

**SUPREME COURT OF NIGERIA**  
MONDAY 27TH MAY, 2002. SC. 180/1997  
**CORAM:- M. L. UWAIK CJN, I. L. KUTIGI, A. I. IGUH,**  
**A. I. KATSINA-ALU, E. O. AYOOLA, JJSC**

WEST AFRICAN BREWERIES LTD ..... APPELLANT  
AND  
SAVANNAH VENTURES LIMITED  
& 5 ORS ..... RESPONDENT

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COURTS - Documents - Investigation - It is not proper for court to examine documents - In such a manner that will amount to fact finding investigation - That leads to discovery of facts - Which could have been proved by evidence (H1)

EVIDENCE - Investigation and Evaluation of - Distinction - Whereas investigation of evidence leads to discovery of fresh facts - Evaluation leads merely to findings based on quality of evidence already existing (H2)

APPEALS - Courts - Judgments - Reasons for - Appellate court should not be concerned with phrase used by trial judge to describe his reasoning - But should consider whether the reasons are clear - And lead reasonably to the conclusion arrived at (H3)

PLEADINGS - Fraud - Allegation of - Proof - Alleged fraud must be expressly pleaded - And with particularity (H4)

ACTIONS - Pleadings & findings - Sufficiency of - Determination - Sufficiency of pleadings and of findings in a case - Are determined by the cause of action (H5)

MORTGAGES - Right to sell - Duty of mortgagee/Receiver - Mortgagee/Receiver engaged in selling mortgaged property - Has a duty to act bone fide (H6)

MORTGAGES - Right to sell - Lack of good faith - Proof - Where action is to set aside sale of mortgaged property - By reason of lack

of good faith of receiver - Collusion with purchaser must be established (H7)

PLEADINGS - Lack of good faith - Alleged without particulars - Where the allegation is made without particulars - Opponent should ask that same be struck out - But where opponent omits to ask for particulars - Evidence may be given in support of any allegation in the pleadings (H8)

COURTS - Pleadings - Findings of trial court - Correctness of - Whatever lack of particularity in pleadings - In respect of lack of good faith has been remedied by evidence - Hence Court of Appeal should have upheld the findings of trial court (H9)

MORTGAGES - Sale - Setting aside - Correctness of - When a sale is liable to be set aside on any of several grounds - The fact that court included one untenable ground for setting it aside - Does not make its verdict erroneous - Provided that there is a valid ground to sustain the verdict (H10)

### ***FACTS***

By an agreement marked as Exhibit F, 2<sup>nd</sup> respondent i.e. the receiver of North Brewery agreed to sell to 1<sup>st</sup> respondent i.e. Savannah Ventures the entire assets of the company for a consideration of N15,500,000.00 payable by installments. By the same document it was agreed by 2<sup>nd</sup> respondent and 1<sup>st</sup> respondent that the receivership of the company shall continue until the final installment of the purchase price of N15,500,000.00 has been paid in full and that upon payment of the full purchase price 2<sup>nd</sup> respondent shall be discharged and the assets of the said company shall be transferred to 1<sup>st</sup> respondent. There were three separate valuations of the assets of the company at various times.

Appellant (an equity holder in the company) was dissatisfied with the sale. It therefore instituted this action at the Federal High Court wherein it contended that the valuation of the assets of the company carried out by one Messrs. Williams & Partners was an under value. It also alleged that there has been lack of good faith in 2<sup>nd</sup> respondent's management of the affairs of the company, especially

as it relates to the sale of the company's properties to 1<sup>st</sup> respondent. It therefore sought inter alia, an injunction restraining 2<sup>nd</sup> respondent from sale of the company's properties. At the end of trial, the court granted appellant the declaration sought and also set aside the sale of assets of the company to 1<sup>st</sup> respondent. Being unsatisfied, 1<sup>st</sup> and 2<sup>nd</sup> respondents filed separate appeals to the Court of Appeal. The court allowed respondents' appeals but dismissed appellant's claim. Appellant being aggrieved, filed appeal at Supreme Court.

**HELD** (Unanimously allowing the appeal per lead judgment of **AYOOLA JSC**)

*Documents - Investigation*

**1. There is a plethora of authorities all going to show that it is not proper for a trial court to embark upon examination of documents tendered as exhibits when such examination will amount to a fact finding investigation that leads to discovery of facts which could have been proved by evidence.**

(p. 1463 H)

*Distinction between investigation and evaluation of evidence*

**2. Granted that, sometimes, the line between what is investigation and what is evaluation of documentary evidence may be blurred and difficult to define, the distinction is that whereas, investigation leads to a discovery of fresh facts, the truth of which could have been challenged by fresh contrary evidence; evaluation of evidence leads merely to findings based on the quality of evidence already existing. In the present case what the trial judge did was an evaluation of the valuation reports, Exhibits A, D, and E, and in particular Exhibit E which was preferred by the trial judge. All these reports were before the trial judge and he neither went nor needed to go beyond making use of what were already obvious on the face of the reports. There was neither equivocation about the assets valued in the reports nor about the assets covered by the sale agreement.** (p. 1464 B)

*Courts - Judgments - Reasons for*

**3. What an appellate court should primarily be concerned with is not the particular phrase or term used by the trial judge to describe his process of reasoning or thought process but whether his reasons as discerned from the judgment are clear and lead reasonably to the conclusion he arrived at. His going out of his way to categorize his reasoning process and, perhaps, in the process doing so poorly, will not by that categorization alone make his reasons faulty or his conclusion flawed. In this case, the reasoning of the trial judge was clear and well expressed in the statement as follows:**

***“Finally on this sale transaction concluded in Exhibit F, I have held earlier in this judgment that all the transactions carried out by the 1st defendant (3rd respondent) [i.e. the receiver] based on the discredited Exhibit A which grossly undervalued the assets of the company must be grossly undervalued as well. Exhibit F was based on the same Exhibit A. The sale in the said Exhibit F must therefore equally be undervalued too”.***

(p. 1465 A)

*PLEADINGS - Fraud - Allegation of - Proof*

**4. It has long been an established principle of our law that fraud must be expressly pleaded and with particularity. In United Africa Co. Ltd. v. Taylor [1936] 2 WACA 170, Lord Maugham delivering the judgment of the Privy Council said, at p 71:**

***“In the opinion of their Lordships there is no rule which is less subject to exception than the rule that charges of fraud, and a fortiori charges of criminal malversation or felony, against a defendant ought not to be made at the hearing of an action unless, in a case where there are pleadings, those charges have been definitely and clearly alleged, so that the defendant comes into Court prepared to meet them.”***

(p. 1467 D)

*Pleadings & findings - Sufficiency of - Determination*

**5. Sufficiency of pleadings and of findings in a case are determined by the cause of action. Allegation of fraud was not essential to the claims of the plaintiff for declaration that the**

**valuation by or on behalf of the receiver was not bona fide, or, that the receiver had committed a breach of his statutory or fiduciary duties, nor was it essential to the injunction sought by the plaintiff or the order it sought, to set aside the sale which it alleged was tainted by lack of good faith. In my opinion, the question that should have been made paramount by counsel for the defendants in the court below, but was not so made, was whether the findings of the judge supported the declarations sought.** (p. 1469 B)

*MORTGAGES - Right to sell - Duty of mortgagee*

**6. The law seems sufficiently well settled that the mortgagee or receiver engaged in selling the mortgaged property has a duty to act bona fide. The principle had been enunciated by Kay J as long ago as 1882 in Warner v. Jacob (1882) 20 Ch D 220 and adopted by this court in Eka-Eteh v. Nigeria Housing Development Society Ltd. & Anor (1973) NSCC 373, 380, where this court said, at page 381:**

***“The only obligation incumbent on a mortgagee selling under and in pursuance of a power of sale in the mortgage deed is that he should act in good faith.”*** (p. 1469 F)

*MORTGAGES - Right to sell - Lack of good faith - Proof*

**7. Where the action is to set aside a sale of the mortgaged property by reason of the lack of good faith of the mortgagee or receiver, collusion with the purchaser must be established. Therein lies the relevance of pleading collusion or facts from which such can be inferred.** (p. 1470 C)

*PLEADINGS - Lack of good faith - Alleged without particulars*

**8. Where lack of good faith is alleged without particulars, the opponent should ask that allegation be struck out or for particulars. However, it has also been held that where the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings.** (p. 1471 D)

*Findings of trial court - Correctness of*

**9. Whatever lack of particularity there may have been in the pleadings in regard to absence of good faith, had been remedied by the evidence. Being unable to take a narrow view of the pleadings as the court below was persuaded and was inclined to do, I am of the opinion that the findings of the trial judge were well accommodated within the allegation of bad faith. In the result, in this case in which in the court below counsel for the defendants had concentrated on the pleading question rather than attack the substance of the findings made by the trial judge, the conclusion arrived at by the trial judge should have been upheld by the court below.** (p. 1471 H)

*MORTGAGES - Sale - Setting aside - Correctness of*

**10. When a sale is liable to be set aside on any of several grounds, that the court included one untenable ground for setting it aside does not make its verdict erroneous as long as there was, at least, one valid ground sufficient to sustain the verdict. Furthermore, in the particular circumstances of this case, as has been seen, the sale at gross undervalue and the lack of preciseness in the statement of the obligation of the supposed purchaser are all aspects and manifestations of the absence of good faith. It is for these reasons that I do not think the question whether the trial judge erred in pronouncing on the certainty of the consideration as a separate ground for setting aside the sale, is at all decisive.** (p. 1472 C)

## NOTABLE POINT OF INTEREST

### **AYOOLA JSC**

**1. Proof of allegation of fraud differs from proof of allegation of bad faith**

The same pleading requirement of initial particularity and the same strictness that apply to an allegation of fraud does not, in my view, apply to an allegation of bad faith, even though an allegation of bad faith is sometimes held to be equivalent to an allegation of dishonesty, as in *Cannock Chase District Council v. Kelly* [1978] 1 All E.R. 152 (C.A.). For my part, I do not think that an allegation of lack of

good faith always necessarily implies dishonesty, even though allegation of dishonesty will imply absence of good faith. The description of lack of good faith in *Kennedy v. De Trafford* (supra) did not imply dishonesty. (p. 1471 B)

**REPRESENTATION**

Robert Clarke (with him James Okoh) for the Appellant  
Olajide Ayodele, SAN with S. Mohammed and N. Jimoh for 1st, 2nd  
and 5th Respondents

G. Ofodile Okafor with S. Oyawole for 3rd & 4th Respondent

**CASES REFERRED TO**

Bornu Holding Co. Ltd v. Bogoco (1971) 1 ALL NLR 324  
National Investment & Properties Co. Ltd. v. Thompson Organization Ltd. (1969) NSCC 161

Akinloye v. Eyiyoila (1967) 5 NSCC 16

Okebola v. Molake (1975) 9 NSCC 464

Omorhirhi v. Enatevwere (1988) 19 (Pt. 1) NSCC 909

Hewson v. Cleeve (1904) 2 Ir. R. 536

Kennedy v. De Trafford (1897) AC 722

Olufunmise v. Falana (1990) 21 NSCC (Pt. 2) 97

Usenfowokan v. Idowu Bros (1969) NSCC 108

United Africa Co. Ltd. v. Taylor (1936) 2 WACA 170

Abacha v. Fawehinmi (2000) 4 SCNJ 400

Nwadike & Ors v. Ibekwe & Ors (1987) (Pt. 11) NSCC 1219

Obijuru v. Ozims (1985) 16 (Pt. 1) NSCC 430

**STATUTE REFERRED TO**

Evidence Act s. 149(d)

**LEAD JUDGMENT BY AYOOLA JSC**

In this appeal from the decision of the Court of Appeal delivered on 25th February, 1997 the appellant is West African Breweries Ltd., the plaintiff in an action instituted in the Federal High Court against the respondents. The parties to this appeal [that is, the appellant and the respondents] are described in this judgment, respectively, as the plaintiff and the defendants as they were described at the trial, for convenience.

The plaintiff's action in the Federal High Court ("the trial court") concerned, in the main, the sale of certain assets of the North Brewery Plc, [2nd defendant, (listed as 6th respondent in the title)]. The plaintiff was at a time the holder of only 50% of the equity of the North Brewery, but the remaining 50% which was held by the Federal Government of Nigeria had since been acquired by the plaintiff. The United Bank for Africa Plc ("United Bank") [which was the 3rd defendant at the trial but is listed in the title, herein, as the 4th respondent], acting for itself and five other creditor banks of the North Brewery, appointed the 1st defendant, Hassan Abdulrahman, ("the receiver") (listed as the 2nd respondent), as receiver/manager of North Brewery. The receiver, pursuant to that appointment, took over the property and management of the North Brewery. He entered into an agreement to sell certain assets of the North Brewery to the 4th defendant, Savannah Ventures Ltd., ("Savannah Ventures") (listed in the title, herein, as 1st appellant) an incorporated company of which the 5th defendant, Usman Al-Bashir, was Managing Director.

By an agreement dated 22nd of June 1992, [Exhibit F] the receiver agreed to sell to Savannah Ventures 'the entire assets of the Company as described in the Schedule' to the document, for a consideration of N15,500,000, payable by installments, the first of which was the sum of N5,000,000 said to be paid and acknowledged by the execution of the document, and the rest of which were payable in five monthly installments of N2,500,000 'payable on or before the last day of July, 1992 and subsequently in the sum of N2,000,000 (two million naira) payable on or before the last day of August, September, October and November, 1992'. It was provided in the agreement, that 'the Purchaser (that is, Savannah Ventures) shall be responsible for the payment of the Company's that is, North Brewery's other secured creditors and other priority creditors, namely:- Banks:

1. Continental Merchant Bank Nig. Ltd;
  2. Nigeria Merchant Bank Plc;
  3. NICON;
  4. Nigerian Industrial Development Bank Ltd.
- Government Agencies;
1. NEPA;
  2. WRECA;
  3. Customs & Excise;



4. Boards of internal Revenue (Sale Tax);
5. Boards of Internal Revenue (PAYE);
6. NPF;
7. ITF;
8. CPF'.

By the same document it was agreed by the receiver and Savannah Ventures that the receivership of the Company shall continue until the final installment of the purchase price of N15,500,000 has been paid in full and that upon payment of the full purchase price the receiver and manager shall be discharged and the assets of North Brewery shall be handed over and transferred to Savannah Ventures.

The assets of the North Brewery agreed to be sold as enumerated in the schedule to the agreement consisted of five groups classified as A, B, C, D and E as follows:

*A. 'Property lying and situate at 19/21 Dantata Road, Bompai, Kano, covered by Certificate of Occupancy Number: LKN/IND/RC/82/152 dated 25th November, 1982 including all the land of approximately 4.3439 hectares, surrounded by a high-block fence work buildings, plant and machinery previously used by North Brewery Plc for its business as brewers and bottlers of beverages including: 28 items of buildings and structure enumerated.*

*B. Property lying and situate and otherwise known as No. 104, Lafia Road/Lamido Crescent, Nassarawa, Kano, covered by Certificate of Occupancy No: LKN/RES/RC/66/73 dated 6th August, 1989...*

*C. Property lying and situate at Dakata Layout, Kano .... measuring approximately 11.70 hectares together with the developments thereon (if any)*

*D. Industrial Lift Truck-Sambara 4304 (2No); Toyota Lift Truck (1 No.), 12 Forklifts as enumerated, 1 fire fighting Mercedes Benz and 5 Beetle V/W vehicles;*

*E. 8 generators as enumerated and of varying capacity."*

There were three separate valuations of the assets comprised in group A. Two were, respectively, in 1986 and 1990, by Knight Frank & Rutley, a firm of valuers commissioned by North Brewery, the third, in 1991, was by William and Partners, a firm of Valuation Surveyors commissioned by the receiver.

By its action commenced sometime in October, 1992, the plain-

tiff by its amended writ and statement of claim claimed that: (i) the valuation of the assets of North Brewery by or on behalf of the receiver on 27th September, 1991 was neither made bona fide nor represented a fair value of the assets of North Brewery; (ii) the sale or proposed sale of North Brewery's assets by the receiver was a breach of the receiver's statutory and fiduciary duties to the North Brewery and its employees; and, (iii) the sale or proposed sale of the said assets, machinery and property by the receiver to Savannah Ventures and/or the 5th defendant was unlawful, void and of no effect whatsoever, and sought declarations on those lines. It also asked for orders of injunction to restrain the defendants from selling, transferring or disposing of the assets of the North Brewery or doing so at the value contained in the valuation report dated 27th September, 1992 or at any value below N232 Million; an order setting aside the sale of the assets of North Brewery to Savannah Ventures by virtue of a sale agreement dated 22nd June, 1992 and damages.

The North Brewery had been grossly indebted to six banks in different sums granted it as overdraft against which it had charged its fixed and floating assets by way of securities for the payment of the sums so owed. In August, 1988 the six banks entered into AN INTER-CREDITORS AGREEMENT to regulate their securities and rights inter se so that they could realize their separate securities together. The total amount owned by the North Brewery to the creditor banks was N17.5 Million.

Consequent upon the Federal Government policy to privatize its interest in private enterprises, the Federal Government's equity share of 50% in the North Brewery fell to be sold and the plaintiff signified its intention to buy the same to the Technical committee on privatization and Commercialization (TCPC) which was the Federal Government's agency established to carry out the privatization exercise. While negotiations to buy the Federal Government's shares in the North Brewery by the plaintiff were going on, the United Bank, exercising powers under clause 6 of a deed of debenture appointed the receiver as receiver/manager of the North Brewery. The appointment which took effect from 30th April, 1991 was to last one year. However, because the receiver did not complete his assignment during that period, it was renewed for another year from 29th April, 1992.

The directors of the North Brewery, upon notification of his appointment as receiver, met the receiver and agreed on some points among which was that the receiver would keep the brewery running and for that purpose retain the factory staff and the General Manager. Rather than retain the General Manager, the receiver “fired” him. B

Although, as was its practice, the North Brewery had employed the services of the firm of Messrs. Knight Frank and Rutley to audit its account and evaluate its assets and that firm had done so in 1986 and 1990 and submitted its reports (Exhibits D and E, respectively) the receiver instead of using any of those reports for his administration commissioned Messrs. Williams and Partners to carry out a valuation of the assets of North Brewery. Messrs. Williams and Partners submitted their report dated 27th September, 1991 (Exhibit A) in which they put the total value of the entire assets of the North Brewery which included the factory and properties in Kano at N59,724,920, as against a valuation of the factory only by Messrs. Frank Knight and Rutley as N39,691,000 and N158,848,000 in 1986 and 1990, respectively. C D

To the knowledge of the receiver the plaintiff had, before the valuation commissioned by him, commenced negotiation to purchase Federal Government shares in the North Brewery. The negotiations continued to the knowledge of the receiver after the valuation. Also to the receiver’s knowledge, the plaintiff had undertaken to pay off North Brewery’s indebtedness to the creditor banks after conclusion of the sale agreement with the Federal Government which was to sell its shares for N9 Million, payable in two equal installments, the second of which was to be due 60 days from the payment of the first, on 25th June, 1992. In the event, the plaintiff paid both installments and concluded the agreement of sale of the Federal Government shares to it. Later, the plaintiff became aware of the sale of some of the assets of the North Brewery to Savannah Ventures. Being dissatisfied with the result of the valuation commissioned by the receiver which it regarded as an under-valuation and the good faith of the receiver in the whole transaction of sale of, or agreement to sell, the assets of the North Brewery to Savannah Ventures and his activities as receiver, the plaintiff commenced the action claiming as earlier stated. E F G H

The main plank of the plaintiff's case was that the valuation of the assets of North Brewery carried out by Messrs. Williams and Partner was an undervalue and that there has been lack of good faith in the receiver's management of the affairs of North Brewery and, in particular, in relation to the sale of the properties of that company to the Savannah Ventures.

The trial judge (Ojutalayo, J.) considered the valuation reports of Knight Frank and Rutley and Williams and Partners along with the oral evidence and came to the conclusion that the valuation report rendered by Williams and Partners was unreliable and that, in any event, the valuation was a gross under-valuation of the assets of the North Brewery. He held that the conduct of the receiver in regard to the disposition of the assets of the North Brewery, particularly in regard to the transaction of sale embodied in Exhibit F made between him and the 4th and 5th defendants savoured of "both fraud and collusion between him and the 4th and 5th defendants." The trial judge said:

*"Can the 1st Defendant, in the circumstances of the case, with all the serious imputation and aspersion cast on his activities, ... be said to have acted in good faith, that is honestly and without disregard for the company's interest and that of its share holders (one of whom the plaintiff was, and now the sole share holder) and to have taken reasonable care to obtain the true market value of the assets of the Company when he chose to sell them? From what I have said so far and will still say of the next issue of his general bona fides in his management of the Company's affairs generally, my answer is also positively in the negative."*

He held that since the sale evidenced by Exhibit F was based on the under-valuation by Williams and Partners, the said sales must be at undervalue and that the sale of the assets of North Brewery to Savannah Ventures and its Managing Director, the 5th defendant, ought to be set aside on the grounds of uncertainty of the consideration and want of bona fides on the part of the Receiver. Dwelling further on the activities of the receiver he said:-

*"I am absolutely clear in my mind that the actions of the 1st Defendant in the sale of the Company's properties Exhibit F to the 4th Defendant are reprehensible, as they at least savour or are suggestive or admit of fraud and collusion and have thereby seriously*

*eroded, dent and cast unlimited doubts and aspersions on the bona fides of the 1st defendant.”*

At the end of the day, the trial judge granted the declarations sought and set aside the sale of the assets of the North Brewery to Savannah Ventures.

From the decision of the trial judge there were two sets of appeal to the Court of Appeal. One was by Savannah Ventures, its Managing Director, Alhaji Al-Bashir, and Savannah Beverages Ltd., (“Savannah Beverages”) which was granted leave to appeal as “party interested.” The other was by the receiver and the United Bank. B

At the forefront of the appeal in the court below was the question whether, having regard to the pleadings, allegations of lack of bona fides, fraud and collusion and sale of the properties in Exhibit F twice over were made or could be inferred against Savannah Ventures and the 5th Defendant, its Managing Director. Abdullahi, JCA, D (as he then was) who delivered the leading judgment of the court below resolved the question in favour of the defendants. He held that no paragraph of the pleading provided a basis for the “numerous serious findings” made by the learned trial judge. C

As regards the question whether assets sold to Savannah Ventures were sold at undervalue, he accepted the submission of counsel for the defendants that the items enumerated in Exhibit F were never a subject of challenge and that Exhibit F was not made part of any of the valuation reports. He held that ‘parity of reason’, by which the trial judge arrived at the conclusion that the assets covered by Exhibit F were sold at under-value, was not valid. Specifically, he held that the learned trial judge was wrong to have held that by ‘parity of reason’ the gross under-valuation of Exhibit F would affect all the transaction carried out by the receiver. Still concerning the sale of assets evidenced by Exhibit F, he rejected the conclusion of the trial judge that consideration for the sale was uncertain. Ogebe and Mahmud Mohammed, JJCA, agreed with the judgment of Abdullahi, J.C.A (as he then was). In the event, the Court of Appeal allowed the defendants’ appeal and dismissed the plaintiff’s claim. E F G H

On this appeal by the plaintiff, the three dominant issues are; (i) whether the court below was right in its conclusion that the trial court decided the case before it outside the pleadings of the parties; (ii) whether the court below was correct in its view that the under-

valuation in Exhibit A, the valuation report of Williams and partners, had no nexus with the items in Exhibit F, the sale agreement between the Receiver and Savannah Ventures; and (iii) whether consideration for the sale was uncertain.

B Since the question whether assets of North Brewery were sold  
to Savannah Ventures at gross undervalue was fundamental to the  
case both at the trial court and the court below, and indeed, in this  
appeal, the proper approach is to make that question the starting  
point in the consideration of the issues arising in this appeal. The trial  
C judge was clear and specific in his finding that the assets of the North  
Brewery enumerated in the schedule to the agreement Exhibit F were  
grossly undervalued. The reasoning by which he came to that con-  
clusion was the main target of criticism by the court below. The ques-  
tion on this appeal is whether the criticism and the consequential  
D rejection of the finding were justifiable.

The trial judge arrived at the finding that the value of the North  
Brewery's assets was grossly understated in the report of Messrs. Wil-  
liams and Partners, [who I shall refer to as the "receiver's valuers"] by  
comparing the valuation carried out by the receiver's valuers as con-  
E tained in their report (Exhibit A) with the valuation carried out by  
Knight Frank & Rutley, [who I shall refer to as North Brewery's valuers]  
as contained in their report, Exhibit E.

It is evident that the trial judge ascribed better competence  
F and more weight to the evidence of the expert, Mr. Ojo, who gave  
evidence for the plaintiff in support of the valuation report, Exhibit  
E, and as the person who prepared it, as against Mr. Nwankwo, the  
expert who gave evidence in support of the receiver's valuer's re-  
port, Exhibit A, but was not its maker. The trial judge considered the  
G basis of the respective reports and held that:-

*"...the basis of the valuation in Mr. Nwankwo's Report in Ex-  
hibit A appears rather too technical, academic and pedantic while  
Mr. Adebayo Ojo's Reports in Exhibits D and E appear rather very  
simple, practical and more pragmatic".*

H Consequently, he held that the reports (Exhibits D and E) of  
the valuers appointed by North Brewery were "more authentic" and  
worthy of greater weight than the valuation by the receiver's valuers  
contained in Exhibit A. In rather meticulous details, the trial judge  
stated why he considered Exhibit A lacking in "authenticity". First, he

considered it improbable that the net worth of the North Brewery would be less than zero as the valuation in Exhibit A would suggest. Second, Mr. Nwankwo who did not prepare the report, Exhibit A, could not testify convincingly about its contents when it came to question of the condition of the assets valued. Thirdly, the valuation report, Exhibit A, was dated 27th September 1991, a day before the completion of inspection of the assets on 28th September, 1991. With these criticisms of the report, he came to the conclusion that the report, Exhibit A, *“had been prepared in collusion to foster some nefarious and negative ends.”*

The result of the evaluation of the evidence and comparisons carried out by the trial judge was expressed by him in the conclusion he arrived at as follows:-

*“This leads me to the consideration as to whether the assets of the company had been grossly undervalued. If, as I have held above, the basis of the valuation of the Reports of Knight Frank and Rutley in Exhibits D and E are more reasonable, more practical and more plausible, it then follows that the Reports would, or at least, be likely to represent the true market value of the assets reported upon therein as at the time of the reports. In other words, the values of the factory of the company alone as at 1986 and 1990 which are put in Exhibit D and E at N39,691,000 and N158,848,000 respectively are likely to be reasonable and also likely to represent the true market values of the assets of the company at the material times.*

*Now to the crunch. The assets valued in Exhibit E, whose value as at November 1990 is said to be N158,848,000 were in respect of ‘...your property at 19-21 Dantata Road, Kano, together with the machinery assets therein.’*

*This property is the factory of the Company. Thus, the report does not cover other assets of the company outside the factory. Assuming without conceding that this property did not appreciate between that November, 1990 and September, 1991 when Exhibit A was made, it could never have depreciated so badly in value as to fall below the value of 1990 which was N158,848,00. But the report in Exhibit A covers not only the factory premises at No. 19 - 21 Dantata Road, Kano, but also all of the company’s properties both inside and outside the factory Report, Exhibit A, valued at N59,724,920. In other words, the value of the factory alone as at 1990 is about three*

*times the value of the whole of the company's assets including the very same factory in 1991. I doubt if there is or could be any reasonable person who will not think or say that the valuation in the Exhibit, in the circumstances, is a gross under-valuation of the total assets of the company as at September, 1991."*

B In the appeal to the court of Appeal, counsel on behalf of the first set of appellants was content to argue that what was of relevance was valuation of the assets to which Exhibit F related and that there was no such valuation. The court below (per Abdullahi, JCA, (as he then was )  
C quoted the findings above, not with any critical comments other than in the context of examining whether the findings could be used by "parity of reason" to determine whether the assets covered by Exhibit F were sold at gross undervalue or not.

No doubt, the trial judge relied on his findings in regard to the  
D valuation reports, Exhibit A and E, to come to the conclusion that the assets covered by Exhibit F were sold unreasonably at less than fair market value. His conclusion quoted in the leading judgment of the court below bore that out, as follows;

*"In the circumstances and in view of all I have said so far on  
E this issue, I have no difficulty in coming to the conclusion and in holding that the Williams and Partners Valuation Report, Exhibit A, apart from being very unreliable is a gross under-valuation of the assets of the company. And it can be safely said that this conclusion is  
F bound, at least by parity of reason, to affect all the transactions carried out by the 1st defendant on the basis of this report particularly the sale in Exhibit "F" which is the next issues I am going to consider".* (Underlining provided by the court below).

The argument proceeded in the court below, against the com-  
G ment of the trial judge, that the trial judge should not have used the valuation reports accepted by him to determine the fair market value of the assets covered by Exhibit F, the sale agreement. That was the argument that found favour with the court below. In the leading judgment it was stated:

H *"Again the issue of under valuation of the assets of 2nd respondent (i.e. North Brewery) as contained in the report of Messrs. Williams and Partners, if it is an under-valuation at all, it has no nexus with the fair market value of the items in Exhibit "F". This is because the entire evidence before the trial court did not link this (sic) items to*



*any of the reports submitted by the two firms of experts.”* (Words in brackets are mine).

Notwithstanding that there was no challenge to the finding of the trial judge in regard to Exhibit E, the valuation report by Knight Frank and Rutley, the court below volunteered the opinion, albeit in passing, that it could not “afford the report, the kind of high distinction given to it by the learned trial judge” because there was no *“iota of evidence that any plants or machines were imported between 1986 and 1991”*. However, it is clear that the trial judge’s finding as regards the under-valuation of the assets sold by virtue of exhibit F was rejected by the court below on the ground that the conclusion reached by *“parity of reason”*, as put by the trial judge, was unacceptable because: the sale agreement was not made part of any of the report submitted by the firms of experts; *“no one questioned its authenticity”*; and, *no evidence of the prices of the items were produced before the court*. Being of the view that the learned trial judge must have *“done his own exercise outside the court room alone by using a longer mental exercise to reach the conclusion he reached that the prices of the items are grossly undervalued”*, and, applying *Bornu Holding Company Ltd. v. Alh. Hassan Bogoco* [1971] 1 ALL N.L.R. 324, the court below held that the trial judge was wrong to have held that by ‘parity of reason’ the gross under-valuation of Exhibit A would affect all transactions carried out by the receiver on the basis of the report.

The principle in *Bornu Holding Company Ltd. v. Bogoco* [1971] 1 ALL NLR 325; [1971] NSCC 321, as summarized in the head note of [1971] 1 NSCC 321 is that:

*“Where it is necessary that a point or points arising for determination in a case should be further clarified by evidence after the close of the trial, it is the duty of the court trying the case to invite the parties to supply such evidence or explain such point or points and it is wrong for the court in these circumstances to substitute its own views or matters on which there should be, and there was no evidence”*.

In that case the trial judge made an analysis of books of account which this court held went beyond the actual questions asked in respect of it from the accountant who kept the account book. ***There is a plethora of authorities all going to show that it is***

**not proper for a trial court to embark upon examination of documents tendered as exhibits when such examination will amount to a fact finding investigation that leads to discovery of facts which could have been proved by evidence.**

The authorities do not, in my view, go to the extent of prohibiting the court from evaluating the documentary evidence before it either by itself or alongside other evidence in the case in order to make findings of fact on issues before it. ***Granted that, sometimes, the line between what is investigation and what is evaluation of documentary evidence may be blurred and difficult to define, the distinction is that whereas, investigation leads to a discovery of fresh facts, the truth of which could have been challenged by fresh contrary evidence; evaluation of evidence leads merely to findings based on the quality of evidence already existing. In the present case what the trial judge did was an evaluation of the valuation reports, Exhibits A, D, and E, and in particular Exhibit E which was preferred by the trial judge. All these reports were before the trial judge and he neither went nor needed to go beyond making use of what were already obvious on the face of the reports. There was neither equivocation about the assets valued in the reports nor about the assets covered by the sale agreement.*** The report, Exhibit E, as of valuation of property at 19-21 Dantata Road, Kano which was item A of the assets which were subject-matter of the sale agreement, Exhibit F.

It is clear that the issue being whether or not the assets of the North Brewery sold to Savannah Ventures were sold at gross-under-value the valuation report relating to one of those assets was relevant. It did not need any special examination of the reports and the sale agreement to know that both related to the same subject-matter as far as the property at 19-21 Dantata Road, Kano was concerned. The principle of the case of Bornu Holding Company Ltd., and similar cases does not apply. The question that should have been of use in this case was not whether the trial judge had embarked on an inquiry of his own but whether he made a proper use of the evidence before him including the valuation reports.

I am of the opinion that the emphasis placed by counsel for the defendants in this appeal and in the appeal in the court below

and by the court below itself, on the trial judge's use of the phrase "*parity of reason*" to describe his reasoning is, with respect, much ado about nothing. ***What an appellate court should primarily be concerned with is not the particular phrase or term used by the trial judge to describe his process of reasoning or thought process but whether his reasons as discerned from the judgment are clear and lead reasonably to the conclusion he arrived at. His going out of his way to categorize his reasoning process and, perhaps, in the process doing so poorly, will not by that categorization alone make his reasons faulty or his conclusion flawed. In this case, the reasoning of the trial judge was clear and well expressed in the statement as follows:***

***"Finally on this sale transaction concluded in Exhibit F, I have held earlier in this judgment that all the transactions carried out by the 1st defendant (3rd respondent) [i.e. the receiver] based on the discredited Exhibit A which grossly undervalued the assets of the company must be grossly undervalued as well. Exhibit F was based on the same Exhibit A. The sale in the said Exhibit F must therefore equally be undervalued too".***

Put simply, the trial judge's reasoning was that if the foundation was bad the super-structure erected on it cannot be good. That the judge, perhaps inaccurately, used the phrase "*parity of reason*" to describe that simple logical reasoning, cannot in any way whittle the validity of his straight forward reasoning. The simple and straight forward common sense and logic of the reasoning of the trial judge is that the valuation report, Exhibit A, of the entire assets of North Brewery including the 19-21 Dantata Road, Kano put in 1991 at N59,724,920 must have been a gross under-valuation in view of the valuation report, Exhibit E (which he held reliable) which put the value of just one item 19-21 Dantata Road, Kano at N158,848,000 in 1990. The sale of the assets based on that gross under-valuation must itself have been at a gross undervalue. With this reasoning which cannot be faulted, there could not have been any need to embark upon any fresh evaluation of the assets comprised in the sale agreement. If just one item was N158,848,000 how could any transaction of sale of that one item plus several other items at far less than the value of just one item, have been at anything near the proper value?

If one item in Exhibit F had been valued N158,848,000 in exhibit E, the valuation by North Brewery's valuers, how could that item plus other items sold at about a tenth of the value of just one item be anything else than at undervalue? Thus was the straight-forward reasoning of the learned trial judge. I am unable to find any flaw in it.

B The fastidious may not have approved of the learned trial judge's use of the phrase "*parity of reason*" to described his reasoning. For my part, I am inclined to regard it as reasoning in an a fortiori form, but that does not really matter. It suffices that I am satisfied that  
C the judge did not embark on a comparative exercise but merely based a finding of fact on the necessary and logical inference that flowed from a fact already found, when he held that the sale based on the value placed on the assets (in Exhibit A) which was itself a gross undervaluation was at a gross undervalue. The value of a "part" having  
D been ascertained, it is a logical inference that the value of the whole, or anything greater than the "*part*" cannot be less than the ascertained valued of the "*part*".

In my opinion, the decision of the court below is erroneous when it held that by use of the phrase "*parity of reason*" the trial  
E judge "*introduced the theory of parity of reason as a yardstick and used it as the basis for fair market value of the items in Exhibit F*". That, simply, was not the position. I have stated my reasons.

Against the background of the confirmed findings that the as-  
F sets of North Brewery were grossly undervalued by the receiver's valuers and that the sale of assets by virtue of the sale agreement, Exhibit F, was at gross-undervalue, it is now convenient to consider the issue whether the court below was right in its conclusion that the trial judge "built up a case for the respondent (i.e. the plaintiff) out-  
G side the respondent's (plaintiff's) pleading and that several of the findings, made by the trial judge were based on unpleaded facts. The impugned findings, expressed in various forms, come to this: that the actions of the receiver in the sale of North Brewery's assets savoured and were suggestive of fraud and collusion with Savannah  
H Ventures. The argument of counsel for the defendants that these findings were of facts not pleaded found favour with the court below.

The authorities are now legion that parties are bound by their pleadings. Evidence of facts not pleaded should not be admitted: *National Investment and Properties Co. Ltd. v. Thompson Organisation*

Ltd. & Ors [1969] NSCC 161; Akinloye & Anor v. Eyiyaola & Ors [1967] 5 NSCC 16. The court is not permitted to formulate issues not raised in the pleading: Okebola & Ors v. Molake [1975] 9 NSCC 464. A party cannot rely on allegation of fraud where the allegation is based on facts not pleaded: Omorhirhi & Ors v. Enatevwere [1988] 19 (Part 1) NSCC 909. Fraud must be specifically pleaded. All these are well established and common place principles of our law of pleadings. B

Equally well established are: that a party although bound to plead material facts is not bound to plead the legal consequences of those facts: Obijuru v. Ozims [1985] 16 (part 1) NSCC 430; a court is bound to consider issues raised on the pleadings before it: Nwadike & Ors v. Ibekwu & Ors [1987] (part 11) NSCC 1219; a party is at liberty to raise points of law on pleaded facts: Abacha v. Fawehinmi (2000) 4 SCNJ 400. C

Since this appeal concerns what should be pleaded in order to raise an issue of fraud, it is expedient to dwell a little more on that aspect of this appeal. ***It has long been an established principle of our law that fraud must be expressly pleaded and with particularity.*** See Usenfowokan v. Idowu Bros & Anor (1969) NSCC 108, 112. ***In United Africa Co. Ltd. v. Taylor [1936] 2 WACA 170, Lord Maugham delivering the judgment of the Privy Council said, at p 71:*** D

***“In the opinion of their Lordships there is no rule which is less subject to exception than the rule that charges of fraud, and a fortiori charges of criminal malversation or felony, against a defendant ought not to be made at the hearing of an action unless, in a case where there are pleadings, those charges have been definitely and clearly alleged, so that the defendant comes into Court prepared to meet them”.*** E

In similar vein, were the opinions of this court variously put in several other cases. Referring to Stroud’s Judicial Dictionary [4th Edition] Vol. 2 Nnamani, JSC, in Olufunmise v. Falana [1990] 21 NSCC (part 2) 97 at 107 said “*fraud*” is something dishonest and morally wrong” and that “*it is trite that it has to be pleaded and established in evidence. In pleading, it is frequently unnecessary to use the word.*” F

In the present case the substance of the allegation of the plain- G

tiff on its pleading was:- (i) as averred in paragraph 18 of the amended statement of claim, that: *“the sale of some of the assets and the proposal to sell all the assets, machinery and property of the 2nd defendant [North Brewery] by the 1st defendant [the receiver] was not in good faith”*; (ii) as averred in paragraph 19, that the transaction took place when the receiver was aware that the plaintiff was willing and prepared to pay off the indebtedness of the North Brewery to the United Bank and the other creditor banks and the receiver had agreed to the payment of a sum in full and final settlement of the indebtedness of the North Brewery to the six creditor banks; (iii) as averred in paragraph 8, that the receiver has sold some assets of the North Brewery at undervalue; and, as averred in paragraph 15, that there was an arrangement between the receiver and Savannah Ventures to sell or transfer the assets of the North Brewery to Savannah Ventures and for the latter to resell the assets.

These pleaded facts were found proved by the trial judge who held that they *“savour of or are suggestive or admit of fraud and collusion ... and cast unlimited doubts and aspersions on the bona fides of the receiver.”* Here was a clear finding of absence of good faith in the transaction of sale. Such finding, without doubt, related to issues that arose from the pleadings. In addition to the averments in the amended statement of claim which have been referred to, there were averments in the statement of defence joining issue with the plaintiff in regard to the good faith of the receiver’s conduct and his activities. Thus, in paragraph 5 of the statement of defence of the receiver and the United Bank, it was averred that: *The 1st defendant as the Receiver/Manager of the 2nd defendant, executed his mandate faithfully, sincerely and in good faith...* And, in paragraph 17 they averred that *“the sale to the 4th and 5th defendants of the 2nd defendant’s assets, was done in good faith and in fairness to all the parties concerned and connected with the assets aforesaid both as mortgagor and creditors or otherwise”*. The good faith of the receiver was thus very much in issue on the pleadings.

In my view, the preoccupation of counsel for the defendants and the court below with the pleading question in regard to findings of the trial judge which tended towards a view that there was fraud and collusion on the part of the receiver and Savannah Ventures and its Managing Director had obfuscated what should have been the

real question, namely: whether what had been pleaded and the findings related to them were sufficient to support the trial judge's conclusion. If they were sufficient, that will be enough to sustain the judgment. Superfluity of findings does not by itself render a decision erroneous or invalid. In this case, I am of the opinion that the court below was right when it held that fraud had not been expressly pleaded and that the trial judge was wrong to find fraud. However, I do not think that should, by itself, affect the result. B

***Sufficiency of pleadings and of findings in a case are determined by the cause of action. Allegation of fraud was not essential to the claims of the plaintiff for declaration that the valuation by or on behalf of the receiver was not bona fide, or, that the receiver had committed a breach of his statutory or fiduciary duties, nor was it essential to the injunction sought by the plaintiff or the order it sought, to set aside the sale which it alleged was tainted by lack of good faith. In my opinion, the question that should have been made paramount by counsel for the defendants in the court below, but was not so made, was whether the findings of the judge supported the declarations sought.*** C D E

There is an abundance of authorities describing the obligations of a mortgagee and, by extension, a receiver, exercising a power of sale. Putting aside the question which does not arise in this case, whether the mortgagee or receiver owes a duty of care in the conduct of the sale, ***the law seems sufficiently well settled that the mortgagee or receiver engaged in selling the mortgaged property has a duty to act bona fide. The principle had been enunciated by Kay J as long ago as 1882 in Warner v. Jacob (1882) 20 Ch D 220 and adopted by this court in Eka-Eteh v. Nigeria Housing Development Society Ltd & Anor (1973) NSCC 373, 380, where this court said, at page 381:*** F G

***"The only obligation incumbent on a mortgagee selling under and in pursuance of a power of sale in the mortgage deed is that he should act in good faith."*** H

The proposition was also expressed in the decision of the House of Lords in Kennedy v. De Trafford [1897] AC 722 from which the proposition stated above was, apparently, taken as stated in the head note to that case. Granted that the duty of the mortgagee, or re-

ceiver, to act in good faith is capable of precise statement, what amounts to good faith cannot be stated with equal precision. Lack of good faith covers a multitude of conduct having, I venture to think, dishonesty or reprehensibility as common elements. Commenting on the mortgagee's duty to act in good faith in selling the mortgaged property, Lord HERSCHELL said in *Kennedy v. De Trafford*, supra, at p. 185:

*"It is very difficult to define exhaustively all that would be included in the words 'good faith' but I think it would be unreasonable to require the mortgagee to do more than exercise his power of sale in that fashion. Of course, if he willfully deals with the property in such manner that the interests of the mortgagor are sacrificed, I should say that he had not been exercising his power of sale in good faith."*

***Where the action is to set aside a sale of the mortgaged property by reason of the lack of good faith of the mortgagee or receiver, collusion with the purchaser must be established. Therein lies the relevance of pleading collusion or facts from which such can be inferred.*** See *Eka-Eteh v. Nigeria Housing Dev. Society* (supra) at p. 381.

What had seemed problematic in the court below was that, although the trial judge had said that he had "*reservation as to whether or not 'fraud' and 'collusion' are inferable from the plaintiff's statement of claim*", he, nevertheless, proceeded to find that the actions of the receiver in the sale of the company's properties in Exhibit F "*savour or are suggestive or admit of fraud and collusion*". The court below commented, perhaps with some justification, that this clearly showed the 'amount of confusion in the learned judge's mind'. However, the trial judge had made the criticized statement in the context of a consideration of the authenticity of the sale agreement, exhibit F, and, in the wider context of the bona fides of the receiver. In meticulous details which I do not attempt to recapture, the trial judge examined the evidence which tended to show, among other things, that the sale was a sham, although he did exactly not use that word, because, (i) the consideration was not real; ii) the purchaser, Savannah Ventures, purported to pay the debts to banks and agencies when the amount of indebtedness had not been specified or incorporated by reference in the agreement, Exhibit F; (iii) banks whose debt had been satisfied before the date of the agreement were, nevertheless,



included in the agreement as creditor banks to which the purchaser should pay; and, (iv) there was no evidence that Savannah Ventures paid anything to the creditor banks.

It seems to me evident that the broad issue being about the bona fides of the receiver, the facts and particular issues that the trial judge had to resolve could not be broken into self-contained compartments. In order to determine whether his conclusion was right or not, a holistic view has to be taken of the pleadings and evidence in the wider context of the allegation of mala fides. The same pleading requirement of initial particularity and the same strictness that apply to an allegation of fraud does not, in my view, apply to an allegation of bad faith, even though an allegation of bad faith is sometimes held to be equivalent to an allegation of dishonesty, as in *Cannock Chase District Council v. Kelly* [1978] 1 All E.R. 152 (C.A.). For my part, I do not think that an allegation of lack of good faith always necessarily implies dishonesty, even though allegation of dishonesty will imply absence of good faith. The description of lack of good faith in *Kennedy v. De Trafford* (supra) did not imply dishonesty. ***Where lack of good faith is alleged without particulars, the opponent should ask that allegation be struck out or for particulars. However, it has also been held that where the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings:*** *Dean of Chester v. Smelting Corporation* [1902] W.N. 5; *Hewson v. Cleeve* [1904] 2 Ir. R. 536.

In this case, the general good faith of the receiver had been impugned. Evidence had been led, without objection, ranging over a wide field, all relevant to show his lack of good faith. In the process, evidence had been led before, and accepted by, the trial judge which go to show absence of good faith of the receiver, generally, and, in particular, in regard to the sale of the assets of North Brewery to Savannah Ventures, and complicity of the latter in a transaction, which, in my understanding of the trial judge's findings, was almost a sham transaction, having regard, among other things, to the absence of certainty of the exact sum the supposed purchaser was obliged to pay and the absence of evidence that it actually paid anything. ***Whatever lack of particularity there may have been in the pleadings in regard to absence of good faith, had been remedied by the evidence. Being unable to take a narrow view of the pleadings***

**as the court below was persuaded and was inclined to do, I am of the opinion that the findings of the trial judge were well accommodated within the allegation of bad faith. In the result, in this case in which in the court below counsel for the defendants had concentrated on the pleading question rather than**  
**B attack the substance of the findings made by the trial judge, the conclusion arrived at by the trial judge should have been upheld by the court below.**

Although the trial judge appeared to have treated uncertainty  
 C of consideration as a ground for setting aside the sale, whereas that was not the case made at the trial, I do not think that that should have been sufficient justification for setting aside the judgment of the trial judge. **When a sale is liable to be set aside on any of several grounds, that the court included one untenable ground**  
**D for setting it aside does not make its verdict erroneous as long as there was, at least, one valid ground sufficient to sustain the verdict. Furthermore, in the particular circumstances of this case, as has been seen, the sale at gross undervalue and the lack of preciseness in the statement of the obligation of**  
**E the supposed purchaser are all aspects and manifestations of the absence of good faith. It is for these reasons that I do not think the question whether the trial judge erred in pronouncing on the certainty of the consideration as a separate ground**  
**F for setting aside the sale, is at all decisive.** Since the decisive issues in this appeal have been resolved, the issue whether there was proper application of section 149 (d) of the Evidence Act or not, is really not of importance to the main issues decisive of the appeal which I have resolved against the defendants.

**G** I think enough has been said to determine this appeal. The issues raised by the appeal in the court below and in this court have been of a very limited and narrow nature, thereby making it unnecessary to consider whether or not some of the declarations sought and granted were appropriate.

**H** Confining myself to the issues that arise in this appeal and, for the reasons which I have stated, I would allow the appeal. Accordingly, I allow the appeal and set aside the decision of the Court of Appeal. I restore the judgment of the Federal High Court. The appellant is entitled to costs of this appeal and of the appeal in the court

below. Accordingly, I award to the appellant against each set of respondents N10,000 and N5,000 costs, being, respectively, costs of this appeal and costs of the appeal in the court below.

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**UWAIS CJN**

B

I have had opportunity of reading in advance the judgment read by my learned brother Ayoola, JSC. I entirely agree with his reasoning and conclusions. I too will therefore allow the appeal.

Accordingly, the appeal is hereby allowed and I adopt the order contained in the said judgment.

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**KUTIGI JSC**

I read in advance the judgment just rendered by my learned brother Ayoola, JSC. I agree with his conclusion that there is merit in the appeal. I therefore allow the appeal, set aside the judgment of the Court of Appeal and restore the one delivered by the trial Federal High Court. I endorse the order for costs in the lead judgment.

E

**IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ayoola, J.S.C. and I agree entirely with the reasoning and conclusions therein.

For the same reasons as he has lucidly set out in his judgment, I, too, would allow this appeal and make the same orders including those as to costs as are therein contained.

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G

**KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother Ayoola, JSC. I entirely agree with his reasoning and conclusion and I also would allow the appeal. I only wish to add a few observations of my own on the issue of good faith or lack of it on the part of the receiver.

The central issue in this case revolved around the sale of the assets of the North Breweries Ltd., by the Receiver/Manager Hassan

H

Abdulraman (1st defendant). The plaintiff complained that the valuation of the assets of North Breweries by or on behalf of the receiver/manager was neither made bona fide nor presented a fair value of the assets of North Breweries. The subsequent sale was said to be grossly understood.

B As a receiver/manager the 1st defendant Hassan Abdulraman took over the property and management of the North Breweries. He had a duty to manage the North Breweries but did he? No. He did not. Rather he sacked the staff of the company and thereafter busied  
C himself with the sale of the assets of North Breweries to Savannah Ventures. It is clear from the evidence before the court that to achieve his aim, the receiver threw caution and fairness to the wind.

It began like this. For the purpose of disposing of the assets of North Breweries, the receiver commissioned Messrs. Williams & Partners to carry out a valuation of its assets. Messrs. Williams & Partner submitted their report dated 27th September, 1991 (Exhibit A) in which they put the total value of the entire assets of the North Breweries which included the factory and properties in Kano at N59,724,290. But, as was its practice, the North Breweries had com-  
E missioned the firm of Messrs. Knight Frank & Rutley to audit its account and evaluate its assets. The firm had done so in 1986 and 1990 and submitted its reports (Exhibit D and E, respectively). These reports by Messrs. Knight Frank and Rutley which were with respect  
F to the factory only put the value at N39,691,000 and N158,848,000 respectively. As I have already stated Exhibit A by Messrs. Williams & Partner in 1991 put the total value of the entire assets of the North Breweries which included the factory and properties in Kano at N59,724,920.

G How did the learned trial judge react to this curious state of affairs? In the course of his judgment the learned trial judge said:

*"This leads me to the consideration as to whether the assets of the company had been grossly undervalued. If, as I have held above, the basis of the evaluation of the Reports of Knight Frank and Rutley  
H in Exhibits D and E are more reasonable, more practical and more plausible, it then follows that the Reports would, or at least, be likely to represent the true market value of the assets reported upon therein as at the time of the Reports. In other words, the values of the factory of the company alone as at 1986 and 1990 which are put in Exhibits*

*D and E at N39,691,000 and N158,848,00 respectively are likely to be reasonable and also likely to represent the true market values of the assets of the Company at the material times.*

*Now to the crunch. The assets valued in Exhibit E, whose value as at November, 1990 is said to be N158,848,000 were in respect of:-* B

*“...your property at 19-20 Dantata Road, Kano, together with the plant and machinery assets therein.”*

*This property is the factory of the Company. Thus, the Report does not cover other assets of the Company outside the factory. Assuming without conceding that this property did not appreciate between that November, 1990 and September 1991 when Exhibit A was made, it could never have depreciated so badly in value as to fall below the value of 1990 which was N158,848,000. But the Report in Exhibit A covers not only the factory premises at No. 19 - 21 Dantata Road, Kano, but also all of the Company's properties both inside and outside the factory all of which the Report, Exhibit A, valued at N59,724,920. In other words, the value of the factory alone as at 1990 is about three times the value of the whole of the Company's assets including the very same factory in 1991 I doubt if there is or could be any reasonable person who will not think or say that the valuation in the Exhibit, in the circumstances, is a gross undervaluation of the total assets of the Company as at September, 1991.”* C D E

*I can't agree more. It can easily be seen from the evidence before the court react the receiver acted in bad faith. At the trial the receiver showed how easily his memory failed him. He feigned ignorance of everything that he did or happened around him with respect to the affairs of the North Breweries. A few examples will suffice. Under cross-examination by Mr. Clarke the following transpired:* F G

*“Q - How much did the Report contain in terms of money realized from sale of assets?”*

*A - I cannot say off-head how much are realized*

*Q - My question is the list of properties (house) you sold and how much afterward you had mentioned one sold above the Williams Valuation - Report paragraph 8 of S/D.* H

*A - Apart from Kwaranga Road property, all the other landed properties were sold by Banks having legal mortgages on them, I was*

*not involved in the sale and so I am not in a position to say for how much each property was sold.*

*Q - Now in your evidence in chief you said you received over N10.01m which you used in incurring certain obligations - can you tell the court how you got this N10.01m.*

*B A - The money came from the sale of the assets of the company.*

*Q - This is exclusive of the N20m we mentioned yesterday realised from the sale of the 5 properties. Is it not.*

*C A - The N20m was suggested by counsel and not by me.*

*Q - The N20m was suggested by Counsel because you yourself claimed that you did not know the amount realised from the sale of the 5 properties, if you now know the amount, you can tell the court to know which figure to use, otherwise the N20m will stand.*

*D A - I don't know.*

*Q - N20m of 5 properties sold; N10.01m of expenses incurred; unspecified monies through sales of assets which you have not told the court; all these moneys would have paid off the money owed your appointer which was N19m during your first year of appointment. I put it to you.*

*A - Yes given that there were no human beings in the Factory and there was nothing to be managed; on staff entitlements and no terminal benefits to be paid; operational expenses to be made.*

*F Q - Outside these 11 landed properties made up as follows:*

*5 sold by the 2 Bank*

*1 sold by you*

*2 as in Exhibit F.*

*G 3 by the Consortium - are you aware of any other sales of landed properties to anybody else.*

*A - I am not aware of any other sale of any other landed properties.*

*H Q - Look at Exhibit A. Williams Report in respect of all the properties of the Company. If you look at pages 1 and 2 thereof, you will see that there are 14 landed properties including the Factory. If you now add the Factory to the 11 landed properties as stated and admitted by you, then there will 12 landed properties leaving a balance of 2 properties unaccounted for. Can you account for those 2 properties.*

*A - items (i), (k) and (l) at page 2 are undeveloped land and so I did not take cognisance of them.*

*Q - So they are available for return to the 2nd Defendant Company.*

*A - They are available for return to the 2nd Defendant Company.* B

*Q - Could you tell the Court how much, Physical Cash, you were able to pay your appointors before Exhibit F was entered into.*

*A - Nothing.*

*Q - What about the N3m you allowed them to take for the purchase of those properties.* C

*A - The N3m was recovered by the Banks and Money was accordingly shared.*

*Q - Are you suggesting that your appointors were intermeddling with the affairs of the Company when you were Receiver Manager.* D

*A - I am not suggesting that.*

*Q - So they took the N3m with your consent and knowledge as Receiver Manager.*

*A - Yes, and proper A/C was being kept by me.* E

*Q - Does the N3m represent part of the realization of the debt of N18m to your appointors.*

*A - It forms part of the realization of the debt and N18m was not the total amount being owed.* F

*Q - How much was being owed."*

It is therefore no wonder when the trial judge said:

*"Can the 1st defendant, in the circumstances of this case, with all the serious imputation and aspersion cast on his activities... be said to have acted in good faith, that is honestly and without disregard for the company's interest and that of its share holders (one of whom the plaintiff was, and now the sole share holder) and to have taken reasonable care to obtain the true market value of the assets of the company when he chose to sell them? From what I have said so far and will still say of the next issue of his general bona fides in his management of the Company's affairs generally, my answer is also positively in the negative."* H

It must be stressed again that the 1st defendant was appointed receiver/manager of the North Breweries. But there is abundant evi-

dence that he abandoned his commission to manage the company. Indeed he admitted this under cross-examination. Learned Counsel for the plaintiff put it to him thus:

*“Therefore I put it to you that you did more on receivership selling the assets of the Company rather than managing the same.”*

B His answer was:

*“Yes, I agree with you.”*

C There is abundant evidence that the receiver was clearly grossly negligent and reckless in dealing with the properties of the North Breweries. It cannot be said that he acted in good faith. In my judgment this is enough to void the sale of the assets of the North Breweries.

D In the result, and for the reasons given by my learned brother, Ayoola JSC, I also allow the appeal and set aside the judgment of the Court of Appeal. I restore the judgment of the Federal High Court. I abide by the orders as to costs.

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