

SUPREME COURT OF NIGERIA
27TH FEBRUARY, 2004. SC. 48/1999
CORAM:- M. L. UWAIS, CJN, S. U. ONU, A. I. IGUH,
A. O. EJIWUNMI, N. TOBI, JJSC

PROVOST LAGOS STATE APPELLANTS
COLLEGE OF EDUCATION & ORS.

AND

DR. KOLAWOLE EDUN & ORS. RESPONDENTS

LAND LAW - Trespass - To succeed in a claim for damages for trespass
- The plaintiff must establish exclusive possession of the land in dispute
- At all times material to the commission of the alleged tort (H1)

LAND LAW - Possession - Conflicting claims - Where two parties make
conflicting claims to possession of the same land - The law ascribes
possession to the person - That can prove better title to the land in dispute (H2)

LAND LAW - Title - Proof - Receipt of payment of money to the radical
title owners of the land in dispute - Coupled with the respondents' effective
physical possession of the land in dispute - Gave rise to a good
equitable interest or title in the land to the respondents (H3)

LAND LAW - Title - The right of the respondents - Granted under the
receipt of payment - Coupled with their undisputed physical possession
of the land in dispute - Predated the public notice of acquisition - And
remained effective and unaffected (H4)

STATUTES - Land acquisition - Decree No. 33 of 1976 - Has no retroactive
effect - And is effective and relevant - Only to public acquisitions -
Made after its enactment on 1 - 7 - 1996 (H5)

LAND LAW - Title - Public acquisition of land by government - The law
as it stood before 1st July, 1976 - Was that the issuing of a public notice

of acquisition - Did not immediately confer title to government (H6)

LAND USE ACT - Customary right of occupancy - Deemed holder of - Respondents who were in physical possession of the land - Are deemed holders of customary right of occupancy (H7)

LAND USE ACT - Deemed grants of rights of occupancy - Are as valid as express grants - And may not be defeated by any unlawful subsequent dealing - In respect of such land by the original owners thereof (H8)

EVIDENCE - Unchallenged evidence - Courts - Where evidence given by a party was not challenged by the opposite party - It is always open to the court - To act on such evidence before it (H9)

FACTS

The plaintiffs claimed against the defendants in the High Court of Lagos State, holden at Ikeja as follows:

(i) N250,000.00 special damages for unlawful destruction of structures and loss of properties as listed in paragraphs 20 and 21 above.

(ii) N500,000.00 general damages for trespass

(iii) A declaration that the plaintiffs were in lawful occupation of the said premises.

(iv) Costs

(v) Further or other Reliefs”.

The case of the plaintiffs is that they carried on poultry business under the partnership name of Four Pillars (Nigeria) Associates at km 30, Oto Awori, Badagry Expressway, Lagos State on a piece of land acquired by the 1st plaintiff on the 13th of January, 1972 from the Owokulehin-Idumosi family who are the undisputed radical owners of the land. No registered deed of lease or conveyance was executed by the parties in respect of this grant although the said family land owners issued a receipt to the 1st plaintiff in acknowledgment of his payment of the sum of £2,500 to them as rent for “one acre plot situated at Oto - Awori for the years 1971 - 2031, fifty years”. It is the plaintiffs' case that the 1st

plaintiff went into immediate physical possession of this land on his acquisition of the said land. Along with the other plaintiffs, they also developed the property as a poultry farm and had at all material times run this poultry farm without interruption from any quarters. The plaintiffs stated that in 1982, the Lagos State College of Education moved into their said property, claiming title thereto by virtue of some Acquisition Notice. The defendants on finding the plaintiffs' poultry farm on the land in dispute issued encroachment notices against the plaintiffs. As a result, the plaintiffs petitioned the Government of Lagos State. In the meantime defendants' agents carried out a valuation of the plaintiffs' poultry farm which they assessed at N48,900.00. About the month of June, 1982 agents of the 1st defendant fenced in the plaintiffs form, describing the same as part of the Lagos State, College of Education. They thereby denied the plaintiffs right of access to their poultry farm. The plaintiffs further claimed that the defendants and their agents proceeded to demolish all the structures and property of the plaintiffs on the farm which they valued at N250,000.00 hence this action.

The defendants, for their part, admitted that the land in dispute originally belonged to the Owokulehin-Idumosi family but claimed that the Lagos State government on the 12th September, 1972 acquired the same from the family for public purpose. This notice of acquisition was published in the official gazette of 16th November, 1972. They claimed that the land was allocated to the Lagos State College of Education for its permanent site. Sometime in January, 1982, the College of Education moved into possession of the land preparatory to developing it and found poultry farm and two buildings of three rooms erected by the plaintiffs thereon. The defendants then caused contravention and demolition notices to be served on the plaintiffs. They claimed that when the plaintiffs failed to comply with the said notices, the defendants demolished the plaintiffs' structures on the farm.

At the conclusion of hearing, the learned trial judge, Longe, J. after a review of the evidence dismissed the plaintiffs' claims in their Dissatisfied with the decision of that court, the plaintiffs lodged an appeal to the court of Appeal, Lagos Division, which allowed the appeal. Ag-

grieved by this decision, the defendants have appealed to the supreme court.

ISSUES FOR DETERMINATION

B "(1) *Whether the Learned Justices of the Court of Appeal were right in holding that the Plaintiffs (now Respondents) have better title to the land than the Defendants (now Appellants).*

C "(2) *Whether obtaining Certificate of title or vesting deed is a pre-requisite for a valid compulsory acquisition of land under Public Land Acquisition Law or Decree of 1976.*

(3) *Whether document admitted as Exhibit 10 was made by Person interested in the subject matter of the proceeding and therefore offends the provisions of S.91(3) of Evidence Act 1990.*

D "(4) *Whether the learned Justices of the Court of Appeal were right to have held the appellants liable in damages for the destruction of the respondents' structures and for loss of properties."*

HELD (Unanimously allowing the appeal per lead judgment of IGUH E JSC)

Trespass - To succeed in a claim for damages for trespass

F 1. It is a basic principle of law that in a claim for damages for trespass to land, the plaintiff, to succeed, must establish exclusive possession of the land in dispute at all times material to the commission of the alleged tort by the defendant. See Olugbenro v. Ajagangbade III (1990) 3 N.W.L.R. (Part 136) 37 (p. 655 E)

G ***Possession - Conflicting claims***

H 2. And where two parties make conflicting claims to possession of the same land, the possession being disputed, the law ascribes possession to the person that can prove better title to the land in dispute. See Awoonor Renner v. Daboh 2 W.A.C.A. 258, Umeabi v. Otukoya (1978) 4 S.C. 33 etc. (p. 655 G)

Title - Proof - Receipt of payment of money

3. In the first place, it cannot be disputed that Exhibit 1 which was rightly

admitted in evidence to prove payment of money by the 1st respondent to the radical title owners of the land in dispute coupled with the respondents' effective physical possession of the land in dispute as far back as from the 13th January, 1972 gave rise to a good equitable interest and/or title to the land in dispute in favour of the respondents. See Isaac Ogunbambi O. Abowab (1951) 13 W.A.C.A. 132, (p. 656 D)

Title - The right of the respondents

4. In the third place, the rights of the respondents under Exhibit 1 coupled with their undisputed physical possession of the land in dispute with effect from the 13th January, 1972 predated Exhibit 9 and remained effective and unaffected until, at least, up to the 1st July, 1976 when the Public Land Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 which made no provision for obtaining Certificate of Title or a Vesting Deed as pre-requisite for a valid compulsory acquisition of land was promulgated into law. (p. 656 G)

STATUTES - Land acquisition - Decree No. 33 of 1976

5. It ought to be observed, however, that the said Decree No. 33 of 1976 has no retroactive effect and did not therefore affect Exhibit 9 which was published on the 16th November, 1972. In my view, it is indisputable that Decree No. 33 of 1976 is effective and relevant only to public acquisitions made after its enactment on the 1st July, 1976. (p. 656 H)

Title - Public acquisition of land by government

6. Now, the acquisition in issue was allegedly made before 1st July, 1976. It is not in contention that the law as it stood before the 1st July, 1976 was that the issuing of a public notice of acquisition did not per se immediately vest or confer title to the land in issue in the Government until a Certificate of Title to the whole or any part of the land is subsequently obtained and registered at the Land Registry. See Aturanse and others v. Federal Commissioner for Works and Housing (1975) 1 All N.L.R. 331 at 339, (City Property Development Ltd. V.A.G. Lagos State and others (1976) 1 All N.L.R. (Part 1) 28 etc. In the present case, the appellants

were unable to show that they obtained a Certificate of Title or a Vesting Deed in respect of the land in dispute and may not therefore claim that title thereto was vested in them on the said 16th November, 1972 on which date Exhibit 9 was published or on any other date thereafter.

B (p. 657 B)

Customary right of occupancy - Deemed holder of

7. The respondents in the present case were in exclusive physical possession of the land in dispute and were using the same for agricultural purposes in a non-urban area or village called Otto/Ijanikin, Awori immediately before the commencement of the Land Use Act on the 29th March, 1978. They are therefore deemed holders of Customary Right of Occupancy in respect of the land in dispute by operation of law at the commencement of the Land Use Act, 1978 on the 29th March, 1978. Their deemed grant is no less effective than a Customary Right of Occupancy expressly granted by the appropriate Local Government. (p. 658 A)

LAND USE ACT - Deemed grants of rights of occupancy

8. Deemed grants, whether of Statutory or Customary Right of Occupancy are as valid as express grants and may not be defeated by any unlawful subsequent dealing in respect of such land by the original owners thereof. This is because after a party has divested himself of interest in land or any res, no right vests in him to deal with such property any further. See Okafor Egbuche v. Chief Idigo II N.L.R. 140, Adamo Akeju v. Chief Suenu 6 N.L.R. 87. (p. 658 C)

EVIDENCE - Unchallenged evidence - Courts

9. Where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it. See Isaac Omoregbee v. Daniel Lawani (1981) 3-4S.C. 108 at 117. (p. 659 A)

NOTABLE POINTS OF INTEREST**TOBI JSC***1. Vesting order alone - Confers acquisition right on the governor*

It is clear from section 25(1) that after the expiration of the period specified in the notice given under section 8, the Military Governor will make a vesting order in respect of the whole or any part of the land described in the notice. Subsection (2) enjoins government to publish the vesting order in the State Gazette. By subsection (3), it is the vesting order which confers on the Military Governor all the rights in any estate contained therein. C

Learned counsel for the respondents argued that as the Military Governor did not make any vesting order, Exhibit 9 did not, and could not confer on Lagos State any estate or interest within the meaning of section 25(3). I entirely agree with the submission of learned counsel for the respondents. (p. 665 G) D

2. A notice of acquisition must be specific

A notice of acquisition of property must be specific and precise as to the property acquired. A vague and ambiguous definition of the property which is capable of more than one interpretation as to its precise location cannot be valid in law. If an acquisition involves a community acquisition, there should be a schedule to the Notice of Acquisition specifically spelling out the boundaries and other identities of the area or areas acquired. F
(p. 667 G)

3. A notice of acquisition should spell out the public purpose G

Second, public acquisition of land for public purpose presupposes that the Notice of Acquisition should spell out the public purpose within the meaning of section 2 of the Public Land Acquisition Law, Cap. 105 of Western Region, 1959 which was then applicable in Lagos State. It does not appear that Exhibit 9 contained such vital information. In LSDPC v. Banire (1992) 5 NWLR (Pt. 234) 620, it was held that where an acquiring authority compulsorily acquires private property it is important that the particular of the “*public purpose*” for which such property is ac- H

quired is given. See also Chief Commissioner Eastern Provinces v. J.M. Ononye (1944) 17 NLR 142. (p. 668 A)

4. *Need for prior notice of intention to acquire*

B Third, before private property is acquired, the acquiring authority must give notice of intention to acquire the property before publishing same in the gazette. PW1 in his evidence-in-chief said:

"I never had any quit notice or acquisition notice from any quarter."

C This evidence was not challenged under cross-examination and it is deemed to have been admitted. In The Attorney-General of Bendel State v Aideyan (1989) 4 NWLR (Pt. 118) 646, this court held that by the provisions of sections 5 and 9 of the Bendel State Public Lands Acquisition Law, before someone's property could be acquired compulsorily for
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public purpose: (a) notice of intention so to do must have been served upon him or the occupier or a person interested or upon such persons as were entitled to sell or convey the land; failing both, affixed conspicuously on the property; (b) the notice must be by personal service or by being left at his last known place of abode or business; (c) the notice served on him must be published once in the Bendel State Gazette, and at least two national daily newspapers circulating in Bendel State. It must be said that section 5 and 9 of the Bendel State Law is similarly worded as section 5 and 9 of the Lagos State Law. (p. 668 C)

5. *Statutes which encroach a person's property rights - Are to be construed strictly against the acquiring authority*

G What is the effect of the non-compliance with the law? It is settled law that expropriatory statutes which encroach on a person's proprietary rights must be construed *fortissime contra preferentes*, that is strictly against the acquiring authority but sympathetically in favour of the citizen
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whose property rights are being deprived. Consequently, as against the acquiring authority, there must be a strict adherence to the formalities prescribed for the acquisition. See Obikoya v Governor of Lagos State (1987)1 NWLR (Pt. 50) 385. (p. 668 G)

6. Need for government to comply with the acquisition procedure

There are statutes which provide for the procedure of acquiring property by the Government. Government is expected to comply and it must as a matter of law comply with those statutes which Government has enacted. Therefore where Government disobeys its own statutes by not complying with the laid down procedure for the acquisition of private property, it is the duty of the courts to intervene against the Government and in favour of the private citizen. That is the situation I have seen in this appeal. (p. 669 C)

REPRESENTATION

Appellant absent and unrepresented.

F. Popoola with him A. Ajibade for the Respondents.

CASES REFERRED TO

- Alhaji Adesa v. Emmanuel Oyinwale and others (2000) 10 N.W.L.R. (Part 674) 116; (2000) 6 KLR (pt 106) 1915
- Yesufu v. Oyetunde (1998) 12 NWLR (Pt. 579) 483 at 493, (1998) 10 KLR (pt 72) 2327
- LSDPC v. Banire (1992) 5 NWLR (Pt. 234) 620
- Obikoya v Governor of Lagos State (1987) 1 NWLR (Pt. 50) 385
- LSDP V. Foreign Finance Corporation (1987) 1 NWLR (Pt.50) 413
- Attorney-General Bendel State v. P.L.A. Adeyan (1989) 4 NWLR (Pt. 118) 646.
- Isaac Omoregbee v. Daniel Lawani (1981) 3-4 S.C. 108 at 117
- Odulaja v. Hadlad (1973) 11 S.C. 35
- Nigerian Maritime Services Ltd. V. Alhaji Afolabi (1978) 2 S.C. 79 at 81
- Aturanse and others v. Federal Commissioner for Works and Housing (1975) 1 All N.L.R. 331 at 339
- City Property Development Ltd. V.A.G. Lagos State and others (1976) 1 H All N.L.R. (Part 1) 28

STATUTES REFERRED TO

Public Land Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976

Land Use Act, 1978 SS. 5(1)(a), 6(1)(a), 34(2), 36(2)

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LEAD JUDGMENT BY IGUH JSC

The proceedings leading to this appeal were first initiated in the High Court of Lagos state, holden at Ikeja. In that court the plaintiffs claimed against the defendants as follows:-

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“(1) N250,000.00 special damages for unlawful destruction of structures and loss of properties as listed in paragraphs 20 and 21 above.

(ii) N500,000.00 general damages for trespass.

(iii) A declaration that the plaintiffs were in lawful occupation of

D the said premises.

(iv) Costs.

(v) Further or other Reliefs.”

Pleadings were ordered in the suit and were duly settled, filed and

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exchanged.

At the subsequent trial, both parties testified on their own behalf but called no witnesses.

The case of the plaintiffs is that they carried poultry business under the partnership name of Four Pillars (Nigeria) Associates at Kilometre

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30, Oto Awori, Badagry Expressway Lagos State on a piece or parcel of land acquired by the 1st plaintiff on the 13th day of January, 1972 from

the Owokulehin – Idumosi family who are the undisputed radical owners of the land. No registered deed of lease or conveyance was executed by

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the parties in respect of this grant although the said family land owners issued a receipt to the 1st plaintiff in acknowledgment of his payment of

the sum of #2,500.00 (Two thousand five hundred pounds only) to them as rent for “one acre plot situated at Oto – Awori for the years 1971 –

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2031, Fifty years”. This receipt was tendered and received in evidence at the trial as Exhibit 1. It is the plaintiffs’ case that the 1st plaintiff went

into immediate physical possession of this land on his acquisition of the said land. Along with the other plaintiffs, they also developed the prop-

erty as a poultry farm and had at all material times run this poultry farm without interruption from any quarters. The plaintiffs gave copious evidence of what they established on this land which is now in dispute. These included the construction of two houses and four poultry sheds with thousands of layers and chicks. They also sank two bore holes on the land and installed several air conditioners, deep freezers and various other properties which they carefully pleaded in paragraphs 20 and 21 of their Statement of Claim. B

The plaintiffs stated that in 1982, the Lagos State College of Education moved into their said property, claiming title thereto by virtue of some Acquisition Notice. The defendants on finding the plaintiffs' poultry farm on the land in dispute issued encroachment notices against the plaintiffs. As a result, the plaintiff's petitioned the Government of Lagos State per Exhibits 5, 5A and 6A. In the meantime, the defendants' agents carried out a valuation of the plaintiffs' poultry farm which they assessed at N48,900.00. About the month of June, 1982, agents of the 1st defendant fenced in the plaintiffs' farm, describing the same as part of the Lagos State, College of Education. They thereby denied the plaintiffs right of access to their poultry farm. The plaintiffs further claimed that the defendants and their agents proceeded to demolish all the structures and property of the plaintiffs on the farm which they valued at N250,000.00 hence this action. C D E

The defendants, for their part, admitted that the land in dispute originally belonged to the Owokulehin – Idumosi family but claimed that the Lagos State Government on the 12th September, 1972 acquired the same from the family for public purpose. This notice of acquisition was published in the official gazette of 16th November, 1972. They claimed that the land was allocated to the Lagos State College of Education for its permanent site. Sometime in January, 1982, the College of Education moved into possession of the land preparatory to developing it and found poultry farm and two buildings of three rooms erected by the plaintiffs thereon. The defendants then caused contravention and demolition notices to be served on the plaintiffs. They claimed that when the plaintiffs failed to comply with the said notices, the defendants demolished the F G H

plaintiffs' structures on the farm.

At the conclusion of hearing, the learned trial Judge, Longe, J. after a review of the evidence on the 17th January, 1995 dismissed the plaintiffs' claims in their entirety. He stated as follows:

B *"Having failed on title or possession, I do not consider it necessary to review or consider the other claims of the plaintiffs. Such claims are predicated on their success for title or possession and having been warned by duly issued Notices to remove the structures, their claims on them cannot succeed. The entire claims of the plaintiffs are hereby dismissed and there is judgment for the defendants in that all the plaintiffs' claims failed".*

D Dissatisfied with this decision of the trial court, the plaintiffs lodged an appeal against the same to the Court of appeal, Lagos Division, which court in a unanimous decision on the 22nd day of July 1998 allowed the appeal. It concluded:-

E *"In the final result, I allow the appeal. I set aside the judgment of Longe. J. delivered on 17th January, 1995. In its place there will be judgment for the appellants as follows:-*

1. N250,000.00 being Special Damages for unlawful destruction of structures and loss of properties listed in paragraphs 20 & 21 of the Further Amended Statement of Claim.
- F 2. Declaration that the appellants were in lawful occupation of the said premises. The appellants are entitled to costs which I assess and fix at the sum of N5,000.00'

G Aggrieved by this decision of the Court of Appeal, the defendants have appealed to this court. I shall hereinafter in this judgment refer to the plaintiffs and the defendants as the respondents and the appellants respectively.

H Pursuant to the Rules of this Court, the parties filed and exchanged their written briefs of argument. In the appellants' brief of argument, the following four issues are set out as arising for determination in this appeal, namely:-

"(1) Whether the Learned Justices of the Court of Appeal were right in holding that the Plaintiffs (now Respondents) have better title to

the land than the Defendants (now Appellants).

(2) *Whether obtaining Certificate of title or vesting deed is a pre-requisite for a valid compulsory acquisition of land under Public Land Acquisition Law or Decree of 1976.*

(3) *Whether document admitted as Exhibit 10 was made by Person interested in the subject matter of the proceeding and therefore offends the provisions of S.91(3) of Evidence Act 1990.*

(4) *Whether the learned Justices of the Court of Appeal were right to have held the appellants liable in damages for the destruction of the respondents' structures and for loss of properties."*

The respondents, for their part, adopted the above four issues formulated by the appellants as sufficiently comprehensive for the determination of this appeal.

I have closely examined the four issues agreed to by the parties and it seems to me that having regard to the grounds of appeal filed, they substantially represent the main issues for resolution in this appeal. I shall therefore adopt them for my consideration of this appeal.

At the oral hearing of the appeal before us Mr. Babatunde Fashola announced his appearance for all four appellants who admittedly are public officers in the service of the Lagos State Government and had been sued in this case in their public capacities. Asked by the court for his designation in the Ministry of Justice if he belonged to that Ministry or, in the alternative, whether he was a private legal practitioner retained to appear for the appellants in the prosecution of this appeal, Mr. Fashola Frankly admitted that he was neither in the employment of the Lagos State Ministry of Justice nor was he a private legal practitioner briefed to prosecute the appeal on behalf of the appellants. He also admitted that he had no fiat or authorization whether from the Attorney-General of Lagos State or from any other authorised public officer to appear for the appellants in the appeal. He explained that, he was employed in the office of the Governor of Lagos State as a Chief of Staff to the Governor of Lagos state but that he neither applied for nor was he issued with a fiat or authorisation by the Attorney-General of Lagos state to prosecute this appeal. In these circumstances it is plain that without a fiat, Mr. Babatunde

fashola cannot appropriately appear for the appellants in this appeal. Accordingly, the appellants were treated as unrepresented in the appeal although this was not any matter of great moment. This is because the appellants had properly settled and filed their brief of argument in the appeal by Lawal Pedro Esq. Of Attorney-General's Chambers Ministry of Justice, Lagos State. There is also a brief of argument of the respondents filed in reply to the said appellants' brief of argument. In the circumstance, the appeal was taken as having been argued on the appellants' brief of argument.

The main contention of the appellants under issues 1 to 3 is that where, as in the present case, the two parties to a land in dispute claim title and possession thereto, the title being disputed, the plaintiff, to succeed in his claim for trespass must establish a better title to the land. The cases of Balogun v. Akanji (1992) N.W.L.R. (Part 591) 594, Amakor v. Obiefuna (1974) 3 S.C. 67 and Oba Fasiku v. Oba Oluronke (1990) 1 S.C. 16 at 36 – 37 were relied upon for this proposition. They submitted that the respondents as plaintiffs before the trial court failed to establish any title to the land in dispute and that their claims were therefore rightly dismissed by that court. They argued that Certificate of Title or vesting deed is not a pre-requisite for a valid acquisition of land under the Public Land Acquisition Law or Decree No. 33 of 1976. The appellants argued that Exhibit 10 was not made by a person interested in the proceeding and that the maker did not fall within the provisions of Section 91(3) of the Evidence Act. They concluded by submitting that the appellants are not liable in damages for the destruction of the respondents' property on the land in dispute as the demolition was not wrongful or unlawful. They urged the court to allow this appeal.

The respondents, for their own part, submitted that they established a better title to the land in dispute than the appellants and that they had been in undisturbed de facto and legal possession thereof since the 13th day of January, 1972 until in 1982 when they were unlawfully forced out by the appellants. They argued that the appellant relied on a global acquisition of 120 square miles of land in November, 1972 which nowhere mentioned Ijanikin/Oto Awori, the location of the land in dispute.

The purpose of the alleged acquisition was also not stated. They stressed that no service of the purported acquisition notice was effected on the respondents and no Vesting Certificate in respect of the land was applied for or obtained by the appellants. They argued that the only possession the appellants had was their forceful entry into and the destruction of the respondents' various property on the land in dispute. They stated that the allegation of fraud made by the appellants with regard to Exhibit 1 was neither pleaded nor was any evidence led by them in support thereof. It was further contended that Exhibit 10 which the appellants relied upon was made during the pendency of this suit and by persons financially interested in the outcome of the case and that the court below was right in placing no weight on the document. They argued that there was no valid acquisition of the land in dispute by the appellants. They therefore urged the court to dismiss this appeal.

There can be no doubt from a close study of the claims before the court that what are essentially in issue in this case appear to be whether or not the plaintiffs/respondents were at all times material to the commission of the trespass complained of in lawful possession and/or occupation of the land in dispute and whether or not their claims in damages for trespass are sustainable.

It is a basic principle of law that in a claim for damages for trespass to land, the plaintiff, to succeed, must establish exclusive possession of the land in dispute at all times material to the commission of the alleged tort by the defendant. See *Olugbenro v. Ajagangbade III* (1990) 3 N.W.L.R. (Part 136) 37 *Adebanjo v. Brown* 1990) 3 N.W.L.R. (Part 141) 661 *Ogbu v. Ane* (1974) 8 S.C.N.J. 355. And where two parties make conflicting claims to possession of the same land, the possession being disputed, the law ascribes possession to the person that can prove better title to the land in dispute. See *Awoonor Renner v. Daboh* 2 W.A.C.A. 258, *Umeabi v. Otukoya* (1978) 4 S.C. 33 etc. With these preliminary observations in view, issues 1 to 3 will now be considered together.

Issues 1 to 3 deal essentially with which of the parties hereto established a better title to the land in dispute. In this regard, the appel-

lants relied on Exhibit 9, the Public Notice of Acquisition dated the 16th November, 1972. It was, however, not until in the month of January, 1982 that they decided to move into the land in dispute preparatory to developing it. The respondents, on the other hand, relied on Exhibit 1, the receipt for the payment of #2,500.00 made by the 1st respondent to the Owokulehin-Idumosi family, the radical title owners of the land in dispute in respect of the 1st respondents acquisition of the land for the period 1971 to 2031. Exhibit 1 is dated the 13th June, 1972. The respondents further relied on their physical possession of the land. They claimed that they went into immediate physical and actual possession of the land on its acquisition and developed it as a poultry farm. They erected several houses and poultry sheds which harboured thousands of layers and chicks thereon. The respondents were in actual physical and uninterrupted possession of the land in dispute from the 13th January, 1972 until they were disturbed by the appellants sometime in January, 1982.

In the first place, it cannot be disputed that Exhibit 1 which was rightly admitted in evidence to prove payment of money by the 1st respondent to the radical title owners of the land in dispute coupled with the respondents' effective physical possession of the land in dispute as far back as from the 13th January, 1972 gave rise to a good equitable interest and/or title to the land in dispute in favour of the respondents. See Isaac Ogunbambi O. Abowab (1951) 13 W.A.C.A. 132, Orosanmi v. Idowu 4 F.S.C. 40.

In the second place, Exhibit 9 relied upon by the appellants in proof of their title to the land in dispute made no specific reference to Ijanikin/Otto town or village where the land in dispute is situated.

In the third place, the rights of the respondents under Exhibit 1 coupled with their undisputed physical possession of the land in dispute with effect from the 13th January, 1972 predated Exhibit 9 and remained effective and unaffected until, at least, up to the 1st July, 1976 when the Public Land Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976 which made no provision for obtaining Certificate of Title or a Vesting Deed as pre-requisite for a valid compulsory acquisition of land was promulgated into law. It ought

to be observed, however, that the said Decree No. 33 of 1976 has no retroactive effect and did not therefore affect Exhibit 9 which was published on the 16th November, 1972. In my view, it is indisputable that Decree No. 33 of 1976 is effective and relevant only to public acquisitions made after its enactment on the 1st July, 1976. B

Now, the acquisition in issue was allegedly made before 1st July, 1976. It is not in contention that the law as it stood before the 1st July, 1976 was that the issuing of a public notice of acquisition did not per se immediately vest or confer title to the land in issue in the Government until a Certificate of Title to the whole or any part of the land is subsequently obtained and registered at the Land Registry. See Aturanse and others v. Federal Commissioner for Works and Housing (1975) 1 All N.L.R. 331 at 339, (City Property Development Ltd. V.A.G. Lagos State and others (1976) 1 All N.L.R. (Part 1) 28 etc. In the present case, the appellants were unable to show that they obtained a Certificate of Title or a Vesting Deed in respect of the land in dispute and may not therefore claim that title thereto was vested in them on the said 16th November, 1972 on which date Exhibit 9 was published or on any other date thereafter. D E

There is one more point to be stressed on the question of which of the parties proved a better title to the land in dispute. In this regard attention must be drawn to the provisions of the Land Use Act, 1978 which came into effect on the 29th March, 1978. There is firstly the Statutory right of Occupancy granted by a State Governor pursuant to Section 5(1)(a) of the Act and the Customary right of Occupancy granted by a Local Government under Section 6(1)(a) of the Act. The second classification is the Statutory right of Occupancy deemed to have been granted by a State Governor pursuant to Section 34(2) of the Act as against the Customary right of Occupancy deemed to have been granted by a Local Government under Section 36(2). There therefore exist in both cases of Statutory and Customary rights of occupancy actual grant as well as deemed grant. An actual grant is naturally a grant expressly made by the Governor of a State or by a Local Government whilst a deemed grant came into existence automatically by the operation of law. See Savannah F G H

658 Provost L.S.C.E. v. Edun (2004) 2 KLR Iguh JSC
Bank (Nig.) Ltd. V. Ajilo (1989) 1 N.W.L.R. (Part 97) 305, Alhaji Adesa v.
Emmanuel Oyinwale and others (2000) 10 N.W.L.R. (Part 674) 116 etc.

The respondents in the present case were in exclusive physical possession of the land in dispute and were using the same for agricultural purposes in a non-urban area or village called Otto/Ijanikin, Awori immediately before the commencement of the Land Use Act on the 29th March, 1978. They are therefore deemed holders of Customary Right of Occupancy in respect of the land in dispute by operation of law at the commencement of the Land Use Act, 1978 on the 29th March, 1978. Their deemed grant is no less effective than a Customary Right of Occupancy expressly granted by the appropriate Local Government. Deemed grants, whether of Statutory or Customary Right of Occupancy are as valid as express grants and may not be defeated by any unlawful subsequent dealing in respect of such land by the original owners thereof. This is because after a party has divested himself of interest in land or any res, no right vests in him to deal with such property any further. See Okafor Egbuche v. Chief Idigo II N.L.R. 140, Adamo Akeju v. Chief Suenu 6 N.L.R. 87. I will for all the reasons I have stated above resolve issues 1 to 3 against the appellants. I am in agreement with the court below that the respondents had better title to the land in dispute than the appellants.

There is finally issue 4 which poses the question whether the court below was right to hold the appellants liable in damages for the destruction of the respondents, structures on the land in dispute. It is hardly in dispute that the respondents were at all times material to the commission of the trespass complained of in exclusive and peaceable possession of the land in dispute. The appellants without any justification invaded the land in dispute in the possession of the respondents and destroyed their properties thereon. All the items of the respondents' property destroyed by the appellants were carefully pleaded and meticulously adduced in evidence. Indeed the appellants hardly controverted their values as testified to by the respondents. The special damages claimed by the respondents were meticulously pleaded and strictly proved as required by law.

See Dumez (Nigeria) Ltd. V. Ogboli (1972)1 All N.L.R. 241, Jaber v. Basma 14 W.A.C.A. 140.

Where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it. See Isaac Omoregbee v. Daniel Lawani (1981) 3-4S.C. 108 at 117, Odulaja v. Hadlad (1973) 11 S.C. 35, Nigerian Maritime Services Ltd. V. Alhaji Afolabi (1978) 2 S.C. 79 at 81.

I have carefully considered the findings of the court below on the issue of liability and the damages awarded in this case and I have no reason to interfere with its decision. Issue 4 is accordingly resolved against the appellants.

In the final result, this appeal is without substance and it is hereby dismissed with costs to the respondents against the appellants which I assess at N10,000.00.

UWAIS CJN

I have had the opportunity of reading in draft the judgment of my learned brother Iguh, JSC. I agree entirely that the appeal has no merit.

It is accordingly dismissed with N10,000.00 costs to the respondents against the Appellants.

ONU JSC

Having been privileged to read before now the judgment of my learned brother Iguh, JSC just delivered, I agree with his reasoning and conclusion to dismiss the appeal as lacking in merit.

I have nothing useful to add thereto.

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EJIWUNMI JSC

I was privileged to have read in advance the judgment just delivered by my learned brother, Iguh JSC. I also dismiss this appeal for the reasons given in the said lead judgment and I abide with the order made as to costs.

TOBI JSC

The plaintiffs as respondents claimed for three reliefs in the High Court of Lagos State: (i) N250,000.00 special damages for unlawful destruction of structures and loss of properties; (ii) N500,000.00 general damages for trespass and (iii) a declaration that the plaintiffs were in lawful occupation of the premises.

The claims of the plaintiffs/respondents were dismissed by the learned trial judge. On appeal, the Court of Appeal set aside the judgment of the trial judge and entered judgment in favour of the plaintiffs/respondents as follows:

“(1) N250,000 being special damages for unlawful destruction of structures and loss of properties listed in paragraphs 20 - 21 of the further Amended Statement of Claim.

(2) Declaration that the appellants were in lawful occupation of the said premises.”

Dissatisfied, the defendants/appellants have come to this court. As usual, briefs were filed and duly exchanged. The appellants formulated the following issues for determination:

“(1) Whether the Learned Justices of the Court of Appeal were right in holding that the Plaintiffs (now Respondents) have better title to the Land than the Defendants (now Appellants).

(2) Whether obtaining Certificate of title or vesting deed is a pre-requisite for a valid compulsory acquisition of land under Public Land Acquisition Law or Decree of 1976.

(3) Whether document admitted as Exhibit 10 was made by person interested in the subject matter of the proceeding and therefore offends the provisions of S. 91 (3) of Evidence Act 1990.

(4) Whether the learned justices of the Court of Appeal were right to have held the appellants liable in damages for the destruction of the Respondents' structures and for loss of properties."

The respondents adopted the above issues formulated by the appellants. The main crux of this appeal is whether there was a vesting deed or order and whether the acquisition of the property in dispute complied with the laws applicable.

Mr. Babatunde R. Fashola from the Governor's Office announced his appearance for the appellants. As he is not from the Ministry of Justice, the court decided that he cannot appear for the appellants. He therefore withdrew his appearance. In view of the fact that the brief was prepared and signed by Lawal Pedro from the Ministry of Justice, Lagos State, it was deemed argued.

I shall take only the submissions relating to Issue No. 2 Dealing with whether a certificate of title or a vesting deed is a prerequisite for a valid compulsory acquisition of land under the Public Land Acquisition Law or Decree 1976, Mr. Pedro referred to section 25 of the Public Land Acquisition Law Cap. 103 and Cap. 113 as amended by Edict of 1976 which is similar to section 25 of the Public Land Acquisition Act Cap. 167, Laws of the Federation and Lagos and submitted that the provisions do not make grant of certificate of title a prerequisite for a valid acquisition of land, rather they provide for the governor to obtain certificate of title to evidence the title acquired. He submitted further that certificate of title has nothing to do with the validity of acquisition. Acquisition is complete and valid upon issuance and service of proper notices and publication of the notices in the official gazette as well as payment of compensation, leaned counsel contended.

Counsel conceded that under the Public Land Acquisition Act Cap. 167, valid acquisition of land per se will not immediately confer title on the government until a certificate of title to the whole or any part of the land is subsequently obtained and registered at the land registry. He cited Atunrase v. Federal Commissioner for Works (1975) 1 All NLR 331.

Assuming, without conceding, that under Public Land Acquisition Act, it was mandatory for the government to obtain certificate of title to

validate compulsory acquisition of land, learned counsel submitted that there is no time limit within which the government may obtain the certificate. He cited section 25 of the public Land Acquisition Act Cap. 167. It was therefore the argument of counsel that up to the date of commencement of this action in 1982, government could still have obtained the certificate as proof of title. To learned counsel, this could no longer be the position because with effect from 1st July 1976, it was no longer the law for the government to apply for a grant of certificate of title to any acquired land as proof of title. Counsel referred to section 20 of the Public Land Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976. He said that Decree No. 33 of 1976 also made consequential amendments to Cap. 167 and all equivalent Laws of the States. Although counsel had earlier relied on Atunrase v. Federal Commissioner for Works (supra), he contended that since the case was decided before Decree No. 33 of 1976 was promulgated, it could not have applied to this case.

It was the submission of learned counsel that with the enactment of the Land use Act 1978, the position of the law under Decree No. 33 of 1976 was further confirmed and certificate of title is unnecessary to confer title on acquired land. He cited Makeri v. Kafinta (1990) 7 NWLR (Pt. 163) 411 at 419 where according to counsel, this court referred to and distinguished the case of Lagunro v. Toku (1986) 4 NWLR (Pt. 33) 90.

In the light of the above, learned counsel submitted that as at 1977 when Exhibit 1 (the rent receipt) was made in favour of the respondents and in 1980 when Exhibit 7 (the survey plan) of the respondents was made and in 1982 when the cause of action arose, the position of the land was and is that certificate of title is unnecessary to validate acquisition of land by government or to confer title of acquired land on government.

Citing the case of Yesufu v. Oyetunde (1998) 12 NWLR (Pt. 579) 483 at 493, learned counsel submitted that once there is compulsory acquisition of land, title of the former owner becomes extinguished. It follows that in 1977, the plaintiffs/respondents could not have acquired any interest from the former landowner since title to the land became vested in government in 1976. He urged the court to allow the appeal.

Learned counsel for the respondents, Mr. Folarin Popoola, submitted that Exhibit 9, the Notice of Acquisition published on 16th November, 1972 did not divest the respondents or even Owokunlehin Idimosi Family of the land in dispute for the following reasons:

“(i) *Whatever it is worth, exhibit 9 made no mention or reference to Ijanikin/Otto town or village where the land is situated.*

(ii) *Even where, or if, Exhibit 9 referred to the land in dispute, (and we don’t admit) the title of the respondents, Exhibit 1, which was made on 13th June 1972, predated Exhibit 9 and remained unaffected and effective until, at least, up to the 1st of July 1976 when Decree No. 33 was issued. Decree No. 33 has no retroactive effect to 16th November, 1972 when Exhibit 9 was published.*

(iii) *Decree No. 33 is effective and relevant only to public acquisition made after 1st July, 1976.*

(iv) *As for all public lands acquisitions made before 1st July 1976, the acquiring authority MUST comply with all the formalities prescribed by the law of acquisition of lands. And in Lagos State, the law as it stood before 1st July 1976 was the Public Lands Acquisition (Amendment) Edict, 1976.”*

Referring specifically to section 25(1) of the Edict, learned counsel submitted that as the appellants had no vesting order, Exhibit 9 did not and could not confer on the Lagos State any estate or interest as demanded by section 25(3) of the Edict, 1976.

Still on Exhibit 9, learned counsel submitted that the exhibit did not state any of the public purposes enumerated in section 3 (1) of the Public Lands Acquisition Law Cap. 103 of Western Nigeria, 1959 which was then in force in Lagos State. Referring to sections 5 and 9 of the Law, learned counsel submitted that before acquisition, persons interested in the land must be given notice of intention to acquire the land before publishing same in the gazette. He cited Attorney-General of Bendel State v. Aideyan (1989) 4 NWLR (Pt. 118) 646 at 673 and the evidence of PW1.

On the Land Use Act, learned counsel submitted that the Act will be applicable to acquisitions made after the commencement of the Act.

To counsel, the Act is not the existing law at the time of the purported acquisition of the land in dispute in 1972. He contended that the case of Makeri v. Kafinta (supra) was decided per incuriam as the Court of appeal overlooked the provisions of section 34 and 36 of the Land Use B Act.

On the Public Lands Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976, learned counsel submitted that the law was already of spent force and void in every respect as at January 1982 when the appellants, relying on it entered the respondent's land. He contended that by virtue of section 274(4) of the 1979 Constitution, Decree No. 33 of 1976 became an existing law of the National Assembly and accordingly became void as it legislated for the States in respect of matters which are not within the legislative competence of the National Assembly. To learned D counsel, the Lagos State Public Lands Acquisition (Amendment) Law, 1976 remains the law in force in respect of all public land acquisition. He reinforced his earlier argument of service of notice of acquisition and submitted that failure on the part of the appellants to prove service can- E not validate the acquisition. He urged the court to dismiss the appeal.

Both counsel have cited quite a number of statutes. These include Public Land Acquisition Law of Lagos State Cap. 103 of 1973; Public Land Acquisition (Amend.) Edit of Lagos State, 1976; Public Land Ac- F quisition Act Cap. 167, Laws of the Federation, 1968; Public Land Acquisition (Miscellaneous Provisions) Decree No. 33 of 1976, the Land Use Act, 1978 and Public Lands Acquisition Law Cap. 105 of Western Region, 1959.

In determining the applicable law in this matter, there is need to G know when the cause of action arose. The question therefore is, what prompted the cause of action? It is clear on the evidence that Exhibit 9, the notice of Acquisition, sparked off the litigation in this matter. And it was published in a gazette on 16th November, 1972.

H Learned counsel for the appellants argued that the applicable law is Decree No. 33 of 1976. It must be pointed out that at the time the cause of action arose, Decree No. 33 was not promulgated. And as rightly pointed out by learned counsel for the respondents, Decree No. 33 had

no retrospective application. In my view, Decree No. 33 of 1976 became effective and relevant only in respect of public acquisitions from the date of commencement of the Decree.

I seem to agree with the submission of learned counsel for the respondents that the applicable law is the Public Lands Acquisition (Amendments) Edict, 1976 of Lagos State which would appear to have amended the Public Land Acquisition Law Caps 103 and 113 then in force in Lagos State. It is a valid canon of statutory interpretation that an amendment takes effect from the commencement date of the original or amended statute, unless the lawmaker states otherwise.

Section 25(1) of the Public Lands Acquisition (Amendment) Edict, 1976 reads:

“(1) The Military Governor may at any time after the expiration of the period specified in the notice given under section 8 of this Law, make a vesting Order, in respect of the whole or any part of the land described in such notice.

(2) A vesting order made by the Military Governor under the provisions of subsection (1) of this section shall be published in the State Gazette.

(3) A vesting order made by the Military Governor in respect of any acquisition made under this law shall confer on the Military Governor in trust for the Government of the Lagos State any estate or interest comprised or referred to therein against all persons, free from all adverse or competing rights, titles, interests, trusts, claims and demands whatsoever, subject to the terms and conditions, if any, therein mentioned.”

It is clear from section 25(1) that after the expiration of the period specified in the notice given under section 8, the Military Governor will make a vesting order in respect of the whole or any part of the land described in the notice. Subsection (2) enjoins government to publish the vesting order in the State Gazette. By subsection (3), it is the vesting order which confers on the Military Governor all the rights in any estate contained therein.

Learned counsel for the respondents argued that as the Military Governor did not make any vesting order, Exhibit 9 did not, and could

not confer on Lagos State any estate or interest within the meaning of section 25(3). I entirely agree with the submission of learned counsel for the respondents.

Where a statute specifically provides for a particular way in which Government or any party can obtain title, the Government or the party can only acquire title by strict compliance with the statute, unless the statute by its wording is against the Constitution of the land. And if I may go further, I do not see the provision of section 25 going contrary to the 1979 Constitution which provided for the compulsory acquisition of property under section 40 on the payment of prompt compensation.

Learned counsel for the appellants did not contest the submission that vesting order was not made by the Governor. All he submitted is that the applicable law was Decree No. 33 of 1976, a Decree which did not provide for a vesting order. I have already come to the conclusion that Decree No. 33 of 1976 is not applicable because it has no retrospective effect.

Learned counsel for the appellants, in an effort to drown the submission of his colleague made reference to section 25 of the Public Land Acquisition Act Cap. 167 which provided as follows:

“The Minister may at any time after the expiration of six weeks from the date of the service and publication of the notice mentioned in section 5, apply ex parte by summons to the High Court for a certificate of title to whole or any part of the lands described in such notice and upon such application the court shall, upon the proof of the service and publication of the said notice, grant a certificate of title as in Form D in the schedule or to the like effect of the whole of the lands described in such notice or to that part thereof in respect of which the application is made, which certificate shall not be questioned or defeasible by reason of any irregularity or error or defect in the proceeding previous to the obtaining of such certificate.”

Although learned counsel rightly called the court’s attention to the above provision, he gave the court a wrong interpretation of the clear provision. But in the paragraph immediately following the wrong interpretation, counsel sounded relevant when he said, and I quote him in

extenso:

“I however concede that under the Public Land Acquisition Act Cap. 167 valid acquisition of land per se will not immediately confer title on the government until a certificate of title to the whole or any part of the land is subsequently obtained and registered at the Land Registry. The decision of this court in ATUNRASE VS FED COMM FOR WORKS 1975 1 All NLR 331 referred to by the Court of Appeal, place some credence to this contention when Elias C.J.N. (as he then was) observed as follows:

‘The issuing of the public notice of acquisition does not immediately vest the title to the land in the government but the latter may acquire it only after satisfying the provisions of the Public Land Acquisition Act requiring that a Land Certificate should be obtained as proof of title’.

Learned counsel thereafter returned to section 25 of the Public Lands Acquisition Act, Cap. 67 which I have reproduced above and capitalized on the six weeks period of grace provided for in the section. Finding himself in a helpless situation, he struggled to relate the period of grace to Decree No. 33 of 1976, a law which I have held is not applicable. The submission of counsel, with the greatest respect, is not only clumsy but zigzag. It has not taken him anywhere.

The above on the absence of vesting order apart, Exhibit 9, the Notice of Acquisition can be faulted. First, Exhibit 9 did not mention or make reference to Ijanokun/Otto town or village where the land is situated. Of course, Exhibit 9 could not have mentioned the town or village that the land was situated because the acquisition was that of “*Global acquisition of 120.50 square miles*” whatever that means. A notice of acquisition of property must be specific and precise as to the property acquired. A vague and ambiguous definition of the property which is capable of more than one interpretation as to its precise location cannot be valid in law. If an acquisition involves a community acquisition, there should be a schedule to the Notice of Acquisition specifically spelling out the boundaries and other identities of the area or areas acquired.

Second, public acquisition of land for public purpose presupposes

that the Notice of Acquisition should spell out the public purpose within the meaning of section 2 of the Public Land Acquisition Law, Cap. 105 of Western Region, 1959 which was then applicable in Lagos State. It does not appear that Exhibit 9 contained such vital information. In LSDPC v. Banire (1992) 5 NWLR (Pt. 234) 620, it was held that where an acquiring authority compulsorily acquires private property it is important that the particular of the “*public purpose*” for which such property is acquired is given. See also Chief Commissioner Eastern Provinces v. J.M. Ononye (1944) 17 NLR 142.

Third, before private property is acquired, the acquiring authority must give notice of intention to acquire the property before publishing same in the gazette. PW1 in his evidence-in-chief said:

“I never had any quit notice or acquisition notice from any quarter.”

This evidence was not challenged under cross-examination and it is deemed to have been admitted. In The Attorney-General of Bendel State v Aideyan (1989) 4 NWLR (Pt. 118) 646, this court held that by the provisions of sections 5 and 9 of the Bendel State Public Lands Acquisition Law, before someone’s property could be acquired compulsorily for public purpose: (a) notice of intention so to do must have been served upon him or the occupier or a person interested or upon such persons as were entitled to sell or convey the land; failing both, affixed conspicuously on the property; (b) the notice must be by personal service or by being left at his last known place of abode or business; (c) the notice served on him must be published once in the Bendel State Gazette, and at least two national daily newspapers circulating in Bendel State. It must be said that section 5 and 9 of the Bendel State Law is similarly worded as section 5 and 9 of the Lagos State Law.

What is the effect of the non-compliance with the law? It is settled law that expropriators statutes which encroach on a person’s proprietary rights must be construed *fortissime contra preferentes*, that is strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived. Consequently, as against the acquiring authority, there must be a strict adherence to the formalities

prescribed for the acquisition. See Obikoya v Governor of Lagos State (1987)1 NWLR (Pt. 50) 385; LSDP V. Foreign Finance Corporation (1987) 1 NWLR (Pt.50) 413; Attorney-General Bendel State v. P.L.A. Adeyan (1989) 4 NWLR (Pt. 118) 646.

Government has the constitutional right to compulsorily acquire property on payment of compensation. That was the provision of section 40 of the 1979 Constitution, the Constitution that was in force when this matter went to court. It is now section 44 of the 1999 Constitution. There is no argument about that constitutional power.

There are statutes which provide for the procedure of acquiring property by the Government. Government is expected to comply and it must as a matter of law comply with those statutes which Government has enacted. Therefore where Government disobeys its own statutes by not complying with the laid down procedure for the acquisition of private property, it is the duty of the courts to intervene against the Government and in favour of the private citizen. That is the situation I have seen in this appeal.

It is for the above reasons and the fuller reasons given in the leading judgment by my learned brother, Iguh, JSC, that I too dismiss the appeal, because it is clear to me that the acquisition of the property did not comply with the law. I award N10,000.00 costs in favour of the respondents.

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