

**SUPREME COURT OF NIGERIA**  
FRIDAY 13TH DECEMBER, 2002. SC. 310/2001  
**CORAM:- M. L. UWAIIS CJN, M. E. OGUNDARE,**  
**U. MOHAMMED, S. O. UWAIFO, E. O. AYOOLA, JJSC**

1. THE VESSEL "LEONA II"  
2. OWNERS OF THE VESSEL ..... APPELLANTS  
"LEONA II"  
AND  
FIRST FUELS LIMITED  
INTEGRATED OIL AND GAS LTD ..... RESPONDENTS

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CONTRACTS - Documents - Mistakes - Rectification - Basis - Not every type of mistake can be relied on - As ground for rectification of written document (H1)

CONTRACTS - Documents - Rectification - Equity rectifies instruments and not contracts - Hence document which records prior agreement - Cannot be rectified merely because of mistake (H2)

DOCUMENTS - Rectification - Right to apply for - A person who can neither claim rights under a document - Nor be subject to an obligation under it - Cannot seek to rectify same (H3)

DOCUMENTS - Non contractual document - Rectification - Where document is not contractual - Court may enquire whether party seeking its rectification - Has sufficient interest to invoke jurisdiction of court (H4)

ADMIRALTY - Vessel - Power of sale - Merchant Shipping Act s. 322 - Admiralty Marshal acting pursuant to order of court to sell - Can transfer ship as if he was the registered owner (H5)

ADMIRALTY - Admiralty Marshal - Duty of - He sells vessel for a reasonable price - And where judgment debtor or creditor conceives that the duty is breached - Remedy is not to seek rectification of bill of sale (H6)

ACTIONS - Discretionary reliefs - Denial - Where party has been denied the reliefs - On grounds other than grounds of his conduct - The question of his proper or improper behaviour is irrelevant (H7)

### **FACTS**

Plaintiff/respondent obtained judgment against defendants/appellants at the Federal High Court, Lagos. In execution of the judgment, the court ordered that a vessel “Leona 11”, which had earlier been arrested and detained, be sold by the Admiralty Marshal of the court. Thereafter, respondent informed the court that a buyer had been found who offered S600,000. However, appellants refused the offer as being too small claiming to have found another buyer with S1.5m on certain conditions. Court eventually ordered that Admiralty Marshal get a buyer within 2 weeks at whatever price and that whichever party objected to that price should provide an alternative buyer within one month. Subsequently, the court accepted an offer of S250,000 being the highest offer so far received by the Admiralty Marshal and ordered that the amount be paid to the court or directly to respondent.

However, due to difficulties encountered in securing a buyer with highest bid, the court on a certain adjourned date ordered the marshal to execute transfer of ownership of the vessel to either 2<sup>nd</sup> respondent (Integrated Oil and Gas Ltd) or Integrated Investment Ltd irrespective of the amount, whoever pays first. Pursuant to the court order, the marshal executed a deed of transfer in favour of 2<sup>nd</sup> respondent in consideration for S300,000. A bill of sale was subsequently executed in like terms. More than six months after, appellants applied to the court praying for rectification of the bill of sale to embody some new terms. The court granted the order as prayed. Dissatisfied, 2<sup>nd</sup> respondent appealed to the Court of Appeal, Lagos Division which unanimously allowed the appeal dismissing appellant’s claims. Appellants not being happy filed appeal at Supreme Court.

### **ISSUE FOR DETERMINATION**

*The appropriateness of the remedy of rectification sought by the defendants.*

**HELD**

(unanimously dismissing the appeal per

**AYOOLA JSC)***Documents - Mistakes - Rectification - Basis*

**1. Although rectification is in the realms of mistake, not every type of mistake can be relied on as ground for rectification of a written document. The nature of mistake and the consequence on contract of mistake are multifarious. Parties may be mistaken as to the terms of the contract, or as to the subject-matter of the contract; or, even as to identity of the contracting parties, to mention but a few. When contracts tainted by mistakes of such nature are reduced into writing, the remedy of an aggrieved party does not lie in rectification even though rectification in ordinary language is the correction of a mistake. When used in the context of equitable remedy, rectification is of written documents and is about correcting a mistake in recording what the maker or makers of the document had recorded.**

**The defect that is corrected by rectification is the defect in the recording of what the document was intended to record and not mistakes as to the terms agreed on or in forming an intention as to the transaction recorded. (p. 3457 A/H)**

*Documents - Rectification*

**2. A want of authority of a contracting party to agree to particular terms embodied in the written agreement is not cured by seeking to rectify the document to bring the terms in line with what is within the authority of the contracting party. It is an established rule that "court in equity do not rectify contracts; they may and do rectify instruments." The principle is that since equity rectifies instruments and not contracts, a document which accurately records a prior agreement or the intention of the maker cannot be rectified merely because the agreement was made under some mistake or because the intention was formed in error or because the maker had no authority to enter into the agreement in the first place.**

**From the nature of the equitable relief of rectification it fol-**

**lows that the proper questions to ask when the document to be rectified embodied the terms of a prior agreement are (i) whether there was a prior agreement; (ii) what the terms of the prior agreement were; and (iii) whether the document faithfully embodied the terms of such agreement.**

<sup>B</sup> (pp. 3457 H/3458 F)

*DOCUMENTS - Rectification - Right to apply for*

<sup>C</sup> **3. Whether the document sought to be rectified is a contractual document or non-contractual document, the objective of the party seeking rectification is to make the document accurately define the rights and obligations of persons who claim rights or are subject to obligations under it. A person who can neither claim rights under a written document nor be subjected to an**  
<sup>D</sup> **obligation under it is a stranger. He cannot seek to rectify the document.**

<sup>E</sup> **Learned counsel for the defendants conceded that where the equitable remedy of rectification applies to contractual documents only the parties to the contract are competent to seek rectification of the documents. That concession was contained in the original brief filed by the defendants where it was stated: “Nor is it disputed that in the case of such documents, (i.e. contractual documents), only the parties to**  
<sup>F</sup> **the contract are competent, as a general rule, to seek a rectification of the contract.” I have referred to the books of authority cited by him to show that rectification is not limited to contractual documents. Nothing in the passages from those books, however, shows that a stranger to a contractual docu-**  
<sup>G</sup> **ment can seek rectification of such documents or that a bill of sale, which is the type of document with which this matter is concerned, is anything but a contractual document. A bill of sale, like a deed of conveyance, is a contractual document in the sense that it is a more formal document made pursuant to**  
<sup>H</sup> **and giving effect to an antecedent agreement. (p. 3459 A)**

*Non contractual document - Rectification*

**4. Where the document is not a contractual document the court may enquire whether a party seeking its rectification has suf-**

***ficient interest to enable him invoke the jurisdiction of the court. Such are cases, for instance, where the person seeking rectification of a trust document is a beneficiary.***

***Learned counsel for the defendants based his argument against the opinion of the court below that the defendants lack competence, as I see it, on two grounds, namely: first, that the defendants being judgment debtors do have sufficient interest in the proceeds of sale of the vessel to support their standing to seek rectification of the bill of sale, and, secondly, that the bill of sale is not a contract but a conveyance.***

***I am inclined to hold, as the trial court in several passages in its ruling and the court below did, that the bill of sale is a contractual document. I do not see any basis on which the defendants can validly claim competence to seek its rectification. The court below came to a correct conclusion when it held that the defendants lacked competence to seek rectification of the bill of sale. (p. 3463 B)***

*ADMIRALTY - Vessel - Power of sale*

***5. It is evident that the Admiralty Marshall acting pursuant to the order of court to sell the vessel had the power to transfer the ship or share in the same manner and to the same extend as if he were the registered owner thereof: S. 322 Merchant Shipping Act (Cap. 224, Laws of the Federation, 1990). The instrument by which the transfer is effected and the sale is completed is the bill of sale. However, the judgment debtor is not a party to the sale. The price at which the Admiralty Marshall sells the vessel seized in execution in a purely judicial sale need not be subject to negotiation and agreement of the judgment debtor or even the judgment creditor. (p. 3463 D)***

*Admiralty Marshal - Duty of*

***6. Equating the position of the Admiralty Marshall to that of a sheriff who has seized goods in execution, I venture to think that the duty of the Admiralty Marshall is to sell the vessel for a reasonable price, or, not to conduct the sale as to prevent it fetching a reasonable price. Where the judgment debtor or the judgment creditor conceives that there may have been a***

***breach of that duty, the remedy is not in seeking rectification of the bill of sale.*** (p. 3463 G)

*ACTIONS - Discretionary reliefs - Denial*

***7. In my opinion, in a case such as this, in which the party seeking relief had been denied a discretionary relief on grounds other than grounds of his conduct, the question whether he was found to have behaved properly or improperly is irrelevant. In the result, even if the court below had erred in its view of the conduct of the defendants, that error would have had no consequence on the result of the appeal, since the operative reasoning of the court below was that the defendants lacked competence to seek a rectification of the bill of sale and that, in any event, there was nothing on record to show that the bill of sale was not in line with the agreement of the Admiralty Marshal with the buyers. In the result, even if the two last issues have been resolved in favour of the defendants that would have made no difference to the conclusion to be arrived at the appeal.*** (p. 3465 C)

## NOTABLE POINT OF INTEREST

### UWAIFO JSC

***1. It is undesirable to give absolute discretion to admiralty marshal in a judicial sale***

I do not think I ought to end this judgment without expressing my absolute disgust about the very unsatisfactory way the vessel was sold. Several offers appeared to have been taunted but nothing concrete was achieved. It is undesirable, in my view, to give a blank cheque to the Admiralty Marshal to sell a seized vessel for an amount at his discretion. The procedure of appraisal and sale should normally be adopted. It is fair to both the defendant who owns the property and the plaintiff who succeeds in an action in rem involving the property. If the plaintiff's claim is successful, it will be necessary to have the property sold by the court in order that the claim may be paid off out of the proceeds. In that case a commission for the appraisal of the property ought to be done. After the appraised value has been fixed, the court will then order that the property be

sold, normally by private treaty. The property must not be sold at a price less than the appraised value unless the court on the applications of the Admiralty Marshall gives leave to sell at a lower price. Surplus funds (if any) after payment of claim are paid over to the owner of the property. But where there are more than one claim against the property, the proceeds from sale are paid into a fund in court and all claims against the property are thereupon transferred to the fund. The fund will be disbursed only after the claims and their respective priorities have been adjudicated. See *The Westport* (1965) 2 All ER 167. It must be realised that if the proceeds from sale are insufficient to meet the indebtedness, the owner remains still liable for the balance. To sell under arbitrary procedure encourages unconscionable, if not entirely fraudulent bargains and this makes the judicial process which permits such procedure suspect. It is hoped that the experience in the present case is seen as the last. (p. 3470 B)

### **REPRESENTATION**

Chief E. Idowu with T. Williams, Esq & T. Alakoso, Esq, for Appellant L. N. Mbanefo, Esq, SAN with C. Ozoh, Esq., for the Respondents

### **CASS REFERRED TO**

*F. E. Rose London Ltd v. W. N. Prim Jnr. & Co Ltd* (1953) 2 QB 450  
*Ifeanyichukwu Osondu Ltd. v. Soleh Boneh Nig Ltd* (2000) 3 SC 42  
*Tucker v. Bennet* (1888) 38 ChD 1  
*Crane v Hegeman-Harris Co. Inc* (1939) 1 All ER 662  
*Re Segelman (deceased)* (1995) 3 All ER 676  
*The Westport* (1965) 2 All ER 167

### **STATUTES REFERRED TO**

Merchant Shipping Act (cap 224) LFN 1990, s. 322

### **BOOKS REFERRED TO**

Chitty on Contracts, 28th edition, vol. 1 para 19-66  
Halsbury's Law of England (vol. 16) 4th edition para 783  
Meagher et al on Equity Doctrines and Remedies, 3rd edition p. 671  
Snell on Equity, 30th edition pp. 700-701  
Spry on Equitable Remedies, 5th edition p. 609

**LEAD JUDGMENT BY AYOOLA JSC**

On Tuesday, 13th March, 2001, Belgore, CJ., sitting in the Federal High Court, holden at Lagos, made the following orders:-

B *“That the Bill of Sale relating to the Vessel M/T Leona II be rectified to bring out the order of the Court by deleting the expression ‘USD300,000 only paid to us’ where the words occur in the agreement and substituting therefore the expression- ‘USD300.00 and further sums to be paid to us in accordance with the terms of agreement dated 19<sup>th</sup> October, 1998 , a copy of which was annexed to the affidavit of one Captain Ihenacho deposed to on 2<sup>nd</sup> October, 1998, (sic) and filed in Court on the same date bringing the total sale price of Vessel Leona II to USD1,300,000.00.’*

D *2. That the vessel M/T Leona II should be re-arrested and detained by the Admiralty Marshall as security for the payment of the sum of \$400.00 owed in respect of instalments of the purchase price of the aforesaid Vessel by it pursuant to the order of the Court.*

E *3. That the Vessel Leona II be sold by the Admiralty Marshall in the event of the Respondent failing to pay the sum of \$400,000 at once and further instalments due until the final balance of the total \$1,300,000 being the sale price of the vessel is liquidated.”*

F Integrated Oil and Gas Ltd., (“the buyers”), which had purchased the Vessel Leona II, (“the vessel”), being dissatisfied with the order appealed to the Court of Appeal. The Court on 16<sup>th</sup> July, 2001, set aside the orders made by the learned Chief Judge and ordered that the vessel be released to the buyers. The Vessel Leona II and Owners of the Vessel Leona II (“the defendants”) have appealed to this court from the judgment of the Court of Appeal. The respondents to the appeal are First Fuels Ltd., (“the plaintiff”), and G the buyers.

H In July 1997, judgment was given in favour of the plaintiff. In execution of the judgment, the Federal High Court on 7<sup>th</sup> August, 1997, ordered that the vessel which had earlier been arrested and detained be sold by the Admiralty Marshall who was the Chief Registrar of the Federal High Court. Therefore followed negotiations and orders for the sale of the vessel. There was indeed a lot of going to and fro, somewhat difficult to put together. The course of events seems to have been as follows:-

1. On 26<sup>th</sup> January, 1998, counsel for the plaintiff told the



court that the plaintiff and the defendants have found a buyer who offered \$600,000 for the vessel. The defendants regarded the offer too small and claimed to have found a new buyer for \$1.5 million on certain conditions which the plaintiff rejected. Counsel for the plaintiff reported that the parties have agreed that the Admiralty Marshall be ordered to sell the ship 'in a normal way' on condition that "both parties agree to the price before sale and whichever parties disagrees (sic) must provide a buyer with a higher price with a specific time of two weeks for refusal." The defendants confirmed the agreement with a request only that four weeks should be allowed instead of two weeks within which to get a buyer. The trial court made an order in the following terms:

".....that the Admiralty Marshall of the court will look for a buyer within two weeks from today's date and get the views of the two parties within two weeks of his finding a buyer with a price whichever of a party does not agree with the price must provide a new buyer with a higher price within one month from today's date".

2. On 2<sup>nd</sup> March, 1998, a report was made to the court that no buyer was found.

3. The matter came before the trial court on 16<sup>th</sup> March, 1998, when Mr. Williams, counsel for the defendants, reported to that court that "we are at the advance stage of negotiation"; and, on 7<sup>th</sup> July, 1998, when the court noted that: "The Admiralty Marshall had not filed anything in the court's file or reported anything to the court".

4. Then followed the proceedings on 13<sup>th</sup> July, 1998, when the Chief Judge said: "I accepted the offer of \$250,000 found by the Admiralty Marshal of the court as the price of the Vessel Leona." He ordered that: "The Admiralty Marshall should pay the money to the court or directly to the plaintiff and accept a receipt from the plaintiff for the said amount." The case was then adjourned to 19<sup>th</sup> October, 1998, for mention.

5. On 19<sup>th</sup> October, 1998, the learned Chief Judge announced that there was before the court a report of Admiralty Marshall dated 14<sup>th</sup> October, 1998, reporting that "the original buyer for \$250,000 could not be found but someone had offered \$350,000." The Chief Judge then made another order that: ".....the vessel should be sold to whoever pays to the Admiralty Marshall of the court or to the plaintiff a sum of N350,000 or above within 12 days of this order;

that is, on or before 30<sup>th</sup> October, 1998.”

6. Apparently, on 2<sup>nd</sup> November, 1998, there were a “Further and Better Affidavit and a “Second Further Affidavit”, respectively sworn by one Laitan Adesanya, who described himself as the “duly appointed representatives of the owners of the Vessel Leona II,” and one Captain Ihenacho, who described himself as “the duly appointed Attorney of Integrated Oil and Gas Ltd.” and filed by the defendants.

7. On 2<sup>nd</sup> November, 1998, the date to which the matter had been adjourned, counsel for the plaintiff, Mr. Razaq, SAN, announced to the court that: “On 21<sup>st</sup> October, a buyer paid \$500.000.” The learned Chief Judge retorted, rightly, I think, that:

*“The Admiralty Marshall is not aware of this and he is being put in an impossible position if he had accepted an earlier offer.” To counter Mr. Razaq’s announcement, Mr. T. E. Williams told the court that: “We have put an offer of \$11.5m (sic: \$1.5?) and have paid \$505,000 to the Admiralty Marshall and the \$1m will be paid over the period of 15 months.” Mr. Razaq not having got the “new terms” the case was adjourned to 9<sup>th</sup> November, 1998, “to enable the plaintiff to study the new proposal and make his reaction known”.*

8. Apparently, on being apprised of the “new terms” which, apparently, were contained in the affidavits referred to in (6) above and the attachment thereto, the plaintiff filed an affidavit sworn by one Abdullahi Akanbi, litigation assistant in the Chambers of Alhaji Razaq & Co., on the authority of the plaintiff, which, in substance, was a rejection by the plaintiff of the “new terms” put forward by the defendants for the sale of the vessel.

9. That was the position when, after successive adjournments, the matter came before the trial court on 7<sup>th</sup> December, 1998, and that court made an order as follows:-

*“The Admiralty Marshall of the court is ordered to execute Transfer of ownership of the vessel ‘Leona’ to either Integrate (sic) Oil and Gas Ltd., Integrated (sic) Investment Ltd., irrespective of the amount anyone of them might paid, which of the cheques first come through.*

*The issue of how the balance of the judgment debt is to be paid, particularly the claims of settlement filed if the vessel is sold to the party who filed (sic) is adjourned to 25<sup>th</sup> January, 1999’.*

10. On 25<sup>th</sup> January, 1999, the matter was further adjourned

to 8<sup>th</sup> February, 1999. The record of appeal showed that on 8<sup>th</sup> February, 1999, Alhaji A. G. F. Abdul, (sic: Abdul Razaq), SAN, appeared for the plaintiff and A. O. Williams Esq, for the defendant, Mr. Razaq referred to the order of 7<sup>th</sup> December, 1998, and wanted to know to whom the vessel was sold and asked that the money be paid to the plaintiff. The record shows that the Admiralty Marshall was “called to the court who conferred (sic confirmed?) that was (sic) the vessel was US \$300,000” and that “the amount is First Bank Nigeria (sic). The court then ordered as follows:

*“The Three Hundred Thousand US Dollars \$3000,000, being the value of the vessel should be paid to the plaintiff by the Admiralty (sic) of the court,”* (Emphasis mine)

Pursuant to the order of the court made on 7<sup>th</sup> December, 1998, the Admiralty Marshall executed a deed of transfer dated 9<sup>th</sup> December, 1998, “in consideration of the sum of \$300,000 (Three Hundred Thousand Dollars), paid by INTEGRATED OIL AND GAS LIMITED” and a Bill of Sale dated 10<sup>th</sup> December, 1998, issued in like terms. More than six months after the deed of transfer was executed and the bill of sale issued, the defendants applied to the court for an order that the buyers do show cause why

*“1. The Bill of Sale relating to the vessel M/T LEONA II should not be rectified by deleting the expression USD 300,000 ONLY paid to us’ where those words occur and substituting therefor the expression -USD300,000 AND FURTHER SUMS to be paid to us in accordance with the terms of the Agreement dated 19.10.98 a copy of which was annexed to the Affidavit of one Captain Ihenacho deposed to on 2.11.98.’*

*ii. The vessel M/T LEONA II should not be re-arrested and detained by the Admiralty Marshall as security for the payment of the sum of \$400,000 owed in respect of installments of the purchase price of the aforesaid vessel by it pursuant to the order of This Honourable Court;*

*iii. This Honourable Court should not direct that the said vessel shall be sold by the Admiralty Marshall in the event of the Respondent failing to pay the said sum or any further installment due and payable by it in respect of the aforementioned instalments of the said purchase price;*

*iv. Such further or other orders be not made by this Honourable*

*Court relating to or connected with the liability of the Respondent to pay the purchase price of the aforesaid vessel in full.”*

The Federal High Court granted the order in terms as prayed. The learned Chief Judge reasoned that pursuant to the order of the court made on 19<sup>th</sup> October, 1998, the buyers agreed on 19<sup>th</sup> October, 1998, to purchase the vessel for a sum of \$1,300,000 and that this complied with that order “in that the purchase was done before 30<sup>th</sup> October, 1998, for the sum of \$1,300,000 which was above \$350,000 as also ordered by the court”. He buttressed this view by referring to what he described a deed of sale made on 19<sup>th</sup> October, 1998, and filed in court on 2<sup>nd</sup> November, 1998. His interpretation of the order of 7<sup>th</sup> December, 1998, was that the vessel could be sold to either of the two bidders, the buyer or Interglobal Investment, “*whichever cheque of the two got cleared first.*” It is not quite clear from the record how Interglobal Investment Ltd., came into the matter and how much it offered. He held that: “*by 9<sup>th</sup> December, 1998, when the Admiralty Marshall transferred the ownership of the Leona II to the buyer, Interglobal Investment Ltd’s cheque did not come through before that of Integrated Oil and Gas Ltd., the only valid buyer would be Integrated Oil and Gas Ltd. and the only price offered would be US\$1,300,000 which is the only price upon which the vessel could be transferred to the buyer. That was the highest offer and that was the higher offer filed in the court.*”

The learned Chief Judge was, inter alia, of the following opinion: any transfer not in tune with the condition in the order of 7<sup>th</sup> December, 1998, was contrary to the order of the court and was wrong and invalid; the initial order of sale made on 7<sup>th</sup> August, 1997, excluded sale by the Admiralty Marshall; the order made on 26<sup>th</sup> January, 1998, showed that “at no time was the sale of the vessel placed exclusively on the Admiralty Marshall”, “the Admiralty Marshall signed the agreement contrary to the expressed order of the court while Integrated Oil and Gas Ltd., signed it in breach of an earlier agreement he had earlier entered into as to the price he was to pay for the purchase of this vessel”; an agreement under such circumstances as above narrated is at best voidable “unless ratified (sic) to be in line with the order of the court and the earlier agreement signed by the parties.”; and, the agreement entered into by the Admiralty Marshall and the buyers was without authority.

Allowing the appeal of the buyers, the Court of Appeal, in a leading judgment delivered by Oguntade, JCA, with which Galadima and Chukwumah-Eneh, JJCA., agreed, noted the uncontested facts: first, that the sale of the vessel was a judicial sale by the Admiralty Marshall who needed to act on the direction of the court; secondly, that it had not been easy to get a buyer for the vessel, explaining the reason why in July, 1998 the court had been willing to accept \$250,000 as purchase price for the vessel, shifting to \$350,000 in October, 1998, and finally to sale to the buyers or “Integrated (sic: Interglobal) Investment Ltd., “whichever of the two paid first and irrespective, the amount anyone of them might paid’ (sic)””; thirdly, that the sale was concluded and sealed by court upon report of the Admiralty Marshall that \$300,000 had been received as the purchase price of the vessel, counsel for plaintiff and defendants being then present in court.

After enumerating these unchallenged facts, Oguntade, JCA, referred to the orders made by the learned Chief Judge, respectively, on 7<sup>th</sup> December, 1998, and on 14<sup>th</sup> December, 1998, confirming that the buyers’ cheque had been cleared and transfer of ownership executed and consequently ordering a release from detention of the vessel. The unanimous view of the court below was that the sale of the vessel was between the Admiralty Marshall and the buyers; and, that the sale to the buyer was “absolute and not tied to any condition as to fulfillment of an agreement made between it and Alpha Marine Services Ltd.” That court held, inaccurately, I think, that the agreement made between Alpha Marine Services Ltd., and the buyers and Capt. Ihenacho’s affidavit were not before the lower court on 7<sup>th</sup> December, 1998, and could not have formed part of the material considered by the Chief Judge in coming to a decision that the vessel be sold to the buyer for \$300,000.

The Court below further held (i) that “it was never in the contemplation of the parties to the case that the power to sell the vessel was in Alpha Marine Service who were in fact in judgment debtors from whom the vessel was seized”; (ii) that the defendants not being parties to the bill of sale were not competent to bring an application for rectification; (iii) that in the guise of enforcing an earlier order of court, the lower court was in fact enforcing a private agreement between the defendants and the buyers. These appear to me to be main reasons why the court below had considered the buyers appeal

meritorious.

On this appeal, the core of the defendants case is that the approach of the court below was erroneous in that it did not ask, as it should have, when considering whether or not the defendants have the necessary standing to seek rectification of the bill of sale, whether or not the defendants have sufficient interest in ensuring that the correct purchase price is reflected in the Bill of sale. It was argued that the court below ask a wrong and irrelevant question, namely: whether or not the defendants were parties to the bill of sale. It was contended that had the court below asked the correct question, it would have found that the defendants, being judgment debtors had sufficient interest in the proceeds of the sale of the vessel to support their standing to invoke the jurisdiction of the trial court for rectification. In a supplemental brief at a later stage of the proceeding, counsel on behalf of the defendants expanded the scope of the defendants' case when they raised issues of unjust enrichment and fraud. I think it is proper to say, straightaway, that those issues are irrelevant to the question whether an instrument should be rectified or not. Besides, they were not issued raised at the trial and in the court below.

Learned counsel for the defendants in challenging the opinion of the court below that the equitable remedy of rectification is not available to the defendant because they were not parties to the bill of sale, argued that the remedy of rectification is not limited to contractual documents but includes "the rectification of a Bill of sale which incidentally is not a contract but a conveyance". Lengthy passages were cited from several books of authority such as Spry on Equitable Remedies, 5<sup>th</sup> Ed. 1997. p. 609; Snell on Equity, 30<sup>th</sup> ed 2000 at pp. 700-701, and Meagher et al on Equity Doctrines and Remedies, 3<sup>rd</sup> ed. (1993) 671, all with the purpose of buttressing the argument that non-contractual documents can be subject of rectification.

There were contentions on some minor issues such as, whether the court below was correct in law in relying upon the drawn order dated 14:12:98 which, it was argued, was invalid because the trial court did not sit on that day and the parties did not ask for the order; and, whether the court below was right in its view that the transaction carried out by the Alpha Marine Services was calculated to make nonsense of the adjudicatory system, to deceive the court and to make an under-the-table profit for itself. However, it is clear that the

central and main question is in regard to the competence of the defendants to seek a rectification of the bill of sale.

**Although rectification is in the realms of mistake, not every type of mistake can be relied on as ground for rectification of a written document. The nature of mistake and the consequence on contract of mistake are multifarious. Parties may be mistaken as to the terms of the contract, or as to the subject-matter of the contract; or, even as to identity of the contracting parties, to mention but a few. When contracts tainted by mistakes of such nature are reduced into writing, the remedy of an aggrieved party does not lie in rectification even though rectification in ordinary language is the correction of a mistake. When used in the context of equitable remedy, rectification is of written documents and is about correcting a mistake in recording what the maker or makers of the document had recorded.** It was in this contract that Romilly, MR, said in *Murray v Parker* (1854) 19 Beav 305, 308:

*“In matters of mistake the court undoubtedly has jurisdiction, and though this jurisdiction is to be exercised with great caution and care still it is to be exercised, in all cases, where a deed as executed is not according to the real agreement between the parties.”*

Warrington, LJ., in *Craddock Brothers v. Hunt* (1923) 2 ChD 136 at 159 described the jurisdiction of Courts of equity to rectify documents in the following terms:

*“The jurisdiction of Courts of equity in this respect is to bring the written document executed in pursuance of an antecedent agreement into conformity with that agreement. The conditions to that exercise are that there must be an antecedent contract and the common intention of embodying or giving effect to the whole of that contract by the writing, and there must be clear evidence that the document by common mistake failed to embody such contract and either contained provisions not agreed upon or omitted something that was agreed upon, or otherwise departed from the terms.”*

**The defect that is corrected by rectification is the defect in the recording of what the document was intended to record and not mistakes as to the terms agreed on or in forming an intention as to the transaction recorded.**

**A want of authority of a contracting party to agree to**

**particular terms embodied in the written agreement is not cured by seeking to rectify the document to bring the terms in line with what is within the authority of the contracting party. It is an established rule that “court in equity do not rectify contracts; they may and do rectify instruments.”** (see Mackenzie v. Coulson (1869) LR 8 Eq 369, 375. **The principle is that since equity rectifies instruments and not contracts, a document which accurately records a prior agreement or the intention of the maker cannot be rectified merely because the agreement was made under some mistake or because the intention was formed in error or because the maker had no authority to enter into the agreement in the first place.** As to agreement made under the principle is well illustrated by the case of F. E. Rose (London) Ltd. v. W. N. Prim Jnr. & Co. Ltd. (1953) 2 QB 450. In that case, the plaintiff orally agreed to buy from the defendant and the defendant orally agreed to sell to the plaintiff “horsebeans”. When the contract was reduced into writing the goods were described as “horsebeans.” There were there types of “horsebeans”: feves, feveroles and fevettes. It turned out that the defendant had supplied to the plaintiffs feves which were less valuable than feveroles. Prior to the transaction, the plaintiffs, which had received an order for the supply of “Moroccan horsebeans described here as feveroles”, had asked from the defendants what “feveroles” were and had been told by the defendants that they were just horsebeans. The plaintiff applied for a rectification of the document by inserting “feveroles” after “horsebeans”. It was held that the document could not be rectified since it accurately recorded the previous oral agreement.

**From the nature of the equitable relief of rectification it follows that the proper questions to ask when the document to be rectified embodied the terms of a prior agreement are (i) whether there was a prior agreement; (ii) what the terms of the prior agreement were; and (iii) whether the document faithfully embodied the terms of such agreement.** When the document to be rectified is a document other than one embodying the terms of a contract, an error in the document can be rectified provided the error or omission was one in expressing the manifest intention of the maker. That the decision or manifest intention of the maker had been influenced by misrepresentation, mistake or fraud



or tainted by want of authority, is not a valid ground for the remedy or rectification of a document which accurately records the maker's intention or decision.

***Whether the document sought to be rectified is a contractual document or non-contractual document, the objective of the party seeking rectification is to make the document accurately define the rights and obligations of persons who claim rights or are subject to obligations under it. A person who can neither claim rights under a written document nor be subjected to an obligation under it is a stranger. He cannot seek to rectify the document.***

***Learned counsel for the defendants conceded that where the equitable remedy of rectification applies to contractual documents only the parties to the contract are competent to seek rectification of the documents. That concession was contained in the original brief filed by the defendants where it was stated: "Nor is it disputed that in the case of such documents, (i.e., contractual documents), only the parties to the contract are competent, as a general rule, to seek a rectification of the contract." I have referred to the books of authority cited by him to show that rectification is not limited to contractual documents. Nothing in the passages from those books, however, shows that a stranger to a contractual document can seek rectification of such documents or that a bill of sale, which is the type of document with which this matter is concerned, is anything but a contractual document. A bill of sale, like a deed of conveyance, is a contractual document in the sense that it is a more formal document made pursuant to and giving effect to an antecedent agreement.***

In this case, there was, apart from the bill of sale, a deed of transfer whereby the Admiralty Marshall had in consideration of the sum of \$300,000 paid by INTEGRATED OIL AND GAS LIMITED transferred all the shares in the vessel to the said company. By the same document the Admiralty Marshall covenanted with the buyer that "*I have power to make the above transfer and I HEREBY CERTIFY that the effect in Nigerian Law of this Judicial Sale is that the ship above particularly described has been freed from all liens and encumbrances whatsoever up to the 9th day of December, One Thou-*

*sand Nine Hundred and Eighty-eight.*” The bill of sale by which the sale was completed was a more formal instrument in like terms.

The transaction of sale culminating in the deed of transfer and the bill of sale was between the Admiralty Marshall and the buyers. The defendants were not parties to the transaction, notwithstanding  
 B that the sale was in respect of properties seized in execution to satisfy the defendants’ indebtedness to the plaintiff. It was on the footing that the bill of sale sought to be rectified was a contractual document that the court below held that the defendants not being parties to the  
 C transaction were not competent to seek its rectification.

Notwithstanding the view taken by the court below of the contractual nature of the bill of sale, learned counsel for the defendants proceeded to argue that the correct approach was for the court below to have asked whether or not the defendants have sufficient interest  
 D in ensuring that the correct purchase price is reflected in the bill of sale. Furthermore, authorities were brought to the notice of the court by counsel on behalf of the defendants, after close of oral arguments, to buttress the argument advanced that the defendants, though not party to the bill of sale were competent to seek its rectification.

Ordinarily, where a document is a contractual document the competence of a party to seek its rectification must be determined within the privity rule and not on the basis of a benefit that a stranger may derive from the contract. The law is clear that, as a general rule,  
 E a contract cannot confer rights or impose obligations on any person  
 F except the parties to it or, as an exception to the general rule, a person on whom such parties confer a benefit who is to be distinguished from a person who may benefit from the contract. That a person may benefit from the performance of a contract does not alone give  
 G him a right to enforce the contract. However, counsel for the defendants have argued that there are exceptions to the general rule and that this case falls within the exception. They cited authorities, which shall presently be considered, to support propositions they canvassed as follows: *Craddock Brothers v. Hunt* (1923) 2 Ch 136,  
 H (Rectification may be ordered against a 3<sup>rd</sup> Party purchaser with notice); *Thompson v. Whitmore* (1843-60) All ER 698, (A volunteer (3<sup>rd</sup> Party) beneficiary can seek rectification of a settlement); *Smith v Liffie* (1875) LR 20 & 666 (The courts can rectify a contract made in pursuance of a court’s order); *Andersfield Banking Coy. v. Henry*

(1895) 2 Ch. 273. They also referred to a passage in Halsbury's Law of England (Vol. 16) 4<sup>th</sup> Edition para. 783 as follows:

*"The doctrine of trust applies also to contracts; and, where equity can spell out a contract made between A and B for the benefit of C, the construction that B intended to contract as trustee for C, even though nothing was said about any trust in the contract, C is a beneficiary under the contract and is allowed in equity to enforce it."* B

A proper understanding of the principle stated above would show that it does not admit of such wide application as counsel for the defendants would want to make it. The principle is hedged by qualifications. Footnote 1 to paragraph 783 of the work cited contained one such qualification as follows: C

*"The contract must, however, show a clear intention to create a trust in favour of a third party. It is not legitimate to import into contract the idea of a trust when the parties have given no indication that such was their intention: Re Schebsman, ex p Official Receiver, Trustee v Cargo superintendents (London) Ltd. and Schebsman (1994) Ch 83 at 89, (1943) 1 All ER 768 at 770."* D

In similar vein in Chitty on Contracts, 28<sup>th</sup> edition, Volume, 1, para. 19-066 is the statement that a promise will be regarded as trustee for the third party unless he has the intention to create a trust. E

Craddock Brothers v Hunt (supra) does not support the proposition for which it was cited by counsel for the defendants. That was not a case for rectification nor was it a case in which rectification was sought of an instrument to which the plaintiff was not a party. F Rather, the case was for a declaration that the defendant to whom land sold to the plaintiffs had, to the defendant's knowledge, been conveyed in error, should convey the same to the plaintiffs. The parties in that case had bought land from common vendors who were not parties to the suit. The land sold to the plaintiffs was in error described in the conveyance executed by the common vendors as excluding the land mistakenly conveyed to the defendant. As between the plaintiffs and the common vendors there was no dispute that instrument should be rectified to reflect the correct position. Lord Sterndale, MR. noted that fact and proceeded as follows, at p. 152 of the Report: G H

*"...the plaintiffs are entitled as against the vendors to rectification of both the contract and the conveyance and have as against them a*

*good title to the brown land...It now remains to consider the difficult question whether the plaintiffs have any and what rights as against the defendant. In order to decide this question it is necessary first to ascertain the facts as regards the defendant. It is clear, I think, that the contract between him and the vendors must be treated as subsisting.*

*B I do not think it necessary to discuss the question whether the vendors in a properly constituted action brought by them could or could not rectify that contract; I see considerable difficulties in the way of such an action, but I do not decide that they could not be overcome. This, however, is immaterial, for it is quite clear that the contract cannot be*  
*C rectified in the action at the instance of the plaintiffs and in the absence of the vendors.” (underlining mine)*

The words which I have emphasized by underlining in the above passage show that rather than supporting the case of the defendants  
 D on this appeal, *Craddock Brothers v. Hunt* (supra) is against the proposition on which they relied. If that case is to be of any use to the defendants it is probably in the guidance it may offer them as to the versatility of equity to fashion out remedies. *Thompson v Whitmore* (supra) was about the right of volunteer under settlement to have  
 E error rectified. What that case decided as contained in the head-notes was that: “*A volunteer under a settlement declaring the trust of property placed in the hands of trustees is entitled to file a bill stating that the trust has erroneously declared the intention of the parties, and,*  
 F *on making out his case, to have the error rectified, even though the effect of the error would be to carry back the fund to the original settler.”* It is manifest that *Thompson v Whitmore* (supra) falls within established equitable exceptions to the doctrine of privity of contract. There is no need to go into the facts of that case other than that the  
 G case related to marriage settlements and that the plaintiff in the case was the executor of a person who was within the marriage consideration. It seems evident to me that the principles of that case are not applicable to the present case at all.

In *Smith v. Liffe* (supra) what was involved was a marriage  
 H settlement the terms of which were settled by Mrs. Smiths’ mother and her advisers without reference to herself when she was under twenty-one and did not understand that she was to be deprived of the control of her own property in the event of her becoming a widow and childless. The case concerned the power of the court to rectify

the settlement. It was held that she was entitled to have the settlement rectified to bring it in line with what must have been her intention. The case does not bear any similarity to the present case in which the property in question was properly in custodia legis over which the court had and exercised power of disposal.

***Where the document is not a contractual document the court may enquire whether a party seeking its rectification has sufficient interest to enable him invoke the jurisdiction of the court. Such are cases, for instance, where the person seeking rectification of a trust document is a beneficiary.*** B

***Learned counsel for the defendants based his argument against the opinion of the court below that the defendants lack competence, as I see it, on two grounds, namely: first, that the defendants being judgment debtors do have sufficient interest in the proceeds of sale of the vessel to support their standing to seek rectification of the bill of sale, and, secondly, that the bill of sale is not a contract but a conveyance.*** C

***It is evident that the Admiralty Marshall acting pursuant to the order of court to sell the vessel had the power to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof: S. 322 Merchant Shipping Act (Cap. 224, Laws of the Federation, 1990). The instrument by which the transfer is effected and the sale is completed is the bill of sale. However, the judgment debtor is not a party to the sale. The price at which the Admiralty Marshall sells the vessel seized in execution in a purely judicial sale need not be subject to negotiation and agreement of the judgment debtor or even the judgment creditor.*** D

***Equating the position of the Admiralty Marshall to that of a sheriff who has seized goods in execution, I venture to think that the duty of the Admiralty Marshall is to sell the vessel for a reasonable price, or, not to conduct the sale as to prevent it fetching a reasonable price. Where the judgment debtor or the judgment creditor conceives that there may have been a breach of that duty, the remedy is not in seeking rectification of the bill of sale.*** E

***I am inclined to hold, as the trial court in several passages in its ruling and the court below did, that the bill of sale*** F

**is a contractual document. I do not see any basis on which the defendants can validly claim competence to seek its rectification. The court below came to a correct conclusion when it held that the defendants lacked competence to seek rectification of the bill of sale.**

B The conclusion that the defendants had no standing to seek a rectification of the bill of sale should dispose of the appeal. However, the defendants raised two further issues which though, in my opinion, are rather inconsequential, will be briefly considered. These are: (1) the defendants' third issue, "*Whether the court below was correct in law in relying upon the drawn up order dated 14.12.98*", and (2) the defendants' fourth issue, "whether there is any evidence whatsoever capable of supporting the conclusion of the Court of Appeal that the transaction carried out by Alpha Marine Services was calculated 'to make a nonsense of the adjudicatory system', to deceive the court and the plaintiff and to 'make an under-the-table profit for itself'". It is rather surprising that the defendant left the substance of the reasoning of the Court of Appeal that led to its decision and made issues of the inconsequential frills. Apart from the question of competence of the defendants to seek rectification of the bill of sale, the court below rejected the interpretation by Belgore, CJ., of the orders made by him on 19<sup>th</sup> October, 1998, and 7<sup>th</sup> December, 1999. It held that: "*Nothing in the record indicated that the Admiralty Marshall at any time negotiated with the appellants (i.e. the buyers) to sell the vessel for more than \$300,000*", that the defendant did not object when the Admiralty Marshall informed the court that the vessel was sold for \$300,000 even though their counsel was then present in court, and relying on *The Jarvis Brake* (1976) 2 Lloyd's LR 320, 321, that it was contempt for the defendants to attempt to sell that ship themselves. These were significant findings which had nothing to do with the relatively threshold issue of competence of the defendants to seek rectification. None of these views was challenged.

H The order of 14<sup>th</sup> December, 1998, which was the subject of the defendants' 3<sup>rd</sup> issue was consequent on the clearing of the cheque of the buyers and the transfer of the vessel by the Admiralty Marshall to the buyers. It was issued to direct the release of the vessel to the buyers after everything that should be done had been done to vest title in the vessel in the buyers. I fail to see the relevance of this order

to the question whether or not there should be a rectification of the bill of sale. The issue before the trial court and the court below was not whether the vessel was improperly released or not. Whether the order of 14<sup>th</sup> December, 1998, was valid or not is immaterial.

In regard to the 4<sup>th</sup> issue, this court was invited to hold that the transaction carried out by Alpha Marine Services, contrary to the opinion of the court below, was not “calculated ‘to make nonsense of the adjudicatory system’, to deceive the court and the plaintiff and ‘to take an under-the-table profit for itself.’” Whether there were facts from which the court below could come to that conclusion or not is of little moment in this appeal. ***In my opinion, in a case such as this, in which the party seeking relief had been denied a discretionary relief on grounds other than grounds of his conduct, the question whether he was found to have behaved properly or improperly is irrelevant. In the result, even if the court below had erred in its view of the conduct of the defendants, that error would have had no consequence on the result of the appeal, since the operative reasoning of the court below was that the defendants lacked competence to seek a rectification of the bill of sale and that, in any event, there was nothing on record to show that the bill of sale was not in line with the agreement of the Admiralty Marshall with the buyers. In the result, even if the two last issues have been resolved in favour of the defendants that would have made no difference to the conclusion to be arrived at the appeal.*** “In the case of Ifeanyichukwu (Osondu) Co. Ltd. v . Soleh Boneh (Nig.) Ltd. (2000) 3 S.C. 42; (2000) SCNJ 18 this court re-asserted the view that the success of a party on an issue raised by him does not necessarily lead to success in the appeal. That would have been the position here even if the two issues have been resolved in favour of the defendants.

Enough has been said to dispose of this appeal. For the reasons which I have stated, I would resolve the first and second issues raised by defendants against them and hold that the third and fourth issues are inconsequential. I would therefore dismiss defendants’ appeal.

There are aspects of the matter which would have justified further comments and which may be considered puzzling had the issues dictated by the remedy claimed not been narrow. It needs to be noted, however, that it is not evident from the record that at the time

when the Admiralty Marshall negotiated a sale of the vessel to the buyers, the buyers were still willing to pay US\$1,300,000 for it with the question of the disputed ownership of the vessel unresolved and in a transaction concluded by the bill of sale devoid of the several terms favourable to the buyers and protective of their interest contained  
 B in the agreement referred to as Exhibit LA/3. Furthermore, in the affidavit sworn on 2<sup>nd</sup>, November, 1998, on behalf of Integrated Oil and Gas Ltd., the offer made by that company to pay \$1,000,000 by instalments as stated in the document Exhibit LA/3 was to the  
 C plaintiff which rejected it, as the affidavit sworn by Abdullatif Akanbi on 6<sup>th</sup> November, 1998, showed, and not to the defendants. These were the circumstances which, taken together, made it appear rather incongruous that by the order of rectification he made the learned Chief Judge appeared to be incorporating into his order terms which  
 D did not arise from any agreement between the plaintiffs which instigated the judicial sale of the vessel, in execution, and the buyers. The court below, in these circumstances, was right when it held that: “*Nothing on the record indicated that the Admiralty Marshall at any time negotiated with the appellant (the buyers) to sell the vessel to it*  
 E *for more than \$300,000.*”

It may well be that in future if the occasion arises, the question whether the Admiralty Marshall in conducting a purely judicial sale in execution of a judgment debt could enter into terms as to installment  
 F payment of the price of the goods seized and sold will be determined. That question does not arise in this appeal, nor is this appeal an occasion to comment on or conjecture what rights, if any, the defendants may have against the buyers. It is prudent not to say more than is necessary for the determination of this appeal, other than that if the view of  
 G learned Chief Judge, expressed in several parts of his ruling, that the Admiralty Marshall signed the agreement contrary to the order of the court and that the Admiralty Marshall had no authority to enter in an agreement of the sale of the vessel at US\$300,000, is correct, then the remedy is not to be found in an order of rectification. It is to be  
 H understood and emphasised that this appeal is determined on the appropriateness of the remedy of rectification sought by defendants.

As I have said, on the issue argued and for the reasons which I have stated before the above comments, there is no substance in this appeal. In the result, I dismiss the appeal with N10,000.00 costs to



the Integrated Oil and Gas Ltd., the respondent in this appeal.

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**UWAIS CJN**

I have had the opportunity of reading in draft the judgment read by my learned brother, Ayoola, JSC. I entirely agree.

Accordingly, I too hereby dismiss the appeal with N10,000.00 B costs to the Respondent/Respondent.

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**OGUNDARE JSC**

I have read in advance the judgment of my learned brother, Ayoola, JSC. I agree entirely with his reasoning and conclusion. C

My learned brother has set out the facts in full and has considered all the arguments advanced by the parties in this case. I agree entirely with him that if the Appellant has any cause or causes of action at all, it is certainly not for the rectification of the bill of sale in this matter. The sale agreement between the Admiralty Marshall and the Respondent resulting in the bill of sale appeared not to have been the result of any mistake in what those two agreed upon. That being so, there could be no cause for rectification. All the authorities referred to us by learned counsel for the Appellants are agreed that for an action for rectification to succeed, it must be as a result of a mistake to record in the final agreement what the parties actually agreed upon. It may be, as found by the learned trial Chief Judge, that the Admiralty Marshall acted contrary to the order of Court. It may also be that the Respondent knew, as submitted by the Appellants that the ship was more in value than what eventually the Respondent paid. All these may ground a cause or causes of action but not an action for rectification. E F

For the reasons given, therefore, by my learned brother, in his judgment, I too have no hesitation in dismissing this appeal. I do not think it is necessary for me to comment on the subsidiary issues raised. I dismiss this appeal and abide by the consequential orders including the order as to costs, made by my learned brother, Ayoola, JSC. G

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**MOHAMMED JSC**

I have had the preview of the judgment of my learned brother, Ayoola, JSC., in draft, and I agree with him that this appeal has failed. For the reasons given in that judgment I hereby dismiss this appeal. I H

award N10,000.00 to Integrated Oil and Gas Limited being the respondents in this appeal.

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**UWAIFO JSC**

B I have had the opportunity to read in advance the judgment of my learned brother, Ayoola, JSC. It has fully dealt with the main issue namely, when rectification may be appropriate. I agree with the reasoning and conclusions.

C The main problem of the appellants in this case is that they seem to have relied on the alleged agreement between Alpha Marine Services and Integrated Oil and Gas Limited, wherein the amount of \$1,300,000 was agreed for the vessel, to seek to rectify the Bill of Sale for \$300,000 which emanated from the Admiralty Marshall's exercise of his power of sale under court order. It has been shown D that Alpha Marine Services had no right of sale. Even if it did, the alleged agreement has no bearing with the subsequent contract of sale made between the Admiralty Marshall and Integrated Oil and Gas Limited. It follows that the action brought by the appellants, (owners of the vessel), against Integrated Oil and Gas Limited to E compel it, in essence, to be bound by the alleged agreement between it and Alpha Marine Services for the price of \$1,300,000 for the vessel by way of substituting this figure for the amount the Admiralty Marshall sold the vessel is very curious.

F It is in this sense that the action has been brought to seek rectification of the amount of sale by the Admiralty Marshall. The misconception involved is complex. First, as I have already said, Alpha Marine Services had no right of sale. It could not, therefore, be seen to arrange a price for a vessel in respect of which it could not transfer G title. Even though it may seem that Integrated Oil and Gas Limited was prepared to pay the said price of \$1,300,000, it does not appear it could be held bound by it in an arrangement from which it could not possibly get in return the item of the purported arrangement, namely the vessel in question. Second, the Admiralty Marshall acted H to sell the vessel independently of the so-called agreement between Alpha Marine Services and Integrated Oil and Gas Limited. In fact, there is nothing conclusive that it was drawn to his attention and direction to be accordingly guided by it in concluding a sale. It follows that it cannot be reasonably expected or argued that the price stated

in that agreement ought to be made to harmonize with the price stated in that agreement ought to be made to harmonize with the price the Admiralty Marshall would sell. Third, the appellants now seeking rectification were not a party to the said agreement nor the contract of sale by the Admiralty Marshall, and under the doctrine of privity of contract, they had no standing in this type of action. In other words, an action for rectification is not available to them. B

Basically, the object of a suit for rectification is to bring a document, which was intended to give effect to a prior agreement into harmony with that prior agreement. For rectification to receive consideration, the antecedent agreement must be clear and unequivocal and must have continued unchanged until the execution of the final document. It must therefore be proved that the final document did not carry out the parties' earlier, and unchanged, agreement: see *Tucker v Bennet* (1888) 38 ChD 1, 15, 16; *Rhodian River Shipping Co. S.A. v. Halla Maritime Corp.* (1984) Lloyd's Rep. 373. Rectification may only be done upon convincing proof that the concluded instrument does not represent the common intention of the parties since the alleged common intention *ex hypothesi* contradicts the written instrument: see *Crane v Hegeman-Harris Co. Inc* (1939) 1 All ER 662 at 664-665; *Joscelyne v Nissen* (1970) 2 QB 86; *Thomas Bates & Sons Ltd. v. Wyndham's (Lingerie) Ltd.* (1981) 1 WLR 505 at 521. Obviously it is the parties to an instrument or their privies that can ask for rectification of it. In exceptional cases, imperfect gifts may be rectified in favour of the donee as may be permitted by statutory provision: see *Re Segelman (deceased)* (1995) 3 All ER 676. So also where the doctrine of trust can be found to apply in contract arrangement where, for instance, a contract is made between A and B for the benefit of C. It may be possible to construe an intention by B to contract as trustee for C and regard C as a beneficiary: see *Halsbury's Law of England*, vol. 16, 4<sup>th</sup> edn. Para. 783. If the document finally drawn up does not represent what was agreed, C may possibly seek a rectification of it as a beneficiary. These exceptional circumstances do not detract from the principle that only a party to an instrument can seek rectification of it. F G H

Finally, even if the appellants were a party to that agreement between Alpha Marine Services and Integrated Oil and Gas Limited, it cannot be enforced in contravention of the sale made by the

Admiralty Marshall by court order in an action for rectification to which the Admiralty Marshall is not made a party. In essence, I hold the view that rectification was not an appropriate remedy in the circumstances of this case but I would not say that the appellant was without remedy. I think the conclusion reached in the leading judgment  
B to dismiss this appeal was inevitable. I too dismiss the appeal and abide by order for costs made by my learned brother, Ayoola, JSC.

I do not think I ought to end this judgment without expressing my absolute disgust about the very unsatisfactory way the vessel was  
C sold. Several offers appeared to have been taunted but nothing concrete was achieved. It is undesirable, in my view, to give a blank cheque to the Admiralty Marshall to sell a seized vessel for an amount at his discretion. The procedure of appraisement and sale should normally be adopted. It is fair to both the defendant who owns the  
D property and the plaintiff who succeeds in an action in rem involving the property. If the plaintiff's claim is successful, it will be necessary to have the property sold by the court in order that the claim may be paid off out of the proceeds. In that case a commission for the appraisement of the property ought to be done. After the appraised  
E value has been fixed, the court will then order that the property be sold, normally by private treaty. The property must not be sold at a price less than the appraised value unless the court on the applications of the Admiralty Marshall gives leave to sell at a lower price. Surplus  
F funds (if any) after payment of claim are paid over to the owner of the property. But where there are more than one claim against the property, the proceeds from sale are paid into a fund in court and all claims against the property are thereupon transferred to the fund. The fund will be disbursed only after the claims and their respective  
G priorities have been adjudicated. See *The Westport* (1965) 2 All ER 167. It must be realised that if the proceeds from sale are insufficient to meet the indebtedness, the owner remains still liable for the balance. To sell under arbitrary procedure encourages unconscionable, if not  
H entirely fraudulent bargains and this makes the judicial process which permits such procedure suspect. It is hoped that the experience in the present case is seen as the last.