

COURT OF APPEAL ENUGU DIVISION
13TH JULY, 1998. CA/E/43/97
CORAM:- T. AKPABIO, A. I. SALAMI, E. C. UBAEZONU, JJCA

CHIEF EFFIONG LE NELSON & ANOR.
(For themselves and as representatives of the APPELLANTS
successors of Chief (Madam) Adie Ekpenyong
Okon Archibong)

AND

CHIEF OKON EBANGA & 2 ORS.
(For themselves and as representatives of RESPONDENTS
the people of Oberekai village in Akamkpa
Local Government Area)

JUDGMENTS - Dismissal - Where a Court has no jurisdiction to hear and determine a matter - The proper order to make is that of striking out the action and not dismissing it.

JUDGMENTS - S.41 of the Land Use Act - Decision in *Oyeniran v. Egbetola* - Was given *per incuriam* s. 236 of the 1979 constitution.

JUDICIAL PRECEDENTS - The decisions of the Supreme Court - In *Sadikwu v. Dalori* and *Oyeniran v. Egbetola* - Are binding under the principle of *stare decisis*.

JURISDICTION - Concurrent Jurisdiction - The High court has concurrent jurisdiction with Area or Customary Court - In respect of matters falling within s. 41 of the Land Use Act 1978.

JURISDICTION - Unlimited Jurisdiction - Of the State High Court - S. 41 of the Land Use Act cannot limit the unlimited jurisdiction of the High Court - As entrenched in s. 236(1) of the constitution.

STATUTES - Interpretation - Land Use Act 1978 - Provisions of s. 41 - The intention of the statute - Is not to confine the original jurisdiction over customary right of occupancy - To Area Courts or Customary Courts alone.

STATUTES - Interpretation - S. 41 of the Land Use Act 1978 - The import of the phrase " or other court of equivalent jurisdiction " inserted in the section.

FACTS

The plaintiffs/appellants sued the defendants/respondents in the Cross River State High Court claiming a declaration that they are entitled to the customary right of occupancy in respect of the land in dispute and an order of perpetual injunction. When the case was set down for hearing, the respondents filed a notice of preliminary objection contending that by section 41 of the Land Use Act as interpreted by the Supreme Court in *Sadikwu v. Dolari* (1996) 5 NWLR (pt 447) 151 the High Court does not have jurisdictions to grant declarations of customary right of occupancy.

In its ruling the trial court upheld the preliminary objection that he had no jurisdiction. The action was further dismissed. Aggrieved by the said ruling the appellants have appealed to the Court of Appeal, Enugu Division. The appeal was heard on the appellant's brief only as the respondents failed to file their brief of argument. The appellants raised three issues.

ISSUES FOR DETERMINATION

"1. Whether the unlimited jurisdiction of the State High Court conferred by s. 236 of the 1979 Constitution as amended by Decree 107 of 1993 is subject to s. 41 of the Land Use Act.

2. Whether the Cross River State High Court is competent to grant a declaration of customary right of occupancy under s. 41 of the Land Use Act.

3. Whether the trial court was right in dismissing the suit after holding that it had no jurisdiction to try the matter."

HELD (Unanimously allowing the appeal in part per the lead judgment of **UBAEZONU JCA**)

Statutes - Interpretation

1. It will be noticed that in s. 41 of the Act the word "EXCLUSIVE" (capitals mine) is omitted. The omission of the word is not by accident. It is, in my view, deliberate. In Abraham Oyeniran & Ors. v. James Egbetola & Anor. (1997) 5 NWLR (Pt. 504) 122 at 131 (a case I shall return to in this judgment in due course) Mohammed J.S.C at page 131 opined that the word "exclusive" cannot fit into the provisions of s. 41 of the Land Use Act, 1978." With great respect and reverence to the learned jurist, I am unable to see how the word "exclusive" cannot fit into s. 41 of the Act if the makers of the Act had so intended. If it were the intention of the legislators that only the area court or the customary court should have original jurisdiction in respect of customary right of occupancy the section could have read as follows:

'An area court or customary court in a State shall have exclusive jurisdiction in respect of proceedings in respect of a customary right of occupancy...'

Furthermore, the insertion of the words "or other court of equivalent jurisdiction" shows that the intention of the statute is not to confine the original jurisdiction over customary right of occupancy to Area Courts or Customary Courts alone. (p. 83 C)

Interpretation - S. 41 of the Land Use Act, 1978

2. Still on s. 41 of the Land Use Act - What is the import of the phrase "or other court of equivalent jurisdiction" inserted in the section? The section clearly assigns jurisdiction on matters relating to customary right of occupancy to three sets of courts viz:

- (a) Area Court or
- (b) Customary Court or
- (c) Other court of equivalent jurisdiction in a State.

Firstly, it is wrong to confine this jurisdiction only to Area Court or Customary Court. Any such interpretation is doing violence to the provision

of the section. Secondly, it is wrong to say that it is only when there is no Area Court or Customary Court in a State that the High Court of the State or any other court can assume jurisdiction. The section (i.e s. 41) does not say so. It is wrong to read into a law or statute what it does not say - Seward v. Cruz (1884) 10 App. Cases 59; See also Jamal Steel Structures Ltd. v. African Continental Bank Ltd. (1973) 11 S.C. 77 at 85 - 96; Board of Custom & Excise v. Barau (1982) 10 S.C. 48 at 130. In Oyeniran v. Egbetola (supra) Ogundare J.C.A. (as he then was) held the view, in the Court of Appeal, a view which I respectfully share, that you cannot import the word "exclusive" into s. 41 of the Land Use Act. Not only has the Act not said so but the Act provides for a third set of courts which shall have jurisdiction to entertain matters arising from customary right of occupancy. (p. 84 B)

Jurisdiction - Concurrent Jurisdiction

3. Section 41 of the Land Use Act does not say that a litigant must sue first of all in the Area Court or the Customary Court where there is a court of equivalent jurisdiction. Three sets of courts were prescribed by the Act. If the three or two of the sets of the court exist in any State, it is my humble view that a litigant is at liberty to choose his court. It is just like what obtains now in most States where a Magistrate's Court has concurrent jurisdiction with the High Court. A litigant is at liberty to sue in the Magistrate's Court or the High Court. If the litigant sues in the High Court on a matter which is maintainable in the Magistrate's Court he only runs the risk of getting only Magistrate's Court costs or of having his matter transferred to the Magistrate's Court. In the light of all the above, it is my humble view as held by the Court of Appeal in Ebitech v. Obiki (supra) that the High Court has concurrent jurisdiction with Area or Customary Court in respect of matters falling within s. 41 of the Land Use Act 1978. (p. 85 B)

Jurisdiction - Unlimited Jurisdiction

4. The unlimited jurisdiction of the State High Court in civil and criminal matters is only subject to the provisions of the Constitution. The Land

Use Decree (now Act) promulgated in 1978 is an existing law under s. 274 (3) and (4) of the 1979 Constitution. Its validity and continued existence was assured by s. 274 (5) of the 1979 Constitution. It is however not part of the Constitution of the land, and cannot override, curtail or whittle down any provision of the Constitution. I am therefore B unable to appreciate how s. 41 of the Land Use Act can limit or restrict the unlimited jurisdiction of the High Court as entrenched in s. 236(1) of the Constitution. S. 41 of the Land Use Act has not excluded the jurisdiction of the High Court. It has not ascribed exclusive jurisdiction in C matters relating to customary right of occupancy to Area Courts or Customary Courts. If it has done any of these things such a provision will run counter to or be in conflict with s. 236(1) of the 1979 Constitution and to that extent will be invalid. The Land Use Act being an existing law or an Act of the National Assembly, the courts have power under s. 274 D (3) (d) of the Constitution to declare invalid any of its provisions that is inconsistent with the Constitution. (p. 86 D)

Judgments - S. 41 of the Land Use Act E

5. I have already said earlier on in this judgment what I intend to say about the decision in Sadikwu v. Dolari (supra). I had compared the provisions of s. 41 of the Land Tenure Law of Northern Nigeria with the provisions sections 39 and 41 of the Land Use Act. I have also shown F that the exclusiveness of original jurisdiction given to the High Court in s. 39 of the Land Use Act cannot be given to the Area Court or the Customary Court in s. 41 of the Land Use Act because the Act does not give any such exclusiveness. Moreover, the provision of "or any other court of G equivalent jurisdiction" in s. 41 of the Land Use Act emphasizes the absence of any exclusiveness of original jurisdiction to the Area Court or Customary Court. It is interesting to note, and this is important, that throughout the decision in the Sadikwu v. Dolari case (supra) no reference or mention was made of s. 236 of the 1979 Constitution which H gives the High Court unlimited jurisdiction in civil and criminal matters. Is it right in law to take away or restrict the unlimited jurisdiction of the High Court as entrenched in the 1979 Constitution without considering it

and making a finding on it? I think not. It seems to me that the decision in Sadikwu v. Dolari (supra) was given per incuriam s. 236 of the 1979 Constitution. (p. 89 F)

B Judicial Precedents - The decisions of the Supreme Court

6. Having said all the above, my hands and feet are tied by the decision of the Supreme Court in Sadikwu v. Dolari (supra) and particularly by the more recent decision in Oyeniran v. Egbetola (supra). The knot is very tight and I cannot wriggle out of it by distinguishing the case on appeal from the Oyeniran case which is a case from the southern part of Nigeria. Under the principle of stare decisis I must bow to those decisions. I therefore resolve issue 1 and 2 in this appeal against the appellant. (p. 92 G)

D

Judgments - Dismissal

7. A dismissal is a determination of the rights between the contesting parties. If a court has no jurisdiction to entertain a suit, it has no jurisdiction to determine or pronounce on the rights between the parties. The proper order is to strike out the suit thereby returning the parties to the position in which they were before the commencement of the suit. In Gombe v. P.W. (Nig.) Ltd. (1995) 6 NWLR (Pt.402) 402 it was held that where a court has no jurisdiction to hear and determine a matter *before it, the proper order to make is that striking out the action, and *dismissing it. See also Oloriode v. Oyebi (1984) 1 SCNLR 390; Akinbinu v. Oseni (1992) 1 NWLR (Pt. 215) 97. The lower court was therefore wrong to have dismissed the suit instead of striking it out. (p. 93A)

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NOTABLE POINTS OF INTEREST

UBAEZONU JCA

1. Interpretation of the Land Use Act - Importation from the Land Tenure

H Law

I had earlier in this judgment while considering the decision in Oyeniran v. Egbetola (supra) queried why a litigant must go to Area Court or Customary Court first if there were such a court and a High Court in the

State. I expressed the view that a litigant is at liberty to choose either the Customary Court or the High Court where both exist in the State. It seems to me that the view expressed in the lead judgment that the need to go to a "Court of equivalent jurisdiction" (i.e. High Court) does not arise "because there is a Customary Court in Iwo East Local Government of Osun State" was imported into the interpretation of s. 41 of the Land Use Act from s. 41 (3) (b) of the Land Tenure Act of Northern Nigeria. I make bold to say that such importation is unwarranted and not supported by any canon of interpretation. (p. 89 C)

2. Disturbing questions in the *Oyeniran v. Egbetola* case

As regards the recent decision in *Oyeniran v. Egbetola* (supra) I have already sufficiently discussed it in this judgment. I may only add the observations of two of the Justices who took part in the case. Kutigi, J.S.C. was quite categorical that the High Court was a court of equivalent jurisdiction as the Customary Court. Said he in his contribution at page 135.

"But where there is no Area Court or Customary Court, a High Court being 'other court of equivalent jurisdiction' under s. 39 (1) (sic) of the Act shall have original jurisdiction to deal with proceedings relating to such land".

I ask with due humility, what law says that the original jurisdiction of the High Court can only be exercised in this matter only if there is no Area Court or Customary Court in the State? One can only find such a provision in the Land Tenure Law of Northern Nigeria which has no application in this case. With the promulgation of s. 236 of the 1979 Constitution, such a law is null and void. Referring to *Salati v. Shehu* case and *Sadikwu v. Dolari* case the learned Justice conceded at page 135 of *Oyeniran* case that

"those cases when carefully examined would be seen to deal with conditions in the Northern States of Nigeria where generally there are Area Courts as provided in s. 41 (ibid)"

Ogwuegbu J.S.C. had this to say at page 137

"The High Courts and Customary Courts in the Southern States

had concurrent original jurisdiction in proceedings in respect of land the subject of customary right of occupancy. In fact the bulk of such cases are initiated in the High Court and this preference can be found in the history of Customary Courts particularly in the Eastern States of Nigeria and some of those States do not even think of establishing one". (Italics mine for emphasis)

With humility I ask once again, when, where and how was the "concurrent original jurisdiction" of the High Courts in the Southern States taken away so as to confine original jurisdiction in customary right of occupancy to the Customary Courts alone? Can it be read by implication into s. 41 of the Land Use Act? What happens to s. 236 of the Constitution which re-enforced and entrenched the unlimited jurisdiction of the High Court in our Constitution? These are some of the disturbing questions in the Oyeniran v. Egbetola case (supra). (p. 90 C)

3. *How to remedy the jurisdictional difficulty put on s. 41 Land Use Act*
The learned Justice capitulated as follows, as I must capitulate in this judgment "I must however state that Sadikwu v. Dalori (supra) is binding on me". He then suggested a way out as follows:

"It is hoped that the Legislature will amend s. 41 of the Land Use Act by restoring the concurrent jurisdiction that existed before the 1978 Act. This will remove the obvious jurisdictional difficulty which may arise."

May I say with great humility and respect that I am unable to see any "jurisdictional difficulty" to be remedied by the legislature. The jurisdictional difficulty is created by the interpretation put on s. 41 of the Land Use Act. It is the courts, not the legislature, that will remedy the situation. To my mind, s. 41 of the Land Use Act is clear and unambiguous. If I may be permitted to venture an opinion, it is for the Supreme Court, the apex court of the land, sitting perhaps in a full court at its earliest opportunity to summon distinguished senior counsel in the country to address it as amici curiae on the correct interpretation to be placed on s. 41 of the Land Use Act having regards to s. 236 of the 1979 Constitution. The Supreme Court will then be in a position to have a hard look at the

Sadikwu and Oyeniran cases and possibly restore the concurrent jurisdiction of the High Court with Area and Customary Courts on land in non-urban areas as has hitherto been the case. (p. 91 C)

4. The decisions in Oyeniran v. Egbetola and Sadikwu v. Dolari spells disaster B

If the decisions in Oyeniran v. Egbetola (supra) and Sadikwu v. Dolari (supra) remain the law, our land law will be in a state of disaster. It would mean that most of our case law based on the decisions of the High Court on lands in non-urban areas given from the promulgation of the Land Use Act in 1978 till the decision in Sadikwu and Oyeniran is swept away as being null and void. Some of these decisions had been affirmed by the Court of Appeal and the Supreme Court. Such a situation will be chaotic. I express the above opinion with the utmost humility and trepidation. (p. 92 A) C D

REPRESENTATION

E. H. Andrew for the Appellant
Respondent unrepresented E

CASES REFERRED TO

Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122 at 131 F
Seward v. Cruz (1884) 10 App. Cases 59;
Jamal Steel Structures Ltd. v. African Continental Bank Ltd. (1973) 11 S.C. 77 at 85 - 96
Board of Custom & Excise v. Barau (1982) 10 S.C. 48 at 130. G
Gombe v. P.W. (Nig.) Ltd. (1995) 6 NWLR (Pt.402) 402
Oloriode v. Oyebi (1984) 1 SCNLR 390
Akinbinu v. Oseni (1992) 1 NWLR (Pt. 215) 97
Ohiaeri v. Akabeze (1992)2 NWLR (Pt.221) 1
Adesokan v. Adetunji (1994) 5 NWLR (Pt.346) 540 H

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria as emended by Decree

78 Nelson v. Ebanga (1999) 1 KLR Ubaezonu JCA
107, ss. 236, 274
Land Use Act 1978, ss. 39 and 41
Land Tenure Law of Northern Nigeria 1963, s. 41(1)(2) and (3)
Customary Court Law of Cross River State, ss. 12(1) and 43.

B

LEAD JUDGMENT BY UBAEZONU JCA

The appellants, as the plaintiffs, used the respondents in the Cross River State High Court claiming as follows as per the amended statement of claim viz:-

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(a) A declaration that the plaintiffs are entitled to the customary right of occupancy of all that piece or parcel of land known as Obot Anyan Mong at Esit Ikot Offiong Yellow Duke (aka Akansoko) which said parcel of land is more particularly delineated in survey plan No. JEJ/D CR/233 LD drawn by Chief J.E.J. Asuquo a licensed surveyor and which said piece of land is also described in paragraph 3 of this statement of claim.

E

(b) An order of perpetual injunction restraining the defendants by themselves, their agents, servants, privies and successors-in-title from trespassing on the said land and from harassing and intimidating the plaintiffs' tenants and servants on the land."

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When the case was set down for hearing, the respondents filed a notice of preliminary objection contending that by section 41 of the Land Use Act as interpreted by the Supreme Court in Sadikwu v. Dolari (1996) 5 NWLR (Pt. 447) 151 the High Court does not have jurisdiction to grant declarations of customary right of occupancy. In its ruling of 12th March, 1997 the trial court presided over by Ita J. upheld the preliminary objection that he had no jurisdiction. He did not stop there. He dismissed the action. Against the said ruling, the appellants have appealed to this court and have filed their brief of argument following the respondents' failure to file a respondents' brief on being served with the appellants' brief, the appellants filed a motion in this court dated 19/8/97 praying that the appeal be heard on the appellant's brief only, the respondents having failed to file their brief of argument. The motion was served on the respondents who still failed to react to the motion. On 4/2/98

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leave was granted to the appellants in accordance with their motion. The order granting the appellants leave to argue the appeal on their brief only was served on the respondents who still failed to react to the order. Consequently, on 20/5/98 this appeal was heard on the appellants' brief only.

In their brief, the appellants formulated three issues for determination viz:-

"1. Whether the unlimited jurisdiction of the State High Court conferred by s. 236 of the 1979 Constitution as amended by Decree 107 of 1993 is subject to s. 41 of the Land Use Act.

2. Whether the Cross River State High Court is competent to grant a declaration of customary right of occupancy under s. 41 of the Land Use Act.

3. Whether the trial court was right in dismissing the suit after holding that it had no jurisdiction to try the matter."

Arguing the issue No. 1, learned counsel for the appellants submits that as at 1994 when this suit was commenced the jurisdiction of the High Court of Cross River State was defined by the Cross River State High Court Law and s. 236 of the 1979 Constitution of the Federal Republic of Nigeria as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993. It is submitted that the unlimited jurisdiction of the State High Court is subject to any other provision of the Constitution limiting or restricting it. By s. 1 (3) of Decree, 107 of 1993 it is also subject to the provisions of any Decree made by the Federal Ministry Government. The question therefore is whether s. 236 of the Constitution is subject to s. 41 of the Land Use Act which was a Decree of the Federal Military Government. It is submitted that in spite of s. 274 (5) of the 1979 Constitution the Land Use Act is not part of the 1979 Constitution - see Lemboye v. Ogunsiji (1990) 6 NWLR (Pt. 155) 210; Nkwocha v. Governor of Anambra State (1984) 6 S.C. 362; (1984) 1 SCNLR 634; Ebitech v. Obiki (1992) 5 NWLR (Pt. 243) 599; Kanada v. Governor of Kaduna State (1986) 4 NWLR (Pt. 35) 361. It is therefore argued by learned counsel that since the Land Use Act is not part of the Constitution, the lower court was in error when it held that the provi-

sions of the Act fell within the limitation imposed by s. 236 of the Constitution limiting the unlimited jurisdiction of the High Court. It is submitted that the provisions of the Land Use Act as a mere federal legislation are subject to the supremacy of the Constitution. Counsel relies again on Lemboye v. Ogunsiji (supra). s. 41 of the land Use Act cannot therefore oust the unlimited jurisdiction of the State High Court guaranteed by s. 236 of the Constitution - See Ebitech v. Obiki (supra). Learned counsel also refers to Nigeria Arab Bank Ltd. v. Barri Engineering (Nig.) Ltd. (1995) 8 NWLR (Pt. 413) 257; Obada v. Military Governor of Kwara State (1990) 6 NWLR (Pt.157) 482.

It is submitted by learned counsel that the cause of action in the Sadikwu case (supra) arose in 1979 and the case was instituted in July 1979 before the 1979 Constitution was promulgated. The applicable law was therefore the law in operation at the time the cause of action arose i.e. the Land Tenure Law 1963 and the High Court Law 1963 both of Northern Nigeria and the Land Use Act 1978. The unlimited jurisdiction of the High Court as per s. 236 of the 1979 Constitution was not raised nor did it apply. Counsel argued that the trial Judge was wrong in holding that the Sadikwu case (supra) laid down a peculiar precedent that the provisions of the Land Use Act supersedes the Constitution. Sadikwu case (supra), counsel argues, was decided on its own peculiar facts and the law applicable at the time.

The issue No. 2 is very much like the first issue. It is submitted that before the unlimited jurisdiction of the State High Court under s. 236 of the 1979 Constitution, the Cross River State High Court had jurisdiction to grant a declaration of customary right of occupancy under s. 41 of the Land Use Act 1978. This is because under s. 41 of the Land Use Act the following courts have jurisdiction to grant such declaration i.e.

- (i) Area Courts
- (ii) Customary Courts
- (iii) "Other court of equivalent jurisdiction in a State".

Moreover, under s. 11 (1) of the Cross River State High Court Law the State High Court has a general jurisdiction to entertain any matter which the High Court in England may entertain as at 30th September, 1960. It

is therefore submitted that the Cross River State High Court has the same original jurisdiction with the Customary Court in all matters as those expressly excluded under s. 14 of the High Court law. Learned counsel dwelt at length with some State legislations which give unlimited jurisdiction to the Customary Court in land matters such as s. 12(1) and s. 43 B of the Customary Court Law of Cross River State. It is however my respectful view that if these State legislations are in conflict with an Act of the National Assembly, (or a Decree) or the Constitution, the State legislation shall give way to the Act or the Constitution.

Counsel submits that the High Court of Cross River State has an equivalent jurisdiction with the Customary Courts in land matters and therefore it was wrong for the learned trial Judge to decline jurisdiction. The decision in Sadikwu case (supra) was based on the special provisions of the Borno State High Court Law. Counsel argues that in the D Southern States the position is different in view of the provisions of their High Court Laws. Consequently, the Supreme Court has affirmed a number of cases in which the High Courts in the Southern States made a declaration of customary right of occupancy. A few of the examples are E Ogunola v. Eijekole (1990) 4 NWLR (Pt. 146) 632; Makanjuola v. Balogun (1986) 3 NWLR (Pt. 108) 192; Ekretsu v. Oyobeber (1992) 9 NWLR (Pt. 266) 438. These decisions were made after the case of Saliatu v. Shehu (1986) 1 S.C. 332; (1986) 1 NMLR (Pt.15) 198, which was cited F in Sadikwu case (supra) and apparently followed as a precedent. Counsel also referred to and relied on Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt. 135) 688.

It is further submitted that s. 41 of the Land Use Act does not expressly oust the original jurisdiction of the High Court to entertain suits G for declaration of customary right of occupancy.

In his 3rd and final issue, counsel submits that a dismissal of the suit presupposes a determination of the matter on merit. Where the court holds that it has no jurisdiction it should not embark on a determination of H the suit. A dismissal is a determination. The court ought to have struck out the suit. He refers to and relies on Gombe v. P.W. Nig. Ltd. (1995) 6 NWLR (Pt. 402) 402; Oloriode v. Oyebi (1984) 1 SCNLR 390; Akinbinu

82 Nelson v. Ebanga (1999) 1 KLR Ubaezonu JCA
v. Oseni (1992) 1 NWLR (Pt. 215) 97; Ohiaeri v. Akabeze (1992) 2
NWLR (Pt. 221) 1; Adesokan v. Adetunji (1994) 5 NWLR (Pt. 346) 540.

This appeal raises a very important point of law, and I may say, a
vexed issue of law in view of the existing decisions by the Court of
B Appeal and the Supreme Court on the matter. The important point of law
which I shall tackle in this judgment is raised by the 1st and 2nd issues
formulated in the appellant's brief. The issues, put simply, are whether
the High Courts of this country have original jurisdiction to grant a dec-
C laration of a customary right of occupancy or entertain a suit dealing
with customary right of occupancy in its original jurisdiction. In other
words, does the High Court of this land have an original jurisdiction in
matters of customary right of occupancy having regard to s. 41 of the
Land Use Act 1978 and s. 236 of the 1979 Constitution of the Federal
D Republic of Nigeria as amended by the Constitution (Suspension and
Modification) Decree No. 107 of 1993 (hereinafter referred to simply as
"Decree No. 107 of 1993").

Let me start with s. 39(1) of the Land Use Act. It provides:-

E "39. (1) The High Court shall have EXCLUSIVE original jurisdic-
tion in respect of the following proceedings-

(a) proceedings in respect of any land the subject of a statutory
right of occupancy granted by the Governor or deemed to be granted by
F him under this Act; and for the purposes of this paragraph, proceedings
includes proceedings for a declaration of title to a statutory right of occu-
pancy;

(b) Proceedings to determine any question as to the persons en-
titled to compensation payable for improvements on land under this Act.

G (2) All laws, including rules of court, regulating the practice and
procedure of the High Court shall apply in respect of proceedings to
which this section relates and the laws shall have effect with such modi-
fications as would enable effect to be given to the provisions of this
H section." (Capitals mine for emphasis)

There is no problem with this provision of the Act. I have set it out for
the purposes of comparison with s. 41 of the Act which is the one rel

evant to this appeal. S. 41 of the Act provides as follows:

"41. An area court or customary court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Act; and for the purposes of this paragraph proceedings include proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section. (Italics mine for emphasis)"

It will be noticed that in s. 41 of the Act the word "EXCLUSIVE" (capitals mine) is omitted. The omission of the word is not by accident. It is, in my view, deliberate. In Abraham Oyeniran & Ors. v. James Egbetola & Anor. (1997) 5 NWLR (Pt. 504) 122 at 131 (a case I shall return to in this judgment in due course) Mohammed J.S.C at page 131 opined that the word "exclusive" cannot fit into the provisions of s. 41 of the Land Use Act, 1978." With great respect and reverence to the learned jurist, I am unable to see how the word "exclusive" cannot fit into s. 41 of the Act if the makers of the Act had so intended. If it were the intention of the legislators that only the area court or the customary court should have original jurisdiction in respect of customary right of occupancy the section could have read as follows:

'An area court or customary court in a State shall have exclusive jurisdiction in respect of proceedings in respect of a customary right of occupancy...'

Furthermore, the insertion of the words "or other court of equivalent jurisdiction" shows that the intention of the statute is not to confine the original jurisdiction over customary right of occupancy to Area Courts or Customary Courts alone. It seems to me that the problem arising from this branch of our law stems from a view expressed obiter by Karibi-Whyte J.S.C. in Alhaji Baba Bakin Salati v. Alhaji Talle Shehu (1986) 1 NWLR (pt.15) 198 at 218 where the learned Justice observed as follows in respect of the jurisdiction of the High Court in

statutory right of occupancy and the Area and Customary Courts in customary right of occupancy:

"The exercise of these jurisdictions will seem to me mutually exclusive. There is no doubt therefore that the one cannot exercise the jurisdiction of the other."

Still on s. 41 of the Land Use Act - What is the import of the phrase "or other court of equivalent jurisdiction" inserted in the section? The section clearly assigns jurisdiction on matters relating to customary right of occupancy to three sets of courts viz:

(a) Area Court or

(b) Customary Court or

(c) Other court of equivalent jurisdiction in a State.

Firstly, it is wrong to confine this jurisdiction only to Area Court or Customary Court. Any such interpretation is doing violence to the provision of the section. Secondly, it is wrong to say that it is only when there is no Area Court or Customary Court in a State that the High Court of the State or any other court can assume jurisdiction. The section (i.e s. 41) does not say so. It is wrong to read into a law or statute what it does not say - Seward v. Cruz (1884) 10 App. Cases 59; See also Jamal Steel Structures Ltd. v. African Continental Bank Ltd. (1973) 11 S.C. 77 at 85 - 96; Board of Custom & Excise v. Barau (1982) 10 S.C. 48 at 130. In Oyeniran v. Egbetola (supra) Ogundare J.C.A. (as he then was) held the view, in the Court of Appeal, a view which I respectfully share, that you cannot import the word "exclusive" into s. 41 of the Land Use Act. Not only has the Act not said so but the Act provides for a third set of courts which shall have jurisdiction to entertain matters arising from customary right of occupancy. Mohammed J.S.C. in the lead judgment (in Oyeniran v. Egbetola) reasoned as follows at page 132:

"Following this canon of construction of statutes, it is my view, that only courts of equivalent jurisdiction with area court and customary court shall have original jurisdiction in respect of any land the subject of a customary right of occupancy granted by a Local Government. This of course is subject to the existence of such courts in the State concerned. In

this appeal the issue of a court of equivalent jurisdiction does not, in fact, arise because there is a Customary Court in Iwo East Local Government Osun State, where this appeal emanated." (Italics mine)

Assuming that the High Court of Osun State is a court of equivalent jurisdiction to the Customary Court, what prevents a litigant from choosing to sue in the High Court? **Section 41 of the Land Use Act does not say that a litigant must sue first of all in the Area Court or the Customary Court where there is a court of equivalent jurisdiction. Three sets of courts were prescribed by the Act. If the three or two of the sets of the court exist in any State, it is my humble view that a litigant is at liberty to choose his court. It is just like what obtains now in most States where a Magistrate's Court has concurrent jurisdiction with the High Court. A litigant is at liberty to sue in the Magistrate's Court or the High Court. If the litigant sues in the High Court on a matter which is maintainable in the Magistrate's Court he only runs the risk of getting only Magistrate's Court costs or of having his matter transferred to the Magistrate's Court. In the light of all the above, it is my humble view as held by the Court of Appeal in Ebiteh v. Obiki (supra) that the High Court has concurrent jurisdiction with Area or Customary Court in respect of matters falling within s. 41 of the Land Use Act 1978.**

The learned Justice (Mohammed J.S.C.) went on as follows in page 132 in Oyeniran v. Egbetola case (supra).

Prior to the enactment of the Land Use Act, in 1978, both High Courts and the Customary Courts in Oyo State had unlimited jurisdiction in land matters. The Customary Courts were however made to apply the customary law of the place where the land was situate. There was then no classification of land holdings as has now been done in the Land Use Act 1978. The present classification has assigned jurisdiction to a hierarchy of court based on the location of the land subject matter in dispute" (Italics mine)

I may ask with great humility - who or what law took away the unlimited jurisdiction of the High Court of Oyo State in land matters which they had "prior to the enactment of the Land Use Act"? If anything, that unlim-

ited jurisdiction was re-enforced and entrenched in s. 236 of the 1979 Constitution. Neither the Land Use Act which is an existing law nor the "classification of land holding" could take away, limit, restrict or detract from that unlimited jurisdiction.

B Now, section 236(1) of the 1979 Constitution provides:

"236(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

D Thus, **the unlimited jurisdiction of the State High Court in civil and criminal matters is only subject to the provisions of the Constitution. The Land Use Decree (now Act) promulgated in 1978 is an existing law under s. 274 (3) and (4) of the 1979 Constitution. Its validity and continued existence was assured by s. 274 (5) of the 1979 Constitution. It is however not part of the Constitution of the land, and cannot override, curtail or whittle down any provision of the Constitution.** That the Land Use Act is not an integral part of the Constitution see Lemboye v. Ogunsiji (supra) where the Court of Appeal
F said that:

"The Land Use Act 1978 is not an integral part of the Constitution, although it became an extra-ordinary statute by virtue of its entrenchment in the Constitution it remains as a Federal enactment which the Constitution is not."

In Nkwocha v. Governor Anambra State (1984) 6 S.C. 362; (1984) 1 SCNLR 634 the Supreme Court observed

H *"... if the Act has been made a part of the Constitution it would not have been necessary to insert in subsection (5) of section 274 the words 'Nothing in this Constitution shall invalidate' as the draftman of the Constitution cannot make the Constitution to invalidate part of itself, nor would it be necessary to have in subsection (6) of s. 274 that the*

Act shall continue to have effect as a 'Federal enactment' that is, a law made by the National Assembly"

I am therefore unable to appreciate how s. 41 of the Land Use Act can limit or restrict the unlimited jurisdiction of the High Court as entrenched in s. 236(1) of the Constitution. S. 41 of the Land Use Act has not excluded the jurisdiction of the High Court. It has not ascribed exclusive jurisdiction in matters relating to customary right of occupancy to Area Courts or Customary Courts. If it has done any of these things such a provision will run counter to or be in conflict with s. 236(1) of the 1979 Constitution and to that extent will be invalid. The Land Use Act being an existing law or an Act of the National Assembly, the courts have power under s. 274 (3) (d) of the Constitution to declare invalid any of its provisions that is inconsistent with the Constitution. In Ebiteh v. Obiki (supra) this court considered extensively the status of the Land Use Act vis-a-vis the 1979 Constitution as well as the decisions of the Supreme Court on the subject before that date particularly the Supreme Court decision in Salati v. Shehu (supra). This court in Ebiteh v. Obiki (supra) said, per Ejigunmi J.C.A. at page 614:-

"In my humble view, the various pronouncements of learned Justices of the Supreme Court, in their judgments the relevant portions of which I have set out above clearly show that their Lordships were there concerned with construing the provisions of sections 39(1) and 41 of the Land Use Act 1978. I may also add that the learned Justices of the Supreme Court did not consider the effect of section 236 of the 1979 Constitution in arriving at their conclusion.

Therefore in holding that the State High Court is only vested with jurisdiction to entertain suits arising from land in urban area of a State and such land as are so designated within the State, without considering the provisions of section 236 (1) of the 1979 Constitution of the Federal Republic of Nigeria, which vested unlimited jurisdiction in the High Court of all the States of the Federation to adjudicate upon all matters affecting the civil rights and obligations of all persons within the Federation, it cannot be said that the decision in Salati v. Shehu (supra)

should be followed to determine the question raised in this appeal".

I now come to the case of Sadikwu v. Dolari (supra). It was on the basis of the decision in this case that the learned trial Judge in the case in this appeal overruled his earlier ruling in another case and held that he had no jurisdiction. But before I deal with the Sadikwu case let me deal briefly with the case of Salati v. Shehu (supra) which would seem to have been followed or influenced the decision in the Sadikwu case. In that case (Salati v. Shehu) at p. 206-212 Uwais J.S.C. (as he then was) in a classic and scholarly manner made a historic exposition of the jurisdiction of the Area Courts and traced the said jurisdiction to the provisions of the Land Tenure Law Cap. 59 of the Laws of Northern Nigeria 1963 which was enacted in 1962. It seems to me that the said Land New of Northern Nigeria eventually culminated in sections 39 and 41 of the Land Use Act. Some of the provisions of the Land Tenure Law are similar to some of the provisions of the Land Use Act. For instance, as pointed out by the learned jurist at page 207:

"The jurisdiction of the courts established for Northern Nigeria followed the division of rights of occupancy. Hence the provisions of section 41 of the Land Tenure Law which are as follows:

'41(1) The High Court shall have exclusive original jurisdiction in the following proceedings -

(a) Proceedings in which the right of the Governor or the Minister to grant a statutory right of occupancy over any land is in dispute;..

(b) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(c) xxx

(2) An area court of competent jurisdiction in the following proceedings -

(a) proceedings in respect of any land the subject of a statutory right of occupancy granted by a local authority or of a customary right of occupancy where all parties are subject to the jurisdiction of area H courts, subject nevertheless to the provisions of paragraph (b) of subsection (3):"

Thus, it can be seen that s. 41 (1) of the Land Tenure Law is similar to s. 39 (1) (a) of the Land Use Act while s. 41(2) of the Land Tenure Law is

original jurisdiction to the Area Court or Customary Court. It is interesting to note, and this is important, that throughout the decision in the Sadikwu v. Dolari case (supra) no reference or mention was made of s. 236 of the 1979 Constitution which gives the High Court unlimited jurisdiction in civil and criminal matters. Is it right in law to take away or restrict the unlimited jurisdiction of the High Court as entrenched in the 1979 Constitution without considering it and making a finding on it? I think not. It seems to me that the decision in Sadikwu v. Dolari (supra) was given per incuriam v. 236 of the 1979 Constitution.

As regards the recent decision in Oyeniran v. Egbetola (supra) I have already sufficiently discussed it in this judgment. I may only add the observations of two of the Justices who took part in the case. Kutigi, J.S.C. was quite categorical that the High Court was a court of equivalent jurisdiction as the Customary Court. Said he in his contribution at page 135.

"But where there is no Area Court or Customary Court, a High Court being 'other court of equivalent jurisdiction' under s. 39 (1) (sic) of the Act shall have original jurisdiction to deal with proceedings relating to such land".

I ask with due humility, what law says that the original jurisdiction of the High Court can only be exercised in this matter only if there is no Area Court or Customary Court in the State? One can only find such a provision in the Land Tenure Law of Northern Nigeria which has no application in this case. With the promulgation of s. 236 of the 1979 Constitution, such a law is null and void. Referring to Salati v. Shehu case and Sadikwu v. Dolari case the learned Justice conceded at page 135 of Oyeniran case that

"those cases when carefully examined would be seen to deal with conditions in the Northern States of Nigeria where generally there are Area Courts as provided in s. 41 (ibid)"

Ogwuegbu J.S.C. had this to say at page 137

"The High Courts and Customary Courts in the Southern States had concurrent original jurisdiction in proceedings in respect of land the

subject of customary right of occupancy. In fact the bulk of such cases are initiated in the High Court and this preference can be found in the history of Customary Courts particularly in the Eastern States of Nigeria and some of those States do not even think of establishing one". (Italics mine for emphasis) B

With humility I ask once again, when, where and how was the "concurrent original jurisdiction" of the High Courts in the Southern States taken away so as to confine original jurisdiction in customary right of occupancy to the Customary Courts alone? Can it be read by implication into s. 41 of the Land Use Act? What happens to s. 236 of the Constitution which re-enforced and entrenched the unlimited jurisdiction of the High Court in our Constitution? These are some of the disturbing questions in the Oyeniran v. Egbetola case (supra). The learned Justice capitulated as follows, as I must capitulate in this judgment "I must however state that Sadikwu v. Dalori (supra) is binding on me". He then suggested a way out as follows: C D

"It is hoped that the Legislature will amend s. 41 of the Land Use Act by restoring the concurrent jurisdiction that existed before the 1978 E Act. This will remove the obvious jurisdictional difficulty which may arise."

May I say with great humility and respect that I am unable to see any "jurisdictional difficulty" to be remedied by the legislature. The jurisdictional difficulty is created by the interpretation put on s. 41 of the Land Use Act. F

It is the courts, not the legislature, that will remedy the situation. To my mind, s. 41 of the Land Use Act is clear and unambiguous. If I may be permitted to venture an opinion, it is for the Supreme Court, the apex court of the land, sitting perhaps in a full court at its earliest opportunity to summon distinguished senior counsel in the country to address it as amici curiae on the correct interpretation to be placed on s. 41 of the Land Use Act having regards to s. 236 of the 1979 Constitution. The Supreme Court will then be in a position to have a hard look at the Sadikwu and Oyeniran cases and possibly restore the concurrent jurisdiction of the High Court with Area and Customary Courts on land in non-urban G H

areas as has hitherto been the case.

If the decisions in Oyeniran v. Egbetola (supra) and Sadikwu v. Dolari (supra) remain the law, our land law will be in a state of disaster. It would mean that most of our case law based on the decisions of the High Court on lands in non-urban areas given from the promulgation of the Land Use Act in 1978 till the decision in Sadikwu and Oyeniran is swept away as being null and void. Some of these decisions had been affirmed by the Court of Appeal and the Supreme Court. Such a situation will be chaotic. I express the above opinion with the utmost humility and trepidation. Let me now at the expense of repetition, mention a few of these cases where a declaration of customary right of occupancy by the High Court has been affirmed by the Supreme Court. They are as follows:

(1) In Ogunola v. Eiyekele (1990) 4 NWLR (pt. 146) 632 in which a declaration of customary right of occupancy made by the Ogun State High Court was affirmed by the Supreme Court.

(2) In Makanjuola v. Balogun (1989) 3 NWLR (pt. 108) 192 the Supreme Court affirmed a similar declaration made by the High Court of Oyo State.

(3) In Ekretsu v. Oyobebe (1992) 9 NWLR (pt.266) a similar declaration made by Bendel State High Court was affirmed by the Supreme Court.

There are many others. These cases were decided after Salati v. Shehu (supra) which apparently supplied the precedent for the decision in Sadikwu v. Dolari case (supra) which in turn supplied the precedent for the decision in Oyeniran v. Egbetola (supra).

Having said all the above, my hands and feet are tied by the decision of the Supreme Court in Sadikwu v. Dolari (supra) and particularly by the more recent decision in Oyeniran v. Egbetola (supra). The knot is very tight and I cannot wriggle out of it by distinguishing the case on appeal from the Oyeniran case which is a case from the southern part of Nigeria. Under the principle of stare decisis I must bow to those decisions. I therefore resolve issue 1 and 2 in this appeal against the appellant.

I now come to the last issue in this appeal. The lower court, after holding that it had no jurisdiction to entertain the suit, proceeded to dismiss the claim. **A dismissal is a determination of the rights between the contesting parties. If a court has no jurisdiction to entertain a suit, it has no jurisdiction to determine or pronounce on the rights between the parties. The proper order is to strike out the suit thereby returning the parties to the position in which they were before the commencement of the suit. In Gombe v. P.W. (Nig.) Ltd. (1995) 6 NWLR (Pt.402) 402 it was held that where a court has no jurisdiction to hear and determine a matter before it, the proper order to make is that striking out the action, and dismissing it. See also Oloriode v. Oyebi (1984) 1 SCNLR 390; Akinbinu v. Oseni (1992) 1 NWLR (Pt. 215) 97; Ohiaeri v. Akabeze (1992) 2 NWLR (Pt.221) 1; Adesokan v. Adetunji (1994) 5 NWLR (Pt.346) 540. The lower court was therefore wrong to have dismissed the suit instead of striking it out.**

On this issue, this appeal succeeds. The ruling, together with the order of the High Court of Cross River State dated the 12/3/97 and delivered at Calabar by Ita J. is hereby set aside. In its place I make an order striking out the claim the appellant shall have the costs of this appeal which I fix at N3,000.

AKPABIO JCA

I have had the privilege of reading in advance the lead judgment of my learned brother Ubaezonu, J.C.A., just delivered, and agree with him that this appeal should be allowed, at least for the reason that the learned trial Judge, Ita, J., after rightly holding that he had no jurisdiction to entertain the suit before him, nevertheless went on to dismiss the suit instead of merely striking it out.

This was a case in which the plaintiffs/appellants had sued the H defendants/respondents in the High Court of Cross River State sitting at Calabar for a declaration that they were entitled to the customary right of occupancy in respect of a piece or parcel of land known as " Akansoko"

in a non-urban area of Cross River State, as well as for perpetual injunction. On the court's jurisdiction being challenged in a preliminary objection by the respondents, the learned trial judge conceded that he had no jurisdiction to try the matter in view of the provisions of s. 41 of the Land Use Act as well as the decided case of Sadikwu v. Dalori (1996) 5 NWLR (Pt.447) 151. But he went further to dismiss the plaintiffs' claim instead of striking it out. The plaintiffs being dissatisfied now appealed to this court still contending that the High Court had concurrent jurisdiction with customary courts to entertain suits in a rural area; and also that even if the learned trial Judge rightly declined jurisdiction, their suit should have been merely "struck out" and not "dismissed."

My learned brother has very exhaustively considered both the statutory and case law on the matter and reluctantly came to the conclusion that the High Courts now have no original jurisdiction to entertain claims in respect of customary rights of occupancy granted by the Local Government Councils. The reluctance to accept this new position is based on the fact that before the advent of the Land Use Decree, 1978 (now Act.) both the customary courts and High Courts in Southern Nigeria had exercised concurrent jurisdiction in respect of all land matters. Also, s. 236 (1) of the 1979 Constitution of the Federal Republic of Nigeria, conferred on all High Courts "unlimited jurisdiction in all civil and criminal proceedings ." Lastly is the fact that unlike s. 39 of the Land Use Act, 1978, which gave exclusive original jurisdiction to the High Courts in respect of statutory rights of occupancy in respect of land situate in urban areas, s. 41 of the said Act did not give exclusive jurisdiction to Customary, or Area Courts or other courts of equivalent jurisdiction.

Be that as it may, the Supreme Court in three leading cases of

1. Salati v. Shehu (1986) 1 NWLR (pt.15) 198;
2. Sadikwu v. Dalori (1996) 5 NWLR (Pt.447) 151 S. C.
3. Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122

have laid it down as the law that the High Courts, be they in the north or south of this country have no original jurisdiction to declare customary rights of occupancy in respect of land in rural or non-urban area for any body.

In view of the foregoing . I agree entirely with my learned brother, that while the main decision of the learned trial Judge should be allowed to stand, the final order dismissing the suit should be altered to one of striking out as nothing was decided in the suit. (F.A. Akinbobola v. Plisson Fisko & Ors. (1991) 1 NWLR (Pt.167) 270). I too hereby allow this appeal partially with a reduced cost of N3,000.00 to the appellant.

SALAMI JCA

I have read before now the judgment of my learned brother, Ubaezonu, J.C.A. with which I am entirely in agreement.

On the issue of the jurisdiction of the High Court in respect of proceedings in respect of customary right of occupancy, I think that it would be necessary for the Supreme Court to revisit the cases of Sadikwu v. Dalori (1986) 5 NWLR (Pt.447) 151 and Oyeniran v. Egbetola (1997) 5 NWLR (Pt. 504) 122. In the two decisions, the issue of the jurisdiction of a State High Court in respect of proceedings in respect of customary right of occupancy arose for determination. And in both cases it was decided that the High Court would be without jurisdiction in respect of proceedings dealing with customary right of occupancy except in an area without an Area or Customary Court. The decisions turned squarely on the interpretation of section 41 of the Land Use Act, Cap. 202 of the Laws of Federation of Nigeria, 1990. It is necessary for a proper appreciation of my reasoning to set out the provisions of sections 39 and 41 of the Act, Cap. 202, which vests various courts with jurisdiction in respect of proceedings dealing with respective rights of occupancy under the said Act. Section 39 of the Act vests the High Court of various states exclusively with jurisdiction in matters touching upon statutory right of occupancy while section 41 deals with jurisdiction of the courts to examine matters touching upon customary right of occupancy.

Section 39 (1) of the Act provides as follows:-

"39(1) The High Court shall have exclusive original jurisdiction

in respect of the following proceedings-

(a) Proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purpose of this paragraph, proceedings includes proceedings for a declaration of title to a statutory right of occupancy;

(b) Proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act." Section 41 thereof provides thus-

"41. An area court or customary court or other court equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings, in respect of a customary right of occupancy granted by a Local Government under this Act; and for the purposes of this paragraph, proceedings include proceedings for a declaration of title to a customary right of occupancy....."

My scanning of both sections of the enactment reveals that while section 39(1) vests exclusive jurisdiction in a State High Court in respect of proceedings relating to statutory right of occupancy, two courts are contemplated by section 41 in respect of proceedings concerning customary right of occupancy.

In other words, Area or Customary Courts are not vested with exclusive jurisdiction in matters pertaining to customary right of occupancy. There is another court within the contemplation of the enactment which is referred to as "or other court of equivalent jurisdiction." The phrase "or other court of equivalent jurisdiction" does not embrace an inferior court of equivalent jurisdiction because, apart from some Eastern States, there is no other court with jurisdiction to entertain question of title to land in other parts of the Federation. The Magistrates' Courts in the erstwhile Northern and Western Nigeria as well as District Courts in the North are divested of jurisdiction to entertain matters concerning title to or interest in land. In the circumstance, the people in those groups of states would be without remedy for their rights which would defeat the well known principle of law that is, where there is right there is remedy, encapsuled in the Latin maxim of ubi jus ibi remedium if a solution is not found to the cul de sac into which we would be led if exclusive jurisdiction is con-

ferred on Area or Customary Court or other inferior courts. It appears that State High Courts provide a way out.

Section 39, however, gave exclusive jurisdiction to the state High Courts in the determination of issue relating to statutory right of occupancy. It does appear that the legislature in writing "other court of equivalent jurisdiction" into section 41 had in mind the jurisdiction of State High Court to entertain matters in relation to statutory right of occupancy. The High Court, in my respectful view, therefore has unrestricted jurisdiction to entertain proceedings relating to customary right of occupancy with an Area or Customary Court.

Although the Supreme Court did not in Sadikwu v. Dalori op. cit and Oyeniran v. Egbotola op. cit avert its mind to the relevant provision of the Constitution, I am, nevertheless, encouraged in the view that Area, Customary and High Courts, have unfettered concurrent jurisdiction to entertain proceedings dealing with a customary right of occupancy by virtue of the provisions of section 236 of the Constitution of Federal Republic of Nigeria, 1979. Section 236, which has been interpreted, in a number of cases by our courts, particularly this court and the Supreme Court, vests State High Courts with unfettered and unlimited jurisdiction: Bronik Motors Limited v. Wema Bank Limited (1983) 6 S.C. 158, 195, (1983)1 SCNLR 296; Tukur v. Government of Gongola State (1989) 4 NWLR (Pt.117) 517, 541-2 and Savannah Bank of Nigeria Ltd. v. Pan Atlantic Shipping & Trans Ltd. (1987) 1 NWLR (Pt.49) 212 at 229. The last decision extended the jurisdiction of a State High Court to include matters vested in the Federal High Court by section 7 of the Federal High Court Act, Cap. 134 of the Laws of Federation, 1990 by declaring section 8 thereof which sought to oust the jurisdiction of State High Court unconstitutional for being in conflict with section 23(1) of the Constitution. The unlimited jurisdiction of State High Court seems fettered or restricted by the interpretation placed on section 41 of the Land Use Act op. cit. in the cases of Sadikwu v. Dalori op. cit and Oyeniran v. Egbetola H op. cit. I do not think that section 41 of the act should be interpreted in a manner to subject jurisdiction of a State High Court, in relation to customary right of occupancy, to availability or otherwise of an Area Court

or a Customary Court within the locality.

Notwithstanding the foregoing , I too allow the appeal and abide by all the consequential orders, including the order as to costs, proposed in the lead judgment of my learned brother, Ubaezonu, J.C.A Appeal allowed in part.

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