

SUPREME COURT OF NIGERIA  
FRIDAY 21ST FEBRUARY, 2003. SC. 51/1996  
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,  
U. MOHAMMED, A. I. KATSINA-ALU,  
U. A. KALGO, S. O. UWAIFO, JJSC

ALHAJI AMINU DANTOSHO ..... APPELLANT  
AND  
ALHAJI ABUBAKAR MOHAMMED ..... RESPONDENT

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LAND LAW - Right of occupancy - Revocation - Basis - By s.28 Land Use Act - Power of Governor to revoke right of occupancy - Must be for overriding public interest (H1)

LAND LAW - Customary right of occupancy - Revocation - Entitlement - Revocation under s.28 Land Use Act entitles the holder to compensation (H2)

LAND LAW - Title - Competing claims - Where two parties trace their title over same land to same grantor - The latter party cannot maintain action against first person that obtained valid grant (H3)

LAND LAW - Trespass - Necessary party - Where there is no complaint against a party - Non-joinder of the party will not affect proper determination of the issue (H4)

TRESPASS - Meaning of - Trespass is unjustifiable entry by one person upon land in possession of another - And it does not depend on intention of the trespasser (H5)

LAND LAW - Trespass - Basis - Claim for trespass is rooted in exclusive possession - And once defendant claims ownership of disputed land - Title is put in issue (H6)

ORDERS OF COURT - Consequential order - Meaning of - Consequential order is one giving effect to judgment - And is directly traceable to the judgment (H7)

LAND LAW - Quic quid plantatur solo solo cedit - Application - Since title to the land is in respondent - Everything that accedes to the land belongs to him (H8)

LAND LAW - Quic quid plantatur solo solo cedit - Grant - The principle is applied consequent upon a declaration of title - As it need not be claimed - To operate in favour of a successful person (H9)

### FACTS

Plaintiff/respondent and defendant/appellant are holders of a Statutory Right of Occupancy over the same piece of land known as plot 79 Sharada, Kano in the Kano Municipality. Both were thus involved in dispute over who is the real title holder of the land. Consequently, respondent commenced this action at the High Court of Kano State claiming inter alia, damages and injunction restraining appellant from keeping heaps of sand (constituting nuisance) on the land. At the end of hearing, the learned trial Judge entered judgment for respondent.

Consequently, the learned Judge ordered appellant to remove the nuisance from the land, awarded N5,000.00 to respondent and further ordered that failure of appellant to remove the nuisance within three months will bring the application of the maxim quic quid plantatur solo solo cedit. Dissatisfied, appellant filed appeal at the Court of Appeal, Kaduna Division. The court affirmed the 1<sup>st</sup> and 2<sup>nd</sup> orders of the trial court and set aside the 3<sup>rd</sup> order on the ground that same was not pleaded. Aggrieved, appellant appealed to Supreme Court. Respondent cross-appealed against the rejection by the Court of Appeal of the 3<sup>rd</sup> order of the trial court.

### **ISSUES FOR DETERMINATION**

1. Whether the non-joinder of the issuing authority of a grant of statutory right of occupancy in this instance, the Governor of Kano State was fatal to the respondent's case, which was that the said authority issued a subsequent certificate of occupancy, over and above that issued to him by the same authority?

2. Where, as in this appeal, both parties rely on prima-facie authentic certificates of occupancy evidencing a statutory right of occupancy over the same parcel of land in an urban area, which of

the certificates will supersede the other, is it the one issued earlier on in time or is it as prescribed by section 5-(2) of Land Use Act, Cap.202 LFN 1990, which regards the latter certificate as the better of the two.

3. Whether the appellant is a trespasser in the circumstances of this appeal?

**HELD** (Unanimously dismissing the appeal per KAT-SINA-ALU JSC)

LAND LAW - Right of occupancy - Revocation - Basis

1. The power of the Governor to revoke a right of occupancy must be for overriding public interest and for requirement by the Federal Government, for public purposes. So that any revocation for purposes outside the ones prescribed by section 28 of the Act is against the policy and intention of the Act and can be declared invalid, null and void by a competent court.

(p. 706 B)

Customary right of occupancy - Revocation - Entitlement

2. A customary right of occupancy like a statutory right of occupancy entitles a holder to undertake development on the land. Revocation under section 28 of the Act entitles the holder and the occupier to compensation for the value at the date of revocation of their un-exhausted improvements. See sections 29, 30 and 35 of the Act. It is not the intention of the Act that an earlier grant be undermined and impliedly revoked by a later grant for which no compensation may be made.

(p. 709 D)

LAND LAW - Title - Competing claims

3. In a situation such as the one we have in the instant case, where two contesting parties trace their title in respect of the same piece of land to the same grantor, the applicable principle of law has always been that the latter in time of the two parties to obtain the grant cannot maintain an action against the party who first obtained a valid grant of the land from such a common grantor because the grantor having successfully divested himself of title in respect of the piece of

land in question by the first grant would have nothing left to convey to a subsequent grantee under the elementary principle of *nemo dat quod non habet* as no one may convey what no longer belongs to him. This is an obvious truism. The Governor in the present case is the common grantor. The respondent's certificate of occupancy (exhibit J) was issued on 11th August, 1982. By the time the appellant's certificate of occupancy (exhibit 4) was issued on 7th October, 1982 over the same plot of land, the Governor no longer had anything at plot 79 Sharada Kano having not revoked the earlier grant exhibit 1 made to the respondent. It goes without saying that the appellant got nothing from the Governor. I am therefore in complete agreement with the decision of the trial court and the Court of Appeal on this issue. (p. 709 D)

Trespass - Necessary party

4. Where there is no complaint against a party, the non-joinder of that party will not affect the proper determination of the issues joined. It must be stressed here that the radical title of the land is not in issue. That being so, the non-joinder of the Governor of Kano State did not affect the proper determination of the issue joined. Again it must be pointed out that the complaint of trespass was against the appellant and not against the Governor of Kano State. The bottom line is that the Governor of Kano State is not a necessary party to this suit. (p. 710 F)

TRESPASS - Meaning of

5. Now, trespass is an unwarranted or unjustifiable entry or intrusion by one person upon land in possession of another. It does not depend on the intention of the trespasser. Nor can he plead ignorance as to true owner or that he thought the land belonged to him. It is enough that the right of the owner or person in exclusive possession was invaded. It is a settled principle of law that where a person who initially entered land lawfully or pursuant to an authority given by the true owner, or person in possession, subsequently abuses his position or that authority, he becomes a trespasser *ab initio*, his conduct relating back so as to make his initial entry trespass. (p. 711 C)

Trespass - Basis

6. Although generally speaking, a claim for trespass is rooted in exclusive possession or the right to such possession of the land in dispute, once a defendant claims to be the owner of the land in dispute, title to it is put in issue, and in order to succeed, the plaintiff must show a better title than that of the defendant. (p. 711 E) B

Consequential order - Meaning of

7. So what is a consequential order? A consequential order is one giving effect to a judgment or order to which it is consequential. It is directly traceable to or flowing from that judgment or order duly prayed for and made. (p. 712 E) C

LAND LAW - Quic quid plantatur solo solo cedit - Application

8. The respondent in the instant case claimed damages for trespass D and injunction. Having found that title to the land in dispute is in the respondent, the learned trial Judge should have granted an injunction to protect the respondent's title. Since title to the land is in the respondent, everything that accedes to the land belongs to the respondent on the principle of quic quid plantatur solo solo cedit. E (p. 712 F)

LAND LAW - Quic quid plantatur solo solo cedit - Grant

9. I think that principle is consequent on a declaration of title. It need F not be claimed nor does it need an order of court for it to operate in favour of a person who has succeeded in the title claimed. Any argument that the court is wrong to pronounce on it because it was not sought as a relief is an utter misconception. (p. 712 H)

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REPRESENTATION

J. B. Daudu, SAN with U. N. Agomoh [Miss]; R. A. Attah; K. Oketoki [Miss], for the Appellant  
Augustus A. Abuh, Esq., for the Respondent

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CASES REFERRED TO

Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387

Dabup v. Kolo (1993) 8 NWLR (Pt. 317) 254

Ganko v. Ugochukwu Chemical Industries Ltd (1993) 6 NWLR (Pt.

297) 55

Ekpan v. Uyo (1986) 3 NWLR (Pt. 26) 63

Osha v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157

Tewogbade v. Obadina (1994) 4 NWLR (Pt. 388) 326

Teniola v. Olohunkun (1999) 5 NWLR (Part 602) 280

B Ajibade v. Pedro (1992) 5 NWLR (pt. 241) 257

Amakor v. Obiefuna (1974) 1 All NLR 119

Agu v. Odofin (1992) 3 NWLR (Pt. 229) 350

Akinbobola v. Plisson Fisko Nigeria Ltd. (1991) 1 NWLR (Pt. 167) 270

C STATUTE REFERRED TO

Land Use Act Cap 202 LFN 1990, ss. 5(2), 28(1), 29, 30, 34(2) 35 and 36(4)

LEAD JUDGMENT BY KATSINA-ALU JSC

D This is an appeal from a judgment of the Court of Appeal, Kaduna Division delivered on the 26th of February, 1996. The respondent as plaintiff in the Kano State High Court took out a writ of summons against the appellant as defendant claiming as follows:

(i) Damages

E (ii) A declaration that the defendant is not entitled to the premises in such manner as to dig trench and put heaps of sand on the plaintiff's said land.

(iii) A declaration that the defendant is not entitled to continue F to retain the nuisance (i.e. heaps of sand) on the land.

(iv) An injunction restraining the defendant from continuing to keep the sand and the trench on the plaintiff's land so as to be nuisance to the plaintiff.

G The case went to trial before Saleh Minjibir, CJ of Kano State. After Hearing evidence the learned CJ entered judgment for the plaintiff. In the course of his judgment, he held thus:

"In my own considered opinion, two documents are crucial for the just determination of this case and they are exhibits 1 and

H 4. Exhibit 1 is Certificate of Occupancy No. LKN/CON/RES/82/632 in the name of Abubakar Mohammed the plaintiff in this case. The commencement date of exhibit 1 is 15/5/78 and was signed by Muhammed Kabir, the then Commissioner for Land and Survey on the 11th August, 1982. exhibits 3, Certificate of Occu-

pancy No. KN 4136 in the name of the plaintiff gave birth to exhibit 1 from the evidence adduced during the trial proceedings in this case. The commencement date is also 15/5/78. Exhibit 4 Certificate of Occupancy No. LKN/CON/81/00082 in the name of Alhaji Aminu Dantsoho has its commencement date as 18/12/81 and was signed by the then Commissioner for Land and Survey Muhammed Kabir on the 7th October 1982. It is clear that even if exhibits 1 and 4 are in respect of the same plot it goes to show that the equities are equal. It is settled that where the equities are equal, the first in time shall prevail. Thus assuming that exhibits are even genuine, the fact that exhibit 1 the Certificate of Occupancy of the plaintiff is first in time and has therefore a superior title over that of the defendant. That being so, I hold that exhibit 1 has rendered nugatory the contents of exhibit 4. In other words exhibit 4 is a worthless document by virtue of the contents of exhibit I.”

Consequently, the learned trial CJ made the following orders:

1. That the defendant shall remove the nuisance he has created on the plaintiff's plot situated at No. 79, Sharada Layout covered by Certificate of Occupancy No. LKN/CON/RES/RC/82/632. The nuisance should be removed without any delay.

2. The plaintiff is awarded =N=5000.00 damages and against the defendant for trespass on his land by the defendant.”

The learned Chief Judge also ordered that if the defendant failed to remove his structures on the land within the three months the maxim quic quid plantatur solo solo cedit should apply. The first and second orders of Minjibir CJ were affirmed by the Court of Appeal. The third order i.e. that the defendant should remove his structures on the land in question was set aside on the ground that the relief was not pleaded. The defendant now appeals to this court.

The plaintiff also appealed against the setting aside of the order that the defendant remove his structures on the land in dispute within three months or forfeit them under the maxim quic quid plantatur solo solo cedit. The material facts are not in dispute. In brief summary they are as follows:

- “1. Both the plaintiff and the defendant are holders of a Statutory Right of Occupancy over the same piece of Land known as plot 79 Sharada, Kano in the Kano Municipality.

2. Exhibit 1 is Certificate of Occupancy No. LKN/CON/RES/

RC/82/632 in the name of Abubakar S. Mohammed, the plaintiff. The commencement date of exhibit 1 is 15/5/78 and was signed by Mohammed Kabir, the then Commissioner for Lands and Survey on 11th August, 1982.

3. Exhibit 4 is Certificate of Occupancy, No. LKN/  
 B CON/18/00082 in the name of Alhaji Aminu Dantsoho. Its commencement date is 18/12/81 and was signed by Mohammed Kabir, the then Commissioner for Lands and Survey on 7th October, 1982.”

The defendant (referred to hereafter as “the appellant”) filed  
 C his brief of argument. Based upon the grounds of appeal filed, the appellant raised three issues for determination. These read as follows:

1. Whether the non-joinder of the issuing authority of a grant of statutory right of occupancy in this instance, the Governor of Kano State was fatal to the respondent’s case, which was that the said authority issued a subsequent certificate of occupancy, over and  
 D above that issued to him by the same authority?

2. Where, as in this appeal, both parties rely on prima-facie authentic certificates of occupancy evidencing a statutory right of occupancy over the same parcel of land in an urban area which of the certificates will supersede the other, is it the one issued earlier  
 E on in time or is it as prescribed by section 5-(2) of Land Use Act, Cap.202 LFN 1990, which regards the latter certificate as the better of the two.

3. Whether the appellant is a trespasser in the circumstances  
 F of this appeal?

For his part, the respondent submitted four issues for determination in this appeal. They are:

1. When two holders of statutory right of occupancy trace their title to the same Governor and over the same piece of land which of the holders takes precedence over the other; the first in time or the  
 G latter holder?

2. Whether the non-joinder of the Governor of Kano State as party in the instant case was fatal to the decision reached by the lower Court.

3. Whether their Lordships at the Court of Appeal were not  
 H right in adjudging the appellant in this case a trespasser?

4. Whether their Lordships at the Court of Appeal were right when they failed to affirm the decision of the trial court on the



application of the maxim *quid quic plantatur solo solo cedit* after the expiration of the 3 months given the defendant to remove his structures on the plot on the ground that the respondent did not amend his pleading to claim the house built on plot 79 Sharada by the appellant against a court order not to build.

#### ISSUE 1

The material point to bear in mind is that the two crucial documents for the just determination of this appeal are exhibits 1 and 4. Exhibit 1 is C of O No. LKN/CONIRTS/RC/82/632 in the name of Alhaji Abubakar S. Mohammed, the respondent in this appeal. The commencement date of exhibit 1 is 15/5/78 and was signed on 11th August, 1982. Exhibit 4 is C of O No. LKN/CON/81/00082 in the name of Alhaji Aminu Dantoso, the appellant herein with a commencement date of 18/12/81. It was signed on 7th October, 1982. Both certificates of occupancy are in respect of the same plot of land. This is not in dispute.

It was said for the appellant, that on the state of pleadings and evidence, the respondent was aware that there was a duplication of the grant over plot 79 Sharada Kano. It was therefore the contention of the appellant that the trial court and the Court of Appeal were in grave error when they described that appellant's grant as conferred in exhibit 4 as worthless. It was further pointed out that both courts went on to declare that once the Governor or his delegate had made a grant, as in this case, exhibit 1, he was incompetent to create or make another grant, without recourse to section 28(1) of Land Use Act, based on the maxim *Nemo dat quod non habet*. It was the submission of the appellant that this position overlooks the fact that the Land Use Act a *sui generis* legislation on land in Nigeria supersedes the common law and equity principles hitherto in existence. It was further submitted that recourse to equitable principle of first in time is first in law was the source of error of both lower courts. It was said that the applicable law is section 5(2) of the Land Use Act which provides that:

“Upon the grant or a statutory right of occupancy under the provisions of sub-section (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.”

It was contended that the plain meaning of the above provi-

sion is that exhibit 4 issued on the 7th October, 1982 had extinguished exhibit 1 issued on the 11th August, 1982 in the respondent's name. Learned Senior Counsel for the appellant relied on Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 416 Per Obaseki JSC. Dabup v. Kolo (1993) 8 NWLR (Pt. 317) 254 at 277, Ganko v. Ugochukwu Chemical Industries Limited (1993) 6 NWLR (Pt. 297) 55 at 73 per Karibi-Whyte JSC.

For his part, the respondent submitted that both the trial High Court and the Court of Appeal were right when they declined the invocation of section 5(2) of the Land Use Act. Both courts were also right when they held that since exhibit 1 was first in time, it prevailed over exhibit 4 which was issued later to the appellant. Besides, it is the age long position of the law that where two persons claim possession of the same piece of land, possession resides in the party who has a better title. Counsel relied on case of Ekpan v. Uyo (1986) 3 NWLR (Pt. 26) 63.

It was the further contention of the respondent that section 5(2) of the Land Use Act has no applicability in the instant case. This is because the section is only applicable to a conflict between a holder of a Statutory Right of Occupancy granted by the Governor and a holder of a Customary Right of Occupancy granted by the Local Government over the same plot of land. But it was pointed out that the customary right of occupancy in this regard must not arise from a deemed right because the Governor does not have the power to dispossess people of their family land at will. In a situation where there is a conflict between two holders of statutory right of occupancy granted by the Governor, as in this case, it was contended that equity would be called into play. Counsel further said that even though the Governor has the right to revoke a right of occupancy, it must be for overriding public interest and for requirement by the Federal Government for public purposes as prescribed by section 28 of the Land Use Act.

That being so, learned counsel for the respondent argued that the cases of Saude v. Abdullahi (supra), Dabup v. Kolo (supra) and Ganko v. Ugochukwu Chemical Industries Ltd. cited by the appellant do not apply to the facts and circumstances of the present case. Power of the Governor to revoke rights of occupancy. The power of the Governor to revoke rights of occupancy under the Land Use

Act is provided for in section 28. The relevant provisions thereof are section 28(1), (2), (4), (5), (6), and (7). They provide that:

“28(1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.

(2) Overriding public interest in the case of a statutory right of occupancy means - B

(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder; C

(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation; D

(c) the requirement of the land for mining purposes connected there with.

(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes. E

(5) The Governor may revoke a statutory right of occupancy on the ground of -

(a) a breach of any of the provisions which a certificate of occupancy is by section 10 of this Act deemed to contain; F

(b) a breach of any terms contained in the certificate of occupancy or in any special contract made under section 8 of this Act;

(c) refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor under sub-section (3) of section 9 of this Act. G

(6) This revocation of a right of occupancy shall be under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under sub-section H

(6) of this section or on such later date as may be stated in the notice.”

The right of occupancy talked of herein, in my view, includes deemed rights of occupancy derived under sections 34(2) and 36(4).

The power of the Governor to revoke a right of occupancy must be for overriding public interest and for requirement by the Federal Government, for public purposes. So that any revocation for purposes outside the ones prescribed by section 28 of the Act is against the policy and intention of the Act and can be declared invalid, null and void by a competent court. See *Osha v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157. From the established facts of this case, it is crystal clear that the Governor did not act under the provisions of section 28 of the Land Use Act. So, what happened in this case. Both the appellant and the respondent were granted a statutory right of occupancy over the same piece of land known as plot No.79 Sharada in the Municipality of Kano at different times. It is not in dispute that the grant to the respondent was first in time. Both 'the trial court and the Court of Appeal held that the earlier grant took precedence over the latter one; that it conferred title to the disputed land on the respondent.

In the course of its judgment, the Court of Appeal per Umaru Abdullahi, JCA (as he then was) held thus:

"From the established facts in this case, I cannot agree more with the learned counsel for respondent, that the learned senior counsel for appellant has grossly misconstrued the applicability and intention of the provision of section 5(2) of the Land Use Act. Considering the factual situation in this case, the provision of section 5(2) cannot apply. I agree with the view that where two contesting parties trace their title in respect of the same piece of land to the same grantor the applicable principle of law has always been that the latter in time of the two parties to obtain the grant cannot maintain an action against the party who first obtained a valid grant of the land from such a common grantor because the grantor having successfully divested himself of his title in respect of the piece of land by the first grant would have nothing left to convey to a subsequent purchaser (grantee) under the elementary principles of *nemo dat quod non habet* as no one may convey what no longer belongs to him. See *Gabriel Adewole Tewogbade v. Mrs. A. Obadina* (1994)4 NWLR (Pt.388) 326; (1994)4 SCNJ particularly at page 79 where IGUH JSC stated the law as follows:

"When there exists two competing conveyances which have been duly registered each takes effect as against the other from the

date of registration so that the one executed earlier loses its priority if it was registered later, in point of time.'

In this case, exhibit 1 granted to the respondent was doubly first, both in grant and registration to exhibit 4 to the appellant. See also the case of *Michael Rahains v. Romaine* (1992) 5 SCNJ 25, where the Supreme court declared an instrument by grant a nullity because by the time the grant was made the grantor had no more interest in the land so granted. B

I cannot also accept the view of the learned senior counsel that no other interpretation will be acceptable with regard to the provision of section 5(2) of the Land Use Act, other than that exhibit 4 which was later in time automatically extinguished exhibit 1, which was earlier and subsisting grant by the same grantor. In fact to accept the view of the learned senior counsel will negate the purpose for which section 28 of the same Land Use Act was enacted. Even on D ground of common sense, the law makers would not expect each holder of a right of occupancy to feel so insecure that another Governor would come along one day to issue a fresh right of occupancy to another person over the land granted to the holder previously by another Governor and to be asked to start packing out of the land on ground that his title has been extinguished by a new grant. E

In the circumstances, I have no difficulty in holding that the respondent's title with regard to plot No. 79 Sharada Kano has not been extinguished by exhibit 4. Exhibit 1 still remains intact. I also agree with the learned trial Chief Judge that exhibit 4 is a worthless piece of paper." F

Learned senior counsel for the appellant has attacked this decision on the ground that it overlooked the provision of section 5(2) which states that: G

"Upon the grant of a statutory right of occupancy under the provisions of sub-section (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished."

He strongly argued that section 5(2) causes a statutory right of occupancy to extinguish all existing rights, whether they are preexisting customary rights. As I have already indicated earlier on, the power of the Governor to revoke a right of occupancy has been clearly set out in section 28 of the Land Use Act. But this section was not called H

into play in this case. With regard to section 5(2) of the Act which I have already quoted, the respondent contends that it clearly does not apply to the facts and circumstances of the instant case. The section, it was argued, is only applicable to a conflict between a holder of a right of occupancy granted by Governor and a holder of a customary right of occupancy granted by the Local Government over the same piece of land. The authorities relied upon by the learned senior counsel do not support his submission that under section 5(2) a latter statutory right of occupancy extinguishes all existing rights including all existing statutory right. In *Saude v. Abdullahi* (supra) section 5(2) of the Act was not the object of the decision. Throughout the lead judgment no reference was made to section 5(2) of the Act. The view of Obaseki JSC. touching on section 5(2) were clearly obiter.

In the case of *Dabup v. Kola* (supra) the earlier right granted was a customary right of occupancy issued by the local Government. This court held that the latter grant of a statutory right of occupancy by the Governor clearly extinguished the existing customary right granted by the Local Government. In *Teniola v. Olohunkun* (1999) 5 NWLR (Part 602) 280 (supra) the Government right of occupancy was over a land alleged to have been held under a customary right of occupancy. But that right was in fact not shown to exist because in two previous litigations those who asserted it in two separate Area Courts failed to establish it. This court invoked the provision of section 5(2) of the Act and dismissed the appeal.

Be that as it may, I am of the opinion that revocation ought to precede a grant of a statutory right by the Governor under section 5(2) even where the prior right is a customary right of occupancy in the light of section 28(3) which provides:

“(3) overriding public interest in the case of a customary right of occupancy means -

(a) the requirement of the land by the Government in the State or the requirement of land by the Government of the Federation for public purposes of the Federation;

(b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;

(c) the requirement of the land for the extraction of building materials;

(d) the alienation by the occupier by sale, assignment, mort-

gage, transfer of possession, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.”

This means that the power of the Governor to revoke rights of occupancy includes statutory right of occupancy as set out in subsection (2) of section 28 and customary rights of occupancy as provided for in sub-section (3) of section 28. This is good law and good sense. B

A customary right of occupancy like a statutory right of occupancy entitles a holder to undertake development on the land. Revocation under section 28 of the Act entitles the holder and the occupier to compensation for the value at the date of revocation of their un-exhausted improvements. See sections 29, 30 and 35 of the Act. It is not the intention of the Act that an earlier grant be undermined and impliedly revoked by a later grant for which no compensation may be made. C

Now, the rights which I believe will be automatically extinguished upon the grant of a statutory right of occupancy include licenses and usufruct. These rights do not carry with them a right to develop the land. Such rights may be abrogated at a moment's notice with little or no hardship done to the users of the land. D

In a situation such as the one we have in the instant case, where two contesting parties trace their title in respect of the same piece of land to the same grantor, the applicable principle of law has always been that the latter in time of the two parties to obtain the grant cannot maintain an action against the party who first obtained a valid grant of the land from such a common grantor because the grantor having successfully divested himself of title in respect of the piece of land in question by the first grant would have nothing left to convey to a subsequent grantee under the elementary principle of *nemo dat quod non habet* as no one may convey what no longer belongs to him. This is an obvious truism. The Governor in the present case is the common grantor. The respondent's certificate of occupancy (exhibit J) was issued on 11th August, 1982. By the time the appellant's certificate of occupancy (exhibit 4) was issued on 7th October, 1982 over the same plot of land, the Governor no longer had anything at plot 79 Sharada Kano having not revoked the earlier grant exhibit 1 made to the respondent. See *Tewogbade v. Mrs. Obadina* (1994) 4 NWLR (Pt.388) 326, (1994) 4 SCNJ 79. It goes E



without saying that the appellant got nothing from the Governor. I am therefore in complete agreement with the decision of the trial court and the Court of Appeal on this issue.

I turn now to issue No.2. It was submitted for the appellant that since the validity of the radical title of the appellant is in issue, the respondent in order to succeed ought to have joined the Governor of Kano State and prayed for the setting aside of the latter certificate of occupancy. Learned counsel relied on *Osha v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157.

For his part, the respondent submitted that the Governor of Kano State is not a necessary party to this suit. It was contended that the cause of matter in this case is not liable to be defeated by the non-joinder of the Governor. Learned counsel for the respondent pointed out that the validity of the grant made to the respondent was never challenged at the trial of this action. He submitted that the appellant cannot without the leave of this court raise the issue in this appeal.

The short answer is this. Where there is no complaint against a party, the non-joinder of that party will not affect the proper determination of the issues joined. It must be stressed here that the radical title of the land is not in issue. That being so, the non-joinder of the Governor of Kano State did not affect the proper determination of the issue joined. Again it must be pointed out that the complaint of trespass was against the appellant and not against the Governor of Kano State. The bottom line is that the Governor of Kano State is not a necessary party to this suit. See *Osho v. Foreign Finance Corporation* (supra). This issue also fails.

The third issue is a complaint against the affirmation by the Court of Appeal of the appellant as a trespasser. It was pointed out that the appellant was a bona fide holder of a genuine certificate of occupancy - exhibit 4. He entered the land without any notice of the respondent's adverse claim. He was in lawful possession of the land in question. That being so, it could not be said that the appellant was guilty of trespass.

In his reply, the respondent submitted that both the trial court and the Court of Appeal were right in their finding of trespass against the appellant. This is so because the trial court restrained the appellant by injunction from further construction on the land, yet he



continued to completion in defiance of these orders.

Now, trespass is an unwarranted or unjustifiable entry or intrusion by one person upon land in possession of another. It does not depend on the intention of the trespasser. Nor can he plead ignorance as to true owner or that he thought the land belonged to him. It is enough that the right of the owner or person in exclusive possession was invaded. It is a settled principle of law that where a person who initially entered upon land lawfully or pursuant to an authority given by the true owner, or person in possession, subsequently abuses his position or that authority, he becomes a trespasser ab initio, his conduct relating back so as to make his initial entry trespass. See *Ajibade v. Pedro* (1992) 5 NWLR (pt. 241) 257. B  
C

Although generally speaking, a claim for trespass is rooted in exclusive possession or the right to such possession of the land in dispute, once a defendant claims to be the owner of the land in dispute, title to it is put in issue, and in order to succeed, the plaintiff must show a better title than that of the defendant. See *Amakor v. Obiefuna* (1974) 1 All NLR 119. D

The respondent as the plaintiff here, claimed ownership of the land in dispute as per exhibit 1. The defendant, the appellant herein, also claimed ownership of the same piece of land as per exhibit 4. The parties have thus joined issue on their title on the land in dispute. That being the case what falls for the determination is who has a better title. I have earlier on in this judgment resolved the issue of title in favour of the respondent. The appellant failed to prove a valid title and his possession of the land in question was that of a trespasser. The trial court and the Court of Appeal were right when they held the appellant liable in trespass. This issue also fails. E  
F

All the issues having been resolved in favour of the respondent, this appeal fails and I dismiss it. I accordingly affirm the decision of the Court of Appeal. G

The respondent's fourth issue relates to his cross-appeal. It questions the refusal of the Court of Appeal to affirm the decision of the trial court on the application of the maxim *quic quid plantatur solo solo cedit*. In the course of his judgment the learned trial Chief Judge said: H

"The defendant has now the responsibility of removing his building which has constituted a nuisance on the plot of the plaintiff.

This should be done within a reasonable time. I consider three months to be a reasonable time within which defendant should carry all his structures from the plaintiff's land. If he fails to do so within three months the principle or maxim of *quic quid plantatur* should apply."

B The Court of Appeal disagreed. It held in its judgment that:  
 "This finding has no support from the respondent's pleading filed before the trial court and in my view is such a major finding to be regarded as a consequential order. The relief should have been clearly claimed in the pleadings."

C So what is a consequential order? A consequential order is one giving effect to a judgment or order to which it is consequential. It is directly traceable to or flowing from that judgment or order duly prayed for and made. See *Agu v. Odofin* (1992) 3 NWLR (Pt.229) 350; (1992) 3 SCNJ 161; *Akinbobola v. Plisson Fisko Nigeria Ltd.* (1991) 1 NWLR (Pt. 167) 270.

D The respondent in the instant case claimed damages for trespass and injunction. Having found that title to the land in dispute is in the respondent, the learned trial Judge should have granted an injunction to protect the respondent's title. Since title to the land is in the respondent, everything that accedes to the land belongs to the respondent on the principle of *quic quid plantatur solo solo cedit*.  
 E I think that principle is consequent on a declaration of title. It need not be claimed nor does it need an order of court for it to operate in favour of a person who has succeeded in the title claimed. Any  
 F argument that the court is wrong to pronounce on it because it was not sought as a relief is an utter misconception.

In the event, I dismiss the main appeal. As regards the cross appeal, I hereby grant all injunction as claimed by the respondent. The respondent is entitled to costs which I assess at N10,000.00 against the appellant.

G

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### BELGORE JSC

H The law is very clear in matters relating to grant of right of occupancy. It is only by the inverted reading of the provisions of Land Use Act and Land Tenure Law of an existing grant of right of occupancy that a latter grant could destroy. Once a grant or right exists, it

can only be extinguished by a lawful revocation and not by another grant to a different person. 'My learned brother, Katsina-Alu, JSC, has carefully set out the reasons why this appeal has no merit and I agree with him in dismissing this appeal. I make the same orders as to costs.

B

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OGUNDARE JSC

I agree with the judgment of my learned brother, Katsina-Alu, JSC just delivered. Exhibit 4, defendant's purported certificate of occupancy is invalid in view of exhibit I, the certificate earlier granted to the plaintiff and which conferred on the plaintiff, title to the land. Unless and until exhibit I is revoked as required by law- section 28 of the Land Use Act, the Governor had no title to confer on any other person by the grant of another certificate of occupancy. As the defendant had no title when he entered on the land, he was a trespasser and remains so for as long as he remains on the land.

As regards the cross-appeal, I think it is the learned trial Judge that introduced some confusion into the case by his order that defendant remove his building within three months. The plaintiff claimed an injunction. Having found, and quite rightly in my view, that title to the land is in the plaintiff and that the defendant is a trespasser, he should have granted an injunction to protect plaintiff's title. Defendant did not claim a relief that he be given time to remove his building; the learned trial Judge should not have made that order. Title in the land being in the plaintiff everything that accedes to the land belongs to the plaintiff - on the principle *quic quid plantatur solo solo cedit*. The Court of Appeal is right to set aside that order but should have gone further to grant an injunction in favour of the plaintiff as claimed.

Consequently, I dismiss the defendant's main appeal. I affirm the setting aside by the Court of Appeal of the consequential order made by the trial Judge. In its place I order that an injunction be granted as claimed by the plaintiff. I abide by the order for costs made by my learned brother, Katsina-Alu, JSC.

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## MOHAMMED JSC

I have had a preview of the judgment of my learned brother, Katsina-Alu, JSC, and I agree with him that the main appeal has failed. I agree that the power of the Governor to revoke a right of  
 B occupancy has been clearly set out in section 28 of the Land Use Act. The power of the Governor to revoke a right of occupancy must be for overriding public interest and for the requirement of the Federal Government for public purposes. Any revocation which does not  
 C comply with the provisions of s.28 of the Land Use Act is invalid. See *Osha v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157. I also agree that the respondent has better title to the appellant and it is crystal clear that the appellant was liable in trespass. My learned brother has covered all the salient issues canvassed in this appeal and I agree with him to dismiss the main appeal.

D The cross-appeal has merit and for the reasons given in the lead judgment, I set aside the judgment of the court below as it affects the application of the maxim *quic quid plantatur solo solo cedit*. The cross-appeal is allowed. I also award N10,000.00 costs in favour of  
 E the respondent.

## KALGO JSC

F I have had the privilege of reading in draft the judgment just delivered by my learned brother, Katsina-Alu, JSC in this appeal. I agree with his reasoning and conclusions reached therein and I adopt them as mine. Section 5(2) of the Land Use Act, 1978 Cap. 202, Laws of Federation of Nigeria 1990 should not be read or interpreted  
 G in isolation but must be read together with other sections of that Act or the Act as a whole so as to give body and soul to the intendment of the said Act. The power of revoking the light of occupancy conferred on the Governor under s.28 of the said Act is subject to the terms and conditions set out therein. It is intended that the Governor should revoke a right of occupancy arbitrarily or at will and for any  
 H purpose other than “overriding public interest” or where the terms of the grant was contravened by the grantee.

With this and more detailed reasons given in the leading

judgment, I find no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal on the substantive appeal. I however agree that there is merit in the cross-appeal which I accordingly allow.

I award the respondent N10,000.00 costs against the appellant.

B

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#### UWAIFO JSC

I have had the opportunity to read in advance the judgment of my learned brother, Katsina-Alu, JSC. I agree with it for the reasons stated. I intend to discuss only the issue touching on sections 5 and 28 of the Land Use Act, 1978, which I consider rather important. I think it is a misconception on the appellant in this case to argue, in reliance on section 5 sub-section (2) of the said Act, that a later grant of a statutory right of occupancy extinguishes an earlier grant. The provisions of that sub-section read:

“Upon the grant of a statutory right of occupancy under the provisions of sub-section (1) of this section, all existing rights to the use and occupation of the land which is subject of the statutory right of occupancy shall be extinguished.”

I must say that it is neither proper nor safe to interpret section 5(2) without the necessary insight. Furthermore, it is the law that in construing any provision of a statute, a court ought, and is indeed bound, to consider any other parts of the statute which throw light upon the intention of the legislature and which may serve to show that the particular provision ought not to be construed as it would if considered alone without reference to such other parts of the statute: see *Colquhoun v. Brook* (1889) 14 App. Cas. 493 at 506 Per Lord Herschell. The same principle was stated by this court in several cases including *Aqua Ltd. v. Ondo State Sports Council* (1988) 4 NWLR (Pt. 91) 622 at 641-642 Per Wali JSC and *Salami v. Chairman L.E.D.B.* (1989) 5 NWLR (Pt. 123) 539 at 550-551 Per Obaseki JSC. Upon a careful reading of the provisions of section 5(2), I am of the view that “existing rights” must be understood to be in relation to the use and occupation of the land in question. This shows that the existing rights that can be so extinguished are limited in value. They do not include rights that are legally vested in a person over a

- piece of land notwithstanding the use of the word “all” in qualifying “existing rights” because that word can only be of significance when the nature of the existing rights is appreciated in the true context of those provisions. The rights envisaged in section 5(2) are not those, for instance, which a person enjoying them is entitled to alienate but
- B they are just the rights to use or to occupy the land. They are not rights of occupancy in contradistinction to rights to occupation. A right to the occupancy of land may simply be a license, which by its nature does not confer a vested right in the land, and does not create
- C any encumbrance thereon. So also a right to the use of land may be a mere usufruct. Hence a person who enjoys such a right, called a usufructuary in the civil law, is one who has the usufruct or right to the enjoyment of the profit, utility or advantage of some property in which he has no property interest and over which he has not right to alter it substantially, and cannot bind it to any easement. I think that
- D is how section 5(2) of the Act must be regarded in its true meaning. When so regarded, it presents no difficulty in accepting that the effect of a grant of a statutory right of occupancy to land, which creates prima facie a legally vested right, is to extinguish any other rights, as I have defined, to the use and occupation of the said land. The
- E whole purpose of this, in my opinion, is so that the grant of the right of occupancy may have the effect to deliver the land to the holder free from any of those other rights which those who hitherto enjoyed them might otherwise have thought would linger on.
- F So where a right of occupancy is involved, either in the nature of a statutory or customary right of occupancy upon the issuance of a right of occupancy or through a deemed right of occupancy by operation of sections 34(2) and 36(4) of the Act, a later grant of a right of occupancy under section 5(1) cannot ipso facto, by operation of section 5(2), extinguish the earlier right already vested. It will be
- G necessary first to revoke that earlier right of occupancy for overriding public interest or for any of the other reasons as specified under section 28: see *Olohunde v. Adeyoku* (2000) 10 NWLR (Pt. 676) 562 at 597. I am of the opinion that the argument of Mr. Daudu SAN that a later grant of a right of occupancy destroys or extinguishes an earlier grant by virtue of section 5(2) is completely untenable. The
- H court below reacted to a similar argument put before it by Mr. Daudu when it observed per Abdullahi JCA (now PCA) as follows:

“I cannot also accept the view of the learned senior counsel that no other interpretation will be acceptable with regard to the provision of section 5(2) of the Land Use Act, other than that exhibit 4 which was granted later in time automatically extinguished exhibit 1 which was an earlier and subsisting grant by the same grantor. In fact to accept the view of the learned senior counsel will negate the purpose for which section 28 of the same Land Use Act was enacted. Even on ground of common sense, the law makers would not expect each holder of a right of occupancy to feel so insecure that another Governor would come along one day to issue a fresh right of occupancy to another person over the land granted to the holder previously by another Governor and to be asked to start packing out of the land on ground that his own title had been extinguished by a new grant.”

I think the danger of the experience which the submission of the learned Senior Advocate can create has been well exposed by that observation. To traumatize such an experience further let me dramatize with a painful example: A person was granted a statutory right of occupancy. He gave a lease of it, with the consent of the Governor, to a third party who developed it into some business premises - say a hotel complex. Later, a grant of the same land was made by another or the same Governor to someone else. The hotel on the land is there on the basis of the existing right of the earlier holder of the grant over the land. The lessee also has an existing right arising from the lease and to the use of his hotel. Does it mean .all those rights are now extinguished “upon the grant of a statutory right of occupancy” to the later holder? It is no argument that the example given can hardly happen. From the submission of Mr. Daudu, the possibility of its happening is not excluded. That is why the meaning of “all existing rights” must be strictly limited.

I have made an attempt in this judgment to so limit it although in the course of hearing the appeal Mr. Daudu was so tenacious in his argument that he was unable to consider the merit in the suggestion, even coming from the bench, that a limit must be placed on that meaning and that there can be no extinguishment of vested rights by a simple reliance on section 5(2) without first implementing section 28 so as to allow for the observance of the fundamental right to due compensation under section 44(1) of the 1999 Constitution

and in compliance with section 29 of the Act itself. But where existing rights are extinguished by the operation of section 5(2), they simply cease to exist or subsist and no question of compensation can arise. Is that the risk a holder of a right of occupancy under the Land Use Act must be made to face and to suffer the loss that can follow? I cannot contemplate that. The reliance placed by the learned Senior Advocate on the obiter dictum of Obaseki JSC in Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 416 was obviously based on a misconception that it represented the decision of this court in that case. I am satisfied that the Court of Appeal gave a correct interpretation to the effect of section 5(2) of the Act. I agree with the judgment of my learned brother, Katsina-Alu, JSC dismissing the appeal and abide by the other orders made including the one for costs.

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D

AYOOLA JSC

For the reasons clearly stated in the leading judgment just delivered by my learned brother, Katsina-Alu, JSC. I too would dismiss the main appeal. I also order an injunction as claimed by the respondent. Appeal dismissed. Cross appeal allowed.

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