

**SUPREME COURT OF NIGERIA**  
23RD JUNE, 2000. SC. 219/1994  
**CORAM:- A. G. KARIBI-WHYTE, A. B. WALI,**  
**U. MOHAMMED. A. I. KATSINA-ALU,**  
**A. O. EJIWUNMI, JJSC.**

HAUWA SALAMI	.....	APPELLANT
AND		
BALA MOHAMMED & ANOR.	.....	RESPONDENTS

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***CONSTITUTIONAL LAW** - Appeals - New issue - Where any issue is being raised for the first time before the Supreme Court - The prerequisite to do so is leave of that court*

***SUPREME COURT** - Issue - Leave to raise new issue - When there are concurrent findings of fact - Leave would be refused*

**FACTS**

Before the Central Area Court 1, Jos, Plateau State, the Plaintiff/appellant brought a complaint against the defendants/respondents. The complaint of the plaintiff was that the 1st defendant sold the house where the plaintiff stays to the 2nd defendant without contacting the plaintiff. The house consists of 6 rooms and other conveniences. It was inherited by three sisters on their father's death, each being given two rooms. The plaintiff had been a tenant of the two set of rooms belonging to one of the sisters for more than 18 years. The said two rooms were sold to the 2nd defendant by Hajiya Hurairat mother of the owner because, the plaintiff was not regularly paying her rent and was in arrears for almost one and a half years. She was always quarrelling whenever she was approached for the payment of due and accrued rent. The 2nd defendant was the purchaser of the 4 other rooms belonging to the two other sisters. The 1st defendant as the elder brother of the three sisters signed the purchase agreement on their behalf.

The trial court gave judgment in favour of the plaintiff and or-

dered that the two rooms she is occupying should be sold to her. Dissatisfied, the defendants appealed to the Plateau State Customary Court of Appeal, Jos. The appeal was allowed. The plaintiff appealed to the Court of Appeal, Jos Division against the Customary Court of Appeal judgment. Before the Court of Appeal, the plaintiff after obtaining leave of that court filed an additional ground of appeal wherein for the first time she raised and canvassed the question of the trial court's jurisdiction. The Court of Appeal considered the issue and dismissed the appeal. Aggrieved, the plaintiff has now further appealed to the Supreme Court raising 3 issues. Counsel for the respondents raised a preliminary objection to the competence of the appeal in that the issues and grounds formulated never arose from the proceedings at the Court of Appeal.

**HELD** (Unanimously striking out the appeal per lead judgment of **WALI JSC**)

***Constitutional law - Appeals***

1. It is my view that all the grounds of appeal can be said to be raising matters that were not raised and canvassed in the Court of Appeal. As provided by the 1979 Constitution which is applicable to this case, appeals go from the Court of Appeal to this Court and where any issue is being raised for the 1st time before this Court the pre-requisite to do so is leave of this Court. There was no such leave sought and obtained. See the cases of Atoyebi v. Governor of Oyo State [1994] 2 SCNJ 2; Uonika Salonic V. Hoff [1994] 2 SCHLR 86. (p. 2082 B)

***Supreme Court - Issue***

2. Even if the appellant had sought for leave of this Court to raise the issues she purportedly raised in the abortive grounds of appeal, I would have refused her leave to do so having regard to the facts of the case and the concurrent judgments of the Customary Court of Appeal and the Court of Appeal on the issues raised and considered by them. These are concurrent findings of fact. See D. O. Idundun V. Daniel Okumagba [1976] NMLR 200. (p. 2082 D)

### **REPRESENTATION**

No appearance by the Appellant or his Counsel.  
W. Hibatullahi Salako Esq., for the Respondents.

### **CASES REFERRED TO**

Idundun v. Okumagba [1976] NMLR 200  
Afolayan v. Ogunrinde [1990] 2 SCNJ 85  
Atoyebi v. Governor of Oyo State [1994] 2 SCNJ 2  
Salonick v. Hoff [1994] 2 SCHLR 86  
Kusu v. Udo [1990] 2 SCNJ 43  
Salati v. Shehu [1986] 1 NWLR (pt. 15) 45  
A.G. Kwara State v. Olawale [1993] 1 SCNJ 218  
Atoyebi v. Governor of Ondo State [1994] 2 SCNJ at 78

### **LEAD JUDGMENT BY WALL JSC**

Before the central Area court 1, Jos, Plateau State Judiciary, the appellant as plaintiff brought the following complaint against the 1st defendant, now the respondent:-

*"I sue Alhaji Bala Muhammed in that I stay in his house for about eighteen years as tenant and I am paying the rentage every month but he later on sold the house to one of the tenants by name Halliru Mustapha without informing us whether we have means to buy the house or not, while the said Halliru Mustapha [is not reach up] stay there for about 19 years, that is the reason of my complain."*

The defendant, in answer to the plaintiff's complaint stated as follows:-

*"At first the house does not belong to me the defendant, it is for orphans. [marayu] and they are three in number each of them has two rooms and each one of them sold the house [her share] to one person but at different times; the time they sold [their shares] I was not there but I am the person who signed for them as their elder brother; but before I signed it for them I asked the person [who bought their respective shares*

*] and my brother(s) (sisters) told me the person [to whom they sold their shares] was the care-taker of the house ever since before our father died."*

It appears that the 2nd defendant Halliru Mustapha alias Bamidele was joined as a defendant to the action, he being named by the 1st defendant as the purchaser of the house. 2nd defendant in answer to a question by the court admitted purchasing the shares from Hajiya Hurairat, the mother of the children that inherited the shares.

Hajiya Hurairat in her statement to the court stated thus:

"My name is Hajiya Hurairat. What I know is that I sold the house to Alhaji Halliru Mustapha on first time he bought two rooms; later on two, then at last I sold him the last two rooms because whenever my daughters wanted to collect rentage from Hajiya Hauwa she used to quarrel with them. That is the reason why we decided to sell the house to him to [enable him] obtain [own] the whole house. That is what I know."

The plaintiff agreed with statement above and the further statement that she was in arrears of rent for one and a half years.

The court went and inspected the house in dispute and noted as follows:-

".....the house contained about (6) rooms siglies, bailed kitchen and birth (sic) rooms, and the court observed that it is only there (sic) personal enmity between the house owner and the court before the court and the justice is done since the complainant has stayed in the house for the period of eighteen years she is supposed to have at least two rooms out of the rooms because she has been there for too long and even she contacted them that whenever they are going to [sell the two rooms she is occupying] will buy them and they did not do so."

With the above observations and the opinion expressed therein the trial court proceeded to give the following judgment in favour of the plaintiff:-

**"JUDGMENT"**

*For the above mentioned reason the court give judgement in favour of complainant that the said Alhaji Halliru Mustapha is not supposed to buy the whole (6) rooms contained in the house because they*

*have been together at least 18 years as tenant therefore the complainant should pay for two rooms she is occupying, the defendant should refund her (N3,70k) as court fees."*

Dissatisfied with the judgment of the trial Area court the 1st defendant appealed to the Plateau State Customary Court of Appeal. B The 2nd defendant was joined as 2nd appellant on his own application. The 1st and 2nd appellants jointly filed four (4) grounds of appeal and after hearing learned Counsel on both sides, and having considered its decision in Idi Tella & 2 Ors. v. Ibrahim Muhammedu Appeal C No. CCA/124A/86 of 28th July, 1986, it concluded:-

*"The combined effect of our decision in Idi Tella is that while the landlord cannot eject his tenant from the house unless on the ground of misconduct (by the tenant), the tenant has no right whatsoever to prevent the landlord from selling the house to anyone he likes. The D tenant cannot claim right to purchase the same house against the wish of the landlord even in equitable ground. The yard stick applied in Idi Tella is also applicable in the case on hand. Consequently, we hold that the trial Central Area Court Jos was wrong in forcing the 1st defendant, E Bale Mohammed to sell the two rooms to Hauwa Salami. The sale is accordingly declared null and void ab initio."*

Hauwa Salami, the plaintiff appealed to the court of Appeal Jos Division against the Customary Court of Appeal judgment.

Parties filed and exchanged briefs of argument. The Court of F Appeal after meticulous Consideration of the respective briefs filed and adopted by learned counsel delivered a unanimous judgment in the lead of which Musdapher JCA opined thus:

*"The trial Court was clearly in error to hold that the custom G existed. Consequently, on the narrow issue this appeal was argued, the customary court of appeal was justified in setting aside the judgment of the trial area court. There is the issue of whether in view of S. 224 (i) of the 1979 Constitution this Court has the jurisdiction to entertain this H appeal. I do not deem it necessary to dwell on the matter, it will serve no purpose. The issue put shortly deals with the incidence of customary law or customary practice which was adjudicated by the trial court and the*

*customary court of appeal. The incidence of the provision of the Land Use Act and the subsidiary legislation made under it was an issue brought by the appellant. As I held above, I am of the firm view that the subject matter decided by the lower court was concerned with customary law and the courts have the jurisdiction to entertain the matters before them. Similarly, this Court has the jurisdiction to hear the appeal under section 224 (i) of the Constitution.*

*In the result this appeal fails in toto and I dismiss it."*

Aggrieved by the Court of Appeal judgment the plaintiff has now further appealed to this court.

The simple facts of this case as can be deduced from the statements made by the parties are as follows:

The house in which the two rooms in dispute are located, consists of 6 rooms and other conveniences. It was inherited by three sisters on their father's death, each being given two rooms. The plaintiff had been a tenant of the two set of rooms belonging to one of the sisters for more than 18 years when the said two rooms were sold to the 2nd defendant by Hajiya Hurairat mother of the owner because, the plaintiff was not regularly paying her rent and was in arrears for almost one and a half years. She was always quarrelling whenever she was approached for the payment of due and accrued rent. This was the major reason why the mother of owner the in constellation with the latter decided and sold the two rooms to the 2nd defendant when the plaintiff did not respond to the offer made to her, of purchasing the said two rooms. The 2nd defendant was the purchaser of the 4 other rooms belonging to the two other sisters.

Henceforth in this judgment, the plaintiff and the defendants will be referred to as the appellant and the 1st and 2nd respondents respectively. In compliance with Rules of this court, parties filed and exchanged, briefs of argument. In the appellant's brief, the following 3 issues were raised -

"a. Whether the two rooms and indeed the entire premises had in fact being sold to anybody in view of the apparent lack of authority by either 1st respondent or the mother of the three Sisters to do so .

b. Whether the appellant has no right in law, equity and natural

justice to purchase the two rooms in view of the peculiar circumstances of this case.

*c. Whether there was any valid decision by the customary Court of Appeal, Jos, to be confirmed as the Court of Appeal, Jos, did, when there was no basis for that court to interfere with the decision of the Jos Central Area Court, I."*

The respondents also formulated two Issues in the brief, filed and these are:-

"1. Whether there is any valid appeal in the instant case?"

2. Whether the 1st Respondent is bound to sell the two rooms in question to the appellant?"

In the brief filed by learned Counsel for the respondents the question of competency of appeal was raised. The 1st point raised was that the appellant argued in his brief the grounds of appeal instead of the issues formulated therein. The second point was that the grounds of appeal did not arise from the proceedings in the Court of Appeal and to make an order dismissing the appeal. He cited and relied on a number of cases among which are A.G. Kwara State v. Olawale [1993] 1 SCNJ 218; Atoyebi v. Governor of Ondo State [1994] 2 SCNJ 2 at 78 and Uonika Salonic v. Hoff [1994] 2 SCNJ 86 at 93. There was no reply brief filed by the appellant in response to the two preliminary points raised in respondent's brief. The appellant's counsel did not put up appearance in court on the day the appeal was taken. So the appellant's appeal was taken as argued on the brief he had filed: See Order 6 rule 8 (6) of the Supreme Court Rules, 1985 [as amended] and Odutola v. Kayode [1994] 2 NWLR (pt. 224) 1.

Before the Court of Appeal, the appellant after obtaining leave of that court filed an additional ground of appeal wherein for the first time she raised and canvassed the question of the trial court's jurisdiction. The court of Appeal considered the issue and rightly in my view came to the following conclusion-

*"It has been shown or proved that the issue involved was clearly a land matter within the context of the land Use Act or the decision in the Salati case. The complaint here was that the appellant wanted to know*

*the "reason why you sold the house where she stays without contacting her." In my view the trial area court had the jurisdiction to entertain the matter, since it was a claim based on a custom or practice under customary law. It was not a case seeking the court to set aside the sale as in the Salati case."*

For the purpose of clarity it would not be out of place to reproduce the sole ground of appeal argued before the court of Appeal, Jos. It reads as follows:-

*"I The Learned president of the Customary Court of Appeal Jos, justice Yusuf Yakubu, erred in Law when he misdirected himself on the jurisdiction of both his Court and that of the trial Central Area Court Jos, to try and determine the case involving matters concerning Land i.e. Sale of House (Landed property) within Jos urban Area.*

PARTICULARS OF ERROR AND MISDIRECTION

*(a) The said Learned Justice of the Customary Court of Appeal ought to have considered the issue of Jurisdiction first before presiding and determining the case on Appeal before him, this is an error.*

*(b) In the alternative, His Learned president of the Customary Court of Appeal misdirected himself in Law when he assumed Jurisdiction over the said matter concerning Land in Nassarawa an urban area even though the land use Decree Vests land in urban areas on the Government.*

*(c) The trial was undertaken by an Area Court which ought to have enquired and then determine its Jurisdiction but did not do so before trial. In view of the plateau State Legal Notice No. 7 of 1981 - The Land Use Act 1978 Designation of Urban Areas 1981, it is submitted that the Customary Court of Appeal Jos was not competent to hear the appeal as the disputed land (House on the land ) falls within the designation of urban area by S. 34(1) (2) and (3) of 1987 land use Act. Also S. 39 of the said land use Act 1978 vests Jurisdiction to try such land case or matters relating to such land in urban areas on the High Court of a State*

*(d) The Relief sought form the Court of Appeal is that the Judgment of the Customary Court of Appeal be set aside for lack of Jurisdic-*



tion."

I think there is substance in the preliminary objection raised as regards the complaint that "the issues/grounds formulated in this Court never arose from the proceedings at the Court of Appeal". Learned counsel for the respondent submitted that the only issue raised and argued in that Court was related to the jurisdiction of the Customary Court of Appeal Viz-a-Viz the Area Court which had been settled by the Court of Appeal in respondent's favour.

The issue argued before the Court of Appeal was jurisdiction of the trial Area Court to entertain the case as it did and which was confirmed by the Customary Court of Appeal, Plateau State. In the ground of appeal before the Court of Appeal the appellant tried to put an entirely new cause of action before it by raising the issue that the land in dispute was within the Jos Urban Area and that in view of the plateau State Legal Notice No. 7 of 1981 and the Land Use Act 1978 Designation of Urban Areas 1981 both the trial Area Court and the Customary Court of Appeal were wrong to entertain jurisdiction over the matter. The Court of Appeal however granted the appellant leave to do so and in a unanimous judgment of that court and at the expense of repeating myself, Musdapher JCA after a meticulous and painstaking consideration of the issue, concluded-

*"It has not been shown or proved that issue involved was clearly land matter within the context of the Land Use Act or the decision in Salati case. The complaint here was that the appellant wanted to know the "reason why you sold the house where she [the appellant] stays without contacting her." In my view the trial area court has the jurisdiction to entertain the matter, since it was a claim based on a custom or practice under customary law. It was not a case seeking to set aside sale as in the Salati case." [The full reference of the case referred to in the excerpt quoted above is Salati v. Shehu [1986] 1 NWLR (pt. 15) 45,] word in bracket supplied me.*

In her purported appeal before this court the appellant attempted to raise the issues of lack of witness to the sale, lack of handing over of the two rooms sold and land lack of authority on the part of Hajiya Harairat [the mother of one of the three sisters owning the two rooms in dispute]

and the 1st respondent to undertake and perfect the sale. These are the particulars raised under ground 1 which in my view do not flow from it. Grounds 1, 2 and 3 of the grounds of appeal do not arise from the Court of Appeal judgment. Most of the particulars provided in support do not also flow from such grounds. Also the issues raised in the appellant's brief do not flow from the incompetent grounds of appeal. **It is my view that all the grounds of appeal can be said to be raising matters that were not raised and canvassed in the Court of Appeal. As provided by the 1979 Constitution which is applicable to this case, appeals go from the Court of Appeal to this Court and where any issue is being raised for the 1st time before this Court the pre-requisite to do so is leave of this Court. There was no such leave sought and obtained. See the cases of Atoyebi v. Governor of Oyo State [1994] 2 SCNJ 2; Uonika Salonick V. Hoff [1994] 2 SCHLR 86 and Kusu V. Udo [1990] 2 SCNJ 43.**

**Even if the appellant had sought for leave of this Court to raise the issues she purportedly raised in the abortive grounds of appeal, I would have refused her leave to do so having regard to the facts of the case and the concurrent judgments of the customary Court of Appeal and the Court of Appeal on the issues raised and considered by them. These are concurrent findings of fact. See D. O. Idundun V. Daniel Okumagba [1976] NMLR 200; Lucy Onowan v. J. J. I Iserhien in Re Lucy Onowan-Appellant [1976] 9 - 10 SC 95 and Afolayan v. Ogunrinde [1990] 2 SCNJ 85.**

The preliminary objection is well taken and is hereby sustained. The appeal is struck out with N10,000.00 costs to the Respondents.

### KARIBI-WHYTE JSC

I had the privilege of reading the leading judgment of my learned brother A. B. Wali, JSC just read. I agree entirely with him that the preliminary objection by the Respondent that the appeal of the appellants was incompetent was well taken. It is clear from all the three grounds of appeal

relied upon before this court, that none arose from the judgment of the Court of Appeal appealed from. The issues raised in the Appellant's brief of argument cannot be said to have been formulated from the incompetent grounds of appeal. They raised issues not canvassed in the court below. No leave has been sought to raise the issues before this court. B

The preliminary objection seeking to strike out the appeal cannot but be sustained.

The appeal is accordingly struck out. Appellant shall pay N10,000 as costs to Respondents. C

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**MOHAMMED JSC**

I agree. Grounds 1, 2 and 3 raise new issues, which were not D  
canvassed before the Court of Appeal. Allowing the new issues raised by the appellant in the three grounds of appeal would unnecessarily complicate the case by introducing entirely different legal character to the basis on which the case was fought at the trial. If allowed it would ultimately E  
result in grave miscarriage of justice. If a party wishes to raise a new issue not canvassed at the court below leave of the Supreme Court is necessary. Grounds 1, 2 and 3 are therefore incompetent and should be struck out. They are accordingly struck out.

For the reasons given in the lead judgment of my learned brother, F  
Wali, J. S. C. this appeal is struck out. I abide by all the consequential orders made in the lead judgment.

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**KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother wali, JSC, I entirely agree with it. I have nothing useful to H  
add.

**EJIWUNMI JSC**

I was privileged to have read in advance the judgment just delivered by my learned brother WALI JSC. I agree for the reasons so ably  
B set out in the said judgment that the appeal must be struck out, the preliminary objection raised as to its competence having been upheld.

In the result, the appeal is also struck out by me and I award costs in the sum of N10,000.00 in favour of the Respondents.

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