

SUPREME COURT OF NIGERIA
FRIDAY 27TH JUNE, 2003. SC 137/1999
CORAM:- U. MOHAMMED, S. U. ONU, U. A. KALGO,
S. O. UWAIFO, A. O. EJIWUNMI, JJSC

ALHAJI USMAN BUA APPELLANT
AND
BASHIRU DAUDA RESPONDENT

PLEADINGS - Traverse - Pleading “not in a position to admit or deny” - May be taken as an admission - Or removal of burden of proof from plaintiff - Unless other statement of defence paragraphs imply a denial (H1)

EVIDENCE - Unchallenged evidence - Admissibility - Uncontradicted evidence of respondent - Is sufficient to raise a prima facie case of undue influence (H2)

WORDS & PHRASES - Undue influence - Meaning - It is a state of mind of one who has been subdued to improper persuasion - Such that he is induced to do or forbear an act - Which he would otherwise do or not do (H3)

PLEADINGS - Undue influence - Pleaded in different paragraphs - Propriety - That manner of pleading is sufficient particularization of instances of undue influence (H4)

EVIDENCE - Undue influence - Burden of proof - Where donee is presumed to have influence over donor - Burden is on the donee to show the righteousness of the transaction (H5)

EVIDENCE - Undue influence - Element of - Fraudulent abuse of confidence reposed on 1st defendant - Is a strong element of undue influence (H6)

LAND LAW - Alienation - Lis alibi pendens - Doctrine of - The law does not allow litigating party to alienate property - In respect of which proceedings are pending (H7)

LAND LAW - Sale of property - Undue influence - Effect - Where such transaction is caught by the doctrine - The sale is voidable at instance of vendor - Not null and void (H8)

LAND LAW - Sale of property - Subject of pending litigation - Effect on purchaser's title - Whatever judgment that is given in the suit - Is binding on the purchaser (H9)

FACTS

The case of plaintiff/respondent was that he had an encounter with 1st defendant (a native doctor) at his (respondent's) business premises. Subsequently, 1st defendant lured him into engaging his services to bring prosperity to the business. Thereafter, 1st defendant talked respondent into giving up possession of his (respondent's) property in dispute to 1st defendant so that the latter would prepare and keep talisman thereat. Eventually, respondent under the influence of 1st defendant's manipulations signed away his house to 1st defendant in two different documents at 1st defendant's shrine. Thereafter, respondent lived an abnormally strange life.

However upon regaining his senses, respondent came back to claim his house which claim 1st defendant resisted on the ground that respondent sold the house to him. Hence, respondent instituted this suit at the High Court of Plateau State, Jos challenging the sale of his property in dispute. Respondent raised issue of undue influence in the fraudulent transaction. After 1st defendant had filed his statement of defence, he subsequently sold the house to 2nd defendant/appellant and absconded. By the order of court, appellant was joined as 2nd defendant at the trial court. After hearing, the trial judge gave judgment for respondent as he held that 1st defendant induced respondent through undue influence to part with the property in dispute. As for appellant, his title was held to have been defeated by the application of the doctrine of lis pendens. Aggrieved, appellant appealed to the Court of Appeal, Jos Division. The appeal was dismissed. Still dissatisfied, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

“(i) Whether the finding of the trial court as confirmed by the court below was not perverse.

(ii) *Whether the court below properly apply (sic) the principle of law as decided in the case of Barclays Bank Nig. Ltd. v. Ashiru (1978) 1 LRN 266 to have given judgment in favour of the respondent.*

(iii) *Whether the evidence as led by the respondent in the trial court if married with the pleadings could have been said to sustain the proof of his claim against the appellant."*

HELD (Unanimously dismissing the appeal per UWAIFO JSC)

PLEADINGS - Traverse

1. The appellant in his own statement of defence did not respond to the allegations in the statement of claim in a manner that would suggest that he might directly wish to controvert those allegations. In fact he pleaded in para. 3 to those allegations that:

"The 2nd defendant is not in a position to admit or deny the averments in paragraphs 3-12, 26, 27 as they are facts within the exclusive knowledge of the plaintiff."

Such pleading in law may be taken as an admission of the facts contained therein:

Or at any rate it is likely to be construed as placing no burden on the plaintiff unless by implication from the other paragraphs of the statement of defence that there has been a denial.

(p. 1817 G)

EVIDENCE - Unchallenged evidence - Admissibility

2. The respondent's contention is that the uncontradicted evidence tendered by the respondent, taken as a whole to prove the case, is that the respondent was affected by the concoction given to him by the 1st defendant as pleaded and that that gave rise to the undue influence to which he found himself. He argues that since the evidence was not controverted or challenged, and the case being a civil one, it is enough if it amounted to minimal evidence placed before the court.

I think the submission on behalf of the respondent has merit.

This is a very well known principle on which there are so many decided cases.

The evidence as it stands raises a prima facie case of undue influence. Indeed, as will be shown later, in certain peculiar circumstances of undue influence, the burden is on the defendant to prove that he in fact exerted no influence. (p. 1818 C)

WORDS & PHRASES - Undue influence - Meaning

3. Undue influence is no doubt elusive of satisfactory definition but it may be regarded as a state of mind of a person who has been subdued to any improper persuasion or machination in such a way that he is overpowered and consequently induced to do or forbear an act which he would otherwise do or not do of his free will. It is a product of the abuse or misuse of the confidence reposed in some one who is able to put some pressure on or take unfair advantage of another; or who takes an oppressive and unfair advantage of another's necessities or distress.

Undue influence could arise from confidential or fiduciary relationship existing between the parties which raises a presumption of that influence such as solicitor and client.

Doctor and patient.

Principal and agent.

Religious adviser and disciple.

In the present case the undue influence relied on by the respondent borders on some tricks played on him by the 1st defendant. The tricks were such that involved personal contact with him by the 1st defendant through some concoction given to him to drink and another unexplained manipulation of his orientation. (p. 1818 G)

PLEADINGS - Undue influence

4. In the present case, learned counsel for the appellant likened undue influence to fraud and that it should therefore be particularised. Although in the statement of claim the respondent did not set out particulars under one paragraph, he pleaded in different paragraphs the various instances of what the 1st defendant did to his person so as to overpower his

mental ability to resist him. That manner of pleading was, in my view, sufficient particularisation for pleading purposes and was effective. (p. 1820 D)

EVIDENCE - Undue influence - Burden of proof

5. In Allcard v. Skinner (supra) at p.171, Cotton, LJ., classified cases of undue influence into two and said as follows: B

“First, where the court has been satisfied that the gift was the result of influence expressly used by the donee for the purpose; second, where the relations between the donor and donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor. C

The first class of cases may be considered as depending on the principle that no one shall be allowed to retain any benefit arising from his own fraud or wrongful act. In the second class of cases the court interferes, not on the ground that any wrongful act has in fact been committed by the donee, but on the ground of public policy, and to prevent the relations which existed between the parties and the influence arising therefrom being abused.” D E

I find that this classification is quite illustrative as to how particular cases may be resolved. I agree with it and think that in the present case which falls within the first class, the respondent would not be required to show that the transaction was manifestly disadvantageous to him. Even if the case had fallen under the second class; the law is that the burden is on the donee or purchaser to show the righteousness of the transaction. (pp. 1820 G & 1821 A) F G

EVIDENCE - Undue influence - Element of

6. In the case of Hart v. O'Connor (1985) AC 1000 at 1024; (1985) 2 All ER 880 at 891-892, Lord Brightman delivering the judgment of the Privy Council observed thus: H

“In the opinion of their Lordships it is perfectly plain that historically a court of equity did not restrain a suit at law on the ground of ‘unfairness’ unless the conscience of the plaintiff was in some way affected. This might be because of actual

fraud (which the courts of common law would equally have remedied) or constructive fraud.

'Fraud' in its equitable context does not mean, or is not confined to, deceit: 'it means an unconscientious use of the power arising out of (the) circumstances and conditions (of the contracting parties)'.

It is victimisation, which can consist either of the active extortion of a benefit or the passive acceptance of a benefit in unconscionable circumstances."

I think it is right to say that the respondent had confidence in the 1st defendant about what the concoction would achieve for him but the 1st defendant fraudulently abused the confidence. That was the cause of action against the 1st defendant, and abuse of confidence is a strong element in it.

D (pp. 1822 A/ D & 1823 A)

LAND LAW - Alienation - Lis alibi pendens - Doctrine of

7. The situation in which the doctrine of lis alibi pendens operates is fairly clear. Where litigation is being prosecuted in regard to property and one of the parties purports to transfer by sale the legal estate in that property to a third party, who may have no notice of the litigation, the transaction of sale is ineffective.

That purchaser gets nothing because the doctrine is not founded upon the fact of actual or constructive notice of the litigation but upon the fact that the law does not allow to any litigant party rights to alienate property in dispute while proceedings are pending so as to prejudice the opposite party.

G (p. 1824 E)

LAND LAW - Sale of property - Undue influence - Effect

8. The transaction between the respondent and the 1st defendant was caught by the doctrine of undue influence upon a true understanding of the facts. The two courts below were right in coming to that conclusion. That meant that the purported sale was voidable at the instance of the respondent, not null and void as stated in the claim. It is an equitable jurisdiction that the courts exercise to rescind such unconscio-

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nable transaction. It follows therefore that reasonable steps must be taken to avoid a transaction founded on undue influence in order not to be caught by laches and acquiescence. The respondent took prompt action to have the transaction set aside as soon as it dawned on him that he had become a victim of the influence of the 1st defendant. (p. 1825 C) B

LAND LAW - Sale of property - Subject of pending litigation

9. The doctrine of lis alibi pendens has also caught up with the appellant who purported, while litigation was pending or in progress in court, to buy the property involved therein, i.e., the house in question. The appellant being a privy of the 1st defendant through buying pendente lite is bound by the judgment against the latter. The Court of Appeal rightly came to that conclusion. I find no merit in this appeal. It is hereby dismissed with N10,000.00 costs to the respondent. (p. 1825 F) C
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NOTABLE POINT OF INTEREST

MOHAMMED JSC

1. Failure of defendant to give evidence is acceptance of plaintiff's evidence E

The respondent gave convincing evidence during the trial in the High Court in support of the allegation that Alhaji Ajanaku used undue influence to make him sell his property at a give-away price. Although Alhaji Ajanaku filed a Statement of Defence denying the allegation that he used undue influence on the respondent, no evidence was given in support. A defendant who does not give evidence in support of his pleadings or in challenge of the evidence of the plaintiff is deemed to have accepted the facts adduced by the plaintiff, notwithstanding his general traverse. F
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The learned trial judge is right therefore to hold that Alhaji Ajanaku used undue influence on the respondent which made him to sell his property at a give-away price of N15,000.00. The Court of Appeal is right also in affirming the said decision. (p. 1826 G) H

REPRESENTATION

P. O. Olorunmohunle, Esq., for the Appellant

Respondent absent. Not represented but filed a brief of argument

CASES REFERRED TO

- Smith v. Kay (1859) 7 HLC 75
 Nwaobuoku v. Otteh (1961) All NLR 487
 B Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360
 Goldsworthy v. Brickwell (1987) Ch. 378
 Akinwunmi v. Idowu (1969) 1 All NLR 319
 Faseun v. Pharco (Nig.) Ltd. (1965) 2 All NLR 216
 C.I.B.C. Mortgages Plc. v. Pitt (1994) 1 AC 200
 C Bellamy v. Sabine (1857) 26 LJ (N.S.) Eq. R. 797
 Lewis and Peat (NRI) Ltd. v. Akhimien (1976) 7 S.C. 157
 Edmonton Hand Co. v. Dobinson (1974) 1 All ER 484
 Calgary and Edmonton Hand Co. v. Dobinson (1974) 1 All ER 484
 D Kosile v. Folarin (1989) 4. S.C. (Pt.I) 150
 United Bank for Africa Ltd. v. Achoru (1990) 6 NWLR (Pt. 156) 254
 Dresser UK Ltd. v. Falcongate Freight Mgt. Ltd. (1992) 2 All ER 450
 Buraimoh v. Bamgbose (1989) 6 S.C. (Pt. I) 1

LEAD JUDGMENT BY UWAIFO JSC

- This is an appeal from a judgment of the Court of Appeal, Jos Division, given on 16th June, 1999. The judgment affirmed that of the High Court, Jos delivered on 14th June, 1994. The claim originated from that High Court wherein the plaintiff, now respondent,
 F claimed for five reliefs, three of which now stand relevant as follows:
 (a) a declaration that the sale of his house at AO32 Nassarawa Gwong, Jos, to the 1st defendant was null and void; (b) a declaration that the plaintiff was still the owner; and (c) an order setting aside the sale.
 G The 2nd defendant (now appellant) was later joined as it became known that he had bought the said property from the 1st defendant.

- The relevant facts of this case may be stated quite briefly. The respondent is a trader residing in Jos. At the material time he dealt in automobile batteries in his store at No. 35, Ayeni Street, Jos. The 1st
 H defendant is a native doctor. Sometime in September, 1987, the 1st defendant went to that store and bought a battery from the respondent. He did not pay for it but asked that the money be collected from him in his house. The respondent went with him to his house at No. 19 Bauchi Road, Jos. They rode in the 1st defendant's car. On

the way they got engaged in conversation introduced by the 1st defendant. This eventually ended in the arrangement for him, as a native doctor, to help the respondent into prosperity in his business. The 1st defendant prepared some herbal concoctions in three stages for this purpose for the respondent's use. The first stage was a black native soap for bathing. After use, there was no sign of the business improving. The respondent then went back to the 1st defendant whereupon he was given what looked like maize pap which was mixed with a black powdery substance to drink. That was the second stage. But still, after some time there was no improvement in his business.

The respondent went back to the 1st defendant to complain that nothing had changed for the better in his prosperity. The 1st defendant then asked to be taken to the respondent's house. There, the 1st defendant expressed surprise that the respondent had such a big house. He then contrived a third stage. The respondent would leave the house so that the defendant would prepare and keep a talisman in the house. The respondent who was unmarried and lived alone agreed. He vacated the house and took abode with friends. He had been warned by the 1st defendant not to let anyone know what was going on. Later, the respondent who was now unable to help himself emotionally and in reaching rational decisions signed away his house to the 1st defendant - in different documents - at the 1st defendant's shrine. These are Exhibits A and C, registrable though unregistered instruments. Both were drawn up in what I regard to be in flimsy form. There was no consent to alienate as required by Section 22 of the Land Use Act. This issue of consent was never raised throughout the proceedings. I have merely mentioned it along with the nature of the documents to indicate the sheer casualness of the transaction.

The respondent filed his action in December, 1987, and the statement of claim in March, 1988. The 1st defendant filed his statement of defence in April, 1988. While the case had reached that stage, the 1st defendant sold the property in dispute to the appellant and thereafter absconded. He has not been seen ever since. He gave no evidence in support of his statement of defence.

In his statement of defence, the appellant proceeded to narrate how he came to buy the house from the 1st defendant. He averred that he was not aware of any dispute about the house at the

time he purchased it until when he was joined as a co-defendant. The respondent gave evidence of the entire incident and how he left his house and stayed with one Alex Fom who gave evidence as P.W.3. As part of his evidence, the respondent said:

B *"After about a month, I left Alex Fom's house and my relation took me to somewhere in Lagos area for treatment; I recovered and came back to Jos sometime in 1987; I came back to my senses and decided to go back to my house. When I got there I found a security guard who told me that the house did not belong to me but to the defendant."*

C One Anthony Udeze (P.W.2) who claimed to have been an employee of the 1st defendant as his manager gave a long testimony as to the incident. The long and short of it is that the 1st defendant used "black magic" to confuse the respondent. Referring to the first day of contact between the 1st defendant and the respondent (i.e. D plaintiff), the witness said:

E *"After the plaintiff had gone, the defendant called me into his office and told me that he had 'hooked' the plaintiff and that there was no way out for the plaintiff. That he was going to make the plaintiff sell all his wares and bring the money to him."*

Again, the witness said in connection with the house:

F *"He (i.e. 1st defendant) collected his wife in his car as well as myself and we drove to the plaintiff's house at Nassarawa. We entered the house. The defendant said nothing would make the house not to be his ownHe gave me N20.00 to go and buy beer and bring to him The defendant told me as we were drinking the beer that he had warned the plaintiff that he would die if he dared reveal to anybody all that had happened between them or about the house."*

G It is true that some aspects of the evidence of P.W.2 went beyond the pleadings. But by and large those I have reproduced go towards establishing the circumstances which led to the parting by the respondent with his property through the inducement and "undue influence of the defendant and under his direction and pursuant to the faith and trust reposed in the defendant as a native doctor without any separate and independent advice and without due consideration of the reason for or the effect of what he (respondent) was doing," as submitted on behalf of the respondent.

The learned trial Judge, (L. N. Emefo, J.), gave judgment for the respondent as plaintiff. This was affirmed, as I have said, by the Court of Appeal. The appellant has now further appealed to this court upon three issues which he stated thus:

“(i) *Whether the finding of the trial court as confirmed by the court below was not perverse.* B

(ii) *Whether the court below properly apply (sic) the principle of law as decided in the case of Barclays Bank Nig. Ltd. v. Ashiru (1978) 1 LRN 266 to have given judgment in favour of the respondent.* C

(iii) *Whether the evidence as led by the respondent in the trial court if married with the pleadings could have been said to sustain the proof of his claim against the appellant.”*

It seems to me that issues (ii) and (iii) from the circumstances of this case tend towards one issue, namely *lis pendens*. The case of Barclays Bank Nig. Ltd. v. Ashiru (1978) 6 & 7 S.C. 99; (1978) 11 NSCC 351 was referred to in issue (ii) on the question of a person alienating property while litigation as to title in respect of it is already in progress. The reason why a claim was made against the appellant was because he was alleged to have bought the house in question from the 1st defendant while the suit against him in respect thereof was pending. Therefore the principle in Barclays Bank Nig. Ltd. v. Ashiru (*supra*) is what is called for consideration in both issues (ii) and (iii). Both issues can conveniently be taken together as one. F

As for issue (i), it is important to realise first that there was only one version of the incident before the trial court. The 1st defendant who filed a statement of defence tendered no evidence. He was alleged to have absconded and therefore he abandoned his defence. ***The appellant in his own statement of defence did not respond to the allegations in the statement of claim in a manner that would suggest that he might directly wish to controvert those allegations. In fact he pleaded in para. 3 to those allegations that:*** G

“The 2nd defendant is not in a position to admit or deny the averments in paragraphs 3-12, 26, 27 as they are facts within the exclusive knowledge of the plaintiff.” H

Such pleading in law may be taken as an admission of the facts contained therein: see Lewis and Peat (NRI) Ltd. v.

Akhimien (1976) 7 S.C. 157; **or at any rate it is likely to be construed as placing no burden on the plaintiff unless by implication from the other paragraphs of the statement of defence that there has been a denial:** see Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360. In any event, the appellant did not give a contrary evidence to the facts of undue influence relied on by the respondent nor were those facts effectively challenged or at all.

The appellant has argued that a plaintiff cannot rely on the weakness of the defendant's case for its failure to prove its case. He also submits that the evidence led by the respondent was substantially at variance with the pleading, and that undue influence was not established. On the other hand, **the respondent's contention is that the uncontradicted evidence tendered by the respondent, taken as a whole to prove the case, is that the respondent was affected by the concoction given to him by the 1st defendant as pleaded and that gave rise to the undue influence to which he found himself. He argues that since the evidence was not controverted or challenged, and the case being a civil one, it is enough if it amounted to minimal evidence placed before the court,** citing Nwaobuoku v. Otteh (1961) All NLR 487; Faseun v. Pharco (Nig.) Ltd. (1965) 2 All NLR 216. **I think the submission on behalf of the respondent has merit. This is a very well known principle on which there are so many decided cases,** some being Akinwunmi v. Idowu (1969) 1 All NLR 319 at 321; Omoregbe v. Lawani (1980) 3 - 4 S.C. 108; Kosile v. Folarin (1989) 4. S.C. (Pt.I) 150, (1989) 3 NWLR (Pt. 107) 1 at 12; Buraimoh v. Bamgbose (1989) 6 S.C. (Pt.I) 1; (1989) 3 NWLR (Pt. 109) 352 at 363-364; United Bank for Africa Ltd. v. Achoru (1990) 6 NWLR (Pt. 156) 254 at 289. **The evidence as it stands raises a prima facie case of undue influence. Indeed, as will be shown later, in certain peculiar circumstances of undue influence, the burden is on the defendant to prove that he in fact exerted no influence.**

Undue influence is no doubt elusive of satisfactory definition but it may be regarded as a state of mind of a person who has been subdued to any improper persuasion or machination in such a way that he is overpowered and consequently induced to do or forbear an act which he would otherwise do or not do of his free will. It is a product of the abuse or misuse

of the confidence reposed in some one who is able to put some pressure on or take unfair advantage of another; or who takes an oppressive and unfair advantage of another's necessities or distress: see Black's Law Dictionary, 6th edn. page 1528. **Undue influence could arise from confidential or fiduciary relationship existing between the parties which raises a presumption of that influence such as solicitor and client:** see Willis v. Barron (1902) AC 271; **doctor and patient:** Radcliffe v. Price (1902) 18 TLR 466; Re C.M.G. (1970) 2 All ER 740; **principal and agent:** See Nasr v. Rossek (1973) ANLR 539 (green cover); **religious adviser and disciple.** See Allcard v. Skinner (1887) Ch.D 145. B
C

In the present case the undue influence relied on by the respondent borders on some tricks played on him by the 1st defendant. The tricks were such that involved personal contact with him by the 1st defendant through some concoction given to him to drink and another unexplained manipulation of his orientation. It is said that the concoction overwhelmed and subdued the respondent to the point that he was no longer able to help himself, so to speak. It was in this condition the respondent sold his house at a give away price to the 1st defendant. In Allcard v. Skinner (supra) at p. 183, Lindley, LJ., observed inter alia on comparable phenomenon thus: D
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"It would obviously be to encourage folly, recklessness, extravagance and vice if persons could get back property which they foolishly made away with, whether by giving it to charitable institutions or by bestowing it on less worthy objects. On the other hand, to protect people from being forced, tricked or misled in any way by others into parting with their property is one of the most legitimate object of all laws; and the equitable doctrine of undue influence has grown out of and been developed by the necessity of grappling with insidious forms of spiritual tyranny and with the infinite varieties of fraud. F
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As no court has ever attempted to define fraud so no court has ever attempted to define undue influence, which includes one of its many varieties. The undue influence which Courts of Equity endeavour to defeat is the undue influence of one person over another..... But the influence of one mind over another is very subtle, and of all influences, religious influence is the most dangerous and the most H

powerful, and to counteract it Courts of Equity have gone very far. They have not shrunk from setting aside gifts made to persons in a position to exercise undue influence over the donors, although there has been no proof of the actual exercise of such influence; and the courts have done this on the avowed ground of the necessity of going this length in order to protect persons from the exercise of such influence under circumstances which render proof of it impossible. The courts have required proof of its non-exercise, and failing that proof, have set aside gifts otherwise unimpeachable.”

The doctrine of undue influence extends not only to cases of coercion or tricks or fraud but to all cases “where influence is acquired and abused, where confidence is reposed and betrayed.” See *Smith v. Kay* (1859) 7 HLC 750 at 779. In *C.I.B.C. Mortgages Plc. v. Pitt* (1994) 1 AC 200 at 209, Lord Browne-Wilkinson described actual undue influence as “a species of fraud” and that the complainant need not show that she was manifestly disadvantaged by the transaction concerned. ***In the present case, learned counsel for the appellant likened undue influence to fraud and that it should therefore be particularised. Although in the statement of claim the respondent did not set out particulars under one paragraph, he pleaded in different paragraphs the various instances of what the 1st defendant did to his person so as to overpower his mental ability to resist him. That manner of pleading was, in my view, sufficient particularisation for pleading purposes and was effective.***

Undue influence takes different forms. This could manifest in the variety of circumstances in which trickery or coercion can be employed in human affairs. In other cases, it depends on special relationship in which presumption of undue influence may reasonably be inferred. ***In Allcard v. Skinner (supra) at p.171, Cotton, LJ., classified cases of undue influence into two and said as follows:***

“First, where the court has been satisfied that the gift was the result of influence expressly used by the donee for the purpose; second, where the relations between the donor and donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor. In such a case the court sets aside the voluntary gift,

*unless it is proved that in fact the gift was the spontaneous act of the donor acting under circumstances which enabled him to exercise an independent will and which justifies the court in holding that the gift was the result of a free exercise of the donor's will. **The first class of cases may be considered as depending on the principle that no one shall be allowed to retain any benefit arising from his own fraud or wrongful act. In the second class of cases the court interferes, not on the ground that any wrongful act has in fact been committed by the donee, but on the ground of public policy, and to prevent the relations which existed between the parties and the influence arising therefrom being abused.***"

I find that this classification is quite illustrative as to how particular cases may be resolved. I agree with it and think that in the present case which falls within the first class, the respondent would not be required to show that the transaction was manifestly disadvantageous to him. Even if the case had fallen under the second class; the law is that the burden is on the donee or purchaser to show the righteousness of the transaction. He is entitled as of right, as said by Lord Browne-Wilkinson in *C.I.B.C. Mortgages Plc. v. Pitt* (supra) at page 209, to have it set aside as a matter of public policy; and also the case of *Allcard v. Skinner* (supra) at page 171 per Cotton, L.J., and page 183 per Lindley, L.J. In *Ashburner on Equity*, 2nd edn., at page 299, the learned author gave this illustration:

"In a court of equity, if A obtains any benefit from B, whether under a contract or as a gift, by exerting an influence over B which, in the opinion of the court, prevents B from exercising an independent judgment in the matter in question, B can set aside the contract or recover the gift. Moreover in certain cases the relation between A and B may be such that A has peculiar opportunities of exercising influence over B. If under such circumstances A enters into a contract with B, or receives a gift from B, a court of equity imposes upon A the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it."

There are cases where a bargain is seen to be unconscionable or where there has been equitable fraud, victimisation, taking of advantage, overreaching or other such palpable inequity or unfairness

which affected the conscience of the plaintiff and which might justify the intervention of equity to come to his assistance to avoid the bargain. **In the case of Hart v. O'Connor (1985) AC 1000 at 1024; (1985) 2 All ER 880 at 891-892, Lord Brightman delivering the judgment of the Privy Council observed thus:**

- B ***"In the opinion of their Lordships it is perfectly plain that historically a court of equity did not restrain a suit at law on the ground of 'unfairness' unless the conscience of the plaintiff was in some way affected. This might be because of actual***
- C ***fraud (which the courts of common law would equally have remedied) or constructive fraud, i.e. conduct which falls below the standards demanded by equity, traditionally considered under its more common manifestations of undue influence, abuse of confidence, unconscionable bargains and fraud is on a power.....***
- D ***An unconscionable bargain in this context would be a bargain of an improvident character made by a poor or ignorant person acting without independent advice which cannot be shown to be a fair and reasonable transaction. 'Fraud' in its equitable context does not mean, or is not confined to, deceit: 'it means an***
- E ***unconscientious use of the power arising out of (the) circumstances and conditions (of the contracting parties)': see Earl of Aylesford v. Morris (1873) LR 8 Ch App 484 at 490-491, (1861-73) All ER Rep 300 at 303. It is victimisation, which can consist***
- F ***either of the active extortion of a benefit or the passive acceptance of a benefit in unconscionable circumstances."***

In the present case, as I have said earlier, the 1st defendant failed to give evidence. Consequently, he failed to discharge the burden on him to show the righteousness of the transaction. The learned trial Judge observed as follows:

- G ***"The learned counsel for the 2nd defendant, in his address at the end of the case, seriously submitted that the plaintiff has not proved the allegations of 'undue-influence' pleaded in paras. 7-16 of the amended statement of claim. With respect to the learned counsel, I***
- H ***am not inclined to agree with him, because there is no evidence from the 1st defendant or from anybody for that matter, challenging the evidence of the plaintiff and his witnesses with regards (sic) to the use of undue-influence and concursions' (sic) on the plaintiff by the 1st defendant. As I said above, had the 1st defendant testified and re-***

butted the plaintiff's evidence it might have been a different story."

The court below held that the finding was not perverse. It affirmed it and concluded that the respondent acted under the undue influence of the 1st defendant caused by the concoction he applied on him. ***I think it is right to say that the respondent had confidence in the 1st defendant about what the concoction would achieve for him but the 1st defendant fraudulently abused the confidence. That was the cause of action against the 1st defendant, and abuse of confidence is a strong element in it.***

It was while the case against the 1st defendant was in actual progress that he sold the property in question to the appellant. This was on 8th July, 1988. The document of sale is headed "This is an Agreement between Ajanaku and Alhaji Amolu Usman Sanni." It was signed by the 1st defendant as seller but not signed by the appellant whose name given in the space meant for his signature, as buyer, was "A. Usman Buwa." The body of the said agreement which was handwritten reads thus:

"This is to satisfy (sic) that I Alhaji F.T.A. Ajanaku have sold my Flat 3 bed room 1 kitchen (sic) 1 latrine 1 bathroom at No. AO 32 Nassarawa (sic) Gwong to Alhaji Amolu Usman Sanni at the agreed sum of N16,000.00 sixteen thousand naira only which he paid in cash to me in present (sic) of the below witnesses."

Six witnesses signed below the seller's signature. It is amazing that the learned counsel for respondent raised no issue also about the effect of such a transaction done without the necessary consent under Section 22 of the Land Use Act, quite apart from the consequences of the doctrine of *lis alibi pendens*.

On the question of *lis alibi pendens*, the learned trial Judge had no doubt from the facts, that it applied to defeat the transaction the 1st defendant entered into with the appellant (i.e. 2nd defendant). He said:

"..... (I) It is not in dispute that the plaintiff filed this suit against the 1st defendant on the 17/12/87. It is also not in dispute that during the pendency of the suit, the 1st defendant sold the house to the 2nd defendant on the 8/7/88 and disappeared. Whether the 2nd defendant has valid documents of transfer of the property from the 1st defendant is immaterial. The 2nd defendant is a "pendente lite purchaser" and therefore he bought the house at his own risk.

The doctrine of 'lis pendens' therefore applies to nullify the sale of the property to the 2nd defendant by the 1st defendant."

The Court of Appeal cited this passage and affirmed the finding. The 1st defendant filed his first statement of defence in April, 1988. So clearly he had been served with the suit challenging title to the house in question and had begun taking part in the proceeding at the time he purported to sell the said house to the appellant.

Learned counsel for the appellant has argued that the appellant did not know that there was a suit in respect of the ownership of the house pending in court when he bought it. He contends that the appellant should be regarded as a purchaser for value without notice of any incumbrance. He further contends that the authority of Barclays Bank Nig. Ltd. v. Ashiru (1978) 6 & 7 S.C. 99; (1978) 11 NSCC 351 does not apply to this case because it does not relate to a mortgage transaction as that authority did. Learned counsel for the respondent has however submitted in the brief of argument filed on behalf of the respondent that the doctrine of lis pendens is not limited to mortgage transactions nor does it depend on the notice of a purchaser of property under litigation while it was in process. I have no doubt that the learned counsel for the respondent put the statement of principle correctly.

The situation in which the doctrine of lis alibi pendens operates is fairly clear. Where litigation is being prosecuted in regard to property and one of the parties purports to transfer by sale the legal estate in that property to a third party, who may have no notice of the litigation, the transaction of sale is ineffective: see *Osagie v. Oyeyinka* (1987) 2 NSCC 840 at 849. ***That purchaser gets nothing because the doctrine is not founded upon the fact of actual or constructive notice of the litigation but upon the fact that the law does not allow to any litigant party rights to alienate property in dispute while proceedings are pending so as to prejudice the opposite party:*** see *Barclays Bank of Nigeria Ltd. v. Ashiru* (1978) 6 & 7 S.C. 99. For the doctrine of lis pendens to apply, it must be shown (a) that at the time of the sale of the property the suit regarding the dispute about the said property was already pending; see *Bellamy v. Sabine* (1857) 26 LJ (N.S.) Eq. R. 797 at 803; (b) that the action or lis was in respect of real property; it never applies to personal property: see

Wigram v. Buckley (1894) 3 Ch. 483 at 492-493; (c) that the object of the action was to recover or assert title to a specific real property; that is to say, an action in a subject-matter adverse to the owner in respect of some substantive right which is proprietary in nature: see Calgary and Edmonton Hand Co. v. Dobinson (1974) 1 All ER 484 at 489; and (d) that the other party had been served with the originating process in the pending action: see Dresser UK Ltd. v. Falcongate Freight Management Ltd. (1992) 2 All ER 450 at 523. All these conditions were fully met in the present case. It follows that the judgment against the 1st defendant will certainly overreach the purported alienation of the house to the appellant during the pendency of the suit: see Sorrell v. Carpenter (1728) 24 ER 825 per Lord Chancellor King.

The transaction between the respondent and the 1st defendant was caught by the doctrine of undue influence upon a true understanding of the facts. The two courts below were right in coming to that conclusion. That meant that the purported sale was voidable at the instance of the respondent, not null and void as stated in the claim. It is an equitable jurisdiction that the courts exercise to rescind such unconscionable transaction. It follows therefore that reasonable steps must be taken to avoid a transaction founded on undue influence in order not to be caught by laches and acquiescence: see Goldsworthy v. Brickwell (1987) Ch. 378 at 410; Nasr v. Rossek (supra) at page 551. The respondent took prompt action to have the transaction set aside as soon as it dawned on him that he had become a victim of the influence of the 1st defendant. The doctrine of lis alibi pendens has also caught up with the appellant who purported, while litigation was pending or in progress in court, to buy the property involved therein, i.e., the house in question. The appellant being a privy of the 1st defendant through buying pendente lite is bound by the judgment against the latter. The Court of Appeal rightly came to that conclusion. I find no merit in this appeal. It is hereby dismissed with N10,000.00 costs to the respondent.

MOHAMMED JSC

I am of the same opinion as my learned brother, Uwaifo, JSC.,

that this appeal is without merit and ought to be dismissed. It is without any doubt that Alhaji Fatayi Ajanaku was a con-man. He exercised undue influence over the respondent and made him part, through improper spiritual influence, with his house and properties. In a dubious conveyance, the respondent was induced to sell his house with all the properties inside at a give-away price of N15,000.00. It is clear that when the transaction was effected the respondent was suffering from some delusion. When the respondent recovered from his delusion he demanded the return of his properties. Alhaji Ajanaku refused to do so. The respondent went before the High Court and filed the following claims:

“1. A declaration that the conveyance and transfer of A032 Nassarawa Gwong, Jos and the plaintiff’s movable properties listed above are null and void.

2. An order setting aside the sale of A032 Nassarawa Gwong, Jos, for reason of undue influence and grossly inadequate consideration.

3. An order that the defendant should return to the plaintiff the properties listed in paragraph 4 for lack of consideration.”

The trial High Court called for pleadings. They were filed and exchanged. Alhaji Ajanaku denied all the averments in the respondent’s Statement of Claim.

During the pendency of the suit, Alhaji Ajanaku sold the disputed property to Alhaji Usman Bua, the appellant, in this appeal. Alhaji Ajanaku executed all necessary documents of conveyance to the appellant without giving notice of the pendency of the suit filed by the respondent in the High Court. When the appellant discovered that at the time of the sale of the premises to him there was a case pending in court over the disputed property, he joined Alhaji Ajanaku as the 2nd defendant in the suit. Soon after the appellant had joined as the 2nd defendant, Alhaji Ajanaku disappeared in to thin air!

The respondent gave convincing evidence during the trial in the High Court in support of the allegation that Alhaji Ajanaku used undue influence to make him sell his property at a give-away price. Although Alhaji Ajanaku filed a Statement of Defence denying the allegation that he used undue influence on the respondent, no evidence was given in support. A defendant who does not give evidence in support of his pleadings or in challenge of the evidence of

the plaintiff is deemed to have accepted the facts adduced by the plaintiff, notwithstanding his general traverse. See *FCDA v. Alhaji Musa Naibi* (1990) All NLR 475. The learned trial judge is right therefore to hold that Alhaji Ajanaku used undue influence on the respondent which made him to sell his property at a give-away price of N15,000.00. The Court of Appeal is right also in affirming the said decision. B

My learned brother, Uwaifo, JSC., considered the issue of *Lis Pendens* which was raised in issue II by the appellant and I agree with his conclusion on that subject. It is instructive that where a litigation is pending between a plaintiff and the defendant as to the right to a particular estate the decision of the court in the suit shall be binding not only on the litigant parties, but also upon those who derive title under them by the alienation of the property made pending the suit. It is immaterial whether the alienee had or had no notice of the pending suit. See *Barclays Bank Nig. Ltd. v. Ashiru* (1978) 1 LRN 266 and *Oilfields Corp. v. Bashko* 173 ARK 533 (U.S.) C D

For these reasons and fuller reasons in the lead judgment of my learned brother, Uwaifo, JSC., this appeal is dismissed. I assess N10,000.00 costs in favour of the respondent. E

ONU JSC

I had the privilege before now to read the judgment of my learned brother, Uwaifo, JSC, just delivered. I am in complete agreement with his reasoning and conclusion that the appeal is devoid of merit and must therefore fail. F

I abide by the consequential orders therein made inclusive of the costs awarded. G

KALGO JSC

I have had the opportunity of reading in advance the judgment just delivered by my learned brother, Uwaifo, JSC, in this appeal. I agree with the reasoning and conclusions reached therein which I adopt as mine. I have nothing useful to add. I find no substance in the appeal and I dismiss it with N10,000.00 costs to the respondent. H

EJIWUNMI JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Uwaifo, JSC. Though I am in full agreement with his reasoning for dismissing this appeal, yet I need to add a few words of my own in support of the said judgment. As the facts have been fully set out in the lead judgment, it is not necessary to repeat them except as are necessary for the points being made in this judgment. It is manifest from the pleadings that the plaintiff at all materials times was the lawful owner of a three bedroom house situate at No. AO 32 Nassarawa Gwong, Dutse Uku area, Jos, worth N65,000.00. The thrust of the case of the plaintiff against the 1st defendant and the 2nd defendant now appellant is as pleaded in paragraphs 7, 13, 14, 15, 16, 23, 24, 25:

“7. In or about September, 1987, the first defendant as a native doctor wrongfully procured and induced the plaintiff to sell the plaintiff’s house at No. AO 32, Nassarawa Gwong, Jos valued N65,000.00 to the first defendant for only N15,000.00.

13. About September, 1987, the first defendant also induced Mr. Sunday Ajina, the Sarki Egbak to sign the sale agreement of the house at AO 32, Nassarawa Gwong, Jos as a witness.

14. The first defendant as a native doctor wrongfully induced the plaintiff to hand over to the defendant, the building plan, sale agreement and other documents of title in respect of AO 32, Nassarawa Gwong, Jos.

15. The first defendant as a native doctor also wrongfully procured and induced the plaintiff to allow the defendant take possession of all the properties listed in paragraph 5, inside the plaintiff’s house without the defendant giving any consideration for the said properties. The plaintiff pleads and relies on all receipts and documents in respect of his properties.

16. The plaintiff was induced to do the acts and things mentioned in paragraphs 6, 13 & 14, thereof and each of them by the undue influence of the defendant and under his direction and pursuant to the faith and trust reposed in the defendant as a native doctor without any separate or independent advice and without due consideration of the reason for or the effect of what he was doing.

23. Sometime in 1989 while the case was (is still) pending, the first defendant sold the properties situate and known as AO 32,

Nassarawa Gwong, Jos, the subject-matter of this suit to the second defendant who is now in occupation.

24. *The second defendant bought the said property from the first defendant knowing fully well of this present action between the plaintiff and the first defendant.*

25. *The plaintiff hereby gives the second defendant Notice to produce all the sale agreements between him and the first defendant about the said property mentioned in paragraph 24 above.”* B

And on the basis of the several averments made in the Amended Statement of Claim, the plaintiff claimed the following reliefs:-

“1. *A declaration that the conveyance and transfer of AO 32, Nassarawa Gwong, Jos to the first defendant and the plaintiff’s movable properties listed above are null and void.* C

2. *An order setting aside the sale of AO 32, Nassarawa Gwong, Jos to the 1st defendant for reason of undue influence and gross inadequate consideration.* D

3. *An order setting aside the sale of AO 32, Nassarawa Gwong, Jos by the first defendant to the second defendant.*

4. *An order that the first defendant should return to the plaintiff the properties listed in paragraph 5 for lack of consideration.* E

5. *A declaration that the plaintiff is still the lawful owner of the property called AO 32, Nassarawa Gwong, Jos.”*

The 2nd defendant, now appellant, by his Amended Statement of Defence made several averments in the said amended statement of defence. Germane to the claim of the plaintiff are his pleadings in paragraphs 1, 2, 3, 4, 8. They read thus:- F

“(1) *Save and except as hereinafter specifically admitted, the 2nd defendant denies each and every allegation of fact contained in the further amended statement of claim as same herein set out and traversed seriatim.* G

(2) *The second defendant admits paragraph 3 of the further amended statement of claim (hereinafter to be called “the claims”).*

(3) *The 2nd defendant is not in a position to admit or deny the averments in paragraphs 3, 12, 26, 27 as they are facts within the exclusive knowledge of the plaintiff.* H

(4) *The 2nd defendant avers that he sometime in 1988 bought a house situate at No. AO 32, Nassarawa Gwong, Dutse Uku from Alhaji Ajanaku; the house which he now occupies. The sale agree-*

ment is herein pleaded and shall be relied upon at the trial.

(8) The 2nd defendant avers that he was not aware of any dispute in the house at the time of the purchase and only got to know of it when he was joined."

From the pleadings of the appellant as 2nd defendant, it must be said that his claim to the disputed house depended very much on the outcome of the case of the plaintiff against the 1st defendant. Now the learned trial Judge apparently accepted the claim of the plaintiff that the house was sold to the 1st defendant while under the undue influence of the 1st defendant. The learned trial Judge also found that the 1st defendant sold the "house in issue" to the appellant while the case against the 1st defendant was still pending in court, and disappeared. The learned trial Judge eventually came to the following conclusion upon the evidence before him as be said at pages 115-116 of the judgment, thus:-

"..... it is not in dispute that the plaintiff filed this suit against the 1st defendant on the 17/12/87. It is also not in dispute that during the pendency of the suit, the 1st defendant sold the house to the 2nd defendant on the 8/7/88 and disappeared.

Whether the 2nd defendant has valid documents of transfer of the property from the 1st defendant is immaterial. The 2nd defendant is a "Pendente - Lite Purchaser" and therefore he bought the house at his own risk. The doctrine of "Lis Pendens" therefore applies to nullify the sale of the property to the 2nd defendant by the 1st defendant. Further, the identity of the house (i.e. Res) is not in doubt. The parties know the house in issue as deposed to in their pleadings. In the circumstances, I grant the 3rd prayer of the plaintiff i.e. an Order of this court, setting aside the sale of the plaintiff's property AO 32, Nassarawa Gwong, Jos to the 2nd defendant by the 1st defendant by reason of the fact that the sale was caught by the doctrine of "Lis Pendens", and I also declare that the plaintiff is still the owner of the said house.

All reliefs sought by the plaintiff are hereby granted except the 4th relief, for the 1st defendant to return to the plaintiff, all the properties listed in paragraph 6 of the amended statement of claim."

As the appellant was dissatisfied with the judgment of the trial court, he appealed to the court below. In that court, four issues were considered. Apart from finding that the trial court failed to recognise

that the purchase of the property by him was dependent upon the outcome of the litigation between the plaintiff and the 1st defendant, all the other issues were resolved against the appellant. As he was still dissatisfied with the judgment, the appellant has further appealed to this court. In the appellant's brief, the following issues were identified for the determination of this appeal. They are:-

"(i) Whether the finding of the trial court as confirmed by the court below was not perverse?"

"(ii) Whether the court below properly applied the principle of law as decided in the case of Barclays Bank Nig. Ltd. v. Ashiru (1978) 1 LRN 266 to have given judgment in favour of the respondent."

"(iii) Whether the evidence as led by the respondent in the trial court if married with the pleadings could have been said to sustain the proof of his claim against the appellant."

I think it is convenient to consider issue three, first. I have before now referred to some portions of the pleadings in this judgment. What became manifest in those pleadings turned on whether the plaintiff was the owner of the disputed property which was allegedly sold to the 1st defendant while the plaintiff was under the undue influence of the 1st defendant, and also whether the 1st defendant was right to have sold the property to the appellant while an action was pending in court against the 1st defendant over the sale of the said property by the plaintiff to the 1st defendant.

The first question that has to be considered is whether the evidence of the plaintiff was properly accepted by the trial court and affirmed by the court below. The learned counsel for the plaintiff/respondent has argued that the evidence of the plaintiff was rightly accepted by the trial court, and the court below was right to have accepted his evidence upon the several issues raised in the course of his evidence. It is manifest that at the trial, the 1st defendant who filed his pleadings in an amended Statement of Defence vanished from the court and perhaps the face of the earth as soon as the appellant was joined in the suit. He therefore did not give any evidence to contradict the evidence of the plaintiff/respondent. It is of course the law that the court cannot determine any matter based only on the pleadings. Evidence must be given to prove the averments made in the said pleadings. In the absence of any evidence to the contrary of that presented by the opposing party, and in the

absence of any rule of law which prevents the court from accepting such evidence presented by the plaintiff/respondent, the trial court was right to have accepted the evidence of the plaintiff/respondent. The court below was also right to have accepted the evidence of the plaintiff/respondent. See *Nwaobuoku v. Otteh* (1961) All NLR 487; B *Faseun v. Pharco (Nig.) Ltd.* (1965) 2 ALL NLR 216.

In the instant appeal, I have not been persuaded that the court below was wrong to have affirmed the findings of the trial court with regard to its findings upon the evidence led at the trial. I need also to C observe that the trial court properly came to the conclusion that the plaintiff/respondent was subjected to undue influence and therefore was not master of himself when he purportedly sold the property to the 1st defendant. The evidence remained uncontradicted that the D of contrived treatment to enrich the plaintiff and which amazingly culminated in the sale of the plaintiff's property to the 1st defendant. It is clear that because of his state of health induced by the 1st defendant, the plaintiff/respondent without any independent advice sold his property as proved, to the 1st defendant. See *Allcard v. Skinner* E (1887) 36 Ch. D 145. See also *C.I.B.C. Mortgages Plc v. Pitt & Another* (1994) 1 AC 200.

With regard to the 2nd issue as to whether the court below properly applied the principle decided in the case of *Barclays Bank Nig. Ltd. v. Ashiru* (supra), it is necessary to revisit that case to deter- F mine the question. It is however not in dispute that the 1st defendant purportedly sold the property to the appellant during the pendency of the suit between him and the plaintiff/ respondent. The appellant as part of his defence has postulated the argument that he was not G aware of the litigation over the property between the 1st defendant and the plaintiff/respondent when he bought the property.

In *Barclays Bank Nig. Ltd. v. Ashiru* (supra), the court considered the applicable principles as set out in the case of *Bellamy v. Sabine* (1857) 26 LJ (N.S.) Equity Reports, 797, where at page 803, H Turner, LJ., said:-

"The doctrine of lis pendens is not, as I conceive, founded upon any of the peculiar tenets of a court of equity as to implied or constructive notice. It is, as I think, a doctrine common to the courts both of law and equity, and rests, as I apprehend, upon this founda-

tion that it would plainly be impossible that any action or suit could be brought to a successful termination if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding. That this doctrine belongs to a court of law no less than courts of equity appears from a passage in 2 Inst. 375, where Lord Coke, referring to an alienation by a mesn lord pending a writ, says that the alienee could not take advantage of a particular provision in the Statute of Westminster 2nd 'because he came to the mesnalty pendente brevi, and in judgment of law the mesne (as to the plaintiff) remains seised of the mesnalty; for pendente lite nihil innovetur'; and though Lord Bacon's Orders, which give the rule in equity, are very generally expressed - the language of the order upon this subject being 'no decree bindeth any that cometh in bona Fide by Conveyance from the defendant before the bill exhibited, and is made no party, neither by bill nor order' but where he comes in pendente lite and while the suit is in full prosecution and this includes while the suit is under appeal, and without any colour of allowance or privity of the court, there regularly the decree bindeth', this Order must, I think, be understood to mean that the decree binds so far as the title of the plaintiff is concerned

In the same suit, the Lord Chancellor made these observations:-

"It is scarcely accurate to speak of lis pendens as affecting a purchaser upon the doctrine of notice, although undoubtedly the language of the court often so describes its operation. It affects him not because it amounts to notice but because the law does not allow to litigants parties and gives to them pending the litigation, rights in the property in dispute, so as to prejudice the opposite party. Where a litigation is pending, between a plaintiff and a defendant, as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding, not only on the litigant parties, but also upon those who derive title under them by alienation made pending the suit; whether such alienees had, or had not, notice of the pending proceedings. If this were so there could be no certainty that litigation would ever come to an end. A mortgage

or sale made before a final decree to a person who had no notice of pending proceedings, would always render a new suit necessary, and so interminable litigation might be the consequence”

The Lord Chancellor in support of the above principle of law said thus;-

- B “Notice of the equitable claim, insisted on by the plaintiff would prevent their setting up a legal title against that claim, and whether the notice came to them by means of their being made aware that a suit was pending, in which the right claimed appeared to be claimed, or in any other manner would be immaterial. But in such a case the legal title would be affected not by reason of their being *lis pendens*, but by reason of the mortgage and/or purchaser having notice of the claim...That this is the true doctrine as to *lis pendens*, appears to me not only founded on principle, but also consistent with the authorities. In *Culpepper v. Aston* 2 Ch. Cas. 115 land had been devised to a trustee to sell for payment of debts. The heir filed his bill against the trustee, alleging that the real estate was not wanted for the debts, and therefore, praying a conveyance. It was held that a sale by the trustee *pendente lite* did not bind the heir. So in *Sorell vs. Carpenter* 2 p. Wms. 487 the plaintiff instituted a suit against one Ligo upon a claim, which by the decree he established, to certain leasehold estates. Pending the suit, Ligo sold to the defendant. The question was, whether the Defendant Carpenter, could sustain his purchase, Lord King was clear that he could not, although upon some formal ground the bill in that case was doctrine (*sic*) really (*sic*) was that pending a litigation, a defendant cannot by alienation affect the right of the plaintiff to the property in dispute
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- D
- E
- F

This case having regard to the principles stated above was duly accepted by this court to resolve the issue similar to that raised in the instant case.

I have duly considered the argument preferred by learned counsel for the appellant against its application in this case. However, with due respect to learned counsel, I see no merit in his argument. This is because the argument of counsel that the appellant was unaware of the litigation between the plaintiff/respondent and the 1st defendant when he bought the property is not of any assistance to the appellant in this case. The principle as enunciated in the Bellamy case, and accepted with approval in the Barclays Bank Nig. Ltd v.

Ashiru (supra) is clear. A purchaser who bought property under litigation as in the instant case is affected “not because it amounts to notice but because the law does not allow to litigants parties and give to them pending the litigation, rights in the property in dispute, so as to prejudice the opposite party. Where a litigation is pending, between a plaintiff and a defendant, as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding, not only on the litigant parties, but also upon those who derive title under them by alienation made pending the suit; whether such alienees had, or had not, notice of the pending proceedings.”

The result of the purchase of the property by the appellant during the pendency of the litigation over it between the plaintiff/respondent and the 1st defendant is what has resulted in the instant case. The principle is therefore borne out in this case having regard to the fact that the appellant must be bound by the outcome of the case between the litigating parties. In the instant case, the appellant having bought the property from the 1st defendant who clearly could not establish his claim to the property must also fail to obtain any right or interest in the said property.

In the result, this appeal is also dismissed by me for the above reasons and the fuller reasons given in the leading judgment of my learned brother, Uwaifo, JSC. I also award costs in the sum of N10,000.00 in favour of the plaintiff/respondent.