

SUPREME COURT OF NIGERIA
20TH FEBRUARY, 2004. SC. 106/1998
CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A. KALGO,
S. O. UWAIFO, D. O. EDOZIE, JJSC

VICTOR MANAYO NDOMA-EGBA

(Substituted on 22/4/02 for APPELLANT/CROSS-
Chief Ojong Ndoma-Egba - deceased) RESPONDENT

AND

1. NNAEMEKA CHIKWUKELUO 1ST RESPONDENT/
CHUKWUOGOR CROSS-APPELLANT

2. ATT. GEN. OF CROSS-RIVER STATE

3. MICHAEL ADAGBOR-ORIM

4. INYANG ETTE (alias OBONG RESPONDENTS
EKENG ETIM INYANG, (alias
ODUDUE EKENG INYANG)

LAND LAW - Abandoned properties - Edict No. 10 of 1970 - Interpretation - Section 3 of the Edict cannot be interpreted conjunctively - As if having remained away from his properties - 1st respondent fled from his properties (H1)

WORDS & PHRASES - "Or and "and" - Interpretation - Ordinary usage - Situations may make it necessary - To read "and" in place of "or" and vice versa (H2)

STATUTES - Interpretation of words - Short of an abnormal situation - The literal rule of interpretation - Is the golden metewand of interpretation - Where the words of a statute are plain and unambiguous (H3)

STATUTES - Expropriatory Statutes - Interpretation - The Courts atti-

tude is to adopt the principle of strict construction - Which leans in favour of the citizen whose property rights are being denied (H4)

LAND LAW - "Deserted property" - Edict No. 10 of 1970 - A particular property could not be labelled "deserted property" - Until the property was published in the gazette - And at a place in the custodian's office - Conspicuous and accessible to the public (H5)

LAND LAW - "Lawful custody of deserted property" - Property must be shown to have been taken into lawful custody - As deserted property by the custodian - Before the question whether it was at any point in time abandoned property - Can be considered at all (H6)

LAND LAW - Question of objection - Under ss. 8 and 9 of the Edict - Could only arise if s. 7 relating to publication in the gazette - Is complied with - And only thereafter can the right of appeal under s. 10 arise (H7)

LAND LAW - Right of appeal - Written judgment of the custodian handed to the claimant - Is the condition precedent to exercise the right under s. 10 of the Edict (H8)

LAND LAW - Right of agent to represent his principal - S. 3 of the Edict does not permit an agent to represent his principal - For the purpose of determining whether the property owner fled or remained away from his property (H9)

LAND LAW - Meaning of deserted property - Cannot be the same as abandoned property in the Edict - And to apply the concept of *animus revertendi*² in the owner - Before the property would be identified as deserted is wrong (H10)

WORDS & PHRASES - "Abandon" and "Abandonment" - Meaning - Has a fundament and mental element - Which was never contemplated by Edict No 10 of 1970 (H11)

LAND LAW - Abandoned property - Declaration of - The government or its official - Cannot simply declare any property abandoned - Without statutory authority which defines the word abandon (H12)

STATUTES - Abandoned properties Decree No 90 of 1978 s. 1 - Construction - As the Decree did not define what amounts to "abandoned property" - It does not give legitimacy to a sale made by the committee of any property - Which is not shown by law or definition to be abandoned property (H13)

LAND LAW - Valid title - Those who purported to buy the 1st respondent's properties - Relying on Edict 10 of 1970 as well as Decree No. 90 of 1978 - Got no title irrespective of any purported certificates of occupancy (H14)

ACTIONS - Reliefs - Competence - As relief (3) Is a relief - Sought on behalf of people who are not parties to the action - It is incompetent and is accordingly struck out (H15)

EVIDENCE - Admissibility of unpleaded evidence - The 4th respondent admitted buying the property himself - Without any averment as to his son having anything to do with the property - Such evidence was therefore inadmissible - And went to no issue (H16)

PARTIES - Opportunity to present a party's case - The 4th respondent was a person who had opportunity to present his case - Which he did - And therefore could not be said to be "a person who is not a party to the cause" (H17)

PARTIES - Proper party - The 4th respondent was a proper party - Against whom judgment ought to have been given by the court of Appeal - Had it taken the right decision to restore his name to the suit (H18)

FACTS

The plaintiff, a former civil servant and an Ibo man, lived in Ikom before the Nigerian civil war which started in May 1967. He acquired by
B lease from the natives of Etayip in Ikom two parcels of land known as
plots 127 and 128. They were covered by deeds of lease dated 8 June,
1959 and registered as No. 16 at page 16 in volume 48 and No 17 at page
17 in volume 48 respectively in the lands registry office in Calabar. He
C developed the plots by erecting a number of houses thereon. He said he
left Ikom on 11 August 1967 for Agbani on a business trip with a view to
returning the following day. But on his way back he found that the bridge
at Yale had been blown off as a result of war activities. He could not
return to Ikom until March, 1970 after the cessation of war in January of
D that year. In the meantime the South-Eastern State Government promul-
gated the Deserted Property (Control and Management) (South-Eastern
State) Edict No. 10 of 1970.

This action started when the plaintiff's landed properties at Ikom
E were sold under the label of "abandoned properties". The evidence that
emerged was that the arrangement to sell the properties was made in
1978 while the plaintiff was present and was protesting that his said
properties were not abandoned. He therefore brought this action in 1980
F claiming a declaration that the two deeds of lease in respect of the prop-
erties stated above are existing leases which have not been invalidated
despite the operation of the Edict No.10 of 1970, a declaration that the
plaintiff by reason of these two leases is the person entitled to the grant
of statutory right of occupancy to the lands comprised in the two leases,
G and injunction restraining the defendants from interfering with the plain-
tiff's right to the possession to the lands in dispute, amongst other reliefs.
The High Court Calabar dismissed he plaintiff's claim but the Court of
Appeal, Enugu Division by a majority decision reversed the judgment and
H granted the reliefs claimed by the plaintiff. The defendant has therefore
appealed to the supreme court and the plaintiff cross appealed.

ISSUES FOR DETERMINATION

Whether the 1st respondent's properties in question were not

abandoned properties as contemplated by Edict No. 10 of 1970 out of which the appellant lawfully purchased, and whether the purchase was not validated by Decree No. 90 of 1979.

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

Abandoned properties - Edict No. 10 of 1970

1. Learned counsel for the 1st respondent argues that the alternative conditions “who fled or remained away from the said property” as stated in section 3 of the Edict should be read conjunctively otherwise the “strict literal interpretation of that section of the law would leave it without meaning or would leave it with so many meanings that it would amount to no meaning.” He says that “or” should be read as “and” and that remained away must be linked to “who fled” in order to give the clause a real meaning within the purpose of the Edict. Although the argument appears ingenious, it is not convincing. It has failed to take account of the possibility that “remained away” could occur even without first fleeing. That was in fact what the 1st respondent said happened to him. According to his evidence, which was not controverted, he had, without fleeing, left Ikom on 11 August, 1967 and gone about his business to Agbani but remained away from his properties in Ikom because the bridge he would have taken back the following day was destroyed. This happened during the “outbreak of the late rebellion”, and he was a person of non-South-Eastern State origin. Having in the circumstances remained away from his properties in Ikom, by the language of section 3 of Edict No. 10 of 1970, the 1st respondent’s properties became “deserted properties.” This is so by the canon of literal interpretation which gives only that one meaning and which meaning is not absurd, though perhaps unfair. (p. 689 F)

"Or and "and" - Interpretation

2. In ordinary usage, the word “or” is disjunctive and “and” is conjunctive. But it is conceded that there are situations which would make it necessary to read “and” in place of “or”, and vice versa. This may occur

in order to carry out the intention of the legislature. See Maxwell on The Interpretation of Statutes, 12th edn. Pages 232-234. Instances can be found in such cases as John G. Stein & Co. Ltd v. O'Hanlon (1965) A.C. 890; R. V Oakes (1959) 2 Q.B. 350; and Re Mills (1967) 1 W.L.R. 580.

B Such interpretation may be quite useful in order to avoid absurd or impracticable results. (p. 690 C)

STATUTES - Interpretation of words

C 3. Short of such dilemma, it is the law that the literal rule is the golden metewand of interpretation when the words of a statute are plain and unambiguous. It is a fundamental rule that such words should be given their ordinary plain meaning. It is not in such circumstances permissible to refrain from its meaning, even though it gives unreasonable or unfair result, and to go outside what the words themselves actually convey, in an attempt to consider what other things they ought to be capable of meaning: see African Newspapers Ltd v. Nigeria (1985)2 NWLR (pt.6) 137. (p. 690 E)

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Expropriatory Statutes - Interpretation

4. It is mandatory that this provision be strictly complied with. This Edict No. 10 of 1970 was meant to infringe, in a way, on the proprietary rights of those affected by it. Their properties were to be identified and taken into the custody or control of a designated Custodian. The owners' access to those properties was thereby curtailed or encroached upon. It is the law that in interpreting a statute which encroaches on a person's proprietary right, the courts' attitude must be to adopt the principle of strict construction, *fortissime contra proferentes*³, which leans in favour of the citizen whose property rights are being denied; and against the interest of the law maker: see Bello v. Diocesan Synod of Lagos (1973) A.N.L.R. (Green Cover) 196 at 214. (p. 691 G)

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"Deserted property" - Edict No. 10 of 1970

5. The property concerned in this case must, therefore, be identified by the Custodian as deserted property. He then takes it into his custody or

control. But those steps could not be taken as having been accomplished or lawfully done until the property was published in the gazette and at a place in his office conspicuous and accessible to the public. Unless this was strictly complied with no property could be identified as “deserted property”. It should be noted that the publication must be in the gazette as well as in a conspicuous and accessible place in the Custodians office. This is when a particular property could be labelled “deserted property” and notice of it was thereby given to the public. (p. 692 H)

“Lawful custody of deserted property”

6. The 1st respondent clearly stated and maintained that his properties were not abandoned. Yet, throughout, none of the defendants, particularly the 1st defendant, pleaded the lawful taking into custody of those properties by the Custodian by reference to the gazette and some other publication as mandated by section 7 of Edict No.10 of 1970. Property must be shown to have been taken into lawful custody as deserted property by the custodian before the question whether it was at any point in time abandoned property can be considered at all. (p. 693 C)

Question of objection - Under ss. 8 and 9 of the Edict

7. Again, the question of objection could arise under sections 8 and 9 only if section 7 had been complied with.

It was when this had been done that the occasion for resorting to the right of appeal as provided in section 10 would arise. I do not think anyone can reasonably dispute this legal conclusion.

As I have shown, there is no evidence that there was compliance with section 7 of Edict No. 10 of 1970. Unless there was compliance to the effect that properties identified as having been deserted were published in the Gazette and in a conspicuous place in the Custodian’s Office, there was no cause for objection under section 8 or for appeal under section 10. (p. 693 E/ 694 B/ 695 C)

Right of appeal - Written judgment of the custodian

8. It is the judgment of the Custodian given in writing and handed to the

claimant that would lead to an appeal by a dissatisfied claimant. It was, therefore, of no moment for the learned trial judge, who had no evidence that such judgment had been made by the Custodian and handed in writing to the 1st respondent, to talk of failure to exercise a right of appeal. The learned trial judge appeared to have rendered his judgment on these aspects largely theoretically. (p. 696 B)

Right of agent to represent his principal

9. I have no doubt that the learned counsel for the appellant is right in his argument on that point. The Edict in question was aimed at the person of the property owner as to whether he fled or remained away from his property as a result of the civil war. An agent of such a person could not represent him because the Edict did not envisage that kind of manoeuvring. This is quite clear from the wording of section 3. Section 21 (1) of the Edict seems confirmatory of this because it would appear that not even the presence of a wife or child of the property owner could prevent the property being identified as “deserted property”.

The likelihood was that such a wife would be of South - Eastern State origin who had no reason to flee as a result of the civil war, and would probably live on the premises of the deserted property. Those circumstances notwithstanding, it is still deserted property by the mere fact that the owner, a person of non - South - Eastern State origin, fled or remained away from the said property. That is the plain ordinary meaning to be given to the clear and unambiguous language of section 3. It permits of no agent or representative taking the place or acting on behalf of the absent owner. With due respect, both Tobi and Ubaezonu JJCA were in error in their interpretation of section 3. (p. 696 G)

Meaning of deserted property - Not same as abandoned property

10. The question, however, arises whether “deserted property” as used in section 3 means abandoned property. I think the term “deserted property” was intended to identify a property simply upon the fact that the owner fled or remained away from it as a result of the civil war. However, it is uncalled for and indeed wrong to introduce the concept of *animus revertendi* in the

owner of such property as Ubaezonu JCA did, before that property would be identified as deserted, having regard to the implied definition of “deserted property” in section 3. That concept is inappropriate since “deserted property” as used is only a label reflecting the mere induced, not voluntary, act of the owner of the property concerned in fleeing or remaining away from his property as a result of the civil war. B

As I indicated earlier in this judgment, a person of non-Southern-Eastern origin who fled from his house or remained away from it and stays in a kind neighbour’s house comes within section 3 even though he may be sighting his property from the said neighbour’s house. In such a circumstance, it is obvious that the word “deserted” there used could not have been meant to be a synonym of the word “abandoned”. It is unrealistic, if not cruel, to so regard it. It is true that in the classical definition, “to desert” means to “abandon”. But one must not forget the full legal import of that. I cannot imagine the rationale behind the idea of paying compensation for property that is abandoned. Section 33 of the Edict No. 10 of 1970 provided for compensation as follows: D

“33. (1) *The Custodian shall have power to recommend to the Military Governor the acquisition by the State Government of any deserted property.* E

(2) *Where the Military Governor is satisfied whether or not on the recommendation of the Custodian, that any deserted property is required for a public purpose of the State, the Military Governor may, after consultation with the Executive Council, acquire if for the estate or interest subsisting therein in accordance with the provisions of the Public Lands Acquisition Law.” F*

The Public Lands Acquisition Law provides for compensation of acquired property and indeed under the Constitution, reasonable compensation must be paid for compulsorily acquired property. The definition of abandoned property is antithetical to payment of compensation. I am satisfied that the meaning of “deserted property” under section 3 of Edict No. 10 of 1970 could hardly be abandoned property otherwise the Government would simply appropriate such property by special Law or Edict rather than acquire it under the Pubic Land Acquisition Law which G H

recognizes that there is an owner of such property to be acquired and who should be compensated. Not even sections 34 and 35 of the Deserted property (Control and Management) (South-Eastern State) (Amendment) Edict No 8 of 1971) make any difference to the conclusion I have reached that “deserted property” under the Edict No. 10 of 1970 was not meant as abandoned property.

Second, if the Military Governor could order “deserted property” to be released to the owner by virtue of section 35, then it would seem to me, from the definition of “abandon” which I shall give presently, that such property can in no sense be regarded as abandoned property. What has been truly abandoned cannot thereafter be ordered to be released to the erstwhile owner. It lacks consistency and logic, unless a definition other than the ordinary meaning of “abandon” is intended. If that is so, the definition must be such that it is backed by force of law e.g that it is contained in a relevant statutory definition. In the absence of that, I must go by the ordinary English meaning. (p. 698 B/G/ 700 E)

E “Abandon” and “Abandonment - Meaning

11. To desert, as to abandon, has a fundamental mental element which was never contemplated by Edict No. 10 of 1970. That is why I frown at Ubaezonu JCA’s reference to *animus revertendi* in relation to section 3 of the Edict and regard it as a red herring to a true understanding of that section. In the Black’s Law Dictionary, 6th edition, “abandon” and “abandonment” are defined with their respective consequences. At page 2, there is the following:

G “Abandon. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one’s right or interest. To give up or to cease to use. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in, to desert. It includes the intention, and also the external act by which it is carried H into effect.”

Then follows the further definition, inter alia:

“Abandonment. The surrender, relinquishment disclaimer, or cessation of property or of rights. Voluntary relinquishment of all right, title,

claim and possession, with the intention of not reclaiming it. The giving up of a thing absolutely, without reference to any particular person or purpose, as vacating property with the intention of not returning, so that it may be appropriated by the next corner or finder. Intention to forsake or relinquish the thing by owner with intention of terminating his ownership, but without vesting it in any other person. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property.

‘Abandonment’ includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon. Generally, ‘abandonment’ can arise from a single act or from a series of acts.

Time is not an essential element of ‘abandonment’, although the lapse of time may be evidence of an intention to abandon, and where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment.” (p. 701 A)

Abandoned property - Declaration of

12. Neither the Government nor its officials nor the Abandoned Properties Implementation Committee can simply declare any property abandoned without statutory authority to back this up. If there had been such a statute, it must be clear what constitutes abandonment by definition in that statute. One would be bound by such definition rather than the well - known and accepted definition which depends on the intention and disposition of the owner of property. But in the absence of any special statutory definition, I must resort to and rely on such other definitions as I have reproduced from *The Black’s Law Dictionary*. (p. 702 H)

Abandoned properties Decree No 90 of 1978 s. 1 - Construction

13. As can be seen, this section assumes that abandoned properties have been spelt out or defined. It is a wrong assumption. The Act does not itself define what amounts to “abandoned property” nor did the Edict,

and does not say that whatever is declared by the Committee to be abandoned property shall have that meaning or label. The Act cannot even be said to have a clear nexus with the Edict No. 10 of 1970. Even so, the Edict did not define or mention abandoned property. What I understand
B section 1 of the Act as saying is that whenever the Committee conducted sale or disposition of abandoned properties, the sale shall be deemed to have been lawful and properly made. This does not give legitimacy to a sale made by the Committee of any property which is not shown by law
C or definition to be abandoned property. The owner of such property will get it back, otherwise anybody could be liable to lose his property to the Committee's indiscretion. The Committee had authority over only abandoned properties; and statute must stipulate clearly what is abandoned property. (p. 703 F)
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LAND LAW - Valid title

14. In the circumstances, those who purported to buy the 1st respondent's properties in reliance on Edict 10 of 1970 as well as the Act (formerly Decree No. 90 of 1979), and whatever agreements were made pursuant thereto, got no title irrespective of any purported Certificates of Occupancy. Those properties were not proved to have been gazetted as deserted properties nor is there any legal backing for their being characterized as abandoned properties. The Act does not affect the 1st respondent's properties and therefore section 3 (2) which was intended to oust the jurisdiction of the courts does not apply. The action brought by the
F 1st respondent is accordingly competent. It was filed two years after the unlawful entry upon his properties and after he had protested to the District Officer without avail. I will, therefore, in reference to appellant's
G issues for determination answer issues (i) and (ii) in the negative and issue (iii) in the affirmative. (p. 704 H)

H ACTIONS - Reliefs - Competence

15. I grant all the reliefs claimed except relief (3). It is a relief sought on behalf of the Etayip people who are not parties to the action. The relief is incompetent and is accordingly struck out. I award N10,000.00 costs in

favour of the 1st respondent/cross-appellant against the appellant/respondent. (p. 705 D)

Admissibility of unpleaded evidence

16. If the learned Justice had read closely the submission in the brief of the appellant before the court below on this matter, he would have had to examine the statement of defence. And it would have been clear to him that the 4th defendant (who testified as d.w.4) specifically admitted that he bought the property himself. Not only that the statement of defence contains no averment that the son of the said 4th defendant had anything to do with the property in question his name was never mentioned. So the evidence which the learned Justice said he “carefully examined” is inadmissible and went to no issue. (p. 707 E)

Opportunity to present a party's case

17. It is clear to me that if the learned Justice of Appeal had reached the same conclusion I have come to upon the state of the pleadings and evidence, he would not have held that the 4th defendant was “a person who is not a party to the cause” in this suit. He would have been obligated to restore the 4th defendant. The 4th defendant was a person who had every opportunity to put his case; he did put his case and was given a full hearing. He later, in the end, sought an easy way of avoiding liability. But it was a crooked and dangerous way. No party who adopts that ploy to defeat the cause of justice can expect any assistance from a court of law and equity. (p. 708 D)

PARTIES - Proper party

18. The court below was in error to have upheld what the learned trial judge did. He dismissed the claim against the 4th defendant and struck him off the suit. Upon the pleadings and evidence, the 4th defendant, Inyang Ette, was a proper party against whom judgment ought to have been given by the court below had it taken the right decision to restore his name to the suit. That the 4th defendant was a proper party was not in issue at any time until when, testifying as d.w.4, he suddenly said his

name was not Inyang Ette. He claimed the name was a limited liability company known as Inyang Ette Motors Limited of which he was the Managing Director. It is quite intriguing how the two courts below accepted, at least by implication, that the name “Inyang Ette” as it stands, or that Inyang Ette Motors Limited as given on the ipse dixit of d.w.4, was a limited liability company without legally admissible evidence in this regard, by way of the certificate of incorporation, even if that issue had been pleaded: see *Apostolic Church v A.G Mid Western State* (1972) 7 NSCC 247. Even so, could the 4th defendant, as Inyang Ette, not introduce his name to incorporate a company to be known as Inyang Ette Motors Limited? How will that inhibit his being sued in his name for what he has done personally? I answer the issue raised in the cross - appeal in the negative. (p. 708 G)

REPRESENTATION

Tawo E. Tawo for Appellant/Cross-Respondent
Ifeanyi Obiakor for 1st Respondent/Cross-Appellant

CASES REFERRED TO

- Eboigbe v N.N.P.C. (1994) 5 N.W.L.R. (Pt. 347) 648, (1994) 10 KLR 68
Onwumechili v. Akintemi (1985) 3 NWLR (pt. 13) 504;
Adene v. Dantumbu (1988) 4 NWLR (pt.88) 309;
Ekuma v. Silver Eagle Shipping Agencies (1987) 4 NWLR (pt. 65) 472;
Olawuyi v. Adeyemi (1990) 4 NWLR (pt. 147) 746
Bello v. Diocesan Synod of Lagos (1973) A.N.L.R. (Green Cover) 196 at 214;
Peenok Investments Ltd v. Hotel Presidential Ltd (1982) 13 NSCC 477 at 487 - 488;
Attorney-General of Bendel State v. P.L.A. Aideyan (1989) 4 NWLR (pt. 118) 646 at 675-676.
African Newspapers Ltd v. Nigeria (1985) 2 NWLR (pt.6) 137;
International Bank for West Africa Ltd v. Imano (Nig.) Ltd (1988) 3 NWLR (pt.85) 633;
Egbe v. Alhaji (1990) 1 NWLR (pt. 128) 546;

STATUTES REFERRED TO

Deserted Property (Control and Management) (South-Eastern State) Edict No 10 of 1970.

Abandoned Properties Decree No 90 of 1978

LEAD JUDGMENT BY UWAIFO, JSC

The High Court, Calabar in a considered judgment, dismissed the plaintiff's claim on 7 December, 1992. On 11 December, 1997, the Court of Appeal, Enugu Division, by majority decision, reversed that judgment and granted the reliefs claimed by the plaintiff. It all started when the plaintiff's landed properties at Ikom in Cross River State were sold under the label of "abandoned properties." The evidence that emerged was that the arrangement to sell the properties was made in 1978 while the plaintiff was present and was protesting that his said properties were not abandoned. He therefore brought this action in October, 1980 claiming the following reliefs:

"1. A declaration that the two deeds of lease in respect of two adjacent pieces of land at the junction of IKOM – OBUDU ROAD and ABAKALIKI – MAMFE ROAD, popularly known as Four Corner, Ikom, Cross River State, made in each case between Chief Emmanuel Nkang Abang, Chief Oga Assima, and Chief Ofu for themselves and on behalf of the people of Etayip Quarter of Ikom Town and the plaintiff, and dated, in each case, the 8th day of June, 1959, and registered respectively, as No. 16 at page 16 in volume 48, and as No. 17 at page 17 in volume 48, of the Register of Deeds formerly kept in the Lands Registry in the office at Enugu but now kept in Lands Registry in the office at Calabar, are existing leases and have not been invalidated despite the operation of the Deserted Property (Control and Management) (South-Eastern State) Edict 1970; H

2. A declaration that the plaintiff by reason of these two leases, aforesaid, is the person entitled to the grant of a statutory right of occupancy to the lands comprised in the two leases to the extent of his

leasehold interest;

3. A declaration that the lands comprised in the two deeds of lease, aforesaid, were never abandoned or deserted by the Etayip people, the owners of those lands at all material times, and therefore, the lands were outside the purview of all laws, rules and regulations relating to abandoned or deserted property, and, therefore, can never be sold as abandoned or deserted property, and any purported sale of the said lands, or any part thereof, by any person or persons other than the Etayip people is null and void and of no effect;

4. An injunction restraining the defendants, their servants or agents, from interfering with the plaintiff's right to the possession of the lands comprised in the said two deeds of lease;

5. An injunction:-
(a) restraining the 2nd, 3rd and 4th defendants, each and every one of them, from applying, or further prosecuting any application, for a grant of the statutory right of occupancy to the said lands comprised in the said two leases, either for themselves or for anybody else;

(b) restraining the Government of the Cross River State of Nigeria from treating, or granting, any such application for a grant of the customary right of occupancy to the 2nd, 3rd and 4th defendants, or any of them, or anybody else through them."

I consider it necessary to state more facts of the case very briefly. The plaintiff, a former civil servant and an Ibo man, lived in Ikom before the Nigerian Civil War which started in May, 1967. He acquired by lease from the natives of Etayip in Ikom two parcels of land known as plot 127 and 128. They were covered by deeds of lease dated 8 June, 1959 and registered as No. 16 at page 16 in volume 48 and No. 17 at page 17 in volume 48 respectively in the Lands Registry Office in Calabar. He developed the plots by erecting a number of houses thereon. He became a trader in farm produce after he resigned in 1956 from the post of Assistant Conservator of Forests. He said he left Ikom on 11 August, 1967 for Agbani on business trip with a view to returning the following day. But on his way back he found that the bridge at Yahe had been blown off as a result of war activities. He could not return to Ikom until March, 1970

after the cessation of war in January of that year. In the meantime, the then South-Eastern State Government promulgated the Deserted Property (Control and Management) South-Eastern State) Edict No. 10 of 1970. Section 3 of the said Edict provided thus:

“For the purpose of this Edict every movable or immovable property within the State held or reputed to be held in any estate, right or interest by a person of non-South-Eastern State origin who fled or remained away from the said property at or following the outbreak of the late rebellion is deemed to be deserted and is hereinafter referred to as ‘deserted property.’”

In coming to the conclusion that the plaintiff was caught by the above-stated provision of the Edict No. 10 of 1970, the learned trial judge, Ecoma C.J., observed thus:

“The plaintiff’s statement in his statement of claim and also his testimony in court is that he left Ikom for Agbani in order to check his produce store and had hoped to return to Ikom on the following day. He said he could not return because the Yahe bridge was blown off. This was in 1967. He did not return to Ikom until the civil war ended in 1970. This is a substantial evidence for me to hold that he ‘remained away’ from Ikom and from the property and that he is a person of non-South-Eastern State origin.”

The learned judge, following from this conclusion, later held that as soon as the plaintiff’s properties were taken into custody by the designated Custodian under Edict No. 10 of 1970, they became abandoned properties. But the Court of Appeal, although agreeing that the plaintiff was “physically not in touch with the properties,” held that he did not desert them, per Tobi JCA. The court allowed the appeal against the judgment of Ecoma C.J

As a result of that holding and others related to it, leading to the judgment of the trial court being set aside, the 2nd defendant (now appellant) has appealed against the judgment of the court below and raised the following issues for determination:

“(i) Whether the properties identified as ICC 127B and 128 were abandoned properties within the contemplation and operation of Edict

No. 10 of 1970.

(ii) *Whether the transactions between the Abandoned Properties Implementation Committee and the appellant were secured and assured by the Abandoned Properties Decree No 90 of 1979 now Abandoned Properties Act Cap. 1, Laws of the Federation, 1990.*

(iii) *Whether the 1st respondent's suit at the trial court was competent."*

The 1st respondent was the plaintiff at the trial. The appellant stated that he intends the issues stated above to partially cover the 1st respondent's cross-appeal. From the grounds of appeal and the arguments contained in the appellant's brief, I think issues (i) and (ii) simply put come to this: whether the 1st respondent's properties in question were not abandoned properties as contemplated by Edict No. 10 of 1970 out of which the appellant lawfully purchased, and whether the purchase was not validated by Decree No. 90 of 1979. The houses which the appellant claims he purchased out of the 1st respondent's properties are identified as ICC 127B and ICC 128. It should be noted that all the houses built by the 1st respondent were on plots 127 and 128 covered by the registered deeds stated earlier on in this judgment.

Learned counsel for the appellant has taken issue with the conclusion reached by Tobi JCA that the 1st respondent's properties that were sold did not qualify as deserted properties within the meaning of section 3 of Edict No. 10 of 1970 when the learned Justice of Appeal said:

"I have come to the conclusion that the properties of the appellant [in the Court of Appeal] which were sold did not come under the provisions of the Deserted Property (Control and Management) (South-Eastern State) Edict No. 10 of 1970 Accordingly, the appellant had no legal duty to raise objection or file a Notice of Appeal under Edict No. 10 of 1970."

[Square brackets and parenthesis supplied]

The learned Justice reached this conclusion on the premise he earlier built up that the 1st respondent (then appellant) did not desert his properties under section 3 of Edict No. 10 of 1970 even though he also said that the man "was physically not in touch with the properties." In agreeing with the above, Ubaezonu JCA, being of the opinion that the man neither fled nor remained away from his properties, said:

“Again, did the appellant remain away from the said property. The evidence before the court was that he was in possession through his agent John Ani who was collecting rent for him from the said property. It is my respectful view that for all intents and purposes and having regard to the evidence before the court the appellant neither fled nor remained away from the property which is the subject matter of this appeal.”

The learned trial judge had disbelieved the evidence of John Ani that he acted as agent for the 1st respondent. His reasons were (1) that John Ani should have informed the Ikom County Council, which enumerated the properties in Ikom in 1968 and designated plots 127 and 128 as deserted properties, of his status; (2) that he should have raised objection under section 8 of the Edict within 40 days, stating the grounds of objection; (3) that he should have appealed under section 10 of the Edict.

I think attention must first be drawn to the Edict itself. It was an Edict which made *“provision for the custody, control and management of property of persons of non-South-Eastern State origin deserted by them in the South-Eastern State of Nigeria.”* The date of commencement was back-dated to 18 October, 1967. The interpretation section 2 says that “deserted property” has the meaning assigned to it in section 3. I have already set out the provisions of section 3. It covers movable and immovable property within the State held by a person of non-South-Eastern State origin who, because of the civil war, fled from the said property or remained away from the said property.

Learned counsel for the 1st respondent argues that the alternative conditions “who fled or remained away from the said property” as stated in section 3 of the Edict should be read conjunctively otherwise the “strict literal interpretation of that section of the law would leave it without meaning or would leave it with so many meanings that it would amount to no meaning.” He says that “or” should be read as “and” and that remained away must be linked to “who fled” in order to give the clause a real meaning within the purpose of the Edict. Although the argument appears ingenious, it is not convincing. It has failed to take account of the possibility that “remained away” could occur even without first fleeing. That was in

fact what the 1st respondent said happened to him. According to his evidence, which was not controverted, he had, without fleeing, left Ikom on 11 August, 1967 and gone about his business to Agbani but remained away from his properties in Ikom because the bridge he would have taken back the following day was destroyed. This happened during the “outbreak of the late rebellion”, and he was a person of non-South-Eastern State origin. Having in the circumstances remained away from his properties in Ikom, by the language of section 3 of Edict No. 10 of 1970, the 1st respondent’s properties became “deserted properties.” This is so by the canon of literal interpretation which gives only that one meaning and which meaning is not absurd, though perhaps unfair.

In ordinary usage, the word “or” is disjunctive and “and” is conjunctive. But it is conceded that there are situations which would make it necessary to read “and” in place of “or”, and vice versa. This may occur in order to carry out the intention of the legislature. See Maxwell on The Interpretation of Statutes, 12th edn. Pages 232-234. Instances can be found in such cases as John G. Stein & Co. Ltd v. O’Hanlon (1965) A.C. 890; R. V Oakes (1959) 2 Q.B. 350; and Re Mills (1967) 1 W.L.R. 580. Such interpretation may be quite useful in order to avoid absurd or impracticable results. Short of such dilemma, it is the law that the literal rule is the golden metewand of interpretation when the words of a statute are plain and unambiguous. It is a fundamental rule that such words should be given their ordinary plain meaning. It is not in such circumstances permissible to refrain from its meaning, even though it gives unreasonable or unfair result, and to go outside what the words themselves actually convey, in an attempt to consider what other things they ought to be capable of meaning: see *African Newspapers Ltd v. Nigeria* (1985)2 NWLR (pt.6) 137; *International Bank for West Africa Ltd v. Imano* (Nig.) Ltd (1988) 3 NWLR (pt.85) 633; *Egbe v. Alhaji* (1990) 1 NWLR (pt. 128) 546; *Ekeogu v. Aliri* (1991) 3 NWLR (pt. 179) 258.

It is true that a non-indigene of South-Eastern State who fled from his property at or following the outbreak of the civil war must be

considered to have also remained away from it. There is no difficulty in interpreting the consequence of the act of fleeing under the Edict. The same applies to the act of remaining away. But it is the entire purpose of Edict No. 10 of 1970 that ought to be examined and understood in view of its various provisions and the fact that fleeing or remaining away from one's property could at times present some ridiculous situations, even though the consequence is not in doubt. Fleeing, by the words of section 3, may not involve leaving the State or even the town where the property is located. For example, a person of non-South-Eastern State origin may run away to take refuge in a kind neighbour's house. Yet section 3 of Edict No. 10 of 1970 will, by definition, deem that to amount to desertion as to make such person's property "deserted property." This is because section 3 was not intended to apply to only those who fled from the State but to such persons who fled from or remained away from their properties at the material time. What then is the consequence?

Section 4 of the Edict provided for deserted property to be in the care of a Custodian. He took charge to authorise lawful occupation, to collect and enforce the payment of rent, and to arrange for the repair, maintenance and upkeep of such deserted property: sections 5 and 6. He shall publish from time to time in the gazette and at some conspicuous and accessible place in his office, a list of property identified by him as deserted property and taken into his custody or control. This is provided in section 7 which, because of its importance, I reproduce thus:

"The Custodian shall publish or cause to be published in the Gazette and at a place in his office conspicuous and accessible to the public a list of property from time to time identified by him as deserted property and taken into his custody or control."

It is mandatory that this provision be strictly complied with. This Edict No. 10 of 1970 was meant to infringe, in a way, on the proprietary rights of those affected by it. Their properties were to be identified and taken into the custody or control of a designated Custodian. The owners' access to those properties was thereby curtailed or encroached upon. It is the law that in interpreting a statute which encroaches on a person's proprietary right, the courts'

attitude must be to adopt the principle of strict construction, *fortissime contra proferentes*, which leans in favour of the citizen whose property rights are being denied; and against the interest of the law maker: see **Bello v. Diocesan Synod of Lagos (1973) A.N.L.R. B (Green Cover) 196 at 214**; *Peenok Investments Ltd v. Hotel Presidential Ltd (1982) 13 NSCC 477 at 487 – 488*; *Attorney-General of Bendel State v. P.L.A. Aideyan (1989) 4 NWLR (pt. 118) 646 at 675-676*.

I consider it necessary to refer to *Bello v. Diocesan Synod of Lagos* (Supra) at page 214 because of the important and relevant observation made by Coker JSC *inter alia* thus:

"The principle on which the courts have acted from time immemorial is to construe fortissime contra proferentes any provision of the law which gives them extraordinary powers of compulsory acquisition of the properties of citizens. In re Bowen, South Shields (Thames Street) Clearance Order, 1931 [1932] 2 K.B. 621 at 633. Swift, J. described the position thus:-

'When an owner of property against whom an order has been made under the Act comes into this Court and complains that there has been some irregularity in the proceedings and that he is not liable to have his property taken away, it is right, I think, that his case should be entertained sympathetically and that a statute under which he is being deprived of his rights to property should be construed strictly against the local authority and favourably towards the interest of the applicant, in as much as he for the benefit of the community is undoubtedly suffering a substantial loss, which in my view must not be inflicted upon him unless it is quite clear that Parliament has intended that it shall.'

In such cases the provisions of the statute are read dispassionately and effect is given to the spirit and intent of the legislation Very often the legislation concerned prescribes formalities to be adhered to or complied with as a pre-requisite of the exercise of compulsive powers. In the application of the law, the courts insist that the formalities prescribed should be fully complied with."

The property concerned in this case must, therefore, be identified by the Custodian as deserted property. He then takes it

into his custody or control. But those steps could not be taken as having been accomplished or lawfully done until the property was published in the gazette and at a place in his office conspicuous and accessible to the public. Unless this was strictly complied with no property could be identified as “deserted property”. It should be noted that the publication must be in the gazette as well as in a conspicuous and accessible place in the Custodians office. This is when a particular property could be labelled “deserted property” and notice of it was thereby given to the public.

The 1st respondent clearly stated and maintained that his properties were not abandoned. Yet, throughout, none of the defendants, particularly the 1st defendant, pleaded the lawful taking into custody of those properties by the Custodian by reference to the gazette and some other publication as mandated by section 7 of Edict No.10 of 1970. Property must be shown to have been taken into lawful custody as deserted property by the custodian before the question whether it was at any point in time abandoned property can be considered at all. As will be shown, the difference between “deserted property” by virtue of Edict No. 10 of 1970 and “abandoned” property by definition must be kept distinct for the purposes of this case

Again, the question of objection could arise under sections 8 and 9 only if section 7 had been complied with. They read as follows:

“8. (1) *Where a person is aggrieved by the identification of property as deserted property he may by application in writing to the Custodian make objection to the identification.*

(2) *Such application shall state precisely the grounds of objection, the estate, right or interest claimed in the property and how it was acquired, and shall be made not later than forty days after the date of publication of the list referred to in section 7.*

(3) *Upon receipt of such application the Custodian shall make such enquiry as he deems necessary, and determine the objection to the best of his judgment and given written notice of his decision to the aggrieved person.*

9. (1) *A person who claims, whether for his sole benefit or for the*

benefit of himself and any other person, to be the landlord of any deserted property shall deliver to or at the office of the Custodian a statement in writing setting out precisely and fully the grounds of his claim.

(2) Upon receipt of the statement mentioned in subsection (1) the Custodian shall make such enquiry as he deems necessary and determine the claim to the best of his judgment and give written notice of his decision to the claimant.”

It was when this had been done that the occasion for resorting to the right of appeal as provided in section 10 would arise. I do not think anyone can reasonably dispute this legal conclusion.

But oblivious of this, the learned trial judge gave his reasons for disbelieving the evidence of John Ani. Ani had said that he was the agent of the 1st respondent. He said he was present in Ikom to take care of the 1st respondent’s properties. This was while the 1st respondent “remained away” from those properties going by the evidence as to how he left Ikom. The learned judge reasoned that if it was true that John Ani was living in Ikom during the relevant period, he would have brought his presence to the notice of those who enumerated deserted properties or to the County Council, Ikom. It would appear that the learned trial judge did not have a close look at the evidence of John Ani who testified as p.w.4. He said in examination-in-chief:

“In October 1967, Ikom County Council official came and numbered the buildings. In plot 127 they numbered 3 buildings. In plot 128 they numbered only one building – the plaintiff’s building. As a result of the numbering, I was told by the Council official to stop collecting rent from the three buildings in plot B127.”

When cross-examined by Miss Ndoma-Egba, he said:

“The County Council officials did not tell me why they were numbering the buildings.”

On further cross-examination by Mr. Aniekan, he said inter alia:

“It was not to my knowledge that the Government extended acquisition to the property I was managing I was there when the Council members numbered the property. ... They did not tell me the property was described as abandoned. I believe they were officials from

Ikom County Council. One Ojong asked me verbally to stop collecting rents. I did not challenge him because they said they were going to collect the rent for the plaintiff. Ojong is a representative of Government. I believed him. I went to the County Council and asked the then Secretary, one Bisong.”

The above evidence was given generally in support of paragraphs 29, 30, 31, 33, 34, 35 and 37 of the statement of claim. How then could the learned judge justifiably say that John Ani was not at Ikom at the time otherwise he would have brought his presence to the notice of the enumerators of deserted properties or to the County Council? How else could John Ani have demonstrated that he did both? **As I have shown, there is no evidence that there was compliance with section 7 of Edict No. 10 of 1970. Unless there was compliance to the effect that properties identified as having been deserted were published in the Gazette and in a conspicuous place in the Custodian’s Office, there was no cause for objection under section 8 or for appeal under section 10.**

Again, unfortunately, the learned trial judge observed thus:

“What is more, the law regulating those properties came out in 1970 and all those persons whose interests were affected were given 40 days within which to send in their objections and the other representations – see section 8, (1) (2) of the Edict No. 10 of 1970. The application in respect of the objection to the Custodian was mandatorily expected to state precisely the grounds of objection, the estate, right or interest claimed in the property and how it was acquired. If it was true that p.w.4 John Ani was at Ikom he should have made the objection for and on behalf of the plaintiff. He was certainly not there. It follows that the plaintiff did not object either by himself or through any accredited agent. These apart, the plaintiff failed to exercise his statutory right of appeal against the decision of the Custodian by not appealing to the High Court at Ikom as provided for in section 10, (1) (2) and (3) of the Edict.”

It seems to me that the learned trial judge either overlooked or skipped considering some necessary aspects of the procedure to be followed. To repeat myself, upon the Custodian identifying deserted

property, he would cause it to be published in the Gazette and at a place in his office conspicuous and accessible to the public a list of property from time to time so identified to him and taken into his custody or control. It is that Gazette and publication that gave notice to those affected and to the public at large. It is then they might object or have cause to object in a manner stated in section 8. Then followed section 9 which I have earlier reproduced.

It is the judgment of the Custodian given in writing and handed to the claimant that would lead to an appeal by a dissatisfied claimant. It was, therefore, of no moment for the learned trial judge, who had no evidence that such judgment had been made by the Custodian and handed in writing to the 1st respondent, to talk of failure to exercise a right of appeal. The learned trial judge appeared to have rendered his judgment on these aspects largely theoretically.

I will at this stage consider a few matters arising from the arguments of both counsel in regard to the place of agents under Edict No. 10 of 1970 and the relevance of the question of “animus revertendi” in section 3 thereof. In his judgment, Ubaezonu JCA was of the view that the 1st respondent did not remain away from his properties because he was in possession through his agent John Ani. Tobi JCA held the view emphatically that since the 1st respondent had tenants and “about 20 employees” on the properties that was enough evidence of non-desertion. Learned counsel for the appellant argues that Edict No. 10 of 1970 was specific as to whom it applied, namely persons of non-South-Eastern State origin who fled or remained away from their properties as a result of the civil war; and that agents of such persons were not envisaged to stand in for them. Learned counsel for the 2nd respondent made the same argument. But learned counsel for the 1st respondent/cross-appellant avoided going into that argument.

I have no doubt that the learned counsel for the appellant is right in his argument on that point. The Edict in question was aimed at the person of the property owner as to whether he fled or remained away from his property as a result of the civil war. An agent of such

a person could not represent him because the Edict did not envisage that kind of manoeuvring. This is quite clear from the wording of section 3. Section 21 (1) of the Edict seems confirmatory of this because it would appear that not even the presence of a wife or child of the property owner could prevent the property being identified as “deserted property”. Section 21

(1) reads:

“21 – (1) Where a person who is ordinarily resident within the State is shown to the satisfaction of the Custodian to be the wife or a child of the owner of a deserted property the Custodian may in his sole discretion and for such period as he may think fit, pay to or for the benefit of the wife or child such allowance for her or its subsistence as the Custodian may deem sufficient.”

The likelihood was that such a wife would be of South-Eastern State origin who had no reason to flee as a result of the civil war, and would probably live on the premises of the deserted property. Those circumstances notwithstanding, it is still deserted property by the mere fact that the owner, a person of non-South-Eastern State origin, fled or remained away from the said property. That is the plain ordinary meaning to be given to the clear and unambiguous language of section 3. It permits of no agent or representative taking the place or acting on behalf of the absent owner. With due respect, both Tobi and Ubaezonu JJCA were in error in their interpretation of section 3.

In the course of this judgment, I considered whether as a fact the claim of John Ani that he was present at Ikom during the civil war and acted as agent of the 1st respondent in respect of his properties was supported by evidence. I did not thereby recognize as a matter of law that, granted that John Ani acted in that capacity, that was capable of saving the said properties from being taken into custody as deserted properties. What I did was to demonstrate that the learned trial judge was in error not to have examined the evidence in which John Ani said he was present before he (the learned judge) reached a conclusion that he was not, otherwise, as he reasoned, certain events should have followed. Had the learned trial judge

considered John Ani's evidence and accepted it, that would still not have made any difference in law. The learned trial judge would not have been able to rightly conclude that the 1st respondent's properties did not qualify as deserted properties. To do so would be an erroneous interpretation of section 3 of Edict No. 10 of 1970.

The question, however, arises whether "deserted property" as used in section 3 means abandoned property. I think the term "deserted property" was intended to identify a property simply upon the fact that the owner fled or remained away from it as a result of the civil war. However, it is uncalled for and indeed wrong to introduce the concept of animus revertendi in the owner of such property as Ubaezonu JCA did, before that property would be identified as deserted, having regard to the implied definition of "deserted property" in section 3. That concept is inappropriate since "deserted property" as used is only a label reflecting the mere induced, not voluntary, act of the owner of the property concerned in fleeing or remaining away from his property as a result of the civil war. The whole purpose of the Edict was to provide for the custody, control and management of such property. It seems to me that Edict No. 10 of 1970 had, at least initially, a salutary purpose of protecting the so-called "deserted properties" from vandals and false claimants for the real owners. It was in a sense a beneficial law for the preservation of the said properties. Hence there were provisions for dealing with conflicting claims to property (section 11), false claims (section 14), unlawful occupation (section 12 and 13), malicious damage (section 15), payment of subsistence allowance to wife or child of owner (section 21), among other provisions.

As I indicated earlier in this judgment, a person of non-Southern-Eastern origin who fled from his house or remained away from it and stays in a kind neighbour's house comes within section 3 even though he may be sighting his property from the said neighbour's house. In such a circumstance, it is obvious that the word "deserted" there used could not have been meant to be a synonym of the word "abandoned". It is unrealistic, if not cruel, to

so regard it. It is true that in the classical definition, “to desert” means to “abandon”. But one must not forget the full legal import of that. I cannot imagine the rationale behind the idea of paying compensation for property that is abandoned. Section 33 of the Edict No. 10 of 1970 provided for compensation as follows:

“33. (1) *The Custodian shall have power to recommend to the Military Governor the acquisition by the State Government of any deserted property.*

(2) *Where the Military Governor is satisfied whether or not on the recommendation of the Custodian, that any deserted property is required for a public purpose of the State, the Military Governor may, after consultation with the Executive Council, acquire if for the estate or interest subsisting therein in accordance with the provisions of the Public Lands Acquisition Law.*”

The Public Lands Acquisition Law provides for compensation of acquired property and indeed under the Constitution, reasonable compensation must be paid for compulsorily acquired property. The definition of abandoned property is antithetical to payment of compensation. I am satisfied that the meaning of “deserted property” under section 3 of Edict No. 10 of 1970 could hardly be abandoned property otherwise the Government would simply appropriate such property by special Law or Edict rather than acquire it under the Public Land Acquisition Law which recognizes that there is an owner of such property to be acquired and who should be compensated. Not even sections 34 and 35 of the Deserted property (Control and Management) (South-Eastern State) (Amendment) Edict No 8 of 1971) make any difference to the conclusion I have reached that “deserted property” under the Edict No. 10 of 1970 was not meant as abandoned property. The sections read thus:

34. (1) *Where it appears to the Military Governor that it is in the public interest so to do, he may in writing direct the Custodian to sell any deserted property within the meaning of section 3 of this Edict.*

(2) *Notwithstanding anything to the contrary in any written law, any interested legal, beneficial or otherwise, subsisting in a deserted*

property to which this section applies shall, upon the sale of such property, be deemed to subsist in the proceeds of sale alone and accordingly the title to any deserted property sold by virtue of this section shall, from the date of the sale, be free from any encumbrance whatsoever.

B (3) *The proceeds of any sale to which subsection (1) above applies shall be dealt with in accordance with the provisions of subsection (2) of section 27 of this Edict.*

C 35. *Where the Military Governor is satisfied following representations made to him by any person (acting for himself or any other person or for both) claiming to be entitled to or interested in any deserted property that the property ought to be released from the provisions of this Edict, he may by order in the Gazette declare the deserted property released; and accordingly the property shall, from the date of the release,*
D *cease to be vested in the Custodian,”*

I think it is necessary to make some relevant remarks in regards to the above sections 34 and 35 of Edict No. 8 of 1971. First, it is not the case of the defendants that the Military Governor directed the Custodian
E to sell the plaintiff's properties to them under section 34 (1). In fact they did not purport to buy from the Custodian but from the Abandoned Properties Implementation Committee. The aspect relating to the said Committee shall be considered later. **Second, if the Military Governor could**
F **order “deserted property” to be released to the owner by virtue of section 35, then it would seem to me, from the definition of “abandon” which I shall give presently, that such property can in no sense be regarded as abandoned property. What has been truly abandoned cannot thereafter be ordered to be released to the erstwhile owner.**
G **It lacks consistency and logic, unless a definition other than the ordinary meaning of “abandon” is intended. If that is so, the definition must be such that it is backed by force of law e.g that it is contained in a relevant statutory definition. In the absence of that,**
H **I must go by the ordinary English meaning.**

I must now refer to the definitions of “abandon” and “abandonment.” It will be seen from the said definitions that under no pretext can the 1st respondent be said to have deserted his properties unless the

meaning of “deserted property” as used in section 3 is limited to the surrounding circumstances in which it is applied as a mere label.

To desert, as to abandon, has a fundamental mental element which was never contemplated by Edict No. 10 of 1970. That is why I frown at Ubaezonu JCA’s reference to *animus revertendi* in relation to section 3 of the Edict and regarded it as a red herring to a true understanding of that section. In the Black’s Law Dictionary, 6th edition, “abandon” and “abandonment” are defined with their respective consequences. At page 2, there is the following:

“Abandon. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one’s right or interest. To give up or to cease to use. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. It includes the intention, and also the external act by which it is carried into effect.”

Then follows the further definition, inter alia:

“Abandonment. The surrender, relinquishment disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it The giving up of a thing absolutely, without reference to any particular person or purpose, as vacating property with the intention of not returning, so that it may be appropriated by the next corner or finder. Intention to forsake or relinquish the thing by owner with intention of terminating his ownership, but without vesting it in any other person The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property.

‘Abandonment’ includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon Generally, ‘abandonment’ can arise from a single act or from a series of acts...

Time is not an essential element of ‘abandonment’, although the lapse of time may be evidence of an intention to abandon, and

where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment."

The 1st respondent was back in Ikom in March, 1970. When then did his properties become abandoned properties which could be sold against his will? I have earlier demonstrated that the procedure for even making them deserted properties under Edict No. 10 Of 1970 was not complied with. There is nothing, therefore to back up any assertion that the said properties were officially identified as deserted properties although the 1st respondent having remained away from them, they had qualified to be identified as deserted properties. There is nothing in the Edict or any other statute or statutory instrument to show that they had qualified as abandoned properties. Learned counsel for the appellant in his argument has relied on the ipse dixit of two defence witnesses in this regard. Richard Eteng Ubom who testified as d.w 1 said:

"I know the plaintiff as the owner of some abandoned properties in Ikom. He had ICC 127 Obudu Road. ICC 128, Old UAC – about 6-7 buildings. He had some houses in Bendeghe – ICC 2. All these properties were abandoned. I met the plaintiff in 1978 for the first time. He came into my office to find out the list containing the names of all those who bought his properties. At this time all this (sic) properties had been sold by the Abandoned Properties Implementation Committee set up by the Federal Government."

Chief Ojong Ndoma-Egba who testified as d.w.2 said.

"The properties of non South Eastern State indigenes who were not at that time resident at Ikom were affected – that is between 1967-1968.

These properties were enumerated by the Government and declared them as abandoned properties."

These pieces of evidence have no legal effect. It cannot be said that the properties of the 1st respondent who was already back in Ikom in March 1970 could be declared abandoned properties when one goes by the definitions of "abandon" and "abandonment" stated earlier. **Neither the Government nor its officials nor the Abandoned Properties Implementation Committee can simply declare any property**

abandoned without statutory authority to back this up. If there had been such a statute, it must be clear what constitutes abandonment by definition in that statute. One would be bound by such definition rather than the well-known and accepted definition which depends on the intention and disposition of the owner of property. But in the absence of any special statutory definition, I must resort to and rely on such other definitions as I have reproduced from *The Black's Law Dictionary*. B

This takes me to the Abandoned Properties Decree No. 90 of 1978, now Abandoned Properties Act (Cap. 1) Vol. 1, Laws of the Federal Republic of Nigeria, 1990. It is an Act to make provisions for the sale, registration and maintenance of abandoned properties by the Implementation Committee set up for the purpose. Section 1 provides: C

"1. (1) Every sale or disposition of abandoned properties conducted by the Abandoned Properties Implementation Committee (hereinafter in this Act referred to as 'the Committee') set up by the Federal Government shall be deemed to have been lawful and properly made and any instrument issued by the Committee which purports to convey any estate or interest in land, shall be deemed to have been validly issued and shall have effect according to its tenor or intendment. D

(2) Any abandoned property sold pursuant to subsection (1) of this section shall vest in the purchaser free of all encumbrances without any further assurance apart from this Act." E F

As can be seen, this section assumes that abandoned properties have been spelt out or defined. It is a wrong assumption. The Act does not itself define what amounts to "abandoned property" nor did the Edict, and does not say that whatever is declared by the Committee to be abandoned property shall have that meaning or label. The Act cannot even be said to have a clear nexus with the Edict No. 10 of 1970. Even so, the Edict did not define or mention abandoned property. What I understand section 1 of the Act as saying is that whenever the Committee conducted sale or disposition of abandoned properties, the sale shall be deemed to have been lawful and properly made. This does not give legitimacy to a sale G H

made by the Committee of any property which is not shown by law or definition to be abandoned property. The owner of such property will get it back, otherwise anybody could be liable to lose his property to the Committee's indiscretion. The Committee had authority over only abandoned properties; and statute must stipulate clearly what is abandoned property. The 1st respondent always maintained that he never abandoned his properties in question in Ikom: see paragraph 17 of the statement of claim. All he was saying was that his properties in Ikom were not abandoned properties. The learned trial judge recognized this as an important question but fell far short of answering it. He said inter alia:

"The main question for one also to ask here is whether the plaintiff's property was in fact abandoned? For the purpose of answering the above question, it would be necessary to consider the object of the Deserted Property (Control and Management) Edict No. 10 of 1970 and also the Abandoned Properties Decree 1979 and the evidence led over the issue. It is a known fact that while the civil war was raging a lot of citizens left their places of abode for places of safety. The then South Eastern State now Cross River State was one of the disturbed areas during the said civil war. A lot of people here left their ordinary places of residence and fled or were compelled by circumstances to return to their respective villages or towns and in that unexpected process, left a lot of properties in the disturbed areas. The Government then took steps in order to protect such properties by enacting an Edict vesting all such properties on the Custodian appointed for that purpose."

This has said nothing new. The properties were protected by Government for whose sakes? Does this make them abandoned properties? Certainly not. The 1st respondent was paid rent of N45,000.00 for the period 1970 - 1973 by soldiers who occupied the houses as per two cheques, exhibits 4 and 4B. The appellant was aware of this because the two cheques were produced by his counsel and admitted in evidence. The payment was made direct to the 1st respondent in Ikom. How can it be said either logically or legally, that the 1st respondent abandoned those properties; or that they were abandoned properties?

In the circumstances, those who purported to buy the 1st respondent's properties in reliance on Edict 10 of 1970 as well as the Act (formerly Decree No. 90 of 1979), and whatever agreements were made pursuant thereto, got no title irrespective of any purported Certificates of Occupancy. Those properties were not proved to have been gazetted as deserted properties nor is there any legal backing for their being characterized as abandoned properties. The Act does not affect the 1st respondent's properties and therefore section 3 (2) which was intended to oust the jurisdiction of the courts does not apply. The action brought by the 1st respondent is accordingly competent. It was filed two years after the unlawful entry upon his properties and after he had protested to the District Officer without avail. I will, therefore, in reference to appellant's issues for determination answer issues (i) and (ii) in the negative and issue (iii) in the affirmative. I accordingly dismiss the appeal as being unmeritorious. I grant all the reliefs claimed except relief (3). It is a relief sought on behalf of the Etayip people who are not parties to the action. The relief is incompetent and is accordingly struck out. I award N10,000.00 costs in favour of the 1st respondent/cross-appellant against the appellant/respondent.

The only relevant issue in the cross-appeal which I need to consider and resolve is quite important. It reads thus:

"Whether the Court of Appeal was right in affirming the decision of the High Court Striking out the 4th defendant from the suit."

The 4th defendant in the suit was Inyang Ette. He was identified in paragraph 5 of the statement of claim as a businessman and transport owner who resides in Uyo town. Then in paragraphs 39, 40, 42, 43 and 44, specific allegations of acts of trespass to and interference with the 1st respondent's properties were made against him and the 2nd and 3rd defendants. Injunctive reliefs were sought against him and the others.

The 3rd and 4th defendants filed a joint statement of defence in which, among other things, they alleged that the plaintiff abandoned his properties, raised issue of jurisdiction and the defence of laches. In particular they alleged that (1) they have since applied for and obtained a

certificate of occupancy in respect of the properties; (2) they have since mortgaged the said properties; (3) they spend large sums of money to put up new building; (4) they have sold some of the properties in 1978; (5) they were bona fide purchasers for value without notice of any defect in the vendor's title. But there was the averment in paragraph 4 in answer to paragraph 5 of the statement of claim that "the 4th defendant denies that his name is Inyang Ette and that he is occupying any of the plaintiff's property as alleged in that name. The 4th defendant only came to court in obedience to the summons which was served on him at his place of business at Uyo and will at the trial apply that his name be struck out."

The 4th defendant participated in the trial to the end. On 12 July, 1991 learned counsel for him applied that his name be struck off the suit pursuant to the said averment in paragraph 4 of the statement of defence. The learned trial judge regarded the application as premature but that it would be considered in the judgment. In the course of the judgment given on 7 December, 1992, the learned trial judge revisited the matter. He said Obong Ekeng Etim Inyang (d.w.4) testified and denied that his name was Inyang Ette; and that his son, Odudu Ekeng Inyang, should have been sued. He therefore said; "If there was any party to be sued by the plaintiff, it should have been Odudu Ekeng Inyang and not Inyang Ette. There were no circumstances in this case to warrant the bringing of the 4th defendant Inyang Ette into the picture. That being so, I shall, at this stage dismiss the case against the 4th defendant and I do so accordingly. The name of the 4th defendant is hereby struck out."

On appeal to the Court of Appeal, the issue of the misjoinder of the 4th defendant as well as the judgment reached on him by the trial court was fully argued. It was contended that the statement of defence showed that the 4th defendant interfered with the plaintiff's property quite apart from the averments in the statement of the claim against him and the evidence in this regard. It was also argued that no where in the statement of defence did the 4th defendant mention the name of his alleged son who was said to have bought the property or that someone else bought the property. Whereas the 4th defendant specifically admitted in para-

graphs 7 and 15 of the statement of defence that he bought the property himself from the Government.

The court below per Tobi JCA considered the matter and observed thus:

“One Obong Ekeng Etim Inyang, who gave evidence as d.w.4 B said to the effect that the name of Inyang Ette that appears on the record as 4th defendant is a limited liability company, distinct and different from him, the managing Director of the company. He said in evidence that his son, Odudu Ekeng Inyang, bought the property at plot ICC 12A C from the 3rd respondent who had earlier bought (the) same from the Abandoned Properties Implementation Committee.

Learned counsel for the 4th defendant at the lower court submitted that the 4th defendant was improperly brought to court as it did not buy the property. Counsel urged the court to strike out the name of the 4th D defendant.”

The learned Justice of Appeal then quoted the passage from the learned trial judge’s judgment, which I earlier reproduced above, and said:

“I have carefully examined the evidence of d.w.4 and I cannot see E how I can disagree with the decision of the learned trial judge.”

If the learned Justice had read closely the submission in the brief of the appellant before the court below on this matter, he would have had to examine the statement of defence. And it would have been clear to him that the 4th defendant (who testified as d.w.4) specifically admitted that he bought the property himself. Not only that the statement of defence contains no averment that the son of the said 4th defendant had anything to do with the property in question, his name was never mentioned. So the evidence which the learned Justice said he “carefully examined” is inadmissible and went to no issue. F G

I have already said that the 4th defendant fully participated in the trial of the case. In conflict with his unambiguous admission in paragraphs 7 and 15 of the statement of defence that he bought the property himself from the Government, he said it was his son, Odudu Ekeng Inyang, who bought. I have shown that that evidence is inadmissible. The court H

below was urged, in the circumstances, to restore the name of the 4th defendant so that he would be bound by the judgment that court would give. This was how Tobi JCA reacted to that submission in his leading judgment:

B “Learned counsel for the appellant has urged this court to include
the 4th defendant as a party to this appeal. Who will do that? Me! No!! It
is good law that a court of law will not make an order against a person
who is not a party to the cause. To restore the name of the 4th defendant
C at this stage and to make the judgment of this court to bind him, is to
throw away all the established principles of fair hearing and natural
justice, particularly the rule of audi alteram partem. See generally
Onwumechili v. Akintemi (1985) 3 NWLR (pt. 13) 504; Adene v.
Dantumbu (1988) 4 NWLR (pt.88) 309; Ekuma v. Silver Eagle Shipping
D Agencies (1987) 4 NWLR (pt. 65) 472; Olawuyi v. Adeyemi (1990) 4
NWLR (pt. 147) 746. No, court of law which is also a court of equity will
make such an Order.”

It is clear to me that if the learned Justice of Appeal had
E reached the same conclusion I have come to upon the state of the
pleadings and evidence, he would not have held that the 4th de-
fendant was “a person who is not a party to the cause” in this suit.
He would have been obligated to restore the 4th defendant. The 4th
F defendant was a person who had every opportunity to put his case;
he did put his case and was given a full hearing. He later, in the
end, sought an easy way of avoiding liability. But it was a crooked
and dangerous way. No party who adopts that ploy to defeat the
cause of justice can expect any assistance from a court of law and
G equity.

The court below was in error to have upheld what the learned
trial judge did. He dismissed the claim against the 4th defendant
and struck him off the suit. Upon the pleadings and evidence, the
H 4th defendant, Inyang Ette, was a proper party against whom judg-
ment ought to have been given by the court below had it taken the
right decision to restore his name to the suit. That the 4th defend-
ant was a proper party was not in issue at any time until when,

testifying as d.w.4, he suddenly said his name was not Inyang Ette. He claimed the name was a limited liability company known as Inyang Ette Motors Limited of which he was the Managing Director. It is quite intriguing how the two courts below accepted, at least by implication, that the name “Inyang Ette” as it stands, or that Inyang Ette Motors Limited as given on the ipse dixit of d.w.4, was a limited liability company without legally admissible evidence in this regard, by way of the certificate of incorporation, even if that issue had been pleaded: see *Apostolic Church v A.G Mid Western State* (1972) 7 NSCC 247; *J.K Randle v. Kwara Breweries Ltd* (1986) 6 SC 1; *African Continental Bank Plc v. Emostrate Ltd* (2002) 8 NWLR (pt. 770) 501. Even so, could the 4th defendant, as Inyang Ette, not introduce his name to incorporate a company to be known as Inyang Ette Motors Limited? How will that inhibit his being sued in his name for what he has done personally? I answer the issue raised in the cross-appeal in the negative. Accordingly, I allow the cross-appeal on that issue and set aside the judgments of the two courts below in that regard. I restore the 4th defendant to the suit and order that his appearance, for the avoidance of any doubt, shall be stated in the number 4 position as defendant thus:

“4 Inyang Ette

(alias Obong Ekeng Etim Inyang)

alias Odudu Ekeng Inyang } 4th defendant

I hold the 4th defendant bound by the decision in which judgment has been given in favour of the 1st respondent as plaintiff. It is ordered that the plaintiff be given immediate possession of his said properties by those who have taken them over, including the appellant and the 3rd and 4th respondents. The 1st respondent/cross - appellant is awarded N10,000.00 costs against the appellant/cross - respondent.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Uwaifo, JSC. I agree with the conclusion to dismiss the appeal and allow

the cross - appeal. I endorse the order for costs.

KATSINA-ALU JSC

B I have had the advantage of reading in advance the judgment delivered by my learned brother Uwaifo JSC. I entirely agree with it and for the reasons which he has given I, too dismiss the appeal. I abide by the order for costs.

C EDOZIE JSC

The facts of the dispute giving rise to this appeal are for the most part largely undisputed and may be outlined as hereunder. Before the Nigerian Civil war that started in May, 1967, the 1st Respondent an Ibo
D man from Awka now in Anambra State was resident in Ikom then in South-Eastern State but now in Cross River State. He leased from the Etayip Community of Ikom, two parcels of land situated at Four Corner Ikom and numbered as Plots 127 and 128, which were duly registered
E first at Enugu and later at Calabar. He built houses on parts of the plots while reserving other parts for his poultry farm and vegetable gardens. He rented some parts of the houses to tenants and lived in other parts with his family and employees. On 11th August 1967 the 1st Respondent
F made a trip to Agbani outside South - Eastern State to check on his business there intending to return the next day but that was not possible the bridge at Yahe had been damaged due to operations of the war. Consequently, he travelled to his home Awka where he presumably remained till the end of hostilities in January 1970. He eventually returned to Ikom
G on 15th March 1970. On 31st May, 1970, the Military Governor of the then South - Eastern State promulgated the "Deserted Property" (Control and Management) South - Eastern State Edict, No. 10 of 1970 with commencement date retrospective to 18th October, 1967. Pursuant to this
H Edict, the 1st Respondent's properties were classified as deserted properties and were subsequently sold to the 2nd, 3rd and 4th Defendants, that is, the Appellant, 3rd and 4th Respondents by the Abandoned Properties Implementation Committee, a body set up by the Federal Govern-

ment of Nigeria. It is against this background that the 1st Respondent as plaintiff commenced proceedings against Defendants claiming the reliefs set out in the leading judgment.

The main thrust of the 1st Respondent's case was that his properties in question could not be classified as deserted and abandoned properties since during the period of hostilities he had an agent in the person of John Ani (D.W.4) who was at all the time material to the case resident in Ikom and was collecting on his behalf rents from the tenants living in his houses. The learned trial judge did not believe that the said John Ani remained behind to look after the 1st Respondent's property and consequently dismissed his claims, holding inter alia that the properties in dispute were caught by the provisions of Edict No. 10 of 1970.

On appeal to the Court of Appeal, that court in its majority judgment held that the trial court did not properly evaluate the evidence with respect to the evidence of John Ani (D.W.4) to the effect that he remained behind to look after the 1st Respondents properties. The Court therefore accepted his evidence in that regard and held that the properties in question did not qualify as deserted properties within the meaning of section 3 of the Edict No. 10 of 1970. Consequently, it reversed the decision of the trial court and entered judgment for the 1st Respondent.

In the appeal before this Court, the main question that I propose to comment on is whether the properties in dispute were deserted or abandoned properties within the contemplation of Edict No. 10 of 1970. To address this question it is necessary to bear in mind the provisions of sections 3, 4(1), 5, 7, 8(1), 9(1), 10(1) and 10(2) of Edict No. 10 of 1970 which enact as follows:—

“3 For the purpose of this Edict, every movable or immovable property within the state held or reputed to be held in any estate, right or interest by a person of non South-Eastern State origin who fled or remained away from the said property at or following the outbreak of the late rebellion is deemed to be deserted and is hereinafter referred to as ‘deserted property’

“4(1) The Military Governor may from time to time appoint an officer in the public service of the state to be Custodian of deserted

property hereinafter referred to as “the Custodian” for the purpose of holding, preserving and dealing with such property and secondly all deserted property in the state is subject to the provision of this Edict hereby vested in the custodian.”

B “5 It shall be the duty of the Custodian to identify deserted property within the State and take it into his custody or control and to keep and maintain a register thereof showing its location and “if know, its owner.”

C “7 The Custodian shall publish or cause to be published in the Gazette and at a place in his office conspicuous and accessible to the public a list of property from time to time identified by him as deserted property and taken into his custody or control.”

D “8(1) Where a person is aggrieved by the identification of property as deserted property he may by application in writing to the Custodian make objection to the identification.”

E “9(1) A person who claims, whether for his sole benefit or for the benefit of himself and any other person to be the landlord of any deserted property shall deliver to or at the office of the Custodian a statement in writing setting out precisely and fully the grounds of his claim.”

F “10(1) Where a person who objects under the provisions of section 8 is dissatisfied with the decision of the Custodian taken under subsection (3) of that section (3) of that section he may appeal to the High Court against the decision.”

G “10(2) Where a person who claims to be the landlord of deserted property is aggrieved by the decision of the Custodian taken under subsection (2) of section 9, he may appeal to the High Court against that decision.”

H From the definition of “deserted property” in section 3 above, it is evident from the plaintiff’s own showing that he “remained away from the properties in dispute at or following the outbreak” of the Nigerian Civil War and since he was not of South-Eastern State origin, the properties in dispute fall within the ambit of section 3 of the Edict and technically they are deserted properties. The section does not admit the introduction or importation of the common law doctrine or concept of agency

expressed in the Latin maxim “Qui per alium facit, per seipsum facere videtur” or more shortly, “Qui facit, per alium, facit per se’ meaning, “He who acts by another acts by himself.” The court is not permitted to import into the words of a statute such qualifying or additional words that were not provided for by the Legislature. In the case of Ogba v State B (1992) 2 N.W.L.R. (Pt. 222) 164 at 186; (1992) 23 N.S.C.C. (Pt.1) 203 at 204, this Court, per Akpata JSC expounded the position of the law thus:

“There is no doubt that to use the common law principle of presumption of regularity to interpret entrenched constitutional right may be C inappropriate. It is however erroneous to read into a clear and unambiguous constitutional provision what it does not embrace. The provision has to be interpreted strictly in accordance with the ordinary meaning of the words used without its being adorned, as it were, with ornamental D words not therein to make it attractive to wider interpretation.”

See also Eboigbe v N.N.P.C. (1994) 5 N.W.L.R. (Pt. 347) 648 where this Court in interpreting sections 12(1) and (2) of the N.N.P.C Act, Cap 32, Laws of the Federation 1990 on the question whether the concept of E admission could be introduced to prevent the limitation period from running held thus: _

“In the instant case, although there were moves to negotiate, there is nothing to indicate that there had been admission if any, let alone F fulfilment or settlement of same. In any case, the Nigerian National Petroleum Corporation Act does not admit of this qualification nor does it make room for exceptions.”

In the same vein, section 3 of Edict No. 10 of 1970 supra does not G accommodate the introduction of agency as held by Tobi JCA (as he then was) or animus revertendi according to the view expressed by Ubaezonu JCA.

Be that as it may, it must be emphasised that Edict No. 10 of 1970 supra is an expropriatory statute which encroaches on one’s personal H property and as such is subject to a strict construction in the same way as penal statutes. It is a recognized rule of construction that they should be interpreted, if possible, so as to respect such rights and if there is any

ambiguity, the construction which is in favour of the freedom of the individual should be adopted: David v. Da Silva (1934) A.C 106; Peenok Investments Ltd v Hotel Presidential Ltd (1982) 13 N.S.C.C 477 – 488, Attorney – General of Bendel State v P.L.A Aideyan 1989 4 N.W.L.R. (Pt. B 118) 646 at 675 – 636. Where the statute provides a procedure for divesting a citizen of his property, the procedure so provided must be adopted: In Re Bowen, South Shields (Thomas Street) Clearance Order, 1931 (1932) 2 K B 621 at 633. In the case in hand, Edict No. 10 of 1970 in section 4(1) thereof, provided for the appointment of a custodian of deserted property.

By section 5, the Custodian is to identify take custody and control of deserted property, maintain a register thereof. By section 7, it is an obligation for the custodian to publish or cause to be published in the Gazette and at a place in his office conspicuous and accessible to the public a list of property identified by him as abandoned property. It is after these have been done that an affected person would be entitled to make objections to the Custodian under section 8(1) and 9(1) and file an appeal to the High Court against the decision of the Custodian under section 10(2). Learned counsel for the Appellant appears to give the impression that the provisions of the Edict were duly complied with by the Custodian. At p.4 of his brief, he said

“The Defendants (including now Appellant) on the other hand contended that the properties were abandoned; they were so identified, advertised, gazetted, advertised for sale and sold to the Appellant who won them through ballot by the Abandoned Properties Implementation Committee”

The evidence (pp 175-176 of the record) of Richard Etang Ubom (D.W.1) who was in charge of administering the deserted properties did not indicate that the provisions of the Edict in question were complied with in respect to gazette publication. This is fatal to the defence.

It is important to stress that Edict No. 10 of 1970 talks of “deserted property” which in its comprehensive definition in section 3 thereof includes property of persons of non South Eastern State origin who (a) fled and (b) remained away from their property as a result of the out-

break of the civil war. As already pointed out, the definition is wide enough to embrace the 1st Respondent's properties. However, the Abandoned Properties Act, Cap 1, Laws of Nigeria 1990 which seeks to validate dispositions of abandoned properties by Abandoned Properties Implementation Committee contains no definition of "abandoned properties" B nor does the Act appear to make any reference to Edict No. 10 of 1970 "Deserted Property" under the Edict is not co-terminous with "abandoned property" which evinces the intention of the owner to wilfully relinquish or give up title to his property. Upon this view the 1st Respondent who received rents collected on his behalf during his absence C from Ikom could not be said to have abandoned his properties in question. It follows logically that the aforesaid properties did not come within the purview of the Abandoned Properties Act. Consequently the Act is ineffectual in validating the purported sale of the 1st Respondent's properties D by the Implementation Committee.

It is for the foregoing and the fuller reasons advanced in the leading judgment of my learned brother Uwaifo J.S.C that I too, dismiss the appeal and allow the cross-appeal with all the consequential orders including orders as to costs made in the leading judgment. E

PATS-ACHOLONU JSC

I have read the beautiful and erudite judgment of my learned brother Uwaifo JSC and I agree with him whole and entire. As such, there is nothing on that level I need add. F

However, it may be pertinent to say that the concept of Abandoned property and the consequential enactment of statutes in some states in the South like the former South Eastern State (which later after being carved out, becomes Cross Rivers State and Akwa Ibom State,) and also in the Federal Government, is an aberration and incomprehensible myopic policy conceived by people whose pretensions could have done incalculable harm to the organic unit of this country seeing that the civil war euphemistically described as Biafran War, was fought to keep Nigerian one. G H

I fail to see how those statutes that gave life to this hideous type of law could have conceivably advanced the cause of a united country. If anything it could have led to its balkanisation. The very ugly and disquieting idea of abandoned property in this Country was a frightening phenomenon which unwittingly gave the impression that we are no longer one Country or one Nation. It is difficult to understand how this strange phenomenon unknown in our jurisprudence crept into our legal system, and the Courts felt comfortable in applying its noxious provisions without raising questions on the morality (even if they have to make an unsavoury comment,) and its not very engaging connotations. I make bold to state that strict adherence by the law Courts to the Austinian Theory of legal positivism was what brought about the 2nd World War where a villainous and devilish dictator succeeded in emasculating the Courts and the people by spewing out laws that had horrendous effects not only on the Germans but more particularly on the Jews.

The two expressions in section 3 of Edict No. 10 of 1970 which are germane in this matter are “remained away” and “who fled”. Can it possibly be denied that if an owner of a house decides to live abroad for a few years from his usual place of abode he has not “remained away” from his property. It would be stretching the connotation of that expression too far to state that by such an action he has manifested or evinced an intention not to return to his property.

The case here is even made worse in that the Respondent/Cross-Appellant never really abandoned his property or fled from his home. His being away from his property was when he went out in quest for the advancement of his business and unfortunately he was caught by the incidence of the civil war i.e. the bridge he would have used to gain access to his house had been blown, and he had to stay out due to the circumstances he found himself. To make matters worse he was even alive and present when his property was being bargained for disposal or sale. The incidence of abandoned property I believe has done violence to our good natured legal system and nearly set us back. There are inherent in an individual certain rights that must be protected by the State amongst which are the rights not to be deprived of one’s property, and prompt

compensation of property compulsorily acquired, except under special circumstances that would not offend civilized and accepted decency and internationally recognized norms. There is something in the nature of human beings and the community to which they belong and of course the organic component known as the Nation which compels them to act B or react either positively or negatively to certain situations and in the course of human history, societies have witnessed oppositions to policies that offend the sensibilities of the people who have always striven to condemn such policies and to ensure the obliteration of such repellent C policies which are translated to laws.

I believe that any laws that merely seek to punish a certain class of people in a society is a law that could destroy the whole fabric of a nation if such a law is not struck off the statute Book. In my view, the Deserted D Property (Central and Management) Edict No. 10 of 1970 of South East-ern State falls into that category. See also the Abandoned Property Act (Cap.1) 1979, in the laws of the Federal Republic of Nigeria, 1990.

The leading judgment here stands as the exposition of evil that is implicit in an unconscionable law which gave rise to an abnormality or E serious irregularity called Abandoned property. As I said, I have nothing more to add except for those few remarks. I adopt the judgment of my learned brother Uwaifo JSC as mine and I abide by all consequential F orders.

G

2 The intention of returning

3 Strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived.

H