

SUPREME COURT OF NIGERIA
30TH APRIL, 1999. SC. 150/1993
CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, I. L.
KUTIGI, E. O. OGWUEGBU, A. I. IGUH, JJSC

GODWIN I. OKEKE & 2 ORS. APPELLANTS
(2nd and 3rd Appellants as the Administrators
of the Estate of late Patrick Okoye)
AND
MADAM EBI ORUH RESPONDENT

APPEALS - Issues - Appellate courts - Can only decide on issues - Raised on the grounds of appeal filed.

COURTS - Adjournment of cases - Are at the discretion of the court - And to succeed in an appeal against such exercise of discretion - It must be shown that the order would manifestly work injustice.

COURTS - Adjournment - Written application to the court - For adjournment - By the counsel for the appellants - And the appellants voluntarily decided to prosecute their case without their counsel - The trial judge was quite right to so proceed.

COURTS - Issues - Appellate courts - Can only decide on issues - Raised on the grounds of appeal filed.

INTERPRETATION OF STATUTES - Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972 - Rights acquired under it - Before the decision in Peenok's case was given are valid - Where they are not specifically challenged - And declared invalid by a court of competent jurisdiction.

INTERPRETATION OF STATUTES - Validity - Of the Rivers State Edicts Nos. 15 and 17 of 1972 - The Edicts are unconstitutional, null and

void and of no effect - And all actions taken in the present case pursuant to it - Are similarly null and void.

PRACTICE AND PROCEDURE - *Adjournment of cases - Are at the discretion of the court - And to succeed in an appeal against such exercise of discretion - It must be shown that the order would manifestly work injustice.*

PRACTICE & PROCEDURE - *Adjournment - Written application to the court - For adjournment - By the counsel for the appellants - And the appellants voluntarily decided to prosecute their case without their counsel - The trial judge was quite right to so proceed.*

PLEADINGS - *Evidence - Documents - Letters of Administration - Need not be specifically pleaded - So long as facts by which such documents are covered - Are pleaded.*

PLEADINGS - *Statement of defence - Proper traverse - To raise an issue of fact there must be a proper traverse - And a defendant does not satisfy this by pleading - That he is not in a position to admit or deny a particular allegation*

FACTS

In the High Court of Justice, Rivers State holden at Port Harcourt, the Plaintiffs/appellants, the 2nd and 3rd suing as the administrators of the estate of the late Patrick Okereke Okoye claimed against the defendant/respondent inter alia, declaration that the 1st plaintiff is the Lessee of the property in dispute, damages for trespass and injunction. The plaintiffs' case is that the building lease in respect of the state land located in Port Harcourt now in dispute was granted to the 1st Plaintiff by the Government of former Eastern Nigeria, in January 1962. The lease which was duly registered at the Lands Registry was subsisting and the Government of Rivers State of Nigeria is now the lessor of the said property. By virtue of a Power of attorney granted by the 1st plaintiff as lessee of the

property to one Patrick Okereke Okoye in 1963 the latter erected an uncompleted story building on the plot of land and enjoyed the possession and use of the same by putting tenants thereon and collecting rents from them until his death. The 2nd and 3rd plaintiffs, the wife and son respectively of the said Patrick Okereke Okoye are the administrators and personal representatives of his estate. They had since his death managed and controlled the 1st plaintiff's premises in issue. In 1984, however, the defendant forced her way into the property claiming that she had purchased it from the Rivers State Government and had been interfering with the plaintiffs' possession thereof. Hence they instituted the action. The defendant, for her part, claimed to have bought the property in dispute from the Rivers State Government by virtue of a Deed of Conveyance dated the 16th September, 1982 which was duly registered at the Lands Registry. She contended that the State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972 and Notice No. 452 (Gazette No. 56 of 1/11/72) made thereunder cancelled the lease granted by the Government of Rivers State to the 1st Plaintiff and extinguished all his rights and interests over the same. And that consequently the plaintiffs had no title to or interest in the premises and could not therefore maintain the present action. When the case came up for hearing, learned counsel for the plaintiffs was absent but had applied to the Court in writing for an adjournment of the suit because he was appearing before the Court of Appeal on the same date. From the record of proceedings the plaintiffs apparently volunteered to proceed without their counsel and thus the case was heard and concluded on the same day in the absence of the plaintiffs' counsel.

Judgment in the case was delivered eight days thereafter. The plaintiffs claims were dismissed in their entirety. The plaintiffs appealed unsuccessfully to the Court of Appeal, Port Harcourt Division. Aggrieved, they have further appealed to the Supreme Court raising four issues but the appeal was determined on a main issue framed by that court.

ISSUES FOR DETERMINATION

1. (ii) *Whether from the record (See Pages 22-25 of the Record) the*

Appellants' conduct amounted to a waiver of their right to Legal representation as was held by the Learned Justices of the Court of Appeal.

2. *The validity or otherwise of the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972 in the light of the decisions in B Peenok Investment Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. 1 and Abaye v. Ofili and Another (1986) 1 N.W.L.R (part 15) 134.*

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

C Practice and Procedure - Adjournment

1. The first point that must be made is that adjournments of cases fixed for hearing are not obtainable as a matter of course but may be granted or refused at the discretion of the court. See African Continental Bank Ltd. v. Agbanyim (1960) 5 F.S.C. 19, Abiodun Odusote v. Olaitan Odusote (1971) 1 N.M.L.R. 228 etc. The exercise of this discretion, however, is a judicial act against which an aggrieved party may lodge an appeal, but since it is a matter of discretion, an appellate court will be slow to interfere with it. See Re Yates' Settlement Trusts (1954) 1 W.L.R. 564. It would however appear that in order to succeed in an appeal against such exercise of discretion, the appellant shall satisfy the appellate court that the trial court acted on an entirely wrong principle or failed to take all the circumstances of the case into consideration and that it is manifest that the order would work injustice to the appellant. (p. 960 E)

Adjournment - Written application to the court

2. In the present case, although the appellants' learned counsel applied in writing to the court for an adjournment of the case, it is on record that the 3rd appellant nevertheless decided to proceed with the hearing of the case without their counsel. I think I agree with the submission of learned counsel for the respondent that the appellants by their apparent voluntary decision to prosecute their case without their counsel turned down his application for adjournment. This conduct of the appellants, in effect, rendered it no longer necessary for the learned trial Judge to rule on the application for adjournment as it was apparent that the party for whose

benefit the application was made had rejected it outright and opted to lead evidence and conduct their case in person. This course of action they were perfectly entitled to take. The position would otherwise have been different if the trial court had compelled the appellants to conduct their case in the absence of their counsel. I think from all the evidence on record, the learned trial Judge was quite right when at the instance of the appellants he proceeded with the hearing of the case in the absence of their counsel. (p. 960 H) B

Appeals - Issues

3. An appellate court can only decide on issues raised on the grounds of appeal filed. See Management Enterprises v. Otusanya (1987) 2 N.W.L.R. (part 55) 179. Consequently, issues for determination formulated in a brief must be based on the ground or grounds of appeal filed by the parties. See Onifade v. Olayiwola (1990) 7 N.W.L.R. (part 161) 130 at 157. If they are not related to any ground of appeal, they would become irrelevant as they go to no issue. Any argument in the brief in support of such issues will be discountenanced by the court. See Momodu v. Momoh (1991) 1 N.W.L.R. (part 169) 608 at 620-621. In the present case, there is no ground of appeal filed which challenges the 2nd and 3rd appellants as the administrators of the estate of the late Patrick Okereke Okoye. All that the court directed, in the interest of justice, was to call for the production of the original of the relevant Letters of Administration for scrutiny. No arguments on the subject were called for by the court. (p.966D) C D E F

Pleadings - Evidence

4. I think attention must also be drawn to the fact that by paragraph 9 of the Statement of claim, facts which covered the Letters of Administration in issue were clearly pleaded. This, in my view, was tantamount to pleading the Letters of Administration itself which constituted the 2nd and 3rd appellants the administrators or personal representatives of the estate of the late Patrick Okereke Okoye. The law is well settled that documentary evidence, and this includes Letters of Administration, needs not be specifically pleaded so long as facts and not the evidence by which G H

such a document is covered are pleaded. See Alhaji B. Thanni & Another v. Sabalemotu Saibu and others (1977) 2 S.C. 89 at 114-115. In my view, there are enough facts in the appellants' Statement of claim which clearly cover the Letters of Administration in issue. (p. 966 H)

B

Pleadings - Statement of defence

5. There is also paragraph 1 of the Statement of Defence whereby the respondent averred inter alia that she was not in a position to admit material facts pleaded in paragraphs 9 - 12 of the appellants' Statement of claim. This plea, in my view, amounts to no more than that the respondent was not in a position to admit or deny the averments in those paragraphs of the Statement of Claim and that she would at the trial put the plaintiffs to strict proof thereof. This, in my view, cannot be regarded as a proper traverse as it is settled law that in order to raise an issue of fact, there must be a proper traverse and a defendant does not this satisfactorily by pleading that he is not in a position to admit or deny a particular allegation in the plaintiff's Statement of claim and/or that he will at the trial put the plaintiff to the strictest proof thereof. See Lewis and Peat (N.R.I.) Ltd. v. Akhimien (1976) 7 S.C. 157, Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718 at 741, Lawal Owosho v. Dada (1984) 7 S.C. 149 at 163. It therefore seems to me that having regard to the state of the pleadings in this case and more particularly to the life issues for determination in the appeal, the Letters of Administration in issue is hardly of any relevance in this appeal and I must discountenance the respondent's arguments thereon as irrelevant and going to no issue in the appeal. (p. 967 E)

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Rights State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 - Rights acquired under it.

6. It therefore seems to me crystal clear that although any actions lawfully taken or rights acquired under the Rivers State Lands (Cancellation of Lease) Edicts Nos. 15 and 17 of 1972 before the 3rd December, 1982 on which date the decision of this court in Peenok's case pronouncing the said Edicts as null and void was given are valid by virtue of the

provisions of section 6 of the interpretation act, 1964, such actions or rights cannot remain valid where they are specifically challenged and declared invalid by a court of competent jurisdiction in any proceedings where the validity of the Edicts is directly in issue as in Peenok's case. (p. 973 E) B

Validity - Of the Rivers State Edicts Nos. 15 and 17

7. It is thus clear to me that this is a case where the validity of both the relevant Edicts and the alleged rights acquired under them are directly in issue. Such rights, in my judgment, are liable to be invalidated by a court of competent jurisdiction where they are found to be unconstitutional and null and void and it would not matter that they were purportedly acquired before the decision in Peenok's case. See Abaye v. Ofili and Another, supra. I think both courts below, with respect, were in error when they held that the purported cancellation of the 1st appellant's lease by the Rivers State Government, the alleged acquisition of the property in issue by the Rivers State Government and the purported subsequent sale of the property by the Rivers State Government to the respondent are all lawful and valid. It is my view, also, that both courts below were in definite error when they upheld the validity of the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1992 which had been pronounced by this court to be unconstitutional, null and void and of no effect by virtue of their inconsistency with the mandatory provisions of section 31(2) (a) and 3(2) (b) of the constitution of the Federation of Nigeria, 1963. See Peenok Investments Ltd. v. Hotel Presidential Ltd., (supra). In my judgment, the said Edicts Nos. 15 and 17 of 1992 are unconstitutional, null and void and of no effect by virtue of the inconsistency above mentioned. Consequently all actions taken in the present case pursuant to the said Edicts are null and void and of no effect whatever. For the avoidance of doubt, these actions which include the purported cancellation of the 1st appellant's Lease, the alleged acquisition of the property in issue by the Rivers State Government and the subsequent "sale" thereof to the respondent by the said Rivers State Government are hereby declared null and void and of no effect whatsoever. (p. 974 B) C D E F G H

NOTABLE POINT OF INTEREST

UWAIS CJN

1. Invitation as amicus curiae is a matter of honour for a counsel

I only wish to point out our disappointment in the failure of the Attorney-General of Rivers State to honour the Court's invitation for him to address us as amicus curiae on the validity of the State Lands (Cancellation of Leases) Edict No. 15 of 1972 and States Lands (Cancellation of Leases) (Amendment) Edict No. 17 of 1972 of Rivers State Vis-a-vis the decisions of this Court in the cases of Peenok Investments Ltd. v. Hotel Presidential Ltd., (1982) 12 S.C. 1 and Abaye Ofili, (1986) 1 N.W.L.R. (Part 15) 134. It has always been a matter of privilege and honour for counsel to the invited by this court as amicus curiae. (p. 975 G)

D REPRESENTATION

V. O. Okoleh Esq. for the appellants.

C. V. Georgewill Esq. for the respondents.

E CASES REFERRED TO

Abaye v. Ofili (1986) 1 N.W.L.R. (part 15) Page 134

Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. 1

Umarco Nigeria Ltd. v. Panalpina World Transport Ltd. (1986) 2 N.W.L.R. (part 20) 65

F Harrods Ltd. v. Lawrence Anifalaje (1986) 5 N.W.L.R. (part 43) 603

Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. at 31

African Continental Bank Ltd. v. Agbanyim (1960) 5 F.S.C. 19

Odusote v. Odusote (1971) 1 N.M.L.R. 228

G Management Enterprises v. Otusanya (1987) 2 N.W.L.R. (part 55) 179

Onifade v. Olayiwola (1990) 7 N.W.L.R. (part 161) 130 at 157

Momodu v. Momoh (1991) 1 N.W.L.R. (part 169) 608 at 620-621

Thanni v. Saibu (1977) 2 S.C. 89 at 114-115

H Lewis and peat (N.R.I.) Ltd. v. Akhimien (1976) 7 S.C. 157

Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718 at 741

Owosho v. Dada (1984) 7 S.C. 149 at 163

STATUTES REFERRED TO

Rivers State (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972
 Constitution of the Federation of Nigeria, 1963, s. 31 (2) (a) and (b)
 Interpretation Act, 1964; s.6

B

LEAD JUDGMENT BY IGUH JSC

The proceedings leading to this appeal were first initiated in the High Court of Justice, Rivers State, holden at Port Harcourt on the 30th day of April, 1986. In that court, the three plaintiffs, the 2nd and 3rd suing as the administrators of the estate of the late Patrick Okereke Okoye, had claimed against the defendant as follows:-

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"(1) A declaration that the 1st Plaintiff is the Lessee of the Leasehold property known as plot 153, Gborokiri Layout, Port Harcourt otherwise known as No. 22, Etche Street, Gborokiri (Borokiri) Port Harcourt.

D

(2) A declaration that the said Lease registered as No. 2 at Page 2 in Volume 297 in the Lands Registry at Enugu, now Port Harcourt is still subsisting.

E

(3) A declaration that the purported Sale or Transfer of the said Plot 153, Gborokiri Layout, Port Harcourt to the Defendant by the Rivers State Government is null and void and of no effect whatsoever.

(4) A declaration that the purported cancellation of the Lease granted to 1st Plaintiff is null and void and of no effect whatsoever.

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(5) That as the Administrators of the Estate of Late Partrick O. Okoye, the 2nd and 3rd plaintiffs are entitled to manage and superintend the property.

(6) N1,000.00 damages for trespass.

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(7) A perpetual injunction restraining the Defendant, her servants or agents from further acts of trespass to the said property."

Pleadings were ordered in the suit and were duly settled, filed and exchanged.

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When the case came up for hearing on the 6th day of July, 1987, the parties were in court except the 1st and 2nd plaintiffs. Learned counsel for the plaintiffs, S. J. Ofoluwa Esq. was also absent although he had

applied to the court in writing for an adjournment of the suit on the ground that he was appearing before the Court of Appeal, Enugu Division, on the same date. The Defendant's learned counsel, F. G. Peters Esq. was present in court.

B Following the said application for an adjournment by the plaintiffs' counsel, the following notes appear in the record of proceedings of the learned trial Judge, namely:-

"On 18th May, 1987 Mr. Ofoluwa wrote that he was at Bori High Court and that the case should be adjourned to another date. To-day he has sent a letter that he is at the Appeal Court Enugu, he again asks for adjournment.

Plaintiff says he is ready to proceed without his lawyer."

It was on the strength of the above that the learned trial Judge immediately proceeded with the hearing of the case in the absence of the plaintiffs' counsel.

The 3rd plaintiff who testified on behalf of the others called one witness and closed their case. The defendant was led in evidence by her learned counsel who therefore addressed the court the same day. Judgment in the suit was delivered eight days thereafter, that is to say, on the 14th July, 1987. The plaintiffs claims on that date were dismissed in their entirety.

F The plaintiffs' case as pleaded is that the building lease in respect of the State land known as Plot 153, Gborokiri Layout, otherwise also referred to as No. 22, Etche Street, Gborokiri (Borokiri), Port Harcourt was granted to the 1st plaintiff by the then Governor of former Eastern Nigeria, for and on behalf of the Government of the said Eastern Nigeria in January, 1962. The lease was duly registered as No. 2 at Page 2 in volume 297 in the Lands Registry in the office at Enugu but now in Port Harcourt, Rivers State. The said lease was subsisting and the Government of the Rivers State of Nigeria is now the lessor of the said property.

H By a deed created on the 4th day of November, 1963, the 1st plaintiffs, as lessee of the property, gave power of attorney to one Patrick Okereke Okoye to inter alia develop and build on the demised land. Patrick Okereke Okoye duly erected an uncompleted storey building on this plot

of land and enjoyed the possession and use of the same by putting tenants thereon and collecting rents from them until his death.

The 2nd and 3rd plaintiffs, the wife and son respectively of the said Patrick Okereke Okoye, are the administrators and personal representatives of his estate. They had since his death managed and controlled the 1st plaintiff's premises in issue. In 1984, however, the defendant forced her way into the property, claiming that she had purchased it from the Rivers State Government and had been interfering with the plaintiffs' possession thereof. B

A search by the plaintiffs at the Land Registry, Port Harcourt disclosed that the 1st plaintiff's building lease was purportedly cancelled by Gazette Notice No. 56 Vol. 4 of the 1st November, 1972 and that an agreement of sale by the Rivers State Government was registered against the property in the name of the defendant as the State lessee. The plaintiffs' contentions inter alia were:- C

(i) That there was no valid sale of the property to the defendant by the rivers State Government.

(ii) That the property was not lawfully acquired by the Government of Rivers State. E

(iii) That the purported cancellation of the lease by the rivers State Government is null and void and of no effect.

(iv) That Edicts Nos. 15 and 17 of 1972 purporting to cancel the lease are unconstitutional, null and void and of no effect. F

The defendant, for her part, claimed to have bought the property in dispute from the Rivers State Government in the year 1982. This was by virtue of a Deed of Conveyance dated the 16th September, 1982 and registered as No. 77 at page 77 in Volume 95 at the Lands Registry in the office at Port Harcourt. She contended that the State Lands (Cancellation of Leases) Edicts No.s 15 and 17 of 1972 and Notice No. 452 (Gazette No. 56 of 1/11/72) made thereunder cancelled the lease granted by the Government of Rivers State to the 1st plaintiff and extinguished all his rights and interests over the same. She argued that the plaintiffs had consequently no title to or interest in the premises and could not therefore maintain the present action. G
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At the conclusion of hearing, the learned trial Judge, Fiberesima, J. in a sketchy judgment dismissed the plaintiffs' claims in their entirety, describing the same as "a wild-goose chase". On the validity of the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972, the learned Judge in upholding the same ruled thus:-

"In my opinion the pleading support the claim of the property by purchase by the defendant. Further, as Mr. F. G. Peters rightly noted in his short address, by Abaye v. Ofili (1986) 1 N.W.L.R. (part 15) Page 134, the State Lands (Cancellation of Leases) Edict, 1972 is an existing Law within the meaning of section 274 of the 1979 Constitution and the Edict remains Valid until it is annulled."

He concluded:-

- "In conclusion I have to declare that:-*
- 1.
 - 2.
 - 3.
 - 4. *The cancellation in 1972 of the original lease granted to 1st plaintiff is valid;*
 - 5. *The subsequent sale of the property by rivers State Government is valid;*
 - 6. *The claim by the defendant that she owns the property by purchase from Rivers State Government in 1982 is uncontroverted. The result is that the action fails and is accordingly dismissed."*

Being dissatisfied with the said judgment, the plaintiffs lodged an appeal against the same to the Court of Appeal, Port Harcourt Division, which court in a unanimous decision dismissed the appeal on the 16th April, 1992. Aggrieved by this decision of the Court of Appeal, the plaintiffs have further appealed to this court. I shall hereafter refer to the plaintiffs and the defendant in this judgment as the appellants and the respondent respectively.

Five grounds of appeal were filed by the appellants against this decision of the Court of Appeal. It is unnecessary to reproduce them in this judgment. It suffices to state that the parties pursuant to the Rules of this court filed and exchanged their written briefs of argument.

The four issues identified on behalf of the appellants for the determination of this court are as follows:-

"(i) Whether the Learned Justices of the Court of Appeal were right in holding that the trial at the High Court was fair and did not occasion a miscarriage of Justice to the Appellants.

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(ii) Whether from the record (See Pages 22-25 of the Record) the Appellants' conduct amounted to a waiver of their right to Legal representation as was held by the Learned Justices of the Court of Appeal.

(iii) Whether the Court of Appeal was right in holding that the High Court had no Jurisdiction to hear the matter and give the reliefs sought in view of Rivers State Edicts Nos. 15 and 17 of 1972.

C

(iv) Whether the Court of Appeal was right in confirming the Sale of the Property to the Respondent in view of Sections 22 and 23 of the State lands Law, Cap. 122, Laws of Eastern Nigeria, 1963 as applicable to rivers State."

D

The respondent, for her part, submitted three issues which in her opinion are sufficient for the resolution of this appeal. These are set out thus:-

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"1. Whether the Learned Justices of the Court of Appeal were right when they held that the Appellants had a fair trial in the Court below.

2. Whether the Learned Justices of the Court of Appeal rightly confirmed the sale of the subject property to the Respondent as valid considering the provisions of the Land Use Act, 1978.

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3. Whether the Jurisdiction of the High Court is a proper issue in this appeal."

I have closely examined the two sets of issues identified in the respective briefs of the parties and, having regard to the pleadings and the grounds of appeal filed, it seems to me that the issues formulated on behalf of the appellants are, to a certain extent only, relevant for the consideration of this appeal, I do not, however, agree, with respect, that they conclusively address the central issue that arises for determination in this appeal. That issue concerns the validity of the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972 in the light of the

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decisions of this court in Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. 1 and Abaye v. Ofili and Another (1986) 1 N.W.L.R. (Part 15) 134. I will deal with this central issue later in this judgment.

At the oral hearing of the appeal before us, both learned counsel for the parties adopted their respective briefs of argument and proffered additional submissions in amplification thereof.

The main contention of the appellants on issues 1 and 2 is that the court below was in error by holding that they were given a fair hearing when the learned trial Judge failed to rule on their counsel's written application for an adjournment of the appeal on the ground of his appearance before the Court of Appeal but proceeded instead to call on them to go on with their case in his absence. He called in aid the decisions in Umarco Nigeria Ltd. v. Panalpina World Transport Ltd. (1986) 2 N.W.L.R. (part 20) 65 and Harrods Ltd. v. Lawrence Anifalaje and Another (1986) 5 N.W.L.R. (part 43) 603 and argued that the trial court failed to exercise its discretion properly by failing to adjourn the case in the interest of justice to enable the appellants to be legally represented by their counsel at the trial. Learned counsel stressed that the Court of Appeal lost track of the pleadings and the facts of the case when, of the appellants, it stated:-

"They testified along the line of their Statement of Claim and submitted to cross-examination. No documents were pleaded in the Statement of Claim. None was in evidence either. The case rested mainly on facts and these were on record".

He argued that the 3rd appellant's "unaided and unguided 8 Lines testimony" as plaintiff in a title to land case cannot be said to have fully covered all the averments in their Statement of Claim. Besides, the appellants' original Building Lease pleaded in paragraphs 5 and 6 of their Statement of Claim, Power of Attorney referred to in paragraph 8 and Letters of Administration cited in paragraph 9 of the same Statement of Claim were duly pleaded but not tendered as they were all in the possession of the appellants' counsel who had the file of the case but was engaged at the Court of Appeal. He submitted that it is apparent that the trial was one sided and that the Court of Appeal ought to have so found.

On issues 3 and 4, the appellants' grouse is that the Court of Appeal was in error by holding that the trial court had no jurisdiction to entertain the claims by virtue of the provisions of the Rivers State Land (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972. Learned counsel for the appellants referred to the decision of this court in Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. at 31 wherein the said Edicts Nos. 15 and 17 of 1972 were declared null and void and of no effect and submitted that it was consequently wrong for the Court of Appeal to have held that the trial court had no jurisdiction to entertain the suit. He contended that the court below was clearly in error when it held that the purported cancellation of the Building Lease granted to the 1st appellant and the alleged sale of the disputed property to the respondent by the Government of the Rivers State of Nigeria could not be challenged in any court of law. It was as a result of this mistaken view that the Court of Appeal, again in error, held that the alleged cancellation in 1972 of the original lease granted to the 1st appellant and the subsequent alleged sale of the property by the Rivers State Government to the respondent were both valid. He urged the court to allow this appeal.

Learned respondent's counsel in his reply on issues 1 and 2 pointed out that the trial court, quite rightly, acknowledged the application for an adjournment of the case by the learned counsel for the appellants. He however contended that it was the 3rd appellant himself who voluntarily decided to discountenance the application of their counsel for an adjournment and proceeded with the hearing of the case without him. He submitted that what the rule of natural justice demands is that both parties to every case should be heard before judgment is handed down. He argued that the court could not possibly, without cause, grant the adjournment of a suit at the instance of a plaintiff's counsel where such plaintiff himself has expressed his readiness and desire to proceed with his case. In his view, the appellants overruled their counsel's application for an adjournment and opted to call evidence. He claimed that they cannot now complain that they were denied the services of their counsel.

On issues 3 and 4, respondent's learned counsel emphasized that the Court of Appeal was right to have confirmed the validity of the sale of

the property in issue to the respondent. He conceded that the Court of Appeal addressed the validity of the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972 but submitted that its observations on the issue were inconsequential and did not affect its judgment.

B He urged the court to dismiss this appeal.

Turning now to issues 1 and 2, I think it is pertinent to reproduce the relevant portion of the proceedings of the 6th July, 1987 on the issue of adjournment when this case came up for hearing. This is as follows:-

C "RESUMED ON MONDAY THE 6TH DAY OF JULY, 1987.

3rd Plaintiff present - others absent. Defendant present.

Mr. F. G. Peters appears for Defendant.

On 18th May, 1987 Mr. Ofoluwa wrote that he is at Bori High Court and

D *that the case should be adjourned to another date.*

Today he has sent a letter that he is at the Appeal Court Enugu, he again asks for adjournment.

Plaintiff says he is ready to proceed without his lawyer.

E P.W. 1: *Sworn on the Bible States in English*

My name Mr. Anthony Okoye, Trader, 2A Etche Road, Aba"

The first point that must be made is that adjournments of cases fixed for hearing are not obtainable as a matter of course but may be granted or refused at the discretion of the court. See Afri-

F **can Continental Bank Ltd. v. Agbanyim (1960) 5 F.S.C. 19, Abiodun**

Odusote v. Olaitan Odusote (1971) 1 N.M.L.R. 228 etc. The exer-

cise of this discretion, however, is a judicial act against which an

aggrieved party may lodge an appeal, but since it is a matter of

G **discretion, an appellate court will be slow to interfere with it. See**

Re Yates' Settlement Trusts (1954) 1 W.L.R. 564. It would however

appear that in order to succeed in an appeal against such exercise

of discretion, the appellant shall satisfy the appellate court that the

H **trial court acted on an entirely wrong principle or failed to take all**

the circumstances of the case into consideration and that it is mani-

fest that the order would work injustice to the appellant.

In the present case, although the appellants' learned coun-

sel applied in writing to the court for an adjournment of the case, it is on record that the 3rd appellant nevertheless decided to proceed with the hearing of the case without their counsel. I think I agree with the submission of learned counsel for the respondent that the appellants by their apparent voluntary decision to prosecute their case without their counsel turned down his application for adjournment. This conduct of the appellants, in effect, rendered it no longer necessary for the learned trial Judge to rule on the application for adjournment as it was apparent that the party for whose benefit the application was made had rejected it outright and opted to lead evidence and conduct their case in person. This course of action they were perfectly entitled to take. The position would otherwise have been different if the trial court had compelled the appellants to conduct their case in the absence of their counsel. No such evidence, however, is disclosed from the records. There was also no attempt by the appellants or counsel on their behalf to supplement the record of proceedings by any further evidence of compulsion by the learned trial Judge as a result of which the said appellants had no option but were obliged to conduct their case without their counsel. **I think from all the evidence on record, the learned trial Judge was quite right when at the instance of the appellants he proceeded with the hearing of the case in the absence of their counsel.** The appellants cannot approbate and reprobate with the same breath and they cannot, in my judgment, now complain that their case was heard in the absence of their counsel when that course of action was taken on their application and at their instance. Issues 1 and 2 must accordingly be resolved against the appellants.

I shall now consider issues 3 and 4 together. Both learned counsel for the parties had in their oral submissions adopted the arguments canvassed in their respective briefs of argument. It is, perhaps, better to commence my examination of these issues by setting out the relevant averments in the pleadings of the parties with a view to identifying the central issue in controversy between them.

Paragraphs 4 - 19 of the appellants' Statement of Claim averred

as follows:-

- B "4. The first Plaintiff who lived in Port Harcourt in his younger days was granted a Building Lease of the property known as Plot 153, Gborokiri Layout, Port Harcourt. The property is also now known as No. 22, Etche Street, Gborokiri (Borokiri) Port Harcourt.
5. The Building Lease was granted by the then Governor of Eastern Nigeria for and on behalf of the Government of Eastern Nigeria. The Lease was granted in January, 1962 and is still subsisting.
- C 6. The said Building Lease was registered as No. 2 at Page 2 in Volume 297 in the Lands Registry in the Office at Enugu, now Port Harcourt; the said Lease is still subsisting.
- D 7. Since the creation of the rivers State the Government of the said Rivers State of Nigeria is now the Lessor of the said property.
8. By a Power of Attorney created on the 4th day of November, 1963, the 1st Plaintiff, as lessee, gave power to Patrick Okereke Okoye then of 43B, Ngwa Road, Aba, to inter alia, build on the plot.
- E 9. The said Mr. Patrick Okereke Okoye - deceased - was the husband and father of the 2nd and 3rd Plaintiffs respectively. The 2nd and 3rd Plaintiffs are now the Administrators of the Estate of the late Patrick Okereke Okoye
- F 10. Before his death, the said Patrick Okoye built an uncompleted storey building on the Plot and enjoyed same by putting tenants therein and collecting rents from them.
- G 11. After the death of Mr. Partrick Okereke Okoye, his widow and children, including the 3rd Plaintiff, enjoyed the property collecting rents from tenants therein. The 2nd and 3rd Plaintiffs have since the death of the said Patrick Okereke Okoye been managing and controlling the said property.
- H 12. The present tenants of the property recognize and accept 2nd and 3rd Plaintiffs as their Landlords; the tenants pay rents to them.
13. Sometime in 1984, the Defendant forced her way into the property claiming to have bought same from the rivers State Government; Defendant has been interfering with Plaintiffs' possession of the property ever since.

14. *When the tenants in the property would not pay rents to her, she started harassing them and eventually sued them before the Rent Tribunal of Port Harcourt District.*

15. *This action was taken out as a result of the said harassment of the tenants, and trespass to the premises by the Defendant.* B

16. *Following the allegations of the Defendant, Plaintiffs conducted a Search at the Lands Registry, Port Harcourt where the following were discovered:-*

(a) *that by a Notice in Gazette No. 56 Vol. 4 of 1st November, 1972, the Building Lease was cancelled.* C

(b) *that a Sale Agreement was registered against the property in the name of the Defendant as Grantee; Rivers State Government was the Grantor.*

17. *Plaintiffs aver as follows:-* D

(i) *there has been no proper sale of the property to the Defendant.*

(ii) *that the property has not been acquired by the Government of the Rivers State.* E

(iii) *that the purported cancellation of the Lease is null and void and of no effect whatsoever.*

(iv) *that Edicts Nos. 15 and 17 of 1972 purporting to cancel the Lease are unconstitutional, null and void and of no effect.* F

18. *In spite of several warnings by the Plaintiffs to Defendant to stay clear of the property, she has refused to stay clear from same.*

19. *Wherefore the Plaintiffs' claim against the Defendant are as follows:-*

(1) *A declaration that the 1st Plaintiff is the Lessee of the Leasehold property known as Plot 153, Gborokiri Layout, Port Harcourt otherwise known as No. 22, Etche Street, Gborokiri (Borokiri) Port Harcourt.* G

(2) *A declaration that the said Lease registered as No. 2 at Page 2 in Volume 297 in the Lands Registry at Enugu now Port Harcourt is still subsisting.* H

(3) *A declaration that the purported Sale or Transfer of the said*

Plot 153, Gborokiri Layout, Port Harcourt to the Defendant by the Rivers State Government is null and void and of no effect whatsoever.

(4) A declaration that the purported cancellation of the Lease granted to 1st Plaintiff is null and void and of no effect whatsoever.

B *(5) That as the Administrators of the Estate of Late Patrick O. Okoye, the 2nd and 3rd plaintiffs are entitled to manage and superintend the property.*

(6) N1,000.00 damages for trespass.

C *(7) A perpetual injunction restraining the Defendant, her servants or agents from further acts of trespass to the said property".*

The above averments of the appellants were replied to by the respondent in paragraphs 1 - 7 of her Statement of Defence as follows:-

D *"1. Defendant is in no position to admit paragraphs 1, 2, 3, 9, 10, 11 and 12 of the Statement of Claim and consequently denies the same.*

2. Save that the said building lease no longer subsists, Defendant admits paragraphs 4, 5, 6, 7 and 8 of the Statement of Claim and only became aware of the facts therein averred in the course of this dispute.

F *3. Defendant admits paragraphs 13, 14, 15 and 16 of the Statement of Claim save that Defendant asserted her right peacefully to the property in dispute since she purchased the same in 1982 not 1984 and did not harass any tenants other than instituting due legal action against those of them in default of payment of their rent at the Rent Tribunal.*

G *4. Defendant denies paragraphs 17 and 18 of the Statement of Claim and would contend at the trial that the Plaintiffs are not entitled to any of the reliefs claimed and that the sake of the property to her by the Rivers State Government by virtue of the Deed of Conveyance dated September 16, 1982 and registered as No. 77 at Page 77 in Vol. 95 at the Port Harcourt Lands Registry conferred a valid title on her after having, H in accordance with the letter of offer of February 12, 1982 paid all due purchase fees and the Receipts for such payments issued to her between February and October, 1982. Defendant will rely on all documents herein averred.*

5. *The State Lands (Cancellation of Leases) Edict No. 15 of 1972 and the Notice No. 452 (Gazette 56 of 1/11/72) Cancelling the said lease granted to the 1st Plaintiff duly put an end to the said lease granted to the 1st Plaintiff; consequently, Plaintiffs have no title or interest to ground this action or the reliefs claimed in the circumstances of this case.* B

6. *Save as hereinbefore specifically admitted or denied, defendant denies each and every allegation of facts contained in the Plaintiffs' Statement of Claim as if the same were specifically set out and traversed seriatim.*

7. *Defendant would at the trial set up all legal and equitable defences available to her not hereinbefore specifically averred or pleaded".* C

A close examination of the pleadings would reveal that save that the Building Lease is still subsisting, paragraphs 4, 5, 6, 7 and 8 of the averments in the appellants' Statement of Claim were expressly admitted D in paragraph 2 of the respondent's Statement of Defence. This, in effect, meant admissions by the respondent to the following effect:-

(i) That the 1st appellant was granted a Building Lease of the property in issue by the Government of the former Eastern Nigeria as E lessors in the year 1962.

(ii) That the Building Lease was duly registered as No. 2 at Page 2 in Volume 297 in the Registry of Lands in the office at Enugu but now at Port Harcourt.

(iii) That since the creation of the Rivers State, the Government F of the Rivers State of Nigeria is now the Lessor of the said property.

(iv) That by a Power of Attorney created on the 4th day of November, 1963, the 1st appellant, as State Lessee, gave power to one Partrick Okereke Okoye to develop and build on the said plot. G

There are other material admissions by the respondent with regard to the averments in paragraphs 13, 14, 15 and 16 of the appellants' Statement of Claim. From the state of the pleadings, however, the main defence of the respondent was that the Lease in issue no longer subsisted H as by the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972, the same was cancelled and the property sold by the Rivers State Government on the 16th September, 1982 to the respondent. It is

thus clear that the main issue for determination between the parties concerns the validity or otherwise, firstly, of the alleged cancellation of the appellants' Lease in respect of the property and, secondly, the purported sale of the property to the respondent by the Rivers State Government.

B This must be considered as the 5th and the most vital issue for resolution in this appeal.

I think I ought in passing to mention that no issue was raised in any of the briefs of argument filed in this appeal concerning the averment that the 2nd and 3rd appellants are the administrators of the estate of the late Patrick Okereke Okoye, the donee of the aforementioned Power of Attorney. Learned counsel for the respondent did however contend in his supplementary brief that the relevant Letters of Administration was not pleaded by the appellants and that this is fatal to their case. I agree with Mr. Okoleh that this argument must be discountenanced for the simple reason that the same does not constitute one of the issues that arise for determination in this appeal. **An appellate court can only decide on issues raised on the grounds of appeal filed.** See Management Enterprises v. Otusanya (1987) 2 N.W.L.R. (part 55) 179. Consequently, issues for determination formulated in a brief must be based on the ground or grounds of appeal filed by the parties. See Onifade v. Olayiwola (1990) 7 N.W.L.R. (part 161) 130 at 157. If they are not related to any ground of appeal, they would become irrelevant as they go to no issue. Any argument in the brief in support of such issues will be discountenanced by the court. See Momodu v. Momoh (1991) 1 N.W.L.R. (part 169) 608 at 620-621.

G In the present case, there is no ground of appeal filed which challenges the 2nd and 3rd appellants as the administrators of the estate of the late Patrick Okereke Okoye. All that the court directed, in the interest of justice, was to call for the production of the original of the relevant Letters of Administration for scrutiny. H No arguments on the subject were called for by the court.

I think attention must also be drawn to the fact that by paragraph 9 of the Statement of claim, facts which covered the Letters of Administration in issue were clearly pleaded. This, in

my view, was tantamount to pleading the Letters of Administration itself which constituted the 2nd and 3rd appellants the administrators or personal representatives of the estate of the late Patrick Okereke Okoye. The law is well settled that documentary evidence, and this includes Letters of Administration, needs not be specifically pleaded so long as facts and not the evidence by which such a document is covered are pleaded. See Alhaji B. Thanni & Another v. Sabalemotu Saibu and others (1977) 2 S.C. 89 at 114-115. In my view, there are enough facts in the appellants' Statement of claim which clearly cover the Letters of Administration in issue. See also paragraph 19(5) of the appellants' Statement of claim. In addition, it also seems to me that Letters of Administration is merely the evidence in proof of the status of the 2nd and 3rd appellants as administrators of the relevant estate and it is a basic principle of pleadings that only facts and not evidence in proof of such facts are permitted to be pleaded. The facts which cover the Letters of Administration having been pleaded. I think the document in issue needed not be further specifically pleaded.

There is also paragraph 1 of the Statement of Defence whereby the respondent averred inter alia that she was not in a position to admit material facts pleaded in paragraphs 9 - 12 of the appellants' Statement of claim. This plea, in my view, amounts to no more than that the respondent was not in a position to admit or deny the averments in those paragraphs of the Statement of Claim and that she would at the trial put the plaintiffs to strict proof thereof. This, in my view, cannot be regarded as a proper traverse as it is settled law that in order to raise an issue of fact, there must be a proper traverse and a defendant does not this satisfactorily by pleading that he is not in a position to admit or deny a particular allegation in the plaintiff's Statement of claim and/or that he will at the trial put the plaintiff to the strictest proof thereof. See Lewis and peat (N.R.I.) Ltd. v. Akhimien (1976) 7 S.C. 157, Nwadike v. Ibekwe (1987) 4 N.W.L.R. (Part 67) 718 at 741, Lawal Owosho v. Dada (1984) 7 S.C. 149 at 163. It therefore seems to me that having

regard to the state of the pleadings in this case and more particularly to the life issues for determination in the appeal, the Letters of Administration in issue is hardly of any relevance in this appeal and I must discountenance the respondent's arguments thereon as irrelevant and going to no issue in the appeal.

Having regard, however, to the powers conferred on this court pursuant to the provisions of section 22 of the Supreme Court Act, Cap. 424, Laws of the Federation of Nigeria 1990 and particularly to the overall interest of justice, this court directed the appellants' counsel to produce before it the original copy of the Letters of Administration of the Estate of the late Patrick Okereke Okoye granted to the 2nd and 3rd appellants in this case. Having also arrived at the conclusion that the central issue in controversy between the parties concerns the validity or otherwise of the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1972 in the light of the decisions in Peenok Investment Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. 1 and Abaye v. Ofili and Another (1986) 1 N.W.L.R (part 15) 134, this court, again in the interest of justice, directed that counsel for both parties should further address it fully on the question. This central issue not only cuts across issue 3 and 4 formulated in the appellants' brief but conclusively addresses the crucial question between the parties on this appeal.

Learned counsel for both parties accordingly filed their supplementary briefs of argument pursuant to the order of this court in respect of the said central issue.

On the 4th day of February, 1999, learned counsel for the appellants, as directed, produced before the court the original copy of the Letters of Administration of the estate of the late Patrick Okereke Okoye granted to the 2nd and 3rd appellants by the High Court of Rivers State. I need hardly add that there was nothing whatsoever on its face for which the said Letters of Administration may stand faulted.

Learned counsel for the appellants, Mr. V. O. Okoleh in his further address submitted that there is no conflict between the decisions in the peenok and Abaye cases. The later followed the former but laid down conditions for the applicability of the decision in the peenok case.

One of such conditions is that actions rightly taken under the said Edicts, before the decision in peenok's case declared the relevant Edicts null and void on the 3rd December, 1982, must be regarded as valid unless they are pronounced invalid in any proceedings in which the validity of the Edicts is directly in issue. He contended that the validity of Edicts Nos. 15 and 17 of 1972, the cancellation Notice No. 452 and the purported sale of the property in issue to the respondent are all directly in issue in the present case. Learned counsel therefore urged this court to allow this appeal, pronounce the purported cancellation of the appellants' Lease and the alleged sale of the property to the respondent invalid and to enter judgement for the appellants in terms of their claims. B C

Learned counsel for the respondent, Mr. C. V. Georgewill was unable to appear before the court at the resumed hearing of the appeal. In his supplementary brief of argument, however, he conceded that the Rivers State (Cancellation of Lease) Edicts Nos. 15 and 17 of 1972 faced full-scale test in this court in the peenok case. He argued that although at the conclusion of that battle, this court held that the Edicts were null and void, it firmly confined this nullity to all actions taken pursuant to those Edicts after the 3rd December, 1982 on which date judgment was delivered in the peenok case. He referred to the decision of this court in Abaye's case and submitted that all actions duly taken and rights acquired under those Edicts before the 3rd December, 1982 remained valid. He argued that in the present case, the respondent's interest in the property having been acquired before the decision in the peenok case, the acquisition remains valid by virtue of the decision in the Abaye case. He urged the court to dismiss this appeal. D E F

It is common ground that the Rivers State (cancellation of Lease) Edicts Nos. 15 and 17 of 1972 came into close scrutiny before a full panel of this court in Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. 1. At the conclusion of hearing, this court, in a unanimous decision on the 3rd day of December, 1982 held that the said Edicts were unconstitutional, null and void and of no effect as they were inconsistent with the mandatory provisions of section 31(2) (a) and 31(2) (b) of the constitution of the Federation of Nigeria, 1963. Consequently, this G H

court had no difficulty in declaring null and void the Cancellation. Notice made pursuant to the said Edicts by the Government of Rivers State with regard to the appellant's property in issue in that case. Delivering the judgement of the court, Irikefe, J.S.C., as he then was, after a through consideration of the issue concluded thus:-

"I would accordingly rule that Edicts No. 15 and 17 would the Cancellation Notice made in regard to the appellant's property, to wit: Rivers State Government Notice No. 412 of 26th day of September, 1973 are void, of no effect and unconstitutional as being inconsistent with the clear and mandatory provisions of section 31 of the Constitution of the Federation of Nigeria, 1963. There is undoubted power in this court to declare null void any Edict that conflicts with the provisions of the 1963 Federal Constitution.

See the decisions of this court in chief Ereku v. Governor Mid-Western State (1974) 10 S.C. pp 59-76 and Onyiuke vs. Esiala - (1974) 10 S.C. pp 77-90.

For the foregoing reasons, this appeal ought to succeed. The appeal is accordingly allowed and the judgement of the High Court of Anambra State holden at Enugu (Umezina, J.) dated 16th January, 1978 and the judgment of the Federal Court of Appeal, Enugu, dated 5th June, 1980 together with the orders made therein as to costs are hereby set aside. The plaintiff/appellant herein shall have judgment on its claim:

(a) for sum of N270,000 being arrears of rent from 24th March, 1972 to 23rd March, 1977 for nine flats at the rate of N6,000.00 per annum per flat.

(b) for mesne profits for the period 24th March, 1977 to the date of this judgement for nine flats at the rate of N6,000.00 per annum per flat.

The respondent shall pay the appellant costs assessed at N500.00 in the High Court, N300.00 in the Federal Court of Appeal and N300.00 in this court."

In endorsing the above view of Irikefe, J.S.C., Idigbe, J.S.C. contributed as follows:-

"There is no doubt whatsoever that such exercise as was carried

out in the said Edict No. 15 of 1972 and the amendment carried out in Edict No. 17 of 1972 are clearly in conflict with the provisions of subparagraphs (a) and (b) of sub-section (2) of section 31 of the 1963 Constitution of the Federation Act No. 20 of 1963 as modified by Decree No. (1) of 1966. In the event, both Edicts (i.e. Nos. 15 and 17 of 1972 and the Legal Notice No. 412 of 26th of September, 1972 based thereon) are unconstitutional and invalid, each being null and void".

Said Eso, J.S.C. in the same case:-

"Thought no bad faith should be imputed to a legislature, it is still my view that Edict 15 as amended by Edict 17 aforesaid, is invalid, and I will proceed to give my reasons.

Compulsory acquisition of the property in question or the cancellation of the appellant's lease as it was stated in the Edict was purported to have been made under s. 3(1) of the Cancellation of Leases Edict, 1972 as amended by Edict No. 17 of the same year. For the cancellation of the lease or any acquisition of the property to be valid, the Edict itself must be valid and not be inconsistent with the Constitution. The Constitution in operation at the time was the constitution of the Federation, 1963 No. 20. Section 31 of the Constitution provides:

"31(1) No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that -

(a) requires the payment of adequate compensation thereafter; and

(b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria.

(2) Nothing in this section shall affect the operation of any law in force on the thirty-first day of March, 1958, or any law made after that date that amends or replaces any such law and does not -

(b) add to the purpose for which or circumstances in which such property may be taken possession of or acquired;"

It follows therefore that Edicts 15 and 17 aforesaid have been rendered invalid by s. 31(2) of the Constitution of the Federation and a fortiori the "cancellation" or acquisition", as the case may be, of the appellant's lease is invalid".

B This court maintained its decision when a near similar issue arose for decision in the case of Abaye v. Ofili and Another (1986) 1 N.W.L.R. (part 15) 134. It was however the contention of learned counsel for the respondent that this court in the Abaye case held that all actions rightly taken or transactions concluded under those Edicts before the 3rd December, 1982, when the decision of this court in Peenok's case declared them void remained valid and enforceable. He therefore submitted that the respondent having purchased the property in issue on the 16th September, 1982 before the decision in Peenok's case could not be affected D by the subsequent declaration of the Edicts Nos. 15 and 17 as null and void.

With profound respect, I am unable to accept this submission of learned counsel for the respondent as well founded. In the Abaye case E relied on by the respondent, this court exhaustively dealt with the issues now under consideration. Said Uwais, J.S.C., as he then was, who delivered the leading judgment of court as follows:-

"I think it will be a dangerous precedent, capable of resulting in chaos, to hold that if a case is contested on the basis of the applicability F of a particular statute when the statute is operative, then, if at a later date the statute became repealed, the right acquired under it also becomes extinguished,. It is to avoid such absurdity and preserve the certainty and predictability of law that section 6 subsection (2) of the Interpretation Act, 1964 provides that when an enactment expires, lapses or ceases to have effect, the provisions of subsection (1) thereof should apply, as if the enactment remains operative. The provisions in paragraphs (b) (c) and (e) of the subsection read thus:

- H "6 - (1) The repeal of an enactment shell not
 (b) affect the previous operation of the enactment or anything duly done or suffered under the enactment;
 (c) affect any right, privilege, obligation, or liability accrued

under the enactment;.....

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the enactment had not been repealed."

It follows, therefore, that the appellant cannot rely on the decision in Peenok's case to contend that the grant of lease made to the 1st respondent by the Government of Rivers State is null and void since the State Lands (cancellation of Leases) Edict, 1972 was declared void in December, 1982. To my mind any action rightly taken under the Edict before the 3rd December, 1982, when the decision of this court in Peenok's case was given, remains valid at all time by virtue of the provisions of section 6 of the Interpretation Act, 1964; Unless, of course, it is specifically declared invalid by a competent court of law in any proceedings where the validity of the Edict is directly in issue as in the Peenok's case. (Underlining supplied for emphasis)

It therefore seems to me crystal clear that although any actions lawfully taken or rights acquired under the Rivers State Lands (cancellation of Lease) Edicts Nos. 15 and 17 of 1972 before the 3rd December, 1982 on which date the decision of this court in Peenok's case pronouncing the said Edicts as null and void was given are valid by virtue of the provisions of section 6 of the interpretation act, 1964, such actions or rights cannot remain valid where they are specifically challenged and declared invalid by a court of competent jurisdiction in any proceedings where the validity of the Edicts is directly in issue as in Peenok's case.

In the present case, as in Peenok's case, the validity of the Rivers State Lands (Cancellation of Lease) Edicts Nos. 15 and 17 of 1972 is directly in issue by virtue of the averment in paragraph 17 (iv) of the appellants' Statement of Claim and paragraphs 4 and 5 of the respondent's Statement of Defence. Furthermore, the validity of the alleged cancellation of the 1st appellant's lease pursuant to the said Edicts

Nos. 15 and 17 of 1972 and the purported subsequent sale of the property by the Rivers State Government to the respondent are similarly directly in issue in this case by virtue of paragraphs 17(i), 17(ii), 17(iii) and 19 of the Statement of Claim and paragraphs 4 and 5 of the respondent's Statement of Defence. **It is thus clear to me that this is a case where the validity of both the relevant Edicts and the alleged rights acquired under them are directly in issue. Such rights, in my judgment, are liable to be invalidated by a court of competent jurisdiction where they are found to be unconstitutional and null and void and it would not matter that they were purportedly acquired before the decision in Peenok's case. See Abaye v. Ofili and Another, supra. I think both courts below, with respect, were in error when they held that the purported cancellation of the 1st appellant's lease by the Rivers State Government, the alleged acquisition of the property in issue by the Rivers State Government and the purported subsequent sale of the property by the Rivers State Government to the respondent are all lawful and valid. It is my view, also, that both courts below were in definite error when they upheld the validity of the Rivers State Lands (Cancellation of Leases) Edicts Nos. 15 and 17 of 1992 which had been pronounced by this court to be unconstitutional, null and void and of no effect by virtue of their inconsistency with the mandatory provisions of section 31(2) (a) and 3(2) (b) of the constitution of the Federation of Nigeria, 1963. See Peenok Investments Ltd. v. Hotel Presidential Ltd., (supra). In my judgment, the said Edicts Nos. 15 and 17 of 1992 are unconstitutional, null and void and of no effect by virtue of the inconsistency above mentioned. Consequently all actions taken in the present case pursuant to the said Edicts are null and void and of no effect whatever. For the avoidance of doubt, these actions which include the purported cancellation of the 1st appellant's Lease, the alleged acquisition of the property in issue by the Rivers State Government and the subsequent "sale" thereof to the respondent by the said Rivers State Government are hereby declared null and void and of no effect whatsoever.**

In the final result, this appeal succeeds and it is hereby allowed. The judgment of the trial court in this case as affirmed by the Court of Appeal is hereby set aside and in substitution thereof, there shall be judgment for the appellants against the respondent as follows;-

(1) A declaration that the 1st plaintiff is the Lease of the Leasehold B property known as plot 153, Gborokiri Layout, Port Harcourt otherwise known as No. 22, Etche Street, Gborokiri (Borokiri) Port Harcourt.

(2) A declaration that the said Lease registered as No. 2 at page 2 in volume 297 in the Lands Registry at Enugu now at Port Harcourt is C still subsisting.

(3) A declaration that the purported sale or Transfer of the said plot 153, Gborokiri Layout, Port Harcourt to the Defendant by the Rivers State Government is null and void and of no effect whatsoever.

(4) A declaration that the purported cancellation of the Lease D granted to 1st plaintiff is null and void and of no effect whatsoever.

(5) That as the Administrators of the Estate of Late Patrick O. Okoye, the 2nd and 3rd plaintiffs are entitled to manage and superintend the property. E

(6) N1,000.00 general damages for trespass.

(7) A perpetual injunction restraining the Defendant, her servants or agents from any further acts of trespass on the said property.

There will be costs to the appellants against the respondent which F I assess and fix at N10,000.00.

UWAIS CJN

I have had the opportunity of reading in draft the Judgment read G by my learned brother Iguh, J.S.C. I entirely agree with him that this appeal has merit and that it should be allowed.

I only wish to point out our disappointment in the failure of the Attorney-General of Rivers State to honour the Court's invitation for him H to address us as amicus curiae on the validity of the State Lands (Cancellation of Leases) Edict No. 15 of 1972 and States Lands (Cancellation of Leases) (Amendment) Edict No. 17 of 1972 of Rivers State Vis-a-vis

the decisions of this Court in the cases of Peenok Investments Ltd. v. Hotel Presidential Ltd., (1982) 12 S.C. 1 and Abaye Ofili, (1986) 1 N.W.L.R. (Part 15) 134. It has always been a matter of privilege and honour for counsel to the invited by this court as amicus curiae.

B Finally, I too hereby allow the appeal and set aside the decisions of the High Court and the Court of Appeal. I adopt the consequential order contained in the judgment of my learned brother Iguh, J.S.C.

C **BELGORE JSC**

I read in advance the judgment of my learned brother, Iguh, JSC., and for the reasons fully set out therein, I also allow this appeal with the same consequential orders.

D **KUTIGI JSC**

I read in advance the judgment just rendered by my learned
E brother Iguh, J.S.C. He has exhaustively covered the issues canvassed before us in the appeal. I agree with his reasoning and conclusions.

I will therefore allow the appeal set aside the judgments of the lower courts and enter judgment for the plaintiffs/Appellants as claimed.
F I subscribe to the orders made in the said judgment.

OGWUEGBU JSC

I have had the privilege of a preview of the judgment of my
G learned brother Iguh, J.S.C. allowing this appeal. I agree with his reasoning and conclusions.

My learned brother Iguh, JSC, has exhaustively dealt with all the issues raised and I only wish to add my own views on the validity of the
H Rivers State Lands (Cancellation of Leases) Edict Nos. 15 and 7 of 1972 in relation to the cancellation of the lease hold property known as plot 153, Gborokiri Layout, Port Harcourt otherwise known as No. 22, Etche Street, Gborokiri (Borokiri) Port Harcourt and the purported sale of the

said property to the defendant by the Rivers State Government in 1982.

The facts of the case have been fully set out in the judgment of my learned brother Iguh, J.S.C. and no useful purpose will be served in recapitulating them here, except portions of them as are necessary for better understanding of the points being made in this judgment. B

At the trial, the plaintiffs' contentions were that :-

"(i) There has been no proper sale of the property to the defendant.

(ii) The property has not been acquired by the Government of the Rivers State. C

(iii) The purported cancellation of the Leased is null and void and of no effect and

(iv) Edict Nos. 15 and 17 of 1972 purporting to cancel the Lease are unconstitutional and of no effect." D

The case of the defendant was that the State Lands (Cancellation of Lease) Edict Nos. 15 and 17 of 1972 and the Notice No. 452 (Gazette 56 of 1/11/72) cancelling the lease granted to the 1st plaintiff duly put an end to the said lease and that the plaintiffs have no title to or interest over the property to ground the action or the reliefs claimed. E

The learned trial judge at the conclusion of the trial dismissed the plaintiffs' claims. He held that the cancellation of the building lease granted to Godwin I. Okeke by the Rivers State Government in 1982 was valid and the purchases of the said property by the defendant from the Rivers State Government was also valid. F

The plaintiffs who were dissatisfied with the judgment appealed to the Court of Appeal, Port Harcourt Division and lost hence the further appeal to this court. Briefs of argument were filed and issues (3) and (4) formulated in the plaintiffs' brief which centre on the invalidity of the Rivers State Edict Nos. 15 and 17 of 1972 are the main issues canvassed in favour of the plaintiffs. G

The appeal was argued on 12-10-98 and judgment was fixed for 8-1-99. In the light of the decisions of this court in the cases of Peenok Investments Ltd. v. Hotel Presidential Ltd. (1992) 12 S.C. 1 and Abaye v. Ofili & Or. (1986) 1 N.W.L.R. (pt. 15) 134, the court by letters invited H

both learned counsel to further address us. The Attorney-General and commissioner For Justice, Rivers State was also invited as amicus curiae. The appeal was adjourned to 4-2-99 for further addresses.

Both learned counsel filed supplementary briefs in response to the invitation by the court. At the resumed hearing on 4-2-99, only the plaintiffs' counsel was present. The respondent's counsel was absent but filed a supplementary brief which will be considered in this judgment in compliance with the rules of this court. The Attorney-General and Commissioner For Justice, Rivers State neither filed a brief nor attended the hearing in person or by a representative in response to the invitation by the court. Mr. Okoleh, learned plaintiffs' counsel adopted and relied on the plaintiffs' supplementary brief. On the validity of State lands (Cancellation of Leases) Edict Nos. 15 and 17 of 1972, it was submitted in the plaintiffs' supplementary brief that;

"In the PEENOK INVESTMENTS LTD. v. HOTEL PRESIDENTIAL LTD. (1982) 12 S.C. 1, particularly at pp 28-31, the full court of the Supreme Court unanimously decided that the Rivers State's "STATE LANDS (CANCELLATION OF LEASE) EDICT NO. 15 OF 1972 and the amendment carried out in EDICT NO. 17 OF 1972 were null and void, of no effect and unconstitutional as being inconsistent with the clear and mandatory provisions of S. 31 (2) (a) and (b) of the constitution of the Federation of Nigeria, 1963. Consequently, the court declared null and void the cancellation Notice made pursuant to the said EDICTS in respect of the appellant's property on the 25th day of September, 1973.

In the case of ABAYE v. OFILI (1986) 1 N.W.L.R. (PART 15) 134, where the original leases - L.E. EGU, did not contest the cancellation of his Lease, the Defendant/Appellant, at the Supreme Court and for the first time, relied on PEENOK'S case and contended that since Edicts Nos. 15 and 17 of 1972 had been declared void, the Rivers State Government had no property to convey to the plaintiff/1st Respondent in Exhibit "A" on 3rd January 1979.....

It is submitted that the peculiar circumstances of the ABAYE V. OFILI

case (*supra*) are absent in the present case. As in the PEENOK'S case, the validity of the Edicts are directly in issue. Furthermore, the validity of the Cancellation of the Lease pursuant to the Edicts (*supra*) and subsequent sale to the Respondent are the direct issues in this case."

We were urged to give effect to the decision of this court in PEENOK'S B case and set aside the purported cancellation of the plaintiffs lease and the subsequent sale of the property to the defendant.

On the validity of Edict Nos. 15 and 17 of 1972, the learned defendant's counsel Mr. Georgewill submitted as follows in the defendant's C supplementary brief:

"The Rivers State (Cancellation of Leases) Edict Nos. 15 and 17 of 1972 faced full scale test in court in the case of Peenok Investment Ltd. vs. Hotel Presidential Ltd. (1982) 12 S.C. 1. At the conclusion of that battle this Honourable Court held that the said Edicts were null and void as they were inconsistent with the provisions of section 31(2) (a) and (b) of the 1963 constitution of the Federation. This court maintained its position when the same arose for determination in the case of ABAYE VS. OFILI (1986) 1 N.W.L.R., Part 15, 134. However, the court E planted the nullity of those laws firmly on the date of the judgment in the PEENOK INVESTMENTS case when it held further that all actions duly taken and rights acquired under those laws before 3rd December, 1982 remained valid. See ABAYE VS OFILI *supra* 146, C-H..... F

It follows therefore that the respondent's interest having been acquired before the decision in PEENOK INVESTMENTS, the acquisition remains valid by force of the decision in ABAYE VS OFILI *supra*. So that as far as this case is concerned, the said Edict may innocuously be described as existing law since all acts done pursuant to their provisions were so done G before the date of the judgment in PEENOK. The rights and obligations created thereby before the date of judgment in PEENOK INVESTMENT case ought to be made to avail the Respondent"

In Peenok Investment Ltd. v. Hotel Presidential Ltd (*supra*) the H plaintiff who was the appellant in this court commenced an action against the defendant claiming arrears of rent for use and occupation of its premises in Port Harcourt. The defendant (Hotel Presidential Ltd) in its

defence claimed that the lease of the premises in question had been cancelled and that the ownership of the property had reverted to the Rivers State Government in accordance with the State lands (Cancellation of Leases) Edict Nos. 15 and 17 of 1972. In response to this defence, the plaintiff/appellant sought and obtained leave to raise the following matters by way of reply, that the purported cancellation of the lease was irregular, vindictive, mala fide and an abuse of power.

At the trial, the plaintiff relied solely on Edict Nos. 15 and 17 of 1972. The trial court dismissed the claim and the plaintiff's appeal to the Court of Appeal was also dismissed. The plaintiff further appealed to this court. This court after considering the evidence and the provisions of section 3(1) of Edict No. 15 of 1972, section 3(2) of Cap 105, sections 5 and 6 of the State Lands Law and section 31 of the 1963 constitution of the Federation of Nigeria, found as follows:

(1) That section 6 of the said Law imposed the obligation on the lessor that he has full power to grant the leases and that the lessee if he fulfils his own condition shall enjoy the premises without any interruption for as long as the law is in force;

(2) That there is no provision in the law for cancellation, and that section 22 which deals with RESUMPTION OF LAND FOR PUBLIC PURPOSE cannot be interpreted to cover a case of cancellation of lease which still has 84 years to run;

(3) That the law dealing with acquisition of land for public purpose relevant to the case is public Lands Acquisition Law of Eastern Nigeria (Cap 105) and that according to its tenor, deals with the acquisition of native or virgin land from a native community by government for a public purpose upon payment of compensation.

The court held that:-

"..... Edicts No. 15 and 17 and the cancellation Notice made in regard to the appellant's property, to wit: Rivers State Government Notice No. 412 of 26th September, 1973 are void, of no effect and unconstitutional as being inconsistent with the clear and mandatory provisions of section 31 of the constitution of the Federation of Nigeria, 1963."

The plaintiff's appeal was accordingly allowed.

The facts of the case of Abaye v. Ofili & Or. (supra) were that the land in dispute - plot 295 in Oromineke Layout in Port Harcourt, Rivers State was a state land administered under the State Law. It was originally conveyed to one Mr. L.E. Egu. The lease was cancelled by the Rivers State Government pursuant to the State Lands (Cancellation of Lease) Edict Nos. 15 and 17 1972.

On 3-1-79, the Rivers State Government conveyed the property to the plaintiff/1st respondent. The decision in the PEENOK'S case was given on 3-12-82. The defendant/appellant in Abaye's case was the occupant of the property in dispute having been allocated the house earlier as an employee of the Government. On 25-1-79, he was informed by the Rivers State Government of the change of ownership of the property and was advised to pay his rent to the plaintiff/1st respondent. He refused. The plaintiff instituted an action against him for a declaration of ownership of the land, an order for possession, injunction and damages for loss of use.

In the High Court, the defendant contended that the original lease to Mr. Egu was cancelled by the State Lands (Cancellation of Lease) Edict, 1972. Consequently, the property had been re-acquired by the Rivers State Government and that it could not be conveyed by lease to the plaintiff as this would be contrary to "public purpose" as provided in the State Lands Law. This contention was accepted by the High Court but rejected by the Court of Appeal. On a further appeal to this court, the defendant/appellant for the first time relied on Peenok's case and contended that since the State Lands (Cancellation of Lease) Edicts 1972 had been declared void, the Rivers State Government had no property to convey in Exhibit "A" - (the Deed of conveyance of the land to the plaintiff/1st respondent by the Rivers State Government).

Uwais, J.S.C. (as he then was) who delivered the judgment of the court held;

"Now it is true that this Court decided in Peenok's case (supra) at pp. 28-31 that the State Lands (Cancellation of Lease) Edict No. 15 of 1972 was null and void, because it was inconsistent with the provisions

of section 31 subsection (2) (a) and (b) of the 1963 constitution of the Federation, Act No. 20 of 1963. The question then is: can the appellant rely on that decision to defeat the claim of the 1st respondent? At this stage it needs to be pointed out that at the time this case was instituted in the High Court and up to the 2nd April, 1980 when the judgment of the High Court was given, the State Lands (Cancellation of Lease) Edict, 1972 had not been declared null and void. So that the point now being raised by the appellant was not available to him in the High Court. Also on the date the 1st respondent was granted lease of the property in dispute, which is 1st January, 1978, the Edict in question was operative. It was whilst the 1st respondent's appeal was pending in the Court of Appeal that our decision in *Peenok's* case was delivered. Through out the argument of the appeal before that court no reference was made to the decision and when the Court of Appeal came to give its judgment it did not advert to it. In the circumstances, has the decision any bearing on the present case?.....

I think it will be a dangerous precedent, capable of resulting in chaos, to hold that if a case is contested on the basis of the applicability of a particular statute, when the statute is operative, then, if at a later date the Statute became repealed, the right acquired under it also becomes extinguished. It is to avoid such absurdity and preserve the certainty and predictability of law that section 6 sub-section (2) of the Interpretation Act, 1964 provides that when an enactment expired, lapses or ceases to have effect, the provisions of subsection (1) thereof should apply, as if the enactment remains operative.....

It follows, therefore, that the appellant cannot rely on the decision in *Peenok's* case to contend that the grant of lease made to the 1st respondent by the Government of Rivers State is null and void since the State Lands (Cancellation of Leases) Edict, 1972 was declared void in December, 1982. To my mind any action rightly taken under the Edict before the 3rd December, 1982, when the decision of this court in *Peenok's* case was given remains valid at all time by virtue of the provisions of section 6 of the Interpretation Act, 1964, unless of course, it is specifi-

cally declared invalid by a competent court of law in any proceedings where the validity of the Edict is directly in issue as in the Peenok's case. In Kay v. Godwin (1830)6 Bing. 576 at p. 582; Tindal C.J. said:

"The effect of repealing a statute is to obliterate it completely from the records of the parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law."

See also the decision in *Hamilton Gell v. White*, (1922)2 K.B. 422 and *Free Lanka Insurance Co. Ltd. v. Ransasinghe*, (1964) A.C. 54 at pp. 550-553." (underlining is for emphasis).

It is clear that any action taken or right acquired before 3-12-82 when the decision in *peenok's case* was given remains valid by virtue of the provisions of section 6(1) of the Interpretation Act which read:

"6.(1) The repeal of an enactment shall not-.....

(b) after the previous operation of the enactment or anything duly done or suffered under the enactment;

(c) affect any right; privilege, obligation, or liability accrued or incurred under the enactment;

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the enactment had not been repealed."

The decision of this court in *peenok's case* and that in *Abaye v. Ofili & Or.* are not in conflict. The later followed the former but went further to add that the right acquired before the repeal remains valid unless it is specifically declared invalid by a competent court of law in any proceedings where the validity of the Edict is directly in issue as in *peenok's case*.

In the proceedings leading to this appeal, the validity of the Rivers State Edict Nos. 15 and 17, the cancellation of the plaintiffs' lease, the acquisition of the property and its purported sale by the Rivers State

Government were directly in issue. They were distinctly raised in the pleadings. There is no doubt therefore that the said Edicts and all actions taken or rights acquire thereunder in relation to the plaintiff's property including its purported sale to the defendant are liable to be declared
B invalid by a competent court of law as being inconsistent with the mandatory provisions of section 31 of the 1963 Constitution even though the defendant acquired his right before 3-12-82.

It is clear that the court below was in error when it upheld the
C decision of the trial court which held that the Edicts are still valid, the cancellation of the plaintiffs' lease valid and the subsequent sale of the property to the defendant as also valid.

I will therefore, for the above reasons and the fuller reasons given by my learned brother Iguh, J.S.C. allow the appeal and set aside
D the judgment of the court below. I abide by all the orders made by him in his judgment including the order as to costs.

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