

SUPREME COURT OF NIGERIA

13TH JULY, 2001. SC. 71/1995

**CORAM:- A. B. WALI, I. L. KUTIGI, S. U. ONU, U. A. KALGO,
S. O. UWAIFO, JJSC.**

ROCKONOH PROPERTY CO. LTD. PLAINTIFF/APPELLANT
AND

1. NIGERIA DEFENDANTS/RESPONDENTS
TELECOMMUNICATIONS PLC

2. NIGERIAN COAL CORPORATION

APPEALS - *Leave - Issue - Fresh issue - When an issue not raised in the Court below - Is sought to be raised as a fresh point in the Supreme Court - Leave to do so must be sought and obtained (H 3)*

DAMAGES - *Assessment - Special and general damages - Principle in regard to the assessment and award of special damages - Differentiated from that of general damages (H 11)*

DAMAGES - *General damages - Trespass to land - When general damages are sought on the basis of trespass to land - They would represent payment for the tort of trespass - Not the value of the land (H 2)*

DAMAGES - *General Damages - Quantum - General damages are always made as a claim at large - The quantum need not be pleaded and proved (H 1)*

EVIDENCE - *Evaluation - Basic qualities - Which evidence must possess - Before a court can act upon it (H 10)*

EVIDENCE - *Evaluation - Probative value - Evidence which has no probative value - Cannot be relied upon to support a claim (H 9)*

LAND LAW - *Evidence - Title - Instrument conferring title - Obtaining of necessary consent - The burden of proving that the consent was ob-*

tained - Was on the party relying on the validity of the transaction (H 7)

LAND LAW - Registration - Instrument - Consent - Presumption - When consent is endorsed on the instrument - It will raise a presumption of validity of the instrument (H 5)

LAND LAW - Registration - Instrument - Governor's consent - Lands Instrument Registration Law s. 10 - Registrar satisfaction as to Governor's consent - Is a matter of evidence (H 4)

LAND LAW - Registration - Instrument - Which does not have the necessary consent endorsed on it - The mere fact that such an instrument was registered - Will not raise the presumption of regularity to the effect that the consent was given (H 6)

LAND LAW - Title - Instrument - Registration - Absence of necessary consent - The fact that the instrument was registered is not helpful - Because registration does not cure the defect in an instrument (H 8)

FACTS

The plaintiff/Appellant claimed against the 1st Defendant/Respondent for: (a) N32,752,506 as general damages for trespass to 13, Colliery Avenue or in the alternative; (b) an injunction restraining the 1st defendant, its agents, servants and privies from remaining on and/or using the land except with the consent of the plaintiff. The appellant company is an estate developer. The 1st and 2nd respondents are Federal Government Parastatals. The appellant has as its Chairman P.W.I, Chief Christian Chukwuma Onoh. He had also in the past been the chairman of the 2nd respondent

It is common ground that No. 13 Colliery Avenue, GRA, Enugu ("*the property in dispute*") was originally the property of Nigeria Coal Corporation, the 2nd respondent. The claims of the appellant and the 1st respondent is that each one of them acquired the property in dispute from the 2nd respondent which the latter did not categorically deny. The

case of the 1st respondent is that it was assisted by the P.W.1 in the negotiations to acquire the property in dispute to erect its Earth Satellite Station in Enugu now named I.B.B. Third Gateway. The 1st respondent maintains that it paid the money asked for by the 2nd respondent for the property in dispute sometime in April 1983, demanded for vacant possession in May, 1983 and having been so given carried out the demolition of the existing buildings on the land in preparation for laying the foundation of the Satellite Station by President Shagari. The foundation could not be laid as planned owing to military intervention in Government at the close of 1983. It says that it continued ever since to remain in possession of the land. The 1st respondent has since erected its satellite station which has been in operation.

However, the appellant through the active voice and involvement of PW1 claimed to have become the owner of the property in dispute. According to the appellant the 1st respondent notified the 2nd respondent by a letter dated 19th July, 1983 (Exhibit F) of the suspension of the project of the proposed satellite and about plans to have a refund of the amount it had paid for the property. There is a subsequent letter dated 11th August, 1983 (Exhibit G) acknowledging a purported receipt of the amount. The PW1 said there were rumours that the satellite project was likely to be abandoned and that it was this development that had fired his interest in acquiring the property in dispute in case the 1st respondent decided to abandon the project. This is stated in a letter dated 15th February, 1983 (Exhibit H) which PW1 sent on behalf of the appellant to the 1st respondent. PW1 stated that subsequent circumstances made it possible for his said interest to materialize and he claimed that this led to the execution of a deed of assignment dated 19th December, 1983 between the 2nd respondent and the appellant in respect of the property in dispute. The deed was registered nine years later in 1992 as No. 94 at page 94 in Volume 1376 of the Lands Registry in the office at Enugu (Exhibit J). Eventually, sometime in February, 1993, PW1 commissioned a firm of Estate Surveyors and Valuers to carry out a valuation of the property with a view to determining the money worth of the site in order to make a claim against the 1st respondent. Based on the valuation report (Exhibit

V), the appellant claimed against the 1st respondent as aforesaid.

At the conclusion of trial, the learned trial judge, gave judgment in favour of the appellant. Dissatisfied, the defendants appealed to the Court of Appeal which allowed the appeal. Aggrieved, the appellant has B appealed to the Supreme Court raising seven issues, while the 1st respondent raised three issues, the last two of which were considered adequate in resolving the appeal. The 2nd respondent cross-appealed raising one issue which was struck out by the court.

C **ISSUES FOR DETERMINATION**

"1. Whether failure to obtain prior ministerial approval as required by section 12(4) of the Nigerian Coal corporation Act did not render exhibit J invalid, null and void.

D 2. Whether the appellant proved its case and was entitled to judgment."

HELD (Unanimously dismissing the appeal and striking out the cross-appeal per lead judgment of **UWAIFO JSC**)

E ***General damages - Quantum***

1. General damages are always made as a claim at large. The quantum need not be pleaded and proved. The award is quantified by what, in the opinion of a reasonable person, is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act F of the defendant. It does not depend upon calculation made and figure arrived at from specific items. (p. 2884 H)

G ***General damages - Trespass to land***

2. When general damages are sought on the basis of trespass to land, they would represent payment for the tort of trespass, not the value of the land; and the land remains at least under the possessory ownership or right of the plaintiff claimant. (p. 2885 B)

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Appeals - Issue

3. When an issue not raised in the court below is sought to be raised as a fresh point in this court, leave to do must be sought and obtained in this

court. The present issue is therefore not competent: See *Uor v. Loko* (1988) 2 NWLR (pt. 77) 430. Accordingly, I strike it out together with the cross-appeal. (p. 2888 F)

Consent - Land Instrument Registration Law s. 10

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4. In the present case no prior or any approval of the Minister was obtained in compliance with s.12(4) of the Nigeria Coal Corporation Act. The said deed of assignment was registered nevertheless. Section 10 of the Land Instruments Registration Law, Cap.72, Laws of Eastern Nigeria provides:

C

"No instrument requiring the consent of the Governor or any public officer to the validity thereof shall be registered unless such consent be endorsed thereon or the Registrar is otherwise satisfied that such consent has been given."

D

In my view, it is expected that the need for the Registrar to be satisfied that the Governor's consent had been obtained can only arise if there is no relevant endorsement suggestive of this on the instrument sought to be registered. It is that absence of such endorsement that will put him on inquiry. It follows that the issue that he was satisfied must be a matter of evidence which must be laid before the court. (p. 2895 D)

Consent - Presumption

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5. When consent or approval is endorsed on the instrument, it will raise the obvious presumption of the validity of the transaction or at any rate that that was what satisfied the Registrar that the necessary prior ministerial consent was given before he registered the instrument. (p. 2895H)

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Instrument - Which does not have the necessary consent

6. The mere fact that an instrument which does not have the necessary consent endorsed on it was registered will not *ipso facto*, in my respectful opinion, raise the presumption that the Registrar was satisfied that such consent had been given which led him to register the instrument. Nor is it right to accept that the mere registration of such instrument raises the presumption of regularity to the effect that the consent was

given. There must be some evidence in support of any of such presumptions. (p. 2896 A)

Land law - Evidence

- B 7. It must be accepted that the absence of the necessary ministerial approval or consent is a serious defect which affects the title sought to be conferred by the relevant instrument. It seems to me that if there is no evidence or ground upon which a presumption can be raised that such approval or consent had been obtained, the party whose reliance on the validity of a relevant transaction depends on that approval or consent has the burden to prove that it was obtained. (p. 2897 G)

Land law - Title

- D 8. It is not helpful to rely on the fact that the instrument evidencing the transaction was registered because registration does not cure the defect arising from the absence of the ministerial approval or consent, or indeed any defect in any instrument. (p. 2898 A)

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Evidence - Evaluation

9. The law does not permit evidence which is of no probative value to be relied upon by a party, nor to be acted upon by the court, to support a claim. (p. 2900 F)

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Evaluation - Basic qualities

10. It is an important aspect of civil procedure that for evidence to be considered useful and which a court can act upon, there are certain basic qualities it must possess. The first consideration is usually the double requirement of relevancy and admissibility. But in essence, they can be separated. The evidence must be relevant to a fact in issue, or to any fact which, though not in issue, is so connected with the fact in issue; or relevant to a fact which is inconsistent to any fact in issue, or to a fact which by itself or in connection with any other fact makes the existence or non-existence of any fact in issue probable or improbable: ss.7 & 12 Evidence Act. It must be admissible having regard to the facts pleaded

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and if no law or rule precludes its admission. It must have credibility or cogency thereby enabling the Judge to ascribe some probative value to it having regard to its nature and what it is intended to establish.

(p. 2900 F)

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Damages - Assessment

11. It is no longer a matter for contention that the principal in regard to the assessment and award of special damages is different from that of general damages. In the former, damages are specially pleaded, strictly proved and accordingly awarded: in the latter, they are averred, if necessary under specific heads of claim, presumed in law to be the direct and natural consequence of the act complained of and awarded at large as a jury question. In the present case the pleadings and evidence suggest special damages whereas the relief sought is, curiously, for general damages. Although that relief is so stated, it must be emphasised still that the learned trial judge nevertheless acted under a misconception to have made an award of general damages having regard to the nature and structure of the case presented by the appellant which is founded on special damages. (p. 2902 A)

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NOTABLE POINTS OF INTEREST

UWAIFO.JSC

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1. Basing valuation of landed property on pure investment portfolio

It is an interesting development that a person who studied Estate Management to practise as an Estate Surveyor and Valuer would base his valuation of landed property on pure investment portfolio in a commercial bank. This was actually revealed in the evidence of the said valuer, PW4, already reproduced. It will be seen that that was the type of evidence before the trial court, fully accepted by it in support of a specific amount claimed as *general damages for trespass to land*, which amount was also awarded in full. (p. 2886 B)

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2. Claiming the value of a property as general damages for trespass

That aspect of the claim is for general damages as compensation for

trespass. But the evidence led which I have just considered above is for the *value of the property*, not for trespass upon it. To claim for the value of property is to suggest that ownership is in the claimant and that once paid no more claim will be laid by him to ownership of the property. If ownership in such a case cannot be established by proof of title to the property, proof of possession is not enough. That was the first burden the appellant undertook in the present case. The appellant must be regarded as having sought compensation in the form of special damages for its loss of property to which it has title and not for general damages for a mere temporary disturbance of its possession of the property. (p. 2886 E)

WALI JSC

3. *Parties may settle terms of transaction before applying for consent*
It is a condition precedent that under Section 12(4) of the Nigerian Coal Corporation Act, 1950 [Cap134] Laws of the Federation of Nigeria 1958, now Section 12(4) of the Nigerian Coal Corporation Act 1950 [Cap 299] Laws of the Federation of Nigeria, 1990, before the Corporation can make any valid and enforceable alienation, demise, mortgage or charge any land vested in it, it must obtain the prior approval of the Minister charged with the responsibility of the Corporation. However this does not mean that parties cannot start negotiation and settlement of the terms on which the transaction is to be hinged before applying for the Minister's approval e.g. preparing a deed of assignment. Parties would not be expected to apply for the Minister's approval without settling and agreeing on the terms related to the transaction; likewise the minister would not be expected to give approval to a transaction the terms of which are not known to him. (p. 2906 G)

KUTIGLJSC

4. *Prior approval to the alienation of land must be proved*
I agree with his reasoning and conclusions especially on the validity or otherwise of the Exhibit J., the deed of lease, on which the Plaintiff's case was founded. Exhibit J. clearly violated section 12(4) of the Nige-

rian Coal Corporation Act, as no prior approval of the Minister was obtained. This needed to be proved and could not have been presumed. (p. 2908 H)

REPRESENTATION

A. N. Anyamene SAN with him C. J. Anyamene-Ezugu (Mrs.) for the appellant.

Chief A. O. Mogboh SAN, him A. N. Mabu Esq. for 1st respondent.

O. R. Ulasi Esq. for the 2nd respondent/cross-appellant.

CASES REFERRED TO

Odulaja v. Haddad (1973) 1 SC 357

Lar v. Stirling Asstaldi Ltd. (1977) 11-12 SC 53

Osuji v. Isiocha (1989) 3 NWLR (Pt. 111) 623

Uor v. Loko (1988) 2 NWLR (pt. 77) 430

Popoola v. Adeyemo (1992) 8 NWLR (pt. 257) 1

Honika Sawmill (Nig.) Ltd. v. Hoff (1994) 2 NWLR (Pt. 326) 252

Emegokwue v. Okadigbo (1973) 4 SC 113

Onobruhere v. Esegine (1986) 1 NWLR (Pt.19) 799

Misr (Nig.) Ltd. v. Ibrahim (1975) 5 SC 55 at 62

Akhionbare v. Omoregie (1976) 12 SC 11 at 27

Ijebu-Ode Local Government v. Adedeji Balogun & Co. (1991) 1 NWLR (pt.166) 136 at p. 158

Eseigbe v. Agholor (1993) 9 NWLR (Pt.316) 128 at p.145

Chidiak v. Coker (1954) 14 W.A.C.A. 506

Savannah Bank (Nig.) Ltd. v. Ajilo (1989) 1 N.W.L.R. (Pt.97) 305

STATUTE REFERRED TO

Nigerian Coal Corporation Act, 1950 (Cap.299) Vol.18 Laws of the Federation of Nigeria, 1990 S. 12(4), Para. 15 of the First Schedule.

Land Use Act, SS. 22 and 26

Land Instruments Registration Law, Cap. 72, Laws of Eastern Nigeria; S. 10.

Evidence Act, Cap. 112, LFN, 1990, SS. 7 and 12.

LEAD JUDGMENT BY UWAIFO JSC

The facts of this case have in many respects been presented differently by either party, that is to say, the plaintiff/appellant and the 1st defendant/respondent. That may be expected in a case where there is dispute particularly as to oral facts. But in this case, there are a couple of peculiar documents admitted in evidence which have some dubiety about them such as raise far more question than can be provided with answers. The role the 2nd respondent was made to play by some of its functionaries deserves special mention. The facts taken as a whole are extremely intriguing. It is unprofitable to attempt to reconcile them all or even state them in detail. Let me therefore state the facts relevant for this appeal and as far as caution dictates, leave out all other facts.

The appellant company is an estate developer. The 1st and 2nd respondents are Federal Government parastatals. The appellant has as its chairman PW1 Chief Christian Chukwuma Onoh. He had also in the past been the chairman of the 2nd respondent. The 1st respondent was assisted by the PW1 in the negotiations to acquire a suitable site to erect its Earth Satellite Station in Enugu now named *I.B.B. Third Gateway*. In accordance with the agreement reached with the 2nd respondent, the owner of the site, the 1st respondent paid a premium of N220,000.00 in April, 1983 for the site and was thereafter to pay an annual rent of N100.00. The site in question was known as No.13 Colliery Avenue, Enugu. The 1st respondent has since erected its satellite station which has been in operation. Somehow, as will be clear later, the appellant, through the active voice and involvement of PW1 claimed to have become the owner of the site in reliance on a deed of assignment which will be more particularly referred to and considered in the course of this judgment. Eventually, sometime in February, 1993, PW1 commissioned Estate Surveyors and Valuers known as Chinwuba, Odumodu & Co. of 8 Chime Avenue, New Haven, Enugu to carry out a valuation of the site. This was with a view to determining the money worth of the site in order to make a claim against the 1st respondent.

At the time of acquisition of the site by the 1st respondent, there

were existing buildings of the 2nd respondent thereon. This fact is supported by a body of documentary and oral evidence. It is sufficient for the present purpose to start by referring to part of the evidence given by P.W.4, Alpha Ifeanacho Odumodu, an estate surveyor/.valuer called as a witness by the appellant and to extracts from the document prepared by him, exhibit V. The said oral evidence and the document speak volumes. B
The witness said:

"The plaintiff's (sic) company engaged my services to carry out the valuation of a property at 13 Colliery Avenue, G.R.A., Enugu. My company carried out the assignment. I visited the site in order to confirm C what is in the report. My company visited the site and prior to our visit the property had been demolished. The plaintiffs informed us that there is similar property along Colliery Avenue and my company also saw that one. We visited the property closest to the one we were supposed to D value..... In carrying out the valuation, we ascertained that an offer of 2.37million naira was made on the property in 1982. We based our valuation on the offer in 1982 by determining the amount to which the figure of 2.37 million naira was if invested in a Bank in 1982 would E amount to now, at the existing bank rate which 27% interest rate from Commercial Banks. After this, our valuation gave us N32,854,125.00. Property values since 1982 have been on the increase. We used the multiplier of 13.8625 derived from our valuation table based on the interest rate of 27%. 13.8625 was got from valuation table that guides us." F
The Valuation Report dated 11th February, 1993 was tendered by P.W.4 and admitted by the court as exhibit V.

The report was forwarded to PW1 by letter also dated 11th February, 1993. The first two paragraphs of the said letter read: G

"We have in accordance with your instruction carried out an appraisal survey on the property at No. 13 Colliery Avenue G.R.A. Enugu which was acquired in 1982 by Nigerian Telecommunication Plc, successors in title to Nigerian External Telecommunication (NET) for the construction of their Eastern Gateway Satellite. The property consists of a H low density residential plot of land having an area of approximately 2.372 acres, on which is developed a two storey family dwelling house, a single

storey Guest house and a single storey boys quarters."

Then in the Report itself, paras.; 1.1 and 1.2, the following important and instructive information is given:

"1.1. Preamble

B *We were instructed and our services retained by Chief*
CC Onoh, Chairman of ROCKONOH PROPERTY COMPANY LIMITED
to carry out a survey and valuation of the property at No. 13 Colliery
Avenue, G.R.A., Enugu acquired in 1982 by Nigeria External Telecom-
C *munication (NET) the predecessors of Nigeria Telecommunication PLC*
(NITEL) the present occupiers of the premises.

1.2. Purpose of valuation

The valuation is being carried out to determine a fair
and just compensation payable to Rockonoh Property Co. Ltd. as restitu-
D *tion for their interest in the property at No. 13 Colliery Avenue G.R.A.*
Enugu which was acquired by Nigerian Telecommunication PLC succes-
sors in title to Nigerian External Telecommunication for the construction
of their Eastern Gateway Satellite."

E The evidence is that the demolition of the buildings on No. 13
Colliery Avenue was done by the 1st respondent in 1983. The testimony
of P.W.2, David Abiodun Sowade, who was the Secretary/Legal Adviser
of the 2nd respondent indicates this. *He said inter alia:*

F *"1st defendant gave us information that the President would lay*
the foundation stone of 13 Colliery Avenue in 1983, May 13th, I ar-
ranged for the 2nd defendants to remove their personal effects so that
demolition could take place.... The coup of 1983 terminated everybody's
appointment. I was in office when demolition was going on."

G In his evidence, PW1 who appeared to have known of the contract for
the demolition called for the written contract. He said he had given no-
tice to the 1st respondent to produce it. He also admitted that the com-
pany, Tora Nigeria Limited which was contracted to carry out the demo-
H lition was one of his subsidiary companies. He in fact produced and
tendered the written contract, and it was admitted as exhibit U. The
contract was signed on 14 July, 1983 between the 1st respondent and the
said company. The contract work was to be completed on or before 30

august, 1983. There is nothing to show that the contract was not performed as agreed. It is therefore correct to say that the demolition took place between 14 July and 30th August, 1983.

However, the appellant said that the 1st respondent notified the 2nd respondent by a letter dated 19th July, 1983 (exhibit F) allegedly signed by one J.A. Olaniyi, 1st respondent Acting Chief Engineer, of the suspension of the project of the proposed satellite and about plans to have a refund of the money it had paid as ground rent and one year's annual rent which totalled N220,100.00. There is a subsequent letter dated 11th August, 1983 (exhibit G) allegedly signed by the same Olaniyi acknowledging a purported receipt of that amount. The PW1 said that there were rumours that the satellite project was likely to be abandoned and it was this development that had fired his interest in acquiring No. 13 Colliery Avenue in case the 1st respondent decided to abandon the project. This is stated in a letter dated 15th February, 1983 (exhibit H) which he said he sent (personally signed by him on behalf of the appellant) to the 1st respondent, part of which reads:

"The lack of interest to vigorous (sic) pursue the negotiation over the past few months seem to be a confirmation of the rumour that the project will be abandoned. I am aware of the going on in the Ministry and the attempt to frustrate the Eastern Satellite Project by certain groups. The irony of it all is that these groups are already making arrangement for a prospective buyer from NCC; and have contacted some reputable Banks. As property developers we are carefully watching developments. If and when NET decides to abandon the project, kindly notify us as we will be interested in the property."

According to him, subsequent circumstances made it possible for his said interest to materialise, and he claimed that this led to the execution of a deed of assignment dated 19th December, 1983 between the 2nd respondent and the appellant in respect of No. 13 Colliery Avenue. The deed was registered nine years later in 1992 as No. 94 at page 94 in volume 1376 of the Lands Registry in the office at Enugu (exhibit J).

The 1st respondent maintains that it paid the money asked for by the 2nd respondent for the property in question sometime in April, 1983,

demanded for vacant possession in May, 1983 and having been so given, carried out the demolition of the existing buildings on the land in preparation for laying the foundation of the Satellite Station by President Shagari. The foundation could not be laid as planned owing to military intervention in Government at the close of 1983. It says it continued ever since to remain in possession of the land.

There is no dispute that it was at the instance of the 1st respondent with the concurrence of the 2nd respondent that the demolition in question was carried out between July and August, 1983. But the appellant claiming to have been given an assignment of the land by the 2nd respondent and also that it has been in lawful possession at all material times, brought this action in April, 1992 against the 1st respondent and claimed originally in the writ for N5,000,000.00 damages for the trespass and an injunction. The 2nd respondent was later joined as a co-defendant on the application of the 1st respondent. In spite of that joinder, the appellant in its amended statement of claim made it clear that the reliefs it sought were against the 1st respondent only. The reliefs finally claimed were for:

"(a) N32,752,506 general damages for trespass to 13, Colliery Avenue, or in the alternative,

(b) An injunction restraining the 1st defendant, its agents, servants and privies from remaining on and/or using the land except with the consent of the plaintiff on terms of tenancy acceptable to the plaintiff."

Although the claim was so couched, it is evident that relief (b) presupposes that the appellant has title to the land upon which, as landlord, it was prepared to grant a tenancy to the 1st respondent. As regards relief (a), it could be that it was based either on a claim to exclusive possession (without title) or on title in reliance on exhibit J which then implies the right to possession.

But it seems to me that the amount claimed as general damages as if for trespass makes the relief sought purely illusory. The reason for my so saying is simple. **General damages are always made as a claim at large. The quantum need not be pleaded and proved. The award**

is quantified by what, in the opinion of a reasonable person, is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act of the defendant. It does not depend upon calculation made and figure arrived at from specific items: See *Odulaja v. Haddad* (1973) 1 SC 357; *Lar v. Stirling Asstaldi Ltd.* (1977) 11-12 SC 53; *Osuji v. Isiocha* (1989) 3 NWLR (Pt. 111) 623. When general damages are sought on the basis of trespass to land, they would represent payment for the tort of trespass, not the value of the land; and the land remains at least under the possessory ownership or right of the plaintiff claimant. In the present case, the agents commissioned by the appellant to make a valuation of the land in question stated the basis of it and their opinion for the amount of compensation arrived at in exhibit V as follows:

"4.1 Basis of Valuation

We were informed by our client that Nigeria External Communication (NET) the successors of NITEL offered to pay the sum of N2.150m for the structures on the land and N220,000.00 for disturbance i.e. for land in 1982 making a total of N2,370,000.00.

We are therefore going to base our valuation on determination of the present value of the amount agreed in 1982 as compensation for the acquired property which is equivalent to the amount which N2,370,000.00. invested in 1982 will accumulate (sic) to in eleven years i.e. in 1993. At an interest rate of 27% the valuation table shows a multiplier of 13.8625 which works out the present value of compensation payable at N32,854,125.00.

4.2 Conclusive Valuation Opinion

Based on the foregoing analysis and taking into consideration the nature, construction, location and size of the subject property at No. 13 Colliery Avenue G.R.A. Enugu, as well as the amount of compensation offered to Rockonoh Property Co. Ltd. in 1982, we are of the opinion that N32,864,125.00 is the present value of the compensation that should have been paid in 1982."

In the said Valuation Report, particulars of the buildings such as the materials used, the space covered by every apartment in each of the

buildings (such as sitting room, bedroom, dining, kitchen, store, bathroom, garage, guest room) and the state of the buildings were methodically provided. However, it is clear to me that the valuation was not based or calculated on those specifications. It was solely based on what
 B can be regarded as the speculation of a person claiming to be an investment expert which led him to conclude that an amount of N2,370,000.00 invested in a commercial bank in 1982 would grow in about eleven years at an interest rate of 27% going by a certain multiplier figure of 13.8625
 C to the sum of N32,854,125.00. It is an interesting development that a person who studied Estate Management to practise as an Estate Surveyor and Valuer would base his valuation of landed property on pure investment portfolio in a commercial bank. This was actually revealed in the evidence of the said valuer, PW4, already reproduced. It will be seen
 D that that was the type of evidence before the trial court, fully accepted by it in support of a specific amount claimed as *general damages for trespass to land*, which amount was also awarded in full.

This takes me to another fundamental reason for regarding that
 E claim as illusory. That aspect of the claim is for general damages as compensation for trespass. But the evidence led which I have just considered above is for the *value of the property*, not for trespass upon it. To claim for the value of property is to suggest that ownership is in the
 F claimant and that once paid no more claim will be laid by him to ownership of the property. If ownership in such a case cannot be established by proof of title to the property, proof of possession is not enough. That was the first burden the appellant undertook in the present case. The
 G appellant must be regarded as having sought compensation in the form of special damages for its loss of property to which it has title and not for general damages for a mere temporary disturbance of its possession of the property.

Upon the state of the evidence and based on that nature of claim,
 H the learned trial judge on 17 December, 1993, gave judgment for the amount of N32,752,506.00 in favour of the appellant. The court observed and held as follows:

"Plaintiffs' Valuer said that if the amount of N2,150,000.00 for

the structures on the land and N220,000.00 for disturbance which 1st Defendants offered in 1982 were invested in a Commercial Bank at an interest rate of 27% in 1982 it will accumulate in 1993 (to) N32,854,125.00. It is in evidence that Plaintiffs made Exh. V retrospectively after the 3rd Gateway Satellite has been built on the land. 1st Defendants' Valuer B confirmed that valuation could be done retrospectively. The fact that the Satellite is servicing a purpose is no defence to a tort and court can award damages instead of injunction where justice demands so. Plaintiffs also claim in the alternative thereby giving room for the 1st Defendants to discuss what they thought reasonable to pay, but this kind gesture C as not considered by the 1st defendants.

In view of the various positions I have taken in the course of this judgment. I have come to the conclusion that the Plaintiffs have proved their case and are entitled to the amount of N32,752,506.00 against D the 1st defendants as general damages for trespass on their property, 13 Colliery Avenue, G.R.A. Enugu."

It is not clear at all how the learned trial judge brought the sum of N32,854,125.00 as claimed down to N32,752,506.00 and there is no E basis on which the discrepancy may be regarded as a clerical error. As already indicated this amount represents the total value of the property in question to the appellant according to the valuation made by P.W.4 if it had been offered for sale but it was curiously awarded as general dam- F ages for trespass.

The 1st respondent appealed to the Court of Appeal. In the judgment given on 8 December, 1994, Tobi JCA who read the leading judgment reached two vital conclusions, namely, (1) that the assignment G which the appellant claimed to have acquired in respect of the land in question as evidenced by exhibit J requires the prior approval of the Minister and as this was not obtained, the assignment was null and void; (2) that there being no evidence that the appellant was ever in possession of the land, it cannot claim for damages for trespass against the 1st respon- H dent. These conclusions were supported by Akintan and Adamu JJCA. The lower court then allowed the appeal, set aside the judgment of the trial court and made an order dismissing the claim.

The appellant in its appeal against that judgment has raised seven issues for determination. The 1st respondent has made it three issues as follows:

B "1. Whether in view of the numerous defects of exhibit J the appellant could still base its case on it.

2. Whether failure to obtain prior ministerial approval as required by section 12(4) of the Nigerian Coal corporation Act did not render exhibit J invalid, null and void.

C 3. Whether the appellant proved its case and was entitled to judgment."

I think these three issues adequately cover the appeal although the last two will essentially resolve it. The 2nd respondent cross-appealed and set down one issue for the determination of the cross-appeal thus:

D "Having regard to the peculiar circumstances of this case, was the court below not obliged to strike out the name of the 2nd respondent whether or not there was a cross appeal against the refusal by the trial court to do so."

E The nature of this issue shows that there is no merit in it since there was no appeal before the lower court against the refusal of the trial court to strike out the 2nd respondent. Besides, in the motion for extension of time within which to cross-appeal brought by the 2nd respondent which was granted by this court, there was no prayer for leave to argue an issue (this very issue) not raised in the court below. **When an issue not raised in the court below is sought to be raised as a fresh point in this court, leave to do must be sought and obtained in this court.**

F **The present issue is therefore not competent: See *Uor v. Loko* (1988) 2 NWLR (pt. 77) 430; *Popoola v. Adeyemo* (1992) 8 NWLR (pt. 257) 1; *Honika Sawmill (Nig.) Ltd. v. Hoff* (1994) 2 NWLR (Pt. 326) 252. Accordingly, I strike it out together with the cross-appeal.**

G As I said, the main appeal can be resolved upon the last two H issues raised by the 1st respondent. I intend to confine myself to them and avoid delving further as much as practicable into some of the rather disturbing facts of this case. Before specifically taking the last two issues to treat them as issues 1 and 2 respectively, I shall make a few more

observations about some of the exhibits. Exhibit v, the valuation Report tendered by the appellant leaves me in no doubt, from the excerpts contained in the *"preamble"* and *"Purpose Valuation"* I reproduced from it earlier in this judgment, that the appellant and PW1, Chief C.C. Onoh, were fully aware that the 1st respondent had acquired a right to possession of the land in question beginning from sometime in 1982 and that after it took possession remained thereon throughout even at the time the so-called valuation was carried out in February, 1993. Exhibit U also tendered by the appellant shows that it was after the 1st respondent took over possession that it carried out the demolition of the buildings thereon with the full knowledge and consent of the 2nd respondent. This is also apparent from exhibit R, the letter dated 13th May, 1983 addressed by the 1st respondent to the 2nd respondent informing the latter of the plan to demolish the buildings and asking for possession not later than the first week of June, 1983. It is therefore a matter of disquiet that the appellant tendered two letters dated 19th July and 11th August, 1983 respectively (exhibits F and G) purportedly written by the 2nd respondent to the 1st respondent during the very period the demolition took place, offering to discuss the refund and allegedly refunding the sum of N220,100.00 that the 1st respondent had paid to the 2nd respondent in respect of the property. If it were true as later claimed by the appellant that the buildings which the 1st respondent had demolished were then valued N2,150,000.00, it would be naive to refund the said N220,100.00 to the 1st respondent when indeed the 2nd respondent should have demanded for the said value of the buildings from the 1st respondent. It is inconceivable to me that the 1st respondent who was responsible for demolishing the buildings on a site it had arranged to take an assignment of from the 2nd respondent and who, as presented by the appellant, was in apparent breach of that arrangement would ask for and get back from the said 2nd respondent the money it had paid towards that arrangement when that money was far less than the value of the buildings, as presented by the appellant, it had demolished.

In this regard, the averment in paragraph 6 of the amended statement of claim that -

"Instead of commencing a fresh negotiation with the plaintiff the 1st defendant broke and entered into parcel B walled off the land and commenced erecting structure for use as the third international telecommunications gateway centres and continued in its acts of trespass despite plaintiff's letter of 4th February, 1992, and in the process demolished the structures on the land" {Italics mine for emphasis}

can have no foundation particularly the suggestion that the demolition of the buildings or structures on the land was done by the 1st respondent in 1992. It cannot be said that the demolition took place in 1992. Even the evidence in cross-examination of PW1 runs contrary to that when he said:

"I don't know if 1st defendant wrote to 2nd defendant asking for vacant possession. I do not know that the clearing of 13 Colliery Avenue was given (as) contract to a person to do. I know one Raymond Mba, he was once a director of 2nd defendant in 1983... It is not to my knowledge that R. Mba was given contract to get 13 Colliery Avenue ready. He did not tell me that he was paid for it. The clearing and demolition of 13 Colliery Avenue was between July and August 1984." [Italics mine for emphasis].

Indeed, as already shown, the demolition was done between July and August 1983.

Again, one finds it difficult to place the case presented by the appellant alongside a letter dated as late as 10th June, 1991 (exhibit Z) written by the 2nd respondent to the 1st respondent in respect of No. 13 Colliery Avenue, Enugu which goes as follows:

"I wish to draw your attention to the lease agreement entered into by your organisation with the Nigerian Coal Corporation in 1983 which culminated in the granting of a ninety-nine year lease to your Organisation of the above mentioned premises.

In the agreement, you accepted to pay an initial capital sum of N220,000.00 (two hundred and twenty thousand naira) and subsequently a non-revisionable yearly ground rent of N100.00 (one hundred naira). From records, you paid to this corporation the sum of N220,100.00 (two hundred and twenty thousand, one hundred naira) representing the agreed

capital sum for the developments on the land plus one year (1983) ground rent. Since then you have failed to pay the said agreed ground rent of N100.00 (one hundred naira) from 1984 to-date.

Consequently, I am directed to demand from you the immediate payment of the arrears of the said ground rent as agreed from 1984 to-date which amount to N800.00 (eight hundred naira).

Please take notice that failure to pay the said arrears and/or the subsequent future payments will lead to the termination of the said lease." In view of the above in addition to other evidence in favour of the 1st respondent, the circumstances of the alleged deed of assignment (exhibit J) dated 19th December, 1983 which the appellant latched onto become rather suspect. There is the possibility, of course, that the appellant could have been a victim of some unscrupulous officials of the 2nd respondent. But being the plaintiff, it has the burden of proving its case by presenting satisfactory evidence.

Issue No. 1

Perhaps I should bother less with the irregularities in the evidence relied on by the appellant, particularly exhibit J, and consider whether in any event, barring such irregularities, title was acquired by virtue of that document to the said property by the appellant without the prior approval of the Minister having been obtained to effect the assignment. Such approval is required by section 12(4) of the Nigerian Coal Corporation Act, 1950 (Cap. 299) Vol. 18 Laws of the Federation of Nigeria, 1990 which provides that

"The Corporation shall not alienate, demise, mortgage or charge any land vested in the Corporation under the provision of this section without the prior approval of the Minister."

The point has been argued by learned Senior Advocate for the 1st respondent that without the prior approval of the Minister the assignment was null and void.

While learned Senior Advocate for the appellant acknowledges the said provision and its implication, he argues along two line for holding that the assignment was valid. First, that the said s. 12(4) of the Nigerian Coal Corporation Act does not say that failure to get the Minister's prior

approval makes the transaction of alienation void as does s. 26 of the Land Use Act. Second, that under para. 15 of the First Schedule to the Act, there is a rebuttable presumption as to due execution of all documents purported to have been executed under the seal of the Corporation. He argues that the presumption applies to any duly executed document in respect of a transaction requiring prior ministerial consent or approval. I shall take the two arguments together. Para. 15 of the said Schedule reads:

"15. Any document purporting to be a document duly executed or issued under the seal of the corporation or on behalf of the Corporation shall, until the contrary is proved, be deemed to be a document so executed or issued as the case may be."

This provision, in my respectful view, raises only one presumption, namely, that a document which *purports* to have been executed, if under the seal of the corporation or on behalf of the Corporation, shall be presumed (or deemed) to have been executed by the Corporation or on its behalf. There is no other presumption. There is certainly no presumption that if the Minister's approval is what can make the transaction in respect of which the document was executed valid, then such approval would be deemed to have been obtained by the mere fact of the execution of the document relating to the said transaction by or on behalf of the corporation. This shall be made clearer in the course of this judgment.

The further argument is that there is no provision in the Nigerian Coal Corporation Act comparable to that of s. 26 of the Land Use Act specifically declaring that failure to obtain the necessary approval or consent to alienate property makes the transaction null and void. It has therefore been submitted that the decision of this court in *Savannah Bank (Nig.) Ltd. v. Ajilo (1989) 1 NWLR (Pt.97) 305* based on ss. 22 and 26 of the Land Use Act is inapplicable to the present case. I do not find myself able to accept that submission. It is true that s.22(1) simply provides that:

"22(1). It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy of any part thereof by assignment, mortgage, transfer of possession, sub-

lease or otherwise howsoever without the consent of the Governor first had and obtained."

This is supplemented by s.26 as to the consequences of breaching s. 22(1) as follows:

"26. Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void."

Admittedly, S.26 of the Land Use Act spells out plainly the consequences which follow when s.22 is not complied with. But going by the authorities it is equally unmistakable that without the provisions of s.26, the consequences of an infraction of s.22 would be the same. In *Dickson v. Solicitor-general, Plateau State (1974) NSCC (vol.9) 268*, the respondent as plaintiff who was the Solicitor-General, brought an action against the appellants as defendants seeking the eviction of the appellants from some premises. The appellants were in those premises by virtue of a certificate of occupancy granted to a company whose statutory right of occupancy had been determined by the sale of the premises by the said company to the 2nd appellant. The trial judge held that the sale or purported sale of the property and the power of attorney in respect thereof to the 2nd appellant through whom the 1st appellant occupied the property was illegal and ineffective not having been done with the prior ministerial consent, and gave judgment for the respondent. On appeal to this court, s.28(1) of the land Tenure Law came up for consideration and Coker JSC observed at pages 296-270 as follows:

"The plaintiffs case is that the consent of the Commissioner of Lands was not obtained as it should have been obtained to either of these transactions [i.e. the sale of the property and the power of attorney]. It is not disputed that the consent of the Commissioner of Lands was not obtained to these transactions and indeed the 1st defendant in the course of his evidence at the trial stated that to the best of his knowledge no consent of the Commissioner of lands was obtained to the purported agreement of sale. The section prescribes as a prerequisite to the legality of any of the transactions contemplated by it that the consent of the Commissioner of Lands should 'first be had and obtained'. This means

what the section says and unless such consent was first had and obtained before the occurrence of the relevant transactions, the consequence envisaged by the action must follow. We have come to the conclusion clearly in our mind that both transactions offend against the clear provisions of section 28(1) of the Land Tenure Law, Cap.59. Section 28(1) provides, *inter alia*, as follows:

'28(1) It shall not be lawful for the holder of a statutory right of occupancy granted by the Military Governor or the Commission to alienate his right of occupancy or any part thereof by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise howsoever without the consent of the Commissioner first had and obtained.'

The first clause in the power of attorney,.... transfers to the donee of the power of attorney the right to the possession of the premises in question. As this is one of the matters contemplated by section 28(1), it is manifest that the power of attorney itself offends against that section. It is easy to see that the defendants had made out no case at all to entitle them to be in lawful possession or occupation of the property in question and that the learned trial judge was right to conclude that they should be evicted." [Parenthesis in square brackets supplied]

The case of *Nakyauta v. Maikima* (1977) NSCC (vol. 11) 355 enunciates a similar principle. It is enough, without stating the facts of that case, to quote the observation of Udoma JSC at pages 363-364, *inter alia*, as follows:

"..... it occurs to us that learned counsel for the second defendant would appear to have overlooked the covenant contained in the certificate of occupancy granted to the plaintiff by the Minister in 1961, and the provisions of section 42 of the Land Tenure Law, Cap. 59 both of which must be read together.

In section 42 of the Land Tenure Law, it is provided as follow:

'No right of occupancy granted under the provisions of this Law or under the provisions of any written law replaced by this Law which is subject to a covenant, whether expressed or implied, by the holder not to assign, or which under any Law may not be alienated, without the consent or approval or the Military Governor or the Commissioner or a

Native Authority shall be sold by or under the order of a Court save to a purchaser approved in writing by the Commissioner and upon terms also so approved.'

Then covenant 13 of the Certificate of Occupancy, No.10466, granted to the plaintiff provides:

'13. Not to alienate the right of occupancy hereby granted or any part thereof by sale, mortgage, transfer of possession, sublease or bequest or otherwise howsoever without the consent of the Commissioner first had and obtained.'.....

We are, therefore, of the opinion and hold and declare that the purported sale of the said property on or about 4th October, 1969, by the first defendant, pursuant to a writ of attachment in satisfaction of the judgment/debt in suit No. K/66/64 - Martin Gutman v. Northern buying and Shipping Association Limited - was null and void ab initio. It was irregular, improper and invalid and of no legal effect whatsoever."

In the present case no prior or any approval of the Minister was obtained in compliance with s.12(4) of the Nigeria Coal Corporation Act. The said deed of assignment was registered nevertheless. Section 10 of the Land Instruments Registration Law, Cap.72, Laws of Eastern Nigeria provides:

"No instrument requiring the consent of the Governor or any public officer to the validity thereof shall be registered unless such consent be endorsed thereon or the Registrar is otherwise satisfied that such consent has been given."

In my view, it is expected that the need for the Registrar to be satisfied that the Governor's consent had been obtained can only arise if there is no relevant endorsement suggestive of this on the instrument sought to be registered. It is that absence of such endorsement that will put him on inquiry. It follows that the issue that he was satisfied must be a matter of evidence which must be laid before the court. When consent or approval is endorsed on the instrument, it will raise the obvious presumption of the validity of the transaction or at any rate that that was what satisfied the Registrar that the necessary prior ministerial consent was given before

he registered the instrument. The mere fact that an instrument which does not have the necessary consent endorsed on it was registered will not *ipso facto*, in my respectful opinion, raise the presumption that the Registrar was satisfied that such consent had been given which led him to register the instrument. Nor is it right to accept that the mere registration of such instrument raises the presumption of regularity to the effect that the consent was given. There must be some evidence in support of any of such presumptions.

The case of *Quo Vadis Hotel and Restaurants Ltd. v. Commissioner of Lands. Mid-West State (1973) NSCC (Vol.8) 417* illustrates how the presumption arising from registration of an instrument of a transaction requiring ministerial consent or approval operates. In that case State land was involved in the sublease transaction. Under section 4 of the State Lands Law, Cap.29 Laws of Western Region applicable in the then Mid-West State, covenants by the lessee included covenant not to assign sublet or otherwise part with possession of the land comprised in such lease or any part thereof without the previous consent or the Military Governor in writing. There was also section 3(1) of the Native Lands Acquisition Law, Cap.80 which required the approval of the Military Governor. The lessee, a native, gave a sublease to a foreigner by deed of sublease dated November 1, 1968 to take effect from April, 1969. The approval of the Commissioner for Works, Land and Transport acting on behalf of the Military Governor was endorsed on the deed on 5th November, 1968. The deed of sublease was registered and was exhibit E before the Court. There was a dispute later and the issue was raised whether the prior consent of the Military Governor was obtained for the sublease. A distinction was recognised in that case between previous or prior consent (in writing) and approval although that is purely irrelevant in the present case. The plaintiff sought to declare the sublease a nullity on the basis that there was no evidence that the previous consent in writing of the Military Governor was obtained notwithstanding the approval endorsed on the deed by the Commissioner acting on behalf of the Military governor by virtue of section 3(1) of the Native Lands Ac-

quisition and that the instrument should not have been registered. This court considered the implication of section 11 of the land Instruments Registration Law, Cap 56, which is *in pari materia* with section 10 of the Eastern Region Law already reproduced above but which I quote here again as follows:

"11. No instrument requiring the consent of the Governor or of any public officer to the validity thereof shall be registered unless such consent be endorsed thereon or the registrar is otherwise satisfied that such consent has been given."

In its observation on the way section 11 should be applied in the circumstances, at page 430, bearing in mind that approval was endorsed on the deed of sublease, exhibit E, this court said as follows per Coker JSC:

"If then the endorsement on exhibit E indicates the approval of the Governor under section 3(1) then clearly there is a presumption that the necessary procedure for obtaining such an endorsement had been pursued. The document exhibit 'E' as already stated by us bears on its face the 'approval' of the Governor and the Registrar of Deeds had suggested this in his pleadings thereby joining issues with the plaintiff on the point that the deed was duly registered in accordance with the provisions of the Land Instruments Registration Law Cap. 56..... The Registrar of Deeds apparently registered the document exhibit 'E' in compliance with the provisions of section 11. This much is clear on its face and we are driven to the conclusion that there must be that presumption that the Registrar was at least 'otherwise satisfied that the necessary consent had been given.' If the word 'consent' in section 11 is to have any useful meaning at all it must be regarded as implying a wider concept than that of a mere consent and must in its connotation include an approval or an agreement or concurrence to a transaction either before or after its execution or institution."

It must be accepted that the absence of the necessary ministerial approval or consent is a serious defect which affects the title sought to be conferred by the relevant instrument. It seems to me that if there is no evidence or ground upon which a presumption can be raised that such approval or consent had been obtained,

the party whose reliance on the validity of a relevant transaction depends on that approval or consent has the burden to prove that it was obtained. It is not helpful to rely on the fact that the instrument evidencing the transaction was registered because registration does not cure the defect arising from the absence of the ministerial approval or consent, or indeed any defect in any instrument. This court in *Apene v. Barclays Bank of Nigeria (1977) NSCC (Vol.11) 29 at 36*, considered the said section 11 and referred to s.26 of that same Law which provides that: "*Registration shall not cure any defect in any instrument or, subject to the provisions of this Law, confer upon it any effect or validity which it would not otherwise have had.*" [Section 23 of the relevant Eastern Nigeria Laws, 1963, Cap. 72, contains a similar provision,] This court came to the conclusion that although the instrument in that case was registered yet because the necessary ministerial consent was neither endorsed on it nor shown to have been obtained, the transaction of sale founded on it could not stand and that the instrument was null and void. See also *Chidiak v. Coker (1954) 14 WACA 506 at 508* where the court expressed the view that it could not be presumed on the facts of that case that the Governor gave the necessary consent to a lease transaction, and that the onus was on the plaintiff relying on the instrument to prove the consent. The authorities discussed above represent, in my respectful view, the correct principles of law and I have no hesitation in reaching the conclusion that those principles apply to the present case. I hold that the lower court was right to declare exhibit J null and void. Consequently it conferred no title whatsoever to the land in question on the appellant.

Issue No. 2

The lower court also found, quite rightly in my view, that there is no evidence at all that the appellant was ever in possession of the land. I need not go into that beyond what has been said. But I must come back to exhibit V, the so-called Valuation Report. I have shown that it was no valuation of an estate by an estate surveyor and valuer in any manner and by any stretch of the imagination. It was no more than a most ambitious attempt by an estate valuer to perform as a pseudo-actuary and investor

to make a calculation of an investment of a given sum of money to arrive at what it would yield and cumulatively amount to over a number of years. It is also quite amateurish and incredible to testify that an interest of 27% per annum was used to calculate the investment of a sum of money in a commercial bank consistently over a period of some eleven B years without as much as produce evidence that such regime of interest was ever recorded, and if so by which commercial bank, as none was mentioned, and for that length of time. Again, neither in the Valuation Report nor in evidence was it demonstrated how the initial amount of N2,370,000.00 worked out to be N32,854,125.00 from the alleged mul- C tiplier of 13.8625 and the interest rate of 27% for that number of years. It was nothing other than sheer mystery presented to the court as evidence. Surprisingly, the trial court accepted such evidence.

I think it is essential to recall the circumstances I earlier adverted D to that in the Valuation Report it is stated that because the buildings on the land had been demolished before the valuation exercise took place, "*a similar property of the same design, age and construction was surveyed and sketch plans of the physical developments were made and measure- E ments taken. All field data were also assembled and analysed including the neighbourhood character.*" The space accommodation of each of the rooms in the said similar buildings was carefully measured and recorded. The nature of the materials used for the buildings were identified F and the fact that the property was located in low density area of G.R.A. was given as information. One may ask, what did all these details lead to? From what has been shown, they served no purpose; they were not used to assess the current worth of the property meant for valuation; G they were utterly irrelevant.

I think it is a mere matter of common sense that the amount of N2,370,000.00 allegedly used as the value of the property in 1982 for investments returns would not produce the total amount eventually arrived at as a result of the nature and quality of the property in question H and the neighbourhood it was located in. That consideration would play no part in the manner the investment would grow. From the perception and *investment wizardry of PW4, the high-yield* would depend, one would

expect on his assiduous selection of a commercial Bank in which to lodge the amount of money! I believe the trial court was treated to a grand fantasy by PW4 with both his oral and documentary evidence (exhibit V) when he testified in support of the appellant's claim.

B Even so, it is still important to say further that the premise upon which PW4 made the calculation was intrinsically faulty. The amount of N2,370,000.00 upon which he based his calculation represents what was said to be the value of the structure on the land as at 1982 (i.e. N2.150m for the structure and N220,000.00 for disturbance). The deed of lease C (exhibit J) which the appellant relied on was dated 19th December, 1983. There is clear evidence that between July and August, 1983 the building on the land had been demolished by the 1st respondent. Assuming therefore that the appellant acquired the land by virtue of exhibit J in December, 1983, the buildings already demolished could not form part of the land nor be regarded as appellant's assets because they did not then exist. D So all that amount arrived at in exhibit V upon a calculation based on the value of those buildings and the damages for alleged disturbance was a huge exercise in futility. All the foregoing I have touched upon in regard to the evidence on damages is not a criticism of the quantum of damages awarded in principle as to whether it is excessive. That is not in issue here in this appeal. What is in issue is whether the appellant proved its E case by credible evidence and was entitled to judgment. F

Exhibit V is not evidence capable of such proof. I am entitled to say so in this appeal. **The law does not permit evidence which is of no probative value to be relied upon by a party, nor to be acted upon by the court, to support a claim. It is an important aspect of civil G procedure that for evidence to be considered useful and which a court can act upon, there are certain basic qualities it must possess. The first consideration is usually the double requirement of relevancy and admissibility. But in essence, they can be separated. H The evidence must be relevant to a fact in issue, or to any fact which, though not in issue, is so connected with the fact in issue; or relevant to a fact which is inconsistent to any fact in issue, or to a fact which by itself or in connection with any other fact makes the**

existence or non-existence of any fact in issue probable or improbable: ss.7 & 12 Evidence Act. It must be admissible having regard to the facts pleaded and if no law or rule precludes its admission: see *Emegokwue v. Okadigbo* (1973) 4 SC 113; *Onobruchere v. Esegine* (1986) 1 NWLR (Pt.19) 799. **It must have credibility or cogency B thereby enabling the Judge to ascribe some probative value to it having regard to its nature and what it is intended to establish:** *Misr (Nig.) Ltd. v. Ibrahim* (1975) 5 SC 55 at 62; *Akhionbare v. Omoregie* (1976) 12 SC 11 at 27. I have had to state the above because exhibit V C neither has cogency nor any probative value which can be ascribed to it.

Furthermore, I have already shown that the sum of money now claimed would be the value of the property to the appellant as if he was disposing of it in its entirety. It could never be claimed as damages for mere trespass. But to claim that amount, the appellant would need title D not just possession. Even if it proved title, the action would still fail without an amendment to the claim because, as I said, that amount in the form of special damages cannot be awarded as general damages wholly or partially. This is because if the buildings destroyed by the 1st respondent had indeed become the property to the appellant before they were destroyed by the virtue of proving title to the land, what it would be entitled to would be the cost of reasonable reinstatement of the buildings; or put in other words, the value of the buildings properly assessed: see F *S.D. Lar v. Sterling Astaldi (Nig.) Ltd.* (1977) 11-12 SC 53 at P.61; *Shell-BP Petroleum Development Co. of Nigeria Ltd. v. His Highness Pere Cole* (1978) NSCC (vol.11) 96 at P.101. It would not be a matter of award of general damages arising simply from the fact of that destruction. As I said recently in *Badmus v. Abegunde* (1999) 1 NWLR (Pt.627) G 493 at 504:

"The general damages in this case cannot stem from the mere fact of the very loss occasioned by the destruction of the house and store which by their nature readily lend themselves to quantification or assessment going by the evidence of the cost of repairs or replacement as the case may be." H

In such a case, if there is need for award of general damages, it must be

because of the collateral consequence of some act of the defendant either arising from negligence or trespass which may be suitable for compensation at large. **It is no longer a matter for contention that the principal in regard to the assessment and award of special damages is different from that of general damages:** see *Ijebu-Ode Local Government v. Adediji Balogun & Co. (1991) 1 NWLR (pt.166) 136 at p. 158; Esegbe v. Agholor (1993) 9 NMLR (Pt.316) 128 at p.145. In the former, damages are specially pleaded, strictly proved and accordingly awarded: in the latter, they are averred, if necessary under specific heads of claim, presumed in law to be the direct and natural consequence of the act complained of and awarded at large as a jury question. In the present case the pleadings and evidence suggest special damages whereas the relief sought is, curiously, for general damages. Although that relief is so stated, it must be emphasised still that the learned trial judge nevertheless acted under a misconception to have made an award of general damages having regard to the nature and structure of the case presented by the appellant which is founded on special damages. In *Shell-BP Ltd. v. Cole (supra)*, *Bello JSC* (later CJN) delivering the judgment of this court observed at pages 100-101 as follows:*

"It appears from the abstract of the judgment of the learned trial Judge, which we have earlier on quoted, that the learned Judge misdirected himself in law in relying on the principle of law relating to the assessment of general damages when from their pleadings and the evidence adduced by them the respondents' case is in the nature of claims for special damages."

I hold the view that there is no evidence upon which the appellant could have been awarded the damages it claimed either wholly or in part. It simply failed to make out a case that would entitle it to judgment. The lower court was right to set aside the judgment of the trial court.

I have come to the conclusion that in all the circumstances of this case, there is no merit in this appeal and I accordingly dismiss it. In consequence, I also dismiss the claim. I have already disposed of the cross-appeal by striking it out. I award costs of N10,000.00 to the 1st

respondent against the appellant.

WALI JSC

I am privileged to have read in advance, a copy of the draft lead B judgment of my learned brother Uwaifo, JSC and I agree with his reasoning and conclusions for dismissing the appeal and striking out the cross-appeal by the 2nd Respondent.

The success or failure of the appellant's case as plaintiff is hinged C on Exhibit J, the deed of assignment pertaining to No. 13 Colliery Avenue G.R.A., Enugu.

It is common ground that No. 13 Colliery Avenue, G.R.A., Enugu was originally the property of Nigerian Coal Corporation, the 2nd Respondent in this case. The claims of the appellant and the 1st Respon- D dent is that each one of them acquired the property in dispute from the 2nd Respondent which the latter did not categorically dispute in the its Statement of Defence dated 4/2/93, which I find to be evasive. In paragraph 7 of the Statement of Defence, the 2nd Respondent averred as E follows:-

"7. The 2nd defendant as the original owner of No. 13 Colliery Avenue, G.R.A., Enugu, is bound by all transactions validly entered into between it and whoever is adjudged the rightful assignee of the same by F this Honourable Court and is entitled to the benefits of the concurring covenants and conditions attaching thereto, on the event of such as assignment."

The learned trial judge remarked on the indifference shown by G the 2nd Respondent as to whom between the two contestants, it sold the property in dispute when he stated-

"Surprisingly the 2nd Defendant appeared indifferent as to whom it sold its property, leaving the Courts to decide who, between the plain- H tiff and the 1st Defendant has better claim."

As regards Exhibit J, the learned trial judge said-

"By section 12(4) of Coal Corporation Act, 1950 prior ministerial approval is required but this approval need not be endorsed on Ex-

hibit J. The said sections says 'prior ministerial approval', which means that approval must have been had and obtained before Exhibit J was made. There was no evidence that this prior approval was not obtained. There is no endorsement of Ministerial approval on Exhibit J supra. Will
B Exhibit J be different? The sum total is that there is no evidence in rebuttal that plaintiff did not pay for the purchase of the No. 13 Colliery Avenue, and 2nd defendant did not deny receiving purchase money from the plaintiff. Even if Exhibit J is not admissible as an instrument showing title, it is proof that money was paid by the plaintiff for the purchase
C of the property - see *DJUKPAN V. OROVUYOVBE* [1967] N.M.L.R. 387 at 297."

Was the trial judge right after her observation that "prior ministerial approval, which means that approval must have been had and
D obtained before Exhibit J was made." in her conclusion that "there was no evidence that this prior approval was not obtained", in the context of the evidence produced by the plaintiff/appellant?

Did the trial court not misdirect itself in law in putting the onus
E on the 1st Respondent to prove that Exhibit J was not in conformity with section 12(4) of the Nigerian Coal Corporation Act when the Appellant did not prove otherwise?

Section 137(1) of the Evidence Act [Cap 112] Laws of the Federation of Nigeria, 1990, Vol. 8, provides that-
F

"137(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings."
G

Section 12(4) of the Nigerian Coal Corporation Act, 1950 [Cap 299] Vol. 18, Laws of the Federation of Nigeria, 1990 provides as follows:-

"Section 12(4) The Corporation shall not alienate, demise mortgage or charge any land vested in the Corporation under the provisions of this section without the prior approval of the Minister"
H

Section 2 of the Act defines "Minister" thus-

"Means the member of the National Council of Ministers for the

time being charged with the responsibility for matters relating to mines and minerals."

In paragraph 2 of the Amended Statement of Claim, the appellant avers as follows:-

"..... the land comprised in parcel B, delineated in plan No. EN 288 with the buildings thereon, and known as 13 Colliery Avenue; formerly the official residence of the General Manager of the 2nd defendant, was assigned to the plaintiff by the 2nd defendant for a consideration of N231,000.00 and a yearly rent of N1,000.00 by an instrument registered as No. 94 at page 94 in Volume 1376 of the registered deeds at Enugu. The plaintiff is up-to-date with the said rent."

This averment was denied by the 1st Respondent in his amended statement of defence in paragraph 4 where in it was averred as follows:-

"4. The 1st Defendant vehemently denies that the plaintiff ever purchased No. 13 Colliery Avenue, 'Parcel B' as stated in paragraph 4 of the Amended Statement of Claim as required by law."

Mr. Anyamene SAN, learned counsel for the plaintiff/appellant made the following submission on the issue of consent/approval before the trial court:-

"When 1st defendant pulled out 2nd defendant did not deny receiving the payment from the plaintiff, exhibit J. Even if the document is not admissible as instrument showing title, it is proof that money was paid, it was stamped on 19/12/83 two days after execution. It qualifies as evidence that plaintiff paid money for the land. DJUKPAN V. OROVUYOVBE [1967] NMLR 287 at 297. Another attack was that consent of Governor was not endorsed - Ans. The absence of that consent, if necessary, will not nullify the receipt that plaintiff paid, such amount for the property. There is no law that requires Governor's assent in case of title/conveyance. Section 22 of the Land Use Act Cap 202 specifies the transactions relating to land requiring approval of the Governor. Section 49 [1 and 2] of same Land Use Decree. The property vested in Coal Corporation in 1950 therefore land use Act will not apply to it. See Section 1 the land was never vested in the Governor of the State."

The next attack is that the Minister did not consent. See 12(4) of Coal corporation Act. Counsel submits that the Minister's approval need not be endorsed on Exhibit J. The approval says 'Prior' which they have to conclude the transaction first, obtain approval and then assign.

B *Counsel is also fortified by Exhibit T - a lease for 99 years given by Coal Corporation, to the Governor of Eastern Region - how can the 2nd Defendant now need Governor's consent. There is no approval of the Minister endorsed on Exhibit T. 1st Defendants are confused in what really happened....."*

C xxxxxxx

"Plaintiff has shown he paid money for the property after 1st defendant abandoned the project. Plaintiff has an equitable title even if his legal title is impeached."

D On this issue, PW1 testified as follows:-

"I do not conduct a search before Exhibit J was made. I did not see the copy of the lease in respect of parcel B, 13 Colliery Avenue. I did not see any conditions and stipulations contained in the head lease of 2nd defendant. Counsel puts it to witness that 2nd defendant have no lease. Answer I do not know. But I do know that in all Government lands being subleased or being assigned the consent of the Governor or any person acting on his behalf e.g. Commissioner for lands must be obtained before a proper assignment can be made and lease registered....."

F *The Commissioners consent is not there and is not supposed to be there. The Commissioner by allowing the document to be registered means that he has consented. If it is a lease the Minister of Mines and Power need not give approval, but if it is a fee simple, his approval is needed. If the Board of Coal Corporation i.e. 2nd defendant gives approval for an act to be done for a lease and if after 14 days, it becomes effective. The 2nd defendant should answer whether the Minister approved."*

G *It is a condition precedent that under Section 12(4) of the Nigerian Coal Corporation Act, 1950 [Cap134] Laws of the Federation of Nigeria 1958, now Section 12(4) of the Nigerian Coal Corporation Act 1950 [Cap 299] Laws of the Federation of Nigeria, 1990, before the Corporation can make any valid and enforceable alienation, demise, mort-*

gave or charge any land vested in it, it must obtain the prior approval of the Minister charged with the responsibility of the Corporation. However this does not mean that parties cannot start negotiation and settlement of the terms on which the transaction is to be hinged before applying for the Minister's approval e.g. preparing a deed of assignment. Parties would not be expected to apply for the Minister's approval without settling and agreeing on the terms related to the transaction; likewise the minister would not be expected to give approval to a transaction the terms of which are not known to him. See *DICKSON V. THE SOLICITOR-GENERAL OF PLATEAU STATE* [1975] NSCC (Vol.9) 268; *LABARAN NAKYAUTA V. IBRAHIM MAIKIMA* [1977] 6 SC 51 and *SAVANAH BANK LTD. V. A. O. AJILO* [1989] ALL NLR 26. In the cases cited supra this court considered the provisions of 22(4) of the Nigerian Coal Corporation Act, 1950, and the transaction in each case was declared void for non-compliance with the provisions of the particular Law

It was the contention and submission of learned Senior Counsel for the appellant that by this payment of part of purchase price of the land in dispute and the registration of the deed of assignment Exhibit J, the presumption of regularity and validity became manifest, notwithstanding that it did not bear the endorsement or approval by the Minister. But this cannot be accurate as Section 10 of the Land instruments Registration Law Cap 72, Laws of Eastern Nigeria, 1963, applicable in Anambra State provides as follows:-

"10. No instrument requiring the consent of the Governor or any public Officer to the validity thereof shall be registered unless such consent be endorsed thereon or the Registrar is satisfied that such consent has been given."

By the provision above, an instrument requiring Governor's, or Minister's approval [as in the present case] would only qualify for registration if it satisfies the following conditions-

1. *that the Governor's or Minister's consent or approval, as the case may be, is obtained.*
2. *that the Registrar of Deeds is satisfied (by evidence) that*

such consent or approval has been obtained.

B In the present case, though Exhibit J was registered, there was no evidence upon which the Registrar satisfied himself that the Minister's approval was given to Exhibit J and therefore, its mere registration would not and did not confer to it the validity which it could have acquired had the Minister's approval been sought and granted. See AKPENE V. BARCLAYS BANK OF NIGERIA [1977] 1 SC 47 and OMOSANYA V. ANIFOWOSHE [1959] 4 FSC 94.

C In my view the learned trial judge was in grave error when he presumed the validity of Exhibit J without evidence of prior Ministerial approval to it which, for that reason is a nullity. The 1st Respondent had no duty to prove its regularity and validity.

D As between the appellant and the 2nd Respondent the purported sale and assignment of the latter's interest in No. 13 Colliery Avenue, Enugu, to the former and based on Exhibit J was a nullity and as such the appellant was not entitled to possession of the said land. The appellant acquired no equitable interest by virtue of Exhibit J.

E I therefore entirely agree with the Court of Appeal that Exhibit J is null and void as it was not made in conformity with Section 12(4) of the Nigerian Coal Corporation Act, 1950.

F This in my view is enough to dispose of this appeal, and it is for this and other detailed reasons in the lead judgment of my learned brother Uwaifo, JSC that I also dismiss the appeal.

G As for the Cross appeal by the 2nd Respondent, since no leave of this court was sought for and granted to raise and canvass the issue therein for the first time, I also agree with my learned brother Uwaifo JSC that it is incompetent and I hereby strike it out. N10,000.00 costs is awarded to the 1st Respondent.

H **KUTIGIJSC**

I read in draft the judgment just delivered by my learned brother Uwaifo, JSC. I agree with his reasoning and conclusions especially on the validity or otherwise of the Exhibit J., the deed of lease, on which the

Plaintiff's case was founded. Exhibit J. clearly violated section 12(4) of the Nigerian Coal Corporation Act, as no prior approval of the Minister was obtained. This needed to be proved and could not have been presumed. (See for example CHIDIAK VS. COKER (1954) 14 W.A.C.A. 506, SAVANNAH BANK (NIG) LTD. VS. AJILO (1989) 1 N.W.L.R. (Pt.97) 305. The conclusion must therefore be that Exhibit J was a nullity. It follows therefore that even if the Plaintiff was in possession as claimed, its possession was unlawful, and consequently could not claim damages for trespass against the 1st Defendant who was lawfully in possession even before the Plaintiff. This issue alone in my view is sufficient to dispose of the appeal. The appeal therefore fails and it is hereby dismissed.

I also agree to strike out the 2nd Defendant's cross-appeal as being incompetent since leave was not sought to raise the issue for the first time in this court. (See POPOOLA VS ADEYEMO (1992) 8 N.W.L.R. (Pt.257) 1). It is accordingly struck-out.

I endorse the order for costs in the lead judgment.

ONU JSC

I had the privilege of a preview of the judgment of my learned brother Uwaifo, JSC just delivered. I am in entire agreement therewith that the appeal has no merit whatsoever and ought therefore to fail.

The entire case in its initiation, prosecution and its wobbly journey through to its conclusion before us, bears the hallmarks of what in Shakespearian language as uttered by Macbeth is, "*a tale told by a fool full of sound and fury signifying nothing.*"

Exhibit J, the deed of assignment on which the Appellant's case was founded as has been demonstrated in the leading judgment, clearly violated Section 12(4) of the Nigerian Coal corporation Act which requires the prior approval of the Minister - an approval which was never obtained or procured. For want of proof of this requirement, Exhibit J. would palpably appear to be a nullity. See Scott-Emuakpor v Ukavbe (1975) 12 SC. 41 and Okoro v. Inspector-General of police 14 WACA

370.

The conclusion I would arrive at therefore is that if Appellant was indeed in possession of the purported land in dispute as it claimed, that possession was unlawful and so it could not successfully claim damages for trespass against the 1st Defendant/Respondent who was in lawful possession before it.

I, therefore without more, upon the foregoing premises dismiss Appellant's appeal.

The joinder of the 2nd Respondent being from the inception of the action a non-starter, it (2nd Respondent) ought not to have been forcibly retained thereon as a party unto the conclusion of the trial before being struck out. Furthermore, leave not having been sought and obtained to argue 2nd Respondent/Cross Appellant's two issues, they are accordingly declared incompetent and unarguable. I too will strike them out and make similar consequential orders inclusive of costs as contained in the leading judgment.

E

KALGO JSC

I have read before now, the judgment just delivered by my learned brother Uwaifo JSC, in this appeal. He has in my respectful view, extensively and painstakingly dealt with the most important issues which arose in the dispute between the parties as disclosed in their respective briefs and upon which the appellant heavily relied in filing this action in court. I therefore agree entirely with the reasoning and conclusions reached by him in the leading judgment. I see no merit in the appeal which I hereby dismiss and affirm the decision of the Court of Appeal. I also strike out the cross-appeal of the 2nd appellant. I award N10,000.00 costs in favour of the 1st respondent against the appellant.

H