

SUPREME COURT OF NIGERIA

7TH APRIL, 2000. SC.75/1994

**CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE, A. I.
IGUH, S. O. UWAIFO, E. O. AYOOLA, JJSC.**

CHIEF OMONIYI FAYEHUN & 8 ORS .. PLAINTIFFS/APPELLANTS
AND
CHIEF R.A. FADOJU & 74 ORS DEFENDANTS/RESPONDENTS

JUDGMENTS - Evidence - Findings of fact - Which are supported by credible evidence - Such findings are not perverse.

LAND LAW - Family land - Sale of a family land - By the head of the family - Without the concurrence of principal members of the family - Is not void but merely voidable.

LAND LAW - Family property - Sale by members of the family - Without the concurrence of the head of the family - Is void.

LAND LAW - Family land - Sale by authorized representatives of the family - Is valid.

FACTS

The plaintiffs/appellants claimed against the defendants/respondents for a declaration that the sales of the land in dispute to the 2nd set of defendants were null and void and of no effect, an order to set them aside and perpetual injunction to restrain the 2nd set of defendants their servants and/or agents from committing any further acts of trespass on the land. The Plaintiffs and the 1st set of defendants, that is, 1st to 4th defendants are all members of the Ojomu Otenioro family of Akure. The land in dispute is admitted by all parties to belong to the said family. The land was laid out in plots by the family and a number of plots were sold to the 2nd set of defendants, that is, the 5th to the 75th defendants. The plaintiffs who claimed to be principal members of the family alleged that the plots

sold to the 2nd set of defendants were sold without their knowledge and consent. They averred that the 1st defendant was not the head of the family but, like the 3rd and 4th defendants, only a principal member of the family. They further stated that the 2nd defendant was not a principal member of the family being the son of the 2nd plaintiff. The defendants' case was that the 1st defendant was the head of the family and that the 2nd defendant was the secretary to the family at all times relevant to this action. The 1st to 4th defendants claimed that they were principal members of the family and that the family at a meeting held in the house of the 1st defendant at Ojomu Chieftaincy house appointed the four of them as representatives of the family with full powers to dispose of the family land and to execute all conveyances, leases, receipts, mortgages and other documents required to be signed by the said family in respect of the family land.

The four defendants admitted that they made sales of portions of the land to the 2nd set of defendants and that they rendered account of all monies received and spent to the entire family at various meetings and that the family applied the proceeds to projects approved by the family. At the conclusion of the trial, the learned trial judge in a reserved judgment found plaintiffs' claims not proved and dismissed them. The plaintiffs were dissatisfied and appealed to the Court of Appeal. The Court of Appeal dismissed the appeal. The plaintiffs have further appealed to the Supreme Court raising four issues but the appeal was determine on the first issue

ISSUE FOR DETERMINATION

"1. Whether in the absence of legal and credible evidence in proof of the requirements by law for a valid disposition of family land under the Yoruba Customary Law, the Court of Appeal can still proceed to confirm the judgment of the lower court which declared as valid the sales made by the 1st - 4th respondents to the 5th - 75th respondents in violation of such principles of law.

HELD (Unanimously dismissing the appeal per lead reasons for judgment of **OGUNDARE JSC**)

Family land - Sale of family land

1. It is well settled that a sale of family land by the head of family is only voidable where it is made without the concurrence of principal members of the family. Such a sale is not void but merely voidable. But where family property is sold by members of the family without the concurrence of the head of the family such a sale is void. See Ekpendu v. Erika (1959) 4 FSC 79. In view of the admission in this Court by Mr. Bello that the 1st defendant is the head of Ojomu Otenioro family the declaration sought in plaintiff's 1st claim could not have succeeded and, in my respectful view, was rightly dismissed. (p. 797 A)

Family land - Sale by authorized representatives

2. The sales by the 1st to the 4th defendants to the 5th to the 75th defendants were made on the authority given them by the family. These sales were clearly valid as rightly found by the learned trial Judge and rightly affirmed by the Court of Appeal. (p. 797 E)

Judgments - Evidence

3. All the findings made by the learned trial Judge and affirmed by the Court below are adequately supported by the credible evidence accepted by the learned trial Judge who saw and heard the witnesses and was in a better position to ascribe credibility to them. There is nothing that has been urged either in the Brief of the plaintiffs or in the oral arguments of Mr. Bello to convince me that those findings were perverse. (p. 797 F)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. Dispute on the proceeds of sales of family land

If the plaintiffs have a dispute with the 1st defendant on the proceeds of sales of the family land the dispute lies in some other forum and not in the action they embarked upon in these proceedings. (p. 798 A)

KARIBI-WHYTE JSC*2. Conditions for the validity of alienation of family land*

It is now well settled that the Chief and head of the family is the person to make alienations of communal land. Any alienation made without him as a party is void. - See Agbloee v. Sappor (1947)12 WACA. 187 (Ghana) applied in Ekipendu v. Erika (1959)4 FSC. 79. Since the land is communal land, and not owned by the Chief as an individual, the Chief holds it in trust and can only make valid transactions on behalf of the community and not beneficially for himself. The law is that any transaction by the Chief or head of the family purporting to alienate family land in his own beneficial interest is void. However, any transaction by the Chief alone purporting to alienate family land for the purposes and in the interest of the family is not void, but *prima facie* voidable at the instance of the principal members of the family. See Akerele v. Atunrase (1969) 1 All NLR. 201. The transaction can be set aside if action is brought timeously. - See Okonkwo v. Okonkwo (1998)10 NWLR. 554. The law is well settled and has been very clearly stated in the recent judgment of this Court of Odukwe v. Oguniyi (1998)8 NWLR p. 339 at p. 351. A sale of family land by a member of the family without the consent of the Chief or head of the family and the principal members of the family is void *ab initio*. - See Ekipendu v. Erika (1959)4 FSC. 79. It is essential to the validity of sale of family land, that the Chief or head of family must join in the conveyance and the principal members of the family must consent to the transaction. - See Agbloee v. Sappor (supra). Such a combination of parties to the conveyance of family land by the Chief or head of the family and the principal members of the family is in my opinion unimpeachable. (p. 802 E)

UWAIFO JSC*3. All the principal members of a family do not have to consent to the sale of family land*

It is not however a requirement that all the principal members will have to give their consent. It is enough if a majority of the accredited representatives or principal members of the family authorise the sales: see Lukan v. Ogunsusi (supra) at page 319. (p. 807 F)

REPRESENTATION

M. O. Bello, Esq. for Appellants.

I. O. Akeju Esq. for the 1st - 4th Respondents.

A. O. Ajayi Esq. for 5th - 75th Respondents.

B

CASES REFERRED TO

Ekpendu v. Erika (1959) 4 FSC 79;

City Property Development Ltd. v. Attorney-General of Lagos State (1976) 1 SC. 71; C

Akeju v. Suenu (1935) 6 NLR. 87 at p.90,

Oloto v. Dawuda (1904) 1 NLR. 57,

Lewis v. Bankole (1909) 1 NLR. 82 at p.104,

Att-Gen. v. John Holt (1910-15) 2 NLR. 1 at p.3 D

Okiji v. Adejobi (1960) 5 FSC.

Kadiri Balogun v. Anamu Balogun 9 WACA. 78.

Jegede v. Eyinogun (1959) 4 FSC. 270

Akinola v. Oluwo (1962) 1 All NLR. 224, E

Aro v. Jaja (1925) 6 NLR. 24.

Agarin v. Olushi (1907) 1 NLR.

Oshodi v. Balogun (1936) 2 All ER.

Agbloee v. Sappor (1947) 12 WACA.

F

Ekpendu v. Erika (1959) 4 FSC. 79.

Akerele v. Atunrase (1969) 1 All NLR. 201,

Manko v. Bonso (1936) 3 WACA. 62

Okonkwo v. Okonkwo (1998) 10 NWLR. 554.

G

LEAD REASONS FOR JUDGMENT BY OGUNDARE JSC

This appeal came before us for oral hearing on 10th January, 2000. After hearing learned counsel for the Appellants we found it unnecessary to call on the counsel for the Respondents to reply. We dismissed the appeal and affirmed the judgment of the Court below with N10,000.00 costs to each of the two sets of Respondents. We indicated

then that we would give our reasons for the judgment today. Here are my reasons for dismissing the appeal.

The Plaintiffs and the first set of Defendants, that is, 1st to 4th Defendants are all members of the Ojomu Otenioro family of Akure. B The land in dispute is admitted by all parties to belong to the said family. The land was laid out into plots by the family and a number of plots were sold to the 2nd set of Defendants, that is, the 5th to the 75th Defendants. C The Plaintiffs who claimed to be principal members of the Ojomu Otenioro family alleged that the plots sold to the 2nd set of defendants were sold without their knowledge and consent. They averred that the 1st defendant Chief R. A. Fadoju was not the Head of the family but, like 3rd and 4th defendants, only a principal member of the family. They further averred that the 2nd defendant was not a principal member of the family being the D son of the 2nd plaintiff. They therefore, claimed:

- (1) a declaration that the sales to the 2nd set of defendants were null and void and of no effect;
- (2) an order or declaration setting aside such sales and
- E (3) an injunction restraining the 2nd set of defendants, their agents, etc. from committing. Further acts of trespass on the land.

The case for the defence was to the effect that the 1st defendant was the head of the Ojomu Otenioro family the owner of the land in dispute and that the 2nd defendant Timothy Ajayi was the Secretary to the F family at all times relevant to this action. The defendants particularly the 1st to the 4th defendants claimed that they were principal members of the family and that the family at a meeting held in the house of the 1st defendant at Ojomu chieftaincy house appointed the four of them as representatives of the family with full powers to dispose of the family land and to G execute all conveyances, leases, receipts, mortgages and all other documents required to be signed by the said family in respect of the family land. The four defendants admitted that they made sales of portions of the H land to the 2nd set of defendants and that they rendered account of all monies received and spent to the entire family at various meetings and that the family applied the proceeds to projects approved by the family.

I must pause here to mention that originally the action was against

38 defendants, 34 of whom, that is, 5th to 38th defendants were purchasers of various plots of the land. In the course of the proceedings, the 39th to 75th defendants by order of the trial court were joined as co-defendants necessitating the 5th to the 75th defendants filing a joint statement of defence. B

At the trial, evidence was led both for the plaintiffs and the defence and learned counsel for the parties addressed the Court. The learned trial Judge in a reserved judgment found:

"(1) that the 1st defendants the Chief Ojomu is the head of Ojomu Otenioro family and he has been so since 1964 when he was installed Chief Ojomu; C

(2) that the 2nd defendant was appointed the Secretary of the family by the principal members of the family including the plaintiffs;

(3) that the 3rd and 4th defendants are principal members of the family; D

(4) that members of the family including all the plaintiffs appointed the 1st to the 4th defendants as representatives of the family to deal with family land for and on behalf of the family. E

(5) Since the 1st - 4th defendants were validly appointed as the representatives of the family to deal with the family estate for and on behalf of the family and have not been removed from office, it stands to reason that any sale of family land carried out by them and any conveyances executed by them in favour of purchasers are valid. F

(6) that all the grants were made, as shown by the deeds of conveyance and certificates of occupancy, after the 1st - 4th defendants had been appointed by the family members as representatives of the family invested with the power to make grants of land to purchasers; G

(7) that the 5th to the 75th defendants acquired their plots of land lawfully and are not trespassers.

It is upon these findings that the learned trial Judge found plaintiffs' claims not proved and dismissed them. H

The Plaintiffs were dissatisfied with the judgment of the High Court and appealed to the Court of Appeal. The Court of Appeal after taking arguments dismissed the appeal. The plaintiffs have now with leave

of the court below, further appealed to this Court. The parties filed and exchanged their respective Briefs of arguments. The plaintiffs who are now appellants formulated four issues as calling for determination in this appeal to wit:

B "1. Whether in the absence of legal and credible evidence in
proof of the requirements by law for a valid disposition of family land
under the Yoruba Customary Law, the Court of Appeal can still proceed
to confirm the judgment of the lower court which declared as valid the
C sales made by the 1st - 4th respondents to the 5th - 75th respondents in
violation of such principles of law.

2. Whether upon the failure of the 1st - 4th respondents to prove
their capacity Authority to represent or power of attorney to act on be-
half of the family in the disposition of the family land, the Court of Ap-
D peal is right to hold that the sales so made cannot be set aside.

3. Whether a period of 2 years (1977-1978) of wrongful dispo-
sition of family land can be held in law as considerable length of time to
invest the 1st - 4th respondents with authority to sell and so validate the
E sales.

4. Whether the mere purport by the 1st - 4th respondents to act
on behalf of the family in the sale of family land confers validity on such
transaction and whether the defence of leaches and acquiescence can
F avail the 5th - 75th respondents in this case."

All the above issues merely impugn findings of fact made by the trial court and affirmed by the Court of Appeal.

At the oral hearing of the appeal before us, Mr. M.O. Bello a legal
G practitioner and himself a party, that is, 5th plaintiff/appellant, addressed
the court as counsel for all the plaintiffs/appellants. In the course of his
address, learned counsel conceded it that the 1st defendant is the head of
the family. It was pointed out to learned counsel by the Court that in the
light of this concession, the 1st claim of the plaintiffs for a declaration that
H the sales to the 2nd set of defendants be declared null and void could not be
sustained. Learned counsel conceded the point but still urged the Court to
allow the appeal, set aside the judgments of the courts below and enter
judgment for the plaintiffs on their claims.

No doubt the plaintiffs have a very herculean task in this Court. Their appeal is against the concurrent findings of fact of the two courts below. **It is well settled that a sale of family land by the head of family is only voidable where it is made without the concurrence of principal members of the family. Such a sale is not void but merely voidable. But where family property is sold by members of the family without the concurrence of the head of the family such a sale is void. See Ekipendu v. Erika (1959) 4 FSC 79; City Property Development Ltd. v. Attorney-General of Lagos State (1976) 1 SC. 71; 100-101; Solomon v. Mogaji (1982) 11 SC 1, 7-10 per Bello, JSC (as he then was), 59-60 per Eso JSC and 69, per Nnamani JSC; Lukan v. Ogunsusi (1972) 5 SC 40 at p.46-48. In view of the admission in this Court by Mr. Bello that the 1st defendant is the head of Ojomu Otenioro family the declaration sought in plaintiff's 1st claim could not have succeeded and, in my respectful view, was rightly dismissed.**

In the light of the vital findings of fact made by the learned trial Judge - which I have highlighted above - and which findings of fact were affirmed by the court below, I cannot see how the plaintiffs can succeed on the 2nd and 3rd legs of their claims. **The sales by the 1st to the 4th defendants to the 5th to the 75th defendants were made on the authority given them by the family. These sales were clearly valid as rightly found by the learned trial Judge and rightly affirmed by the Court of Appeal. All the findings made by the learned trial Judge and affirmed by the Court below are adequately supported by the credible evidence accepted by the learned trial Judge who saw and heard the witnesses and was in a better position to ascribe credibility to them. There is nothing that has been urged either in the Brief of the plaintiffs or in the oral arguments of Mr. Bello to convince me that those findings were perverse.**

The learned trial Judge observed:

"The plaintiffs should look for their remedies, if any against the 1st - 4th defendants. The interest of the 5th to 75th defendants are in no way affected by such internal quarrel on proceeds of sale of the family land."

This observation is well taken. If the plaintiffs have a dispute with the 1st defendant on the proceeds of sales of the family land the dispute lies in some other forum and not in the action they embarked upon in these proceedings.

B This appeal is completely bereft of any merit and I had no hesitation whatsoever in dismissing it on 10th January, 2000.

KARIBI-WHYTE JSC

C After hearing learned Counsel for the Appellants, it was felt unnecessary to call upon the Respondents for their reply. I dismissed the appeal and affirmed the judgment of the court below. Costs to each set of Respondents assessed at N10,000.00 were awarded. The Court indicated D that reasons for judgment will be given today. I hereby set out my reasons for dismissing the appeal.

The claim of the Plaintiffs against the Defendants is for -

- (1) a declaration that the sales to the 2nd set of defendants were E null and void and of no effect
- (2) an order or declaration setting aside such sales and
- (3) an injunction restraining the 2nd set of defendants, their agents, etc. from committing further acts of trespass on the land.

F There are two sets of Defendants. The 1st - 4th are the 1st set of Defendants. The 5th to 75th are the 2nd set of the Defendants who sought to be joined subsequently.

The Facts

G The facts are that plaintiffs and the first set of Defendants are all members of the Ojomu Otenioro family of Akure. The land in dispute as admitted on all sides is family land which was laid out into plots by the family and a number of the plots were sold to the second set of Defendants. Plaintiffs' claim to be the principal members of the Ojomu Otenioro fam- H ily. They claim that the plots sold to the second set of Defendants were without their knowledge and consent. They allege that the 1st Defendant, Chief R. A. Fadoju was not the head of the family, but only a principal member of the family like the 3rd and 4th Defendants. They also aver that

the 2nd Defendant was not a principal member of the family being the son of the 2nd plaintiff.

The Defendants' case is to the effect that the 1st Defendant is the head of the Ojomu Otenioro family, the owner of the land in dispute and that Timothy Ajayi was the Secretary of the family at all times relevant to this action. The Defendants, particularly the 1st to 4th Defendants, claim to be the principal members of the family and that the family at a meeting held in the House of the 1st Defendant at Ojomu Chieftaincy House appointed the four of them as representatives of the family with full powers to dispose of the family land and to execute all conveyances, leases, receipts, mortgages and all other documents required to execute in respect of the land of the family. The first set of Defendants admit making sales of portions of family land to the 2nd set Defendants. They had rendered account of all monies received and spent to the family at various family meetings and that the family had applied the proceeds to approved family projects.

It is necessary to explain that the action was originally against the first 38 Defendants. The remaining 39 to 75 Defendants applied to be joined as co-defendants, and filed a joint statement of Defence with the 5th to 75th.

Findings of the learned trial Judge

After evidence on the part of the parties, and addresses by Counsel, the learned trial Judge in a well considered judgment found that the claims of the Plaintiff were not proved. He found as follows -

"(1) That the 1st defendant as the Chief Ojomu is the head of the Ojomu Otenioro family and he has been so since 1964 when he was installed Chief Ojomu.

(2) That the 2nd Defendant was appointed the Secretary of the family by the principal members of the family including the Plaintiffs.

(3) That the 3rd and 4th Defendants are principal members of the family;

(4) That members of the family including all the plaintiffs appointed the 1st to the 4th Defendants as representatives of the family to deal with family land for and on behalf of the family.

(5) *Since the 1st - 4th defendants were validly appointed as the representatives of the family to deal with the family estate for and on behalf of the family and have not been removed from office, it stands to reason that any sale of family land carried out by them and conveyances executed by them in favour of purchasers are valid.*

(6) *That all the grants were made, as shown by the deeds of conveyance and certificate of occupancy after the 1st - 4th defendants had been appointed by the family members as representatives of the family invested with the power to make grants of land to purchasers.*

(7) *That the 5th to the 75th Defendants acquired their plots of land lawfully and are not trespassers."*

Plaintiffs not satisfied with the judgment of the learned trial Judge appealed against it to the Court of Appeal. The Court of Appeal dismissed the appeal. The case before us is a further appeal to this Court by Plaintiffs with leave of the Court below.

Issues for Determination

The briefs of arguments on behalf of Appellants and Respondents were filed and exchanged. Appellants had formulated the following issues for determination in this appeal -

"1. *Whether in the absence of legal and credible evidence in proof of the requirements by law for a valid disposition of family land under the Yoruba customary law, the Court of Appeal can still proceed to confirm the judgment of the lower court which declared as valid the sales made by the 1st - 4th respondents to the 5th - 75th respondents in violation of such principles of law.*

2. *Whether upon the failure of the 1st - 4th respondents to prove their capacity Authority to represent or power of attorney to act on behalf of the family in the disposition of the family land, the Court of Appeal is right to hold that the sales so made cannot be set aside.*

3. *Whether a period of 2 years (1977-1978) of wrongful disposition of family land can be held in law as a considerable length of time to invest the 1st - 4th Respondents with authority to sell and so validate the sales.*

4. *Whether the mere purport by the 1st - 4th respondents to act*

on behalf of the family in the sale of family land confers validity on such transaction and whether the defence of laches and acquiescence can avail the 5th - 75th respondents in this case."

It seems to me that the crux and overriding consideration of the issues so formulated is to render the sale of the land by 1st - 4th Defendants to 5th - 75th Defendants void, on the ground of absence of capacity or authority to make sales.

It is important and pertinent to advert to the findings of the learned trial Judge, accepted by the court below that the 1st defendant, as Chief Ojomu was the head of the Ojomu - Otenioro family having been so since 1964. The family own the lands in dispute. It was his finding also that the 2nd Defendant was appointed Secretary of the family by the principal members of the family which includes the Plaintiffs. The 1st to 4th Defendants are principal members of the family and were appointed as representatives of the family to deal with family land for and on behalf of the family.

During argument before us learned Counsel to the Appellants conceded, following the finding that the 1st Defendant is the head of the Ojomu Otenioro family. Accordingly, the court pointed out to learned counsel that the claim of Appellants for a declaration that the sales to the 2nd set of defendants be declared null and void was not sustainable. Nevertheless learned Counsel still urged the court to allow the appeal, set aside the judgment of the court below and enter judgment for plaintiffs.

Consideration of the Appeal

The findings of the learned trial Judge which were accepted by the Court of Appeal have made the resolution of the issues for determination relatively simple. It is obvious from the issues formulated that the case of the parties is based and inextricably tied to the validity of the sale of the land in dispute made by the 1st - 4th Defendants, and the determination of the issue as to who was the head of the Ojomu - Otenioro family the owners of the land at the relevant period. After several decades of vacillation and indecision with the concept of the absolute inalienability of communal or family land - See Akeju v. Suenu (1935) 6 NLR. 87 at p.90, Oloto v. Dawuda (1904) 1 NLR. 57, Lewis v. Bankole (1909) 1 NLR. 82

at p.104, Att-Gen. v. John Holt (1910-15) 2 NLR. 1 at p.3 Okiji v. Adejobi (1960) 5 FSC. 44 and other cases, the Courts subsequently accepted the view that communal land after partition was alienable. - See Kadiri Balogun v. Anamu Balogun 9 WACA. 78. This new concept of alienation which is
 B a departure from the immanent beliefs in respect of land holding was strictly watched and regulated by conditions to ensure compliance with the accepted inherent and mythical values of land holding. The rationale in all the cases is that no one had the capacity to alienate land except the absolute owner. This has been recognised in Jegede v. Eyinogun (1959)
 C 4 FSC. 270 Akinola v. Oluwo (1962) 1 All NLR. 224, Aro v. Jaja (1925)6 NLR. 24. Alienation of land by gift was known. Not sale. Sale of land had to come later. In Agarin v. Olushi (1907)1 NLR. 67 outright sale of land was allowed.

D With the advent of intense commercial activities and the need for land for the purpose, the old situation of inalienability yielded to the new situation of alienability to facilitate the prevailing commercial activities. In Oshodi v. Balogun (1936) 2 All ER. 1632 (1936)4 WACA. 1, the Privy
 E Council referred to the custom which had developed of permitting the alienation of family land with the general consent of the family.

It is now well settled that the Chief and head of the family is the person to make alienations of communal land. Any alienation made without him as a party is void. - See Agbloee v. Sappor (1947)12 WACA. 187
 F (Ghana) applied in Ekpendu v. Erika (1959)4 FSC. 79. Since the land is communal land, and not owned by the Chief as an individual, the Chief holds it in trust and can only make valid transactions on behalf of the community and not beneficially for himself. The law is that any transaction
 G by the Chief or head of the family purporting to alienate family land in his own beneficial interest is void. However, any transaction by the Chief alone purporting to alienate family land for the purposes and in the interest of the family is not void, but prima facie voidable at the instance of the
 H principal members of the family. See Akerele v. Atunrase (1969) 1 All NLR. 201, Manko v. Bonso (1936)3 WACA. 62 Esan v. Faro (1947)12 WACA.135. The transaction can be set aside if action is brought timeously. - See Okonkwo v. Okonkwo (1998)10 NWLR. 554. The law is well settled

and has been very clearly stated in the recent judgment of this Court of Odukwe v. Oguniyi (1998)8 NWLR p. 339 at p. 351. A sale of family land by a member of the family without the consent of the Chief or head of the family and the principal members of the family is void ab initio. - See Ekipendu v. Erika (1959)4 FSC. 79. It is essential to the validity of sale of family land, that the Chief or head of family must join in the conveyance and the principal members of the family must consent to the transaction. - See Agbloee v. Sappor (supra). Such a combination of parties to the conveyance of family land by the Chief or head of the family and the principal members of the family is in my opinion unimpeachable.

In view of the concurrent findings in this case that the 1st Defendant is the head of the Ojomu Otenioro family, owners of the land in dispute, the 2nd Defendant is the Secretary appointed by the family in a family meeting including the Plaintiffs, the 1st to 4th Defendant are principal members of the family and were appointed as representatives of the family to deal with family land for and on behalf of the family, it is difficult for Appellants to succeed on the 2nd and 3rd legs of their claim.

The 1st to 4th Defendants/Respondents had the authority of the family to make the sale of family land to the 5th - 75th Defendants/Respondents. These sales are valid as rightly found by the trial judge and affirmed by the Court of Appeal. All the findings made by the learned Judge and affirmed by the Court of Appeal are adequately supported by evidence accepted by the trial Judge who saw and heard the witnesses and was in the most advantageous situation to assess their veracity and credibility. I have found no basis for interfering with the findings which cannot be described as perverse.

This appeal is completely lacking in merit. I dismissed the appeal on January 10, 2000 for the reasons above stated.

IGUH JSC

On the 10th January, 2000, I dismissed this appeal and then indicated that I would give my reasons for so doing today.

I have since had the advantage of reading in draft the reasons for judgment just delivered by my learned brother, Ogundare, J.S.C. and I agree entirely with the reasoning and conclusions therein reached.

It is admitted by both parties that the land in dispute belongs to the Ojomu Otenioro family in Akure to which the plaintiffs and the 1st to 4th defendants belong. A number of plots in the said land were sold by the 1st - 4th defendants, hereinafter called the 1st set of defendants, to the 5th - 75th defendants, hereinafter referred to as the 2nd set of defendants.

It is these sales that are now the subject matter of this action.

The plaintiffs had claimed a declaration that the said sales were null and void and of no effect, an order to set them aside and perpetual injunction to restrain the 2nd set of defendants, their servants and/or agents from committing any further acts of trespass on the land. Their contention was that the 1st defendant was not the head of their family, that the 2nd defendant was not principal member of the family and that the 1st set of defendants, acting in concert, wrongfully sold portions of their family land in dispute without the knowledge, authority and/or consent of members of their family.

The principles of law governing sales of family property are well settled. In the first place the head of a family must join in a disposition of family land and the principal members of that family must also concur in such a sale and a disposition purporting to transfer family land without these essential customary elements will be void ab initio. See Agbloee 11 and others v. Sappor and Another (1947) 12 W.A.C.A. 187.

In the second place, transactions carried out by members of a family in respect of family land without the concurrence of the head of the family are also null and void ab initio. The position is different where the head of family alone sells family land without the consent of the principal members of the family. In the latter case the transaction is not void ab initio but prima facie voidable and the family can set aside such a sale if the other members act timeously. See Ekipendu v. Erika (1959) 4 F.S.C. 79 at 81 and Manko v. Bonso 3 W.A.C.A. 62. But this principle of law is only applicable, however, where such a head of family alienates the land or

makes a disposition thereof for and on behalf of the family and not where he purports to sell the property as the beneficial owner thereof. In the latter case, the maxim nemo dat quod non habet will apply, and the disposition will be void ab initio. See Akerele v. Atunrase (1969) 1 All N.L.R. 201 at 208.

In the case on hand, the findings of the trial court as affirmed by the Court of Appeal are:-

(i) That the 1st defendant is the head of the Ojomu Otenioro family and had been so since 1964 when he was installed Chief Ojomu.

(ii) That both the plaintiffs as well as the 1st set of defendants are all principal members of the Ojomu Otenioro family in Akure who are the owners of the land dispute.

(iii) That the 2nd defendant was appointed the Secretary of the Ojomu Otenioro family by the principal members of the family, including the plaintiffs.

(iv) That the 1st set of defendants were fully appointed by the principal members of the family to represent the family in the sale and alienation of the plots of land on the family estate in dispute for and on behalf of the family.

In these circumstances and applying the aforementioned principles of law governing dealings in family land, it is abundantly clear that the sales of the plots of land in issue by the 1st set of defendants who at all material times were than accredited agents, representatives, attorneys and, in their own rights, principal members of the Ojomu Otenioro family and included the head of the family could under no stretch of the imagination be regarded as either null and void or voidable. The sales, in my opinion, were absolutely valid in all respects and I cannot see my way clear to fault them.

It is for the above and the more detailed reasons contained in the leading "Reasons for Judgment" of my learned brother, Ogundare, J.S.C. that I dismissed the appeal with N10,000.00 costs to the respondents.

UWAIFO JSC

This appeal was dismissed by me on 10 January, 2000 as being without merit after studying the briefs of arguments of both parties and
 B hearing counsel for the appellants in oral argument. The court found on necessity to call on respondents' counsel for any oral argument. I awarded N10,000.00 costs against the appellants in favour of each set of respondents and said I would give my reasons for the judgment today. I now give
 C my reasons.

I read in advance the reasons for the judgment by my learned brother Ogundare JSC. I am in agreement with him. I do not need to state the facts of this case in any detail. The relevant facts have been fully narrated by Ogundare JSC. I shall merely recall that the plaintiffs/appel-
 D lants pleaded that the 1st, 3rd and 4th defendants/respondents were principal members of the Ojomu Otenioro family. This is contained in para. 4 of the statement of claim. It is not in dispute that the land in question in this case is owned by the said Ojomu Otenioro family. There was an
 E issue as to who was the head of that family. The plaintiffs/appellants contended that the 1st respondent thought a principal member was not the head. The 1st - 4th defendants/respondents argued to the contrary.

The learned trial judge however came to the conclusion upon the
 F evidence before him that at all material times the 1st respondent was the head of the family and that the 3rd and 4th respondents were principal members. Before us, learned counsel for the appellants conceded that the 1st respondent was the head of the family. In actual fact the findings of the
 G learned trial judge as to the status of the 1st, 3rd and 4th respondents in the family were not directly challenged on appeal at the Court of Appeal. Therefore, the true position from the findings (and concession by appellants' counsel) was that the 1st respondent as head of the family and the 3rd and 4th respondents as principal members of the family (the 2nd re-
 H spondent, a member of the family acting as their Secretary) sold portions of family land to various persons including the 5th - 75th respondents. The appellants argued before us that they were not consulted as principal members of the family before the sales were made.

But the learned trial judge found as a fact that the 2nd respondent was appointed the Secretary to the family by the "principal members of the family including the plaintiffs." This was confirmed by the lower court. It follows that the sales carried out by the 1st - 4th respondents strictly in accordance with Yoruba Custom in regard to family land, namely sale of family land by the head of the family and (or with the concurrence of) the principal members, were valid. In Secretary, Lagos Town Council v. Nurudin Badaru Sule 15 N.L.R. 72, on the death of Chief Aromire, Yesufu Aromire was appointed by the family to act as head of the family. With the knowledge of the family he sold family land. The sale was held valid. This case was referred to in Lukan v. Ogunsusi (1972) NSCC (vol. 7) 316 where Lewis JSC, in reference to Yesufu Aromire and the sale, said at pages 318-319:

"Surely, he was the head of the family and sale of family land made by him at the time were (sic) with the knowledge and consent of the family. There can be no doubt that a proper transfer of family land was made by him as representative and agent of the family."

It was held in Adewuyi v. Ishola (1958) W.R.N.L.R. 110 and approved in Solomon v. Mogaji (1982) NSCC (Vol.13) 400 at 405 per Eso JSC that a majority of the accredited representatives or principal members of the family have to join the head of family in order to save a sale by him alone being made voidable. So it is settled law that sale of family property by the head of the family alone without the consent of the principal members is voidable: see Bello Adedibu v. Makanjuola 10 WACA 33. It is not however a requirement that all the principal members will have to give their consent. It is enough if a majority of the accredited representatives or principal members of the family authorise the sales: see Lukan v. Ogunsusi (supra) at page 319. When the principal members sell family land without the concurrence of the head of the family, the sale is void ab initio: See Esan v. Faro 12 WACA 135; Agloe v. Sappor 12 WACA 187; Ekpendu v. Erika (1959) 4 FSC 79 (1959) SCNLR 186.

It follows that the appellants' claim in which they sought to have the sales of family property in this case declared null and void and of no effect could not succeed upon the facts which are that the sales were by the

head and the duly accredited principal members of the family. The lower court was therefore right to have affirmed the decision of the learned trial judge which dismissed claim. It was for these reasons I dismissed this appeal on 10 January, 2000.

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AYOOLA JSC

C I have had the privilege of reading in draft the reasons for judgment delivered by my learned brother, Ogundare, JSC. I am in entire agreement with the reasons he gives for dismissing the appeal. There is nothing I can usefully add to these reasons which clearly spell out why the appeal lacked substance. For these reasons I too dismissed the appeal with N10,00 costs to the respondents.

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