

**SUPREME COURT OF NIGERIA**  
25TH MAY, 2001. SC. 145/1997  
**CORAM:- A. B. WALLI, S. U. ONU, A. I. IGUH,**  
**A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC.**

INSPECTOR KAYODE	.....	APPELLANT
AND		
ALHAJI J. A. ODUTOLA	.....	RESPONDENT

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***EQUITY*** - Laches & acquiescence - Conditions that must exist - For the plea to be sustained - Were rightly enumerated by the trial judge - And appellant failed to satisfy these conditions (H 8)

***EQUITY*** - Laches & acquiescence - Land law - As the action of the appellant - In gaining possession of the disputed land - Was not bona fide - His equitable defences could not avail him (H 6)

***EQUITY*** - Laches & acquiescence - Land law - Title - Only a very high degree of acquiescence - And not mere lapse of time - Will lead to a loss of title by the original owner - In favour of an occupier - Which is not so in this case (H 4)

***EQUITY*** - Laches & acquiescence - Land law - Title - The acquiescence complained of - Must be fraudulent - And the delay must be combined - With plaintiffs knowledge of his cause of action - For the plea to succeed (H 5)

***JUDGMENTS*** - Appeals - Inconsistent findings - The trial court cannot blow hot and cold - In finding one thing and holding another (H 7)

***LAND LAW*** - Laches & acquiescence - Title - The appellant could not have been mistaken - As to the true owner of the land - As the respondent's registered Deed - Served as a notice to him - And therefore his equitable defences must fail (H 9)

**LAND LAW** - Title - Equitable defences - Registration of an instrument - Is not notice to all the world - And as appellant's title was not proved - His equitable defences of acquiescence and laches - Ought to have been rejected (H 1)

**PLEADINGS** - Cross examination - Evidence - Which is not material - To any issue raised by the pleading - May be disregarded - Even though obtained in cross examination (H 2)

**PLEADINGS** - Cross examination - The admission obtained - From the defendant during cross examination - Went to negative his own pleaded fact - And was therefore admissible - Though not pleaded by the plaintiff (H 3)

### **FACTS**

The Respondent as plaintiff sued the Appellant at the High Court holden at Ibadan for damages for trespass committed by the appellant in 1964 on his land situate at Ibadan and for injunction restraining the appellant from continuing the said trespass.

At the trial the respondent traced his root of title to the Ikuola family and for his source of interest he relied on two Deeds of conveyance dated May 1946 and August 1949 respectively and also registered in Lagos Land Registry and Ibadan Land Registry respectively. He also relied on possession as well as some judgment he got against some earlier trespassers. The appellant relied on a grant under Native Law from representatives of the same Ikuola family in 1957 and a Deed of conveyance dated June 1965 and registered in Ibadan Land Registry office.

The trial judge at the end of trial came to the conclusion that the respondent proved his root of title but that the appellant's defence of laches and acquiescence, stale claim and adverse possession robbed him of his title and his claim was dismissed. On appeal to the Court of Appeal, the respondent's appeal was unanimously allowed. The appellant being dissatisfied has appealed to the Supreme Court.

**ISSUES FOR DETERMINATION****ISSUE ONE**

*Whether the learned Justices of the Court of Appeal were right when they held that the registration of deed of conveyance was a notice to the appellant. See ground four of the grounds of Appeal.*

**ISSUE TWO**

*Whether the learned Justices of the Court of Appeal were justified in making use of evidence elicited from cross-examination particularly when such facts were not pleaded. See ground one of the grounds of Appeal.*

**ISSUE THREE**

*Whether the plea of laches acquiescence etc. were not available to the appellant when the Lower Court had found that the plea was made out. See grounds Two and Three of the grounds of Appeal.*

**ISSUE FOUR**

*Whether the learned Justices of Court of Appeal were right in holding that the Appellant relied only on Exhibit J. when he in fact pleaded in paragraph 7 of his amended Statement of Defence the equitable defences of laches, acquiescence etc. See ground 6 of the grounds of Appeal.*

**HELD** (Unanimously dismissing the appeal per leading judgment of **ONU JSC**)

***Land law - Title to land - Equitable defences***

1. The court below after confirming the trial court's decision to uphold the Respondent's legal ownership of the land in dispute held that since the defence of acquiescence as earlier reviewed had collapsed, the learned trial Judge ought to have rejected the defences of acquiescence and laches. Consequently, the Respondent ought to have succeeded in his claim for trespass and injunction and court below rightly so held. See Karimu Ayinla v. Sifawu Sijuwola (1984) 5 SC.44 at pages 72 – 73 where with regard to registration of land, the case of Omosanya v. Anifowose (1959) 4 FSC 94 at page 98 was relied on in support of the proposition that "Registration of an instrument under the Land Registration is not notice

thereof to all the world.” Even if it was the Ikuola Family itself and not its purported accredited representatives earlier referred to that transferred the land in dispute to the Appellant, Ikuola Family had nothing to transfer to the Appellant again. The truth of the matter is that the Respondent did not only buy first from Ikuola Family, he even registered the Conveyance in 1952 before the alleged sale under Native Law and Custom to the Appellant in 1957 and its subsequent execution and registration of a Deed of Conveyance by him in 1964 in respect of the same land. See Amankra v. Sankley (1963) All NLR 310 at 313. Clearly therefore, the legal title of the Appellant to the land in dispute as per Exhibit ‘J’ is not proved and his equitable defences are made to prop up a defective legal title as claimed. (p. 1875 E\_

**D Pleading - Cross examination - Evidence**

2. On ISSUE NO. 2 which asks whether the learned Justices of the court below were justified in making use of evidence elicited from cross-examination, particularly when such facts were not pleaded, the short answer thereto is that upon a careful consideration of the pleadings I earlier adverted to, to the effect that any fact not pleaded goes to no issue either in his statement of claim or in his amended statement of defence vide as exemplified in such decided authorities as:

- F (i) Idahosa v. Oronsaye (1959) 4 FSC 166 at 171;  
(v) Abimbola George & 2 Ors. v. Dominion Flour Mills Ltd. (1963) 1 All NLR 71 at 72 the principle enunciated therein which may be stated as:

G “Evidence which is not material to any issue raised by the pleadings may be disregarded; the Judge was entitled to ignore any evidence bearing on illegality, even though obtained in cross-examination of the plaintiffs’ witnesses, as there is no issue of illegality before him.” (p. 1876 C)

**H Pleadings - Cross examination - Admission**

3. Albeit, since the purpose of cross-examination is to test the credibility of a witness, the admission by the defendant that the Plaintiff had earlier

sued him is admissible to negative his plea of acquiescence vide – Kaiyaoja v. Egunla (supra). (p. 1876 H)

***Equity - Title - High degree of acquiescence***

4. I am of the respectful view that the court below rightly rejected these equitable defences put forward by the Appellant. This is because, there could indeed be loss of title through acquiescence and laches but a high degree of acquiescence is required to obliterate the original owner’s reversionary right in land in favour of an occupier. See Tiamiyu Dania v. Yesufu Soyenu (1937) 13 NLR 143. C

Thus, the Respondent here cannot be said to be guilty of delay in commencing an action against the Appellant as rightly observed by the court below because of lapse of time though generally, evidence of acquiescence is not just mere lapse of time. (p. 1877 C) D

***Equity - Fraudulent acquiescence***

5. In Abbey v. Ollenu (1954) 14 WACA 564 at 568, the West African Court of Appeal adopted and quoted with approval the dictum of Fry J. in Wilmot v. Barber (1880) 15 CH.D 96 at 105 thus: E

*“It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he acted in such a way as would make it fraudulent for him to set up those rights.”* See also Gerrard v. O’Reilly 3D & WAR 414. F

I cannot infer from the Respondent’s conduct any act that could give rise to the conclusion that he behaved fraudulently or that he wilfully remained passive when he became aware of the Appellant’s acts of trespass on the land in dispute. Furthermore, for a delay in taking action, there must be knowledge on the part of the Plaintiff of all the facts giving him a cause of action. See Mogaji v. Nuga (1960) 5 FSC 107, where it H was held that laches is not delay alone; some other factors must exist such as knowledge. (p. 1877 E) G

***Equity - Bona fide possession***

6. Besides, in addition to the action the Respondent brought against the Appellant in 1964, he (Appellant) ought to have known that the Respondent had interest in the land and ought to have exercised caution until the action was disposed of by the court. Instead, the Appellant went ahead to commit further acts of trespass on Respondent's land before the Respondent was himself non-suited by the court in 1973, as found by the court in its judgment wherein the Respondent was non-suited, to wit:

*"The present action was commenced about four years after the 1964 case was disposed of. Between 1964 when the first action was instituted, the defendant had extended his building from the area verged 'green' in Exhibit H. to the area verged 'yellow.'"*

It is for this reason that I agree with the Respondent's submission that in putting up more buildings on the land by way of expansion, the Appellant could not be acting bona fide that he was the owner thereof. And since laches and acquiescence are equitable reliefs to defeat the rightful owner of his legal rights or claims for trespass and injunction, the bona fide of the possession becomes material. I venture to opine therefore that the Appellant's defences of acquiescence and laches could not stand and the court below, rightly in my view, rejected them based upon the prop of the trial court's finding to the effect that;

*"Since the purpose of cross-examination is to test the credibility of a witness, I think the admission of the defendant that the Plaintiff had earlier sued him is admissible to negative his plea of acquiescence."* See Kaiyaoja v. Egunla (1974) 12 SC.55 at 65. (p. 1878 A)

***Judgment - Inconsistent finding***

7. A fortiori, I hold that the learned trial Judge having so found could not be seen with respect, to blow hot and cold as to whether the defences of laches and acquiescence were made out. See Ezomo v. Attorney-General of Bendel State (1986) 4 NWLR (Part 36) 448 at 462 (per Aniagolu, JSC) wherein the learned Justice said that *"the respondent cannot blow hot and cold."* (p. 1878 G)

***Equity - Conditions that must exist***

8. Furthermore, since all the conditions precedent for a plea of acquiescence or laches to succeed raised by the Appellant were not present due to the particular circumstances of the Respondent's case, the court below was right in upholding the Respondent's appeal before it. In effect since the equitable defences of acquiescence and laches raised by the Appellant were not made out to estop the Respondent from exercising his legal rights on the land, I endorse the four ingredients the learned trial Judge spelt out that must be present for this plea to be sustained, to wit: C

1. *"The person seeking to set up the plea must have made a mistake as to his legal rights.*
2. *He must have expended some money or must have done some act on the faith of his mistaken belief.*
3. *The person whose right has been infringed must know of the D existence of his own right which is inconsistent with the right mistakenly claimed by the person seeking to set up the plea of acquiescence.*
4. *The person whose right has been infringed must have encouraged the person seeking to set up the plea of acquiescence in the latter's E expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal rights."*  
(p. 1879 A)

***Laches & acquiescence - Mistake***

9. Mistake on the part of the Appellant, in my opinion, becomes material. The Respondent having registered the Deed of Conveyance dated 15<sup>th</sup> December, 1952 and registered as No. 26 at page 26 in Volume 58 of the Lands Registry in the Office at Ibadan, the Appellant had been put on an inquiry to verify from the Lands Registry. Having failed to use the opportunity offered by the Registration of the Deed of Conveyance (Exhibit 'D') executed in favour of the Respondent in 1952, he cannot be heard to say he acted without notice on the principle of caveat emptor. Although the law recognises that the length and nature of possession may be such as to oust the title of the true owner of land by the doctrine of acquiescence (see Da Costa v. Ikomi (1968) 1 All NLR 394 and Sanyaolu v. F G H

Coker (1983) 1 SCNLR 168 at 182 E) the Appellant's plea of acquiescence and laches in the instant case were rightly rejected by the learned Justices of the court below but rightly granted the Respondent's claims for trespass and injunction. In the case of Ramsden v. Dyson (1866) 1 HL 140, cited with approval in Gbadamosi & Ors. v. Alhaji Salami Bello Mogaji & Ors., Supreme Court decision No. SC66/1983 delivered on 15<sup>th</sup> February, 1985 per Oputa, JSC) wherein the law was restated as follows:

C *"If a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of the expenditure made on it. There would be nothing in my conduct active or passive making it inequitable in me to assert my legal rights."*

D In my view, Appellant knew or ought to have known that the land in dispute belonged to the Respondent and that the Respondent and his brother acquired it in 1952, five years before the Appellant purported to have purchased the land from the accredited representatives of the Respondent's Vendor. I am therefore of the opinion that the Registration of the Deed of Conveyance (Exhibit 'D') in favour of the Respondent constitutes a notice to the Appellant and he ought to have known that the Respondent is the owner of the land. Consequently, I take the firm view that the plea of acquiescence and laches does not and could not avail the Appellant. See Nwakobi v. Nzekwu (1961) 1 All NLR 445 at 450. (p. 1879 E)

## NOTABLE POINTS OF INTEREST

### G WALI JSC

1. *A property owner has no duty to protest against a trespasser who is not mistaken as to ownership of land*

H There is no duty on a person having estate or interest in land or other property for that matter to raise protest against a trespass or encroachment on the property on invasion of his right on same if he has no reason to believe that such a trespasser, encroacher or invader mistakenly conceives himself to be acting lawfully because in such a situation there

cannot said to be any misrepresentation, delusion or inaction from the owner's part, encouraging or fostering the trespasser in expending money by developing the property. There is nothing to stop the owner from asserting his right against the trespasser at any time however that may be, subject to any applicable statutory provision of limitation. See *WILLMOTT V. BARBER* [1888] 15 CH 96. (p. 1884 C)

## **IGUHJSC**

### *1. An earlier registered deed has benefit over a later one*

It cannot be disputed that where two competing deeds are registered, each takes effect as against the other from the date of registration and the benefit of earlier registration is preserved. See *Amankara v. Zankley* (1963) 1 All NLR 304 and *Karimu Ayinla v. Sifawu Sijuwola* (1984) 5 S.C. 44 at 72. In the present case, the plaintiff's deeds of Title were executed and registered several years before the defendant's Deed of Conveyance, Exhibit J was executed and registered. The priority of the plaintiff's title Deeds over Exhibit J cannot therefore be the subject of any controversy. In my judgment, the Court of Appeal was perfectly right when it upheld the superiority of the plaintiff's Title Deeds in respect of the land in dispute to the defendant's Conveyance, Exhibit J. (p. 1888 G)

### *2. Equity fixes no specific time for determining stale claims*

I think it needs be observed that equity does not fix a specific limit of time after which claims may be said to be barred or stale but considers all the circumstances of each and every case. However, in determining the existence or otherwise of such *inordinate delay* as to amount to laches, two main issues may be considered. These are:-

(i) Acquiescence on the part of the plaintiff which, in this sense, does not mean standing by while the violation of a right is in progress, but assent after the violation had been completed and the plaintiff has become aware of it. This is because it is clearly unjust to give a plaintiff a remedy where, by his conduct, he has done that which might not unreasonably be regarded as amounting to a waiver of it.

(ii) Any change of position that has occurred on the defendant's part. (p. 1889 D)

### **REPRESENTATION**

- B A. A. L. Okunade Esq., for the Appellant  
N. O. O. Oke Esq., for the Respondent.

### **CASES REFERRED TO**

- Morayo v. Okiade (1940)15 NLR 131  
C Karimu Ayinla v. Sifawu Sijuwola (1984)5 SC.44 at pages 72-73  
Omosanya v. Anifowose (1959)4 FSC 94 at page 98  
Amankra v. Sankley (1963) ALL NLR 310 at 313  
Idahosa v. Oronsaye (1959)4 FSC 166 at 171  
D NIPC Ltd. v. The Thompson Organisation Ltd. (1969)1 NMLR 99 at 101  
Oladejo Adewuyi-Ajuwon & Ors. v. Falade Akanni & Ors. (1993)12 SCNJ  
32 at page 35  
Abraham Olabanjo & Anor. v. Salami Adeoti Omokewu & Ors. (1992)7  
E SCNJ 266 at page 267  
Abimbola George & 2 Ors. v. Dominion Flour Mills Ltd. (1963)1 ALL  
NLR 71 at 72  
Tiamiyu Dania v. Yesufu Soyenu (1937)13 NLR 143  
Abbey v. Ollenu (1954)14 WACA 564 at 568  
F Wilmot v. Barber (1880)15 CH.D 96 at 105  
Gerrard v. O'Reilly 3 D & WAR 414  
Mogaji v. Nuga (1960)5 FSC 107  
Kaiyaoja v. Egunla (1974)12 SC.55 at 65  
G

### **LEAD JUDGMENT BY ONU JSC**

In the High Court holden at Ibadan coram Ademakinwa, J., the Appellant who was Defendant was sued by the Respondent who was  
H then the Plaintiff claiming from him (Appellant) the following reliefs:

*“(a) The sum of N1,200 being special and general damages in respect of continuing trespass committed by the Defendant on the Plaintiff's land situate at Molete, Ibadan sometime in 1964*

*(b) Injunction restraining the Defendant, his agents, servants or assigns from continuance of the aforesaid trespass.”*

After pleadings were ordered, filed and exchanged by the parties, the Respondent having earlier sought leave which was granted for him to amend his Statement of Claim-case went to trial. The Respondent gave evidence and called only one witness in support of his case while the Appellant thereafter testified in support of his case and called five witnesses. Learned counsel for either side addressed the court and in a considered judgment delivered on 16<sup>th</sup> July, 1981, the learned trial Judge (per Ademakinwa, J.) dismissed the Respondent’s claims in their entirety.

Briefly stated, the facts of the Respondent’s case before the trial High Court were predicated on a root of title from IKUOLA Family, Ibadan and for the purpose of tracing his source of interest, he equally relied on a Deed of Conveyance dated 28<sup>th</sup> day of May, 1946 registered as No.49 at page 49 in Volume 327 of the Land Registry in Lagos. He equally relied on the Deed of Conveyance dated the 16<sup>th</sup> day of August, 1949 and registered as No. 50 at page 50 in Volume 2 of the Lands Registry, Ibadan as well as possession vide paragraphs 5, 11 and 14 of the Statement of Claim. The Respondent further relied on some judgments he got against some earlier trespassers on the land and the Deed of 15<sup>th</sup> December, 1952, registered as No. 26 at page 26 in Volume 50 of the Lands Registry, Ibadan.

The Appellant on the other hand, relied on a grant under Native Law and Custom from the representatives of the same IKUOLA Family in 1957 and a subsequently executed Deed of Conveyance dated 29<sup>th</sup> day of June, 1964 registered as No. 23 in Volume 759 of the Lands Registry’s Office, Ibadan.

By paragraph 7 of his Amended Statement of Defence, the Appellant admitted that the Respondent had earlier sued him in Suit No. I/ 183/64. He finally relied on the equitable defences of laches, acquiescence, stale claim and adverse possession. The learned trial Judge then considered the case of each party and came to the conclusion that although the Appellant proved his root of title yet the defences of laches,

acquiescence, stale claim and adverse possession robbed him of his title as the evidence of laches etc. put up by him was not contradicted, controverted or challenged by the Respondent. Hence, the trial court dismissed the Respondent's claim when it held in the penultimate paragraph B of its judgment thus:

*"In my view there is sufficient evidence of acquiescence and laches in this case to warrant the restraining of the plaintiff from exercising his legal right in respect of the land in dispute. See Morayo v. Okiade (1940) 15 NLR 131. In the circumstances, the plaintiff's claim fails and C it is accordingly dismissed."*

Earlier on, the learned trial Judge had firmly held as follows:

*"In the present case, there is evidence which I accept that the defendant had been on the land in dispute since 1964. I am also con- D vinced that the defendant had completed his building by 1964 and people have already been living there. For the defendant to have put a three storey building on the land in dispute without the plaintiff knowing seems to me to be quite incredible. It is even significant that after being non- E suited, according to the evidence adduced in 1973, the plaintiff still waited another four years till 1977 before instituting the present action. In the meantime, the defendant had under the mistaken belief that the plaintiff was no longer interested in pursuing the action committed further funds F in extending his building on the land. One would have expected that having been in court for 9 years only to be non-suited, the plaintiff would have acted more timely in commencing the present action."*

Aggrieved by this decision, the Respondent appealed to the Court of Appeal sitting in Ibadan (hereinafter in the rest of this judgment referred to as the court below). In a unanimous decision, that court (per G Okunola, J.C.A. concurred in by Mukhtar and Dalhatu Adamu, JJ.C.A) held, allowing the appeal on 16<sup>th</sup> June, 1997, inter alia, as follows:

*"I have considered the submission of both learned counsel to the H parties vis-à-vis the records and the prevailing law. As conceded (sic) by both sides learned trial Judge found at page 42, lines 27 – 35 on title between the parties which is the bone of contention thus:*

*"Whichever way one looks at it, the Plaintiff's title to the land*

*in dispute is unimpeachable. Having found that the appellant is the legal owner of the land in dispute and since the defence of acquiescence as reviewed supra had collapsed, the learned trial Judge ought to have rejected the defences of acquiescence and laches and the appellant ought to have succeeded in his claim for trespass and injunction and I so hold.”* B

Being dissatisfied with this decision, the Appellant has appealed to this Court upon a Notice of appeal containing six grounds.

The parties hereto filed and exchanged briefs of argument. The Appellant, for his part identified four issues as arising for determination, to wit: C

#### ISSUE ONE

Whether the learned Justices of the Court of Appeal were right when they held that the registration of deed of conveyance was a notice to the appellant. See ground four of the grounds of Appeal. D

#### ISSUE TWO

Whether the learned Justices of the Court of Appeal were justified in making use of evidence elicited from cross-examination particularly when such facts were not pleaded. See ground one of the grounds of Appeal. E

#### ISSUE THREE

Whether the plea of laches acquiescence etc. were not available to the appellant when the Lower Court had found that the plea was made out. See grounds Two and Three of the grounds of Appeal. F

#### ISSUE FOUR

Whether the learned Justices of Court of Appeal were right in holding that the Appellant relied only on Exhibit J. when he in fact pleaded in paragraph 7 of his amended Statement of Defence the equitable defences of laches, acquiescence etc. See ground 6 of the grounds of Appeal. G

The two issues submitted at the Respondent’s instance for our determination are: H

#### ISSUE 1

Whether the equitable defence of laches and acquiescence availed the Appellant having primarily based his claim on Exhibit J. (a Deed of

Conveyance registered at a later date.)

## ISSUE 2

Whether the learned Justices of the Court of Appeal were wrong in unanimously upholding the Respondent's appeal before it upon their consideration of Exhibit 'J' and the defence of laches, acquiescence and stale claim put up by the Appellant.

In my consideration of the issues for determination I propose to adopt the four issues proffered by the Appellant and deal with issues 1 and 2 separately with issues 3 and 4 together for ease and convenience of treatment, as follows:

## ISSUE ONE

The Appellant's query with this issue is whether the learned Justices of the court below were right when they held that the registration of the Deed of Conveyance (Exhibit 'J') constituted a notice to the Appellant. Be it noted that both by his pleadings and oral evidence the Appellant relied principally on Exhibit 'J' as his source of title from the IKUOLA Family from whom the Respondent had equally earlier bought in 1949 the same parcel of land in dispute. By paragraph 6 of his Amended Statement of Defence, the Appellant pleaded thus:

*"The Defendant will contend at the hearing of this case that the defendant is the owner of the land in dispute by virtue of a Deed of Conveyance dated the 29<sup>th</sup> of June, 1964, and registered as No. 23 at page 23 made between the defendant and the principal members of IKUOLA FAMILY had nothing to sell to the Appellant again on the legal principle of Nemo dat quad non habet."*

By paragraph 6 of the Statement of Claim the Respondent pleaded as follows:

*"By an instrument dated the 15<sup>th</sup> day of December, 1952 and registered as No. 26 at page 26 in Volume 50 of the Lands Registry in Ibadan made between the principal members of IKUOLA Family on the one part and the Plaintiff on the other part, the IKUOLA FAMILY ratified the sale made to BELLO ADESHINA and the same by the said BELLO SOBALOU ADESHINA to ODUTOLA brothers."*

The Respondent testified in support of the above averment thus:

*“In 1952, the principal members of Ikuola Family certified the sale to me. This is the instrument of Ratification – (Instrument tendered; no objection; admitted as Exhibit “D”)*

The learned trial Judge in his judgment held inter alia:

*“The evidence adduced by the defendant in support of his title to the land in dispute is not at all convincing. The Deed of Conveyance (Exhibit ‘J’) tendered by the defendant was executed in his favour not by his Vendor but by three persons who described themselves as accredited representatives of IKUOLA FAMILY. Even assuming that the three persons who executed Exhibit ‘J’ in favour of the defendant had authority of Ikuola Family to do so, this document dated the 27<sup>th</sup> of June, 1964 being later in time than Exhibit ‘D’, which was executed in the Plaintiff’s favour on the 15<sup>th</sup> of December, 1952 could not pass any title to the defendant as the family would as at that date have nothing more to pass.”*

It is pertinent here to remark that earlier on in his judgment, the learned trial Judge had held as follows:

*“Whichever way one looks at it the Plaintiff’s title to the land in dispute is unimpeachable.”*

**The court below after confirming the trial court’s decision to uphold the Respondent’s legal ownership of the land in dispute held that since the defence of acquiescence as earlier reviewed had collapsed, the learned trial Judge ought to have rejected the defences of acquiescence and laches. Consequently, the Respondent ought to have succeeded in his claim for trespass and injunction and court below rightly so held. See Karimu Ayinla v. Sifawu Sijuwola (1984) 5 SC.44 at pages 72 – 73 where with regard to registration of land, the case of Omosanya v. Anifowose (1959) 4 FSC 94 at page 98 was relied on in support of the proposition that “Registration of an instrument under the Land Registration is not notice thereof to all the world.” Even if it was the Ikuola Family itself and not its purported accredited representatives earlier referred to that transferred the land in dispute to the Appellant, Ikuola Family had nothing to transfer to the Appellant again. The truth of the matter is that the Respondent did not only buy first from Ikuola**

Family, he even registered the Conveyance in 1952 before the alleged sale under Native Law and Custom to the Appellant in 1957 and its subsequent execution and registration of a Deed of Conveyance by him in 1964 in respect of the same land. See Amankra v. Sankley (1963) All NLR 310 at 313. Clearly therefore, the legal title of the Appellant to the land in dispute as per Exhibit ‘J’ is not proved and his equitable defences are made to prop up a defective legal title as claimed.

On ISSUE NO. 2 which asks whether the learned Justices of the court below were justified in making use of evidence elicited from cross-examination, particularly when such facts were not pleaded, the short answer thereto is that upon a careful consideration of the pleadings I earlier adverted to, to the effect that any fact not pleaded goes to no issue either in his statement of claim or in his amended statement of defence vide as exemplified in such decided authorities as:

(i) Idahosa v. Oronsaye (1959) 4 FSC 166 at 171;

(ii) NIPC Ltd. v. The Thompson Organisation Ltd. (1969) 1 NMLR 99 at 101;

(iii) Oladejo Adewuyi-Ajuwon & Ors. v. Fadele Akanni & Ors. (1993 12 SCNJ 32 at page 35;

(iv) Abraham Olabanjo & Anor. v. Salami Adeoti Omokewu & Ors. (1992) 7 SCNJ 266 at 267 and

(v) Abimbola George & 2 Ors. v. Dominion Flour Mills Ltd. (1963) 1 All NLR 71 at 72 the principle enunciated therein which may be stated as:

*“Evidence which is not material to any issue raised by the pleadings may be disregarded; the Judge was entitled to ignore any evidence bearing on illegality, even though obtained in cross-examination of the plaintiffs’ witnesses, as there is no issue of illegality before him.”*

Albeit, since the purpose of cross-examination is to test the credibility of a witness, the admission by the defendant that the Plaintiff had earlier sued him is admissible to negative his plea of acquiescence vide – Kaiyaoja v. Egunla (supra).

ISSUES NOS. 3 AND 4 CONSIDERED TOGETHER

The joint complaint of these issues considered together and which related to grounds 2 and 3 as well as ground 6 of the grounds of Appeal was lastly treated. These issues maintained a two-pronged attack in respect of the Respondent's claims against the Appellant at the trial High Court. There, he pleaded a Deed of Conveyance as his source of title to the land in dispute, though not in the alternative. He also put up the equitable defences of laches, acquiescence, stale claim and adverse possession.

**I am** of the respectful view that the court below rightly rejected these equitable defences put forward by the Appellant. This is because, there could indeed be loss of title through acquiescence and laches but a high degree of acquiescence is required to obliterate the original owner's reversionary right in land in favour of an occupier. See Tiamiyu Dania v. Yesufu Soyenu (1937) 13 NLR 143.

Thus, the Respondent here cannot be said to be guilty of delay in commencing an action against the Appellant as rightly observed by the court below because of lapse of time though generally, evidence of acquiescence is not just mere lapse of time. In Abbey v. Ollenu (1954) 14 WACA 564 at 568, the West African Court of Appeal adopted and quoted with approval the dictum of Fry J. in Wilmot v. Barber (1880) 15 CH.D 96 at 105 thus:

*"It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he acted in such a way as would make it fraudulent for him to set up those rights."* See also Gerrard v. O'Reilly 3D & WAR 414.

I cannot infer from the Respondent's conduct any act that could give rise to the conclusion that he behaved fraudulently or that he wilfully remained passive when he became aware of the Appellant's acts of trespass on the land in dispute. Furthermore, for a delay in taking action, there must be knowledge on the part of the Plaintiff of all the facts giving him a cause of action. See Mogaji v. Nuga

(1960) 5 FSC 107, where it was held that laches is not delay alone; some other factors must exist such as knowledge. Besides, in addition to the action the Respondent brought against the Appellant in 1964, he (Appellant) ought to have known that the Respondent had interest in the land and ought to have exercised caution until the action was disposed of by the court. Instead, the Appellant went ahead to commit further acts of trespass on Respondent's land before the Respondent was himself non-suited by the court in 1973, as found by the court in its judgment wherein the Respondent was non-suited, to wit:

*"The present action was commenced about four years after the 1964 case was disposed of. Between 1964 when the first action was instituted, the defendant had extended his building from the area verged 'green' in Exhibit H. to the area verged 'yellow.'"*

It is for this reason that I agree with the Respondent's submission that in putting up more buildings on the land by way of expansion, the Appellant could not be acting bona fide that he was the owner thereof. And since laches and acquiescence are equitable reliefs to defeat the rightful owner of his legal rights or claims for trespass and injunction, the bona fide of the possession becomes material. I venture to opine therefore that the Appellant's defences of acquiescence and laches could not stand and the court below, rightly in my view, rejected them based upon the prop of the trial court's finding to the effect that;

*"Since the purpose of cross-examination is to test the credibility of a witness, I think the admission of the defendant that the Plaintiff had earlier sued him is admissible to negative his plea of acquiescence."* See *Kaiyaoja v. Egunla* (1974) 12 SC.55 at 65.

A fortiori, I hold that the learned trial Judge having so found could not be seen with respect, to blow hot and cold as to whether the defences of laches and acquiescence were made out. See *Ezomo v. Attorney-General of Bendel State* (1986) 4 NWLR (Part 36) 448 at 462 (per Aniagolu, JSC) wherein the learned Justice said that *"the respondent cannot blow hot and cold."*

Furthermore, since all the conditions precedent for a plea of acquiescence or laches to succeed raised by the Appellant were not present due to the particular circumstances of the Respondent's case, the court below was right in upholding the Respondent's appeal before it. In effect since the equitable defences of acquiescence and laches raised by the Appellant were not made out to estop the Respondent from exercising his legal rights on the land, I endorse the four ingredients the learned trial Judge spelt out that must be present for this plea to be sustained, to wit:

1. *"The person seeking to set up the plea must have made a mistake as to his legal rights."*

2. *He must have expended some money or must have done some act on the faith of his mistaken belief.*

3. *The person whose right has been infringed must know of the existence of his own right which is inconsistent with the right mistakenly claimed by the person seeking to set up the plea of acquiescence.*

4. *The person whose right has been infringed must have encouraged the person seeking to set up the plea of acquiescence in the latter's expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal rights."*

Mistake on the part of the Appellant, in my opinion, becomes material. The Respondent having registered the Deed of Conveyance dated 15<sup>th</sup> December, 1952 and registered as No. 26 at page 26 in Volume 58 of the Lands Registry in the Office at Ibadan, the Appellant had been put on an inquiry to verify from the Lands Registry. Having failed to use the opportunity offered by the Registration of the Deed of Conveyance (Exhibit 'D') executed in favour of the Respondent in 1952, he cannot be heard to say he acted without notice on the principle of *caveat emptor*. Although the law recognises that the length and nature of possession may be such as to oust the title of the true owner of land by the doctrine of acquiescence (see Da Costa v. Ikomi (1968) 1 All NLR 394 and Sanyaolu v. Coker (1983) 1 SCNLR 168 at 182 E) the Appellant's plea of acquiescence

and laches in the instant case were rightly rejected by the learned Justices of the court below but rightly granted the Respondent's claims for trespass and injunction. In the case of Ramsden v. Dyson (1866) 1 HL 140, cited with approval in Gbadamosi & Ors. v. Alhaji Salami Bello Mogaji & Ors., Supreme Court decision No. SC66/1983 delivered on 15<sup>th</sup> February, 1985 per Oputa, JSC) wherein the law was restated as follows:

*"If a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of the expenditure made on it. There would be nothing in my conduct active or passive making it inequitable in me to assert my legal rights."*

In my view, Appellant knew or ought to have known that the land in dispute belonged to the Respondent and that the Respondent and his brother acquired it in 1952, five years before the Appellant purported to have purchased the land from the accredited representatives of the Respondent's Vendor. I am therefore of the opinion that the Registration of the Deed of Conveyance (Exhibit 'D') in favour of the Respondent constitutes a notice to the Appellant and he ought to have known that the Respondent is the owner of the land. Consequently, I take the firm view that the plea of acquiescence and laches does not and could not avail the Appellant. See Nwakobi v. Nzekwu (1961) 1 All NLR 445 at 450 and Idehen v. Olaye (1991) 5 NWLR (Part 191) 344 at 354.

These issues are accordingly resolved against the Appellant.

The end result is that this appeal fails and it is dismissed by me with N10,000.00 costs to the Respondent.

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### WALI JSC

I have had the privilege of reading in advance a copy of the lead judgment of my learned brother Onu, SC and I agree with his reasoning and conclusion for dismissing the appeal.

The learned trial judge relied heavily on the equitable defences of

laches and acquiescence in giving judgment to the defendant/Respondent. He said:-

*“The defendant has however raised a plea of “laches and acquiescence” in paragraph 7 of his amended Statement of Defence... The burden of proving that there was acquiescence is on the defendant who alleges it... On the preponderance of evidence adduced, I am inclined to believe the defendant on this issue.”*

After making the statement above, he concluded as follows:-

*“In the present case, there is evidence which I accept that the defendant had been on the land in dispute since 1957. I find it extremely hard to believe that the first time the plaintiff noticed the presence of the defendant on the land was in 1964. I am also convinced that the defendant had completed his building by 1964 and people have already been living there. For the defendant to have put a three storey building on the land in dispute without the plaintiff knowing seems to me to be quite incredible. It is even significant that after being non suited, according to the evidence adduced in 1973, the plaintiff still waited another four years till 1977 before instituting the present action. In the mean time, the defendant had under the mistaken belief that the plaintiff was no longer interested in pursuing the action committed further funds in extending building on the land. One would have expected that having been in court for 9 years only to be non suited, the plaintiff would have acted more timely in commencing the present action. In my view, there is sufficient evidence of acquiescence and laches in this case to warrant the restraining of the plaintiff from exercising his legal right in respect of the land in dispute.”*

Essentially the equitable defences of acquiescence and laches involve a loss of time and substantial delay in asserting the right being claimed of. Either of the defence will only apply if :-

- i. there is evidence of an agreement by the plaintiff to give up or release his right;
- ii. the delay to enforce the right has resulted in the destruction or loss of evidence by which the claim might be rebutted;
- iii. the claim is to a business for the plaintiff for which he should

not be allowed to adopt the attitude of wait and see the business if it would prosper;

iv. the plaintiff has not done any thing as to induce the defendant to alter his position on the reasonable belief that the claim has been released or abandoned.

The learned trial judge after meticulous consideration of the evidence adduced before him had no difficulty in resolving the issue of title to the land in dispute in favour of the plaintiff/respondent. He stated:-

*“The evidence adduced by the defendant in support of his title to the land in dispute is not at all convincing. The deed of conveyance (Exhibit ‘J’) not by his vendor but by three persons who described themselves as accredited representatives of Ikuola family. Even assuming that the three persons who executed Exhibit ‘J’ in favour of the defendant had the authority of Ikuola family to do so, this document dated 27th of June, 1964 being later in time than Exhibit ‘D8’ which was executed in the plaintiff’s favour on the 15th of December, 1952 could not pass any title to the defendant as the family would as at that date have nothing more to pass.”*

However he found that the evidence showed that the appellant/defendant had been on the land in dispute since 1957 and that by 1964 the latter had completed his building on the disputed land. But there was evidence and which the learned trial judge seemed to have accepted that the plaintiff/respondent instituted an action against the appellant/defendant in 1964 in which the former was non-suited. Both the 1964 case and Exhibit D executed in favour of the plaintiff/respondent on 15/2/52 by Ikuola family, which is earlier in time to Exhibit J purportedly executed on 27/6/64 by accredited members of the same family in favour of the appellant/defendant are in my view sufficient materials to put the appellant on notice as regards the weakness of the validity of his own title. In TAIWO V. TAIWO [1958] SCNLR 244 particularly at 247 – 248, this court in dealing with the equitable defences of acquiescence and laches, stated as follows:-

*“Acquiescence does not bar a claim unless certain conditions are fulfilled. One of the most important is that the party who relies upon*

his opponent's acquiescence must have been led by it to expend money or otherwise alter his position. There is nothing to show here that the plaintiffs or their predecessor in title, Rebecca, have been led to do anything of the sort by the defendants' failure to assert their claim. However, the plaintiffs here do not rely upon bare acquiescence, but upon acquiescence over a long period; I should prefer to say that they rely on the defendants' laches. Laches is not delay alone; some other factor must exist or at least the delay must be such that the existence of some other factors may be inferred. Laches may be evidence of the waiver of a party's right, but waiver is incomplete without consideration in some shape or form proceeding from the other party. There is no evidence of that here; neither the plaintiffs nor their predecessor in title here acted in any way upon the defendants' failure to assert a claim to Rosannah's share of the rents which they were taking. Counsel for the plaintiffs speaks of the defendants' case as a stale claim. There is a stale claim when laches has brought about the destruction or loss of evidence which might have supported or rebutted it. In the present case the rights of the parties depend on native law and custom, not on any dealings between individuals giving rise to private rights which the passage of time might have made more difficult to establish. Evidence relevant to the native law and custom governing the case is as available now as it was 14 years ago. In my view, the defendants' inactivity, by itself and unaccompanied by any other circumstance which would make it a fraud or unconscionable on their part to maintain whatever rights they may have to a share in Rosannah's estate, has not relieved the plaintiffs from the burden of showing positively that the native law and custom in this matter is what they assert it to be. It still rests with the plaintiffs to show that native law entitled them to succeed to Rossannah's share to the exclusion of Fredrick's children."

See also SOLOMON V. MOGAJI (1982) 11 SC. 1

A person may not be deprived of his legal rights on grounds of acquiescence or laches unless it will be inequitable and unjust to grant him such a right because he has done by his conduct that which might fairly be regarded as equivalent to a waiver of it or he has by his conduct

or neglect put the other party in a position where it will not be reasonable to place such other party if the remedy were to be asserted. Two factors are always taken into consideration in granting the remedy sought and these are:-

- B (i) the length of the delay; and
- (ii) the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in so far as it relates to the grant of the remedy.

C See NWAKOBI V. NZEKWU [1964]J 1 WLR 1019 particularly at 1023.

There is no duty on a person having estate or interest in land or other property for that matter to raise protest against a trespass or encroachment on the property on invasion of his right on same if he has no reason to believe that such a trespasser, encroacher or invader mistakenly conceives himself to be acting lawfully because in such a situation there cannot said to be any misrepresentation, delusion or inaction from the owner's part, encouraging or fostering the trespasser in expending money by developing the property. There is nothing to stop the owner from asserting his right against the trespasser at any time however that may be, subject to any applicable statutory provision of limitation. See WILLMOTT V. BARBER [1888] 15 CH 96.

F It seems to me that in this case neither the defence of acquiescence nor that of laches is available to the appellant/defendant having regard to the evidence adduced. In KAIYAOJA & ORS. V. LASISI EGUNLA [1974] ALL NLR 913, a situation which is not completely dissimilar to the one at hand, in considering the applicability of the doctrine of acquiescence and laches this Court held:-

G “3. *that the doctrine of laches and acquiescence was wrongly applied to this case.*

H 4. *that mere lapse of time is not enough to justify the defence of laches unless such lapse of time is coupled with the existence of circumstances which make it inequitable to enforce the claim;*

5. *that, though there may be acquiescence without undue delay, yet the acquiescence which will deprive a man of his legal rights must*

amount to a fraud.

6. that the appellant's conduct in the present case was such that they could not be said to have slept upon their rights."

I hold the view that the Court of Appeal was right and on firm ground when in allowing the appeal it concluded as follows:-

*"Having found that the appellant is the legal owner of the land in dispute and since the defence of acquiescence as reviewed supra had collapsed, the learned trial judge ought to have rejected the defences of acquiescence and laches and the appellant ought to have succeeded in his claim for trespass and injunction and I so hold.*

*In sum, this appeal succeeds and it is allowed."*

It is for these and other detailed reasons articulated in the lead judgment of my learned brother Onu, JSC with which I have already expressed my agreement, that I also hereby dismiss the appeal and affirm the judgment of the Court of Appeal with N10,000.00 costs to the Respondent.

### IGUHJSC

I have had the privilege of reading in draft the judgement of my learned brother, Onu, JSC. And I am in entire agreement with his reasoning and conclusions on the issues raised in this appeal.

The case is essentially a land dispute between the parties in respect of a piece or parcel of land situate at Molete area of Ibadan. Before the trial court, the respondent, as plaintiff, pleaded and relied inter alia on grant from the Ikuola family, Ibadan in respect of this piece of land. This grant was evidenced by a Deed of Conveyance dated the 28th day of May 1946 registered as No. 49 at page 49 in Volume 327 of the Lands Registry in the office at Lagos. Additionally, he relied on two other Deeds of Conveyance dated the 16th day of August, 1949 and registered as No. 50 at page 50 in Volume 2 and the 15th December, 1952 and registered as No. 26 at page 26 in Volume 50 respectively at the Lands Registry in the office at Ibadan. He further based his claims on possession of the land in dispute.

The appellant, on the other hand, as defendant in the trial court, pleaded and relied on grant of the said piece of land under customary law from alleged representatives of the same Ikuola family in 1957 and a subsequently executed Deed of Conveyance dated the 29th day of June, 1964 registered as No. 23 at Page 23 in Volume 759 of the Lands Registry in the office at Ibadan. He also pleaded, in addition, the equitable defences of laches, acquiescence, stale claim and adverse possession.

The learned trial Judge, although he came to the conclusion that the respondent's root of title to the land in dispute was "unimpeachable" proceeded, nevertheless, to dismiss his claims for trespass and injunction against the appellant. This he did, holding that the appellant's equitable defences of laches and acquiescence had been established. He said:-

*"Be that as it may, the Supreme Court had also ruled in Suit No. SC./106/1974 referred to above that the Deed of Conveyance (Exhibit 'D') executed in favour of the plaintiff by the Ikuola family on the 15th of December, 1952 had effectively passed a valid title to the land to the plaintiff. It would therefore appear that whichever way one looks at it, the plaintiff's title to the land in dispute is unimpeachable."*

He went on:-

*"The evidence adduced by the defendant in support of his title to the land in dispute is not at all convincing. The deed of conveyance (Exhibit 'J') tendered by the defendant was executed in his favour, not by his vendor but by three persons who described themselves as accredited representatives of Ikuola family. Even assuming that the three persons who executed Exhibit 'J' in favour of the defendant had the authority of Ikuola family to do so, this document dated 27th of June, 1964 being later in time than Exhibit D8, which was executed in the plaintiff's favour on the 15th of December, 1952 could not pass any title to the defendant as the family would as at that date have nothing more to pass."*

Turning to the issue of laches and acquiescence, the learned trial Judge stated:-

*"The defendant has however raised a plea of "laches and acquiescence" in paragraph 7 of his amended Statement of Defence. In an attempt to support this plea, the defence counsel has tried to suppress the*

fact that the plaintiff instituted an action (Suit No. 1/183/64) against the defendant in 1964. The defendant had however admitted this fact under cross-examination...

The first time that the plaintiff took any action against the defendant was in 1964, some seven years after the Defendant had been on the land... A certified true copy of the judgment was not tendered to enable me know why the plaintiff was non-suited, neither was there any explanation why the case took about nine years to be disposed of... In my view, there is sufficient evidence of acquiescence and laches in this case to warrant the restraining of the plaintiff from exercising his legal right in respect of the land in dispute.”

He then concluded:-

“In the circumstances, the plaintiff’s claim fails and it is accordingly dismissed.”

On appeal before the Court of Appeal, that court in considering the equitable defences of laches and acquiescence in issue observed thus:-

“In the circumstances of this case, was the learned trial judge right in upholding the respondent’s defence of laches and acquiescence? I will answer this question in the negative. This is more so having regard to the finding of the learned judge at page 43 lines 19 – 23 thus:

“Since the purpose of cross-examination is to test the credibility of a witness, I think the admission of the defendant that the plaintiff had earlier sued him is admissible to negative his plea of acquiescence.”

With the above finding, the only option open to the learned trial judge was to have rejected the respondent’s defences of laches and acquiescence which lacked any pivot to stand upon and I so hold.”

The court went on:

“Having found that the appellant is the legal owner of the land in dispute and since the defence of acquiescence as reviewed supra had collapsed, the learned trial Judge ought to have rejected the defences of acquiescence and laches and the appellant ought to have succeeded in his claim for trespass and injunction and I so hold.”

It concluded:-

“In sum this appeal succeeds and it is allowed. The judgment of

*the Oyo State High Court, Ibadan in Suit No. 1/229/77 delivered by Ademakinwa J. on 16/7/81 is hereby set aside. In its place I substitute the judgment and order of the lower court with an order granting the relief sought by the Appellant in this appeal by entering judgment for the Plaintiff/Appellant as per the Writ of Summons, as follows:-*

*i. The Sum of 1,800 being Special and General Damages in respect of continuing trespass committed by the Defendant on the Plaintiff's land situate at Ibadan since sometime in Ibadan since sometime in 1964;*

*ii. An injunction restraining the defendant, his agents/servants and assigns from the continuance of the aforesaid trespass."*

The defendant has now appealed to this court against this decision of the Court of Appeal.

Two questions arise in this appeal for the determination of this court. The first is whether the Court of Appeal was right by upholding the superior title of the plaintiff as against the defendant's alleged title to the land in dispute as found by the trial court. The second and, clearly, the main issue in this appeal is whether, as found by the Court of Appeal, the equitable defences of laches and acquiescence are inapplicable to the facts and circumstances of this case.

The first issue hardly presents any difficulty as it is the finding of the trial court, quite rightly in my view, that the plaintiff's title to the land in dispute is unimpeachable, a finding which was affirmed by the Court of Appeal. Although both parties laid claim to the land through a common grantor, namely, the Ikuola family of Ibadan, it is clear that the plaintiff's documents of title were duly executed and registered under the Land Instruments Registration Law several years before the defendant's Deed of Conveyance, Exhibit J which was only executed and registered in 1964.

It cannot be disputed that where two competing deeds are registered, each takes effect as against the other from the date of registration and the benefit of earlier registration is preserved. See Amarkara v. Zankley (1963) 1 All NLR 304 and Karimu Ayinla v. Sifawu Sijuwola (1984) 5 S.C. 44 at 72. In the present case, the plaintiff's deeds of Title were

executed and registered several years before the defendant's Deed of Conveyance, Exhibit J was executed and registered. The priority of the plaintiff's title Deeds over Exhibit J cannot therefore be the subject of any controversy. In my judgment, the Court of Appeal was perfectly right when it upheld the superiority of the plaintiff's Title Deeds in respect of the land in dispute to the defendant's Conveyance, Exhibit J. I will now turn to the second issue.

A plaintiff, in equity, is bound to prosecute his claim without undue delay pursuant to the equitable maxim vigilantibus et non dormientibus lex succurrit. A court of equity refuses its aid to stale demands where the plaintiff has slept upon his right and acquiesced for a great length of time. He is in such circumstance said to be barred by his laches.

I think it needs be observed that equity does not fix a specific limit of time after which claims may be said to be barred or stale but considers all the circumstances of each and every case. However, in determining the existence or otherwise of such *inordinate delay* as to amount to laches, two main issues may be considered. These are:-

(i) Acquiescence on the part of the plaintiff which, in this sense, does not mean standing by while the violation of a right is in progress, but assent after the violation had been completed and the plaintiff has become aware of it. This is because it is clearly unjust to give a plaintiff a remedy where, by his conduct, he has done that which might not unreasonably be regarded as amounting to a waiver of it.

(ii) Any change of position that has occurred on the defendant's part.

As the subject was succinctly put in Lindsay Petroleum Co. v. Hurd (1875) L.R. 5 P.C. 221:-

*"The doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if*

the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just is founded upon mere delay, that delay of course not amounting to a bar by any Statute of Limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

Turning now to acquiescence, the term is used where a person refrains from seeking redress when there is brought to his notice a violation of his rights of which he did not know at the time, and in that sense acquiescence is an element in laches. As the authors of Halsbury’s Laws of England, 4th Edition, Para, 1473 at Page 994 explained:-

“The term (acquiescence) is, however, properly used where a person having a right, and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed; a person so standing by cannot afterwards be heard to complain of the act.”

See De Bussche v. Alt (1878 – 80) All E. R. Reprint 1247.

The learned authors went on:-

“ In that sense, the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct; the principle of estoppel by representation applying both at law and in equity, although the application to acquiescence is equitable.”

See too Leeds v. Amherst 16 L.J. Ch.5

Accordingly, it has been said that if a stranger begins to build on another’s land supposing it to be his own and the real owner, perceiving his mistake, abstains from setting him right and leaves him to persevere

in his error, a court of equity will not allow such real owner afterwards to assert his title to the land on which the stranger has expended money on the supposition that the land was his own. It considers that the owner saw the mistake into which the stranger had fallen and that it was the duty of such owner to be active and to assert his adverse title; and that it would be dishonest in the owner to remain wilfully passive on such an occasion, in order afterwards to profit by the mistake which such owner might have prevented. See Ramsden v. Dyson (1866) L.R. 1 H.L. 129 at 140.

One vital point has, however, been made. This is the fact that laches and acquiescence which will deprive a man of his legal rights must amount to fraud. It is added that a man must not be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up the rights. See Willmott v. Barber (1880) 15 Ch. D. 96 at 105 and Abbey v. Ollenu (1954) 14 W.A.C.A. 564 at 568. The elements which have been accepted as necessary to constitute fraud of the description under reference have therefore been stated to comprise as follows:-

(1) The plaintiff who sets up the doctrine of laches and acquiescence must have made a mistake as to his legal rights.

(2) Such a plaintiff must have expended some money or must have done some act on the faith of his mistaken belief.

(3) The defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff as the doctrine of acquiescent is founded upon conduct with a knowledge of one's legal rights.

(4) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights.

(5) The defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal rights.

Where all these elements exist, it is deemed that there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right

from exercising it. See Willmott v. Barber (1880) 15 Ch. D. 96.

Turning briefly once again to the facts of this case it is the defendant's case that he bought the land in dispute in 1957, although Exhibit J, his Deed of Conveyance in respect of the land is dated the 27th June, 1964. It is also not in dispute that following the defendant's entry to erect a building on the land, the plaintiff, in assertion of his claim of title to the land instituted an action against the said defendant in 1964 in suit No. 1/183/64 at the Ibadan High Court. That action was not determined until nine years thereafter in the year 1973 when the trial court non-suited the plaintiff.

As it did appear that the defendant persisted with his acts of trespass on the land, the plaintiff in June 1977 instituted a second action against him at the Ibadan High Court for special and general damages for trespass and perpetual injunction. The present appeal is from the decision of the Court of Appeal in this second action.

Having regard to the above facts, it is now left for me to ask myself in what respect the plaintiff slept upon his right under any circumstances which amounted to inordinate delay in the prosecution of his rights in and over the land in dispute? I ask myself in what respect the plaintiff, on the above facts, might be accused of assenting to any violation of his rights over the land in dispute by the defendant? I ask myself if there is any conduct of the plaintiff that may be regarded as a waiver of his rights in respect of the land in dispute. I ask myself what negligence or conduct on the part of the plaintiff in this matter that may be construed as a waiver of any of the remedies he now claims against the defendant. I ask myself what inducement the plaintiff at any time extended to the defendant in the infringement of the former's rights over the land in dispute by the said defendant. And I finally ask myself what acts of the plaintiff in these proceedings, if any, that may be said to amount to fraud and thus estop him from asserting his rights to the land in dispute against the defendant.

I have given very anxious consideration to each and every one of the above questions and find no difficulty in resolving them in the negative. In my view, there is no evidence whatsoever, no matter how

weak, to fault the plaintiff in any way with regard to his entitlements to the relief he has claimed against the defendant. I find that no laches or acquiescence, as known to law, was established by the defendant against the plaintiff in this case. I entertain no doubt that the Court of Appeal was perfectly right in dismissing the defendant's plea of laches and acquiescence and in entering judgment for the plaintiff as claimed. B

It is for the above and the more detailed reasons contained in the judgment of my learned brother, Onu, JSC. that I, too, dismiss this appeal as lacking in substance. I abide by the order for costs made in the leading judgment. C

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**KATSINA-ALU JSC**

I have had the privilege of reading in draft the judgment of my learned brother Onu JSC in this appeal. I entirely agree with it. There is nothing I can usefully add. D

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**EJIWUNMI JSC**

I have had the privilege of reading in advance the draft of the judgment just delivered by my learned brother Onu JSC. E

In that judgment the issues raised having regard to the appeal of the appellant were carefully considered in the light of the facts revealed in the record of proceedings. I find myself in entire agreement with the reasoning of my learned brother that led to the dismissal of the appeal. F The appeal in my humble view lacks merit. The Court below was indeed right to have reversed the judgment of the trial Court. It is, palpably G wrong for the learned trial judge to have refused to award judgment to the respondent after he had held thus:-

*"In the present case, there is evidence which I accept that the defendant had been on the land in dispute since 1964. I am also convinced that the defendant had completed his building by 1964 and people have already been living there. For the defendant to have put a three storey building on the land in dispute without the plaintiff knowing seems H*

to me to be quite incredible. It is even significant that after being non-suited, according to the evidence adduced in 1973, the plaintiff still waited another four years till 1977 before instituting the present action. In the meantime, the defendant had under the mistaken belief that the plaintiff was no longer interested in pursuing the action committed further funds in extending his building on the land. One would have expected that having been in court for 9 years only to be non-suited, the plaintiff would have acted more timely in commencing the present action.”

As the Respondent was not happy with the judgment of the trial Court which after making the findings of fact referred to above, this went on to hold thus:-

*"In my view there is sufficient evidence of acquiescence and laches in this case to warrant the restraining of the plaintiff from exercising his legal right in respect of the land in dispute. See Morayo v. Okiade (1940) 15 NLR 131.*

*In the circumstances, the plaintiff's claim fails and it is accordingly dismissed."*

The Respondent, was therefore obliged to challenge this conclusion of the learned trial judge. It is pertinent to observe that the reliefs claimed from the trial Court were as follows:-

*"(a) The sum of N1,200 being special and general damages in respect of continuing trespass committed by the Defendant on the Plaintiff's land situated at Molete, Ibadan sometime in 1964.*

*(b) Injunction restraining the defendant, his agents, servants or assigns from continuance of the aforesaid trespass."*

When the appeal of the respondent came before the Court below, one of the questions considered by the Court was whether the learned trial judge was right to have denied the reliefs sought by the Respondent on the ground that he was guilty of laches and acquiescence. The Court below, after the consideration of the facts and the argument of learned counsel for the parties, per Okunola, JSC, (concurring on by Mukhtar and Dalhatu Adamu JJCA) allowing the appeal, held inter alia, thus:-

*"Whichever way one looks at it, the plaintiff's title to the land in dispute is unimpeachable. Having found that the appellant is the legal*

*owner of the land in dispute and since the defence of acquiescence as reviewed supra had collapsed, the learned trial Judge ought to have rejected the defence of acquiescence and laches and the appellant ought to have succeeded in his claim for trespass and injunction and I so hold."*

The Appellant has now appealed to this Court as he was dissatisfied with the decision of the Court below. One of the issues raised in this Court being whether the Learned Justices of the Court of Appeal were right in holding that the equitable defence laches and acquiescence availed the Appellant. To properly answer this question, I think it is right to refer to authorities in which this question has been raised and considered. In TIAMIYU DANIA V. YESUFU SOYENU (1937) 13 NLR 143 it was held that a higher degree of acquiescence was required to extinguish the original owner's reversionary right in favour of the occupier.

I now turn to the authority referred to Morayo v. Okiade (supra) upon which the Learned Trial Judge grounded his decision for refusing the relief sought by the respondent.

It is my respectful view that if the Learned Trial Judge had carefully considered the facts in that case in relation to that in the instant appeal, his decision would perhaps have been different. In the instant case, the record of proceedings show quite clearly that the respondent had consistently challenged the appellant as a trespasser on his land. It is apposit to refer to the case of Abbey v. Ollenu 14 WACA 5567, where at p.568, the West African Court of Appeal, in considering when the equitable doctrine of acquiescence would apply, in a case, quoted with approval, the conditions set down by FRY, J in WILLMOTT V BARBER 15 Ch. D. at p. 105. They read:-

*"It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set those rights. What then are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done*

some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal rights. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but in my judgment nothing short of this will do."

Having regard to the facts established in the instant appeal, I am in no doubt that the Court below was right to have allowed the appeal. The appellant has not in my humble view advanced any argument to persuade me to hold otherwise

In the result, I also dismiss this appeal for the above reasons given in the leading judgment of my brother Onu JSC.

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