

SUPREME COURT OF NIGERIA

2ND MARCH, 2001. SC. 172/1995.

**CORAM:- M. L. UWAIS CJN, S. U. ONU, A. I. KATSINA-ALU,
O. ACHIKE, E. O. AYoola, JJSC.**

MRS. FLORENCE OMOTAYO LABODE APPELLANT
AND

1. DR. GODFREY OTUBU

2. CUTAVON (NIGERIA) LTD. RESPONDENTS

ACTIONS - Abuse of court process - Statement of claim that disclosed a reasonable cause of action - Is not an abuse of the process of the court.

ACTIONS - Cause of action - Detinue - Though not established in the statement of claim - Yet a reasonable cause of action was disclosed.

ACTIONS - Tort - Detinue - Meaning of - Detention of the Chattel is wrongful - If the defendant's possession is adverse to the plaintiff's right.

PRACTICE & PROCEDURE - Parties - Necessary party - Though not joined in the action initially - But having been joined as a third party by the defendants' application -The proceedings is regularized thereby.

PROPERTY LAW - Pawn or pledge - Validity - It is void if the pawnor has no authority from the owner - And therefore cannot hold it against the owner.

FACTS

The plaintiff/Appellant acquired property of No.6 Calabar street, Surulere, Lagos by way of Assignment for valuable consideration in 1984. The vendor issued her with the land certificate title No MO 9413. The plaintiff engaged the services of the vendor's solicitor - Mr. C.O. Fadipe to prepare the Deed of assignment, lodge the application for Governor's consent and so handed him the original copy of the land certificate. Be-

cause of the protracted delay in carrying out her instructions, the Appellant in 1986 requested the solicitor to return her land certificate. To her surprise, Mr. Fadipe informed her that he deposited the certificate with the Defendants/Respondents for the amount of N155,000 (One Hundred and fifty five thousand Naira only) advanced to him by the Defendants.

The plaintiff then demanded the return of the certificate from the defendants to enable her perfect her title which was then still in her vendor and also raise money to revitalize her business. The defendants refused this demand and also refused to reply the plaintiff's letters. Hence the plaintiff commenced a suit in the High Court of Lagos State for an order to compel the defendants to surrender the land certificate to her and for damages for " *wrongful refusal to release* " it to her. The defendants who served a third party notice on Mr. Fadipe, later applied to the High court to strike out the plaintiff's statement of claim for disclosing no cause of action contending that the proper parties were not before the court.

The trial court dismissed the application holding that if the statement of claim is unchallenged and undefended, the plaintiff's action is likely to succeed. Dissatisfied the Defendants appealed. The Court of Appeal allowed the appeal and struck out the statement of claim for disclosing no reasonable cause of action in detainee. The plaintiff has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

"Whether the writ of summons and the Statement of Claim disclose reasonable cause of action."

HELD (Unanimously allowing the appeal per lead judgment of **UWAIS CJN**)

Tort - Detinue - Meaning of

1. Both the trial court and the Court of Appeal were at one, that based on the facts pleaded by the Appellant, the tort of detainee comes into play. Detainee is defined to be a wrongful detention of a plaintiff's chattel by a defendant, which is evidenced by the refusal of the defendant or his agent to deliver the chattel up on demand -see Alicia Hosiers Ltd. V

Brown, Shipley & Co., (1970) 1 Q.B. 195. Detention of the chattel is not wrongful unless the defendant's possession is adverse to the Plaintiff's right. It follows, therefore, that it is not a wrong to omit to deliver the goods to the plaintiff where there is no contractual duty or duty as bailee so to do and where there is no intention to keep the goods in defiance of the plaintiff- Capital Finance Co. Ltd. v Bray, (1964) 1 W.L.R. 323. (p. 715 G)

Pawn or pledge - Validity

2. While the tort of detinue may not operate as between the Appellant and the Respondents, the same is not true of the relationship between the Respondents and Mr. Fadipe, because of the pledge by Mr. Fadipe to the Respondents as pawnees or pledgees. At common law the capacity of a person to enter into a contract of pawn is governed by the same rules as applicable to contracts in general. Thus if the pawnor has no authority to make the pledge, the pawnee cannot hold the goods or property against the real owner— Williams v Barton, (1825) 3 Bing. 139, Ex Ch.; unless the owner has so acted as to clothe the pawnor with apparent authority to make the pledge - Fry and Mason v Smellie and Taylor, (1912) 3 KB 282CA; and Fuller v Glyn, Currie & Co., (1914) 2 KB 168. This is not the position in the present case, the Appellant did not in any way authorise Mr. Fadipe to pledge the Land Certificate. The general rule, with regard to the right of a true owner of pawned goods or property is that in order to make the pawn valid against the owner, it must be shown that the pledger has authority to pawn —See Cole v North Western Bank, (1875) LR 10 CP 354 at pp.362 - 363, Ex Ch. (p. 716 E)

Cause of action - Detinue

3. From the foregoing it follows that the facts contained in the Appellant's Statement of Claim have not disclosed detinue as a cause of action available to the Appellant against the Respondents; but it cannot be doubted that the facts disclosed a reasonable cause of action against the Respondents with regard to the pledge to them by Mr. Fadipe. For it stands to reason and common sense that Mr. Fadipe did the wrong thing by pledg-

ing the title certificate to the Respondents without the authority of the Appellant. Surely, this is sufficient to give rise to a cause of action if even not by way of detinue. In the circumstances the Appellant cannot be made to suffer for the wrongful act of Mr. Fadipe. Although the Court of Appeal made reference to the pledge by Mr. Fadipe it did not advert to the implication of Mr. Fadipe making the pledge without the authority of his client — the appellant. If the learned Justices had done so, they would have come to the conclusion, particularly in the light of the averment in paragraph 17 of the Statement of Claim, that the Appellant had a reasonable cause of action against the Respondents as disclosed therein. (p. 717 A)

Parties - Necessary party

4. With regard to the point that the necessary parties were not before the trial court on the face of the Statement of Claim, it is true that Mr. Fadipe was not joined in the action by the Appellant at the time she took out the Writ of Summons and filed the Statement of Claim. This she could have done by amending the Statement of Claim to join Mr. Fadipe as co-defendant. However, at the time the Respondents brought the application to strike out the Statements of Claim (the 31st October, 1989) they had earlier on made Mr. Fadipe a third party to the action on the 9th day of May, 1989. They therefore could not be heard to complain that the proper parties were not before the trial Court and that to be a reason for asking the trial court to strike out the Statement of Claim. It would have been an exercise in futility for the Appellant to apply by October, 1989 to join Mr. Fadipe as a co-defendant in the action since he had been made so on the third-party application by the Respondents. (p. 717 E)

Actions - Abuse of court process

5. In conclusion, the Appellant's action cannot be considered to be an abuse of the process of the court since the Statement of Claim has, as shown, disclosed a reasonable cause of action against the Respondents.

In the result, I allow the appeal, and set aside the judgment of the Court of Appeal and restore the ruling of the trial court though for a

different reason. (p. 718 A)

NOTABLE POINTS OF INTEREST

UWAIS CJN

1. Pledge/pawn defined

Consequently, although there is no contractual agreement between the Appellant and the Respondents, it is not in doubt that the latter are holding on the Land Certificate in adversity to the former's possession. The Respondents' reason for holding on the certificate is due to the pledge by Mr. Fadipe to them. Pledge is interchangeable with pawn and both have been defined to mean "a bailment of personal property as security for some debt or engagement".— See Halsbury's Laws of England, 4th Edition, Volume 36 (1) paragraph 101 at p. 72. (p. 716 B)

ONU JSC

2. A wrong must not necessarily be remediable under a known head of tort before it is justiciable

What is important is simply the presentation of the factual situation which if substantiated entitles the Appellant to a relief against the Respondents. For once there is a wrong there must be a remedy. A wrong must not necessarily be remediable under a known head of tort before it is justiciable. see the exhaustive treatment of this issue by this Court in the celebrated case of Aliu Bello & Ors. v. Attorney- General of Oyo State (1986) 5 NWLR (part 45) 828 where Bello, JSC, as he then was explained the correct meaning of the word "wrongful" as stated by Bowen, L.J. in Mogul v. McGregor 23 QBC 598 at 612 to 613. (p. 722 A)

3. Courts should rely on the substance of an action rather than the form

I therefore take the view that the refusal by the Respondents to release the Title Deed to her is therefore an infringement of her personal right and is "wrongful." See the principle of law as stated by this Court per Karibi- Whyte, JSC in Aliu Bello v. Attorney- General of Oyo State (1983) SCNLR 142 at 160. See also The State v. Gwanto & Ors as well as Falobi v. Falobi (1976) 1 NMLR 169 at 171 where this Court enjoined

courts to eschew reliance on technicalities in the determination of disputes and to rely on the substance of an action rather than the form as the predominant consideration. (p. 723 B)

B 4. *Correct application of order 27 Rule 4*

Thus, even if the decision of the court below is right, which unfortunately is not, an order of dismissal of the suit which it entered can neither be justified nor permitted under Order 22 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules which provides as follows:

C “*The Court or a Judge in Chambers may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and in any such case or in a case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a*
D *Judge in Chambers may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just.*”

In effect, wherever an application is brought under Order 22 Rule 4 (ibid) on the ground that a pleading discloses no reasonable cause of
E action as happened in the instant case, the only prayer that could be sought is an order striking out the relevant pleading. The action can only be dismissed if it is found at the same time to be frivolous or vexatious. Since the court below did not find the Appellant’s action to be frivolous
F and vexatious and what the Respondents sought in the trial court was for “striking out the Plaintiff’s Statement of Claim” the decision of the court below is wrong. (p. 726 E)

ACHIKE JSC

G 5. *Unprofessional conduct*

It would be unfortunate for me to conclude this judgment without saying a word about the conduct of C.O. Fadipe Esq. qua solicitor. In my judgment, his conduct was professionally unethical and left much to be
H desired. The impression one has is that he is on the run; but time does not run against the Nigerian Bar Association (N.B.A) to set up the necessary machinery to investigate his infamous conduct. It is therefore hoped that learned counsel for the parties would feel duty bound to bring this matter

to the attention of the appropriate disciplinary authority of the N.B.A.
(p. 734 B)

AYOOLA JSC

6. When to serve a third party notice

B

A third party notice is served where a defendant claim against a party not already a party to the action, inter alia, that he is entitled to contribution or indemnity; or, that any question or issue relating to or concerned with the said subject matter is substantially the same as some question or issue arising between the plaintiff and defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or between any or either of them. (See Order 14 rule 22 (1) of the High Court of Lagos State). (p. 737 A)

D

REPRESENTATION

J. A. Badejo for the Appellant

F. Popoola for the Respondents.

E

CASES REFERRED TO

Oloriode & Ors. v Oyebi & Ors., (1984) 5 S.C. 1 at 24 - 25

Egbe v Adefarasin, (1987) 1 NWLR (part 47) 1 at p. 20

F

Bello & Ors. v A-G of Oyo State, (1986) 5 N.W.L.R. (part 45) 828

Nigeria Airways Ltd. v Lapite (1990) N.W.L.R. (part 163) 392 at p. 406

Adekunle v The State (1989) 5 N.W.L.R (part 123) 507

Ogbimi v Ololo, (1993) 7 N.W.L.R. (part 304) at p. 130

G

Adepoju v Afonja, (1994) 8 N.W.L.R. (part 363) 440

British and French Bank v Adande, (1961) W.N.L.R. 277

Akeredolu v Akinremi, (1989) N.W.L.R. (part 108) 167;

Olale v Ekwelendu, (1989) N.W.L.R. (part 115) 332

Marshall v National Provincial Bank, (1893) 2 CH. 120

H

BOOKS REFERRED TO

Halsbury's Laws of England 4th Ed. vol. 36 (1) para. 101, 135a 138 pp

72 & 138

Snell's Principles of Equity 26th Ed. pp 45 - 55

Bullen & Leake & Jacobs Precedents of Pleadings 13th Ed. p. 954.

B RULES REFERRED TO

High Court of Lagos State (Civil Procedure) Rules Cap 52 Laws of Lagos State 1972 O. 22, O.14 r. 22(1)

LEAD JUDGMENT BY UWAIS CJN

C This is an interlocutory appeal from the decision of the Court of Appeal, Lagos Division. The Appellant was the plaintiff in a suit brought in the High Court of Lagos State, sitting in Lagos; while the Respondents were the defendants. The plaintiff's claim in the suit was for:-

D “(a) *An Order directing the Defendants to surrender to the plaintiff forthwith the Original Land Certificate Title No. MO 9413 registered at the Lands Registry, Lagos and covering property lying, being and situate at No. 6, Calabar Street, Surulere, Lagos.*

E (b) *N100,000.00 being general damages against the Defendants jointly and severally for the wrongful refusal to release to the plaintiff the said Land Certificate Title No. MO9413”.*

F The writ of summons which was taken out on the 28th day of September, 1988 was accompanied with the Statement of Claim. A motion Ex-parte was brought jointly, on the 21st of December, 1988, by the Defendants under Order 13 rule 2 of the High Court of Lagos State (Civil Procedure) Rules, 1972, for the plaintiff's previous solicitor —C.O. Fadipe, Esq. to be joined in the suit as a third party. It appears from the record of G the proceedings of the 9th day of May, 1989 that the motion ex-parte was granted, for learned trial judge — Adeyinka J. after being addressed by J.A. Badejo, Esq, learned counsel for the plaintiff, ruled as follows:-

H “COURT:- *Suit is sat (sic set) down for trial 1st November, 1989. H/ N (sic Hearing Notice) to issue to the Defendant (sic) and 3rd party”.*

On the 27th day of January, 1989, Alade A. Akesode, Esq. solicitors to the Defendants issued out, a third - party notice under Order 13 rule 23 of the High Court of Lagos State (Civil Procedure) Rules, 1972

addressed to C. O. Fadipe, Esq. directing him to enter appearance in the suit within 8 days and that in default of doing so, he would be deemed to have admitted the issues between him and the Defendant and be liable to the judgment of the High Court. The issues raised against C O Fadipe, Esq., by the third- party notice are:

“(i) *the repayment of the deposit N150,000.00 paid by the 1st defendant to you as consideration for the sale or assignment of the property, No. 6 Calabar Street, Surulere, Lagos, (which sale or assignment you failed or neglected to perfect) along with interest at the rate of ten percent (10%)—per annum,*

(ii) *the entitlement of the 1st defendant to purchaser’s lien on the original Land Certificate title No. MO 9413 covering the property known as No. 6 Calabar Street, Surulere, until the said amount of N150,000.00 with interest thereon at the rate of ten percent (10%) per annum has been paid together with costs should be determined not only as between the plaintiff and the defendant but between the plaintiff and the defendant and yourself.”*

The third -party notice was eventually served on C.O. Fadipe, Esq. by substituted service, by pasting it on the door of his chamber at No.38, Kano Road, Ebute-Metta East, Lagos.

On the 31st day of October, 1989, the Defendants took out a summons for direction under Order 22 rule 4 and Order 26 rule 6 (3) of the High Court of Lagos State (Civil Procedure) Rules, 1972 seeking an order of the trial court to strike out the plaintiff’s Statement of Claim on the ground that—

“(a) *it discloses no cause of action in that the reliefs sought by the plaintiff are not such that the Court can grant against the Defendants herein;*

(b) *that the necessary parties are not before the Court; and*

(c) *that the action is an abuse of process of this Honourable Court.”*

The summons was heard by the learned trial judge on the 13th day of March, 1999, and he gave ruling on the same day dismissing the Defendants’ application. The ruling stated in part as follow:-

“.....*This action may be founded in conversion or detinue but is more of detinue at this stage as it was not alleged that the Title Deed*

had been deposed of (sic) by the Defendants.....The essence of this action is that the plaintiff is entitled to be in possession of the title deed, not the defendants. I refer to paragraph 8 and 9 of the Statement of Claim And hold that they are allegation of demand and refusal.I refer to paragraph 9 (of the) Statement of Claim and hold that the defendants' refusal was blunt and unconditional. The defendants have by holding on to the title deed interfered with the plaintiff's property as per paragraph 20 (of the) Statement of Claim, she could not pledge to raise funds for her business. The Statement of Claim therefore discloses a course (sic cause) of action which is reasonable because if the Statement of Claim is unchallenged and undefended, the plaintiff's action is likely to succeed.....Alhaji Olanrewaju having delivered his title deed to the plaintiff and executed a Deed of Assignment the proper person to sue is the plaintiff.....This applicatiion fails in its entirety and is hereby dismissed".(interpolation mine).

At this stage, i think it is necessary to quote the pertinent paragraphs in the Statement of Claim with regard to the Defendants' application to have it struck out.

"4. Sometime in 1984, Alhaji Mudasiru Olanrewaju, the original owner of the said No. 6, Calabar Street, Surulere, Lagos assigned it to the plaintiff for valuable consideration.

5. The plaintiff found it convenient to engage the services of the previous owner's Solicitor, Mr. C.O. Fadipe to prepare the Deed of Assignment, lodge the necessary application for Governor's consent and generally perfect her Title.

6. Pursuant to the instructions given to the said Mr. C.O. Fadipe as stated in paragraph 5 above, the plaintiff handed over to him, among other things, the original Title Deed covering the said No.6, Calabar Street, Surulere, Lagos registered as Title No MO 94123 at the lands Registry in Lagos.

7. Sometime in 1986, it became clear to the plaintiff that the application for Governor's consent was taking an unduly long period to process and she requested Mr. C.O. Fadipe to hand over the Original Land certificate Title No. MO. 9413 and all other documents in his possession to enable

her continue personally to process the perfection of her title.

8. *To the plaintiff's utter surprise she was informed by M. C.O.Fadipe that he had deposited the Land Certificate Title No. MO 9413 with the 1st Defendant as security for certain amounts advanced to him by the 1st and 2nd Defendants.*

9. *The plaintiff confronted the 1st Defendant in his house on 31st December, 1987 and he admitted that the said Original Land Certificate No. MO 9413 is in his possession but refused to hand same over to the plaintiff on demand.*

10. *Towards the end of 1987 and after strenuous efforts the plaintiff eventually succeeded in obtaining the Governor's consent to the transaction assigning the property covered by the Lands Certificate No 9413 and known as 6, Calabar Street, Surulere, Lagos to her.*

11. *The plaintiff will rely at the trial on the said Deed of Assignment dated 30th December, 1987 duly executed by Alhaji Mudashiru Akanni Olanrewaju and also endorsed as a transaction for which the Consent of the Governor of Lagos State has been obtained.*

12. *The officials of the lands Registry, Lagos have requested for the original Land Certificate No. MO 9413 before the Deed of Assignment referred to above could be registered at the Lands Registry.*

13. *The plaintiff has not been able to register the said Deed of Assignment because the 1st and 2nd Defendants have refused and/or neglected to hand over to the plaintiff the Original Land Certificate No. MO 9413, despite persistent demand.*

14. *Up to date, the Defendants have refused to reply the plaintiff's Solicitors letters to the Defendants dated 9th June, 1988, 18th July, 1988 and 15th September, 1988."*

15. *The plaintiff will rely at the trial on Mr. C.O Fadipe's letter to the plaintiff dated 17th February, 1988, 13th May, 1988, and 10th June, 1988 respectively.*

16. *The plaintiff is now aware that the 2nd Defendant has sued Mr. C.O. H Fadipe in Suit No. LD/775/87 for the recovery of the sum of N155,000.00 Certified True Copies of the processes filed in the Suit will be relied upon at the trial.*

17. *The Plaintiff is not a party to any transaction between the Defendants and Mr. C.O. Fadipe and gave no instructions whatsoever to the said Mr. C.O. Fadipe or any person whatsoever to deposit the Original Land Certificate No. MO 9413 with any person including the Defendants herein.*”

“20. *The refusal of the Defendants to surrender the Original Title No. MO9413 has prevented the Plaintiff from perfecting her Title and lodging same with her bank as security for the much needed facilities to revitalise her business.*”

“22. *The plaintiff will contend at the trial that the refusal by the Defendants to release Title No. MO 9413 to her is wrongful and that she has suffered substantial General Damages by reason thereof.*

23. *WHEREOF the Plaintiff claims as per the Writ of Summons. DATED this 28th day of September, 1988*”.

Dissatisfied with the ruling of the learned trial judge, the Defendant’s appealed from it to the Court of Appeal which, in stating the facts of the case in its judgment (per Uwaifo, JCA as he then was, which was agreed with by Sulu-Gambari, JCA and Kalgo JCA, as he then was), observed as follows:-

“*The plaintiff acquired property at No. 6 Calabar Street, Surulere, Lagos by way of assignment. He got the Land Certificate Title No. MO 9413 from the vendor. The Vendors solicitor was one Mr.C.O.Fadipe. The plaintiff decided to use his services to prepare the Deed of Assignment and so handed him the Land Certificate. Mr. Fadipe became of course a bailee of that Certificate. In breach of trust, Mr. Fadipe pledged the certificate to secure loan given him by the Defendants. On becoming aware the plaintiff demanded the return of the Certificate from the defendants to enable her to perfect her legal title which was still in her vendor but they refused. There is no averment that the plaintiff offered to repay to the defendants the loan given to Mr. Fadipe in order to retrieve the Certificate. The simple question is whether an action in detinue is the proper remedy available to the plaintiff against the defendants in the circumstances. Put in other words, whether the plaintiff has disclosed a reasonable cause of action based on the test of detinue against the defendants*”

in her statement of claim.” (underlining mine).

Based on the foregoing the Court of Appeal went on to consider the case on the basis of pledge. Uwaifo, J.C.A. observed further as follows:-

“I think the learned trial judge took a narrow view of the refusal of the defendants to return the Certificate when there was no averment that there was an offer by the plaintiff to repay the loan or that the loan was tendered. What Mr. Fadipe did was to pledge the Land Certificate with the defendants to secure the loan. The question is not whether the pledge is realisable in the circumstances. The real question is whether the defendants may hang on to the certificate and desist on being repaid or a condition for releasing it in an action forwarded (sic founded) in detinues.”

The learned Justice concluded his judgment thus:-

“In the present case since the plaintiff already knew of the pledge and pleaded it, it was up to her to plead necessary facts in her statement of claim to support a wrongful detention of the Certificate as I already indicated. It is my view that the Statement of claim in this action does not disclose a reasonable cause of action in detinue. It ought to have been struck out by the court below and the action dismissed in accordance with Order 22 rule 4 of the High of Lagos State (Civil Procedure) Rules. See Oloriode & Ors. v Oyebi & Ors., (1984) 5 S.C. 1 at 24—25 per Obaseki, JSC. I allow the appeal. Accordingly I strike out the statement of claim and dismiss the action with N1,500.00 costs to the appellants”.

It then became the turn of the plaintiff to appeal against the decision of the Court below to this Court. The Appellant’s brief of argument was filed and only one issue was raised therein for our determination. It reads:-

“Whether the writ of summons and the Statement of Claim disclose reasonable cause of action.”

The respondents’ brief of argument simply adopts the issue formulated by the Appellant.

Mr. Badejo, learned counsel for the Appellant, contends that the Appellant purchased the property at No. 6, Calabar Street, Surulere in

1984 from Alhaji Mudashiru Olanrewaju. She engaged the services of Mr. C. O. Fadipe as solicitor to prepare the deed of assignment, lodge the application for Governor's consent and perfect her title. To enable Mr. Fadipe comply with her instructions, she handed over to him the original
 B copy of the land certificate No. MO 9413 which covers the property in question. When in 1986 she requested Mr. Fadipe to return the land certificate to her since he failed to carry out her instructions, she was surprised to learn that Mr. Fadipe had deposited the certificate with the 1st
 C and 2nd Respondents as security for certain amount of money advanced to him by the Respondents.

Learned counsel for the Appellant argues that neither Alhaji Olanrewaju the previous owner of the property nor the Appellant are parties to the alleged loan transaction between the Respondents and Mr.
 D Fadipe. He canvasses that a cause of action is a factual situation which if substantiated entitles a plaintiff to a remedy. He cited the case of Egbe v Adefarasin, (1987) 1 NWLR (part 47) 1 at p. 20 per Oputa, JSC and submitted that in the present case the Appellant has not pleaded the tort
 E of detinue in her Statement of Claim. Nor has she presented herself as a pledgor seeking to recover the land certificate as property pledged by her. He contends that the learned Justices of the Court of Appeal were erroneous when they sought to bring the Appellant's claim within the
 F head of tort of detinue which the Respondents claimed it fell. He submits that it is no longer necessary for a plaintiff's claim to be identified with a particular head of tort. It is sufficient if the facts averred in the statement of claim, if substantiated, would entitle the plaintiff to a relief against a
 G defendant. For once there is a wrong there must be a remedy (ubi jus ibi remedium). Learned counsel cites in support the case of Bello & Ors. v A-G of Oyo State, (1986) 5 NW.L.R. (part 45) 828 at pp. 853 and 854 per Bello, JSC (as he then was). He submits that it is beyond argument
 H that the facts averred in the Appellant's Statement of Claim discloses a reasonable cause of action. Learned counsel also argues that the Court of Appeal acted in error when after holding that the Statement of Claim did not disclose reasonable cause of action went on to dismiss the action contrary to the provisions of Order 22 rule 4 of the High Court of Lagos

State (Civil Procedure) Rules, 1972, under which the Respondent's Summons for Direction was issued, while the Respondents' application was for the action to be struck out. The Order provides:-

"4. The Court or a Judge in Chamber may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge in Chambers may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

He submits, citing the case of Nigerian Airway Ltd. V Lapite (1990) N.W.L.R. (Part 163) 392 at p. 406 F-H that the Appellant's action could only be dismissed if it was found, apart from not disclosing reasonable cause of action, to be frivolous or vexatious. However, the Court of Appeal made no such finding before dismissing the action.

In concluding his argument, learned counsel for the Appellant submits that apart from this Court holding that the Statement of claim discloses a reasonable cause of action, we should exercise our jurisdiction and power on the authority of Chief Imonikhe & Anor. v A.G of Bendel State & Anor., (1992) 6 N.W.L.R. (part 248) 396 to compel the Respondents to release to the Appellant the Land Certificate in dispute and remit the case to the trial High Court for the assessment of the damages claimed only in accordance with the general power of the Court under Section 22 of the Supreme Court Act, Cap. 425

In his reply, Mr. Popoola, learned counsel for the Respondents, argues that the lower courts concurrently found that the facts pleaded in the Appellant's Statement of Claim amount to *detinue*. He refers to the judgment of the trial Court where it stated as follows:-

"This action may be founded in conversion or detinue but is more of detinue at this state (sic stage) as it was not alleged that the Title Deed had been disposed of by the Defendant".

and the leading judgment of the Court of Appeal which opens thus:-

"This appeal is decided on the issue whether the statement of claim discloses a reasonable cause of action in detinue."

to submit that there are concurrent findings of fact on the issue and that

the Appellant has shown no special circumstances as to why this Court should depart from the findings. He relies on the decisions in Olaloye v Balogun, (1990) 5 N.W.L.R.(148) 24 C.A.; Are v Ipaye, (1990) 2 N.W.L.R. (part 132) 298 and Adekunle v The State (1989) 5 N.W.L.R. (part 123) B 507.

Learned counsel for the Respondents argues further that a cause of action must be such that is known to law; and refers to the definition of “*cause of action*” in Ogbimi v Ololo, (1993) 7 N.W.L.R. (part 304) at p. 130 and Adepoju v Afonja, (1994) 8 N.W.L.R. (Part 363) 440. He contends that a deposit of one’s title document in order to secure a loan is an equitable mortgage of the document- British and French Bank v Akande, (1961) W.N.L.R. 277. That the Respondents in the present case hold the Certificate of Title as security for the loan granted and the document can only be recovered by repaying the loan. He further argues that the statement of Claim does not aver that the Respondents are contesting ownership of the title to the property in dispute with the Appellant but instead paragraphs 6, 8, 9 and 16 thereof reveal a loan, a pledge and the effort to recover the loan and release the Certificate of Title. D E

Learned counsel canvassed that the Court of Appeal was right to observe that the question for determination in the action, is not whether the pledge is realisable in the circumstances; but whether the Respondents may hold on to the Certificate of Title and insist on being repaid the loan as a condition for releasing it in an action for detinue. He submits that the learned trial judge overlooked this fact and that is why his decision was set aside by the Court of Appeal. F

It is also urged upon us, by learned counsel for the Respondents, that since the issue whether Mr. Fadipe, as solicitor, can pledge his client’s document is being raised for the first time in the Supreme Court, we should not countenance it and should, therefore, ignore it, he cites in support- Akeredolu v Akinremi, (1989) N.W.L.R.(Part 108) 167; Olale v Ekwelendu, (1989) N.W.L.R. (Part 115) 332 and A-G v Fairlakes Hotel Ltd., (1988) 5 N.W.L.R. (Part 92) 4. G H

Arguing in the alternative, learned counsel contends that a solicitor to whom title documents are entrusted is an agent as a trustee. In that

capacity, a principal's interest could be defeated by a bona fide purchaser for value of the legal estate without notice— Marshall v National Provincial Bank, (1893) 2 Ch. 120. In this situation, the client as principal can sue the solicitor as its agent. However, in the present case this situation has not been depicted by the Statement of Claim and the writ of summons. In considering the application of the Respondents on Summons for Direction issued under Order 22 rule 4 the courts are limited to consideration of the Statement of Claim only, learned counsel said.

Now it is true that in determining an application under Order 22 of the High Court of Lagos State (Civil Procedure) Rules, Cap. 52 of the Laws of Lagos State, 1972, the trial Court will only examine the writ of summons and the Statement of Claim. It will not examine the Statement of Defence or any defence by way of the affidavit in support of the application to strike out or dismiss the action or suit— see Fumodoh v Aboro, (1991) 9 N.W.L.R. (part 214) 210 at pp. 231H- 232B and Civil Service Technical Workers Union v Agricultural and Allied Workers Union of Nigeria, (1993) 2 N.W.L.R. (part 273) 63 at pp. 71G-72A. It is clear from the Appellant's Statement of Claim that the Land Certificate which she gave to Mr. Fadipe as solicitor to register in her favour ended up with the Respondents as pawn. She specifically averred in paragraph 17 thereof that she was not a party to the transaction between Mr. Fadipe and the Respondents nor did she give instructions to Mr. Fadipe to deposit the Land Certificate to the Respondents. In other words, she did not authorise Mr. Fadipe to pledge the document to the Respondents. These averments are presumed to be true for the purpose of the application brought by the Respondents for the trial court to strike out the Statement of Claim — see Fashanu v Governor of Western Region & Anor., 1955—56 W.R.N.L.R. 138 and Adegoke v Foko & Anor., 1968 N.M.L.R. 441.

Both the trial court and the Court of Appeal were at one, that based on the facts pleaded by the Appellant, the tort of detinue comes into play. Detinue is defined to be a wrongful detention of a plaintiff's chattel by a defendant, which is evidenced by the refusal of the defendant or his agent to deliver the chattel up on demand - see Alicia Hosier Ltd. V Brown, Shipley & Co., (1970) 1 Q.B. 195.

Detention of the chattel is not wrongful unless the defendant's possession is adverse to the Plaintiff's right. It follows, therefore, that it is not a wrong to omit to deliver the goods to the plaintiff where there is no contractual duty or duty as bailee so to do and where there is no intention to keep the goods in defiance of the plaintiff-Capital Finance Co. Ltd. v Bray, (1964) 1 W.L.R. 323.

It is not in doubt from the pleadings in the Statement of Claim that Mr. Fadipe had pledged the Land Certificate to the Respondents on receipt of a deposit of N150,000.00 from the Respondents. Consequently, although there is no contractual agreement between the Appellant and the Respondents, it is not in doubt that the latter are holding on the Land Certificate in adversity to the former's possession. The Respondents' reason for holding on the certificate is due to the pledge by Mr. Fadipe to them. Pledge is interchangeable with pawn and both have been defined to mean "a bailment of personal property as security for some debt or engagement".—see Halsbury's Laws of England, 4th Edition, Volume 36 (1) paragraph 101 at p. 72.

While the tort of detinue may not operate as between the Appellant and the Respondents, the same is not true of the relationship between the Respondents and Mr. Fadipe, because of the pledge by Mr. Fadipe to the Respondents as pawnees or pledgees. At common law the capacity of a person to enter into a contract of pawn is governed by the same rules as applicable to contracts in general. Thus if the pawnor has no authority to make the pledge, the pawnee cannot hold the goods or property against the real owner—Williams v Barton, (1825) 3 Bing. 139, Ex Ch.; unless the owner has so acted as to clothe the pawnor with apparent authority to make the pledge—Fry and Mason v Smellie and Taylor, (1912) 3 KB 282CA; and Fuller v Glyn, Currie & Co., (1914) 2 KB 168. This is not the position in the present case, the Appellant did not in any way authorise Mr. Fadipe to pledge the Land Certificate. The general rule, with regard to the right of a true owner of pawned goods or property is that in order to make the pawn valid against the owner, it must be shown that the pledger has authority to pawn —

See Cole v North Western Bank, (1875) LR 10 CP 354 at pp. 362 - 363, Ex Ch.

From the foregoing it follows that the facts contained in the Appellant's Statement of Claim have not disclosed detainee as a cause of action available to the Appellant against the Respondents; B but it cannot be doubted that the facts disclosed a reasonable cause of action against the Respondents with regard to the pledge to them by Mr. Fadipe. For it stands to reason and common sense that Mr. Fadipe did the wrong thing by pledging the title certificate to the Respondents without the authority of the Appellant. Surely, this is C sufficient to give rise to a cause of action if even not by way of detainee. In the circumstances the Appellant cannot be made to suffer for the wrongful act of Mr. Fadipe. Although the Court of Appeal made reference to the pledge by Mr. Fadipe it did not advert to D the implication of Mr. Fadipe making the pledge without the authority of his client —the appellant. If the learned Justices had done so, they would have come to the conclusion, particularly in the light of the averment in paragraph 17 of the Statement of Claim, E that the Appellant had a reasonable cause of action against the Respondents as disclosed therein.

With regard to the point that the necessary parties were not before the trial court on the face of the Statement of Claim, it F is true that Mr. Fadipe was not joined in the action by the Appellant at the time she took out the Writ of Summons and filed the Statement of Claim. This she could have done by amending the Statement of Claim to join Mr. Fadipe as co-defendant. However, at the time the Respondents brought the application to strike out the State- G ments of Claim (the 31st October, 1989) they had earlier on made Mr. Fadipe a third party to the action on the 9th day of May, 1989. They therefore could not be heard to complain that the proper parties were not before the trial Court and that to be a reason for H asking the trial court to strike out the Statement of Claim. It would have been an exercise in futility for the Appellant to apply by October, 1989 to join Mr. Fadipe as a co-defendant in the action since he

had been made so on the third-party application by the Respondents.

In conclusion, the Appellant's action cannot be considered to be an abuse of the process of the court since the Statement of Claim has, as shown, disclosed a reasonable cause of action against the Respondents.

In the result, I allow the appeal, and set aside the judgment of the Court of Appeal and restore the ruling of the trial court though for a different reason. The case is hereby remitted to the High Court of Lagos State for the trial to commence without further delay. Costs assessed at N10,000.00 shall be paid by the Respondents to the Appellant.

D

ONU JSC

Appellant who was Plaintiff instituted the action giving rise to the appeal herein in the Lagos High Court for:-

E *“(a) An Order directing the defendants to surrender to the Plaintiff the Original Land Certificate Title No. 9413 registered at the Land Registry, Lagos and covering property lying, being and situate at No. 6 Calabar Street, Surulere, Lagos.*

F *(b) N150,000.00 being general damages against the Defendants jointly and severally for the wrongful refusal to release to the Plaintiff the said Land Certificate Title No. 9413.”*

G The defendants joined issues with the Plaintiff by filing a Statement of Defence - the latter which was later amended at the instance of the Defence by leave of the trial Judge on 19/6/90.

Furthermore, the Defendants brought an application to issue and serve a Third Party Notice on the Plaintiff's former Solicitor, Mr. C.O. Fadipe. The said Third party Notice having been served but before the date fixed H for trial namely, 30/10/89 following the conclusion of the pleadings, the defendants filed an application under Order 22 rule 4 of the High Court of Lagos (Civil Procedure) Rules, praying the court to strike out the Plaintiff's Statement of Claim on the grounds that:

(a) *It discloses no cause of action in that the reliefs sought by the Plaintiff are not such that the court can grant against the Defendants.*

(b) *That the necessary parties are not before the court and*

(c) *That the action is an abuse of process of the court.*

Plaintiff Appellant filed a counter-affidavit and in the ensuing Ruling after arguments of the above grounds by learned Counsel on either side, the learned trial Judge held *inter alia* as follows:

“The important thing is that the Plaintiff alleged that she is the owner of the property. I refer to paragraphs 1, 4, 7 and 10 of the Statement of Claim. The essence of this action is that the Plaintiff is entitled to be in possession of the title deed, not the defendants. I refer to paragraph (sic) 8 and 9 of Statement of Claim and hold that they are allegations of demand and refusal. The averment that the 1st defendant admitted that the title deed was in his possession is not evidence but an allegation of facts. Paragraphs 8, 9 and 13 of the Statement of Claim are clear and unambiguous that the Plaintiff confronted the defendants and the defendants refused to return the document on demand.

I refer to unconditional refusal by the defendants to sustain conversion or detainue.....

That averment is not the same thing as the 1st and 2nd defendants telling the Plaintiff that they would not return the document until they were paid by Mr. Fadipe.”

The appeal which lay to the Court of Appeal sitting in Lagos was eventually argued. In its reserved judgment dated 20th February, 1995 that court held inter alia that-

“This appeal is decided on the issue of whether the Statement the Claim discloses a reasonable cause of action in detinue.”

What that court did was to proceed to consider whether the ingredients of the tort of detainue were pleaded and whether the facts as pleaded constitute sufficient proof of the tort of detainue and a breach of an obligation on the part of a pledge. The Court found that the Statement of Claim did not disclose a reasonable cause of action based on detainue in the sense that there was no averment that there was “an offer by the Plaintiff to repay the loan or that the loan was tendered.” In its leading

judgment written by Uwaifo, J.C.A. as he then it was held inter alia that-
"It seems to me that in order to establish a cause of action in detinue in regard to pledged Property, the Plaintiff must aver either that he has repaid the debt or has made a proper tender which was refused."

B On being aggrieved, the Appellant has appealed to this Court on one lone ground, which states:

"Whether the Writ of Summons and the Statement of Claim disclose reasonable cause of action?"

C The term cause of action as judiciously defined by this Court, applying Read v. Brown (1889) 22 QBD 128 at 131, per Lord Esher M.R in Lasisi Fadare & Ors. v. Attorney- General of Oyo State (1982) 4 SC. 1 at 7 per Aniagolu JSC as—

D *"denoting every fact (though not every piece of evidence) which it would be necessary for the plaintiffs to prove, if traversed, to support his right to the judgment of the Court."*

The above definition of what constitutes the definition of cause of action in Egbe v. Adefarasin (1985) 1 NWLR (part 3) 549. See also E how this court also defined the term in much same way in Thomas v. Olufosoye (1986) 1 NWLR (part 18) 689.

F As a matter of fact, an act on the part of a defendant which gives the plaintiff a cause of complaint, is a cause of action. See Bello v. Attorney- General of Oyo State (1986) 5 NWLR (part 45) 828 at 876 it being settled law that obligation and rights are referable to when a cause of action arises. See also the cases of Chief Audu Adamu & Ors. v. Attorney- General, Bendel State & 3 Ors. (1982) 3 NCLR 676; Okechukwu Adimora v. Nanyelugo Ajufo & Ors. (1988) 3 NWLR (part 80) 1 t 17; Sir Olateru Olagbeji v. Attorney- General of Ondo State & Anor. Case No. FCA/B/69/82 (unreported) and Savage v. Uwechia (1972) 3 SC. 213 at 221.

H I am satisfied that there is no doubt whatsoever that both the two lower courts concurrently took the view that the facts pleaded in the Statement of Claim were facts in detinue. This is to be found in the Ruling of the learned trial Judge as well as that in the judgment of the court below per Uwaifo, J.C.A. as he then was.

On 20th February, 1995 the Court of Appeal (hereinafter referred to as the Court below) in its leading judgment per Uwaifo, J.C.A. as he then was, held as follows:-

"This appeal is decided on the issue whether the Statement of Claim discloses a reasonable cause of action in detinue." B

That court then simply went ahead to consider whether the facts as pleaded constituted sufficient proof of the tort of detinue and a breach of an obligation on the part of a pledgee. It found that the Statement of Claim did not disclose a reasonable cause of action based on detinue in the sense that there was no averment that there was "an offer by the Plaintiff to repay the loan or that the loan was tendered." This was what Uwaifo, J.C.A. as he then was said: C

"It seems to me that in order to establish a cause of detinue in regard pledged property, the Plaintiff must aver either that he has repaid the debt or has made a proper tender which was refused." D

The Appellant was deeply aggrieved by the decision; hence his Notice of Appeal to this Court containing two grounds wherein she complained that the court below took a curious and rather narrow view of the ingredients of the tort of detinue and the law relating to pledges. she further contends that by its unnecessary dwelling on its attempt to match the facts pleaded with particular heads of tort, the court below came to an unwarranted conclusion. E

The lone issue submitted as arising for our determination by the Appellant is: F

"Whether the Writ of Summons and the Statement of Claim disclose reasonable cause of action." G

In my consideration of this lone issue it is apt firstly, to define what a cause of action denotes. Simply put, a cause of action is a factual situation which if substantiated entitles the Plaintiff to a remedy against the Defendant. See Egbe v. Adefarasin (supra). From the attempted definition of what a cause of action denotes; to wit: that a cause of action is the operative fact or facts (the factual situation) which gives rise to the right of action which itself is a remedial right....." Vide Egbe v. Adefarasin (supra), it must be stressed from the onset that the statement H

of Claim did not disclose that the Appellant instituted her action in detinue. Neither did she present herself as a pledgor trying to recover a property pledged by her. What is important is simply the presentation of the factual situation which if substantiated entitles the Appellant to a relief against the Respondents..For once there is a wrong there must be a remedy. A wrong must not necessarily be remediable under a known head of tort before it is justiciable. see the exhaustive treatment of this issue by this Court in the celebrated case of Aliu Bello & Ors. v. Attorney- General of Oyo State (1986) 5 NWLR (part 45) 828 where Bello, JSC, as he then was explained the correct meaning of the word “wrongful” as stated by Bowen, L.J. in Mogul v. McGregor 23 QBC 598 at 612 to 613.

In the instant case, the Honourable Justices would appear palpably to have erred when they went into narrowly examining the law of detinue rather than considering the broad purport of facts as disclosed in the Statement of Claim. This is because the issue before the High Court as can be gathered from the Statement of Claim, rather than being based on detinue should be which of the parties had priority both in law and equity, to hold on to the original land certificate No. MO. 9413. On the one hand, is the Appellant’s claim that she had purchased the property from the previous owner; that she had been in possession and obtained the Governor’s consent to the Assignment. See paragraphs 20-21 and 23 of the Statement of Claim wherein the Appellant pleaded as follows:-

“20 *The refusal of the defendants to surrender the original Title No. MO9413 has prevented the plaintiff from perfecting her Title and lodging same with her bank as security for such needed facilities to revitalise her business.*

21 *The plaintiff continue to suffer damages by virtue of the Defendants action as a result of lack of funds to inject into her business which deteriorates every passing day.*

23 *The plaintiff will contend at the trial that the refusal by the Defendants to release Title No. MO9413 to her is wrongful and that she has suffered substantial General Damages by reason thereof.”*

On the other hand, is the Respondents’ competing claim that the Appellant’s Counsel (Mr. Fadipe) who was engaged in the perfection of

her title had deposited the Land Certificate for a loan of N155,000.00 he, the Solicitor (Fadipe) had obtained. The facts are that the Solicitor (Fadipe) had acted without the Appellant's authority and that the loan was obtained from the Respondents and not for the Appellant's benefit.

On the facts disclosed in the Statement of Claim, the Appellant, B as can be seen, clearly had a legal right to the property at No.6 Calabar Street, Surulere Lagos and in both law and equity is entitled to possession of not only the property but the Title Deed as against the whole world and particularly the Respondents in priority. I therefore take the view C that the refusal by the Respondents to release the Title Deed to her is therefore an infringement of her personal right and is "wrongful." See the principle of law as stated by this Court per Karibi- Whyte, JSC in Aliu Bello v. Attorney- General of Oyo State (1983) SCNLR 142 at 160. See also The State v. Gwanto & Ors as well as Falobi v. Falobi (1976) 1 D NMLR 169 at 171 where this Court enjoined courts to eschew reliance on technicalities in the determination of disputes and to rely on the substance of an action rather than the form as the predominant consideration. In this wise, I wish to refer to the Rights of the true owner and E Actions by the true owners as considered by the learned authors of the Halsbury's of England (4th Edition) Volume 36(i), pages 85 where at paragraph 135 and 138 respectively, the latter in which it is specifically stated:

"38. Actions by the true owner: Where goods have been wrongly F pawned the true owner may maintain an action for conversion against the pawner, and is generally entitled to recover by way of damages the value of the goods converted. He may also maintain an action against G the pawnee. In such a case the measure of damages is the value of the goods converted, but as an alternative to an order for damages the court may order delivery up of the goods concerned."

It is in this wise that I wish to reiterate by expressing my full agreement with the submission of the learned counsel for the Appellant that his case H as formulated in the Statement of Claim is neither a claim in detinue nor in the recovery of pledged property. It is simply a matter of which of the competing interest of the parties have priority. The learned authors of

Snell's principles of Equity, 26th Edition treated this issue at pages 45 to 55 and pages 45- 46 where they had this to say on the issue:

"At law, as in equity, the basic rule is that estates and interests primarily rank in the order of creation. Qui prior est tempore portior est jure" he who is earlier in time is stronger in law..... . Again, where there are two competing equitable interests, the general rule of equity is that the person whose equity attached to the property first will be entitled to priority over the other. Where the equities are equal and neither claimant has the legal estate, the first in time prevails, since "every conveyance, that is to say, the grant of a person entitled merely in equity passes only that which he is justly entitled to and no more."

See Re Samuel Allen & Sons Limited (1907) 1 Ch. 575; Dr. Joseph C. Okoye v. Dumez (Nigeria) Ltd. & Anor. (1985) 1 NWLR (part 4) page 783 at 790; chief Adedapo Adekeye & Anor. v. Chief O.B. Akin- Olugbade (1987) 3 NWLR (part 60) page 214 at page 227 and Alhaji Juradat Animashaun v. G.A. Olojo (1990) 6 NWLR (part 154) 111.

Since the Appellant was not a pledgor and the Land Certificate was deposited with the Respondents by the Appellant's Solicitor without her authority, to require her to plead that she has "either repaid money borrowed by her Solicitor or has made a proper tender for it which was refused" as was held by the court below, is to miss the point completely. Simply put, the issues, with due respect are: can a Solicitor validly pledge a client's document that came into his possession during the course of his professional duties in such a way as to bind the client without the client's authority and concurrence? When the Solicitor pledges the document or goods of a client without authority, can the client institute an action to recover the document or goods pledge from the 3rd party (pledgee) will such an action disclose a reasonable cause? (Underlining is for emphasis.)

For an answer, I wish to stress that a Solicitor has absolutely no right to convert the client's property in his possession to his personal use. He can only do whatever is covered by his instructions. Just as the Solicitor cannot convey a right of title to the property on the defendants, he cannot by the same token pledge a title deed and property which does

not belong to him .As this Court had held in contradistinction to what happened in the case of Weidman & Walters (Nigeria) Ltd .v. Oluwa & Ors. (1968) 1 All NLR 383, the three types of judgment which a judge can deliver in a detinue case as formulated by Diplock, L.J. in General & Finance Facilities Ltd. v. Cooks Cars (Rom-ford Ltd. (1963) 1 WLR 664 B at 650-651 are:

“(1) For the value of the chattel as assessed and damages for its detention;

(2) for the return of the chattel or recovery of its value as assessed and damages for its detention or C

(3) for the return of the chattel and damages for its detention.”
(Underlining above is by me for emphasis).

In the instant case, it is indeed absurd to expect the Appellant to plead that she has paid the amount owed the Respondents by Mr. Fadipe before she could retrieve her Title Deed in respect of No.6 Calabar Street, Surulere, Lagos. This is the moreso, particularly where it was pleaded that the 2nd Respondents in the instant case had in another action at the High Court sued Mr. C.O. Fadipe for the recovery of the loan of N155,000.00. E Furthermore, the same Mr. Fadipe had been joined to the suit giving rise to the appeal herein as a third party by the Respondents. Certainly, the Respondents could not have succeeded in an action against the Appellant for the recovery of money borrowed by Mr.C.O. Fadipe. This is glaringly borne out in the Appellant’s pleading at paragraph 17 in her Statement of Claim she averred: F

“17 The Plaintiff is not a party to any transaction between the Defendants and Mr. C.O. Fadipe and gave no instruction whatsoever to the said Mr. C.O. Fadipe or any person whatsoever to deposit the original land Certificate No. 9413 with any person including the Defendants herein.” G

As these averments are presumed to be true for the purpose of the application brought by the Respondents for the trial court to strike out the Statement of Claim. See Fashanu v Governor of Wester Region & Anor (1955-56) WNLR 13 and Adegoke v. Foko (1968) NMLR 441, both the trial court and the court below had inevitably arrived at the conclusion H

and based on the facts pleaded by the Appellant, that the tort of detainee came into play. See Oluwa Glass Co.v Ehinlanwo (1990) 7 NWLR (part 160) 14 at 32; Kosile v. Folarin (1989) 3 NWLR (part 107) 1 in which the English case of Rossental Alderton (1946) K.B 371 at 374- 375. See also the dictum of Idigbe, JSC in Odumose v. A.C.B. (1976) 11 SC.55 at pages 65-66; (1976) NSCC 635.

In the case in hand, in its consideration of the reasonableness of the Appellant's cause of action, the court below, with due respect, appears clearly to have completely ignored the maxim 'Nemo dat quod non habet' and the need to consider the issue of priority as between the competing interest of the Appellant and those of the Respondents, if any. If Mr. Fadipe cannot give more than he has, it is obvious that a claim to recover the Title Deed from a person he had deposited it with wrongly and in excess of his authority cannot be said to be unreasonable under any circumstances. In facts, the pledge by Mr. Fadipe as Appellant's Solicitor, if proved, is null void and of no effect. It is no pledge at all and it gives no right whatsoever to the Respondents if the facts in the Statement of Claim are taken as admitted.

From the foregoing, it is my view that appellant's claim is well formulated as a right to the enjoyment and possession of the Title Deed to her property (of which she is in possession) to enable her perfect her title to the property. Thus, even if the decision of the court below is right, which unfortunately is not, an order of dismissal of the suit which it entered can neither be justified nor permitted under Order 22 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules which provides as follows:

"The Court or a Judge in Chambers may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and in any such case or in a case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a Judge in Chambers may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just."

In effect, wherever an application is brought under Order 22 Rule 4 (ibid) on the ground that a pleading discloses no reasonable cause of

action as happened in the instant case, the only prayer that could be sought is an order striking out the relevant pleading. The action can only be dismissed if it is found at the same time to be frivolous or vexatious. Since the court below did not find the Appellant's action to be frivolous and vexatious and what the Respondents sought in the trial court was for B "striking out the Plaintiff's Statement of Claim" the decision of the court below is wrong. See Nigeria Airways Ltd. v.F.A.Lapite (1990) 7NWLR (part 163) 392 per Uwais, JSC (as he then was) at page 406 paragraphs F-H. I therefore agree with the appellant counsel's submission that the proper order to make was one of striking out as a dismissal of it would C permanently and prematurely foreclose any action the Appellant may have wished to institute against the Respondents and Mr. C.O. Fadipe based upon same set of facts as are disclosed in this Suit.

It is for these reasons and the more detailed ones contained in D the leading judgment of my learned brother Uwais, CJN, with which I entirely agree, that I too allow this appeal. I also make similar consequential orders inclusive of costs as in the leading judgment.

KATSINA-ALU, JSC

I have had the advantage of reading in advance the judgment of my learned brother, Uwais CJN in this appeal. I entirely agree with it. F There is nothing that I can usefully add. For the reasons which he has given, I would also allow the appeal. I also abide by the consequential order and order as to costs made by the Chief Justice.

ACHIKE, JSC

I have before now had the privilege of a preview of the leading judgement of my learned brother, Hon. Chief Justice Uwais. I am entirely in agreement with his reasoning and conclusion that this appeal deserves H to succeed.

The appellant, as plaintiff, at the High Court of Lagos State, holden at Lagos, claimed against the respondents, as defendants as fol-

lows:

“An Order directing the defendants to surrender to the Plaintiff forthwith the Original Land Certificate Title No. MO 9143 registered at the Lands Registry, Lagos and covering property lying, being and situate
 B *at No. 6, Calabar Street, Surulere, Lagos.*

(b) N100,000.00 being general damages against the Defendants jointly and severally for the wrongful refusal to release to the Plaintiff the said Land Certificate Title No. MO 9413”.

C It may be noted that although the writ of summons, with the Statement of Claim endorsed thereon was taken out on 28/9/88, the defendants’ solicitor by an ex-parte motion filed on 21/12/88 prayed the trial court that C.O.Fadipe, Esq, the former solicitor to the plaintiff be joined as a third-party. The motion ex-parte was granted on 9/5/89 and thereafter
 D the solicitors to the defendants issued out a third-party notice under the High Court of Lagos State (Civil Procedure) Rules. 1972, Order 13 rule 23, directing C.O. Fadipe Esq. to enter appearance otherwise he would be deemed to have admitted the issues between him and the the defen-
 E dants and be liable to the judgment of the trial court. The issues raised in the third-party notice ran thus:

“(i) the repayment of the deposit N150,000.00 paid by the 1st defendant to you as consideration for the sale or assignment of the prop-
 F *erty, No. 6 Calabar Street, Surulere, Lagos, (which sale or assignment you failed or neglected to perfect), along with interest at the rate of ten percent (10%)-per annum,*

(ii) the entitlement of the 1st defendant to purchaser’s lien on the original Land Certificate title No. MO 9413 covering the property
 G *know as No. 6 Calabar Street, Surulere, until the said amount of N150, 000.00 with interest thereon at the rate of ten percent (10%) per annum has been paid together with costs should be determined not only as between the plaintiff and the defendant but between the plaintiff and the*
 H *defendant and yourself”.*

The third-party notice was served on C.O. Fadipe Esq. by substituted service by pasting processes at his last known address in Kano.

On 31/10/89 the defendants took a summons wherein they prayed

the trial court to strike out plaintiff's Statement of Claim on the ground that it disclosed no cause of action and also that the necessary parties were not before the court.

The relevant paragraphs of the Statement of Claim, as one can readily discern from reading it, appear to be paragraphs 4 to 23. These have been substantially set out in the leading judgment and there is nothing compelling to reproduce them again in my judgment. Be that as it may, the essence of the narration in the Statement of Claim, as may readily be summarised, is that the original owner of No. 6 Calabar Street, Surulere, Lagos, Alhaji Mudasiru Olanrewaju, assigned it to the plaintiff for valuable consideration and on ground of convenience, C.O.Fadipe, Esq. the solicitor of the original owner was retained in that capacity by the plaintiff. The plaintiff's said solicitor was handed over the original Land Certificate Title No. MO 9413 and all other relevant documents by the plaintiff for processing the Deed of Assignment and obtaining the Governor's consent. Because of the protracted delay in obtaining the consent, the plaintiff made enquiries which led to her discovering that C.O. Fadipe Esq. had deposited the said Land Certificate Title No MO 9413 as security for money advanced to him by the defendants who had bluntly refused to return same on demand by the plaintiff. It is pertinent to note that the plaintiff stated categorically that she was not a party to the transaction between her solicitor and the defendants in respect of the security transaction. It was the defendants' refusal to surrender the original Title No. MO 9413 and which prevented the plaintiff from perfecting her Title and lodging same with her bank as security for facilities to revive her business that led to the plaintiff's action against the defendants.

The learned trial judge held that the plaintiff's Statement of Claim disclosed a cause of action "*which is reasonable because if the Statement of Claim is unchallenged and undefended, the plaintiff's action is likely to succeed*", accordingly, he dismissed the application.

Dissatisfied, the defendant appealed. The Court of Appeal took the view that the proper action was one in detinue and since the plaintiff had not sufficiently pleaded in respect of the wrongful detention of the

Land Certificate Title, it allowed the appeal and struck out the Statement of Claim.

The plaintiff has now appealed to this Court against the judgment of the lower court and in her brief, the lone issue for determination identified by her ran thus:

“Whether the writ of summons and the Statement of Claim disclose reasonable of action”.

The respondent in their brief approved of this single issue for determination.

Mr. Badejo, learned counsel for the appellant in his brief of argument contended that, on the authority of Egbe v Adefarasin (1987) 1 NWLR (Pt. 47) at p.20 per Oputa, JSC, a cause of action comprises a factual situation which if substantiated entitles a plaintiff to a remedy. Counsel further submitted that appellant never pleaded the tort of detinue in her Statement of Claim and therefore it was erroneous for the Court of Appeal to subsume appellant’s claim under the head of tort as suggested by the respondents in that court. It is counsel’s further submission that it is no longer mandatory for a plaintiff to specifically subsume his claim in tort under particular head of tort if only the factual situation alleged, if established given rise to a remedy, because the maxim is ubi ius ibi remedium (where there is a wrong there must be a remedy.) Reliance is placed on Bello & ors v A.G. of Oyo State (1986) 5 NWLR (pt. 45) 828 at pp. 854. Finally, counsel submitted that the lower court erred in law for it, after holding that the Statement of Claim did not disclose a cause of action.contrary to the provisions of Order 22 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules, 1972 under which the respondents’ issued their Summons for Direction; he contended that the proper order would have been one of striking out. He relied on Nigerian Airways Ltd v Lapite (1990 NWLR (pt. 163) 393 which is an authority for dismissing such action which discloses no cause of action, and is equally frivolous and vexatious.In the result, counsel submitted that the plaintiff’s Statement of claim disclosed a reasonable cause of action, which on the authority of Chief Imonikhe & anor v A.G. of Bendel State & 2 anor (1992) 6 NWLR (pt. 248) 396, the Court should compel the Respon-

dents to release to the Appellant her Land Certificate and remit to the trial High Court for Assessment of damages.

Respondents' learned counsel submitted that Appellant's averment in her Statement of Claim, as found by the two lower courts, disclosed only a cause of action in detinue but was not sufficient enough to enable the appellant claim for the recovery of certificate of Title as security for the loan granted and certificate could only be recovered by repaying the loan. It is also his submission that the present state of the case under appeal is one of concurrent findings of fact that the averment in the Statement of Claim only discloses the tort of detinue and there being no showing of special circumstances, this Court cannot ignore the concurrent findings. To learned counsel, respondents may hold on to the Certificate of Title unless they are repaid the loan as a condition for releasing it in an action in detinue.

It was counsel's further submission that since the issue whether Mr. Fadipe, as solicitor, could pledge his client's Certificate of Title was being raised for the first time without leave, the same should be discounted; he relies on several authorities A.G. v Fairlakes Hotels Ltd (1988) 5 NWLR (pt. 92) 4.

It may be recalled that the Court of Appeal sitting in Lagos, and per the leading judgment of Uwaifo, J.C.A. as he then was, predicated its decision to strike out the Statement of Claim because, in his view, it did not disclose a reasonable cause of action in detinue. But we should recall that the tort of detinue arises where there is a wrong detention or retention of the possession of plaintiff's chattel by the defendant, and it is immaterial how possession of the chattel was acquired and there is a refusal to return same after a demand to do so by the plaintiff. It is also common ground that the defendants were in possession of the Certificate of Title because it was pawned or given to them as security for the loan made to Mr. Fadipe.

Undoubtedly, their holding of the Certificate is in adversity to the plaintiff's possession. Now, since Mr. Fadipe has been joined in the actions as a third-party at the instance of the defendants, it is incontrovertible that the plaintiff can successfully maintain such action against Mr. Fadipe in

the state in which the plaintiff's action was constituted. In any event, in the circumstance, such as this, where the pawning was without the authority of the owner, the plaintiff, it has no validity against her and accordingly she could sue the pawnee for the return of the good pawned.

B Thus even without the joinder of the third party the plaintiff's action against the defendants, as pawnees of the Certificate is well-founded for its return and for damages; see Halsbury's Law of England (4th ed.) vol. 361 (1), para 138.

C From the averments in the Statement of Claims, particularly paragraph 5, it is clear that Mr. Fadipe was engaged for his services, as plaintiff's agent, to prepare the Deed of Assignment and lodge same for the application for the Governor's consent. That was the limit of Fadipe's authority. Therefore, the pledging of the plaintiff's Certificate was with-
D out her authority. It is well-settled that any unauthorised tortious or contractual acts of the agent cannot bind the principal; see Coker v Wickliffe 17 NLR 110 and Obaseki v A.C.B. & ors (1966) NMLR 35.

The same principal is applicable to bailment. Bailment, we should
E bear in mind, like most cases of agency, originates in agreement of the parties. If the bailee does an act which is contrary to the bailment, the bailor has the right to sue the bailee of the goods bailed or, indeed, sue any person to whom the bailee has transferred the possession of the
F goods. See Robinson v Midland Bank (1925) 41 TLR 402.

Again, it seems to me that the principal of nemo dat quod non habet, as canvassed by the plaintiff in the appellant's brief has considerable force and can avail her. If as has been stated earlier that Mr. Fadipe lacked authority to pledge the Land Certificate, the purported pledge of
G same to the defendants was legally an exercise in futility because he (Mr. Fadipe) had nothing to pledge, and so could never defeat the right of the plaintiff, the undisputed real owner of the Land Certificate. It is therefore my view that if the Court of Appeal had given a second hard look at the
H fact that the purported pledge of the Certificate was a sham because of lack of authority so to do by Mr. Fadipe, it would have arrived at a different conclusion of the matter and undoubtedly would have held that the fact averred in the plaintiff's Statement of Claim disclosed a reason-

able cause of action.

The concluding portion of the leading judgment of Uwaifo, JCA (as he then was) lends credence to the immediate conclusion above. His Lordship said: *“Primarily she should have sued Mr. Fadipe to whom she handed the Certificate for him to return it and joined (sic) the defendants.”* B

This may well be so but the joinder of Mr. Fadipe as a third-party at the instance of the defendants coupled with the fact that the pledge alleged was unauthorised and therefore ineffectual would have been sufficiently compelling for the lower court to have held that the Statement of Claim C disclosed a reasonable cause of action.

The summary of what I have been saying is that where, the following circumstances, as in this case, exist, namely that

- (a) the plaintiff did not authorise her agent to pledge or pawn of the Certificate to the defendants; D
- (b) the plaintiff was not a party to the transaction, and
- (c) accordingly, the defendants’ continued detention or retention of the Certificate is unjustifiable and wrongful, E

then, the law will accede to the plaintiff’s relief for the return of her Certificate after due demand for its return has been made. This is in consonance with what I had stated earlier that the tort of detinue arises where there is a wrongful detention or retention of the possession of F chattel by the defendant- and it is immaterial how the possession of the chattel was acquired- and there is a refusal to return same after a demand to do so by the plaintiff. Additional to the plaintiff’s right of action in detinue, it is also undisputable that as the undisputed real owner of the Certificate she has a good cause of action against the defendants for the G return of the Certificate ineffectually passed over to them as a pawn or a pledge.

In the result, I hold that the Court of Appeal was in grave error H to have held that the plaintiff’s Statement of Claim did not disclose a reasonable cause of action; on the contrary, the said Statement of Claim discloses a reasonable cause of action. Accordingly, I allow the appeal, and set aside the judgment of the Court of Appeal while the ruling of the

trial court is however restored for a different reason. The case is remitted to the High Court of Lagos State of the Lagos Judicial Division for trial of the suit to take off with despatch. I award N10,000.00 costs in favour of the appellant.

B It would be unfortunate for me to conclude this judgment without saying a word about the conduct of C.O. Fadipe Esq. qua solicitor. In my judgment, his conduct was professionally unethical and left much to be desired. The impression one has is that he is on the run; but time does not run against the Nigerian Bar Association (N.B.A) to set up the necessary machinery to investigate his infamous conduct. It is therefore hoped that learned counsel for the parties would feel duty bound to bring this matter to the attention of the appropriate disciplinary authority of the N.B.A.

D

AYOOLA, JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Uwais C.J.N. I agree that this appeal should be allowed and with the consequential orders he makes.

I am of the opinion that the plaintiff's statement of claim disclosed a reasonable cause of action and that that the Court of Appeal was in error in holding to the contrary. The facts have been fully set out in the judgment of the Chief Justice. The gist of the plaintiff's case as disclosed in her statement of claim is that she instructed one C.O. Fadipe Esq; a solicitor to apply for the Governor's consent to an assignment of interest to her interest in a property she had both. Mr. Fadipe was her vendor's solicitor. Pursuant to the instruction she gave Mr. Fadipe the original title deed of the property. When it became apparent that the solicitor was not carrying out her instructions expeditiously she requested him to return her document. To her surprise Mr. Fadipe informed her that he had deposited the document with the 1st defendant as security for a loan he took from the two defendants. The plaintiff then demanded delivery of the documents to her by the defendants. They refused to hand over the document to her. Hence she sued in the High Court of Lagos State for an

order to compel them to surrender the document to her and for damages for “wrongful refusal to release”

The defendants served a third party notice on Mr. Fadipe and later applied to the High Court to strike out the plaintiff’s statement of claim on the ground that “it disclose no cause of action in that the reliefs B sought by the plaintiff are not such that the court can grant against the Defendants herein”, that the necessary parties are not before the court, and that the action was an abuse of process of the court. The High Court dismissed the application, the learned judge being of the view that the C action was in detinue and that the statement of claim disclosed that the plaintiff was entitled to possession of the document but the defendants have unconditionally refused to surrender it to her.

The defendants appealed to the Court of Appeal. That court allowed the appeal. The gist of the reasoning of the Court of Appeal is that D since the defendants had come into possession of the document by way of pledge, the plaintiff’s statement ought to have contained an averment that she had offered to pay the loan made to Mr. Fadipe before her cause of action in detinue could be complete. E

It will be a strange thing if the Court of Appeal was right in its view. Suppose I had left my car with a mechanic for him to effect minor repairs on it. When I returned to collect my car he could not deliver it to me because he had pledged it for a loan of N1 million Naira. Do I have to F offer to pay a debt about which I knew nothing and for which I did not authorise him to pledge my car before I could retrieve my car? The consequence of the decision of the Court of Appeal is that I must offer to pay the debt before I could sue for my car. In my respectful view that G does not represent the correct legal position.

The action of detinue is available to anyone who claims property in goods against another who is possession of the goods. The gist of the action is the wrongful detention of the goods. The original taking may be lawful but once the detention becomes wrongful the action will lie. The H detention becomes wrongful if the defendant has no reasonable justification for retaining the goods after a demand has been made for their return and the refusal is unconditional. A statement of the law germane to the

case in hand is contained in Bullen & Leake & Jacobs, Precedents of Pleadings (13th Edition) at p954 thus:

“If the bailee commits an act inconsistent with the bailment which terminates the bailment or entitles the bailor to do so, the bailor has the necessary right to possession to sue the bailee or any transferee from him (Jellis v. Hayward (1905) 2KB 460.” (emphasis mine)

In this case, the plaintiff was the bailor, while Mr. Fadipe was the bailee. The defendants are the transferees.

As between the plaintiff and Mr. Fadipe, there cannot be any doubt that the plaintiff was entitled to immediate possession of the document. Besides, by reason of the unauthorised pledge of the document to secure a loan taken by him, the bailment became immediately terminated. The question is whether the plaintiff had to show any other fact, apart from demand and refusal, in order to found a cause of action against the defendants in detinue?

As between Mr. Fadipe and the defendants, Mr. Fadipe is the pawnor while the defendants are the pawnees of the document. A “pawnor” is one who, being liable to an engagement gives to the person to whom he is liable a thing to be held as security for the payment of his debt or the fulfilment of his liability. A “pawnee” is who receives pawn or pledge (see Vol. 36 (1), Halsbury’s Law of England (4th edition) para 101). A pawn is not valid against the owner of the goods pawned where the pawnor has no authority to pawn. The law is clearly stated in Halsbury’s (op.cit.) at para 138 that:

“Where goods have been wrongly pawned the true owner may maintain an action for conversion against the pawnor..... He may also maintain an action against the pawnee. In such a case the measure of damages is the value of the goods converted, but as an alternative to an order for damages the court may order delivery up of the goods concerned.” (emphasis mine)

In this case the plaintiff as owner of the goods has chosen to pursue her claim, not against the pawnor, i.e. Mr. Fadipe, but against the pawnees, i.e. the defendants. She has also chosen to demand delivery up of the document. Which of them to sue, is an option the law gives her.

Implied in the third party notice served by the defendants on the pawnor, Mr. Fadipe, is that plaintiff's statement had disclosed a cause of action. A third party notice is served where a defendant claim against a party not already a party to the action, inter alia, that he is entitled to contribution or indemnity; or, that any question or issue relating to or B concerned with the said subject matter is substantially the same as some question or issue arising between the plaintiff and defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or C between any or either of them. (See Order 14 rule 22 (1) of the High Court of Lagos State). There is thus no substance in the ground that proper parties were not before the court.

It is not really necessary to hang the plaintiff's cause of action on any old terminology in order to hold that the statement of claim disclosed a cause of action. In England "detinue" has since been abolished D by the Torts (Interference with Goods) Acts 1977. Section 2 (1) of that Act abolished the tort of detinue. The new classification of wrongful interference with goods area now (a) conversion of goods; (b) trespass E to goods; (c) negligence resulting in damage to goods or to an interest in goods; (d) other torts resulting in damage to goods or to an interest in goods (S.2(2) of the Act). What used to be known as detinue is now described as conversion by detention. Before the abolition of the tort of F detinue in 1977 the distinction between detinue and conversion was that in the former all that was required to found an action was mere possession adverse to the rights entitled to possession. There was no need to aver as the case would have been in an action in conversion, that the defendant intended to deal with the goods in a way inconsistent with the G rights of the plaintiff. Often, however a refusal to deliver up the goods after a demand has been made was treated as a conversion. Thus, in practical terms, the distinction between the two torts had become blurred even before 1977. H

In my opinion it is not how the cause of action is described that is material but what facts have to be averred to support a relief that the law recognises and the court will grant. In a claim as the present, those

facts are:

(i) that the plaintiff is entitled to immediate possession of the document by virtue of her ownership of the document.

(ii) that the defendants wrongfully detained the document.

B (iii) that the defendants have unconditionally refused to surrender the document after demand for its surrender has been made.

C That the plaintiff should satisfy a debt which she did not owe or authorize to be incurred is not such a condition that would make the refusal a conditional refusal. The plaintiff has averred those facts enumerated above which, if proved, will support the grant of an order that the document be delivered to her and that the defendants pay consequential damages. Those were relief sought by the plaintiff.

D That Mr. Fadipe has wrongfully without the authority of the plaintiff pledged the document would not prevent the detention of the document by defendants from being wrongful. I venture to think that every detention of another man's property is, prime facie, wrongful, until justification for the detention is proved. An unauthorised pledge of the document by Mr. Fadipe would not amount to such justification. The averment in the statement of claim disclosing that Mr. Fadipe claimed to have pledged the document would not destroy the plaintiff's cause of action.

F In conclusion, in agreement with the Hon. Chief Justice that the statement of claim disclosed a reasonable cause of action and that the court below was in error in holding to the contrary, I too would allow the appeal. I abide by the consequential order and order as to costs made by the Chief Justice.

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