sale administratrix in favour of respondent on payment of the balance of the purchase price very much later and also registered E later than Exhibit G.

Even if it is taken that the receipt Exhibit A, issued to the respondent on part-payment of the purchase price, was earlier in time, I have already shown in this judgment that Exhibit A, coupled with taking possession of the land, conferred only equitable interest, particularly in the undeveloped portion of which is now in dispute, leaving the legal estate in the administratrix. So when in 1972 she exercised her lien over the undeveloped part of the land by selling and conveying same to the appellant, she was exercising her legal right. She did not have to resort to long process of litigation to recover the balance of the purchase price. After executing Exhibit G in favour of the appellant, there was nothing left for her to convey later in Exhibit “B”; and the mere fact that the two beneficiaries to the estate joined the sole administratrix in executing Exhibit G, will not affect the validity of the document. What is important is the conveyance by the sale surviving administratrix and, the signatures of the two other beneficiaries to it are of no significance and superfluous. The H Court of Appeal is therefore wrong in its conclusion on the issue when Ademola JCA observed and concluded:-

*“Here exhibit B was given to the appellant by Mrs. Bucknor who at the time she executed it was the only surviving administratrix of the Jemi-*

*Alade estate, whereas exhibit G was given by vendors namely:- Mrs. Bucknor, Mr. Jemi-Alade and Mrs. Kuye who described themselves as selling on behalf of Jemi-Alade family land which has been vested in the Administrator and Administratrix of the estate of Jemi-Alade.*

*So it is quite patent and admit of no argument that the vendors to B the 1st respondent are not the same as the vendor of the appellant. Therefore the instruments exhibits B and G are not from a common source, so even if one were to apply them to the appropriate section under the Land Instrument Registration Law as to priorities, one would still say that the finding of the trial Judge that the interest of the appellant have been defeated by the C earlier registration of the instrument of the respondent (exhibit) in this matter is erroneous."*

I fully agree with the observation and conclusion of the learned trial Judge that:

*"The position is that by the deed of conveyance exhibit G the legal D estate in the land in dispute has been properly conveyed to the first defendant in April, 1972. It was the contention of the learned counsel for the plaintiff that since this document was executed by Mrs. Bucknor the surviving administratrix of the estate of JemiAlade along with other two people it was void. I do not support this view, Mrs. Bucknor as the only remaining E administratrix of the estate had full right to sign the deed of conveyance."*

Issue 2 as re-framed by me is answered in the affirmative.

It is for these and the fuller reasons in the lead judgment of my learned brother Ogundare, J.S.C. that I also hereby allow the appeal, set aside the decision of the Court of Appeal and restore in place thereof the judgment F of the trial court. I endorse the order of costs made in the lead judgment.

### ONU JSC

In the High Court of Lagos State sitting at Ikeja, the plaintiff/G respondent's claim endorsed on his writ of summons against the defendants, herein appellants, was for;

*"(1) a declaration that the plaintiff is the beneficial owner of the property situate, lying and being at Thomas Drive and forming part of a larger area of land covered by a deed of conveyance registered as No.9 at H page 9 in volume 1547 of the Lands Registry, Lagos and that the plaintiff is entitled to a certificate of occupancy of the same property (hereinafter called the land in dispute);*

*(ii) N1,000.00 damages for trespass committed by the defendants, servants and agents on the said piece or parcel of land on or about the 29th*

day of April, 1980.

(iii) *perpetual injunction restraining the defendants, servants and/or agents from further acts of trespass on the land in dispute.*”

Parties joined issues on their pleadings duly ordered by the trial court and after evidence was adduced by either side followed by the addresses of counsel, the learned trial judge found the respondent’s claims to B have no merit and so dismissed them.

The respondent being aggrieved by that decision appealed to the Court of Appeal sitting in Lagos (herein after referred to as the court below). After considering the arguments proffered by both parties in support of the respective briefs, the court below (Coram: Ademola and Awogu, JJ.C.A. with C Babalakin, J.C.A. as he then was) allowed the appeal by holding inter alia as follows:-

*“The next question is about the two deeds of conveyance. Are the Exhibits B and G given by a common vendor or vendors as the case may be? Here exh. B was given to the appellant by Mrs. Bucknor who at the time she executed it was the only surviving administratrix of the Jemi-Alade estate, whereas exhibit G was given by vendors namely:-Mrs. Bucknor, Mr. Jemi-Alade and Mrs. Kuye who described themselves as selling on behalf of Jemi-Alade family land which had been vested in the administrator and administratrix of the estate of Jemi-Alade.* E

*So it is quite patent and admit of no argument that the vendors to the 1st respondent are not the same as the vendors of the appellant. Therefore the instruments exhibits Band G, are not from a common source.....”*

Later down in his lead judgment Ademola, J.C.A. said;

*“To talk of competing interest, there must be a common base first F and thereafter loss of priority of interest can follow. I am of the view that Exhibit B and Exhibit G have no common base, therefore no question of priorities can arise between the two instruments.....”*

*The learned Judge applying the principle in the case of Howe v. Smith (1884) 27 Ch.D. page 89 (supra) held that the vendor or vendors of G the estate of Jemi-Alade could be at liberty to sell the two remaining plots of the 4 plots earlier sold to the appellant.*

*Here in my view the learned judge is again in error .....*”

The learned Justice then went on to hold as follows:-

*“All I need to say here is that I agree with the appellant’s submis- H sion on this issue and to point out that what the appellant paid in exhibit A, is not the deposit from the purchase of the land nor did the exhibit A stipulate that it was a deposit. What exhibit A. said was that the appellant bought 4 plots paid so much and has a balance of 250pounds to pay.*

*In law exhibit A is transaction of sale of the 4 plots from Jemi-Alade estate of which the document is a receipt that money has passed. The appellant was put into possession. It follows that under customary law the legal personal representative of Jemi-Alade estate transferred ownership to the 'appellant.'*

B The learned Justice thereupon reached the following crucial decision, to wit:

*"The execution of the deed of conveyance later in 1976 Exhibit B is a confirmation of the sale that has validly taken place under customary law as far back as 1965. It is up to the administrator and administratrix of Jemi-Alade estate to sue for the balance of their money before exhibit B. was*

C *executed. They failed to do so.*

*Since they have sold in 1965 they have no more interest in the four plots or in the remaining two plots of land which is the subject matter of the dispute in this case. Their right was only to recover the balance of 250 pounds."*

The learned judge used delay and negligence to defeat the appellant D (sic) title. Let me say straight away that delay and negligence do not come into play here because the sale of the land had already been effected and what it (sic) open to the appellant was to demand a deed of conveyance after he had paid the balance ....."

Having said the above and more, the learned Justice whose judgement was E concurred in by his learned brothers, proceeded to allow the respondent's appeal with costs.

Naturally dissatisfied with the decision thus arrived at by the court below, the appellants have appealed to this court. Of the ten issues proffered by the appellants which I consider to be unnecessary proliferation, one main F issue and a subsidiary thereof are, in my view, worthy of consideration herein. They are:-

(a) Whether the plaintiff/respondent herein acquired title to the four plots of land sold to him in 1965 by the administrator and administratrix of the estate of Jemi-Alade, deceased the previous owner of the land in dispute G notwithstanding that the respondent did not at any time pay the full purchase price.

(b) Whether Exhibit G, the deed of conveyance in favour of the 1st defendant/appellant is valid.

In dealing with both issues together, I wish first of all to observe that H it is settled law that it is for a party to a contract to take all necessary precautions in order to avoid a bad bargain. See *Owo v. Kasumu* (1932) 11 NLR 116; the maxim is *caveat emptor* (let the buyer beware). It is the vendor's duty, however, to disclose defects in his title. The law is that in a transaction of sale of land under customary law, once there is payment of the purchase price of

the land to the purchaser in the presence of witnesses, title in the land passes to the purchaser. See *Ogunbambi v. Abowaba* 13WACA.222; *Cole v. Folami* (1956) SCNLR 180; (1956) 1FSC 66 and *Ashaye v. Akerele* (1968) NMLR.190. In the instant case, no such customary sale did indeed take place and the trial court rightly so found. This is because the respondent did not pay the full price for the 4 plots of land he purported to purchase from the appellants for 950 pounds with a balance of 250 pounds left unpaid. The attributes of a void sale being therefore absent from the purported sale to the respondent, title thereto not having passed, the court below seriously erred when it held that under customary law the legal representatives of Jemi-Alade transferred the ownership of the land in dispute on the part-payment of the purchase price thereof. A fortiori, the court below also was in error when it held that the execution in 1976 of Exhibit was a confirmation of the purported customary sale which took place in 1965 or that delay and negligence do not come into play here. B

On whether Exhibit "G" was duly and validly executed by Mrs. Bucknor, in as much as the law clothed her with the authority to do so in her capacity as administratrix of the estate of Jemi-Alade, she rightly, in my view, exercised that power. It is of no consequence and detriment that she was joined by others not similarly empowered to execute Exhibit 'G'. D

While it is in my opinion clear that Exhibits 'G' and 'B' therefore emanated from the same source, the court below was palpably wrong to hold otherwise. Moreover, as both instruments come from the same source it is clear that Exhibit G, being first in time took priority over Exhibit 'B'. Since, however, the purported conveyance of the land in dispute was by one who no longer had legal title in it, Exhibit 'B' was by that token void. See *Ekpandu v. Erika* (1959) SCNLR 186; (1959) 4 FSC. 79 at 81; *Chief J.O. Lahan & ors. v. R. Lajoyetan & ors.* (1972) 6 SC. 190 at 205 and *Samuel Adenle v. Michael Oyegbade* (1967) NMLR.136. E

It is for the above reasons and the fuller ones contained in the leading judgment of my learned brother Ogundare, J.S.C., a preview of which I had before now, that I too allow this appeal and set aside the decision of the court below. I abide by the leading judgment of my learned brother Ogundare, J.S.C., a preview of which I had before now, that I too allow this appeal and set aside the decision of the court below. I abide by the consequential orders made inclusive of those as to costs. F

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#### ADIO JSC

I have had the benefit of reading, in advance the judgement just delivered by my learned brother, Ogundare, J.S.C., and I agree with him that this appeal succeeds and should be allowed. I accordingly follow it. I abide by

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the consequential orders, including the order for costs.

An agreement between the seller and purchaser, payment of the full purchase price and the delivery of possession in the manner required by native law and custom. See: Ogunbambi v. Abowaba 13 WACA. 222; Cole v. Folami (1956) SCNLR 180; (1956) 1 FSC 66; and Akingbade v. Elemosho (1964) B 1 All NLR 154. The court below erred, therefore, when it held that under customary law the legal representatives of Jemi-Alade estate transferred the ownership of the land in dispute on the part payment of the purchase price. The court below also erred in law in holding that the execution in 1976 of Exhibit “B” was a confirmation of the purported sale which took place in 1965.

C Title to the land in dispute was vested in Mrs. Bucknor who executed exhibit “G” in her capacity as administratrix of the estate of Jemi-Alade. Exhibit “G” which she executed was legally valid and it really did not matter that other persons joined her in executing Exhibit “G”. A legal implication of the fact that exhibit “G” was executed by Mrs. Bucknor was that both Exhibits “B” and “G” D were from the same source and that, for that reason, Exhibit “G” took priority over Exhibit “B”.

As exhibits “B” and “G” were from the same source and as exhibit “G” took priority over exhibit “B”, the latin maxim, nemo dat quod non habet became applicable in favour of the appellant. When a person that has no legal E title to a parcel of land purports to convey the land to another person, the Latin maxim aforesaid applies and the purported conveyance is void. See: Adelaja v. Fanoiki (1990) 2 NWLR (Pt.131) 137; and Ayanduba v. Nigerian Renowned Trading Co. Ltd., (1992) 5 NWLR (Pt. 243) 535.

It is for the foregoing reasons and for the more detailed reasons F given in the lead judgement of my learned brother, Ogundare, JSC., that I agree that the appellant’s appeal should be allowed. Accordingly, I too allow it and I abide by the consequential orders, including the order for costs.

Appeal allowed.

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