

SUPREME COURT OF NIGERIA

18TH MAY, 2001. SC. 153/1995

**CORAM:- S. M. A. BELGORE, A. B. WALL, E. O. OGWUEGBU,
U. MOHAMMED, A. I. KATSINA-ALU, JJSC.**

1. ALHAJI MUDASHIRU KOKORO-OWO
2. ALHAJI SALAWU TAIRU
3. ALHAJI MURITALA AFOLABI
4. MR. SADIKU KUSEYIN APPELLANTS
5. MR. EMMANUEL IDOWU
6. MR. JAMES ORAJIDE
7. MR. M. A. OREKOYA

AND

1. LAGOS STATE GOVERNMENT
2. THE ATT.-GENERAL OF LAGOS STATE RESPONDENTS
3. LAGOS STATE MIN. OF WORKS & HOUSING
4. ETI-OSA LOCAL GOVT. COUNCIL L/STATE
5. MR. ADEMAYO ADEYEMI (D.G.L.S.G. OFFICE)

LAND LAW - Reallocation of Land - The conversion of a customary title - To a right of occupancy under the Land Use Act - Does not amount to a reallocation of Land - In contravention of an interlocutory injunction by the Court of Appeal - As in this case (H 1)

ORDERS - Interlocutory injunction - The Court cannot make an order against a person - Who is neither a party nor a privy - To proceedings before it - And its order did not affect the plaintiff's land - In this case (H 2)

FACTS

By a gazette Notice published in August 1972, the Lagos State Government compulsorily acquired the parcel of Land known as Maroko in Eti-Osa Local Government and paid N6.8 million as compensation to the Oniru Chieftaincy Family - the customary owners of the land. Conse-

quent upon the acquisition the family made representations to the Government and part of the acquired Maroko Land was excised in their favour in 1977 and published in the Lagos State Official gazette of 3rd March 1977. In 1990, the Lagos State government had to evacuate the unauthorized occupiers of the area and destroy their illegal structures when it embarked on a sand filling programme of the Area. As a result the appellants applied to the High Court for leave to enforce their fundamental Human Rights and prayed the Court for an interlocutory injunction pending the determination of the case. The trial judge refused the application for leave and the relief for injunction and advised the plaintiffs to file their writ and statement of claim. The appellants appealed against the Ruling to the Court of Appeal and the Court of Appeal heard an application for an order of interlocutory injunction restraining the respondents from further demolition and sand filling of the houses in Maroko. The Court of Appeal granted the application in part and gave the injunction against the respondents not to reallocate the land pending the determination of the suit.

It appears from the sequence of events that before the determination of the suit the Oniru Chieftaincy family applied and was given a statutory right of occupancy over the land which was excised in their favour in 1977. Therefore the appellants filed an application to the Court of Appeal for an order committing the respondent to prison for issuing the certificate of occupancy and supplemental Deed in disobedience to the injunction of the Court or in the alternative, to cancel the certificate of occupancy in favour of the Oniru family. The Court of Appeal rejected the application and the appellants have appealed to the Supreme Court on a lone issue.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right particularly as the Appeal succeeded to hold that the reallocation of Maroko Land by the Respondent in favour of the Oniru Chieftaincy Family in the context of the Order of Injunction of the Court of Appeal did not violate the Order of Injunction?”

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

Land law - Reallocation of land

1. The order of interlocutory injunction granted against the Respondents by the Court of Appeal dated 11/2/91 reads –

“(i) *That the application succeeds in part;*

(ii) *That the injunction against the reallocation of Maroko land by respondents pending the determination of the appeal pending in this court be and it is accordingly granted.”*

In interpreting this order, the Court of Appeal opined thus:-

“...within Maroko land the Oniru Chieftaincy Family had as far back as 1977 land vested in them. Conversion of their customary title to a right of occupancy under the Land Use Decree 1978 and correction of errors in the description of the parcel of land vested in that family will, in my view, not amount to a reallocation of the land. Reallocation in the context of the order made by this court means creation of fresh interest which did not exist at the time when the order of this court was made.

On the facts disclosed by the counter affidavit and on the face of the document which the appellants want cancelled, I am unable to conclude that the certificate of Occupancy and the supplemental deed constituted a reallocation of land. Since this application can be disposed on this ground which, indeed, is the only Issue taken up by counsel before us, I shall refrain from giving expression to my doubt as to the propriety of relief sought in the particular circumstances of the case having regard to the fact that the Oniru Chieftaincy family is neither a party to the application nor, understandably, to the appeal; and having regard to the fact that the order made by this court became spent on the determination of the appeal.”

I am in complete agreement with the opinion of the Court of Appeal quoted above. (p. 1680 D)

Orders - Interlocutory injunction

2. The Court of Appeal granted, pending the determination of the appeal, an interlocutory order against the Respondents not to reallocate the land compulsorily acquired by them. At the time the Court of Appeal made the order on 11/12/91 the portion of land over which the Statutory Right of

Occupancy was granted, was no longer in possession and control of the Respondents as same had already been excised and returned to the Oniru Chieftaincy Family. So the Court of Appeal's order could in no way be interpreted to affect this piece of land, more especially when the Oniru Chieftaincy Family was not a party to the action.

In my view the Oniru Chieftaincy Family were free and entitled to have made the application for the statutory right of occupancy and the Respondents were equally right to have granted it. The court cannot make an order against a person who is neither a party or privy to a proceeding before it. Despite the ingenuity of the argument presented by learned counsel for the appellants, I find no fault in the decision of the Court of Appeal. (p. 1681 D)

D REPRESENTATION

M.I. Quakers for the Appellants.

Prof. Yemi Osunbajo A.G. Lagos State with S.O. Ishola D.C.L. Lagos State for the Respondents.

E

CASES REFERRED TO

Potta Dabup vs. Haruna Bako Kolo (1993)9 NWLR part 317 page 254 at page 259 paragraph 7

F Dieli & Ors. v. Iwuno & Ors. (1996)4 NWLR. (Pt.445)622 at 635

Olahunde v. Adeyoju (2000)10 NWLR (Pt.676)562 at 597

Ogunleye v. Oni (1990)2 NWLR (Pt.135)745 at 780

Dabup v. Bakokolo (1993)9 NWLR (Pt.317)254 at 278-279

G Titiloye & Ors. v. Olupo & Ors. (1991)7 NWLR (Pt.205)519 at 530

LEAD JUDGMENT BY WALI JSC

The main issue in contest in this appeal is whether a grant of a Statutory Right of Occupancy [C of O] by the Respondents to Oniru Chieftaincy Family over a parcel of land in which the latter had a customary title originally, is a re-allocation of the same parcel of land within the context of the order of interlocutory injunction made by the Court of Appeal not to re-allocate the land in dispute pending the determination of the ap-

peal.

It is pertinent to set out the relevant facts involved in this case which area as follows:-

By a gazette notice published as Notice No. 173 in the Lagos State Gazette No. 20 Vol. 5 of 18th August, 1972, the Lagos State Government compulsorily acquired the parcel of land consisting of 3,100 acres known as Maroko in Eti-Osa Local Government and paid compensation of N6,800,000.00 to the Oniru Chieftaincy Family which claimed to own the land so acquired, under customary law.

In 1990, the Lagos State Government embarked upon a programme of sand filling of the area so acquired as a result of which it had to evacuate the unauthorized occupiers and the destruction of the illegal structures erected therein by them.

As a result of the evacuation, the appellants as plaintiffs filed an application in the Lagos High Court for leave to file an originating summons against the Respondents as defendants to enforce their fundamental Human Rights to wit:

“1. The scheduled, forceful evacuation and demolition of houses in Maroko, Lagos State, [wherein the Applicants are resident] violates the rights of the Applicants to dignity as human beings, privacy, freedom of movement and residence anywhere within Nigeria, and peaceful enjoyment of their property as guaranteed by Sections 31, 34 and 40 respectively of the Constitution of the Federal Republic of Nigeria, 1979 (as amended).

2. The scheduled, forceful evacuation and demolition do not conform with the procedures prescribed under Section 40 of the Constitution of the Federal Republic of Nigeria for compulsory possession of property.

3. The scheduled, forceful evacuation and demolition do not conform with the procedures prescribed by the PUBLIC LANDS ACQUISITION LAW (CAP. 113) Laws of Lagos State (as amended), and is therefore totally unlawful, null, and void.”

This was filed on 11/7/90. In addition to the reliefs above, the appellants also prayed for an interlocutory injunction pending the determi-

nation of the case.

On 16/7/90, the learned trial judge [Okunola, J as he then was] refused the application stating that the issue involved did not relate to the enforcement of the applicants' proprietary right under the Fundamental Rights [Enforcement Procedure] Rules, 1974 and advised the applicants to file their Writ and Statement of Claim and bring the necessary motion whereby the other party will be put on notice.

As regards the application for the interlocutory injunction, the learned trial judge, in refusing to grant the relief, reasoned as follows:-

"I wish to say that the application before me is for an order to restrain the Respondents herein from carrying into effect the forceful evacuation and demolition of residences in Maroko, which from the evidence reviewed above and concurred to by learned applicants Counsel have substantially been demolished. Since the basis of the application is gone any action taken will amount to an exercise in futility, moreso, when it is trite that Equity does not act in vain."

Henceforth, the applicants and the respondents shall be referred to as the appellants and the respondent respectively. The appellants appealed against the Ruling of the trial Court to the Court of Appeal, Lagos Division by a Notice of Appeal dated 11/2/92. On 15/12/94 they filed an application Dated 14/12/94 in that court for:-

"AN ORDER of committal to prison of the Respondents on the grounds that...the issuance of the said Certificate of Occupancy and the Supplemental Deed by the Respondents is in disobedience of the injunctive orders of this Honourable Court made on the 11th day of February, 1991, restraining the Respondents from re-allocating any part of the Maroko Land, the subject matter of this appeal."

In the alternative the appellants prayed the Court of Appeal to cancel the Certificate of Occupancy dated 10/12/91 issued in favour of Oniru Chieftaincy Family.

From the sequence of events in the proceedings in this court it appears that the Court of Appeal heard an application for an order of an interlocutory injunction restraining the Respondents, agents or privies from perpetrating and or continuing any further demolition, alteration and or

sand filling of houses of land in Maroko and granted the same with orders as follows on 11th February, 1991:-

“(i) that the application succeeds in part

(ii) that the injunction against the re-allocation of Maroko land by respondents pending the determination of the appeal pending in this Court.” B

After hearing by the Court of Appeal of the appeal together with the application seeking the committal of the respondents for contempt of the Court of Appeal order of interlocutory injunction made on 11/2/91 and the request to cancel the Certificate of Occupancy issued to Oniru Chieftaincy Family, the appellants appealed to this Court against that part of the judgment which ruled that the issuance of the Certificate of Occupancy by the Respondents to Oniru Chieftaincy Family was not a re-allocation of the piece of land affected by that grant and there was therefore no contempt of its interlocutory order made on 11/2/91. C D

In compliance with the Rules of this Court the appellants and the respondents filed and exchanged briefs of argument. In the amended brief of the appellants the following solitary issue was formulated from the two grounds of appeal filed:- E

“Whether the Court of Appeal was right particularly as the Appeal succeeded to hold that the reallocation of Maroko Land by the Respondent in favour of the Oniru Chieftaincy Family in the context of the Order of Injunction of the Court of Appeal did not violate the Order of Injunction?” F

The Respondents were served with the appellants' Amended Brief on 18/9/2000. Since Respondents did not file an amended brief, I take it that they have adopted the brief they filed on 23/9/96 as their argument in this appeal. In the Respondents' brief, the following two issues were raised:- G

“1. Whether the Court of Appeal was right to hold that the Certificate of Occupancy and the supplemental deed in favour of the Oniru Chieftaincy Family did not constitute a reallocation of land.” H

2. Whether it was proper for the appellants to seek the relief of injunction in the particular circumstances of the case having regard to the fact that the Oniru chieftaincy family is neither a party to the appli-

cation nor to the appeal, and having regard to the fact the order made by the Court of Appeal became spent on the determination of the appeal.”

The second issue raised by the Respondents did not arise from any of the grounds of appeal filed by the appellants. It will therefore be and is hereby declared incompetent and accordingly struck out by me. The other issue raised by Respondents has been adequately covered by the issue in the Appellants’ brief. I will therefore adopt the issue in the Appellant’s brief for resolving and deciding the appeal.

The thrust of the Appellants’ complaint in this appeal is that the respondents were in violation of the order of interlocutory injunction issued against them by the Court of Appeal pending the determination of the appeal in which Okunola J [as he then was] refused the appellants’ application for leave to enforce fundamental human right which was alleged to have been violated when their Maroko land was compulsorily acquired and forced to vacate the land and their structures thereon demolished. Their request for an interim/interlocutory injunction pending the disposal of the case was also refused by the learned trial judge. It was the submission of the Appellants that the Court of Appeal misconstrued the nature of the order it had made when it held [through a panel of the same Court differently constituted] that the injunction was not broken by the respondents when they converted the customary right held by the Oniru Chieftaincy Family into a Statutory Right of Occupancy over a piece of land earlier compulsorily acquired but excised and returned to the said Family before the injunctive order not to re-allocate was made by the Court of Appeal.

The summary of the Appellants’ argument is contained on page 5 of their brief and is as follows:-

“The Res covered by the Injunction not to reallocate was not simply land; it was also the Appellants right to possible repossession and re-allocation if the case ended in their favour. Indeed, the basis of the Injunction was not ownership or possession at the stage the Injunction was issued. So even if the Respondents had produced evidence of Customary ownership over Maroko Land when the Injunction was granted it is submitted that the Court of Appeal would still have issued the Injunction.”

In reply to the argument presented by the Appellants, the Respondents as contained in pages 5 – 6 of their brief, submitted:-

“that the said Certificate of Occupancy was to convert the existing customary title (prior to the demolition) of Oniru chieftaincy family over the land to a statutory right of occupancy which they are entitled to by virtue of section 34 of the Land use Act 1978. The supplemental deed was to correct the error in the survey plan attached to the Certificate of Occupancy.

The Court of Appeal held on page 87 of the Records that “Conversion of their customary title to a right of occupancy under the Land Use Decree 1978 and correction of errors in the description of the parcel of land vested in that family will in my view, not amount to a reallocation of the land. Reallocation in the context of the order made by this court means creation of fresh interests which did not exist at the time when the order of this court was made”.

In the case of Potta Dabup vs. Haruna Bako Kolo (1993) 9 NWLR part 317 page 254 at page 259 paragraph 7 this honourable court held that “By virtue of section 9 (1) (b) of the Land Use Act 1978, a Governor has the power to issue a statutory right of occupancy to a person who is already in occupation of land under a customary right of occupancy and it is not necessary that the prior customary right of occupancy enjoyed by such a person must first be revoked before the grant of the statutory right of occupancy. This is because a grant of a statutory right of occupancy automatically extinguishes all existing right in respect of the parcel of land over which it is granted. The appellant’s contention that customary holdings were inferior to statutory rights of occupancy does not apply in the context of this appeal. It is the submission of the respondents that the Oniru chieftaincy are by virtue of Section 34 (1) Land Use Act 1978 deemed holders of a Statutory right of occupancy.”

As I have stated earlier in this judgment, the main issue in contest in this appeal is whether a grant of the Certificate of Statutory Right of Occupancy by the Respondents to Oniru Chieftaincy Family which before the grant, possessed the parcel of land in dispute by customary right as far back as 1977, is a violation of the interlocutory order granted to the Ap-

pellants against the Respondents not to re-allocate the land compulsorily acquired by the said Respondents.

The vast area known as Maroko was compulsorily acquired by the Respondents in 1972 followed by the payment of N6.8 million Naira by the Respondents to the Oniru Chieftaincy Family which at the material time held customary title over the area so acquired compulsorily. It was later discovered from sequence of events in this case, that part of the land so compulsorily acquired by the Respondents was re-allocated to the Oniru Family in 1977. And on application by the said Family, this was adjusted in 1977 by excising the piece of land wrongly included in the survey plan of the vast area of land compulsorily acquired in 1977. It was returned to the Oniru Chieftaincy Family which in 1991 applied for and was granted a Certificate of Statutory Right of Occupancy dated 10/12/91 by the Respondents over the same piece of land.

The order of interlocutory injunction granted against the Respondents by the Court of Appeal dated 11/2/91 reads –

“(i) That the application succeeds in part;

(ii) That the injunction against the reallocation of Maroko land by respondents pending the determination of the appeal pending in this court be and it is accordingly granted.”

In interpreting this order, the Court of Appeal opined thus:-

“...within Maroko land the Oniru Chieftaincy Family had as far back as 1977 land vested in them. Conversion of their customary title to a right of occupancy under the Land Use Decree 1978 and correction of errors in the description of the parcel of land vested in that family will, in my view, not amount to a reallocation of the land. Reallocation in the context of the order made by this court means creation of fresh interest which did not exist at the time when the order of this court was made.

On the facts disclosed by the counter affidavit and on the face of the document which the appellants want cancelled, I am unable to conclude that the certificate of Occupancy and the supplemental deed constituted a reallocation of land. Since this application can be disposed on this ground which, indeed, is the only Issue taken up by coun-

sel before us, I shall refrain from giving expression to my doubt as to the propriety of relief sought in the particular circumstances of the case having regard to the fact that the Oniru Chieftaincy family is neither a party to the application nor, understandably, to the appeal; and having regard to the fact that the order made by this court became spent on the determination of the appeal.” B

I am in complete agreement with the opinion of the Court of Appeal quoted above.

The original application for enforcement of the Appellant’s fundamental human right vis-a-vis compulsory acquisition by the Respondents of the land in Maroko was dated 11/7/90. On 16/7/90 the trial court refused the application inclusive of the prayer for interim/interlocutory injunction. Hence the appeal to the Court of Appeal. C

The Court of Appeal granted, pending the determination of the appeal, an interlocutory order against the Respondents not to reallocate the land compulsorily acquired by them. At the time the Court of Appeal made the order on 11/12/91 the portion of land over which the Statutory Right of Occupancy was granted, was no longer in possession and control of the Respondents as same had already been excised and returned to the Oniru Chieftaincy Family. So the Court of Appeal’s order could in no way be interpreted to affect this piece of land, more especially when the Oniru Chieftaincy Family was not a party to the action. D E F

In my view the Oniru Chieftaincy Family were free and entitled to have made the application for the statutory right of occupancy and the Respondents were equally right to have granted it. The court cannot make an order against a person who is neither a party or privy to a proceeding before it. Despite the ingenuity of the argument presented by learned counsel for the appellants, I find no fault in the decision of the Court of Appeal. The appeal fails and it is hereby dismissed with N10,000.00 costs to the Respondents. G H

BELGORE JSC

I read in advance the judgment of my learned brother, Wali, JSC and I am in complete agreement with him that this appeal lacks merit. The action by the appellant is based on prayers alien to our sense of justice. A party to be affected by a decision must not be left out of the action because no Court will make an order against any person who has not been heard or given opportunity to be heard. The land, subject of the suit was no longer in possession of the respondents, a fact known to the plaintiffs/appellants. The appeal has no merit and for the full reasons in the judgment of Wali JSC I also dismiss it with N10,000.00 costs to respondents.

OGWUEGBU JSC

The appellants in this court were plaintiffs in the High Court of Lagos State while the respondents were defendants. While their appeal was pending in the Court of Appeal, Lagos Division that court on 11th February, 1991 made an interlocutory order in the following terms:-

“It therefore becomes necessary in the interest of justice to make an interlocutory order restraining the Respondents from any re-allocation of the Maroko land before the determination of this appeal.”

It is the contention of the appellants that in the course of the appeal in the court below, the respondents allocated Maroko land to Oniru Chieftaincy family. They applied to the court below for *“an order to enforce by an order directed to the respondents to cancel the certificate of occupancy issued by them in favour of Oniru Chieftaincy Family over Maroko Land.”* The court below took the application along with the appeal. In its judgment delivered on 4th May, 1995, the court allowed the appeal. As to the interlocutory application, the Court said:

“Conversion of their customary title to a right of occupancy under the Land Use Decree, 1978 and correction of errors in the description of the parcel of land vested in that family will, in my view, not amount to a re-allocation of the land. Re-allocation in the context of the order made by this court means creation of fresh interest which did not exist at the time when the order of this court was made. On the facts

disclosed by the counter-affidavit and on the face of the document which the appellants want cancelled, I am unable to conclude that the certificate of occupancy and the supplemental deed constituted a re-allocation of land."

The appellants were dissatisfied with the decision on the interlocutory injunction hence this appeal. The facts giving rise to the application can be gathered from paragraphs 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20 and 21 of the counter-affidavit deposed to and filed by one Kayode Ogunnusi (Land Officer in the 1st defendant's Department of Lands and Housing) in opposition to the motion before the court below. They read as follows:

"6. That the Lagos State Government as far back as 1972 had acquired a vast tract of land at Maroko, Ilado and Moba comprising 3,100 acres of land of which the disputed land forms part.

7. That the document being shown to me as being marked and annexed Exhibit "A" is a copy of the acquisition notice aforementioned contained in the Lagos State Official Gazette No.2 in Vol.5 and published on 16th August, 1972.

8. That after the said acquisition I am aware, that Lagos State Government paid the Oniru Chieftaincy Family the owners of Maroko Land N6,800,000 (Six Million Eight Hundred Thousand Naira) as compensation.

9. That the disputed land became vested in the Lagos State Government by the said acquisition.

10. That after the said acquisition the Oniru Chieftaincy family made representation to the State Government for an excision of a portion of their acquired land.

11. That the State Government considered this request based on its policy that indigenes of the State retain their original homes.

12. That an excision was done in favour of Oniru Chieftaincy Family and published in the Lagos State Official Gazette Notice No. 11 Volume 10 of 3rd March, 1977.

13. _____

14. That I deny paragraph 10 of the affidavit in support and

state that the Defendants did not allocate the disputed land to the Oniru chieftaincy family.

15. *That the Oniru chieftaincy family approached the Lagos State Government after the demolition of Maroko and laid claim to the*
B *said parcel of land.*

16. _____

17. *That it was confirmed from Lagos State Government records that the disputed land had been excised to the Oniru family.*

18. *That sometime in 1991 the Oniru chieftaincy family applied*
C *to have their customary title over the disputed land converted to a Statutory Right of Occupancy owing to the urbanization of that area.*

19. *That the said application was honoured by the Lagos State Governor who was not creating any fresh interest in favour of the Oniru*
D *chieftaincy family.*

20. *That the document being shown to me and annexed as Exhibit C is a copy of the Certificate of Occupancy No.83 at Page 83 in Vol. 1991 AW of 10th December, 1991 issued in favour of Oniru chieftaincy*
E *family.*

21. *That a supplemental deed registered as No.46 Page 46 in Vol. 1939 at the Lagos Registry, Lagos was issued when the Government discovered an error in the Survey Plan attached to the Certificate of*
F *Occupancy which was issued to the Oniru chieftaincy family."*

The above represent the facts upon which the court below decided the application for the cancellation of the Certificate of Occupancy dated 10th December, 1991 as well as the supplemental deed dated 27th November, 1992. The facts reproduced above were not seriously disputed
G by the appellants. Their main contention was that the certificate of occupancy was a re-allocation which was not permitted having regard to the interlocutory Order of the court below dated 11th February, 1991.

The sole question identified in the appellants' brief for our determination is:
H

"Whether the Court of Appeal was right particularly as the appeal succeeded to hold that the reallocation of Maroko Land by the Respondent in favour of the Oniru Chieftaincy Family in the context of the

Order of Injunction of the Court of Appeal did not violate the Order of Injunction.”

It was submitted in the appellants’ brief that the court below misconstrued the scope of its order and took a narrow view of it when it reached the conclusion that the order of injunction was not broken. It was further B submitted in the brief as follows:-

“With the greatest possible respect to the Court of Appeal and acknowledging the ingenuity of its reasons, the Court failed to note that the Injunction preserved more than interests over Maroko land. It also C protected the possible claim of the Appellants over Maroko. So that assuming but without conceding that no fresh interest were created over Maroko Land, our submission is that the scope of the Order of Injunction was made wide enough to prevent conversion of the title of the Oniru’s D from a customary to a statutory holding. It should have recalled that the Injunction of the Court of Appeal was to protect any claims the Appellants may have to re-allocation. The Res covered by the Injunction not to reallocate was not land; It was also the Appellant’s right to possible E repossession and re-allocation if the case ended in their favour.”

It was submitted in the respondents’ brief and in oral argument presented by Professor Osibanjo, Honourable Attorney-General and Commissioner for Justice, Lagos State that the Certificate of Occupancy issued to Oniru Chieftaincy Family was to convert the existing customary title F (prior to the demolition) over the land to a statutory right of occupancy which they are entitled to by virtue of section 34 of the Land Use Act, 1978 and that the supplementary deed was to correct an error in the survey plan attached to the Certificate of Occupancy. It was further submitted G that section 5(1) of the Land Use Act empowers the Governor of a State to grant a statutory right of occupancy while section 34 confirms the holding of a parcel of land already held prior to 1978 as if it was granted by the Governor. We were referred to the cases of *Dieli & Ors. v. Iwuno & Ors.* (1996)4 NWLR. (Pt.445) 622 at 635, *Olahunde v. Adeyoju* (2000) 10 H NWLR (Pt.676) 562 at 597, *Ogunleye v. Oni* (1990)2 NWLR (Pt.135) 745 at 780, *Dabup v. Bakokolo* (1993)9 NWLR (Pt.317) 254 at 278-279 and *Titiloye & Ors. v. Olupo & Ors.* (1991)7 NWLR (Pt.205) 519 at 530.

The Lagos State Government in 1972 acquired vast tract of land belonging to several villages including Maroko. The Oniru Chieftaincy Family, the customary owners of Maroko made representations to the Government and an excision of part of the acquired Maroko land was made in favour of the said family in 1977. It was published in the Lagos State Official Gazette dated 3rd March, 1977. The excision was made before the interlocutory order of the court below of 11th February, 1991 against re-allocation. The family later applied to the Governor of Lagos State for a statutory right of occupancy over the excised portion as a result of urbanization of the area. The Lagos State Government issued the certificate of occupancy (Exhibit "C") which was registered on 10th December, 1991. It is the certificate of occupancy, exhibit "C" that the appellants want the court to cancel being a reallocation made by the respondents in breach of the interlocutory order.

The excision was done in 1977 before the order of the court below against re-allocation and also before the coming into force of the Land Use Act, 1978. There was no dispute by anybody over the customary title of the Oniru Chieftaincy Family to that parcel of land. The excision in my view affirmed their customary title. Even if the excision is treated as an allocation which it's not, it was done before the order of the court and could not have been affected by it. As the land was vested in the Oniru Chieftaincy Family before the coming into force of the Land Use Act, 1978, it is protected by section 34(2) thereof and the family continued to hold the excised parcel of land as if it was the holder of a statutory right of occupancy issued by the Governor. The Certificate of Occupancy, exhibit "C" issued by the Governor is a recognition of the customary right of the Oniru family and also evidence of the right which already existed. Section 34(2) of the Land Use Act, 1978 provides:

"34 (1) _____

(2) *Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Decree as if the holder of the land was the holder of a statutory right of occupancy issued by the Military Governor under this Decree.*"

It is clear from the provisions of section 34 of the Land Use Act that exhibit “C” did not confer any interest in the Oniru Chieftaincy Family which they did not have before its issuance. The Act did not equate the certificate of occupancy with title. It gives a right of occupancy to an “occupier”, meaning, any person lawfully occupying the land in accordance with customary law which the Oniru Family was before exhibit “C” was issued. See *Oguneye v. Oni (1990)2 NWLR (Pt.135) 745* B

Having regard to the facts of this case and section 34 of the Land Use Act, 1978, the contention of the appellants that the issuance of exhibit “C” to the Oniru Chieftaincy Family by the Governor of Lagos State is a reallocation in breach of the interlocutory order of the court below cannot be sustained. No new right or interest was created in favour of Oniru family which did not exist before the order of the court below. The Governor exercised the power conferred on him by section 9(1) of the Land Use Act, 1978 when he issued exhibit “C”. Section 9(1) reads as follows: D

“9(1) *It shall be lawful for the Governor –*

(a) when granting a statutory right of occupancy to any person;

or

(b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or

(c) when any person is entitled to a statutory right of occupancy, to issue a certificate under his land in evidence of such right of occupancy F

For the above reasons and the fuller reasons contained in the judgment of my learned brother Wali, J.S.C., I agree that the appeal fails. I also hereby dismiss it with N10,000.00 costs to the respondents. G

MOHAMMED JSC

I have had the privilege of reading the judgment of my learned brother, Wali, J.S.C., in draft and I agree with him that this appeal has failed. I accordingly dismiss it. I award N10,000.00 costs in favour of the respondents.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Wali JSC in this appeal. I entirely agree with it. For the reasons which he has given, I too would dismiss this appeal with
B N10,000.00 costs to the Respondents.

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