

**SUPREME COURT OF NIGERIA**  
9TH OCTOBER, 1998. SC. 87/1991  
**CORAM:- M. L. UWAIJS CJN, A. B. WALL, I. L. KUTIGI,**  
**M. E. OGUNDARE, E. O. OGWUEGBU, JJSC**

HUMPHREY N. UDE	.....	APPELLANT
AND		
HARDING OSUJI	.....	RESPONDENT

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***CONTRACTS*** - Contract for the sale of land - Rescission - Where the conduct of the plaintiff was an unequivocal rescission of the contract - He is estopped from contending that the original contract still subsists.

***ESTOPPEL*** - Estoppel by conduct - Definition of the principle

***ESTOPPEL*** - Estoppel by conduct - It's qualification - Is that it can only be invoked by a defendant - And can never stand alone as giving a cause of action

***EQUITY*** - Estoppel - Where the plaintiff by his conduct led the defendant to believe that the contract would not be enforced - It would be inequitable to allow the plaintiff to enforce his claim.

**FACTS**

In the High Court of Imo State, Owerri Judicial Division the plaintiff/appellant claimed against the defendant/respondent as per his writ of summons for the following. Ten thousand naira (N10,000.00) being damages for breach of covenant contained in a Deed of Conveyance and injunction. The plaintiff who is a legal practitioner prepared a deed of conveyance between the defendant and his father when the latter made a gift of a parcel of land to the former. The transaction was registered in the Lands Registry Owerri (Exhibit B"). Sometime in 1974 and consequent upon the request of the plaintiff, part of the land covered by Exhibit "B" was sold to him by the defendant at the Purchase Price of N1,600.00.

A deed of conveyance prepared by the plaintiff was executed by the plaintiff and the defendant in 1974.

By a letter dated 4th June, 1974, the plaintiff wrote to the defendant asking him to refund the Purchase Price of N1,600.00 which he paid for the land (Exhibit "C") because the land was encumbered. The defendant and his father assured the plaintiff that there was no encumbrance but he insisted on the refund. The defendant sent plaintiff N800.00 being half of the purchase money. The plaintiff refused to accept it and insisted on having payment in full. When the Purchase Price could not be paid in full, the plaintiff caused the defendant and his father to be prosecuted in the Magistrate Court for obtaining the said sum of N1,600.00 by false pretences. They were discharged and acquitted by the learned Chief Magistrate. Therefore, the defendant as plaintiff instituted a civil action against the plaintiff herein for malicious prosecution. The trial ended in his favour. The defendant's solicitor sent a cheque for N1,600.00 to the plaintiff with a covering letter (Exhibit "K") as refund of the purchase price of the land which the plaintiff had earlier demanded in Exhibit "C". The plaintiff returned the cheque to the defendant's solicitor with a letter stating that he had conveyed the land to his friend Mr. O. T. Nnadi. The defendant contended that by the circumstances of this case, the plaintiff is estopped from treating the land the subject matter of this action as his land, the contract related thereto having been vitiated by his conduct.

At the close of hearing, the learned trial Judge in a reserved judgment found for the plaintiff in the two reliefs claimed. He was awarded N1,000.00 (One thousand naira) as damages for breach of covenant. The defendant being dissatisfied appealed to the Court of Appeal, Port Harcourt Division. The appeal was allowed and the judgment of the learned trial judge was set aside. The plaintiff being aggrieved by the decision appealed to the Supreme Court raising five issues but the two issues raised by the defendant were considered sufficient in the determination of the appeal.

**ISSUES FOR DETERMINATION**

*"1. Whether Exhibit "C" viewed against the background of the*

*Appellants (sic) conduct amounted to a discharge of the land transaction.*

*2. Having regards to Exhibit "C" aforesaid and the conduct of the Appellant in prosecuting the Respondent for fraud to compel the refund of the purchase price, is the Appellant not estopped from relying on the original land transaction? Is he not precluded in equity from treating the land in question as his?"*

**HELD** (Unanimously dismissing the appeal per lead judgment of **OGWUEGBUJSC**

***Contract for the sale of land***

1. The conduct of the plaintiff was an unequivocal rescission of the contract for the sale of the land in dispute and there was no misrepresentation on the part of the defendant to lead to such a repudiation. Having regard to all the circumstances of this case the plaintiff by his conduct is estopped from contending that the original contract which he entered with the defendant was still subsisting. (p. 2422 C)

***Estoppel by conduct - Definition of the principle***

2. The principle of estoppel by conduct is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted upon accordingly, then, once the other party had taken him at his word and acted on it, then the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. He must accept their legal relations as modified by himself even though it is not supported in point of law by any consideration, but only by his word or conduct. See Combe v. Combe (1951) 1 ALL E.R. 767 at 770. (p. 2422 G)

***Estoppel by conduct - It's qualification***

3. The only qualification to the above principle is that it can only be invoked by a defendant as in this case and can never stand alone as giving a cause of action or action in itself. It cannot, therefore, do away with

the necessity of consideration when that is an essential part of a plain-  
tiffs' cause of action. This qualification does not apply to the facts of  
this case. See Hughes v. Metropolitan Railway Company (1876-77) 2  
App. Cas. 439 at 448 and Tika Tore Press Ltd. v. Abina and others (1973)  
B ALL N.L.R. 887 at 889-891. (p. 2423 A)

### ***Equity - Estoppel***

4. Applying the above principle to the case in hand and bearing in mind  
C the conclusions reached by the court below, the plaintiff by his own act  
of writing exhibit "C" which was followed by the unnecessary and mali-  
cious prosecution of the defendant and his late father, embarked on a  
course of action which had the effect of leading the defendant to believe  
that the strict rights arising under the contract would not be enforced. It  
D would therefore be inequitable to allow the plaintiff to enforce his claim  
against the defendant.<sup>2</sup> The plaintiff's appeal fails. (p. 2423 E)

### **NOTABLE POINT OF INTEREST**

#### **E OGWUEGBU JSC**

*1. Representation - The party making it is precluded from contesting its  
truth*

Whatever a man's real intention may be, he is deemed to act wilfully if he  
F so conducts himself that a reasonable man would take the representation  
to be true and believe that it was meant that he should act upon it and did  
act upon it as true. The party who made the representation would be  
precluded from contesting its truth. See Freeman v. Cooke (1848) 2  
Exch. 652 at 653. (p. 2423 C)  
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### **REPRESENTATION**

A. Nwaiwu Esq. with I. Ogu Esq. for the Plaintiff/Appellant  
Defendant/Respondent absent and not represented

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<sup>2</sup> In Onamade v. ACB Ltd. (1997) 1 KLR (pt 47) 48 the Supreme Court considered  
whether the conduct of the respondent misdirected the appellants unto detriment to  
justify the plea of equitable estoppel

**CASES REFERRED TO**

Combe v. Combe (1951) 1 ALL E.R. 767 at 770.

Hughes v. Metropolitan Railway Company (1876-77) 2 App. Cas. 439 at 448

Tika Tore Press Ltd. v. Abina (1973) ALL N.L.R. 887 at 889-891

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Freeman v. Cooke (1848) 2 Exch. 652 at 653.

**LEAD JUDGMENT BY OGWUEGBU JSC**

The appellant who was plaintiff in the trial court claimed against the defendant as per his writ of summons thus:

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*"Ten thousand naira (N10,000.00) being damages for breach of covenant contained in a deed of Conveyance.*

*Injunction restraining the defendant, his agents and workmen from further breach of covenant."*

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Pleadings were ordered, filed and exchanged by the parties and thereafter hearing commenced in the High Court of Imo State, Owerri Judicial Division before E.I.N. Nwogu, J. At the close of hearing, the learned trial judge in a reserved judgment found for the plaintiff in the two reliefs claimed. The amount awarded as damages for breach of covenant was reduced to one thousand naira as against ten thousand naira claimed in the writ. The respondent herein who was defendant in the High Court being dissatisfied with the judgment of Nwogu, J, appealed to the Court of Appeal, Port Harcourt Division. The court below allowed the appeal and set aside the judgment of the learned trial judge. The plaintiff being aggrieved by the decision appealed to this court. Briefs of argument were filed and exchanged by the parties according to the rules of this court.

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In a sketchy brief of argument filed on 8-4-91, the appellant formulated the following issues for determination in the appeal:

1. *Whether from the totality of the evidence there was a Deed of Conveyance properly executed by the parties and if the answer is in the negative, what should the Court of Appeal have done in the circumstances.*

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2. *Whether Exhibit "C" is capable in law to revoke or repudiate*

a valid conveyance.

3. Whether Exhibit "A" is admissible in evidence having regard to the pleadings.

4. Whether from the evidence defendant/respondent was in breach of covenant for quiet enjoyment of the property in dispute.

5. Whether the Court of Appeal was correct in law not to make an order of restitution having allowed the appeal."

The respondent formulated the following issues in his brief as arising for determination in the appeal:

"1. Whether Exhibit "C" viewed against the background of the Appellants (sic) conduct amounted to a discharge of the land transaction.

2. Having regards to Exhibit "C" aforesaid and the conduct of the Appellant in prosecuting the Respondent for fraud to compel the refund of the purchase price, is the Appellant not estopped from relying on the original land transaction? Is he not precluded in equity from treating the land in question as his?"

I will at this stage summarize the facts of the case. The appellant is a legal practitioner. When the father of the defendant (Mr. A. A. Osuji) made a gift of a parcel of land known as and called "Ezi Umuororonjo" lying along Madumere Street, Owerri to the defendant, the plaintiff in his capacity as solicitor prepared a deed of conveyance between the defendant and his father in respect of the said parcel of land. The transaction was registered in the Lands Registry, Owerri. (Exhibit "B"). Sometime in 1974 plaintiff approached the defendant and pleaded with him to sell part of the land covered by Exhibit "B" to him. The defendant agreed to the request, took the plaintiff to the land and demarcated the portion sold to him. The purchase price was N1,600.00 and a deed of conveyance with executed by the plaintiff and the defendant in 1974. The said conveyance was prepared by the plaintiff. The plaintiff tendered Exhibit "A" as the deed of conveyance in respect of the transaction between him and the defendant. It was executed on the 17th of June, 1976. The defendant denied being a party to Exhibit "A".

By a letter dated 4th June, 1974, the plaintiff wrote to the defen-

dant asking him to refund the purchase price of N1,600.00 which he paid for the land. (Exhibit "C"). The reason given for the demand was that the land was encumbered. He insisted on the refund even after the defendant and his father had assured him that there was no encumbrance. When the plaintiff could not be convinced, the defendant sent him N800.00 B being half of the purchase money. The plaintiff refused to accept it and insisted on having payment in full. When the purchase price could not be paid in full, the plaintiff lodged a complaint to the police alleging that the defendant and his father obtained the said sum of N1,600.00 from the C under false pretences. The police charged the defendant and his father in the Magistrate's court, Owerri for obtaining the said money by falsely pretending that they were owners of the property sold to the plaintiff. Exhibit "D" is the Charge Sheet. They were discharged and acquitted by D the learned Chief Magistrate.

The trial received undue publicity in two National Daily Newspapers - The Renaissance and New Nigeria of 8th and 12th July, 1975 respectively. (Exhibits "E" and "F" - with the headlines: "Customs Officer Faces Theft Charge" and "Customs Officer, Father charged with E theft.) The defendant was a Senior Customs Officer and when his employers, the Board of Customs and Excise read the publications, they wrote to the defendant for his comments and he did so (Exhibits "G" and "H"). The defendant was as a result compulsorily retired by the Military F leadership that came to power on or about 29th July, 1975.

The defendant filed a civil suit against the plaintiff/appellant in the High Court, Owerri for damages for malicious prosecution. The trial ended in his favour on 3-8-84. (Exhibit "N"). The trial of the defendant G herein and his father in the Magistrate's Court ended on 23-1-76. The defendant's solicitor sent a cheque for N1,600.00 to the plaintiff with a covering letter dated 6-4-76 (Exhibit "K") as refund of the purchase price of the land which the plaintiff had earlier demanded in Exhibit "C". The plaintiff returned the cheque to the defendants' solicitor with a letter dated H 24-4-76 stating that he had conveyed the land to his friend, Mr. O. T. Nnadi.

The demand for the refund of the purchase price of the parcel of

land and the events that followed before the present proceedings were set out in paragraphs 7, 8, 10, 11, 13, 17, 18, 19 and 20 of the Statement of Defence which read:-

7. .... In June, 1974, the plaintiff wrote the defendant in Lagos claiming that "the land purported to be conveyed to him was "unsuitable" for his purpose" and not worth the outlay." He therefore demanded a refund of the purchase price of N1,600.00. This letter dated 4-6-74 is hereby pleaded and would be founded upon at the trial.

8. The plaintiff was assured by the defendant's late father that the land in question was never on lease to any late ex-policeman or any body for that matter. Indeed the portion on lease to the later ex-policeman then in possession of the widow was a parcel of land of the same name adjoining this land. In spite of this explanation, the plaintiff insisted on having his money refunded and abrogating the contract.

9. When the defendant returned home in July, 1974, he approached the plaintiff and protested over the plaintiff's conduct in the matter but the plaintiff insisted on the refund of the purchase price of N1,600.00. It was later discovered that the plaintiff had completed arrangement to purchase a parcel of land for N2,000.00 along Douglas Road which he considered to have a better commercial prospect than the one he negotiated to buy from the defendant. Indeed the plaintiff had paid N400.00 towards the purchase of the land at Douglas Road, and since he need (sic) N1,600.00 to complete payment he decided to abrogate the contract and get his money refunded. The defendant then agreed to refund the money.

10. When the defendant returned from Lagos, he remitted the sum of N800.00 to the plaintiff through his (defendant's) late father, A. A. Osuji but the plaintiff insisted that the N1,600.00 should be refunded en-bloc .....

11. The plaintiff thereafter rushed to the Police Station, Owerri and lodged a report to the effect that the defendant and his father obtained N1,600.00 from him (defendant sic) by false pretences and stole the said N1,600.00.

12. On the 27th day of June, 1975, the defendant and his father

were formally arraigned before the Chief Magistrate in court 1 Owerri on a three count charge of obtaining money by false pretences, stealing and resisting arrest.

17. The trial of the defendant and his father concluded on the 23rd day of January, 1976 when by a judgment delivered by the learned trial Chief Magistrate, R. C. Nzeribe, Esq. the defendant and his father were discharged and acquitted on all the three counts

18. On the 3rd day of April, 1976, the defendant by Standard Bank of Nigeria Ltd., Owerri Branch cheque No. 083327 of 3-4-76 refunded the plaintiff the sum of N1,600.00 representing the purchase price but surprisingly the plaintiff returned the said cheque to the defendant's solicitor by a letter reference No. OW/98C/75 of 24-4-76 claiming inter-alia that he had purportedly conveyed the land to one O. T. Nnadi. The said cheque and the letter forwarding it are hereby pleaded and would be founded upon at the trial.

19. The defendant will contend that the act of refunding the plaintiff the purchase price following the insistence and abrogation of the contract is complete and that by his conduct in this matter on which the defendant to his detriment, the plaintiff is estopped from treating the purported contract as valid and subsisting.

20. The defendant will also contend that by circumstances of this matter, the plaintiff is further estopped from treating the land the subject matter of this action his land and sue in respect thereof, the contract relative thereto having been vitiated by his conduct."

The above averments go to the root of the plaintiff's claim and he deliberately avoided mentioning them in his own pleadings. He filed no reply to the statement of defence. Indeed, he kept silent over those averments. The two issues formulated by the respondent in his brief are sufficient in the determination of the appeal and I will adopt them. The appellant in his usual casual way failed to address the main issue in controversy in his brief of argument. That main issue is whether he was not estopped from treating the contract as subsisting.

In Exhibit "C" the plaintiff made it clear to the defendant that he was no longer interested in the parcel of land and that the defendant

should refund the purchase price which he paid. The plaintiff did not stop at the demand. He caused the defendant and his father to be prosecuted in the Magistrate Court for obtaining the said sum of N1,600.00 by false pretences. Thereafter, the defendant as plaintiff instituted a civil action against the plaintiff herein for malicious prosecution. See Exhibits "D" and "N". The criminal proceedings terminated on 23rd January, 1976 and the action for malicious prosecution was concluded on 3-8-84. There could not have been any settlement between the plaintiff and the defendant after Exhibit "C" as the plaintiff/appellant claimed in his evidence. **The conduct of the plaintiff was an unequivocal rescission of the contract for the sale of the land in dispute and there was no misrepresentation on the part of the defendant to lead to such a repudiation.**

**Having regard to all the circumstances of this case the plaintiff by his conduct is estopped from contending that the original contract which he entered with the defendant was still subsisting.** The defence of the defendant as set out in paragraphs 19 and 20 of the statement of defence is one of estoppel by conduct and the court below was right in holding as follows:

*"While I do not agree with the Appellant's submission that Exhibit "C" when properly construed amounts to accord and satisfaction, the Respondents' express repudiation and rescission of the land transaction by Exhibit "C", in my view constitute estoppel by conduct, otherwise called estoppel in pais. The fact that the purchase price of N1,600.00 was not refunded immediately following the demand orally and in Exhibit "C" did not undermine the effect of Exhibit "C" as a complete rescission of the original contract."*

**The principle of estoppel by conduct is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted upon accordingly, then, once the other party had taken him at his word and acted on it, then the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had**

been made by him. He must accept their legal relations as modified by himself even though it is not supported in point of law by any consideration, but only by his word or conduct. See Combe v. Combe (1951) 1 ALL E.R. 767 at 770.

The only qualification to the above principle is that it can only be invoked by a defendant as in this case and can never stand alone as giving a cause of action or action in itself. It cannot, therefore, do away with the necessity of consideration when that is an essential part of a plaintiffs' cause of action. This qualification does not apply to the facts of this case. See Hughes v. Metropolitan Railway Company (1876-77) 2 App. Cas. 439 at 448 and Tika Tore Press Ltd. v. Abina and others (1973) ALL N.L.R. 887 at 889-891. Whatever a man's real intention may be, he is deemed to act wilfully if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it and did act upon it as true. The party who made the representation would be precluded from contesting its truth. See Freeman v. Cooke (1848) 2 Exch. 652 at 653.

Applying the above principle to the case in hand and bearing in mind the conclusions reached by the court below, the plaintiff by his own act of writing exhibit "C" which was followed by the unnecessary and malicious prosecution of the defendant and his late father, embarked on a course of action which had the effect of leading the defendant to believe that the strict rights arising under the contract would not be enforced. It would therefore be inequitable to allow the plaintiff to enforce his claim against the defendant. The plaintiff's appeal fails. It is not necessary for me to determine the question raised by the appellant in his brief as to whether Exhibit "A" was properly executed or not. It was not a matter in which parties joined issue in the trial court and the said exhibit was held to be inadmissible in evidence by the court below and I agree with that conclusion.

The result is that the appeal fails and it is accordingly dismissed with N10,000.00 cost to the defendant/respondent.

**UWAIS CJN**

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I entirely agree that the Appellant after repudiating the agreement between him and the Respondent on the sale of the land in dispute cannot successfully, bring a claim of breach of contract against the Respondent. He cannot blow hot and cold. He is estopped from asserting that the contract subsists after it was repudiated by him, The Court of Appeal was right in so holding in reversal of the decision of the learned trial Judge.

Accordingly, the appeal fails and it is hereby dismissed with costs as assessed by my learned brother Ogwuegbu, J.S.C. in favour of the Respondent.

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**WALI JSC**

I have been privileged to read before now, the lead judgment of my learned brother Ogwuegbu, JSC and with which I entirely agree. For the same reasons ably stated in the lead judgment I also hereby dismiss the appeal and adopt the consequential orders made therein, that of costs inclusive.

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**KUTIGI JSC**

I read before now the judgment just delivered by my learned brother Ogwuegbu J.S.C. I agree with his reasoning and conclusion. I also find no merit in the appeal. It is accordingly dismissed with costs of N10,000.00 to the defendant/respondent.

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**OGUNDARE JSC**

H I agree entirely with the reasoning and conclusion just reached by my learned brother Ogwuegbu JSC. The Plaintiff's conduct is very unconscionable. Having repudiated the contract of sale of land he had with the Defendant and used the process of court to harass and intimi-

date the Defendant and his father in order to enforce his (Plaintiff's) repudiation of the contract, he could not now turn round to claim to claim that the contract was subsisting. His claim that the Defendant in June 1976 executed, in his favour, a deed of conveyance in respect of the land ran against the grain of the facts in this case. In 1976 the parties B were on a war path; there could not have been any settlement between them resulting in the Defendant executing the said conveyance. Exhibit A, if it has the Defendant's signature on it, could only have been a forgery. Suffice it to say that the Defendant denied executing it. The denial, C in my respectful view, falls in line with the facts of this case.

For the detailed reasoning given in the lead judgment of my learned brother and the brief remarks above, I too dismiss this appeal with costs as assessed by Ogwuegbu JSC.

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