

SUPREME COURT OF NIGERIA
9TH OCTOBER, 1998. SC. 122/1992
CORAM:- M. L. UWAIS CJN, A. B. WALI, I. L. KUTIGI,
M. E. OGUNDARE, E. O. OGWUEGBU, JJSC

ALHAJA NIMOTA ABIOLA ABEGBE ABASI PLAINTIFF/
RESPONDENT

AND

1. ANTHONY ARUNA BRAIMAH DEFENDANT/APPELLANT
2. REGISTRAR OF TITLES DEFENDANT/RESPONDENT

EVIDENCE - Proof - Civil cases - Onus of adducing further evidence -
Is on the party who would fail - If such evidence were not produced.

LAND LAW - Title - Burden of Proof - Plaintiff having proved purchase
through her husband - Onus shifted to the 1st defendant to prove the
original purchaser - As averred by him.

LAND LAW - Conveyancing - Plaintiff's failure to sign the document as
purchaser - Would not affect the fact of conveyance of the plot to her - In
view of the uncontradicted evidence that plaintiff paid for same.

LAND LAW - Conveyancing - Forgery allegation - Is proved beyond
reasonable doubt - And the forged conveyance exhibit 2 being vitiated
transferred no title.

LAND LAW - Purchaser for value - Without notice of any fraud - On the
proved facts - The defence of purchaser for value does not avail.

FACTS

Before the High Court Lagos, the plaintiff/respondent filed an action against
the 1st defendant/appellant and the Registrar of Titles (2nd defendant).
Plaintiff sought declaration that the deed of transfer of her property regis-
tered as title No. MO. 6008 to one Alhaja Majekodunmi is void for

fraudulent forgery of her signature: Declaration that the further deed of transfer to 1st defendant is void as Majekodunmi had no title to transfer: And rectification of the Register of Titles. The trial court found in favour of the plaintiff as per her claim. 1st Defendant's appeal to the Court of Appeal was allowed on the ground that the trial judge delivered his judgment outside the 3 months constitutional period.

The Court of Appeal ordered a new trial before another judge. The trial court again found in favour of plaintiff. 1st defendant's appeal to the Court of Appeal was dismissed. He has further appealed to the supreme Court which considered 4 issues in deciding the appeal.

ISSUES FOR DETERMINATION

1. Whether the Respondent has established a right to rectification of the titles register.

2. Whether the Appellant is a bona fide purchaser for value of THE LEGAL ESTATE

3. Whether the Appellant has established the existence of another person with names identical to the Respondent's ALHAJA NIMOTA ABIOLA ABEGBE ABASI.

4. Whether an allegation of fraud, in the circumstances of this case, must be proved beyond reasonable doubt."

HELD (Unanimously dismissing the appeal per lead Judgment of OGUNDARE JSC)

Title - Burden of proof

1. The plaintiff, having proved that she purchased the land in dispute from the LEDB and was given, through her husband, a title document registered as No. MO 6008 and bearing her full names of Alhaja Nimota Abiola Abegbe Abasi, the onus, in my respectful view, shifted on the 1st defendant who averred that another woman, other than the plaintiff was, in fact, the original purchaser. He led no iota of evidence in the discharge of the burden on him. I think the Courts below are right in holding, on the evidence, that the person mentioned in Exhibit 1 as the purchaser is no other than the plaintiff. (p. 2437 E)

Proof - Civil cases

2. Is trite law that civil cases are decided on a preponderance of evidence; the onus of adducing further evidence is on the party who would fail if such evidence were not produced - see; Odulaja v. Haddad (1973) 1 SC 357. The plaintiff having adduced evidence to show that Exhibit 1 was issued to her, the burden shifted to the 1st defendant to lead further evidence that the document was, in fact, issued to someone else, as pleaded by him in paragraph 4 of his amended statement of defence. Having failed to do this, he cannot now complain that judgment was entered in plaintiff's favour. (p. 2438 A)

Conveyancing - Plaintiff's failure to sign the document

3. If the plaintiff's husband, whose conduct in respect of transactions relating to the land in dispute would appear not to be beyond reproach, procured someone else to sign Exhibit 1 on behalf of the plaintiff knowing her to be illiterate, would this, per se, alter the fact that Plot No. 122 in Animashawun Estate was sold and conveyed by LEDB to the plaintiff who, on the uncontradicted evidence before the Court paid for same? I rather think not. The situation might have been different if some other woman had come forward claiming to bear the names on Exhibit 1 and shown to have signed the document. That further evidence was not produced by the 1st defendant who had the burden to produce same. I agree entirely with the learned trial Judge when he said:

"The conclusion I have come to is that Exhibit 1 is plaintiff's document notwithstanding that she did not sign it. She could properly in my view rely upon it. That being my view of the matter the bottom is knocked out of the 1st defendant's case completely." (p. 2438 E)

Conveyancing - Forgery allegation

4. What I make of plaintiff's pleadings is that she accused the 1st defendant of negligence, in not checking on the genuineness of his purchase. That is, he did not make proper search before buying. It is not that he took part in the actual forgery of Exhibit 2. The learned trial Judge found as a fact that plaintiff did not sign Exhibit 2. The Court below affirmed this

finding. It has not been shown to my satisfaction that this concurrent findings of fact of the two Courts below is perverse. I am satisfied on the evidence that Exhibit 2 is a forgery and being so the transaction it purports to evidence is completely vitiated; it transferred no title to the transferee B mentioned therein or to any other person. There is, in my respectful view, sufficient evidence to satisfy the requirement of section 138 of the Evidence Act as to proof beyond reasonable doubt. (p. 2439 H)

C ***Purchaser for value - Without notice***

5. On the evidence available (i) the plaintiff has been proved to be the original purchaser, and (ii) Exhibit 2 not having been signed by her or on her authority is a forgery and, therefore, transferred no title to 1st defendant's vendor. He is, therefore, not a purchaser of the legal estate. The defence, D as found by the two Courts below, is not available to him notwithstanding that he had no notice of the fraud perpetrated in this case. (p. 2440 E)

NOTABLE POINT OF INTEREST

E **WALI JSC**

1. Purchaser for value - Equity aids the vigilant

1st Appellant failed to exhibit the type of vigilance and caution required in a transaction of this nature. He could thereof not justify his negligent F conduct in the transaction by the plea that he was a purchaser for value without notice. Equity aids the vigilant and not the indolent. Section 53(2) of the Registration of Titles Law of Lagos could not avail him. (p. 2450 A)

G **REPRESENTATION**

B. Adesanya for the Defendant/Appellant

T. A. Molajo for the Plaintiff/Respondent

Defendant/Respondent absent and unrepresented

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CASES REFERRED TO

Odulaja v. Haddad (1973) 1 SC 357.

Nwabuoku v. Ottih (1961) 1 All NLR 487, 490; (1961) ANLR 507, 511:

Aikhionbare v. Omoregie (1976) 12 SC 11

Okupe v. Ifemembi (1974) 3 SC 97

Atane v. Amu (1974) 10 SC. 237

STATUTES REFERRED TO

Constitution of Nigeria 1979 s. 258 (1)

Evidence Act ss. 135, 137, 138

Registration of Titles Law Cap 121 Laws of Lagos State ss. 61 (1) (d), 53 (1) & (2)

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LEAD JUDGMENT BY OGUNDARE JSC

This matter has a chequered history. The action commenced on 14th December 1976 when the Plaintiff Alhaja Nimota Abiola Abegbe Abasi (who is now respondent in this appeal) issued a writ of summons in the High Court of Lagos State claiming from Anthony Aruna Braimah (now appellant) and the Registrar of Titles, as 1st and 2nd defendants respectively:-

"1. Declaration that the deed of transfer dated 31st October, 1967 of her property registered as Title No. MO 6008 to Alhaja Ayisatu Adenike Majekodunmi is void for fraud the signature of Nimota Abiola Abegbe Abasi thereto having been forged.

2. Declaration that the further deed of transfer dated 29th August, 1968 to Anthony Aruna Braimah is void as Alhaja Ayisatu Adenike Majekodunmi had no title to transfer.

3. Rectification of the Register of Titles by expunging therefrom, the name of the first defendant as proprietor of the said land reinstating instead the plaintiff's name ,alternatively a declaration that the plaintiff is entitled to be indemnified by the Registrar for her loss."

Pleadings were filed and exchanged. The 1st defendant, Anthony Aruna Braimah, subsequently, with leave of court, amended his statement of defence to which the plaintiff filed a reply.

The action proceeded to trial before Ayorinde J. (as he then was) who on 7th October, 1982 in a reserved judgment found for the plaintiff and entered Judgment in her favour in terms of her claims. Being dissatis-

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fied with the judgment, the 1st defendant appealed to the Court of Appeal. That Court (Coram: Ademola, JCA, Nnaemeka-Agu and Kutigi JJCA, as they were then) on 13th January 1986 allowed the appeal on the ground that the trial Judge delivered his judgment outside the 3-month period laid down in section 258(1) of the Constitution of the Federal Republic of Nigeria, 1979 as it stood before the amendment effected by Decree No. 17 of 1985 which came into operation on 27th August 1985. A new trial was ordered by the Court of Appeal.

The new trial came before Oguntade, J. (as he then was). After evidence had been led on both side and learned counsel for the parties had addressed the court, the learned Judge, in a well considered judgment delivered on 9th March 1987, found for the Plaintiff and entered judgment in her favour in terms of her claims.

The 1st defendant was unhappy with the judgment of Oguntade J. and appealed once again to the Court of Appeal. This time, that Court, on 6th January 1992, dismissed the appeal and affirmed the judgment of Oguntade J.

It is against this judgment that the 1st defendant has further appealed to this Court upon 4 grounds of appeal. In his brief filed pursuant to the rules of this Court he has formulated the following questions as calling for determination in this appeal, that is:

- (a) Proof of the identity of the original Grantee;
- (b) Burden of proof of Fraud; and
- (c) purchaser for value without Notice."

The Plaintiff, in her own brief, raises the following four questions which are not dissimilar to the three broad headings argued in the 1st defendant's brief;

1" Whether the Respondent has established a right to rectification of the titles register.

2. Whether the Appellant is a bona fide purchaser for value of
H THE LEGAL ESTATE

3. Whether the Appellant has established the existence of another person with names identical to the Respondent's ALHAJA NIMOTA ABIOLA ABEGBE ABASI.

4. Whether an allegation of fraud, in the circumstances of this case, must be proved beyond reasonable doubt."

At the oral hearing of this appeal, the learned Chief Justice of Nigeria, who presided, drew the attention of learned counsel for the parties to the fact that Kutigi JSC (a member of the panel hearing the appeal) B took part in the hearing of first appeal to the Court of Appeal and would want to know if any party was objecting to his participating in the hearing of the present appeal. Both counsel indicated they were not objecting to Kutigi JSC's participation. This is understandable as the issue of law involved in the first appeal to the Court of Appeal was different to the issues C now to be resolved in this appeal.

The 2nd defendant who took no part in the appeal to the Court of Appeal also took no part in the hearing of the present appeal. No brief was filed on his behalf nor was he represented by counsel at the hearing, even D though all relevant papers, including hearing notice, were served on him.

Learned counsel proffered oral arguments in further expatiation of the submissions in their respective briefs. Before proceeding with a consideration of the arguments advanced by learned counsel I think it is E appropriate at this stage to give a short resume of the facts.

The plaintiff, Alhaja Nimota Abiola Abegbe Abasi was at one time a wife to Mr. Adebisi Majekodunmi, a legal practitioner but now deceased. While they were living together as husband and wife, the plaintiff F sometime in 1965 or there about applied to the Lagos Executive Development Board LEDB, for short) for a plot of land in Surulere to be allocated to her. In response, the LEDB allocated to her Plot No.122 in Animashawun Estate, Surulere and demanded from her the purchase price of # 556 (now N1,112.00). She paid the purchase price through her husband G who acted throughout as her agent in the purchase of the land. The LEDB conveyed the land to her buy a deed of conveyance dated 1st December 1965 signed by the Board's Chairman. The deed (Exhibit 1) bearing her names was registered as title No. MO 6008 in the Lagos Register H of Titles. The plaintiff entrusted to her husband, Mr. Majekodunmi, the safe custody of the document of title.

Relations soon went sour between the couple resulting in the plain-

tiff living apart from the husband. She, however, continued to visit the land. When Mr. Adebiyi Majekodunmi died in 1975 (two years after the plaintiff left him), the plaintiff approached Mrs. Majekodunmi and her daughter (PW1) who were the administrators of his estate for the return to her of her title document No. MO 6008. When she was told that the document could not be found among his papers, the plaintiff caused a search to be made in the Lands Registry. It was discovered that the owner of the title deed had, by Exhibit 2, purportedly sold the land to one Alhaja Ayisatu Adenike Majekodunmi, who in turn had sold the same to the 1st defendant. The plaintiff then instituted the action leading to this appeal against the 1st defendant and the Registrar of Titles as 2nd defendant.

At the trial, plaintiff denied executing Exhibit 2 and denied selling her land to Alhaja Ayisatu Adenike Majekodunmi or anyone else. She testified that Alhaja Ayisatu Adenike Majekodunmi was an old woman living in Abeokuta and was her mother-in-law being Mr. Adebiyi Majekodunmi's mother. 1st defendant also testified that he did not know Alhaja Ayisatu Adenike Majekodunmi and that he carried out all negotiations leading to the sale of the land to him with Mr. Adebiyi Majekodunmi.

Identity of the Original Purchaser of the land:

Learned counsel for the 1st defendant made much weather, both in the Court below and in this Court of the fact that the plaintiff did not sign the deed of conveyance, Exhibit 1, by which the LEDB conveyed the land to the original purchaser. It is learned counsel's submission that as the deed was not signed by the plaintiff, the purchaser must be one who signed it even though such person bore names similar to the plaintiff's. Learned counsel for the plaintiff countered that 1st defendant's argument was mere conjecture or speculation as he failed to produce such a purchaser. The lower Courts agreed with the plaintiff

The plaintiff pleaded thus:

"1. The plaintiff is a trader and the proprietor of plot No. 122 in Animashawun Estate, Surulere, registered as title No. MO 6008 in the Lagos Register of Titles.

2. The said plot was sold and conveyed to the plaintiff as evidenced by a deed of conveyance dated 1st December, 1965 signed by the

Chairmen of the Lagos Executive Development board and its Secretary.

3. *The plaintiff paid for the plot of land an amount of # 566 now N1,112,00 in 1965.*

4. *The said sum of # 556 now N1,112.00 was handed by the plaintiff to her late husband Mr. A.A. Majekodunmi who paid the money to the Lagos Executive Development bard on the plaintiff's behalf.*

5. *The plaintiff entrusted to the said N. A. Majekodunmi the transactions with the Lagos Executive Development Board, the collection and safe custody of the document of title to the property.*

6. *The plaintiff later knew that the property was registered as title No. MO 6008."*

The 1st defendant denied paragraphs 1-5 above and averred in his pleadings-

"4. *With reference to paragraphs 2, 3 and 11 of the Statement of Claim, the 1st Defendant avers that one Alhaja Nimota Abiola Abegbe Abasi (hereinafter called 'the Grantee') with identical names with the Plaintiff was the original proprietor of Plot No. 122, Animashawun Estate, Surulere, Lagos registered as Title No. MO 6008 ('the property') in the Lands Registry') in the Lands Register of Titles, Lagos Lands Registry.*

5. *The 1st Defendant avers that by a Deed of Indenture dated the 1st day of December, 1965 signed by all the parties thereto. The Chairman and Secretary of the Lagos Executive Development Board (now LSDPC) and the Grantee, the land in dispute was sold to the Grantee and accordingly conveyed to her by virtue of the said Deed of Indenture."*

The plaintiff led evidence in support of her averments but the 1st defendant did not adduce any evidence of the existence of any woman, other than the plaintiff, who was the purchaser to whom the LEDB sold the land. On the evidence before him, the learned trial Judge observed and found:

"In his address Mr. Molajo submitted that the submission by Mr. Ayanlaja that another person who bore identical names with the plaintiff had been the grantee of the land in Exhibit 1 was a mere speculation. I wholly agree with Mr. Molajo.

It is too much for me to imagine that another person not the plaintiff bore all four identical names with plaintiff and acted through Mr. A.A. Majekodunmi who was plaintiff's husband. The 1st defendant did not go beyond leaving the court to speculate on such possibility. No evidence of any kind was called by 1st defendant to show that any person by the names - Nimota Abiola Abegbe Abasi other the plaintiff ever existed. If such a person existed, where did she live? Where is she now? If she is dead where are her relations or personal representatives? Did not anybody ever see her?

It is in my view a most fanciful and unrealistic speculation. I reject it and find as a fact that it was the plaintiff who gave money to her husband Mr. A.A. Majekodunmi so that he could pay for the land on her behalf. I find as a fact that the plaintiff was the intended grantee in Exhibit 1."

The Court below, per Sulu-Gambari JCA, in affirming the above views of the learned trial Judge, said.

"It is the further contention of the appellant that the onus lies on the respondent to prove that there is no other person bearing those names than herself. I do not think so. The plaintiff already brought the action claiming that her title deed had been tampered with and somehow falsified. She led evidence to establish that she was the wife of late Chief Majekodunmi with whom the 1st appellant negotiated to buy off the property. If the 1st appellant claims that there is another person known by those names, I would suppose that that is a peculiar knowledge, the onus of establishing which must squarely rest on the 1st appellant.

The learned trial judge also held that the contention that there is another person bearing all the names of the respondent was most fanciful and unrealistic speculation: the 1st defendant/appellant did not call the person who he claimed to be bearing all the names of the respondent; that it is too much of a coincidence for a person to bear all the four names of another. If such a person exists or existed, where did she live? Where is she now or if she is dead, who can give evidence of her existence? All these informations were not supplied and the learned trial judge did not find the defence put forward by the present appellant on

this particular issue convincing. I share the same view."

It is the contention of learned counsel for the 1st defendant that by holding as above the Courts below placed the burden of proof of the identity of the original purchaser on the 1st defendant rather than on the plaintiff. With respect, I do not accept learned counsel's submission. No doubt the plaintiff had the primary duty of proving her case. The burden was on her to prove the facts she relied on in proof of her claim - see section 135 of the Evidence Act. But the burden is not static for section 137 provides:

"137(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

2. If such party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced; and so on successively, until all the issues in the pleadings have been dealt with."

The plaintiff, having proved that she purchased the land in dispute from the LEDB and was given, through her husband, a title document registered as No. MO 6008 and bearing her full names of Alhaja Nimota Abiola Abegbe Abasi, the onus, in my respectful view, shifted on the 1st defendant who averred that another woman, other than the plaintiff was, in fact, the original purchaser. He led no iota of evidence in the discharge of the burden on him. I think the Courts below are right in holding, on the evidence, that the person mentioned in Exhibit 1 as the purchaser is no other than the plaintiff. As was said by Sir Ademola, CJF (as he then was) in Nwabuoku v. Ottih (1961) 1 All NLR 487, 490; (1961) ANLR 507, 511:

"The evidence of the appellant therefore stands uncontradicted. His evidence giving the terms of the transaction between him and the respondent was in terms of his Writ. In the absence of any evidence of rebuttal the appellant was entitled to judgment. and I am of the view that the learned Judge's duty was to have entered judgement in this favour at the close of the respondent's case."

See also Aikhionbare v. Omoregie (1976) 12 SC 11; Okupe v. Ifemembi (1974) 3 SC 97, Atane v. Amu (1974) 10 SC. 237. It is trite law that civil cases are decided on a preponderance of evidence; the onus of adducing further evidence is on the party who would fail if such evidence were not produced - see; Odulaja v. Haddad (1973) 1 SC 357. The plaintiff having adduced evidence to show that Exhibit 1 was issued to her, the burden shifted to the 1st defendant to lead further evidence that the document was, in fact, issued to someone else, as pleaded by him in paragraph 4 of his amended statement of defence. Having failed to do this, he cannot now complain that judgment was entered in plaintiff's favour.

The 1st defendant premised his complaint on the fact that plaintiff, on her admission, did not sign Exhibit 1 but someone else did. It is argued that someone else must be the Alhaja Nimota Abiola Abegbe Abasi named in Exhibit 1 as the purchaser. This argument loses sight of the evidence of the plaintiff wherein, under cross-examination, she said:

"I did not sign any agreement with LEDB My husband did everything on my behalf."

If the plaintiff's husband, whose conduct in respect of transactions relating to the land in dispute would appear not to be beyond reproach, procured someone else to sign Exhibit 1 on behalf of the plaintiff knowing her to be illiterate, would this, per se, alter the fact that Plot No. 122 in Animashawun Estate was sold and conveyed by LEDB to the plaintiff who, on the uncontradicted evidence before the Court paid for same? I rather think not. The situation might have been different if some other woman had come forward claiming to bear the names on Exhibit 1 and shown to have signed the document. That further evidence was not produced by the 1st defendant who had the burden to produce same. I agree entirely with the learned trial Judge when he said:

"The conclusion I have come to is that Exhibit 1 is plaintiff's document notwithstanding that she did not sign it. She could properly in my view rely upon it. That being my view of the matter the bottom is knocked out of the 1st defendant's case completely."

Burden of Proof of Fraud:

By her pleadings, plaintiff claimed that Exhibit 2, the document by which the land in dispute was sold to Alhaja Ayisatu Adenike Majekodunmi, was a forgery in that although it was purported to have been executed by her but it was, in fact, not executed by her. I do not think the 1st defendant is seriously challenging the fact that plaintiff did not sign Exhibit 2. Plaintiff, in her statement of claim, pleaded:

"10. Enquiries revealed that the land registered as title No. MO 6008 had been transferred to one Alhaja Ayisatu Adenike Majekodunmi by documents on which the plaintiff's names had been forged."

11. The plaintiff did not sign any deed of transfer and did not sell the land to anyone

12. By a further forged deed of transfer the land was further transferred to Mr. Anthony Aruna Braimah of the Federal Ministry of Education, Lagos."

And in her reply to the amended statement of defence of the 1st defendant, she further pleaded:

"2. The plaintiff will contend that even if the defendant is a subsequent registered owner he acquired no title in the property in dispute as his predecessor in title purported to acquire the property by fraud to wit - forgery of the plaintiff's name and signature."

5. The plaintiff denies executing any deed of transfer and puts the first defendant to the strictest proof thereof."

8. The plaintiff will contend at the trial that the first defendant is party to the fraud because he never made any attempt to check the genuineness of the purchase."

Can it be said that plaintiff alleged that 1st defendant forged Exhibit 2? I do not think so. Her case simply was that Exhibit 1 conveyed the land in dispute to her and as she did not sign Exhibit 2, Exhibit 2 was a forgery and transferred no title in the land to Alhaja Ayisatu Majekodunmi who purportedly sold same to the 1st defendant. **What I make of plaintiff's pleadings is that she accused the 1st defendant of negligence, in not checking on the genuineness of his purchase. That is, he did not make proper search before buying. It is not that he took part in the actual**

forgery of Exhibit 2.

The learned trial Judge found as a fact that plaintiff did not sign Exhibit 2. The Court below affirmed this finding. It has not been shown to my satisfaction that this concurrent findings of fact of the two Courts below is perverse. I am satisfied on the evidence that Exhibit 2 is a forgery and being so the transaction it purports to evidence is completely vitiated; it transferred no title to the transferee mentioned therein or to any other person. There is, in my respectful view, sufficient evidence to satisfy the requirement of section 138 of the Evidence Act as to proof beyond reasonable doubt. With respect to the learned counsel for the 1st defendant, I find no substance in the arguments advanced by him, both in his written brief and oral submissions, to the contrary.

Purchaser for Value Without Notice:

The 1st defendant contends that as he is a purchaser for value of the legal estate in the land in dispute without notice of any fraud, he has an unanswerable defence to the plaintiff's claim. This submission is predicated on the fact that plaintiff is not the original purchaser of the land and that Exhibit 3 transferred the legal estate in the land to him. As I have decided above, both premises are wrong. **On the evidence available (i) the plaintiff has been proved to be the original purchaser, and (ii) Exhibit 2 not having been signed by her or on her authority is a forgery and, therefore, transferred no title to 1st defendant's vendor. He is, therefore, not a purchaser of the legal estate. The defence, as found by the two Courts below, is not available to him notwithstanding that he had no notice of the fraud perpetrated in this case.**

My conclusion is that all the arguments advanced in favour of the 1st defendant fail. This appeal equally fails and it is dismissed by me. I affirm the judgment of the Courts below and award N10,000 (ten thousand Naira) costs of this appeal to the Plaintiff/Respondent against the 1st Defendant/Appellant.

UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother Ogundare, JSC. I entirely agree that this appeal lacks merit and that it should be dismissed.

Accordingly the appeal is hereby dismissed with N10,000.00 costs to the Plaintiff/Respondent against the Defendant/Appellant.

WALI JSC

I have read before now the lead judgment of my learned brother Ogundare, JSC and I agree with his reasoning and conclusion for dismissing the appeal.

The facts of this case as emerged from the pleadings and the evidence of the parties are not seriously in dispute.

Alhaja Nimota Abiola Abegbe Abasi who was one of the wives of late A. Majekodunmi Esq., and the plaintiff in this case, bought a plot of land through her late husband, from .L.E.D.B. for the sum of \$556.00. This plot of land is plot No.122 Animashawun Estate Surulere, Lagos. The plaintiff entrusted Mr. Majekodunmi with the whole transaction. The plot of land was registered in plaintiff's favour as title No. MO 6008 and all the documents relating thereto were kept in custody of her late husband, Mr. Majekodunmi.

On the death of Mr. Majekodunmi the plaintiff demanded the release of the title documents of the said plot bought by her late husband on her behalf, from his senior wife and his daughter who were put in-charge and management of his estate. It was then discovered that late Majekodunmi had fraudulently first transferred the plot to Alhaja Ayisatu Adenike Majekodunmi, his mother and subsequently to Anthony Aruna Braimoh, the 1st defendant.

In her statement of claim, particularly in paragraphs 1,2,3,4, 5,9,10, 11 and 12 the plaintiff averred thus-

"1. The plaintiff is a trader and the proprietor of Plot No. 122 in Animashawun Estate, Surulere, registered at title No. MO 6008 in the Lagos Register of Titles.

2. *The said plot was sold and conveyed to the plaintiff as evidenced by a deed of conveyance dated 1st December, 1965, signed by the Chairman of the Lagos Executive Development Board and its Secretary.*

B 3. *The Plaintiff paid for the plot of land an amount of 556 Pounds now N1,112.00 in 1965.*

C 4. *The said sum of 556 Pounds now N1.112.00 was handed by the Plaintiff to her late husband, Mr. A.A. Majekodunmi, who paid the money to the Lagos Executive development Board on the Plaintiff's behalf.*

D 5. *The Plaintiff entrusted to the said Mr. A.A. Majekodunmi the transaction with the Lagos Executive Development Board, the collection and safe custody of the document of title to the property.*

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E 9. *After the death of Mr. A.A. Majekodunmi, the Plaintiff lodged a verbal claim with Mrs. Majekodunmi, and her daughter who the Plaintiff learnt are in charge of the estate, that the land Certificate No.6008 was in the custody of Mr. A.A. Majekodunmi and that she wanted to collect it.*

F 10. *Enquiries revealed that the land registered as title No. MO 6008 had been transferred to one Alhaja Ayisatu Adenike Majekodunmi by documents on which the Plaintiff's names had been forged.*

11. *The Plaintiff did not sign any deed of transfer and did not sell the land to anyone.*

G 12. *By a further forged deed of transfer the land was further transferred to Mr. Anthony Aruna Braima of the Federal Ministry of Education Lagos."*

In answer to the averments above, the 1st defendant, in his Amended Statement of Defence, particularly paragraphs 5,6,7,8,9 and 10 pleaded as follows:-

H "5. *The 1st Defendant avers that by a Deed of Indenture dated the 1st day of December, 1965, signed by all the parties thereto. The Chairman and Secretary of the Lagos Executive Development. Board (now LSDPC) and the Grantee, the land in dispute was sold to the Grantee*

and accordingly conveyed to her by virtue of the said Deed of Indenture.

6. The 1st Defendant further says that the Grantee in like manner and style of execution as in the Deed of Indenture above referred to executed a Deed of Transfer on Lands Form 7 dated 31st October, 1967, to one Alhaja Ayisatu Adenike Majekodunmi ("the vendor"). The duly stamped deed of transfer was registered in the Proprietorship Register of the Certificate of Title MO 6008 and shall be refund upon at the trial of this action. B

7. The 1st Defendant (who is a civil servant) avers that sometime in 1968, he entered into discussion with a view to buying to buying the property. The Vendor and the 1st Defendant agreed to a purchaser price of 750 Pounds (N1,500.00). C

8. The 1st Defendant thereafter applied to the African Staff Housing Board for a loan of 750 Pounds (N1,500.00) to finance the purchase of the property. The 1st Defendant will further show that the said Housing Board on behalf of the 1st Defendant carried out a search at the Lands Registry, Lagos, on the property which showed that the Vendor had no caution, charges or encumbrances against her title. D E

9. The 1st Defendant will further show at the trial of this action that he eventually paid through the African Staff Housing Board to the Vendor, a sum of 750 Pounds (N1,500.00). The 1st Defendant says that a result of this payment the vendor transferred the property registered under Land Certificate Title No. MO 6008 to him by virtue of a duly executed Deed of Transfer on Lands Form 7 dated the 29th day of August, 1968. The Deed of Transfer was therefore registered and noted on the Proprietorship Register of Certificate of Title No. MO 6008. The 1st Defendant shall rely on the documents aforesaid at the trial of this action. F G

10. The 1st Defendant avers that his interest in the property is adequately registered in accordance with the Registration of Titles Law Cap. 121 Laws of Lagos State and contends that as a subsequent registered owner of the property and as a bona fide purchaser for value without notice of any fraud or other irregular dealing, he acquired an indefeasible title to the property." H

The case proceeded to trial at the end of which Oguntade J, as he then was, painstakingly considered and evaluated the evidence and arrived at the following conclusion:-

"The plaintiff gave her names as Nimota Abiola Abegbe Abasi.

B If the submission of Mr. Ayanlaja is correct, it then means that another person by the same names Nimota Abiola Abegbe Abasi was the grantee in Exhibit 1 because those are the names by which the grantee in Exhibit 1 received the grant.

C It was not disputed that the plaintiff sated her true names to the Court. The plaintiff testified that she received a letter of allocation to her of the land in dispute. She gave the letter and the sum of \$556.00 to her husband the late Mr. A.A. Majekodunmi. Mr. Majekodunmi later collected on plaintiff's behalf documents in respect of the land. He kept D them for plaintiff. The plaintiff said that she did not sign Exhibit 1. The plaintiff also said that her late husband was a lawyer. When one checks the story of plaintiff as given in given against the contents of Exhibit 1, one gets the impression that the plaintiff spoke the truth. Plaintiff's names E in full appear on Exhibit 1. Her address was stated as c/o A.A. majekodunmi. The said A.A. Majekodunmi signed as a witness and solicitor in Exhibit 1. Further the daughter of A.A. Majekodunmi testified as P.W. 1. she said that plaintiff was the wife of her father and that the F Plaintiff could not sign Exhibit 1 P.W. 1 and plaintiff's children had taught plaintiff how to sign her name and she was able to do this in a crude form."

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G "It is too much for me to imagine that another person not the plaintiff bore all four identical names with plaintiff and acted through Mr. A.A. Majekodunmi who was plaintiff's husband. The 1st defendant did not go beyond leaving the court to speculate on such possibility. No evidence of any kind was called by 1st defendant to show that any person H by the names - Nimota Abiola Abegbe Abasi other than the plaintiff ever existed.

If such a person existed, where did she live? Where is she now? As she is dead where are her relations or personal representatives? Did

not anybody ever see her?

It is in my view a most fanciful and unrealistic speculation. I reject it and find a fact it was the plaintiff who gave money to her husband Mr. A.A. Majekodunmi so that he could pay for the land on her behalf. I find as a fact that the plaintiff was the intended grantee in Exhibit 1." B

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"The conclusion I have come to is that Exhibit 1 is plaintiff's document notwithstanding that she did not sign it. She could properly in my view rely upon it. That being my view of the matter the bottom is knocked out of the 1st defendant's case completely." C

As regards Exhibits 2 and 3 the document by which the property in Exhibit 1 was purportedly transferred by the plaintiff to Alhaja Ayisatu adenike Majekodunmi and subsequently to the 1st defendant respectively, D the learned trial judge concluded thus on the issue:

"I have looked at the signature on Exhibit 2 myself. It is a most impressive inscription attributable to a skillful and experienced hand. It is certainly not the plaintiff's. The plaintiff from her demeanour and bearing is obviously an illiterate woman. She wrote her name before the court. See Exhibit 8. Although she wrote just about her first name NIMOTA, she did so under great efforts which took her some time. I am satisfied she spoke the truth. I find as a fact that the plaintiff did not sign Exhibit 2. Since I have held that the plaintiff is the person to whom the land was allocated, only plaintiff could transfer it. Some person other than plaintiff purported to transfer the land to Alhaja Ayisatu Adenike Majekodunmi in Exhibit 2. No title passed to Alhaja Ayisatu Adenike Majekodunmi vide Exhibit 2 as the purported vendor had no title to pass to Alhaja Ayisatu Adenike Majekodunmi." E F G

Since Alhaja Ayisatu Adenike Majekodunmi did not obtain any title vide Exhibit 2, she had no title to pass to the 1st defendant vide Exhibit 3. The 1st defendant bought nothing vide Exhibit 3." H

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"I am therefore satisfied that the entry in the register which purports that the plaintiff sold her land and transferred same to Alhaja Ayisatu

Adenike Majekodunmi was obtained by fraud/forgery."

On the contention of the 1st defendant that he is a purchaser for value without notice of any fraud, the learned trial judge remarked and concluded:-

B "The thing to point out here is that a person putting forward the plea that he is available purchaser for valuable consideration without notice almost invariably does so to project the estate he has transferred to him. But where the deed of purchase or the transaction upon which the plea is founded transfers or confers no estate or title the plea is absolutely useless."

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D "Once fraud or forgery is shown to have taken place before an estate is purported to be transferred to a defendant his acquisition will be invalidated."

Aggrieved by this decision the 1st defendant appealed to the Court of Appeal, Lagos Division and in a considered and unanimous judgment of that court delivered by Gambari JCA he dismissed the appeal after making E the following findings on the vital issues raised and canvassed before them

1. IDENTITY OF THE ORIGINAL GRANTEE OF THE PLOT OF LAND IN DISPUTE

F "The plaintiff had already brought the action claiming that her title deed had been tampered with and somehow falsified. She led evidence to establish that she was the wife of late Chief Majekodunmi with whom the 1st appellant negotiated to buy off the property. If the 1st appellant claims that there is another person known by those names, I G would suppose that is a peculiar knowledge, the one of establishing which must squarely rest on the 1st appellant.

The learned trial judge also held that the contention that there is another person bearing all the names of the respondent as most fanciful and unrealistic speculation: the 1st defendant/appellant did not call the person H who he claimed to be bearing all names of the respondent; that it is too much of a coincidence for a person to bear all the four names of another. If such a person exists of existed, where did she live? Where is she now

or if she is dead, who can give evidence of her existence? All these informations were not supplied and the learned trial judge did not find the defence put forward by the present appellant on this particular issue convincing. I share the same view."

2. PURCHASER FOR VALUE WITHOUT NOTICE

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"I am in a total agreement with the learned trial judge that where a plea of bona fide purchaser for value is being made, there must be a valid transfer of the property to the man raising that plea. So where a deed of purchaser or transaction upon which the plea is founded, transferred or conferred no estate or title to the purchaser for value, the plea is absolutely useless."

C

xx

"It follows therefore that once the fraud of forgery is established to have taken place before an estate is purportedly transferred to a person who calls himself a bona fide purchaser for value, the transfer so obtained will be rendered invalid."

D

3. BURDEN OF PROOF

"There is no doubt that the plaintiff/respondent in her pleadings alleged fraud. She gave evidence that she did not sign Exhibit 2 which is the main document to be proved to have been falsified in this case."

E

The learned trial judge held, in my opinion, quite rightly, that though the respondent did not sign Exhibit 1, having paid the purchase price of the land, she had substantial intention to purchase the land therefore Exhibit 1 is the plaintiff's document notwithstanding that she did not sign it. She could also properly rely on it. There was no appeal specifically on that decision."

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"The learned trial judge pointed out that the plaintiff/respondent did not plead that it was the defendants that forged the document. All that she did was to prove that her signature was forged on Exhibit 2 that someone (surely not herself) who had not acted on her instruction and on her behalf falsely signed Exhibit 2. this piece of evidence was not challenged."

H

The learned JCA proceeded to consider both section 61(1) (d) of

the registration of Titles Law of Lagos State and Section 137(1) of the Evidence Act and concluded-

"On the totality of the evidence, the learned trial judge held that he was satisfied that the entry in the register which purported to show that the respondent sold her land or transferred same to Alhaja Ayisatu Adenike Majekodunmi was obtained by fraud of forgery and that was sufficient requirement of the provision of Section 61(1) (d) of the Registration of Titles Law of Lagos State to enable the court to make an order of rectification. This decision has never been faulted in this appeal."

[illegible]

"The learned trial judge then came to the inevitable conclusion that the burden of proof had been discharged by the respondent whose evidence and other pieces of evidence led in support of her allegation of fraud had remained largely unchallenged."

[illegible]

"Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt because it would be impossible to achieve such."

E The appeal was dismissed. The defendant further appealed to this court.

Henceforth the plaintiff and the 1st defendant will be referred to in this judgment as the Respondent and the 1st Appellant respectively.

F In the brief filed by the 1st appellant, the following only single issue was formulated -

"Whether the Plaintiff/Respondent made out a case for the rectification of the Register of Title No. MO 6008 as enjoined by Section 61(1) (d) of the Registration of Titles Law Cap 121 Laws of Lagos State as to have the name of the Appellant removed therefrom."

In this contribution, I do not intend to go over the argument presented by learned counsel for the 1st Appellant and the respondent respectively. It is clear from the respondent's Statement of Claim, she was relying on the Deed of conveyance which was executed by L.E.D.B in her favour. She was duly registered as the owner of the plot of land in dispute under Title No. MO 6008. This much was indirectly admitted by the 1st appellant in paragraph 4 of the Amended Statement of Defence in which

he averred that:-

"..... One Alhaja Nimota Abiola Abegbe Abasi (herein after called "Grantee") with identical names with the plaintiff was the original proprietor of plot No. 122 Animashaun Estate, Surulere, Lagos, registered as Title No. MO 6008 ("The Property") In the Lands Register B
if Titles, Lagos Land Registry."

The 1st appellant was unable to produce evidence that there was any other living woman other than the respondent, bearing such identical names. He was likewise not able to fault the evidence of the respondent C that she was the same and only identical person referred to in paragraph 4 of the Amended Statement of Defence of the 1st Appellant. The evidence was rightly accepted by the two lower courts. Section 61(1) of the Registration of Titles Law (Cap 121) Laws of Lagos State was given the treatment and consideration it deserved by the trial court as well as by the D Court of appeal to attract any further comment from me. The evidence showed clearly that both Exhibits 2 and 3 were fraudulently manufactured by late Mr. Majekodunmi Exhibit 3 which is the title deed of the 1st appellant, purported to derive its authenticity from Exhibit 2. The respondent E was able to establish by cogent and reliable evidence that she was not a party to the making and execution of Exhibit 2, nor was it made on her authority or by her consent. The 1st appellant could not therefore be said to have acquired any interest or estate in the land in dispute. It remains the F undisputed property of the respondent, notwithstanding the spurious execution of Exhibits 2 and 3. The requirement of Section 61(1) (c) of Cap. 121 Laws of Lagos State for rectification of the Register in respondent's favour was fully satisfied.

Learned counsel for the 1st appellant also raised in this court as G he did in the two lower courts that 1st appellant was a purchaser for value without notice, a phrase that connotes that he conducted proper investigations in the Land Registry of Lagos State and elsewhere and was satisfied of the genuineness of title of his vendor as shown in Exhibit 2. He said he H was not aware of any fraud or impropriety affecting Exhibit 2. But the evidence adduced showed that he did not demand to see or know the holder of Exhibit 2 from which he derived his own title, but contented himself

with the representation made to him by late Majekodunmi who was described by both the trial court and the Court of Appeal as the perpetrator of the whole fraud. 1st Appellant failed to exhibit the type of vigilance and caution required in a transaction of this nature. He could thereof not justify his negligent conduct in the transaction by the plea that he was a purchaser for value without notice. Equity aids the vigilant and not the indolent. Section 53(2) of the Registration of Titles Law of Lagos could not avail him.

Sub-section (1) of section 28 of the aforesaid Law provides as follows:-

"(1) The registered owner of any land or charge may in the prescribed manner transfer such land or charge or any part thereof";

While sub-sections (1) and (2) of section 53 of the same Law further provide that-

"(1) Registration of any person as owner of any land, lease or charge, consequent on a forged disposition or any disposition which, if unregistered would be absolutely void confers no estate on such registered owner, but shall, in the event of the register being rectified to his prejudice on that account and claiming in good faith under a forged disposition be entitled to recover compensation from the Government.

2. Nothing in this section shall be deemed to invalidate any estate acquired by any subsequent registered owner, being a purchaser for value, or by any person deriving title under such subsequent owner."

The section does not validate spurious transfer as in the present case. The law does not protect the inadequacies of such investigation. See Philip v. Ogundipe (1967)1 All NLR 258 at 266 where Coker JSC commented on and interpreted both sections 53(1) and (2) and 61(3) 3 of the same Law thus:-

"The section does not validate spurious transfer as stated before and so even where a subsequent registered owner is in possession, the Register may still be rectified against him"

Also Elias CJN in Lababedi v. Lagos Metal Industries Nig. Ltd. (1973 1 SC particularly at 17 had this to say on section 53(1) and (2) of the Law (supra)-

"It can not be too strongly emphasized that proof of fraud of forgery is fatal to any claim that a plaintiff may seek to establish under section 53, no matter at that stage this is shown to have secured in the chain of transaction leading, to the plaintiff's dealing in registered land. It is well to point out that the reference to the registered owner in section 53(1) does not necessarily mean the first registered owner, equally the reference to the 'subsequent registered owner' in section 53(2) does not necessarily mean second registered owner the registered owner could be the 3rd or 4th (p. 18). It is accordingly incorrect to - assume that fraud or forgery can under section 53 of the Act vitiate only the title of the first registered owner and not that of a second or subsequent registered owner."

There is concurrent findings by both the trial court and the Court of Appeal which the Supreme Court is always slow to interfere with unless such findings have been demonstratively shown to be perverse. See Ometa v. Numa (1935) 11 NLR 18 and Okonkwo v. Okagbue (1994) NWLR (pt. 336) 301. I have not been convicted that the findings are perverse or erroneous. I affirm them.

It is for this and the more detailed reasons in the lead judgment of my learned brother Ogundare JSC that I also hereby dismiss this appeal and affirm the decisions of the two lower courts. I abide by the consequential orders made in the lead judgment, including that of costs.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother, Ogundare, JSC. I agree with his reasoning and conclusions. I also find no merit in this appeal. Both the trial High Court and the Court of Appeal have rightly found in favour of the plaintiff/respondent. The appeal is accordingly dismissed with costs of N10,000.00 (Ten Thousand naira only) in favour of the plaintiff/respondent against the 1st defendant/ H appellant only.

OGWUEGBU JSC

The judgment just read by my learned brother Ogundare, JSC was made available to me in draft. I agree with his reasoning and conclusions. I too will dismiss the appeal. Although the legal estate in registered land is vested in the registered proprietor, the court has jurisdiction in certain circumstances to rectify the register, for example, where any entry has been obtained by fraud or by forgery as in the instant case.

I abide by all the orders contained in the judgment of my learned brother Ogundare, JSC.

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