

**SUPREME COURT OF NIGERIA**  
9TH FEBRUARY, 2001. SC. 147/1995  
**CORAM :- A. G. KARIBI-WHYTE, M. E. OGUNDARE,**  
**S. U. ONU, O. ACHIKE, S. O. UWAIFO, JJSC.**

UNILIFE DEVELOPMENT CO. LTD ..... APPELLANT  
AND

1. MR. KOLU ADESHIGBIN

2. MISS OLUSEGUN TAYLOR & 3 ORS. .... RESPONDENTS  
(Representatives of the Estate of E. J. Taylor)

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***COURTS*** - Documents - Interpretation - The responsibility of the court - Is simply to give effect to the intention of the parties - And not to rewrite the lease Agreement for the parties.

***DOCUMENTS*** - Interpretation - The use of the phrase 'similar land' - As opposed to 'similar premises' - Used in the Deed of lease - Has the effect of referring strictly to bare land.

***DOCUMENTS*** - Interpretation - Harmonious interpretation - Is a fundamental rule of interpretation - And lower court was clearly in error in failing to use it.

***DOCUMENTS*** - Interpretation - Fragmentary interpretation of the various clauses of the agreement - Made ascertainment of parties intention distorted, erroneous and unacceptable.

***JUDICIAL PRECEDENTS*** - Distinguishing - The facts of the present case can be distinguished from Ponsford's case.

***JUDICIAL PRECEDENTS*** - Distinguishing - The facts of the case of *Cuff v J & F Stone Property Ltd* - Are distinguishable from the present case.

***JUDICIAL PRECEDENTS*** - Distinguishing - The dictum on definition

*of the word 'premises' - In Turner v York Motors Property Co. Ltd is sound - But not applicable to peculiar circumstances of this case.*

**WORDS & PHRASES - 'Premises' - Its meaning or definition is elastic - And depends on the facts of each case.**

**WORDS & PHRASES - 'Land' - Where the structures and objects on the land - Are to be excluded in its meaning - It must be shown that this is clearly discernible from the executed or written document.**

### **FACTS**

The case arose out of arbitration proceedings started in April 1983 seeking a determination in a controversy between the parties on the amount of rent payable by the Appellant under a rent revision clause pursuant to a Deed of lease. At the arbitration proceedings the question put to the arbitrator for the decision of the High Court as a question of law was - *"What basis should be used to compute the revised rent - Whether on the basis of fair and reasonable rent which can be obtained for the premises in the open market? Or on the basis of the fair and reasonable rent which can be obtained for the bare site, without considering the buildings and development on the site?"*

The trial judge after considering the Deed of lease held that only the bare land should be taken into account in determining the rent payable and thus fixed the revised rent at N30,000.00 per annum. The claimant being dissatisfied appealed to the Court of Appeal which allowed the appeal, reversed the decision of the trial High Court and held that the improvement made on the demised premises should be considered in computing the revised rent. Thus they fixed the revised rent at N450,000 per annum. The Appellant, has consequently lodged this appeal against the judgment of the lower court raising one issue for determination.

### **ISSUE FOR DETERMINATION**

*"Was the Court of Appeal right in its determination of the question of law raised by the Arbitrator in his award, to wit: On what basis should the revised rent be computed? Is it on the basis of the fair and*

*reasonable rent which can be obtained for the premises in the open market? Or is it on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site?"*

**HELD :-** (Unanimously allowing the appeal per lead judgment of **ACHIKE JSC**)

***Words & Phrases - 'Premises'***

1. It may be noted that what can be distilled from the authorities of decided cases cited to us, including a welter of definitions in lexicons is that the term '*premises*' may connote bare land or the land with the buildings thereon, depending on what the parties intend it to connote, having regard to the circumstances of the case. In the final analysis, there is no doubt whatsoever that the meaning or the definition of the term "*premises*" is fraught with difficulties and whether it is intended to convey a precise or specific meaning will continue to exercise the courts because the situation in each case will unquestionably depend on the facts of the case thereof. (p. 402 H)

***Words & Phrases - 'Land'***

2. The above definitions of land, including the maxim in respect thereto, show the increasing difficulty in determining the legal conception of land, and the final word in this regard. No doubt, even to the laymen today, land no longer means the ordinary ground with its subsoil, but surely includes buildings and trees growing thereon. For the court in any circumstance, therefore, to exclude the structures and objects, like buildings and trees standing on the ground in the connotation of the term "*land*" it must be shown – where the matter is covered by a written document – to be clearly discernible from the content of the executed or written document. (p. 404 B)

***Documents - Harmonious interpretation***

3. I am in full support of the submission of Appellant's counsel that it was a misdirection for the lower court in consideration of whether the

land, the subject-matter in controversy, was bare land or included the structures thereon to have relied on only clauses 3 and 6 in the entire Lease Agreement to arrive at its conclusion. The learned Justices of the lower court were clearly in error because it is a fundamental rule of construction of instruments that its several clauses, must be interpreted harmoniously so that the various parts of the instrument are not brought in conflict to their natural meaning. (p. 405 B)

**C Documents - Fragmentary interpretation**

4. Surely, a fragmentary interpretation of the various clauses of the Lease Agreement without recourse to the entire Lease Agreement would do violence to the context in which the controversial terms “*premises*” and “*land*” were employed and therefore the ascertainment of the parties’ intention in relation to these two terms was bound to be distorted and erroneous and consequently unacceptable. (p. 405 F)

**Judicial Precedents - Ponsford's case**

5. It is very clear that the facts and circumstances of the present case are easily distinguishable from those of Ponsford case. It will be manifestly perilous to rely on it in the determination of the narrow issue raised in this appeal having regard to the peculiar circumstances of the Lease Agreement sought to be interpreted by the Court. (p. 407 B)

**Judicial Precedents - Cuff v J&F Stone Property Ltd.**

6. Cuff case provides that the improvements should not be wholly disregarded whereas in this appeal, the pith of Appellant’s case is that they should not be taken into account in the assessment of the revised rent for the demised premises. Furthermore, the improvements in Cuff case had been made prior to the execution of the lease and therefore the improvements could not by any disingenuous interpretation be excluded in computing the revised rent unless such exclusion was expressly stated. In other words, the improvements in that case unquestionably formed part of the demised premises. (p. 407 F)

***Judicial Precedents - Turner v York Motors Property Co. Ltd***

7. Therefore, although I find the dictum of Dixon, J sound as expressed in Turner case, however, I would wish to stress that His Lordship's approach in that case was borne out by the peculiar circumstances of that case. I regret that I am not persuaded that that approach can be extended to the peculiar circumstances of this case. (p. 409 A) B

***Documents - Interpretation - Words used in the Deed of lease***

8. The use of similar lands in clause 7(b)(iii) rather than similar premises is telling. In my judgment, it produces the marked difference and effect that the revision in rent should relate to bare land in contradistinction to premises with its inherent elusiveness in meaning. (p. 409 G) C

***Courts - Documents***

9. The submission in either way loses sight that the real issue in this appeal calls for the ascertainment of the parties' intention in the Lease Agreement. In doing so, the Court should bear in mind that it has a responsibility not to re-write the Lease Agreement for the parties but simply to give effect to their intention as may be deduced from the language employed by them. (p. 410 B) D

**NOTABLE POINTS OF INTEREST**

**ACHIKE JSC**

1. *Quicquid plantatur solo solo cedit is not an immutable rule of law*  
Let me add to the vexed definitions of land the Roman maxim which found its way into the English Common Law quicquid plantatur solo, solo cedit (whatever is affixed to the soil, belongs to the soil) while the judicial and academic conflict of opinion rages whether that maxim of English Common law is also a rule of Nigerian customary law. While that debate subsists, the better view on the authorities of Santeng v Darkwa 6 WACA 52 and Moore v Jones 7 NLR 84 appears that it is not. Be that as it may, it must be borne in mind that this maxim is not an immutable rule of law because a lot depends on the fixture attached to the ground or building. (p. 403 H) F G

2. *The use of head notes in a case*

In an exercise such as this I must observe that I find the head notes in Ponsford case to be of considerable assistance although I am aware it should not ordinarily be evoked to decide the issue in controversy except  
B to state the obvious or to resolve doubt and ambiguity as in that case.  
(p. 406 H)

**REPRESENTATION**

C Kehinde Sofola Esq. SAN, for the Appellant  
T. E. Williams Esq. for the Respondents.

**CASES REFERRED TO**

Chief Ogonna v A.G Imo State & ors (1989) 5 NWLR (Pt. 121) 312  
D Chime v Ude (1996) 7 NWLR (Pt 461) 379  
Ponsford v A.M S Aerosols (1977) 1WLR 1029  
Cuff v J & F Store Property Company Limited (1978) W L R 256  
Turner v York Motor property Ltd (1951) 85 C L R 55  
E Doe d. Hemming v Willetes 137 E R 280  
Santeng v Darkwa 6 WACA 52  
Moore v Jones 7 NLR 84  
Adebiyi v Ogunbiyi 1965 NMLR 395

F **BOOKS REFERRED TO**

Corpus Juris Secundum Vol 72, p. 484  
Nigerian Land Law (1972 ed) p.l by B. O. Nwabueze.

G **STATUTE REFERRED TO**

Interpretation Act, Cap 192, Laws of the Federation of Nigeria S.3

**LEAD JUDGMENT BY ACHIKE JSC**

H In the arbitration proceedings which started before Bola Ajibola, Esq. sometime in April 1983, the Respondents, inter alia, sought a determination in a controversy between the parties on the amount of rent payable by the Appellant under a rent revision clause pursuant to the

provisions of a Deed of Lease. At the arbitration proceedings, the exact question put to the arbitrator for the decision of the High Court, as a question of law, was:

*“On what basis should the revised rent be computed? Is it on the basis of the fair and reasonable rent which can be obtained for the premises in the open market? Or is it on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site?”*

The High Court of Lagos Judicial Division presided over by Moni Fafiade, J. on 3<sup>rd</sup> February, 1989 held that only the bare land (i.e. second basis) should be taken into account in determining the revised rent payable. Accordingly, her ladyship decided that the revised rent payable on the demised premises would be 30,000.00 per annum with effect from 1<sup>st</sup> April, 1981, being the rent payable for the bare land.

Dissatisfied, the claimant appealed to the Court of Appeal. That court allowed the appeal, reversed the decision of the trial High Court and held in favour of the first basis, to wit, that the revised rent should take into consideration the improvement made on the demised premises and computed by the Arbitrator at 450,000 per annum.

The Appellant, dissatisfied, has lodged this appeal against the judgment of the lower court. Both parties filed and exchanged briefs of argument.

Kehinde Sofola, SAN, Esq. learned counsel for the Appellant, submitted that the lone issue for determination should be:

*“Was the Court of Appeal right in its determination of the question of law raised by the Arbitrator in his award, to wit: On what basis should the revised rent be computed? Is it on the basis of the fair and reasonable rent which can be obtained for the premises in the open market? Or is it on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site?”*

It may be noted that Respondents' learned counsel, T.E. Williams, Esq. did not in the Respondents' brief expressly identify any issue for determination but indirectly adopted appellant's issue for determination by refer-

ence to the precise issue before the Arbitrator which, of course, was the same as Appellant issue for determination.

Opening the argument for the Appellant, their learned counsel Kehinde Sofola, SAN., Esq. identified clause 7(b)(i)-(iii) of the Lease of Agreement as the relevant clause in this connection but also said that clause 7(b)(iii) was fundamentally the most crucial provision in determining the issue in controversy. Counsel submits that the main object of construction of a document is to decipher the intention of the parties as may be gathered from the express words contained in the Lease Agreement, and for this proposition, counsel relies on Alhaji Tukur v Government of Gongola State (1989) 4 NWLR (Pt.517) and Chief Ogbonna v. A.G. Imo State & ors (1989) 5 NWLR (Pt. 121) 312. Counsel further submits that the key to the issue of law in controversy is the ascertainment of the meaning to be ascribed to the words “*premises*” and “*lands*” as used in clause 7(b)(iii), which, in counsel’s view, must be discovered by construing the Lease Agreement as a whole and not in bits and pieces. In other words, the clauses of the Lease Agreement must be read together because to do otherwise would occasion grave injustice. In his oral submission, he calls in aid a new authority, Chime v Ude (1996) 7 NWLR (Pt.461) 379 at p432H. Counsel submits that at the time of the Lease Agreement the property was a bare land and if the parties had intended to include the subsequent developments thereon in working out the revised rent they should have expressly spelt it out. It is his submission that no one can re-write the Lease Agreement but should only interpret it according to the intention of the parties, as may be deduced from the Lease Agreement.

In the brief, counsel made references to the Lease Agreement showing that the words “*premises*”, “*demised premises*” and “*lands*” were used interchangeably and in many respects have given rise to contradictory meanings. Counsel submits that from the intention of the parties the term “*lands*” as used in clause b(iii) means bare land so also that the term “*premises*” is also used to refer to bare land.

In his consideration of the law on the point, counsel points out that the term “*premises*” has no fixed or static connotation. But when



used in document or written instrument, its exact meaning is as may be determined from the words of the written instrument. Counsel treats us to several definitions from several authoritative works. First, reliance is placed on reference to the word “*premises*” in Corpus Juris Secundum, Vol. 72, p484 where it is stated:

*“The word “premises” has various meanings depending on the subject matter in connection with which it is used. It has no fixed legal significance, and no definition applicable to every situation.”*

Second, Strouds Judicial Dictionary, (4<sup>th</sup> ed.) Vol.4, inter alia, states that “*premises implies some definite place with mets and bounds e.g. land or land with buildings upon it, or a ship or anything of that kind.*” Thirdly, counsel refers to the interpretation section of Recovery of Premises Law, Cap 118, Laws of Lagos State to include:

*“(a) house or building or any part thereof together with its grounds or other appurtenances; and (b) land without any building thereon.”*

Fourthly, “*lands*” as used in the Lease Agreement being construed relates to *premises*” as used therein and as such the Court will have to be guided by the imperative work of the learned authors of Halsbury’s Laws of England (4<sup>th</sup> ed.) Vol. 27 para. 129 which states as follows:

*“When used in a lease or other assurance, “land” includes, if there is nothing to restrict its technical meaning, all kinds of land, whether arable, meadow or otherwise, and also everything on or under the soil; all buildings erected on it.”*

The learned authors in yet Vol.12, (4<sup>th</sup> ed.) of the same series, para 1463 state:

*“The words of a written instrument must in general be taken in their ordinary sense notwithstanding the fact that such a construction may appear not to carry out the purpose which it might otherwise be supposed the parties intended to carry out, but if the provisions and expressions are contradictory and there are grounds appearing on the face of the instrument, affording proof of the real intention of the parties, that intention will prevail against the obvious and ordinary meaning of the words, and where the literal (in the sense of ordinary or primary) construction would lead to an absurd result, and the words used are capable*

*of being interpreted to avoid this result, the literal construction will be abandoned.”*

And finally, counsel refers to para 1469 of the same Vol. 12 wherein it states:

B *“It is a rule of construction applicable to all written instruments that the instrument must be construed as a whole in order to ascertain the true meaning of its several clauses and the words of each clause must be so interpreted as to bring them in harmony with the other provisions of the instrument if that interpretation does no violence to the meaning of*  
 C *which they are naturally susceptible. The best construction of deeds is to make one part of the deed expound the other, and so make all the parts agree. Effect must, as far as possible be given to every word and every clause.”*

D Relying on the foregoing, counsel submits that in point of law, the lower court was wrong and misdirected itself in the consideration of whether the land, the subject matter of dispute was bare land by relying only on clauses 3 and 6 in the entire Lease Agreement, as Adenekan Ademola,  
 E JCA did in his leading judgment and so did Niki Tobi, JCA in his concurring judgment.

Kehinde Sofola Esq. submits that the Lease Agreement by providing that the demised premises was let at the value of 800 pounds yearly as vacant land and on which buildings to the value of 60,000 pounds  
 F were to be erected immediately thereafter, in accordance with Clause 3, lucidly shows that the “*demised premises*” was bare land upon which buildings were to be built later. To counsel, ‘*this error of appreciation of the distinction influenced the conclusion that what was demised was not*  
 G *bare land, without taking into consideration other clauses in the Lease.*’ He submits that it is this misapprehension that led the lower court when it reached the conclusion:

H *“As a matter of fact, the lease enjoins the Arbitrator while revising the rent to look at similar lands in the neighbourhood and of the same facilities and used (sic) whatever result that enquiry could yield in determining the rent. In other words, the Arbitrator must have regard in the revision of the rent to rent accruing on similar buildings to that of the*

*one on the land demised in arriving at the revised rent."*

It is also counsel's submission that reference to "*rent accruing on similar building*" in the assessment of rent revision was a misdirection and has occasioned substantial injustice, and not in accord with clause 7(b)(iii) of the Lease Agreement which suggested that revised rent should be "*for similar lands as against "similar buildings"*".

Finally, Appellants counsel says that the three cases, to wit,

(i) Ponsford v A.M.S. Aerosols (1977) 1WLR 1029,

(ii) Cuff v J & F Store Property Company Limited (1978) W.L.R. 256 and

(iii) Turner v York Motor Property Ltd (1951) 85 C.L.R.55 which are relied upon by the Respondents were the very same cases they relied on at the Arbitration Tribunal and the lower courts and submits that they are distinguishable and irrelevant to the circumstances of this case.

In conclusion, the learned Senior Advocate urges us to decide the case on its particular facts as contained in the Lease Agreement, reject the decision of the lower court and uphold the decision of the trial judge that the term premises as used in the Lease Agreement means bare land.

T.E. Williams, Esq. Learned Respondents' counsel concedes that the appeal turns on the interpretation of the rent revision clause contained in the Lease Agreement and that it is true that at the time of the making of the said Lease Agreement the property demised was bare land - referring to clauses 3 and 6, so also clause 7(b)(iii) of the Lease Agreement. Counsel however submits that once a building is erected thereon the building will attract rent which is to be payable by the tenant. Relying on the entire Respondents' brief, counsel urged us to dismiss the appeal.

From the Respondents' brief of argument learned counsel submits that the Appellant's brief failed to show any serious flaw in the reasoning of the lower court and much of the arguments in their brief were really a repetition of the arguments presented to the Court of Appeal and submits that "*the attack on the grounds of that decision are (sic) clearly misconceived and untenable.*"

Counsel proceeds to explain the reasons why the lower court favoured the conclusion that in determining the revised rent, the arbitra-

tion tribunal should do so on the basis of the fair and reasonable rent, which can be obtained for the premises in the open market. To this end, counsel urges us to apply the dictum of Megarry, J in Cuff v Store Property Company Limited, (supra) or (1979) A.C. 87 at 91. He calls attention to clauses 3 and 6 of the Lease which enjoin the tenant to put a building on the land immediately and allow the landlord to use a prescribed portion thereof rent free and submits that it is open to the parties to have expressly directed the Arbitrator not to take account of the buildings erected on the land in fixing the revised rent. Rather, the Lease enjoins the Arbitrator to look at similar lands in the neighbourhood with the same amenities.

The dictum of Megarry, J in Cuff case which found favour in the leading judgment of the lower court runs thus:

*"...But here there is the bare phrase "reasonable rent", used in relation to the demised premises: the question is not that of the rent "which it would be reasonable for the tenant to pay", but that of "a reasonable rent for the demised premises", and that, as it seems to me, is a matter not affected by who paid for the premises or any part of them. In my view the surveyor must take the premises as he finds them, and then determine what he considers to be a reasonable rent for those premises, regardless of who provided them or paid for them... I think I am in agreement with that approach. The Arbitrator here should have looked into the question with a view of determining a revised rent for the demised premises by taking into account the improvement which has been made on the demised land since 1961."*

Counsel calls attention that Appellant's counsel rather than give due consideration to this portion of Megarry, J's dictum proceeded to cite another portion in Cuff case which was not relied on by the lower court.

However, counsel submits that the Arbitrator's guideline in establishing the renewed rent runs as follows:

*"The amount at which the revised rent shall be fixed by an Arbitrator appointed under this clause shall be such as in the opinion of the Arbitrator is a fair and reasonable rent for the premises having regard to rent obtainable at the commencement of revision period for similar lands*

*of similar area and amenities similarly situated.”*

It is his further submission that the Arbitrator is to fix what in his opinion is “*a fair and reasonable rent for the premises*” and says that the term premises has been commonly used as comprising land and houses or structures thereon following the opinion of Wilde, C.J. in Doe d. Hemming v Willetes 137 E.R. 280 at 283. B

*“The word ‘premises’ is commonly used as comprising land and houses and other matters.”*

Reference is also made to the dictum of Dixon, J. in Turner v York Motors Property Ltd (1951) 85 CLR 55 at p.75: C

*“Having regard to the history of the provision and the dictionary meaning of the word “premises”, I think that we should adhere to the rule laid down that bare land without buildings, if let for the purpose of occupation as bare land, does not constitute premises. If land is let upon terms that the tenant shall or may erect buildings which are not removable by him but will pass with the freehold, then I should say that the land and building when erected would form premises.”* D

Reliance and reference is made to Ponsford v H.M.S. Aerosols (supra) E where the revised rent for the property had to be referred to a surveyor under an arbitration clause where the surveyor under the clause for rent revision provided that he was to fix “*a reasonable rent for the demised premises*”. There Cairns, L.J. quoted extensively from the dictum of Megarry, J (as he then was) and also noted: F

*“But, nevertheless, I find the basis on which MEGARRY J reached his decision to be directly applicable to the present case and, while it is not binding on us, I treat with great respect a decision of a judge so eminent in the field of landlord and tenant: and, moreover, I find his reasoning compelling.”* G

Turning to the Lease Agreement, counsel identifies the fact that the Arbitrator is directed to fix a fair and reasonable rent.

*“having regard to rents obtainable at the commencement of the revision period for similar lands of similar area and amenities situated.”* H  
For the meaning of the expression “*lands*” counsel falls back on the definition of the learned authors in Hill and Redman’s Law of Landlord

400 Unilife Ltd. v. Adeshigbin (2001) 2 KLR Achike JSC and Tenant, (16<sup>th</sup> ed.) at p. 135:

B *“The word ‘land’, when used in a lease or other assurance includes, if there is nothing to restrict its technical meaning, all kinds of land ... and also everything on or under the soil; all buildings erected on it.”*

Further reliance is placed by counsel on the Australian case of In re Lehrer and Real Property Act 1960 NSW 570 at p.574, per Jacobs, J:

C *“The word “land” comprehends in law any ground, soil or earth whatsoever: Coke on Littleton, 4a: even though it originally meant only arable land: Sheppard’s Touchstone, 92. Coke further says that land*  
D *“legally includes also all castles, houses and other buildings for castles, houses, etc. consist upon two things, viz. land or ground, as the foundation or structure thereupon; so as passing the land or ground, primarily, the ownership of land carries with it, everything both above and below the surface, the maxim being “cujus est solum, ejus est usque and coelum et ad inferos.”*

E Counsel recalled the Arbitrator’s guideline to have regard to “rents obtainable... for similar lands of similar area and amenities.” And since it has already been shown that the Arbitrator was to fix the fair and reasonable rent for the house and buildings on No.9 Nnamdi Azikiwe street, then counsel submits that the word “lands” must be construed eiusdem  
F generis with “premises” since like can only be compared with like. In conclusion, counsel submits that the dictum of Megarry, J. is sound, relevant and applicable to the factual situation herein, and was rightly applied by the lower court.

G Referring to Clauses 3 and 6 of the Lease Agreement in relation to the leading judgment of Ademola, JCA, counsel submits that His Lordship from these two clauses inferred that the contemplation of the parties at the time of making the Lease Agreement was that the land demised was to be built upon immediately and the lessor shall use part thereof  
H when built rent free. Counsel further submits that the parties must have contemplated that when rent comes to be revised in 20 years’ time, there must be buildings on the land. He urges us to hold that clauses 3 and 6 tilt the scale in favour of the construction urged upon by the Respondents.

Relying on the view expressed in the House of Lords in Ponsford (supra) which was favourably approved in the leading judgment of the lower court, learned Respondents' counsel urged us to decide the appeal on the first basis i.e .on the basis of the fair and reasonable rent which can be obtained for the premises in the open market, there being no express provision in the Lease Agreement directing the Arbitrator to ignore improvements on the land in computing revised rent. B

In conclusion, learned counsel urges that the appeal be dismissed as there are overwhelming judicial authorities in support of the decision of the court below. C

It must be stated at the outset that the issue for determination in this appeal has been stated with the utmost pellucidity. For purposes of emphasis, however, I wish to reproduce it again:

*“On what basis should the revised rent be computed? Is it on the basis of the fair and reasonable rent which can be obtained for the premises in the open market? Or is it on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site?”* D E

Put very tersely, the question is, should the computation of the revised rent be restricted to the bare land or should it include the developments on the bare land?

For the specific issue being contested in this appeal, the relevant clause on the Lease Agreement is set out in clause 7(b)(i)-(iii) which reads thus: F

*“(i) the rent hereby reserved shall be subject to revision every 20 (twenty) years of the term hereby created and such revised rent shall be fixed by agreement between the Lessors and the Lessees;* G

*(ii) if the Lessors and the Lessees are unable to agree to the revised rent to be paid the matter shall be referred to an Arbitrator to be appointed by agreement between them or in the absence of such agreement to an Arbitrator appointed by a Judge of the High Court Lagos;* H

*(iii) the amount at which the revised rent shall be fixed by an Arbitrator appointed under this clause shall be such as in the opinion of the Arbitrator is a fair and reasonable rent for the premises having regard*

402 Unilife Ltd. v. Adeshigbin (2001) 2 KLR Achike JSC  
to rents obtainable at the commencement of the revision period for similar lands of similar area and amenities similarly situated.”

(emphasis supplied)

It seems to me that it is to the underlined or italicised words in clause  
B 7(b)(iii) that one is obliged to turn in order to embark on the task of  
determining what should be the parties intention in relation to the revised  
rent which must be fair and reasonable for the premises, at the com-  
C mencement of the revision period for similar lands and situated in an area  
with similar amenities. Ascertainment of the parties’ intention clearly  
entails interpreting or construing the terms of the written agreement, i.e.  
the lease agreement in such a way that their view will be discovered. It  
seems to me that the terms ‘*premises*’ and ‘*lands*’ as used in the context  
of clause 7(b)(iii) call for closer scrutiny.

D Let us first examine the meaning of the term “*premises*”. From  
the many learned legal works cited to us by Appellant’s counsel - Corpus  
Juris Secundum (supra), Jowitts Dictionary of English Law (supra) and  
Strouds Judicial Dictionary of English Law (supra), it appears that the  
E term ‘*premises*’ has a fluid or flexible meaning without a static connota-  
tion. It sometimes means bare land and sometimes land with buildings  
thereon, its meanings at any given time would be determined according  
to what the parties so decide, as may be ascertained from the document  
F executed by the parties. On the other hand, from the authorities cited by  
the Respondents - Ponsford v H.M.S. Aerosols, Doe d. Hemming v Willetes  
(supra), Cuff v J & F Store Property Co. Ltd (supra) and Turner v York  
Motors Property Ltd - the term ‘*premises*’ under the Recovery of Pre-  
G mises Law, Cap 118, Law of Lagos State, is used in the two senses of  
buildings with its grounds or appurtenances or simply as land without  
any building thereon.

It may be noted that what can be distilled from the authori-  
ties of decided cases cited to us, including a welter of definitions in  
H lexicons is that the term ‘*premises*’ may connote bare land or the  
land with the buildings thereon, depending on what the parties in-  
tend it to connote, having regard to the circumstances of the case.  
In the final analysis, there is no doubt whatsoever that the mean-



**ing or the definition of the term “premises” is fraught with difficulties and whether it is intended to convey a precise or specific meaning will continue to exercise the courts because the situation in each case will unquestionably depend on the facts of the case thereof.**

Now the word “land” as used in the Lease Agreement, according to appellant’s learned counsel, relates to “premises” and therefore, he further contends that as such the Court will have to be guided by the authoritative way it is expressed by learned authors of Halsbury’s Laws of England (4<sup>th</sup> ed.) (supra) and permit me to reproduce it again, if only for emphasis:

*“when land used in a lease or other assurance “land” includes if there is nothing to restrict its technical meaning, all kinds of land whether arable, meadow or otherwise, and also everything on or under the soil; all buildings erected on it...”*

Section 3 of Interpretation Act, Cap. 192, Laws of the Federation states thus: *“Immovable property or ‘lands’ include land and everything attached to the earth or permanently fastened to anything which is attached to the earth and all chattels real.”* This statutory definition is all-embracing. Another wide statutory definition of land is contained in the Property and Conveyancing Law of Western Nigeria and runs thus:

*“Land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way), and other corporeal hereditaments; also a rent and other incorporeal and hereditaments, and an easement; right, privilege or benefit in, over, or derived from land.”*

This shows that the term ‘land’ has both a natural and artificial content but it is generally in the natural content in terms of the ground and its subsoil and things growing naturally thereon that comprise its basic element. See B.O. Nwabueze, Nigerian Land Law (1972 ed.) p.1.

Let me add to the vexed definitions of land the Roman maxim which found its way into the English Common Law quicquid plantatur solo, solo cedit (whatever is affixed to the soil, belongs to the soil) while the judicial and academic conflict of opinion rages whether that maxim of English Common law is also a rule of Nigerian customary law. While

that debate subsists, the better view on the authorities of Santeng v Darkwa 6 WACA 52 and Moore v Jones 7 NLR 84 appears that it is not. Be that as it may, it must be borne in mind that this maxim is not an immutable rule of law because a lot depends on the fixture attached to the ground or building. See Adebiyi v Ogunbiyi 1965 NMLR 395.

**The above definitions of land, including the maxim in respect thereto, show the increasing difficulty in determining the legal conception of land, and the final word in this regard. No doubt, even to the laymen today, land no longer means the ordinary ground with its subsoil, but surely includes buildings and trees growing thereon. For the court in any circumstance, therefore, to exclude the structures and objects, like buildings and trees standing on the ground in the connotation of the term "land" it must be shown – where the matter is covered by a written document – to be clearly discernible from the content of the executed or written document.**

Learned counsel for the appellant has strongly submitted that the lower court in its leading judgment misdirected itself when in its consideration of whether the land, the subject matter of controversy in this regard, was bare land limited itself to clauses 3 and 6 in the Lease Agreement rather than examine the entire Lease Agreement. Support for this limitation was given by Niki Tobi, J.C.A. in his concurring judgment where he expressly stated: "*I shall take only two clauses in the lease...*" His Lordship then proceeded to reproduce clauses 3 and 6 verbatim. Counsel also submitted that it is a fundamental rule of the interpretation of statutes or documents that once the language of the statute or document is clear the Court is obliged to give it a literal interpretation. See Orubu v N.E.C. (1988) 5 NWLR (Pt.93) 323. He further submitted that it is a fundamental principle of interpretation for the court to discover the intention of the parties as may be deducible from the entire document or instrument executed by the parties, the terms of which they had agreed should bind them. Having done so, the court must give effect to that intention and nothing more pretentious can be the duty of the court in the interpretation or construction of a document; after all, it has no jurisdiction to re-write an agreement for the parties. See Alhaji Tukur v Government of Gongola

State (1989) 4 NWLR (Pt.117) 517 or (1989) 9 SC NJ, Chief Ogbonna v Attorney-General Imo State & ors (1989) 5 NWLR (Pt. 121) 312 and N.E.W. Ltd v Denap Ltd (1997) 6 NWLR (Pt. 535) 481.

**I am in full support of the submission of Appellant's counsel that it was a misdirection for the lower court in consideration of whether the land, the subject-matter in controversy, was bare land or included the structures thereon to have relied on only clauses 3 and 6 in the entire Lease Agreement to arrive at its conclusion. The learned Justices of the lower court were clearly in error because it is a fundamental rule of construction of instruments that its several clauses, must be interpreted harmoniously so that the various parts of the instrument are not brought in conflict to their natural meaning.** Emphasising the same point, the learned authors of Halsbury's Laws of England. Vol. 12, (4<sup>th</sup> ed.) para. 1469 stated tersely but pointedly:

*"The best construction of deeds is to make one part of the deed expound the other; and so make all the parts agree. Effect must, so far as possible, be given to every word and every clause."*

The same principle was approved by this Court in Lamikoro Ojokolobo & ors v Lapade Alamu & anor (1987) 7 SCNJ 98. **Surely, a fragmentary interpretation of the various clauses of the Lease Agreement without recourse to the entire Lease Agreement would do violence to the context in which the controversial terms "premises" and "land" were employed and therefore the ascertainment of the parties' intention in relation to these two terms was bound to be distorted and erroneous and consequently unacceptable.**

Perhaps, it is appropriate at this juncture to consider the leading cases cited and relied upon by the parties in tuis contest, as it appears considerable light would be shed therefrom on the question whether he revised rent should be restricted to the bare land or should include the buildings erected thereon. First let us turn to Ponsford v H.M.S. Aero-sols (supra). Here there was a lease dated August 19, 1968 of factory premises in Barking for 21 years and the revision of rent was to be referred to a surveyor under an arbitration clause where the parties dis-

agree on the revised rent. In 1969, the premises were burnt down and rebuilt out of the proceeds of insurance. The licence for the improvements which were in fact made was contained in a document dated November 14, 1969, where in clause 1 it provided:

B            “The landlords hereby grant unto the tenants licence to execute in  
and upon the demised premises the several alterations and works indicated in the plan annexed... It is hereby agreed and declared that all the  
C            lessee’s covenants and conditions contained in the lease which are now  
applicable to the premises demised thereby shall continue to be applicable to the same when and as altered and shall extend to all additions  
D            which may be made thereto in the course of such alterations.”

The lease of August 19, 1968 indicated, inter alia, that the rent would be assessed “as reasonable rent for the demised premises”. The trial judge,  
D            held that a reasonable rent for the premises should be assessed without taking account of the improvements made by the defendants. The plaintiffs appealed on the ground that the judge was wrong in his construction of the rent review clause. On appeal, the Court of Appeal, by a majority  
E of 2:1, reversed the judgment of the trial court and held that the revised rent would include the improvements made on the demised premises.

Respondents strongly submit that Ponsford case is supportive of their contention that the assessment of revised rent in this appeal for the  
F            demised premises should include improvements made on the demised premises. As would be expected, the Appellant submitted to the contrary. He further urged that Ponsford case was distinguishable in that the relevant clause, reproduced above, clearly stipulated and directed that the improvements to the demised premises were to be included in the revised  
G            assessment of rent. Secondly, unlike the case in hand what was demised was not bare land but developed property. Furthermore, the case in hand, simply involved erection of a building whereas in the Ponsford  
H            case the licence expressly involved improvements to a building that was leased.

In an exercise such as this I must observe that I find the head notes in Ponsford case to be of considerable assistance although I am aware it should not ordinarily be evoked to decide the issue in contro-

versy except to state the obvious or to resolve doubt and ambiguity as in that case. The head notes clearly stated that *it was common ground that the improvements, once made, became part of the demised premises.*”. **It is very clear that the facts and circumstances of the present case are easily distinguishable from those of Ponsford case. It will be manifestly perilous to rely on it in the determination of the narrow issue raised in this appeal having regard to the peculiar circumstances of the Lease Agreement sought to be interpreted by the Court.**

Now to Cuff v J & F Stone Property Limited (supra). The issue decided in that case was put by Megarry J., as he then was at p. 258:

*“What from the summons and evidence initially appeared to be the question for decision was whether or not the survey was to have regard to the improvement. The summons sought a declaration that the rent was to be assessed ‘without disregarding any improvement’ to the demised premises effected by the property company. However, as the argument proceeded it became apparent that this was not the real question between the parties, for Mr. Priday advanced no conclusion, whether based on section 34 or otherwise that the improvements should be wholly disregarded. His case was that while he accepted that the improvements should not be wholly disregarded, he asserted that, to put it shortly, the surveyor should temper the effect to be given to the improvements by what he considered to be reasonable.”* (emphasis is mine)

**Cuff case provides that the improvements should not be wholly disregarded whereas in this appeal, the pith of Appellant’s case is that they should not be taken into account in the assessment of the revised rent for the demised premises. Furthermore, the improvements in Cuff case had been made prior to the execution of the lease and therefore the improvements could not by any disingenuous interpretation be excluded in computing the revised rent unless such exclusion was expressly stated. In other words, the improvements in that case unquestionably formed part of the demised premises.**

The Australian case of Turner v York Motors Property Co. Lim-

ited (supra) is a different kettle of fish; it involved a statutory interpretation of the term “*prescribed premises*” as defined and adopted in Part III of the Landlord and Tenant (Amendment) Act 1948-1949 (NSW). In considering the term premises, Dixon, J at p. 75 said:

B “The word ‘premises’ is no doubt a vague one but in legislation of this sort there are great advantages in a test of its application which is objective and consists in a readily ascertainable physical fact. Having regard to the history of the provision and the dictionary meaning of the word ‘premises’ I think that one should adhere to the rule laid down that  
C bare land without buildings if let for the purpose of occupation as bare land, does not constitute premises.”

Continuing, His Lordship said:

D “If land is let upon terms that the tenant shall or may erect buildings which are not removable by him but will pass with the freehold, then I should say that the land and building when erected would form premises.”

Certainly, this dictum of Dixon, J was expressed as used in the legislation under reference whereas the term under contest is sought to be ascertained as may be gathered from the parties’ intention as stated by them in the Lease Agreement. Bearing in mind that Dixon, J in the statement credited to him above emphasised the vagueness of the term “*premises*”, it is then tolerably understandable to appreciate the coincidence in the view of the learned authors of Corpus Juris Secundum (supra) regarding the elastic use of the term “*premises*”. I wish to reproduce again, if only for emphasis, the emphatic words of the learned authors:

G “The word ‘premises’ has various meanings depending on the subject matter in connection with which it is used. It has no fixed legal significance, and no definition applicable to every situation.” (emphasis is mine).

H It is manifest that the decision in Turner case cannot be the last word in the vexed quest for an enduring definitive connotation of the term “*premises*”. From the authorities, I am bound to re-echo that the term does not readily lend itself to any precise meaning; whatever it may mean, in my judgment, will depend on the intention of the parties as may be gleaned

from the agreement subscribed to by them. **Therefore, although I find the dictum of Dixon, J sound as expressed in Turner case, however, I would wish to stress that His Lordship's approach in that case was borne out by the peculiar circumstances of that case. I regret that I am not persuaded that that approach can be extended to the peculiar circumstances of this case.**

As earlier stated and emphasised in this judgment, clause 7(b)(iii) is fundamentally the key for the ascertainment of the real import of the words “*premises*” and “*lands*” as employed by the parties in the Lease Agreement. The term “*premises*” being elusive as clearly adumbrated above, clause 7(b)(iii) pointedly stipulated that the revised rent for the premises should be rent, having regard to rents obtainable at the commencement of the revision period for similar lands of similar area and amenities similarly situated. It is unquestionably clear that what was demised was bare land. It is equally beyond doubt that having regard to clauses 3, 4, 5 and 6 that buildings of prefixed descriptions were to be erected and kept in good and substantial repair, yet in clause 7(b)(iii) which is crucially fundamental to computing the assessment of revision of rent, it is significantly worthy of note that that clause did not state that the revised rent should be “*rent for the premises having regard to the rents obtainable at the commencement of the revision period for similar premises of similar area and amenities similarly situated.*” Rather, the Arbitrator was directed, as expressly stated in the Lease Agreement, that the revised rent should be ‘*rent for the premises having regard to the rents obtainable for similar lands of similar area and amenities similarly situated.*’ **The use of similar lands in clause 7(b)(iii) rather than similar premises is telling. In my judgment, it produces the marked difference and effect that the revision in rent should relate to bare land in contradistinction to premises with its inherent elusiveness in meaning.**

I cannot conclude this judgment without saying a word about the attractive submission earlier made by learned Respondents’ counsel when he contended – agreeing with the view expressed in the leading judgment of the court below – that there being no stipulation directing the arbitrator

to ignore improvements on the land while computing the revised rent, the arbitrator should take the improvements thereon into account. I said the submission is attractive rather advisedly. In fact, the submission is neither here nor there. After all, an equally misplaced argument on the converse by the Appellant would not doubt be tenable. **The submission in either way loses sight that the real issue in this appeal calls for the ascertainment of the parties' intention in the Lease Agreement. In doing so, the Court should bear in mind that it has a responsibility not to re-write the Lease Agreement for the parties but simply to give effect to their intention as may be deduced from the language employed by them.**

From all I have said I would answer the question in this appeal to the effect that the revised rent should be computed on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site. The appeal is therefore allowed while the judgment of the Court of Appeal is hereby set aside with N10,000.00 costs in favour of the Appellant.

### KARIBI-WHYTE JSC

I have read the leading judgement in this appeal of my learned brother Okay Achike, JSC. I agree entirely with his reasoning and the conclusion allowing the appeal.

This appeal rests on a very narrow issue of construction of a Lease Agreement namely the proper construction of the words of clause 7(b)(iii) of the lease agreement between the parties. The dispute arose from disagreement as to the amount of rent due and payable by the Appellant under the rent revision clause of the Deed of Lease. The parties pursuant to the provision of the lease referred the matter to an arbitrator. The following question was put to the Arbitrator.

*“On what basis should the revised rent be computed? Is it on the basis of the fair and reasonable rent which can be obtained for the premises in the open market? Or is it on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site”*



The formulation of the question put to the Arbitrator appears to suggest a distinction in the computation of the revised rent between, what can be obtained for the premises in the open market, or what can be obtained for the bare site without taking into consideration the buildings or developments. Thus by this approach a distinction is drawn between the “*pre-mises*” which takes into account developments on the land, and the “*bare land*” without the buildings or developments. B

The Arbitrator’s determination which was in the alternative was referred to the High Court of Lagos. In the decision of the High Court C  
Moni Fafiade, J, held that only the bare land without the buildings or development on it, should be taken into account in the computation of the revised rent payable. The revised rent on the demised land was accordingly fixed at N30,000 per annum with effect from April 1, 1981.

Not satisfied, the claimant appealed to the Court of Appeal. The D  
Court of Appeal allowed the appeal and held that the revised rent should take into account the improvement on the demised premises. Dissatisfied with the judgment of the Court of Appeal, Appellant has appealed to this Court against the decision. This is the matter subject matter of this E  
judgment.

The Appellant challenged the judgment alleging four grounds of appeal which are as follows –

“GROUND OF APPEAL:

(1) *The lower Court misdirected itself by holding that:-* F

*“With respect to the learned Judge, the demised premises is not bare land and to base the revised rent payable upon that basis is a misdirection. It is clear from Clause 3 of the lease that what was in the contemplation of the parties at the time of the making of the lease was that the land demised was to be built immediately... It was also the thinking of the parties that the lessor shall use part of the building when built rent-free...”* G  
*and thereby came to an erroneous decision in the case.*

PARTICULARS

(a) *The principles of law which are described as rules of interpretation or construction have not been properly applied.*

(b) *Clause 3 of the lease referred to “demised premises” as what was* H

let i.e. the vacant land on which buildings to the value or amount of L60,000 were to be built subsequently.

(c) It is irrelevant in law in the determination of the issue before the lower Court that after the grant of the lease the parties agreed that buildings were to be erected thereon by the lessee or that part of the said buildings was to be used free or rent by the lessor.

(2) The Court below misdirected itself in law by holding that:-

“The Arbitrator here should have looked into the question with a view of (?) determining a revised rent for the demised premises by taking into account the improvement which has been made on the demised land since 1961 ... because the combined effect of Clauses 3 and 6 of the tenant’s covenant in the lease, is that the land demised land was to take place immediately after the lease has been executed. So the question of revised rent twenty years after the execution of the lease must take account of the improvement made on the land.”

#### PARTICULARS

(a) The first aim of the Courts is to arrive at the interpretation which the words of the lease can fairly bear and which yields a practical result with due regard to the object of the lease.

(b) The ultimate aim is to arrive at an interpretation which achieves harmony among the provisions of the lease as a whole and which also produces consistency with the relevant provisions in the lease.

(c) It is beyond the powers of the lower Court to alter, ignore or add anything to the provisions of the lease.

(d) The proper function of the lower Court is to interpret or expound, on the legal principles of construction of written instruments, the meaning of the text in question.

(e) The interpretation Act and the Interpretation Law of the State apply to the provisions of “any enactment except in so far as the contrary intention appears in the Act (or Law) or the enactment in question” and not to the private agreements between parties as in this case.

(3) The Court below also misdirected itself in law by holding that:-

“The lease enjoins the Arbitrator, while revising the rent to look at similar lands in the neighbourhood and of the same facilities and used (?)

*whatever result that enquiry would yield in determining the rent. In other words, the Arbitrator must have regard in the revision of the to rent accruing on similar buildings to that of the one on the land demised in arriving at the revised rent ... I would therefore answer the question of law posed in the reference by the Arbitrator to the effect that the revised rent should take account of the improvement made on the demised premises since 1961 and accordingly award the sum of N450,000 per annum as rent on the demised premises."*

PARTICULARS

(a) *Jowitts' Dictionary of English Law*, 2<sup>nd</sup> edition, Volume 2 at page 1409.

(b) *Stroud's Judicial Dictionary*, 4<sup>th</sup> edition, Volume 4.

(c) *The submissions made on behalf of the Appellant on Cuff v. J. & F. Stone Property Company Limited* (1978) W.L.R. 256 and *Ponsford v. H.M.S. Aerosols* (1977) 1 W.L.R. 1029.

(d) *Turner v. York Motors Property Limited* (1951) 85 C.L.R. 55

(e) *Cole v. Begho* (1959) 1 N.S.C.C. 60"

Both parties have filed briefs of argument which they adopted and relied upon in their argument before us. Learned Counsel for the Appellant has formulated a single issue for determination as arising from the grounds of appeal. The issue formulated is the same as the question of law raised by the Arbitrator in his award which I have already stated in this judgment. The issue is as follows –

*"Was the Court of Appeal right in its determination of the question of law raised by the Arbitrator in his award, to wit: On what basis should the revised rent be computed? Is it on the basis of the fair and reasonable rent which can be obtained for the premises in the open market? Or is it on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site?"*

Learned Counsel for the Respondent, Mr. T.E. Williams did not formulate any issues in his brief of argument but would seem to have adopted Appellant's formulation in his argument. Arguments of Counsel as I have observed already is concerned with the correct interpretation to

clause 7(b)(i)-(iii) of the Lease Agreement. Particularly relevant in this interpretation is clause 7(b)(iii).

Mr Kehinde Sofola, SAN has identified these clauses of the Lease Agreement as crucial for the construction of the question before the Administrator (sic Arbitrator). He has submitted that the intention of the parties can only be gathered from the express words of the Lease Agreement. He cited and relied on Alhaji Tukur v. Government of Gongola (1989) 4 NWLR (pt.17) 517 Chief Ogbonna v. AG. Imo State & Ors. (1989) 5 NWLR (pt 121) 312. Mr. Sofola argued that the ascertainment of the meaning to be ascribed to the words “premises” and “lands” as used in clause 7(b)(iii) can only be discovered by construing the Lease Agreement as a whole. It was argued that the Lease Agreement must be read together to avoid injustice – Chime v. Ude (1996) 7 NWLR (pt. 461) 379. It was submitted that the property was bare land at the time of the Lease Agreement. If the parties intended to include subsequent developments in working out the revised rent they should have spelt it out. It was contended that at point in time, the lease agreement cannot be re-written but the clauses can only be interpreted in accordance with the intention of the parties.

Referring to the words “premises “demised premises” and “land” as used interchangeably in the Lease Agreement, the intention of the parties, it was submitted, as used in clause 7(b)(iii) means bare land. Similarly, the term “premises” is also used to refer to bare land.

Mr Kehinde Sofola SAN, submitted that the word “premises” has no fixed or static legal meaning. He argued that when used in a document or written instrument, it derives its exact meaning from the words or written instrument. He relied for this view on the definition of the word “premises” in Corpus Juris Secundum, Vol. 2 p.484; Strouds Judicial Dictionary (4<sup>th</sup> Ed.) Vol.4; Recovery of Premises Law Cap 118, Laws of Lagos State, section 2, the interpretation section. The interpretation of “Land” in Halsbury's Laws of England (4th Ed.) vol. 27 para. 129 Vol. 12 (4<sup>th</sup> Ed.) Vol.27 para. 129, Vol.12(4<sup>th</sup> Ed.) para.1463, 1469.

It was submitted that the Court below was wrong to have relied only on Clauses 3 and 6 of the Lease Agreement in consideration of the question

whether the subject matter of dispute was bare land. The lease agreement providing that the demised premises was let at the value of 800 pounds were to be erected immediately thereafter in accordance with Clause 3, shows that the “demised premises” was bare land on which buildings were to be erected later. There is an error in appreciating that it was “bare land” B that was demised. It was this error which resulted in the conclusion that what was demised was not bare land.

It was submitted hence the Court below erroneously held that the Arbitrator must have regard in the revision of the rent to rent accruing on similar buildings, in the assessment of rent revision. This was a C misdirection which occasioned substantial injustice and not in accord with clause 7(b)(iii) of the Lease Agreement which suggested that revised rent should be “for similar lands” as against “similar buildings.”

Learned Counsel for the Appellant referred to three cases relied D upon by Respondents as the same as those relied upon by them at the Arbitration Tribunal and the lower Courts, and submitted they are distinguishable and inappropriate to the circumstances of this case. The cases are, (i) Ponsford v. A.M.S. Aerosols (1977) 1 WLR.1029; (ii) Cuff E v. J. & F Store Property Company Ltd. (1978) WLR. 256 and (iii) Turner v. York Motor Property Limited (1951) 85 C.L.R. 55. Mr. Kehinde Sofola SAN urged us to decide this appeal on its particular facts as contained in the lease agreement, reject the decision of the court below, and uphold the F judgment of the High Court.

In his oral reply to the arguments of learned Counsel to the Appellant, Mr. T.E. Williams for the Respondents conceded that the appeal turned on the interpretation of the rent revision clause of the lease agreement. He also agreed referring to clauses 3 and 6 and 7(b)(iii) of the G lease Agreement that at the time of the making of the said Agreement the property demised was bare land. He however submitted that once a building is erected thereon the building will attract rent which is to be payable by the tenant. He urged us to dismiss the appeal. H

The argument which Mr. T.E. Williams adopted in the Respondents’ brief was more detailed. It was there argued that Appellant’s brief of argument failed to disclose any serious flaw in the reasoning of the lower

courts and that much of the arguments presented were repetitious of the arguments presented in the Court below.

In support of the judgment of the Court below, Mr. T. E. Williams cited and relied on the dictum of Megarry J in Cuff v. Store Property B Company Ltd. (1979) AC. 87 at p.91 he referred to paragraphs 3 and 6 of the Lease agreement which enjoined the tenant to put a building on the land immediately and allowed the landlord to use a prescribed portion thereof rent free. It was submitted it was open to the parties to have expressly directed the Arbitrator not to take account of the buildings erected on the C land in fixing the revised rent. Rather the Lease Agreement enjoined the Arbitrator to look at similar lands in the neighbourhood with the same amenities.

Learned Counsel commented that Appellant’s Counsel rather than D give due consideration to the dictum of Megarry J, proceeded to cite and rely on a dictum of another portion of the same case not relied upon by the lower Court. Mr. T.E. Williams referred to the Arbitrator’s guideline in establishing the revised rent and submitted that the Arbitrator was to fix E what was in his opinion “a fair and reasonable rent for the premises.” He argued relying on the opinion of Wilde C.J in Doe d. Hemming v. Willetes 137 E.R. 280 at 283, Dixer CJ in Turner v. York Motors Property Ltd. (1951) 85 C.L.R. 55 at 75 that the term premises” has been commonly F used as comprising land and houses or structures thereon.

Learned Counsel referred to and relied on Ponsford v H.M.S. Aerosols (1977) 1 WLR. 1029 where a provision in an arbitration clause for the revision of rent for property referred to a surveyor. The surveyor under the clause for rent revision provided that he was to fix “a reasonable G rent for the demised premises.” In this case Cairns LJ, quoted extensively from the dictum of Megarry J.

Counsel referred to the Lease Agreement and pointed out that the Arbitrator was directed to fix a fair and reasonable rent, “having” regard H to rents obtainable at the commencement of the revision period for similar lands of similar area and amenities situated.”

Counsel adopted the definition of the expression lands in Hill and Redman’s Law of Landlord and Tenant (16<sup>th</sup> Ed.) at p.135, where the

authors stated,

*“The word “land,” when used in a lease or other assurance includes, if there is nothing to restrict its technical meaning, all kinds of land... and also everything on or under the soil; all buildings erected on it.”*

B

In addition he cited and relied on the definition in the Australian case of In re Lehrer and Real Property Act 1960 NSW 570 at p.574 per Jacobs, J. Learned Counsel invoked the eiusdem generis rule, that since the Arbitrator was to fix the fair and reasonable rent for the house and buildings on No. 9 Nnamdi Azikiwe Street, the word “lands” must be construed eiusdem generis with “premises”. He submitted that the dictum of Megarry J, was sound, relevant and applicable to the facts of this case and was correctly applied by the court below.

C

Learned Counsel referred to clauses 3 and 6 and submitted that it was a proper inference by the court below that it was in the contemplation of the parties at the time of making the Agreement that the demised land was to be built upon immediately; and that the lessor shall use part of it when built rent free. The parties must have contemplated that when rent comes to be revised in 20 years time, there must be buildings on the land. We were urged to hold that clauses 3 and 6 of the lease agreement are in favour of the construction adopted by the Respondents.

D

The above arguments were urged on us by learned Counsel to the parties in this appeal.

F

I shall now consider the contentions of learned Counsel to the parties in terms of the issue for determination in this appeal. I have already stated the issue in this judgment. The question concisely stated is should the computation of the revised rent be restricted to the bare land, or should it include the developments on the bare land? A proper determination of the issue in question can only be by construing the provisions of clause 7(b)(i)-(iii) of the Lease Agreement between the parties. The provisions read,

G

*(i) the rent hereby reserved shall be subject to revision every 20 (twenty) years of the term hereby created and such revised rent shall be fixed by agreement between the Lessors and the Lessees;*

H

(ii) if the Lessors and the Lessees are unable to agree to the revised rent to be paid the matter shall be referred to an Arbitrator to be appointed by agreement between them or in the absence of such agreement to an Arbitrator appointed by a Judge of the High Court Lagos;

B (iii) the amount at which the revised rent shall be fixed by an Arbitrator appointed under this clause shall be such as in the opinion of the Arbitrator is a fair and reasonable rent for the premises having regard to rents obtainable at the commencement of the revision period for similar lands of similar area and amenities similarly situated. ”

C The words underlined are particularly relevant in the determination of the intention of the parties in relation to the revision of the rent payable which as provided, must be fair and reasonable for the premises at the commencement of the revision for similar lands and situated in an area with  
D similar amenities. A proper construction of the provision of the relevant clause seems to turn on the meaning to be ascribed to the terms “premises” and “lands” used in the provision.

I have carefully read and examined the authorities relied upon by  
E learned Counsel including the various definitions cited to us. It would seem that the term “premises” may connote “bare” land or land with the buildings thereon, depending on the intention of the parties, having regard to the circumstances of the case. This actual meaning of the word  
F “premises” would depend upon the context of the matter and by the circumstances of the case.

Learned Counsel for the Appellant has submitted that the word “land” as used in the Lease Agreement, relates to “premises” and therefore the Court will be guided by the definition of the word “land” in Halsbury’s  
G Laws of England (4<sup>th</sup> Ed.) where it was stated as follows –

“When land used in a lease or other assurance “land” includes if there is nothing to restrict its technical meaning, all kinds of land whether arable meadow or otherwise, and also everything on or under the soil, all  
H buildings erected on it.”

Section 3 of the Interpretation Act, Laws of the Federation which defines land as “Immovable property or “lands” include land and every-thing attached to the earth or permanently fastened to anything which is



attached to the earth and all chattels real.”

Again, there is the very wide definition in the Conveyancing and Property Law of Western Nigeria 1959, section 2 defines land similarly as follows-

*“Land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical, or made in any other way) and other corporeal hereditaments; also a rent and other incorporeal and hereditaments, and an easement, right, privilege or benefit in, over or derived from land.”*

The very wide range of situations which could be brought within the meaning of the expression land explains the difficulties in determining the legal conception of land. Hence where parties have used the word in a written document in circumstances which should disclose their intention, such intention must be collected from the words used in the written document.

Learned Counsel for the Appellant’s contention was that the Court below was misdirected when it limited itself to construing only clauses 3 and 6 of the lease agreement. It was submitted citing Orubu v. N.E.C. (1988) 5 NWLR (pt.93) 323 that it is a fundamental rule of interpretation of statutes or documents that once the language of the statute or document is clear the court is bound to give it a literal construction. The fundamental principle of interpretation is to discover the intention of the parties as to the terms they have agreed to be bound from the entire document or instrument executed by them. The court must carry out their intention as it has no jurisdiction to re-write the agreement for the parties – Alhaji Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt.117) 517; Chief Ogbonna v. Attorney-General Imo State & ors. (1989) 5 NWLR (pt. 121) 312.

I agree with Mr. Sofola SAN in his submission that the Court below was in error to have relied on clauses 3 and 6 of the Lease Agreement only and limited itself in the construction of the lease agreement to the construction of these clauses alone. The approach adopted by the court below is in violation of one of the fundamental and hallowed principles in the construction of documents and written instruments, that the several parts, where there are more than one, must be interpreted together to avoid

conflicts in the natural meaning in the various parts of the written document or instrument. This rule of construction was approved by this court in Ojokolobo & ors. V Alamu & anors. (1987) 7 SCNJ.98.

The approach adopted by the court below which did not have recourse to the entire Lease Agreement in the interpretation of the meanings of the words “land” and “premises” in the written document, have violated a fundamental rule of interpretation which inevitably affected the proper ascertainment of the intention of the parties in relation to the use of these two expressions.

Learned Counsel for the Appellant has submitted that the cases of Ponsford v. H.M.S. Aerosols (supra), Cuff v. J. & F. Stone Property Ltd. (supra) and the Australian case of Turner v. York Motors Property Co. Ltd. (supra) cited and heavily relied upon by Respondents are distinguishable from the instant case before us. I agree with the submission. In Ponsford’s case the Lease Agreement was in respect of buildings on the land which was burnt down and rebuilt out of the proceeds of insurance. The lease agreement was not in connection with or related to bare land on which development of building should be made. In Ponsford, like the instant case, the revision of rent was to be referred to a surveyor under an arbitration clause where the parties disagree on the revised rent. The licence for the making of the improvements was contained in clause 1 of the Lease Agreement which provided as follows-

*“The landlords hereby grant unto the tenants licence to execute in and upon the demised premises the several alterations and works indicated in the plan annexed... It is hereby agreed and declared that all the lessee’s covenants and conditions contained in the lease which are now applicable to the premises demised thereby shall continue to be applicable to the same when and as altered and shall extend to all additions which may be made thereto in the course of such alterations.”*

Unlike the instant case the express provisions of this clause clearly and unequivocally show that it could not be referring to land simpliciter. The expression “several alterations and works indicated in the plan annexed...” can only be referable to building. Accordingly, when the lease of August 19, 1968 indicated that rent would be assessed “as reasonable

for the demised premises” it is only reasonable to conclude that the revised rent should take into account and include the improvements made on the premises.

Cuff v. J. & F Stone Property Ltd. (supra) provided that improvement on the land should not be wholly disregarded. Cuff’s case is different from the case before us in the sense that the improvements on the land had been made prior to the execution of the lease. Accordingly the improvement, unless expressly excluded, must be taken into account in computing the revised rent. In the instant case there was not improvement on the bare land at the time of the lease, and the subsequent improvement did not form part of the demised premises. Without doubt, the improvements in the Cuff case formed part of the demised premises.

The circumstances in Turner v. York Motors Property Co. Ltd. (supra) are completely different. This involved the interpretation of the term “prescribed premises” as defined and adopted in Part III of the Landlord and Tenant (Amendment) Act 1948 (N.S.W.) Dixon J, was here defining the word “premises” within the Act. He said;

*“The word “premises” is no doubt a vague one but in legislation of this sort there are great advantages in a test of its application which is objective and consists in a readily ascertainable physical fact. Having regard to the history of the provision and the dictionary meaning of the word “premises” I think should adhere to the rule laid down that bare land without buildings if let for the purpose of occupation as bare land, does not constitute premises”*

His Lordship continue and added;

*“If land is let upon terms that the tenant shall or may erect buildings which are not removable by him but will pass with the freehold, then I should say that the land and building when erected would form premises.”*

It is obvious that this is an interpretation of a statutory provision which as a general rule is not related to the facts of this case. The meaning of the term in the instant case can only be deduced from the provisions of the Lease Agreement between the parties, and the intention as can be deduced from the words used.

Now, as I have already stated above, Clause 7(b)(iii) is critical and

crucial in the determination of the meaning of the words “premises” and “land” in the Lease Agreement between the parties. It is pertinent to observe that Clause 7(b)(iii) stipulated that the revised rent for the premises should be rent, having regard to rents obtainable at the commencement of the revision period of similar lands of similar area and amenities similarly situated. There is no doubt that bare land was demised. It is also important to observe that although clauses 3, 4, 5 and 6 of the Lease Agreement provided for erection of buildings of prefixed descriptions, which are to be kept in good and substantial repair. The submission of Learned Counsel to the Respondents that because the Lessee was enjoined to erect a building immediately on the land and allowed the Landlord to use a portion rent free, the nature and character of the demised land was altered. I do not think so. What was demised was bare land. So it remains. A condition of the grant of the lease did not alter the character of the lease.

However, Clause 7(b)(iii) did not provide that the revised rent should be “rent for the premises having regard to the rents obtainable at the commencement of the revision period for similar premises of similar area and amenities similarly situated.” The Arbitrator was rather directed that the revised rent should be “rent for the premises having regard to the rents obtainable for similar lands” in Clause 7(b)(iii) is significant. It seems to me that by that expression the parties had in mind the bare land which formed the basis of the Lease Agreement in the revision of the rent, whether it should be based on bare land or on the premises.

I am of opinion that a departure from the clear and unequivocal words of the Lease Agreement would result in the court re-writing the provisions of the Lease Agreement, and thus making agreement for the parties. This, the court cannot do. The function of the Court is to give effect to the intention of the parties as may be deduced from the words of the Lease Agreement. I therefore answer the question in this appeal that the revised rent should be computed on the basis of the fair and reasonable rent obtainable for the bare site, without taking into account the buildings or developments on the site.

I therefore allow the appeal, the judgment of the Court of Appeal is hereby set aside. Respondents shall pay N10,000 as costs to the Appellant.

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**OGUNDARE JSC**

I agree entirely with the judgment of my learned brother Achike JSC just delivered. For the reasons given by him I, too, allow this appeal, set aside the judgment of the Court of Appal and restore that of the High Court of Lagos State (Fafiade J.) with costs to the Appellant as assessed by my learned brother Achike JSC.

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**ONU JSC**

I had the opportunity of a preview of the judgment of my learned brother Achike, JSC just read. I agree with it that the appeal has merit and I accordingly allow it.

I wish to add the following comments of mine in expatiation as follows:

The Respondent herein, who was claimant in an arbitration proceedings commenced in April, 1983 before Bola Ajibola Esq., sought among other things a determination of the revised rent payable by the Appellant to the Respondent pursuant to the provisions of a Deed of Lease, a copy of which is shown on pages 5 to 8 of the Record. The relevant provisions of the said Lease read as follows:

*“(i) The rent hereby reserved shall be subject to revision every twenty (20) years of the term hereby created and such reserved rent shall be fixed by agreement between the Lessors and the Lessees;*

*(ii) If the Lessors and Lessees are unable to agree to the revised rent to be paid, the matter shall be referred to an arbitrator to be appointed by agreement between them or in the absence of such agreement an Arbitrator appointed by a Judge of the High Court, Lagos;*

*(iii) The amount at which the revised rent shall be fixed by an Arbitrator appointed under this clause shall be such as in the opinion of the Arbitrator is a fair and reasonable rent for the premises having regard to the rents obtainable at the commencement of the revision period for similar lands of similar area and amenities similarly situated;*

*(iv) The decision of the Arbitrator appointed under this clause shall be final.”*

It is pertinent to stress here that a point on which both parties were ad idem and which was common ground was that the parties were respectively entitled to the benefits and burdens derivable from the terms of the Lease hereinbefore referred to and bound by same. A dispute arose between the parties on the quantum of revised rent to be paid and the matter was referred to Arbitration in accordance with the terms of the Lease referred to above. At the hearing of the Arbitration proceedings, the Arbitrator was requested to state a question of law for the decision of the High Court in the following terms:

*“On what basis should the revised rent be computed? Is it on the basis of the fair and reasonable rent, which can be obtained for the premises in the open market? Or is it on the basis of the fair and reasonable rent which can be obtained for the bare site, without taking into consideration the buildings or developments on the site?”*

The High Court per Moni Fafiade J. determined the above question of law in her judgment dated 3<sup>rd</sup> February, 1989 by holding that only the bare land should be taken into consideration in determining the revised rent payable. The Claimant was aggrieved by the said decision and so appealed to the court below on 30<sup>th</sup> January, 1991. It is this disaffirmation of that decision by the court below which allowed the appeal to the effect that the revised rent should take account of the improvement made on the demised premises that has led to the present appeal before this Court wherein the single issue formulated for our determination is whether the court below was right in its determination when it resolved (per Niki Tobi, J.C.A.) as follows:

*“I would therefore answer the question of law posed in the reference by the Arbitrator to the effect that revised rent should take account of the improvement made on the demised premises since 1961 and accordingly award the sum of N450,000 annum as rent on the demised premises. The appeal is therefore allowed.”* (Underlining above is mine).

I am in full agreement with the submission of the learned Senior Advocate, Mr. Kehinde Sofola, that in the resolution one way or the other of the above issue, it is perhaps imperative to restate verbatim for the sake of emphasis and clarity the relevant clause in the Deed of Lease as

expressly set out in clause 7(b)(i)-(iii) which runs thus:

*“(b)(i) The rent hereby reserved shall be subject to revision every 20 (twenty) years of the term hereby created and such revised rent shall be fixed by agreement between the Lessors and the lessees;*

*(ii) if the Lessors and the Lessees are unable to agree to the revised rent to be paid the matter shall be referred to an Arbitrator to be appointed by agreement between them or in the absence of such agreement to an Arbitrator appointed by a Judge of the High Court, Lagos.*

*(iii) The amount at which the revised rent shall be fixed by an Arbitrator appointed under this clause shall be such as in the opinion of the Arbitrator is a fair and reasonable rent for the premises having regard to rents obtainable at the commencement of the revision period for similar lands of similar area and amenities similarly situated.”*

I also agree with the learned Senior Advocate that whether in the determination of the single issue for determination it is not the ‘bare land’ that is to be read into the agreement. I am in complete agreement with the learned Senior Advocate’s submission that to determine the intention of the parties, the whole document ought to be read in its complete form. The main object of interpretation and/or construction of documents is to discover the intention of the parties which is deducible from the language used. That role, in my view, is the responsibility of a court of law, which cannot under any guise whatsoever, defeat the meaning of the document which clearly or expressly embodies the terms both parties have agreed to bind them. In which case, all the court has to do in the case in hand, is to interpret the document to bring out its intended meaning and no more. See Alhaji Tukur v. Government of Gongola State (1989) 4 NWLR (Part 117) 517; (1989) 9 SCNJ; Chief Ogbonna v. Attorney-General, Imo State & Ors. 91989) 5 NWLR (Part 121) 312 and Chime v. Ude 91996) 7 NWLR (Part 461) 379 page 432 where I humbly stated the law inter alia as:

*“It is a cardinal rule of construction that in seeking to interpret a particular Section of a statute or subsidiary legislation, one does not take the section in isolation, but one should approach the question of the interpretation on the footing that the section is part of greater whole. See James Orubu v. National Electoral Commission (1988) 5 NWLR (Part 94)*

323.”

I also share the views expressed by learned Senior Counsel for the Appellant that the family of the Lessors is a family with well renowned and leading members of the Bar who in matters of legal drafting or in relation to interpretation of documents, ought to have circumspectly provided in the Deed of Lease what provisions they wished to make for the future specific development of the land in their agreement, being mindful of the fact that ‘bare land’ was what the agreement talked about and no more. Furthermore, not even this Court can come to the aid of the parties herein to re-write the agreement by circumventing it as the Respondents would now wish us to do. Looking at the agreement as a whole, there are no redeeming features therein to make it say what it had from the onset not set out to say. The case of Cuff v. J. & F. and Stone etc (1978) WLR 256 called in aid by the Respondent is accordingly of no avail.

It is for these reasons stated above and the more elaborate ones contained in the leading judgment of my learned brother Achike, JSC that I too allow this appeal, set aside the judgment of the court below and restore the Ruling of the trial court presided over by Moni Fafiade, J. and dated 15<sup>th</sup> March, 1985. There shall be costs of N10,000.00 in favour of the Appellant.

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### UWAIFO JSC

I had the advantage of reading in advance the judgment of my learned brother Achike JSC, who has stated the facts of this case at some length, and I agree with him that this appeal has merit. I however consider it absolutely necessary to state some of the relevant facts which, I think, will enable me to make my views reasonably easy to appreciate as to why a proper construction of the lessees’ covenant is a crucial factor in resolving this appeal.

By a deed of lease dated 11 April, 1961 the Executor and Executrix of the estate of Eusebius James Alexander Taylor (the Lessors) demised a bare parcel of land at No. 9 Victoria Street now known as No. 9 Nnamdi Azikiwe Street, Lagos unto M. Debs & Company Limited (the Lessees) for a term of 50 years commencing from April, 1 1961. The yearly rent



was £800 subject to revision every 20 years. On 6 February, 1974 the Lessees transferred by assignment to Unilife Development Company Limited, the present appellant, the residue of the term granted under the lease. Under the said deed of lease, the Lessees covenanted with the Lessors, the present respondents, “to build construct and erect buildings of the value or amount of £60,000” upon the land immediately at their own cost. More will be said later on the conditions of the lease. There is no dispute that the covenant to build was complied with. B

Problem arose when rent revision became due after 20 years from the commencement date of the lease. The Lessors made a demand for rent of N250,000.00 a year while the Lessees offered N12,000.00. the disparity in both figures appeared to have depended on what either party understood to be the nature of the property the rent was being based. The Lessors based their figure on the land and buildings thereon while the Lessees said it was only the bare land that was the subject of rent. The matter went to arbitration at which the Lessors put up a claim for N450,000.00 a year. The matter went forth and back between the High Court and the Sole Arbitrator who had been appointed by the High Court. In the end the High Court, Lagos, presided over by Moni Fafiade J. on 3<sup>rd</sup> February, 1989, upon an issue formulated before her, came to the conclusion that a reasonable revised rent payable after 20 years from April 1, 1961 was N30,000.00 a year. She arrived at this figure on the basis that the rent should be in respect of the bare land and not the entire premises including the buildings on it. The issue formulated for the learned Judge was: C D E F

“On what basis should the revised rent be computed? Is it on the basis of the fair and reasonable rent which can be obtained for premises on the open market? Or, is it on the basis of the fair and reasonable rent which can be obtained for the bare site without taking into consideration the buildings or development on the site?” G

An appeal was taken to the Court of Appeal on the same issue as reproduced above. On 30 January, 1991, the Court of Appeal in the leading judgment read by Adenekan Ademola, JCA set aside the judgment of Moni Fafiade, J. and awarded the sum of N 450,000.00 a year “as rent H

on the demised premises.” The demised premises, according to him, consisted of the land and the buildings thereon. The learned Justice observed:

“I agree with the appellant’s counsel that the word ‘Land’ occurring in the context of the guideline to the Arbitrator must be considered ejusdem generis with the word ‘premises’ occurring in the earlier part of it. It cannot be a matter of a bare land being used as the basis for comparison in this case. For the factual situation is such that the bare land demised in 1961 has ceased to be bare land in 1981 when the question of revision came up.”

In his concurring judgment, Niki Tobi, JCA observed, quite rightly, that a basic rule of interpretation of documents (or statutes) is that once the language of the document is clear the court must give it the literal interpretation. The learned Justice later went on to observe as follows:

“While the word ‘premises’ is a vaguer term than the word ‘land’ in certain instances, the two can be used interchangeably in some other circumstances. Premises could include land. Of course, the reverse position is also true. To use the expression ‘premises’ only in the context of a building is yet another general usage outside the law and therefore unacceptable. The only problem in the judgment of the learned trial Judge was her use of the epithet ‘bare’ to qualify land. The word ‘bare’ in the context would appear to mean just the ordinary physical structure of the land and no more. But that is not good law.”

On appeal to this court, the issue originally formulated before the trial court and the lower court has again been posed here. I think my learned brother has simplified that issue. It is an appropriate formulation which I will reproduce here with my addition in parenthesis as follows:

“Should the computation of the revised rent (on a fair basis upon a reasonable understanding of the language of the lease agreement in this case) be restricted to the bare land or should it include rent (on a fair basis on) the developments on the bare land (carried out after and in consequence of the lease agreement)?”

It seems to me, with due respect, that the lower Court (per Ademola and Tobi JJCA) did not do enough to rely on the interpretation to be given

to the terms of the deed of lease in respect of the transaction. But they, as it appears to me, relied entirely, in the end, on the legal precepts and definitions of what is ‘land’ and what is ‘premises’, instead of resolving this from the wording of what the parties to the deed could be understood to have intended. In this regard, the trial court (per Moni Fafiade, B J) was of the right perception when she largely satisfied herself as to the interpretation of the terms of the deed of lease before reaching a decision (a) on what the res for the purposes of rent and (b) as to what is a fair and reasonable rent in the circumstances.

What the lower court did was to go by some general rule as to what ‘land’ and ‘premises’ mean in determining their signification as used in the deed in question. That was an erroneous approach particularly when it is recognised (as Niki Tobi JCA did) that the meaning of ‘land’ or ‘premises’ could be vague as it is sometimes used either in an all-embracing or in a restricted meaning. At times ‘land’ could mean nothing other than bare land which at the same time could stand for ‘premises’. It is not unusual for the owner of the bare land to warn trespassers passing through it that it is private land or property or premises. If either term is used in a legislation, the meaning will, of course, depend on the construction of the relevant provisions of that legislation: see *Turner v. York Motors Property Ltd* (1951) 85 CLR 55 at 75. the learned authors of *Hill and Redman’s law of Landlord and Tenant*, 16<sup>th</sup> edition, p. 135 say:

“The word ‘land’, when used in a lease or other assurance includes, if there is nothing to restrict its technical meaning, all kinds of land, whether arable, meadow or otherwise, and also everything on or under the soil; all buildings erected on it.” (Underlining mine)

A similar definition can be found in Halsbury’s Laws of England, 4<sup>th</sup> edition, vol. 27(1) Reissue para. 130. It is useful to add what is stated in *Corpus Juris Secundum* vol. 27, page 484, that:

“The word ‘premises’ has various meanings depending on the subject matter in connection with which it is used. It has no fixed legal significance, and no definition to every situation.”

I think the submission by Mr. Kehinde Sofola SAN that this case should be decided on its peculiar facts and upon a close examination of

the terms of the covenant contained in the deed of lease is sound. In this connection he drew our attention to the guiding observations in *Cornish v. Cleife* (1864) 159 E.R. 605. In that case, a lessor demised “three tenements or dwelling-houses, and a field or plot of ground adjoining thereto” and the lessee covenanted “well and sufficiently to repair, sustain and keep the said tenements or dwelling-houses, field or plot of ground and premises, and every part thereof, as well in houses buildings, walls, hedges, ditches, fences, gates, as in all other needful and necessary reparations whatsoever, when and as often as occasion shall require during the said term, and at the end or sooner determination thereof the said premises so well and sufficiently repaired into the hands and possession of the said lessors peaceably to leave and yield up.” I have purposely stated these facts in full as contained in the headnote. The other facts in the body of the judgment show that subsequently fourteen houses were built upon the land by various person having title under a sublease derived from the lease. The question arose whether the covenant to repair of the original lessee ran with the land to extend to the fourteen houses subsequently built.

A strong argument was put forward by counsel for the defendant that the “*covenant should be construed reddendo singula singulis.*” This is a rule of construction which in that case was urged upon the court to read the lease agreement by referring each phrase or expression to its appropriate object. The case underscores the fact that each case depends on the terms of the covenant between the parties. Accordingly Bramwell, B., at pages 606-607 observed:

“I should be glad, if possible, to lay down some general rule by which cases of this kind might be governed, but I do not see how it is possible, because each case must depend on the particular terms of the covenant into which the parties have entered.”

In the same vein, Channel, B., said at page 607 and I consider it necessary to quote him more elaborately:

“I agree in thinking it necessary in every case to attend to the particular language of the covenant. It can scarcely be expected that cases should be found so directly in point as to relieve the Court from the

*necessity of considering the effect of the language used. The authorities cited in the text books, establish these rules, that where there is a general covenant to repair, and keep and leave in repair, the inference is that the lessee undertakes to repair newly-erected buildings. On the other hand, where the covenant is to repair, and keep and leave in repair the demised B buildings, no such liability arises. This case does not fall exactly within either rule, but it appears to me to fall more within the latter."*

I must now turn to the deed of lease. The habendum contains this important phrase: "WITNESSETH that the Lessors do hereby demise unto C the Lessees ALL that piece or parcel of land situate at ..." That was bare or undeveloped land. That was what was in fact demised. That it was bare land can be further seen from clauses 3 and 4 of the Lessees' covenant which I shall reproduce shortly. Before that, I refer to clause 2 of the Lessees' covenant as follows: D

*"To pay and discharge all rates taxes assessments impositions duties and outgoings whatsoever which may hereafter become imposed or charged upon the demised premises or payable by the owners or occupiers in respect thereof."* (Underlining mine) E

It is beyond argument that the term "demised premises" used in cl.2 is in reference to "that piece or parcel of land" which the Lessors demised to the lessees. Clauses 3 and 4 provide:

*"3. To build construct and erect buildings of the value or amount F of £60,000 (sixty thousand pounds) upon the demised premises immediately at their own cost and discretion suitable to their need and business and in accordance with the regulations and bye-laws of the appropriate Local Authority and the requirements of the Lagos Executive Develop- G ment Board for the time being in force, not being residential.*

*4. To maintain in good and substantial repair all the buildings and other erections on the demised premises and the same in good and substantial repair to surrender or yield up unto the Lessors at the end or sooner determination of the said term."* (Underlining mine) H

A close examination of clauses 3 and 4 must show a clear intention to distinguish *buildings to be erected* from and as against the term *demised premises*, which term, as I said earlier, refers to the bare land.

Up to that point the conclusion can be reached that the term “*demised premises*” is the same as the bare land. It is true that clause 6 appears to be at variance with that conclusion since it enjoins the Lessees

“*To reserve surrender and allow three (3) rooms on the ground floor of the demised premises which shall have access to Victoria Street and as to two rooms measuring 10 feet by 12 feet each and as to the third room 15 feet by 20 feet for the use of the Lessors free of rent.*”

This suggests that although the Lessors desired to have free accommodation in part of the buildings to be erected, they referred to the proposed buildings as the demised premises. This clearly cannot be correct because it was practically impossible at that time to demise what did not then exist. I think what was intended in the said cl.6 is not “*demised premises*” as earlier used as I have shown, and must now be clearly understood, but “*proposed buildings*” on the demised premises as this will meet the reality of the matter.

It is pertinent at this stage to refer to the relevant revision clause (b)(iii) which provides that when the revised rent cannot be determined by agreement between the Lessors and Lessees,

“*the amount at which the revised rent shall be fixed by an Arbitrator appointed under this clause shall be such as in the opinion of the Arbitrator is a fair and reasonable rent for the premises having regard to rents obtainable at the commencement of the revision period for similar lands of similar area and amenities similarly situated.*” (Italics mine)

It is obvious to me that the use of the term “*similar lands*” in this part of the revision clause when read in conjunction with what has been pointed out in regard to clauses 2, 3 and 4 of the Lessees’ covenant must leave no one in doubt that the intention was to base the revised rent upon the piece or parcel of land which was demised by making fair and reasonable comparison with “*similar lands of similar area and amenities similarly situated.*” In my opinion “*amenities similarly situated*” has nothing at all to do with the development (or buildings) on the land. It must be amenities situated in similar area in which the land in question is located. Such amenities may be access roads, telecommunication, shopping centre, school, resort centre etc.

Learned counsel for the Lessors, the respondent in this case, has relied on *Cuff v. J. & F. Stone Property Co. Ltd* (1979) AC 87 and *Ponsfood v. H.M.S. Aerosols Ltd* (1977) 3 All ER 651 among others. He says that the rent that should be charged is that of a reasonable rent for the demised premises. In particular, in support, he cites the observation B of Megarry, J. in *Cuff v. J. & F. Stone Property Co. Ltd* (supra) which, although a decision of a court of first instance, is reported as a Note in the Appeal Cases Law Reports as cited above. The said observation is at page 91 and is as follows:

*"But here there is the bare phrase 'reasonable rent', used in relation to the demised premises: the question is not that of the rent 'which it would be reasonable for the tenant to pay,' but that of 'a reasonable rent for he demised premises,' and that, as it seems to me, is a matter not affected by who paid for the premises or any part of them."* D

I can find nothing in the above passage which cannot be held acceptable when related to the present case. It cannot be denied that the proper manner of assessing rent is to consider and declare what is reasonable rent for the demised premises. But first, it must be ascertained E what amounts to "demised premises" in order to fix a reasonable rent therefore. In the present case I have endeavoured to show that the demised premises are the bare land.

The second consideration is to know the facts of *Cuff v. J. & F. Stone Property Co Ltd* (supra). The property demised in that case was a dwelling house, shop and premises known as 80 High Street North in London Borough of Newham together with the yard or garden thereto. It was at a rent of £275 p.a., rising to £325 for a period of 21 years. The tenant was J. & F. Stone Lighting & Radio Ltd. The tenant later obtained G the Landlord's consent to make certain substantial alterations to the premises. The building alterations materially increased the area of the buildings. While the lease was running to its end in 1966, the tenant brought court proceedings for a new tenancy under s.64 of the Landlord and Tenant Act, 1954. The court made an order for a *new tenancy* for 14 years at a rent of £2,400 p.a. subject to rent revision at the end of the 7<sup>th</sup> H year. After this order, the tenant requested the Landlord for a lease not to

itself but to another company, J. & f. Stone Property Co. Ltd. Lease was agreed for 14 years to the new tenant which became the defendant in these proceedings that later followed.

The issue in regard to rent revision was that while the defendant  
B accepted that the improvements to the property should not be disregarded,  
the surveyor should temper the effect to be given to the improvements  
by what he considered to be reasonable. The plaintiff simply argued that  
when the lease was granted in 1966 the improvements formed part of the  
C demised premises. Therefore, that the rent to be assessed was '*a rea-*  
*sonable rent for the demised premises.*' The court accepted this argu-  
ment. Obviously, the new tenant (i.e. the defendant) negotiated lease for  
the premise with all the buildings etc together with the improvements  
thereto already in place. There was certainly no way there could be  
D argument as to what comprised the demised premises. All that was needed  
to be ascertained was what would be reasonable rent for those demised  
premises. It was in those circumstances Megarry, J. observed correctly,  
in my view, that there was no longer an issue in the determination of a  
E reasonable rent there are no issue, and no need to bother about, who paid  
for the improvements of the premises when he said at page 91 that that  
was -

"*a matter not affected by who paid for the premises or any part of*  
F *them. In my view the surveyor must take the premises as he finds them,*  
*and then determine what he considers to be a reasonable rent for those*  
*premises, regardless of who provided them or paid for them."*

It can be appreciated in what circumstances that observation was made.  
It does not, in my view, fit into the facts of the present case and cannot  
G really apply except as to the principle that when assessing rent under a  
revision clause, it must be a reasonable rent for the demised premises so  
long as what comprises the demised premises is ascertained or agreed.

The observation of Megarry, J was applied in the second case  
H relied on by learned counsel for the respondent in the present case. That  
is the case of Ponsford v. H.M.S. Aerosols Ltd (1977) 3 All ER 651. The  
mandate of the surveyor in that case was to fix "*a reasonable rent for the*  
*demised premises.*" The facts were that premises, a factory, were leased



for 21 years at a rent of £9,000 a year for the first 7 years. The second and third seven years were to attract rent higher than £9000 a year or such sum as should be assessed to be “*a reasonable rent for the demised premises.*” The premises were burnt down and rebuilt out of the proceeds from insurance with substantial improvements costing £31,780 B made at the expense of the tenants. *It was common ground that once the improvements had been made the additions became included in the demised premises.* When the rent came to be reviewed for the second seven year period, the tenant claimed that on the true construction of the rent review clause, the words “*a reasonable rent*” meant a rent that was reasonable as between the parties and therefore no account should be taken of the improvements which had been made at the tenants’ expense. The licence given and agreed for the improvements in a document contained certain clauses, two of which may be reproduced here: D

Clause 1: “*The Landlord hereby grant unto the Tenants licence to execute in and upon the demised premises the several alterations and works indicated in the plan annexed.*”

Clause 3: “*IT IS HEREBY AGREED and declared that all the [tenants’] E covenants and conditions contained in the Lease which are now applicable to the premises demised thereby shall continue to be applicable to the same when and as altered and shall extend to all additions which may be made thereto in the course of such alterations.*” F

The case was decided on the construction to be given to clause 3 above. It was this which led Cairns L.J. to say at page 653:

“*It is common ground that once the improvements had been made the additions to the premises became included in the demised premises. G Considering simply the words of the clause we have to construe, the rent review clause, I have some difficulty in seeing how a reasonable rent for the whole of the demised premises can be assessed by determining a reasonable rent for part of the premises.*”

To this, Sir Gordon Willmer, who concurred with Cairns L.J., added at H page 661 *inter alia*:

“*I need not read cl.3 of the licence again; all I desire to say is that it does make it quite clear that the improvements which have been added*

*at the expense of the tenants are now part of the demised premises. ... As has been pointed out, the demised premises include the additions and improvements in accordance with the licence which is stated to be applicable to the premises 'when and as altered'. That, as has been said, means that the demised premises now include these alterations and additions, and it is for that that a reasonable rent is to be paid."*[Underlining mine]

These observations remind us that it is important in the present case to examine the terms of the lease or covenant in order to ascertain the demised premises for which a reasonable rent will have to be paid on revision. This is more so in the present case where the improvements carried out after the lease was drawn up were not clearly intended or were not adequately stated to be part of the demised premises for the purposes of rent revision. It would appear the respondents had expected and received due consideration for those improvements in the nature of the rent-free apartment conceded to them in the buildings eventually erected by the appellant; and in addition the entire buildings erected at the expense of the appellant would become the property of the respondents after the period of the lease. The two cases relied on by the respondents are in no way helpful to their case. When properly understood, they in fact support the appellant's contention.

For the above reasons and those given by my learned brother Achike JSC, I find merit in this appeal and therefore allow it. I set aside the decision of the lower court and uphold that of Moni Fafiade, J. I abide by the order for costs made by Achike JSC.

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