

SUPREME COURT OF NIGERIA

11TH JULY, 1997. SC.30/1991

**CORAM:- S.M.A. BELGORE, A.B. WALL, M.E. OGUNDARE,
U. MOHAMMED, A.I. IGUH, JJSC**

ALHAJI ALARU SALAKO & ORS PLAINTIFFS/APPELLANTS
AND
CHIEF OLATUNJI DOSUNMU DEFENDANT/RESPONDENT

ACTIONS - *Representative Action - Where competent - No leave of court is required.*

APPEALS - *Evaluation of evidence - Where trial court fails to evaluate evidence adduced before it in the determination of disputes - Appellate Court will do so.*

COURTS - *Findings of fact - Where not supported by the evidence - The findings are perverse.*

EQUITY - *Laches and acquiescence - And statute of Limitation defences - Cannot avail the respondent - In view of the appellants' pleading and evidence.*

LAND LAW - *Family land - Sale thereof - Consent of the entire family branches must be secured - To make the sale valid.*

LAND LAW - *Family land - Sale by the family head - Without consent of accredited members of the different family units - Is voidable.*

LAND LAW - *Voidable sale of family land - When the sale is declared void - The transaction becomes void - And purchaser's documents of title will lack legal effect.*

LAND LAW - *Trespass - Voidable transaction - Entering the land before the transaction was avoided - Is no trespass.*

FACTS

The land in dispute is part of a larger piece of land belonging originally to the Owusa family of the plaintiffs. The defendant acquired two adjacent lands from the family. Five accredited representatives of the family ex-

ecuted the grants to the defendant. In 1978, the defendant went on the portion of the family land now in dispute. The plaintiffs wrote a warning letter through their solicitor to the defendant and he withdrew. But in 1982, the defendant came back to the land not minding protests from the plaintiffs. This now led the plaintiffs to institute the action leading to this appeal. The defendant claimed that the land in dispute was sold to him by the family and a deed of conveyance was executed in his favour by the head of the family in 1973.

The learned trial judge dismissed the plaintiff's action. Aggrieved by the judgment of the trial judge that plaintiffs' lodged an appeal to the Court of Appeal against it which was dismissed. They have further appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

"(1) Whether the Court below was not in error when it held that the Appellants ought to have obtained the leave of the trial Court before instituting this suit. Etc, see p. 1481

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

Actions - Representative action

1. The action as instituted by the plaintiff "For themselves and on behalf of Owusa family of Iperu-Remo" is competent and valid. The plaintiffs did not require leave of the court to institute the action. (p. 1482 C)

Appeals - Evaluation of evidence

2. It is settled law that the trial court must endeavour to appraise and evaluate evidence adduced before it both oral and documentary in the determination of any dispute. Where the trial court failed to do so, the appellate court had a duty to do so, and where as a result of such exercise it found that the findings of the trial court are perverse resulting from drawing wrong conclusions from the accepted evidence or proved facts or due to wrong approach in the determination of these facts in a manner which these facts cannot and do not support, it would re-assess and evaluate the evidence in order to come out with a just decision, even if it is different from that of the trial court. (p. 1498 B)

Family land sale - Need for consent of all family branches

3. There is nothing in the oral or documentary evidence to show that four out of the 5 branches of the Owusa family consented or signified their consent to the sale of the land in dispute by Adeleke Salako as claimed by the respondent. Exhibits G, H and K written by Adeleke Salako did not contain evidence to that effect. The issue here is not whether there were two, three or four sales of the plaintiffs' family land to the respondent but rather whether the land in

dispute was validly sold and conveyed to the respondent. It is both direct and deducible from the respondent's evidence as D.W. 3 that there was no such valid sale muchless to talk of conveyance as purportedly evidenced by Exhibit F. (p. 1500 H & 1501 F)

Courts - Findings of fact

4. The evidence adduced did not show any concurrence of the accredited representatives of the branches of Owusa Family in the purported sale of the land in dispute to D.W. 3. There is no evidence to support the findings of the trial judge on the issue and his conclusion that:

"On that note, I can only say here that, having suffered the perseverance of grasping the details of the evidence of all the parties over the issues at stake, I prefer to trust and rely on the evidence of the defendant and all his witnesses over and above and in preference to that of any of the plaintiffs' witnesses."

The findings are perverse and not resulting from the consideration, assessment and evaluation of the evidence placed before the learned judge. (p. 1501 H)

Family land - Sale by the family head

5. There is plethora of authorities that family land sold by the head of the family without the consent of accredited members of the family is voidable at the instance of the non-consenting members. Even an aggrieved member of the family though not a party can initiate action to set aside a conveyance of family land done without proper authority. Pa Lukula as the head of Owusa family lacked legal capacity to make major disposal of Owusa family property without consulting the senior members of the Owusa Family in other words accredited members of the different family units. (p. 1503 B)

Equity - Laches and acquiescence

6. In my view, with the appellants' pleading and the evidence led in support, the equitable defence of laches and acquiescence cannot avail the respondent nor can that of Statute of Limitation since the appellants became aware of what really happened in 1978. The suit was filed in the trial court on 7/5/82 a period of 4 years from the date appellants became aware of what happened. There was no delay by the appellants in enforcing their right after they had become aware of the un-authorized sale of the land in dispute to the respondent. (p. 1504 G)

Voidable sale of family land

7. As I have said earlier, Exhibit F is voidable and having regard to the overwhelming evidence it must be avoided, I declare it so. What then is the effect of avoiding Exhibit F? The effect will be in my considered opinion, that where a voidable transaction involving sale of family land is avoided, the transaction becomes void. Both Exhibits F and M therefore lack legal effect since the validity and legal effect of Exhibit M is dependent on Exhibit F. (p. 1505 A)

Trespass - Voidable transaction

8. In respect of claim for damages for trespass, since the transaction in Exhibit F was voidable, the respondent had legal justification for entering the land in dispute and until Exhibit F was avoided by this judgment, there was no trespass by the respondent. The relief claimed in paragraph 47 (b) of the Further Amended Statement of Claim therefore fails and same is hereby dismissed. (p. 1505 E)

REPRESENTATION

Kehinde Sofola, SAN with A. Adesina for the Plaintiffs/Appellants
Mrs. Ayo Obe for the Respondent

CASES REFERRED TO

Okolo v. Uzaka (1978) 4 SC 77 at 86
Afolabi v. Adekunle (1983) All NLR 470
Elias v. Disu (1962) ALL NLR 215
Abibatu v. Flora (1990) ALL NLR 310
Adejumo v. Ayantegbe (1989) ALL NLR 468
Sanusi v. Daniel (1956) 1 FSC 93

LEAD JUDGMENT BY WALI JSC

The plaintiffs, in paragraph 47 of their final Amended Statement of Claim claimed the following reliefs against the defendant:-

"a. Declaration that the plaintiffs are entitled to a grant of a Statutory Right of Occupancy in respect of the piece of land at Owusa Farm, Iperu-Remo, more particularly described on plaintiffs' Survey plan.

b. N25,000.00 Special and General Damages for continuing trespass committed to the said land and therein since 1982.

c. Perpetual Injunction restraining the defendant, his agents, servant and/or workers from further trespass to the land, entering thereon or doing anything whatsoever.

d. A declaration that the defendant is not entitled to the Certificate

of Occupancy registered as No. 60 at page 60 in Volume 129 in the Lands Registry in the office at Abeokuta."

At the end of exchange of pleadings between the plaintiffs and the defendant the case proceeded to trial before Somolu J. At the conclusion of taking evidence learned counsel on both sides addressed the court. Judgment was then reserved to 21/1/86 and on that date the learned trial judge delivered a considered judgment containing findings on issues of law and fact, but more on fact and concluded as follows in defendant's favour -

"All plaintiff's action as contained in paragraph 47 of their ultimate statement of claim filed on 17th April, 1985 are hereby dismissed in their entirety.

Aggrieved by the judgment of the trial court the plaintiffs lodged an appeal against it to the Court of Appeal, Ibadan Division.

In a considered judgment of the Court of Appeal, prepared by Omololu-Thomas JCA with which both Kutigi and Ogwuegbu JJCA [as they were then] agreed, the plaintiffs appeal was dismissed. Hence the present appeal to this court by the plaintiffs.

The summary facts stated in the appellants, brief and with which the defendant agreed are as follows:-

"(1) One Owusa was the original owner of a large tract of land at Iperu Remo of which the land in dispute formed a portion. Owusa was survived by Asenuga, male. Asenuga had five wives each of whom, excepting one, had male children. It is, therefore, a matter of common cause that the Owusa family, for the purposes of this appeal, is made up of five branches, namely;

- | | | |
|---|---------------|--------------------|
| F | 1. Oronti | [from male line] |
| | 2. Ogunlaja | ["] |
| | 3. Atoto | [from female line] |
| | 4. Salako | [from male line] |
| | 5. Aina ["] | |

(2) The Appellants would appear to have come from three of the five lines, namely, Salako, Oronti and Aina. However, the second witnesses for the Appellants at the hearing comes from a fourth line, namely Atoto. It is also common cause that at a certain period, one Edalere-Lukula from Atoto line, was regarded as head of the family. He and other accredited members of the family had, at the time he was head of the family, executed conveyances of portions of the land in favour of strangers. In so far as the Respondent was concerned, two conveyances in respect of parts of the land had already been executed in his favour, one by the same Edalere-Lukula and others Exhibit E in this case, and an earlier one by Adeleke Salako, then

head of the family and others, Exhibit J.

(3) *The main dispute is concerned with the alleged conveyance, Exhibit F in this case, signed by Edalere-Lukula in favour of the Respondent. The case of the Appellants is that the said conveyance is null and void, and in consequence that the Respondent is not entitled to the Certificate of Occupancy based on the said conveyance. The case of the Respondent is that the deed of sale of the land to him was executed by the head of the family whilst the actual sale was with the knowledge and consent of the other members of the family.*"

Parties filed and exchanged briefs of argument as required of them by Rules of this court. Henceforth the plaintiffs and the defendant will be referred to in this judgment as the appellants and the respondent.

In the briefs filed by learned Senior Advocate for the appellants, the following three issues were raised for determination by this court-

"(1) *Whether the Court below was not in error when it held that the Appellants ought to have obtained the leave of the trial Court before instituting this suit.*

(2) *Whether the Court below was right when it upheld the trial Court's decision that it would not avoid the purported Conveyance of the land in dispute and in consequence would not grant a declaration that the respondent is not entitled to the Certificate of Occupancy founded on the Conveyance.*

(3) *Whether the Court below was right when it held that the judgment of the trial Court was more than amply justified by preponderance of evidence.*"

Learned Senior Advocate appearing for the respondent adopted the 3 issues formulated in the appellants' brief.

He however said that of the seven grounds of appeal filed by the appellants no issue were formulated on grounds 2, 5, 6 and 7 and were therefore deemed to have been abandoned. But learned counsel for the appellants related the grounds of appeal in his brief to the issues formulated as follows:

1. "4.01. *This issue discussed in paragraph 4(2) (a) to (g) of the appellant's brief herein, is apparently the Appellants' argument on ground 4 of the grounds of appeal.*"

2. "5.01. *Issue number 3 in the appellant's brief, are apparently raised in grounds 6 and 7 in the Notice of Appeal.*"

Having read the grounds of appeal filed, I am of the view that all the grounds, except ground 1 are covered as follows by the Issues formulated:

(a) Grounds 2, 5, 6 and 7 are encompassed by Issue No. 3 of the appellant's brief.

(b) Ground 4 of the grounds of appeal is hinged to issue No. 3 of the appellant's brief.

The only ground of appeal that has been left without an issue is ground 1, though learned counsel on both sides adequately argued in their respective briefs of argument.

B I shall first deal with Issue 1 which related to ground 4 of the grounds of appeal.

In paragraph 3.06 of the respondent's brief, Chief Ajayi SAN of learned counsel conceded as follows:-

"The Respondents would however now conceded that, under the Rules of court which were applicable when the action was instituted in the High court [in 1982] a plaintiff did not need leave of the court to sue in a representative capacity."

With this concession, issue 1 of the appellant's brief is resolved in the appellant's favour. **The action as instituted by the plaintiff "For themselves and on behalf of Owusa family of Iperu-Remo" is competent and valid. The plaintiffs did not require leave of the court to institute the action.** See Adegbite v. Lawal 12 WACA 398; Amusa Gbadesare v. Aina Edu & Ors. WACA 32 1955 of 15/2/56 and Mba Nta & Ors. v. Ede Nwede Anigbo & 5 SC 156.

E In line with arguments of learned counsel in their respective briefs, the two remaining Issues can be reframed as follows:-

2. Was there a valid sale of the parcel of land in dispute to the respondent to the respondent by the accredited members of Owusa Family of Iperu Remo in accordance with the customary law of Iperu Remo?

F 3. If the answer on Issue 1 supra is in the negative, what then are the effects of Exhibit F and M?

It is common ground that the land in dispute forms part of the remaining unpartitioned one third of the Owusa Family land in Iperu Remo and its identity is not in dispute. It is also not disputed that the Owusa family at least on two separate occasions sold to the defendant part of the Owusa Family Land and conveyed same to him through the accredited members of the said Family as shown in Exhibits "E" and "J", the deeds of conveyance signed and executed to that effect. The issue now in dispute is the sale of another portion of the jointly owned 1/3 of the Family land.

H It is the submission of Kehinde Sofola SAN learned counsel for the appellants that Exhibit F which purported to sell and convey the parcel of the land described therein was not executed by the accredited members of the Owusa Family as done on previous occasions when parts of the same family land was sold to the respondent. Learned counsel referred to Exhibits E and J

which were duly signed and executed by the accredited members of the Owusa Family, unlike Exhibit F which was signed by only one of the five accredited members of the Family. He argued that in Exhibit F pa lukula did not give any indication that he had the concurrence of the Owusa Family when he executed it. He signed Exhibit F as "the head of Owusa Family and Trustee of the family land", with no indication that he was executing the deed of sale for and on behalf of the Owusa Family or indeed he was doing so with the concurrence of the principal members of the family. Learned counsel referred to the evidence of the D.W.3 where he admitted that all those accredited members of the Owusa family who should have executed the deed of conveyance of the purported sale of the land in dispute refused to do so. It was his contention that what the defendant did as purchaser was to get pa Lukula in his capacity as head of the Owusa family to execute Exhibit F for him when all the other members of the family refused to do on ground that they did not know or authorize the sale of the land in dispute. Learned counsel cited and relied on Bello Adedubu & Anor. v. Makanjuola 10 WACA 33 at 35 and Asafoatse D Agbloe 11 & Ors. v. E.T.A. Sappor & Anor. [1947] 12 W.A.C.A.187 in support of his submission that the sale by the head of the Family of the family land without consent and authority of the principal members is voidable and the learned trial judge as well as the Court of Appeal were wrong in refusing to avoid Exhibit F in the face of the over-whelming evidence that both the purported sale of the land in dispute and the execution of Exhibit F were done without concurrence of the accredited members of Owusa Family.

Learned Counsel submitted that the trial court was wrong when it came to the conclusion from the evidence adduced that the respondent had proved his case against the appellants. He referred to the evidence of P.W. 4 F and submitted that there was no believable evidence on record upon which the learned trial judge could come to the damaging conclusions as to the characters of the two witnesses. He contended that the damaging conclusions drawn by the judge were not based on issues raised in the pleadings and were in violation of the audi alteram partem principle. He therefore submitted that the Court of Appeal was wrong in holding that the trial judge was right in the inferences he drew from the evidence which resulted in the rejection of the case presented by the appellant. He cited in support, the case of Akin Adejumo & Ors v. Ajani Yusuf Ayantegbe [1989] 3 NWLR (pt. 110) 417 at 434 & 437. He urged this court to allow the appeal as there is no such preponderance of evidence in favour of the respondent to sustain the judgment.

In reply to the submissions by the appellants, Chief G.O.K. Ajayi, SAN, in the written brief he prepared and filed for the respondent, conceded the basic principle of law that a sale of family land by the Head of the Family is

violated at the instance of non-consenting members, but submitted that that is not an issue in the present case having regard to what he described as "the unequivocal finding of fact by the learned trial judge that all the branches of salako Family consented to the sale of the land in dispute to the defendant."

He contended that the issue is not that of a sale of family land by the head of the family and then later informing or seeking the consent of other members of the family; on the contrary it was the case of sale of the family land by other members of the family without the knowledge and consent of the head of the family and who subsequently approved the sale by ratifying the deed of sale and conveyance of the land [exhibit F]

Learned counsel observed that the previous sales of the Owusa family land to the respondent were negotiated and agreed to through late Adeleke Salako, acting as the spokesman for the four of the five branches of the Owusa family, and that in respect of the land in dispute the same Adeleke Salako played and fulfilled the same role. He referred to Exhibit H and submitted that the learned trial judge was right in his finding that every principal member of the Owusa family, with the exception of pa Lukula's branch knew and approved the sale of the land in dispute to the respondent. He said pa Lukula was kept out of the transaction because of the then on-going tussle over the headship of Owusa family between him and Adeleke Salako and as such the defendant was left with no choice but to seek the ratification of the sale transaction by pa Lukula as rightly found by the learned trial judge. He referred to the evidence D.W. 4, D.W.1 the defendant [D.W.3] and exhibit C in support of his submission as regards the findings of the learned trial judge on the fundamental issue. Learned counsel submitted that there was no evidence to support the appellants' contention that respondent concealed Exhibit F from the appellants and that even if the respondent had the conveyance [Exhibit F] and failed or refused to produce it, that would still amount to nothing since appellants did not show exactly what it was that they alleged the respondent had "to hide." He contended that vague allegation about the defendant having something to hide can have no place in a court of law.

Learned Senior Advocate finally submitted on this issue that there is no basis for examining whether or not Exhibit F is voidable at the instance of non-consenting members of the family as the finding of the learned trial judge which was subsequently affirmed by the Court of Appeal show clearly that there are no such non-consenting members.

On the issue of whether the evidence adduced support the judgments of the trial court as well as that of the Court of Appeal, learned counsel referred to paragraph 2 (3) (a) and (b) of the appellant's brief, Exhibit C and the role played by late Adeleke Salako in the sale of the land in dispute to the

respondent. He also referred to the evidence of P.W. 2, P.W.4, P.W.5 and P.W.6 and submitted that "plaintiffs have failed to show in what manner the alleged ignorance of the plaintiffs about Exhibit F affects the issue of their consent to the sale," and that "they knew very well about the conveyance Exhibit "F", although they did not execute it." It was the final submission of learned counsel that the respondent's case which the learned trial judge considered B and accepted is that the appellants knew of and consented to the sale of the land in dispute through late Adeleke Salako, their spokesman and that it was only when they refused to execute Exhibit N as earlier prepared on instruction of Adeleke Salako that respondent resorted to getting to pa Lukula to execute Exhibit F for him. He urged the court to dismiss the appeal. C

Both parties agreed that there were previous sales of Owusa Family land to the defendants. The first sale was concluded as evidenced by Exhibit E. It was executed by the accredited representatives of Owusa family to wit - Joseph Folarin Lukula, Abatan Oronti, Adeola Ogunlaja and Samuel Adeleke Salako. Exhibit E reads as follows: D

"THIS CONVEYANCE made the 21st day of May, 1970 BETWEEN (1) JOSEPH FOLARIN LUKULA, Trader of Akesan Road, Iperu representing Owoyonbo Atoto Branch of OWUSA FAMILY, (2) ABATAN ORONTI, farmer of OWUSA house Iperu representing Oronte Branch of OWUSA FAMILY, (3) ADEOLA OGUNLAJA, Trader of Sewolu Ward, Iperu, representing Ogunlaja Branch of OWUSA FAMILY and (4) SAMUEL ADELEKE SALAKO, Trader of 7 Iregun Lane, Iperu, representing SALAKO Branch of OWUSA FAMILY for themselves and on behalf of the OWUSA FAMILY of Iperu, Western State of Nigeria (hereafter called "the VENDORS" which expression shall where the context so admits include their successors in title and assigns) of the one part AND OLATUNJI DOSUMU, Trader of 28 Abibu Oki Street, Lagos, (hereafter called "the PURCHASER" which expression shall where the context so admits include his heirs, personal representatives and assigns) of the other part. E

WHEREAS the Vendors are the heads of the different sections or G branches making up or constituting the OWUSA FAMILY of Iperu, REMO, Western State of Nigeria, and the accredited representatives of the said OWUSA FAMILY to execute these presents for themselves and on behalf of the OWUSA FAMILY and with their knowledge and consent.

WHEREAS the hereditaments and premises assured and intended H to be hereby conveyed formed portion of lands belonging from time immemorial to the OWUSA FAMILY of Iperu under and by virtue of Yoruba Native Law and Custom for an estate of inheritance.

AND WHEREAS the said OWUSA FAMILY have been in sole exclu-

sive and undisturbed possession of the said hereditaments and premises amongst others from time immemorial exercising maximum acts of ownership thereon.

AND WHEREAS whilst thus seised of the same the vendors have agreed with the purchaser for the sale and transfer to him the purchaser of the said hereditaments and tenements for the sum or consideration of #365 (three hundred and sixty pounds) for the like estate of fee simple absolute in possession free from all encumbrances.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of #365 (Three Hundred and Sixty five Pounds paid to the Vendors by the purchaser before the execution of these presents (the receipt of which sum the Vendors hereby acknowledge) the Vendors as BENEFICIAL OWNERS do hereby grant and convey unto the said purchaser his heirs, personal representatives and assigns for ever All and SINGULAR the piece or parcel of land situate lying and being at OWUSA, otherwise known as Yega Farm, Iperu, Remo, Western State of Nigeria covering an area of approximately 5835.33 Square Yards which land with its dimensions and abuttals is more particularly delineated and described on the plan attached to these presents and thereon edged RED and all the estate right title interest claim and/or demand of the Vendors in or upon the said hereditaments and premises or any portion of same TO HOLD the same UNTO and to the USE of the purchaser his heirs, Legal personal representatives and assigns for ever in fee simple absolute in possession free from all rights and charges and demands and claims and encumbrances whatsoever AND FURTHER the said Vendors hereby covenant with the said purchaser and agree at all times hereafter to indemnify the said purchaser against all costs damages and expenses incurred in consequence of any action, eviction or anything in any wise done by any rival claimant of these hereditaments and tenements or any portion thereof."

Exhibit E was duly executed by the accredited members of the branches of the Owusa Family as vendors on one part, and olatunji Dosumu as the purchaser on the other part, on 21/5/70.

The second deed of conveyance - Exhibit J [photo copy] between Abatan Oronti, Adeola Ogunlaja, E..J. Sokefun, S.A.Salako as vendors on one part, and Olatunji Dosumu as purchaser on the other part, and dated 6/11/63 was signed, sealed and delivered on the same date by the same vendors and the purchaser.

Exhibit J reads as follows:-

"THIS INDENTURE made the 6th day of November, 1963, BETWEEN ABATAN ORONTI, farmer of Owusa House Iperu representing Oronti Branch

of OWUSA FAMILY, ADEOLA OGUNLAJA, Trader of Sewolu Ward, Iperu, representing Ogunlaja branch of OWUSA FAMILY, E.J. Sofekun Clerk of 11, Station Road, Iperu, representing Owayombo Atoto Branch, and S.A. SALAKO, C. F. A. O. Factor of C. F. A. O., Shagamu, representing Salako Branch of OWUSA FAMILY for themselves and on behalf of OWUSA FAMILY of Iperu Western Nigeria, (hereinafter called the "VENDORS" which expression shall wherever the context so admits shall include their successors in title and assigns) on the one part AND OLATUNJI DOSUMU, Administrative Secretary of Action Group of Nigeria of SW8/540, Irepo Street, Molete, Ibadan, Western Nigeria (hereinafter called the purchaser which expression shall where the context so admits shall include his heirs legal person representatives and assigns) of the other part.

WHEREAS as the Vendors are the heads of the different sections or branches making up or constituting the OWUSA FAMILY of Iperu-Remo, Western Nigeria, and are the accredited representative of the said OWUSA FAMILY have been authorized by the members of the said OWUSA FAMILY to execute these presents for themselves and on behalf of the OWUSA FAMILY and with their knowledge and consent.

WHEREAS the hereditaments and premises hereby assured intended to be conveyed formed portion of lands belonging from time immemorial to the OWUSA FAMILY of Iperu under and by virtue of Yoruba Native Law and Custom for an Estate of inheritance.

AND WHEREAS the said OWUSA FAMILY have been in sole exclusive and undisturbed possession of the said hereditaments and premises among others from time immemorial exercising maximum acts of ownership thereon.

AND WHEREAS whilst thus seised of the same the Vendors have agreed with the purchaser for the sale and transfer to him the purchaser of the said hereditaments and tenements for the sum or consideration of #200 (Two Hundred Pounds Nigerian Sterling) for the like estate of fee simple absolute and in possession free from all encumbrances.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of #200 (Two hundred pounds Nigerian sterling) paid to the vendors by the purchaser before the execution of these presents (the receipt of which sum is hereby acknowledged) the Vendors as BENEFICIAL OWNERS do hereby grant and convey unto the said purchaser his heirs, legal personal representatives and assigns for ever All and SINGULAR the piece or parcel of land situate lying and being at OWUSA, otherwise known as Yega Farm Iperu Ijebu District of Western Nigeria covering an area of an approximately 90, 000 square feet, which

land with its dimension and abutments is more particularly shown and delineated on the plan drawn and attached to these presents and thereon edged RED and all the estate right title interest claim and/or demand of the Vendors in or upon the said hereditaments, and premises or any portion of same TO HOLD the same UNTO and to the USE of the purchaser, his heirs, legal B personal representatives and assigns forever in fee simple absolute in possession free from all rights and charges and demands and claims and encumbrances whatsoever AND FURTHER the said Vendors hereby covenant with the said purchaser and agree at all times hereafter to indemnify the said purchaser against all costs damages and expenses incurred in consequence C of any action, eviction or anything in any wise done by any rival claimant of these hereditaments and tenements or any portion thereof."

But as regards the sale of the land in dispute, a different style of conveyance was adopted when the accredited members of the Owusa family refused to execute Exhibit N on grounds that they did not know or authorize the sale of D the land in dispute to the respondent by Adeleke Salako or pa Lukula either jointly or severally in the later's capacity as head of Owusa family or heads of the respective branches of Owusa family to which they belong.

In paragraphs 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the Further Amended Statement of Claim, the appellants averred that:-

E "13. Owusa's land was divided into three: two thirds of which were shared out in 1940, amongst the five children of Asenuga, part of which is the land in dispute.

14. The defendant approached Owusa Family in 1961 for the purchase of a piece of land, and a portion out of the other half of the land which F was not shared amongst the children of Asenuga was sold to him.

15. Five accredited representatives of Owusa family duly executed the grant to the defendant.

16. In 1974, the defendant asked for more land to buy and a land adjacent to the land he purchased in 1961 was sold to him by the plaintiffs' G family.

17. Similarly as in 1961, five assigned prominent members of the family acted for and on behalf of Owusa family in executing the document of sale to the defendant.

18. Plaintiffs rely on the documents of sale, copy or copies to be H tendered in evidence.

19. The acknowledged signatories and authorized representatives of the Owusa family for the transactions between the defendant and plaintiffs' family were Messrs. (i) J.F. Lukula, (ii) E.F. Sofekun, (iii) S.A. Salako, (iv) Adeyola Ogunlaja, (all deceased) and (v) Abatan Oronti (1961); and

for 1974 were Messrs. (i) J.F. Lukula, (ii) S.A. Salako (iii) Adeyola Ogunlaja (all deceased), (iv) Abatan Oronti and (v) Sunmonu Aina.

20. In 1978, the defendant wrongfully and unlawfully entered into the land in dispute and attempted to get it surveyed for himself.

21. The Owusa family then instructed their then solicitor, in the person of O.O. Ashiru Esq., to warn the defendant by letter to deceased from B such wanton and provocative trespass to plaintiffs' land."

In paragraphs 3, 4, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, & 27 of the Amended Statement of Defence, the respondent pleaded as follows:-

"3. The land in dispute falls within a large tract of land which originally belonged to the Owusa family of Iperu Remo absolutely under C Yoruba Native Law and Custom.

4. The land shown on the plan attached to the Statement of Claim and stated therein to be the land in dispute is shown on the plan annexed hereto and thereon edged GREEN.

10. Sometime early in 1972 some members of the Owusa family, led D by one Adeleke Salako (the 1st plaintiff's senior brother now deceased), approached the defendant and proposed that he should buy more land from the Owusa family.

11. At the time of the proposal the defendant aforesaid was already aware that there had been a dispute within the Owusa Family, between E Joseph Folarin Lukula and his supporters on the one hand, and the present plaintiffs' group on the other, as to whether Joseph Folarin Lukula was the Head of the Owusa Family.

12. The defendant was also aware that that dispute had been resolved in favour of Joseph Folarin Lukula by the High Court of the Western F State in its judgment delivered on the 11th of October, 1971 in suit No. J/2/66 between Joseph Folarin Lukula as plaintiff and Abantan Oronti and 5 others as defendants.

13. After the approach was made to the defendant aforesaid he informed Joseph Folarin Lukula of the proposal and asked him whether he G consented to the proposed sale. Joseph Folarin Lukula informed him that he consented to the proposed sale, I instructed that the outcome of the negotiations should be communicated to him.

14. Thereafter defendant opened negotiations with the plaintiffs' H group of the Owusa family through his employee Alhaji Raji Ogunnusi, (now deceased) who was shown the extent of the area of the two adjoining parcels of land by Adeleke Salako and the plaintiffs. The purchase price was subsequently agreed at #500 (N1,000.00) (being 250 per parcel).

15. It was the practice in the earlier sales between the Owusa

family and the defendant for the purchase money to be paid without receipts being issued at the time, although receipt of the purchase money was subsequently acknowledged in the Deeds of Conveyance aforesaid.

16. Similarly the defendant paid the purchase price of #500 (N1,000.00) in cash to the Owusa family through Akadire Salako (another B senior brother of the 1st plaintiff).

17. The Owusa family thereupon put the defendant into possession and he thereafter exercised maximum rights of ownership in respect thereof.

18. In or about November, 1972 the said Adeleke Salako showed the defendant's surveyor the boundary of the land sold to the defendant in C the presence of the 1st plaintiff, the said Alhaji Raji Ogunnusi, the defendant and one Solo, a worker in the defendant's factor who was clearing the boundary of the parcel to be sold with a cutlass to enable the surveyor to carry out his work.

19. As the two parcels adjoined each other the demarcation between them was not shown to the surveyor or cut out in any way, with the result that the two parcels were shown and surveyed as one parcel.

20. The defendant further avers that during the exercise and as the boundaries were cut out along various parcels of land being farmed by different individual members of the Owusa family the 1st plaintiff took the E cutlass from the said Solo and himself cleared away the demarcation between the landed property and that part of the Owusa family land which was being farmed by him.

21. The said Adeleke Salako thereafter gave the defendant a list of the names of the representatives of the Owusa family who would convey the F land to him, and the defendant avers that the said persons were the same as those who conveyed land to him in 1963 and 1970 aforesaid, with one addition, namely one Sumonu Aina.

22. The defendant forwarded the list to his solicitor, Mr. Odesanya with instructions to prepare a Deed of Conveyance in respect of the land.

G 23. The defendant thereupon advised Adeleke Salako that the said engrossed conveyance was ready for execution and that he was to arrange as usual for the members of the family to attend on a date to be agreed, at the Magistrate's court for the execution of the Deed.

H 24. Although communications between the defendant and Adeleke Salako had hitherto been good, and indeed cordial, the defendant received no response in spite of some five or more successive requests. The defendant will rely on letters dated 29th October, 1972 and 17th December, 1972 written by the late Adeleke Salako to the defendant when relations between them were still cordial and warm.

25. *The defendant thereupon made representations to Joseph Folarin Lukula the Head of the family who informed the Defendant that the plaintiffs were still resentful of him (Joseph Folarin Lukula) in spite of the court judgment aforementioned, and obviously would not now execute any documents with him. Joseph Folarin Lukula then informed the defendant that since the whole family had already agreed to sell to him and payment B had been received, he would, as Head of the family execute the Deed for and on behalf of the Family.*

26. *Joseph Folarin Lukula however informed the defendant that the plaintiffs had not given any share of the purchase price to his own branch of the family whereupon the defendant agreed to pay an extra #100 (N200.00) C on account of the purchase price so that Joseph Folarin Lukula's branch would get a share of the purchase price.*

27. *The landed property was thereafter conveyed to the defendant by Joseph Folarin Lukula as Head of the Owusa Family and Trustee for the new agreed price of N1,200.00. The Deed of Conveyance is dated the 9th of D October, 1973 and registered as No. 27 at page 27 in Volume 1525 of the Lands Registry in the office at Ibadan."*

Exhibits A and B contained the survey plans of the land in dispute, Both plans are drawn on the same scale and the parcel of land demarcated therein looks identical both in shape and dimensions. The parties accepted the identity of E the land in dispute in their evidence.

P.W. 2, P.W. 4, and P.W.5 and P.W. 6 denied ever selling the land in dispute to the respondent. All efforts by the appellant to get respondent to show them the documents of sale of parcels of the appellant's family land in dispute and those not in dispute were not successful. The matter of the land F in dispute was reported to Chief Mrs. Awolowo whose motherly advice on the issue did not achieve the desired result.

P.W. 2 narrated in his evidence that as a result of information given to him by his father late pa Lukula concerning the land in dispute, he and her brothers demanded to see from the respondent all documents relating to the G sale of Owusa family land to him. This was not successful. P.W. 2 and his brothers reported the matter to P.W. 4 Chief Olu Adeyemi, a very close friend of the respondent, for his intervention. This also did not produce the desired result. P.W. 2 narrated in his evidence of what happened as follows:-

"After series of efforts by me and my brothers to let us into the extent H of the land purchase transactions with out Owusa family to date (1979) had proved abortive, I and my brothers reported his intransigence on the matter to the Oba Alaperu of Iperu. I sought for his assistance over it so that he can speak to as well as persuade defendant to let us know the extent of all these

land sales' commitments by our family and him. This appeal to Oba Alaperu was by my late and I. The Oba Alaperu then directed us to one Chief Olu Adeyemi of Iperu who he said was a very close friend of defendant to whom we should make our appeal on our complaint.

Chief Olu Adeyemi arranged the meeting of our family members with defendant on the said land in dispute. Defendant was present with one of his children (son) now sitting in the well of the court; so also I, my late father and some others in our Owusa family. At this meeting defendant confirmed to the hearing of all present that he has not been sold any other portion of land separated by any other members of our family except the ones already sold to him (defendant) collectively by members of plaintiffs. Owusa family or their lawful representatives. But defendant did not produce any document relating to any of the alleged purchases he made from us of parts of our land. This was after all of us present had gone round. The specific part of our farmland agreed by all of us present on the farm to have been collectively sold by our family to defendant.

After persuasion by Chief Olu Adeyemi in our presence as we were standing and meeting on the said farmland agreed to be sold by our family to defendant; defendant promised to make available to both myself and my brothers if we came to him later after the visit the documents of all sales of our family land to (defendant). Those present at his special meeting on the farm land are myself, my elder brother by name Dr. Edalere Lukula, Mr. Akadiri Salako, Mr. Abatan, Mr. Aina, Mr. Kehinde Kasali, one Alhaji Salawu Salako defendant and his son who is known or called Dodo (but whose actual name I don't know), Chief Olu Adeyemi.

Although my brother and I made several visits (about four times) to defendant's house, he did not show us any such documents of all the purchases of land allegedly made by our family to him (defendant). My late father also made another report of Defendant's intransigence to Chief Mrs. Awolowo over the matter. My late father is related to Chief Mrs. Awolowo while defendant is in-law to Mrs. Awolowo as one of defendant's sons or children married Mrs. Awolowo's daughter. A meeting was later arranged for Ikenne at the house of the Awolowos at the instance of Chief Mrs. Awolowo."

Under cross examination and when referred to paragraphs 3, 4 and 5 of the Further Amended Statement of claim, P.W.2 admitted that his father admitted to him that he alone had previously on one occasion executed a document of sale of part of the Owusa Family land to the respondent.

P.W.3 is Chief Mrs. H. Awolowo who testified that following a report to her by pa Lukula and P.W.2 on a dispute involving sale of land to the

respondent she organized a meeting in her residence at Ikenne during which she advised defendant to go and pay more money to the P.W. 2 and his father pa Lukula. She said no issues involving documents were raised during the meeting.

As I said earlier despite Chief Mrs. H. Awolowo's motherly intervention and advice the intended result of settlement was not achieved. B

The dispute was further reported to P.W.4 Chief Olusanya Adeyemi who was described by P.W.2 to be a very good friend of the respondent.

P.W.4 said in his evidence that in his effort to achieve amicable settlement of the raging dispute, he arranged for a meeting in the defendant's house. P.W.4 continued thus in his evidence: C

"I know defendant who is my uncle as well as all plaintiffs and 2nd P.W. Sometimes in 1981, the Owusa family as represented by all present plaintiffs brought a dispute over the land now in dispute with defendant to the attention of myself and two others, namely: the Balogun of Iperu by name Chief M.S. Sanusi, and the Alaperu of Iperu, Oba J.O. Ogunfowora. The complaint by plaintiffs was that defendant alleged that he bought or was sold part of plaintiffs' family land at Iperu to which sale to other plaintiffs were unaware apart from one other sale of their family land which is known to them as at that time. It was 1st plaintiff and P.W. 2 that actually laid the complaint. I have my land in the neighbourhood of the one in dispute herein. E My land was a grant from other families but not any from plaintiffs' family. There was a complaint that although defendant claimed to have been sold portion of plaintiffs' family land by late pa Lukula to which they (present plaintiffs) are unaware; defendant has refused persistently to produce any sale document of such land for their (plaintiffs') inspection. I therefore F arranged a meeting with defendant at his own (defendant's) house. All of us - my self, 1st plaintiff one pa Salako - now deceased, Chief Lukula. 2nd P.W. and defendant met in defendant's house as arranged. We heard the stories of both sides and proceeded thereafter in a bunch as in that meeting to the site of the land now in dispute herein. After its inspection (the land in dispute) G We all returned to defendant's house where I called for the inspection f the sale document of the said land now visited and herein disputed from defendant. Defendant said that the documents were not available."

P.W.5 Alhaji Alaru Salako testified for the appellant. He is a member of the branches into which the Owusa Family was sub-divided. After narrating the history of Owusa family was sub-divided. After narrating the history of Owusa family and their land, he further testified:- H

"I know the defendant is not a member of our family. He bought land from our family out of the one-third remainder kept for all family use."

Five representatives of our family jointly executed a conveyance to defendant for what we sold to him. The five representatives are as follows. Folarin Lukula, Adeleke Salako, Abatan Oronti, Adeyoola Ogunlaja, E. J. Sofekun. This was in respect of the first purchase of land from us. About eight to nine years later, defendant also approached us for more land which we sold to him (defendant) from the remainder of what we originally sold to him. The same five signatories for all the five branches signed the conveyance of defendant's second sale to him except that sunmonu Aina replaced Sokefun who had since died after the first conveyance to defendant. Only Sunmonu Aina of the five accredited representatives of our family who sold our land is the only one now alive. Sunmonu Aina is now very aged and is confined to the house. He is about 120 years old but also ill and infirm. I cannot remember the period when our family sold the two portions of land to defendant. Later pa Lukula informed the family that defendant had approached him to execute a conveyance of part of our family land which defendant alleged had been sold to him sometimes whilst the five branches were quarrelling over the use to which three of the five branches were putting the land. Pa Lukula said that he was made to sign or executed the conveyance to defendant somewhere in Sagamu. Pa Lukula said he was made to sign for the fifth branch of our family since the other four branches had signed the same for him. All these happened some four days previously after we saw defendant on another portion of our land never at all sold to him previously and when challenged had (defendant) given the excuse that the encroachment of the cleared land of our family was the mistaken one of his surveyors whom he (defendant) had sent unto the land to try and produce the survey plan of the latest one sold to him by them. Our family declined that any more land had been sold to defendant apart from the previous two portions and that defendant was lying on what he allegedly told pa Lukula."

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"The custom which our family adopts for sale of our family land is one by which the family normally agrees to sell as no one individual is authorized or permitted to sell family land on his or her own. Even the head of our family alone cannot sell any part of our family land except the family authorizes and joins him in the sale.

It is now that this suit was filed that our family realized that defendant had obtained a certificate of occupancy in respect of the disputed land. I claim as per the reliefs (now) contained in our amended statement of claim of 17/4/85 as per court order of 17/4/85.

It is the custom of Ijebu Remo people not to permit individuals to sell family land along but by a general agreement amongst members of the

family. Such sale is usually conducted by the head of the family together with the chiefs of (the) our family consenting or approving. Each branch in our family presents a representative who together with the head of our family are permitted to sell our family land."

P.W.5 denied joining to demarcate the boundary of the land in dispute which is adjoined to his land. He also denied the sale of the land in dispute to the respondent by Owusa family.

P.W. 6, Kadiri Salako, a Member of the Owusa family denied knowledge of the sale of the land in dispute to the respondent.

Presenting his own case, the respondent Chief Olatunji Dosumu testified thus as D.W.3:-

"I became owner of the land on which I built my present house. No 82 Ibadan Road, Iperu by its purchase from one Adeleke Salako who is the elder brother of 1st plaintiff herein in 1962 with the conveyance made to me in or around 1963. Exhibit 'J' herein is the said deed of conveyance of the said land on which my present house now stands. The said Adeleke Salako from whom I bought the said land sold to me as the accredited representative of the Owusa family who are the owners of the land. He was not selling the land to me in his personal capacity. It was with the said Adeleke Salako that I negotiated the purchase and sale of the said land. It was also to him (Adeleke Salako) that I paid the purchase price but he did not issue any receipt for same to me.

It was after my payment for the land that the accredited representatives of the Owusa family executed the deed of conveyance Exhibit 'J' in my favour. The land conveyed by Exhibit 'J' was my first ever land purchased from the Owusa family. The next purchase of land I made from the same family was an access road to my present house comprised in Exhibit J. from the point of the Lagos Ibadan Road as it passes through Iperu. I have a factory in the same area of Iperu where my house is presently situate. My factory is situate at the right hand side to my house from the approach of the access road to it. I also bought it from the same Adeleke Salako. I later made the survey of both the land bought for the access road to my house as well as the land on which my house as well as the land on which my factory is now also situate in one lot that is on one deed of conveyance. The Owusa family representatives also executed a deed of both pieces of land as comprised in a single plan and conveyance to me.

I see Exhibit E, it is the conveyance from Owusa family as relates to both pieces of land. I paid for both pieces of land to the same Adeleke Salako who as usual did not issue me with any receipt. It was after conveyance of the pieces of land that I constructed my said factory. The late Adeleke

Salako was an in-law to my half brother by name Akintola Dosumu. I also later bought another piece of land from the same said Owusa family which now forms the subject matter of this suit between us. In 1972, Mr. Adeleke Salako came to me and offered to sell to me a piece of land which is to the south of my residential house. I informed Adeleke Salako initially I was not interested. I informed him further that if the land which his family intended to sell was the one immediately or next in proximity to my factory, I would be interested. Since We did not agree, he left.

After a while, Adeleke Salako returned to inform me of his family's readiness to sell both the land south of my residence (which offer I once rejected) and the one next to my factory site which I indicated interest in. The offer for that - that is the one next to my factory site was made conditional upon my purchase of the one earlier offered and lying south of my residence. I told him to come back for an answer. I used that as a stop gap to enable me have a discussion over the sales with pa Edalere Lukula. I had my discussion as intended with pa Lukula over both sales of land and pa Edalere Lukula gave me the go-ahead if I were interested. I am close to do this because I was aware that the Owusa family had split into two (2) with one faction led by pa Edalere Lukula and the other by late Adeleke Salako. The tussle between or within the Owusa family was as to the rightful person to be head of their family as well as the sale to the Christ Apostolic Church School premises by some members of the Owusa family. I know that the headship tussle of the Owusa family was settled through a court action. This is the certified true copy of the said court judgment.

Court Note: Judgment is brought to be tendered. No objection.
Court: Judgment dated 11/10/71 by Ayoola J (as he then was) is admitted as Exhibit 'P' (there is no Exhibit 'O' in this suit).

After my discussion with Lukula. I then started negotiation with Adeleke Salako for both pieces of land which are contiguous. We both agreed on a selling price of (1,000.00) 500.00 for both pieces of land in question. The negotiation which intimated in the sale of both pieces of land was conducted on my behalf through one Alhaji Raji Ogunnusi with Adeleke Salako. He is called by me as papa Bintu. He is now dead I paid the purchase price to one Akadiri Salako who is the immediate elder brother to 1st plaintiff 6th P.W. I personally made the payment to Akadiri Salako as directed by Adeleke Salako. Subsequent to my payment, I later saw Adeleke Salako who confirmed to me that he knew of my payment for both portions of land. He also urged me to get the two pieces of land surveyed. I did so and all of us met on the land in company of myself, Raji, Adeleke Salako and one Solomon Fadumowo and my surveyor. The late Adeleke Salako showed us round the

boundaries of the two (2) contiguous pieces of land in order to enable my surveyor prepare a survey plan."

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"My surveyor later produced the plan of the said pieces of land and gave it to me. That is the plan now shown on the plan attached to Exhibit 'F'. I later informed Adeleke Salako of the readiness of my plan, he (A. Salako) B instructed me to get the conveyance prepared in the usual names as on my previous deeds of conveyance from their Owusa family but with one addition whose name is Sunmonu Aina. I thereupon instructed 2nd D.W. to prepare a deed of conveyance for the latest land sale from the Owusa family. Adeleke Salako wrote me a note on the lines of his discussion with me over the names C to use in preparing my conveyance of this latest land sale from the Owusa family. That note is the Exhibit 'H' herein. It was hand written by late Adeleke Salako. I got the conveyance from 2nd D.W. when it was ready and informed Adeleke Salako about same so that he can assemble all those to be concerned with its execution before the Chief Magistrate. But in spite of D several messages and requests to him to ensure due execution of my latest conveyance, Adeleke Salako did not turn up to do so. I then went to report the happenings to pa edalere Lukula expressed surprise at all these and stated that his own branch of their family had not been given their share of the purchase price which I paid to the family but counselled that if I was E minded to pay the sum of #100 for his own branches share he would on behalf of Owusa family sign my conveyance. I duly complied and paid the #100. I then got a fresh conveyance made in the names of pa Edalere Lukula alone but for and on behalf of the Owusa family. Pa Lukula finally executed the conveyance in my favour - that is Exhibit "F" "herein." F

Under cross examination the respondent gave the following answers to questions, put to him:-

"I did not find out from 1st plaintiff why Exhibit N was not executed. Nor from the other co-plaintiffs. But I found out from Adeleke Salako but he did not show up as arranged so I never know why their respective refusal to G execute it.

I agree that my Exhibits E and J were executed by the accredited representatives of Owusa family. I disagree that I authorized my workmen to trespass on the disputed land and further destroy 1st plaintiff and other co-plaintiffs' crops therein. I disagree that I destroyed plaintiffs poultry shed H because he had none there except a hut which I did not destroy. In fact 1st plaintiff has since sold the land on which he had live hut to one Mr. Legunsen. 1st plaintiff told an untruth when he stated in evidence that when he first saw me on the disputed land and challenged me. I informed him that I was trying

to rediscover my already buried beacon pillars on the disputed land. All the plaintiffs did not know of my purchase of or sale of the disputed land because every sale of Owusa family land then to my knowledge was always conducted through and by late Adeleke Salako."

This is in a nutshell, the determining evidence adduced in this case.

- B It is settled law that the trial court must endeavour to appraise and evaluate evidence adduced before it both oral and documentary in the determination of any dispute.** See Fashanu v. Adekoya (1974) 1 All NLR (pt. J) 35 at 91; Balogun v. Agboola [1974] 10 SC 111 and Ebba v. Ogodo [1984] 4 SC 84 at 90. **Where the trial court failed to do so, the appellate court had a duty to do so, and where as a result of such exercise it found that the findings of the trial court are perverse resulting from drawing wrong conclusions from the accepted evidence or proved facts or due to wrong approach in the determination of these facts in a manner which these facts cannot and do not support, it would re-assess and evaluate the evidence in order to come out with a just decision, even if it is different from that of the trial court.** See Okolo v. Uzaka [1978] 4 SC 77 at 86; Abusomwan v. Mercantile Bank [Nig.] Ltd. No. 2 [1987] 3 NWLR (pt. 60) 207; Nnajafor v. Ukonu [1986] 4 NWLR (pt. 35) 505; Chinwandu v. Mbali [1980] 3-4 SC 31; Ibodo v. Enarofia [1980] 5 - 7 SC 42 and Enang v. Adu [1981] 11 - 12 SC 25.

- E** It is clear from the evidence that the respondent seems to rely heavily on the following pieces of evidence to prove the sale of the land in dispute to him:-

1. Exhibits E and J, the deeds of conveyance of the previous sales of the parcels of the Owusa family land to him.
- F** 2. Exhibits G, H and K - notes written by late Adeleke Salako to the respondent.
3. Exhibit F which is the deed of conveyance executed by pa Lukula conveying the parcel of land in dispute to the respondent.
4. Oral evidence.

- G** In considering the evidence, the learned trial judge remarked:
"There is no doubt at least (since all sides are firmly agreed on it) that between 1962 to about 1970, plaintiffs' family made some undisputed sale of their family land to defendant. As to how many possible sales there were between them, both sides agree that such sales are not less than two.
- H** *The biggest riddle as to the disputed land will be to find out whose story do the available facts of evidence vindicate or support as to the possibility of there being either no more than two such sales OR of there being more than two such sales. The defendant says that whatever the number and he speaks of sale of about four separate portion or pieces but covered by three convey-*

ances), however, the negotiations from offer to acceptance of the purchase price have always been conducted through one Adeleke Salako for everyone of such transactions. Plaintiffs have not from the available evidence seriously challenged or disproved that assertion. I believe the defendant on that not (except as to the actual inquiry over whether there are more than two sales or not);" B

and after the above remark the learned judge proceeded to make the following findings in favour of the respondent without assessing and evaluating the appellants' and the respondent's evidence on the appellants' family lack of consent as regards the sale of the land in dispute. He said:-

"But on the crucial issue for determination over the specific alleged disputed land, whether there was its offer and or its subsequent sale to defendant at all, calls for a dispassionate and serious consideration from pleadings and evidence point of view. A digestion of Exhibits J and E which relate to the two uncontested sales of Owusa family land to defendant would seem also to bear right defendant's assertion therein that these two sales were communicated as well as conducted from offer to payments thereof, through now deceased Adeleke Salako. It is through the same members of plaintiffs' family's agency that is late Adeleke Salako, whom defendant asserts that the offer and sale of the disputed land was also made to him about 1972. He proffered many background circumstances and vicissitudes as to how the offer up to sale of the disputed land came about. For this he tendered Exhibits G and H and Exhibit N in particular as the external corroboration of his own side of the story." C D E

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"Specifically, I am saying that it is to my clear satisfaction shown that the disputed land was originally negotiated for sale and subsequently sold by a fractious section (consisting of four out of five branches) of the Owusa family of Iperu Remo. But do the factions embrace all the four or five accredited or respective branches that have authority of that family to either sell or convey their family land? F

I have come to the conclusion not only from the perspective of the acceptance of defendant's story over it, but particularly because a close scrutiny of Exhibits J and E show that for both sales in J and E, the number of the accepted accredited family branches capable and authorized to dispose of family land tally as to four section only. The Salako Branch which Samuel Adeleke Salako represented which had joined the other three principal branches to convey in Exhibit J also took part in executing Exhibit E. What Exhibit H, written by Adeleke on 5/2/73 required of the defendant in a letter addressed to him by Adeleke was complied with in Exhibit 'N'. That Exhibit G H

N is what, according to defendant, the other four accredited principal branches refuse to execute having obtained his offer for sale and money by which the sale to him of the disputed land was concluded.

Yet it must not be forgotten or lost sight of that it is the same S.A. Adeleke who wrote Exhibit H with undoubted reference therein to the sale of the disputed land to defendant and demanded the production of Exhibit N from defendant for the expected meeting with defendant for the evening meeting of 5/2/73 with other representatives of the other accredited plaintiffs' family members; who has now joined the intransigent other family representatives in their blunt refusal to execute exhibit N which I believe was got ready for their execution according to his earlier note and directive so contained therein. In the face of this odious situation, defendant had no choice but to play the game in his own way as he attempted to do by resorting to their legally accepted family head for redress. Pa J Fola Lukula whose branch was by then not consulted or kept in the dark over it not only concurred in the sale afterwards but extracted a price of his own branch in order to enable him perfect the sale of the disputed land to defendant."

In the previous undisputed sales of parcels of Owusa land to the respondent, witnessed by Exhibits E and J, both documents were signed by the accredited representatives of the branches of the Owusa family. The evidence given by P.W.2, P.W.4, P.W.5 and P.W.6 who are all members of the Owusa family denied knowledge or ever authorizing Adeleke Salako or Pa Lukula to sell the land in dispute to the respondent. All attempt by the respondent to get the accredited members of the Owusa family through Adeleke Salako to execute Exhibit N did not materialize. This is manifest in the respondent's evidence as D.W. 3 where he said:-

"I got the conveyance from 2nd D.W.; when it was ready and informed Adeleke Salako about same so that he can assemble all those to be concerned with its execution before the Chief Magistrate. But in spite of several messages and requests to him to ensure the execution of my latest conveyance, Adeleke Salako did not turn up."

This should have been a clear signal to the respondent that all was not well in contrast to the previous transactions conducted by Adeleke Salako on behalf of Owusa family which resulted in the due execution of Exhibits E and J by the accredited members representing the 5 branches of the Family. **There is nothing in the oral or documentary evidence to show that four out of the 5 branches of the Owusa family consented or signified their consent to the sale of the land in dispute by Adeleke Salako as claimed by the respondent. Exhibits G, H and K written by Adeleke Salako did not contain evidence to that effect.** The nearest is Exhibit N which was prepared in line with what

was suggested by Adeleke Salako in Exhibit H wherein he wrote:-

"I had wanted to come to see you this morning But I was told that you are away to Ibadan now, I am suffering from Head ache. If I can see you by 8 o'clock a.m. tomorrow. I will come. But not let us wait till you come back from Lagos. No fear about this boy and his sister. I will tell them to wait till you return from Lagos. But try Hard to come with that conveyance. But B write those 5 sections names."

This Exhibit was addressed to the respondent as was admitted by him. The contents of this Exhibit would put a prudent man on inquiry as regards the genuineness of the transaction referred to therein. The defence evidence showed that Exhibit N which was never executed was prepared as a C result of Exhibit H. When D.W. 3 failed to secure execution of Exhibit N by the accredited representatives of the branches of Owusa Family, he turned to pa Lukula who had just been declared head of the Owusa Family by the court as contained in Exhibit P. D.W. 3 said:-

"I then went to report the happenings to pa Edalere Lukula. Pa D Lukula expressed surprise at all these and stated that his own branch of their family had not been given their share of the purchase price which I paid to the family but counselled that if I was minded to pay the sum of #100 for his branch's share, he would on behalf of Owusa family sign my conveyance. I duly complied and paid the #100. I then got a fresh conveyance E made in the name of Edalere Lukula alone but for and on behalf of the Owusa family. Pa Lukula finally executed the conveyance in my favour - that is Exhibit "F" herein."

At the time the action challenging the sale of the land in dispute to the respondent was instituted, both Adeleke Salako and pa Lukula were dead. F

The issue here is not whether there were two, three or four sales of the plaintiffs' family land to the respondent but rather whether the land in dispute was validly sold and conveyed to the respondent. It is both direct and deducible from the respondent's evidence as D.W. 3 that there was no such valid sale muchless to talk of conveyance as purportedly evidenced by Exhibit G F. The 3 D.W.'s admission in his evidence that:

"I did not find out from 1st plaintiff why Exhibit N was not executed. Nor from the other plaintiffs",

goes to support the appellants' case that Adeleke Salako was not authorized to sell the land in dispute to him. What D.W.3 did was to connive with pa Lukula to singularly execute Exhibit F in his favour. P.W. 2 who is a son of pa Lukula denied knowledge of the transaction in Exhibit F and so did the other witnesses in the case that are interested parties. **The evidence adduced did not show any concurrence of the accredited representatives of the branches of**

Owusa Family in the purported sale of the land in dispute to D.W. 3. There is no evidence to support the findings of the trial judge on the issue and his conclusion that:

"On that note, I can only say here that, having suffered the perseverance of grasping the details of the evidence of all the parties over the B issues at stake, I prefer to trust and rely on the evidence of the defendant and all his witnesses over and above and in preference to that of any of the plaintiffs' witnesses."

The findings are perverse and not resulting from the consideration, assessment and evaluation of the evidence placed before the learned judge.

C The Court of Appeal is equally wrong in its judgment by Omololu Thomas JCA with which Kutigi and Ogwuegbu JJCA [as they then were] agreed where he said:

"The finding of the learned trial judge was however that the branches of the Salako Family consented to the sale of the family land in D dispute. This being the case, as rightly submitted by the respondent's counsel, the question as to whether on the undisputed principle regarding sale of family land by the Head of the family that such is voidable at the instance of non-consenting members was not an issue in the present case. The finding in question is indeed unequivocal and correct in my view as far as the issue E raised in the ground of appeal is concerned. The case put forward by the appellants was that there were at least two previous sales of portions of their family land to the respondent by their accredited members of the Owusa family; it is about a further sale by the Head of the family that the dispute arose. The learned trial judge preferred the respondent's case. He accepted F his case to the effect that following previous usual practices, the appellants negotiated for and sold the land in dispute to the respondent, but owing to the disagreement among members of the family, the appellants refused to execute their conveyance (Exhibit N) in favour of the respondent after they had sold the land to him; hence he (the respondent) proceeded to obtain a G conveyance from the Head of the Family, pa Lukula (acknowledged as such Head by Exhibit P - Judgment of the High Court).

As postulated by the respondent this is not really a case in which the Head of family sold family land and then later informed other members of the family or sought their consent. This case was indeed the reverse - a case H where it was the members of the family who carried out the negotiations and sale (receiving in the process the agreed purchase price and more) without the consent of the Head of the family who subsequently ratified such sale. That being the case Exhibits G, H, N and F are relevant.

The finding stands unchallenged and it is therefore in the circum-

stances unnecessary for this court to embark upon a hypothesis which had long been established as a trite principle of customary law, and which is here inapplicable; because as rightly found by the learned trial Judge, the sale of the disputed land was negotiated, paid for and sold to the respondent by the principal members of the family, and the sale later received the consent and concurrence of the Head of the family as per Exhibit F. The finding is in my humble opinion well founded."

There is plethora of authorities that family land sold by the head of the family without the consent of accredited members of the family is voidable at the instance of the non-consenting members. See Joseph Afolabi & Ors v. John Adekunle & Anor. [1983] All NLR 470; Alhaji A.W Elias v. Olayemi Disu & Ors. [1962] All NLR 215; Falani Abibatu v. Cole Flora & Ors. [1990] All NLR 310.

Even an aggrieved member of the family though not a party can initiate action to set aside a conveyance of family land done without proper authority - See Akin Adejumo & 2 Ors. v. Ajani Yusuf Ayantegbe [1989] All D NLR 468.

Pa Lukula as the head of Owusa family lacked legal capacity to make major disposal of Owusa family property without consulting the senior members of the Owusa Family in other words accredited members of the different family units. Exhibits E and J are clear models of how the Owusa family sells its land.

Part of Exhibit F which purported to convey the land in dispute, reads:-

"THIS CONVEYANCE is made the 9th day of October 1973 BETWEEN Joseph Folarin Lukula of Ibadan Road Station Iperu Ijebu-Remo Western state of Nigeria as Head of the Owusa Family and Trustee of the Family Land known as Yega Farm Iperu Western State of Nigeria (in this conveyance hereinafter referred to as "the Vendor") of the one part and Olatunji Dosumu of Ibadan Road Iperu Western State of Nigeria (in this conveyance hereinafter referred to as "the purchaser") of the second part.

WHEREAS:-

(1) The Owusa Family (in this conveyance hereinafter referred to as "the Family) have been the beneficial owners of the land hereby conveyed since time immemorial;

(2) The Vendor is duly authorized to convey the interest of the Family in the land hereinafter described to the purchaser at the price of N1,200.00 (One Thousand and Two hundred Naira only);

WITNESSETH:-

1. In consideration of the sum of N1,200 (One Thousand Two Hun-

dred Naira only) now paid by the purchaser to the vendor as Trustee of the Family (receipt whereof the Vendor hereby acknowledges) the Vendor for himself and on behalf of the Family as Trustee hereby CONVEY to the purchaser ALL that property known as Yega Farm which is more particularly described in the schedule hereto and delineated on the survey plan annexed B TO HOLD the same unto the purchaser in fee simple freed and discharged from all incidents of customary tenure."

This is unlike Exhibits E and J which were executed by accredited members of Owusa Family. It was only pa Lukula that signed Exhibit F before an Acting Chief Magistrate in Shagamu. It was in contravention of Owusa C Family custom as pleaded in paragraph 45a of the Further Amended Statement of Claim. There is no specific denial of paragraph 45a in the Amended Statement of Defence. Exhibit F which was singularly executed by pa lukula as Head of Owusa Family and Trustee of the Family land is voidable at the instance of the non consenting members of the Owusa Family, since it did not D contain the names of the principal or accredited members of the family as pleaded and testified to.

Exhibit C is a clear indication that as far back as 1978 when the Owusa Family became fully aware of what was going on as regards the land in dispute warned D.W 3 that:

E *"Please note that any attempt by you to obtain certificate of occupancy over the land not properly sold to you before Land Use Decree, will be resisted by all the legal forces available to the Citizens of this country.*

I am also instructed to warn you that neither pa J.F. Lukula nor pa Adeleke Salako was competent to single handed sell the Owusa Family F Land to you without the family consent. You are warned Sir. Thanks."

D. W. 3. specifically stated in his evidence that the plaintiffs did not know of the sale of the land in dispute to him by Adeleke Salako but yet when the latter became lukewarm in executing Exhibit N it did not bother him to find out from the other accredited members of the Family what happened; instead G he resorted to going to pa Lukula, the then declared head of the Owusa Family by the court, who is also illiterate as can be observed from the jurat in Exhibit F, paid #100 to him as a result, of which he (pa Lukula) singularly executed Exhibit F to him. **In my view, with the appellants' pleading and the evidence led in support, the equitable defence of laches and acquiescence cannot avail the H respondent nor can that of Statute of Limitation since the appellants became aware of what really happened in 1978. The suit was filed in the trial court on 7/5/82 a period of 4 years from the date appellants became aware of what happened. There was no delay by the appellants in enforcing their right after they had become aware of the un-authorized sale of the land in dispute to the**

respondent.

The court can set aside a sale that is voidable, See Sanusi V Daniel (1956) 1 FSC 93.

The next issue to consider is the legal affect of Exhibit F. **As I have said earlier, Exhibit F is voidable and having regard to the over-whelming evidence it must be avoided, I declare it so.** See Sanusi V, Daniel Supra; and B Ekpendu V, Erika (1959) 4 FSC 79. **What then is the effect of avoiding Exhibit F? The effect will be in my considered opinion, that where a voidable transaction involving sale of family land is avoided, the transaction becomes void. Both Exhibits F and M therefore lack legal effect since the validity and legal effect of Exhibit M is defendant on Exhibit F.**

issue 2 as reframed by me is answered in the negative.

As regards issue 3 as reframed, since Exhibit F has been avoided, Exhibit M has no legal basis to support it as it derived its legality and validity from Exhibit F.

The two issues as reframed are resolved in favour of the appellants. D The appeal therefore succeeds and is hereby allowed. The judgments of the Court of Appeal and the trial court are hereby set aside together with the orders of costs made therein, and in place thereof judgment is entered in favour of the appellants for the relies sought in paragraph 47 (a) and (d) and same are hereby granted.

In respect of claim for damages for trespass, since the transaction in Exhibit F was voidable, the respondent had legal justification for entering the land in dispute and until Exhibit F was avoided by this judgment, there was no trespass by the respondent. The relief claimed in paragraph 47 (b) of the Further Amended Statement of Claim therefore fails and same is hereby dismissed.

The appellants are awarded N1,000.00 costs in this court N500.00 and N1,000,00 costs in the Court of Appeal and the High Court respectively.

BELGORE JSC

I agree that this appeal has great merit and ought to be allowed. The practice between parties on two previous conveyances and the position of the law that the principal members of the family must consent as they did on previous occasions made the conveyance now in issue greatly flawed, a fact the two lower Court erroneously missed. For the fuller reasons in the judgment of wali, J.S.C. I also allow the appeal and set aside the decision of the Court of Appeal which affirmed the trial Court's judgment. I make the same consequential orders as made by Wali, J.S.C.

OGUNDARE.JSC

This is a further appeal from the judgment of the Court of Appeal (Ibadan Division) to this Court. The plaintiffs who are Appellants in this appeal had sued the defendant (now Respondent) claiming as per paragraph 47 B of their final statement of claim as hereunder:

" (a) Declaration that the plaintiffs are entitled to a grant of a Statutory Right of Occupancy in respect of the piece of land at Owusa Farm, Iperu-Remo, more particularly described on plaintiff's Survey plan.

(b) N25,000.00 Special and General Damages for continuing trespass C committed to the said land and crops therein since 1982.

(c) Perpetual injunction restraining the defendant, his agents servants and/or workers from further trespass to the land, entering thereon or doing anything whatsoever.

(d) A declaration that the defendant is not entitled to the Certificate of D Occupancy registered as No. 60 at page 60 in Volume 129 in the Lands Registry in the office at Abeokuta".

Pleading having been filed and exchanged and amended with leave of Court, the case proceeded to trial at the conclusion of which, after addresses by learned counsel for the parties, the learned trial judge found plaintiffs' claims E not proved and dismissed same. The plaintiffs being dissatisfied with the trial court's judgment appealed unsuccessfully to the Court of Appeal (Ibadan Division). They have now further appealed to this Court.

In their brief of argument filed pursuant to the rules of this Court the plaintiffs have formulated 3 issues for the consideration of this Court. These F are:

"1. Whether the Court below was not error when it held that the Appellants ought to have obtained the leave of the trial Court before instituting this suit.

2. Whether the Court below was right when it upheld the trial Court's G decision that it would not avoid the purported Conveyance of the land in dispute and in consequence would not grant a declaration that the Respondent is not entitled to the Certificate of Occupancy founded on the Conveyance.

3. Whether the Court below was right when it held that the judgment of the H trial Court was more than amply justified by preponderance of evidence".

The defendant adopted the above issues in his own brief of argument.

In consideration of the issues raised in this appeal; I may perhaps, at this stage, state the facts how-be-it briefly. The land in dispute is part of a larger piece of land belonging originally to the Owusa Family of the plaintiffs.

This is not disputed by the defendant who had in earlier transactions acquired from the family other parcels of the family land. On the occasions in 1963 and 1970 when the defendant acquired two adjacent parcels of land from the family, five accredited representatives of the family executed the grants for the defendant. In 1961 the five representatives of the family were J. F. Lukula, E. F. Sofekun S.A. Salako, Adeyola Ogunlaja (all deceased) and Abatan Oronti and B in 1970 their representatives were J.F. Lukula, S.A. Salako, Adeyola Ogunlaja, Abatan Oronti and Sunmonu Aina. In 1978 the defendant went on the portion of the family land (the portion now in dispute) with a view to carry out survey of the said land. The plaintiffs protested through their solicitor who wrote a letter of warning to the defendant. The defendant withdrew from the land. In C 1982, however, the defendant came back to the land and notwithstanding the plaintiffs' protest, he remained on the land this time. This has now led to the plaintiffs instituting the action leading to this appeal.

The defendant claimed that the land in dispute was sold to him by the family and a deed of conveyance was executed in his favour by J. F. Lukula D the head of the family, in October 1973. It would appear from the statement of defence and the evidence of the defendant that there had been a rift in the Owusa family as to its headship resulting in a civil suit in the High Court of Western State which suit ended in favour of J.F. Lukula; he was declared the head of the family by the Court. Notwithstanding the Court's decision, the E opposition within the family to his headship continued unabated until his death. Suffice it to say that the plaintiffs denied selling the land in dispute to the defendant and contended that the execution of a deed of conveyance in respect of the said land by J. F. Lukula in favour of the defendant in 1973 was done without their knowledge nor did they give any consent to such a trans- F action.

At the trial the three deeds of conveyance were tendered in evidence. That of 21/5/70 was marked Exhibit e; that of 9/10/73 was marked Exhibit F and that of 6/11/63 was marked Exhibit J. I need point out that Exhibits E and J were executed by the five accredited representatives of the G family while Exhibit F was executed by Lukula alone.

Issue (1): The Court below had in its judgment per Omolu - Thomas JCA observed:

"This case on appeal proceeded on the basis that the plaintiffs were suing for themselves and on behalf of the Owusa family. Having pleaded that H Owusa owned the land, leave ought to have been sought and obtained that the named persons claimed for themselves and as representing that family or that family via 5 branches. The land does not belong to two or three evidence. It is in this wise that Oloride's case (supra) is in my humble view

quite apposite. *The rationale of Otapo's case (supra) and Osademo's case (supra) is implicit in Oloride's case (supra)*

The plaintiffs complained against this passage. I do not think I need to belabour the submissions of Mr. Kehinde Sofola, SAN learned leading counsel for the plaintiffs. For the complaint was conceded by Chief G. O. K. Ajayi SAN learned leading counsel for the defendant. Under the rules of Court then applicable in the High Court of Ogun State, there was no need for a plaintiff to obtain leave of court to sue in a representative capacity. Order 8, rule 9 of the High Court Civil procedure Rules of Ogun State Applicable at the time the action was instituted provided:

C "9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested."

It was only where the defendant was sued in a representative capacity that leave of court was required. The court below was clearly in error to have held as it did and Issue (1) must, therefore, be resolved in favour of the plaintiffs.

The error, however, is not sufficient to vitiate the judgment appealed against. I say this because Omololu-Thomas JCA observed further in his judgment that

E "it is here to be noted that the trial judge did not dismiss the suit solely on the issue of capacity."

I therefore, agree with Chief Ajayi SAN when in the defendant's brief, he submitted that this fact does not materially affect the possible outcome of this appeal or the merits of the plaintiffs' case....."

F Issues (2) & (3): I think it is convenient to take these two Issues together as the arguments on them dovetail into each other. I have carefully considered the submissions made by learned counsel for the parties. They all boil down to the legal effect of Exhibit F, the deed of conveyance executed by Lukula in favour of the defendant in respect of the land in dispute. For if Exhibit F was validly executed by Lukula that would be the end of the matter. This was the position taken by two courts below that Exhibit F was validly executed by Lukula that would be the end of the matter. The plaintiffs contend all along that in executing Exhibit F the family was not consulted by Lukula and that this was borne out by the fact that the manner of execution was contrary to the family practice. It is their contention that it was never the practice of the family for the head alone to execute the conveyance of family land but that the family was always represented by five accredited family representatives. They cited the two previous occasions the family sold land to the defendant. Each of the 5 branches constituting the family had a representative to execute the deed.

I think the defendant got himself into a fix. He invited unto himself the quagmire in which he later found himself. He knew of the division in the family. He pleaded as hereunder:

"6. *The defendant avers that the Owusa family had as long ago as October, 1977 sold and conveyed the said landed property to him upon the initiative of, and with the consent of the plaintiffs and other senior members of their own branch of the Owusa family, including two senior brothers of the 1st plaintiff, namely Adeleke Salako and Akadiri Salako.*

7. *The defendant denies paragraphs 14, 15, 16, 17, 18 and 19 of the Amended Statement of Claim and avers that he has made only 3 purchases of land from the Owusa family, namely the land including the land in dispute) purchased by him in 1972 as hereinafter averred, and prior thereto, two purchases in 1963 and 1970 respectively, when the Owusa family sold him two separate parcels of land which fall to the north of the said landed property, through their accredited representatives. The deed of Conveyance in respect of the two parcels of land were executed in the defendant's favour by their accredited representatives: Joseph Folarin Lukula head of the family, Abatan Oronti, Adeola Ogunlaja and Samuel Adeleke Salako.*

8. *Part of the said two parcels of land thus sold to the defendant in 1963 and 1970 are shown on the plan annexed hereto and thereon marked 'Chief Olatunji Dosumu's developed property, but the same are more particularly delineated on the plans annexed to the two conveyances in respect thereof, namely a conveyance dated the 6th of November, 1963 which is registered as No. 45 in volumes 691 of the Lands Registry in the office at Ibadan, and a conveyance dated the 21st of May, 1970 which is registered as No. 33 at page 33 in volume 1186 of the Lands Registry in the office at Ibadan.*

9. *The Owusa Family put the defendant into possession of the said two parcels of land and he exercised maximum acts of possession in respect thereof, fencing the same and erecting thereon a dwelling house and factory.*

10. *Sometime early in 1972 some members of the Owusa Family, led by one Adeleke Salako (the 1st plaintiff's senior brother now deceased), approached the defendant and proposed that he should buy more land from the Owusa family.*

11. *At the time of the proposal the defendant aforesaid was already aware that there had been a dispute within the Owusa Family, between Joseph Folarin Lukula and his supporters on the one hand, and the present plaintiff's group on the other, as to whether Joseph Folarin Lukula was the Head of the Owusa Family.*

12. *The defendant was also aware that that dispute had been re-*

solved in favour of Joseph Folarin Lukula by the High Court of the western State in its judgment delivered on the 11th of October, 1971 in suit No. J/2/66 between Joseph Folarin Lukula as plaintiff and Abatan Oronti and 5 others as defendants.

xx

B xxx

23. The defendant thereupon advised Adeleke Salako that the said engrossed conveyance was ready for execution and that he was to arrange as usual for the members of the family to attended on a date to be agreed, at the Magistrate's Court for the execution of the deed.

C 24. Although communications between the defendant and Adeleke Salako had hitherto been good, and indeed cordial, the defendant received no response in spite of some five or more successive requests. The defendant will rely on letters dated 29th October, 1972 and 17th December, 1972 written by the late Adeleke Salako to the defendant when relations between D them were still cordial and warm.

25. The defendant thereupon made representations to Joseph Folarin Lukula the head of the family who informed the Defendant that the plaintiffs going (sic) were still resentful of him (Joseph Folarin Lukula) in spite of the court judgment aforementioned, and obviously would not now E execute any documents with him. Joseph Folarin Lukula then informed the defendant that since the whole family had already agreed to sell to him and payment had been received, he would, as Head of the family execute the Deed for and on behalf of the family.

26. Joseph Folarin Lukula however informed the defendant that F the plaintiffs had not given any share of the purchase price to his own branch of the family whereupon the defendant agreed to pay an extra 100 (N200.00) on account of the purchase price so that Joseph Folarin Lukula's branch would get a share of the purchase price."

It is clear from the above averments that the defendant knew the goings-on in G the family, particularly the rift in the family. Lukula the head of the told the defendant that the rest of the family would not join him in executing a conveyance in favour of the defendant. In spite of all the knowledge he had he got Lukula alone to execute the conveyance in his favour, I should think that prudence would have dictated to him a different course of action.

H The law is clear and I refer in this respect to *Akano v. Ajuwon* (1966) 1 All NLR 246; (1966) All NLR 241 at 243-244 that a sale of family land by the head of the family without the concurrence of the other members is not void but voidable. Bairamian JSC observed at page 249 of the report:

"Plainly, in common parlance people speak of the land of X the

head of the family; and if the members of the family themselves do so, they cannot complain if strangers do. From a lawyer's point of view it may not be precise; but a lawyer, too, would find it hard to discover an English term by which to describe the position of the family head. In strictness he is not the owner; some think it is unwise to call him the trustee and import English ideas of trusts; perhaps manager is nearest but this term does not altogether fit either, for it is conceded that if the family head sells family land without having obtained the consent of the other members whom he ought to consult the sale is not void but voidable at the instance of the others." B

On the facts as disclosed by the evidence in this case the execution of Exhibit F by Lukula was without the concurrence of the other principal members of the family and I think the plaintiffs having challenged the transaction, and with the knowledge of the defendant as to the goings-on in the family, Exhibit F ought to be set aside. In my respectful view the court below was clearly in error to have dismissed plaintiffs' claims. C

For the reasons given above and the fuller reasons given in the judgment of my learned brother wali JSC a preview of which I had before now, I too allow this appeal and I set aside the judgment of the two courts below and grant the plaintiffs claims (a), (c) and (d). In respect of the claim for damages for trespass, I do not think the plaintiffs are on a terra firma. As Exhibit F was only voidable and not void, it means that Defendant's entry on the land in the first instance was lawful. His possession thereof remained so until the avoidance by this Court of Exhibit F. The claim (b) in trespass must, therefore, fail and it is hereby dismissed by me. D E

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

MOHAMMED JSC

I have had the privilege of reading the judgment just read by my learned brother, Wali, J.S.C., in draft, and I agree with him that there is merit in this appeal. I have nothing more to add to such detailed finding in the lead judgment. I also allow the appeal, set aside the judgments of both the High Court and the Court of Appeal and grant the plaintiffs' claims (a), (c) and (d). I refuse to grant claim (b). That claim is dismissed. I abide by all consequential orders made in the lead judgment, including the assessment on costs. G

IGUH JSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Wali, J.S.C. I agree entirely with the reasoning and conclusions therein and adopt them as mine. I also subscribe to the consequential orders including those as to costs therein made. H