

SUPREME COURT OF NIGERIA
11TH FEBRUARY, 2005. SC. 81/2001
CORAM:- M. L. UWAIS CJN, S. U. ONU, A. O. EJIWUNMI,
N. TOBI, D. O. EDOZIE, JJSC

DODO DABO APPELLANT
AND
ALHAJI IKIRA ABDULLAHI RESPONDENT

LAND USE ACT - Statutory Certificate of Occupancy - Issued to the respondent by the Government - Was validly issued under the statute (H1)

STATUTES - Exercise of statutory power - Cannot be held invalid - Save it is shown that the exercise is contrary to the statute (H1)

ADMINISTRATIVE LAW - Statutes - Administrative procedure - Meant to guide the exercise of statutory power - Is not same as a mandatory statutory requirement (H1)

APPEALS - Issues - Leave of court - Where appellant introduces a new issue - Without leave of court - The issue is incompetent (H2)

LAND USE ACT - Statutory Certificate of Occupancy - Recommendation to the Governor - To withdraw an already issued Certificate - Is not binding on the Governor (H3)

LAND LAW - Title - Identity of the land in dispute - Is not in doubt - And it is established that Exhibit 2 - Was issued over that land (H4)

LAND LAW - Title - Judicial precedents - Statutory Certificate of Occupancy - Facts that may justify setting it aside - Cannot be defence to trespass - Where the grant had not been set aside (H5)

ACTIONS - Claims - Counter claim - Grant of Right of Occupancy - Appellant's failure to file counter claim to set it aside - Defeats his defence (H6)

LAND USE ACT - Title - Proof - Claim based on grant of Statutory Certificate of Occupancy - Is proved by tendering the Certificate (H7)

APPEALS - Evidence - Concurrent findings - Not challenged by way of appeal to Supreme Court - Will stand (H8)

LAND LAW - Title - Proof - Where root of title pleaded is not proved - Acts of possession cannot be relied upon (H9)

LAND LAW - Title - Pleadings - Where the grant of title pleaded was abandoned - Evidence of oral grant not pleaded - Goes to no issue (H10)

FACTS

Before the Kaduna High Court the plaintiff/respondent filed an action against the defendant/appellant. Respondent claimed declaration of title, injunction and N100,000 damages for trespass in respect of the land in dispute. Respondent relied on Statutory Certificate of Occupancy No. 8764 granted to him by the Governor. Appellant did not file any counter claim. Rather in his defence he relied on 2 documents as conferring priori title to him, one of them being a Customary Right of Occupancy issued by the Kaduna Local Government. He acknowledged that his house on the land was demolished by the Government of Kaduna State as being an illegal structure. Appellant relied on his long possession of the land since 1968, which he stated to be since 1963 by inadmissible oral evidence . He sought to establish that respondent's Statutory Certificate of Occupancy was not properly issued, as due administrative process was not complied with. He claimed N50,000 as general damages for trespass against the respondent.

In the course of the trial, issue of some discrepancies in Exhibit 2 (the Statutory Certificate of Occupancy) arose as to the location of the

land granted to the respondent. The trial court after evaluating the evidence and case of the parties found in favour of the respondent. Appellant's appeal to the Court of Appeal was dismissed. Being dissatisfied, he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(a) Whether the Court of Appeal properly affirmed the validity of Exhibit 2 and the fact that the Governor lawfully exercised his powers to issue same.

(b) Whether the court was right when it affirmed that Exhibit 2 was over the piece of land in dispute.

*(c) If the answer to ‘a’ and ‘b’ above are in the affirmative, whether in the circumstances, on the authority *Teniola v. Olohunkun* (1999) 4 SCNJ 92, the appeal ought to be dismissed.*

(d) Whether the Court of Appeal was right to have affirmed the judgment of the trial court.”

HELD (Unanimously dismissing the appeal per **ONU JSC**)

C of O - Exercise of statutory power - Administrative procedure

1. I accept the respondent's submission that the power of the Governor to issue Statutory Certificates of Occupancies is statutorily provided for in Section 5(i)(a) of the Land Use Act Cap. 202 Laws of the Federation, 1990 (now Cap L.5 Laws of the Federation 2004) under Section 5(i) (a) which provides;- *“(1) It shall be lawful for the Governor in respect of land, whether or not in an urban area to - (a) grant statutory rights of occupancy to any person for all purposes.”*

This is because an exercise of statutory power cannot be held to be invalid unless it is shown that the exercise is contrary to the statute. Mere administrative procedures meant to guide the exercise of statutory powers, it ought to be stressed, cannot be elevated to the level of mandatory statutory requirement.

Further more, the appellant having failed to show that the Governor acted contrary to law in issuing Exhibit 2, the trial court correctly, in my view, held and the court below properly affirmed, that Exhibit 2 was validly issued and that the Governor lawfully exercised his powers under the Land

Use Act. (p. 600 G / 601 E)

APPEALS - Issues - Leave of court

2. The appellant’s brief at page 7 thereof has introduced an entirely new
 B issue to the effect that the prior advice and recommendation of the Land
 Use and Allocation Committee was neither sought, obtained nor made
 available to the Governor.

Since the issue was neither pleaded nor raised in trial court, nor
 C further claimed in the lower court, its introduction in this court without
 leave is therefore incompetent. The appellant cannot raise a fresh point
 which was not raised, tried and considered and pronounced upon by the
 courts. I therefore agree with the respondent that the argument on this
 issue be and is hereby discountenanced. (p. 601 C)

D

Certificate of Occupancy - Recommendation to the Governor

3. Appellant’s submission at page 6 of his brief to the effect that the real
 question in controversy is whether the Governor was bound to receive and
 E consider recommendations made to him before issuing a Certificate of
 Occupancy is not the real issue in controversy. This is because, as shown
 in the judgment of the trial court (see page 176 of the Records) the
 recommendation to withdraw Exhibit 2 by the Assistant Chief Lands
 F Officer did not go far; it stopped at the Chief Lands Officer who did not
 accept same. Hence, the issue of the Governor being bound to receive and
 consider such recommendation (which did not come to him in the first
 place) did not arise. In fact, even if such recommendation had reached the
 Governor, he could not have been bound by the same. (p. 601 G)

G

Title - Identity of the land in dispute

4. From the foregoing, I agree with the respondent that copious evidence
 was adduced on which the trial court relied in holding that Exhibit 2 was
 H over the piece of land in dispute and on which the court below affirmed
 the finding. A fortiori, I am in agreement with the respondent that it is
 sufficient evidence to support the concurrent finding of the two lower
 courts on this issue and that same not being perverse, ought not to be

disturbed, but rather affirmed.

It is the appellant's contention that in the circumstances only the Governor could amend Exhibit 2 and that there is no case for rectification before the court. With due respect, the issue here is not correction of Exhibit 2 but rather one of showing on the balance of probability that Exhibit 2 is over the piece of land in dispute. This, I agree with the respondent, had been abundantly demonstrated in argument. The appellant has argued at page 2 of his brief that the identity of the land in dispute was not in issue; that it was settled and agreed upon by both parties. I am in entire agreement with this submission and to further add that it ought not to be an issue before this court as well. (p. 605 A)

Certificate of Occupancy - Facts that may justify setting it aside

5. As the consideration of this issue hinges on an affirmative answer to the first and second issues, then appellant's appeal will be brought squarely within the four walls of the decision of this court in the case of *Teniola v. Olohunkun* (supra) 92 at page 103.

In that case, the respondent had relied on the Statutory Certificate of Occupancy in his claim. The appellant contended that the Certificates relied upon by the respondent were irregular and unlawfully obtained as the appellant had a Customary Right of Occupancy over the land prior to the statutory grant to the respondent. However, the appellant did not counter-claim to set aside the grant to the respondent.

Ayoola, JSC., delivering the leading judgment held at page 103 as follows:-

The facts which may justify the setting "aside of a grant of Right of Occupancy cannot be used as defence in an action in trespass when the Grant which vested exclusive possession in the holder had not itself been set aside. The proper thing to do is to advance those facts in an action to set aside the grants..." To treat the grant as annulled when no such remedy has been sought in the action and to hold that the party challenging the grant has a right to enter the land as if the holder of a right had at no time been granted the right cannot at all be right..." (p. 605 G)

Counter claim - Grant of Right of Occupancy

6. He, (appellant), had been aware that the respondent had been granted a Right of Occupancy over the piece of land in dispute by the Kaduna State Government since 1984. He took no visible steps and even when a claim was filed against him, he did not counter-claim to have the grant to the respondent set aside.

Thus, in the instant case, the respondent having produced Exhibit 2, - the Statutory Certificate of Occupancy, - had clearly discharged the burden required of him.

Having discharged the burden of proof on his part, the burden shifted to the appellant to rebut his (respondent's) case. In the first place and as demonstrated under Issue III above, the appellant having not filed a counter-claim to set aside the respondent's Exhibit 2, his defence necessarily must fail. (p. 606 F / 607 H)

Claim based on grant of Statutory Certificate of Occupancy

7. I agree with the respondent's submission that the court below properly affirmed the judgment of the trial court in view of the fact that he (respondent) had discharged the burden of proof that lay on him whereas the appellant for his part could not mount any credible defence to tilt the scale. In a matter like this, judgment is given to the party with the better title.

Indeed, on whether the respondent had discharged the burden of proof required of him, I agree with him that on his claim based on a Statutory Certificate of Occupancy which confers exclusive possession, the respondent need do no more than produce and tender the Statutory Certificate of Occupancy and show that same is over the piece of land in dispute.

By a long line of decided cases by the Supreme Court, it is now trite and settled law that there are five different ways of establishing title to land. (p. 607 D)

APPEALS - Evidence - Concurrent findings

8. The concurrent finding of both the High Court and the Court of Appeal

on the admissibility and evidential value of appellant's Exhibit 3, has not been challenged by way of appeal to this court. That being the case, the fact remains that the appellant cannot rely on same herein in the Supreme Court. Where a party has not challenged a finding by way of appeal, that finding stands. (p. 608 B)

B

Where root of title pleaded is not proved

9. The law is equally settled that where the radical title pleaded is not proved, it is not permissible to support a non-existent root of title with acts of possession. It is not permitted to substitute a root of title that has failed with acts of possession which could have derived from the root. See *Odofoin v. Ayoola* (supra) at 116 and *Ndukwe v. Acha* (1985) 5 SCNJ at 28 at 38-39.

C

The appellant in relying on the grant to him by the Sarkin Kakuri Gwari completely failed to advert to the decision of this court in the case of *Ganken v. Ogechukwu* (1993) SCNJ (Pt. 2) pages 272-275 which placed a burden on the appellant to show the authority and capacity of the Sarkin Kakuri Gwari to make the grant. (p. 608 E)

D

E

Where the grant of title pleaded was abandoned

10. Be it noted that the appellant had pleaded in paragraph 5(1) of his Amended Statement of Claim that in 1968 he was granted the piece of land by the Sarkin Kakuri Gwari evidenced by Exhibit 3. In his evidence-in-chief, however, he now backdated his alleged grant to 1963. I agree with the respondent's submission that appellant must be held bound by his pleading and that evidence of an oral grant in 1963 clearly is contrary to the pleading and goes to no issue. Clearly too, Exhibit 3 is the appellant's root of title. By his pleading and admissible evidence followed by his argument that his oral grant is independent of Exhibit 3 clearly amounts to an afterthought. (p. 609 C)

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NOTABLE POINTS OF INTEREST

TOBI JSC

1. Adverse possession is defeated by true holder's title

I see in this case adverse possession on the part of the appellant. Where possession is adverse or encumbered, the party in possession cannot claim better title to a later true holder of the title. By virtue of the true holder of title, the so-called possession is ab initio voidable and it will be voided at the instance of the person who has title. And that person in this case is the respondent. (p. 614 A)

EDOZIE JSC

2. Title - Nature of a valid document

Admittedly, the production of documents of title is one of the recognized methods of proving title to land. But such a document of title must be admissible in evidence and be of such a character as to be capable of conferring valid title on the party relying on it. Discussing the nature and character of such a document of title, this court, in the case of *Romaine v. Romaine* (1992) 4 NWLR (Pt. 238) 650 at 662 observed thus:-

“I may pause here to observe that one of the recognized ways of proving title to land is by production of a valid instrument of grant. But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance on such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions including:

- (i) whether the document is genuine and valid;*
- (ii) whether it has been duly executed, stamped and registered;*
- (iii) whether the grantor had the authority and capacity to make the grant;*
- (iv) whether the grantor had in fact what he purported to grant; and*
- (v) whether it has the effect claimed by the holder of the instrument.”* (p. 614 F)

3. Valueless documents cannot confer valid title to land

The respondent’s Certificate of Occupancy having been issued by the appropriate authority and duly registered is, at least, prima facie, evidence

or presumption of title in favour of the respondent in respect of the land in dispute. The respondent's Certificate of Occupancy, Exhibit 2, having raised a presumption of title in his favour, the appellant, to succeed, has the duty to rebut that presumption. To this end, he relied on his own documents of title Exhibits 3 and 5. Exhibit 3, dated 11th February, 1968, B was the grant of the land in dispute to him by late Sarkin Kakuri Gwari, Mallam Angulu. Apart from the several defects of this Exhibit 3, in so far as it purported to confer interest in land and was not registered, as a registrable instrument pursuant to Section 3(2) of the Land Registration C Law Cap. 85 of the Laws of Kaduna State 1991, it was inadmissible in evidence by virtue of Section 15 of the said Law. It is, therefore, of no assistance to the appellant. Nor is his position improved by Exhibit 5 which is the Certificate of Occupancy over the land in dispute granted to him by D the Kaduna Local Government. As earlier noted, the land in dispute is located in an area designated as urban. By Section 6(1) of the Land Use Act supra, a Local Government has no power to grant a right of occupancy over land in an urban area. It, therefore, follows that the Kaduna Local Government acted ultra vires and illegally in issuing Exhibit 5. Both E Exhibits 3 and 5 relied upon by the appellant are valueless documents and as such are incapable of rebutting the presumption of title in favour of the respondent created by his impeccable Certificate of Occupancy Exhibit 3. (p. 615 F) F

4. Identity of land - When false description will not vitiate title

Another issue hotly contested and agitated in this appeal relates to the identity of the land covered by the Certificate of Occupancy Exhibit 2, which indicated that the land in question was in "Rigachikun in Kaduna G Local Government". Exhibit 2 contains the numbers of the pillar beacons that demarcate the land in dispute and it is these beacons that are relevant in identifying the land in dispute. The reference in Exhibit 2 to "Rigachikun" H which is not in Kaduna Local Government was demonstrably established by witnesses on both sides and accepted by the two lower courts to be an error. In this regard, the maxim falsa demonstratio non nocet (false description does not vitiate) applies : See Smith v. Ridgway (1866) L.R.

594 Dabo v. Abdullahi (2005) 2 KLR Onu JSC
Ex 331, Ex Ch. (p. 616 E)

REPRESENTATION

Nelson Uzuegbu, Esq., (with him, Louis M. Yashim Esq.,), for the
B Appellant.
A. A. Manta Esq., for the Respondent.

CASES REFERRED TO

Teniola v. Olohunkun (1999) 4 SCNJ 92
C Okafor v. Attorney-General (1992) 6 SCNJ (Pt. II) 219 at page 234 line
35
Odofin v. Ayoola (supra) at 116 and Ndukwe v. Acha (1985) 5 SCNJ at
28 at 38-39
D Ganken v. Ogechukwu (1993) SCNJ (Pt. 2) pages 272-275
Ikeanyi v. A.C.B. (1997) 2 SCNJ 93 at 108 and 110
Adelaja v. Alade (1999) 4 S.C (Pt. I) 81; (1999) 4 SCNJ 4, SCNJ. 225
Saude v. Abdullahi (1989) 7 S.C (Pt. II) 116; (1989) 4 NWLR (Pt. 116)
E 387 at 416
Dabup v. Kolo (1993) 12 SCNJ 1 at page 21
Titilayo v. Olupo (1991) NWLR (Pt. 205) 519 at 530
Leventis Technical v. Petrojessica (1999) 4 S.C (Pt. I) 66; (1999) 4 SCNJ
F 121 at 127

STATUTES REFERRED TO

The Land Use Act Cap. L5 Laws of the Federation of Nigeria 2004 ss.
5(i)(a), 6(i)
G The Land Tenure Law of Nigeria, 1968 s. 38(i)
Native Authority Law of Northern Nigeria, 1963 s. 2
Land Registration Law of Kaduna State, 1991 ss. 3(2), 15
Kaduna State (Designation of Land in Urban Area) Order 1982

H

LEAD JUDGMENT BY ONU JSC

This is an appeal from the judgment of the Kaduna Division of the
Court of Appeal, (coram: Isa Ayo Salami, Victor A. O. Oimage and Joseph

J. Umoren, JJCA.), delivered on the 5th of December, 2000 in Appeal No.CA/K/10/99 wherein the learned justices unanimously dismissed the appellant's appeal against the judgment of Umaru Adamu, J, of the Kaduna High Court. The action was commenced as Suit No. KDH/KAD/132/90 in the High Court with the appellant as the defendant while the respondent was the plaintiff. B

The facts of the case briefly stated are that by his Writ of Summons contained on pages 1 to 3 of the Record, the respondent claimed against the appellant for a declaration of title, an injunction and N10,000.00 general damages for trespass on the plot of land covered by Statutory Certificate of Occupancy No. 8764. C

The appellant for his part, filed a Statement of Defence in which he claimed that he was granted a Customary Right of Occupancy over the piece of land in 1968 by the Sarkin Kakuri Bwari, and that he continued to occupy the piece of land and built a house thereon until 1977, when the house was demolished by the Government of Kaduna State as being an illegal structure. His petition for compensation was rejected and instead the Government promised him an alternative plot. D E

When he waited in vain for the alternative plot, he searched for another piece of land and applied for it, but again, he was informed that it was allocated to another person. When, however, he became aware that the place where his house had been demolished would be made an area for small scale industries by the Government of Kaduna State, he applied that the piece of land where his house had been demolished be allocated to him to enable him set up a block industry. This application was not approved. However, the Kaduna State Government granted the piece of land to the respondent. F G

The appellant further stated that while waiting for the approval of his application to the State Government, he equally approached the Kaduna Local Government, which then issued him a Certificate of Occupancy (Exhibit 5) over the piece of land on which he commenced development only to be stopped by the respondent on the ground that he, the respondent, had been granted the piece of land by the Kaduna State Government. H

The appellant then claimed in his pleading that the respondent's

Statutory Certificate of Occupancy No. 8764 (Exhibit 2) was not properly issued as due processes were not complied with; consequent upon which an Assistant Chief Lands Officer had recommended to the Chief Lands Officer the withdrawal of respondent's said Certificate of Occupancy.

B The appellant's pleading concluded with averments that his Right of Occupancy (Exhibit 5) granted by the Kaduna Local Government still subsisted, thus constituting a better title with a claim for N50,000 as general damages for trespass against the respondent.

C The respondent had filed a Reply and a Defence to the counter-claim in which he denied that neither the alleged customary grant of 1968 (Exhibit 3) nor the Local Government Certificate of Occupancy (Exhibit 5) were over the piece of land in dispute, and further that the piece of land in dispute was within an urban area within the meaning of the Land Use D Act.

The respondent testified and tendered Exhibits 1 and 2, the Statutory Certificate of Occupancy No. NC.8764. On the appellant's part, contrary to his pleading that he was given the land in 1968 by the Sarkin E Kakuri Gwari, in his testimony, he backdated the alleged gift to 1963.

Issues turned in the course of the trial on some discrepancies in Exhibit 2, the Statutory Certificate of Occupancy, particularly as to the reference in the schedule of Exhibit 2 of the piece of land being in F "*Rigachikun in Kaduna Local Government.*"

As to this discrepancy, the appellant's witnesses, to wit; D.W.3, D.W.4 and D.W.5, all staff of the Bureau of Lands and Survey, Kaduna State, confirmed the locus in quo as being synonymous with the land identified as Exhibit 2 and identical to the land appellant was disputing with G the respondent.

It is instructive to note that the appellant under cross-examination conceded that it is the same piece of land where his house was demolished in 1977 by the Kaduna State Government as being an illegal structure (for H which he was advised to approach either, Kachia or Kaduna Local Government for alternative plot) that he is presently disputing ownership with the respondent.

The appellant had submitted only two issues for determination in his

address at the trial court, namely:-

(a) Whether Exhibit 2, Kaduna State Certificate of Occupancy issued to the plaintiff was properly issued.

(b) Whether by Exhibit 2 alone without any other evidence of ownership that plaintiff can succeed in his claim against the defendant. B

The learned trial Judge in his judgment first considered the issue of irregularities in the process of issuing Exhibit 2, the Statutory Certificate of Occupancy harped on by appellant, and held that the said irregularities could not nullify Exhibit 2 and that the Governor lawfully exercised powers conferred on him under Section 5(1) (a) of the Land Use Act to issue Exhibit 2. C

The learned trial Judge next considered the issue of the schedule in Exhibit 2 describing the land as being in Rigachikun and held that since all relevant documents regarding the grant showed the land to be at Kakuri in Kaduna Local Government and since D.W.5 had also explained that the piece of land is not in Rigachikun, the reference to Rigachikun was a mistake which could not have the basis of attacking the authenticity of Exhibit 2. D E

The learned trial Judge after considering appellant's Exhibits 3 and 5 and discountenancing them on the grounds that:

(a) No evidence was adduced to link the exhibit with the plot in dispute. F

(b) That Exhibit 3 did not describe the plot of land, and

(c) That Exhibit 3 was written in Hausa and there was no translation of same in English

he went ahead in respect of the Exhibit to hold that the land in dispute being within an urban area, the Kaduna Local Government lacked power to issue same. G

The learned trial Judge after further considering the case of both sides, held that the appellant had no valid documents to support his claims of title and that he had no cogent and valid defence. That the respondent satisfactorily proved his case and entered judgment granting all the claims of the respondent. H

There was no appeal against the holding by the trial Judge that the

Governor lawfully exercised powers conferred on him under the Land Use Act in issuing Exhibit 2.

Being dissatisfied with the decision, the appellant appealed to the Court of Appeal sitting in Kaduna (hereinafter referred to as the court below) which proceeded to dismiss the appeal and thereby affirming the judgment of the trial court premised on the following grounds:

(a) That the testimony of the appellant's witnesses, to wit. DW4 and DW5, supported the case of the respondent:-

- (i) as to the validity of Exhibit 2.
- (ii) as to the identity of the land over which Exhibit 2 was issued.
- (iii) as to the priority of the grant to the respondent over that of the appellant.

(b) That the plaintiff had discharged the burden of proof required of him.

(c) That the court below could not in the absence of precise identity of the appellant's land which is supposed to have prior interest consider his defence.

(i) That there was no counterclaim by the appellant regarding his prior customary interest and for the Statutory Certificate of Occupancy (Exhibit 2) to be set aside,

(d) That Exhibit 3 not having been translated into English could not speak for itself and so its contents were inadmissible.

(e) That Exhibit 3 being a document purporting to transfer interest in land was not under seal.

(f) That Exhibit 3 purports to transfer an interest in land and was consequently a registrable document which however was not registered.

(g) That in respect of Exhibit 5, the Local Government Certificate of Occupancy:-

(i) The land over which the Local Government made the grant was not certain.

(ii) The land over which Exhibit 5 was issued is within an Urban area.

(iii) That the said piece of land had already been granted to the respondent by the Government of Kaduna State.

The appellant, still not satisfied with the decision of the lower court, appealed to this court on ten grounds, four of which were original and six additional, the latter by leave of court. However, the appellant abandoned ground one of the grounds.

The appellant formulated four issues as arising for determination, viz:

“1. Whether, in view of the irregularities and violation of the Land Use Act the Court of Appeal was in error when it affirmed that Exhibit 2 was validly issued. This issue is distilled from Grounds 2,4 and 6.

2. Had the learned Justices of the Court of Appeal considered the evaluation of evidence as done by the trial Judge would they have affirmed the judgment in favour of the respondent? This issue is formulated from grounds 3,8 and 9.

3. Whether the issuance of Exhibits 1 & 2 extinguished the prior existing rights of the appellant to the use and occupation of the land which the respondent acknowledged. This issue flows from Grounds 5 and 10.

4. Even if Exhibit 2 was rightly held to have been validly issued, did the said exhibit really confer title on the respondent to the land in dispute which is situate along Kachia Road by Television Bye-Pass, Kaduna?

This issue is formulated from Ground 7.”

The respondent for his part submitted the following four issues as arising for the effective determination of this appeal, to wit:

“(a) Whether the Court of Appeal properly affirmed the validity of Exhibit 2 and the fact that the Governor lawfully exercised his powers to issue same.

(b) Whether the court was right when it affirmed that Exhibit 2 was over the piece of land in dispute.

(c) If the answer to ‘a’ and ‘b’ above are in the affirmative, whether in the circumstances, on the authority Teniola v. Olohunkun (1999) 4 SCNJ 92, the appeal ought to be dismissed.

(d) Whether the Court of Appeal was right to have affirmed the judgment of the trial court.”

TREATMENT OF THE ISSUES

In my consideration of the four issues formulated above, I feel inclined to stick to the four distilled by the respondent as follows:-

Issue number one, distilled from Grounds 6 and 10 asks:

Whether the Court of Appeal properly affirmed the validity of Exhibit 2, the Statutory Certificate of Occupancy and the fact that the Governor lawfully exercised his powers to issue same.

The appellant's main argument as can be seen from his pleading, the evidence and his brief, is that there are procedural irregularities prior to the issue of Exhibit 2. Of particular note, he referred to the alleged absence of Ministry of Commerce and Industry and Kaduna State Urban Planning and Development Authority reports before the Governor issued Exhibit 2, and that because of these lapses, Exhibit 2 is invalid.

The appellant could not, however, show whether these reports were required by law and to be mandatorily complied with by the Governor before he could issue a Statutory Certificate of Occupancy. He merely stated in his brief (see page 6 thereof) that they were necessarily required and that the Assistant Chief Lands Officer had recommended the revocation of Exhibit 2. True enough, the trial court had considered these alleged lapses, evidence of which was given by D.W.4 (Malaki Tyeji, Principal Estate Officer), with Bureau of Land and Survey Kaduna State, D.W.5 (Philip Skimong, Director of Administration) but had also noted that the recommendation of the Assistant Chief Lands Officer were addressed to the Chief Lands Officer (his immediate superior) who did not accept them.

The trial court also considered the fact that both D.W.4 and D.W.5 stated that the Governor was not bound by such recommendations before it came to the conclusion that such lapses could not nullify Exhibit 2. For these reasons, I agree entirely with the respondent's submission that the court below was right to have affirmed the validity of Exhibit 2 on these grounds.

In the same vein, **I accept the respondent's submission that the power of the Governor to issue Statutory Certificates of Occupancies is statutorily provided for in Section 5(i)(a) of the Land Use Act Cap. 202 Laws of the Federation, 1990 (now Cap L.5 Laws of the Federation 2004) under Section 5(i) (a) which provides;- "(1) It shall**

be lawful for the Governor in respect of land, whether or not in an urban area to - (a) grant statutory rights of occupancy to any person for all purposes.”

This is because an exercise of statutory power cannot be held to be invalid unless it is shown that the exercise is contrary to the statute. See Okafor v. Attorney-General (1992) 6 SCNJ (Pt. II) 219 at page 234 line 35. Mere administrative procedures meant to guide the exercise of statutory powers, it ought to be stressed, cannot be elevated to the level of mandatory statutory requirement.

The appellant's brief at page 7 thereof has introduced an entirely new issue to the effect that the prior advice and recommendation of the Land Use and Allocation Committee was neither sought, obtained nor made available to the Governor.

Since the issue was neither pleaded nor raised in trial court, nor further claimed in the lower court, its introduction in this court without leave is therefore incompetent. The appellant cannot raise a fresh point which was not raised, tried and considered and pronounced upon by the courts. See Ikeanyi v. A.C.B. (1997) 2 SCNJ 93 at 108 and 110; Adelaja v. Alade (1999) 4 S.C (Pt. I) 81; (1999) 4 SCNJ 225. I therefore agree with the respondent that the argument on this issue be and is hereby discountenance. Furthermore, the appellant having failed to show that the Governor acted contrary to law in issuing Exhibit 2, the trial court correctly, in my view, held and the court below properly affirmed, that Exhibit 2 was validly issued and that the Governor lawfully exercised his powers under the Land Use Act (ibid).

The respondent's contention that the argument of the appellant on this issue to the effect that what is in issue is whether the appellant's prior existing rights were extinguished, is not relevant to the issue under consideration and should therefore equally be discountenanced. Appellant's submission at page 6 of his brief to the effect that the real question in controversy is whether the Governor was bound to receive and consider recommendations made to him before issuing a Certificate of Occupancy is not the real issue in controversy. This is because, as

shown in the judgment of the trial court (see page 176 of the Records) the recommendation to withdraw Exhibit 2 by the Assistant Chief Lands Officer did not go far; it stopped at the Chief Lands Officer who did not accept same. Hence, the issue of the Governor being bound to receive and consider such recommendation (which did not come to him in the first place) did not arise. In fact, even if such recommendation had reached the Governor, he could not have been bound by the same. From the foregoing, I am of the view that the answer to issue No. 1 be and is answered in the affirmative.

ISSUE II

Whether the Court of Appeal was right when it affirmed that Exhibit 2 was over the piece of land in dispute.

In response to the appellant's contention on this issue, the respondent submitted firstly, that the question of which piece of land and what location Exhibit 2 relates to is one of fact.

Therefore, it is next argued, that there are concurrent findings of the courts below that Exhibit 2 relates to the land in dispute. The principle of law, it is next argued, is germane and has been restated several times that the Supreme Court will not disturb concurrent findings of fact made by the lower courts where such findings are supported by sufficient evidence. Such findings, it is argued, can only be disturbed where they are shown to be perverse, citing in support thereof the cases of *Oladele v. Anibi* (1998) 7 S.C. (Pt. I) 1; (1998) 7 SCNJ 24 at 29; *U.A.C. v. Fasheyitan* (1998) 7 S.C. (Pt. II) 35; (1998) 7 SCNJ 179 at 183 and *Nkwo v. Iboe* (1998) 6 S.C. 27; (1998) 6 SCNJ 73 at 81.

The question therefore, it is further contended, is whether, the concurrent findings of the two courts below that Exhibit 2 is over the land in dispute is supported by sufficient evidence. Additionally, it is argued, how could there be abundant evidence to support such findings? To begin with, it is pointed out, a perusal of the pleadings shows clearly that the appellant recognized that a Statutory Certificate of Occupancy had been issued the respondent over the piece of land in dispute, hence the appellant closed his pleadings with statements to the effect that the respondent's Right of Occupancy was not proper, because due process was not

followed and that his own i.e. (appellant's Right of Occupancy) still subsisted and was a better title.

It is pertinent to note that the appellant in his testimony had conceded that he was aware that the piece of land in dispute had been allocated to the respondent by the Kaduna State Government. The appellant being aware of this fact, it is pointed out, had petitioned the Permanent Secretary, Kaduna State Ministry of Lands about what he described as double allocation of the same plot-double in the sense that appellant also had a Local Government Certificate. The appellant under cross-examination similarly agreed that it was the same piece of land where his house was demolished in 1977 that he is presently disputing with the respondent.

Furthermore, three witnesses called by the appellant, namely, D.W.3, D.W.4 and D.W.5 who were staff of the Bureau of Lands and Survey, Kaduna State, confirmed that the land granted the respondent via Exhibit 2 was the same land the appellant was claiming. See the evidence of D.W.3, D.W.4 and D.W.5 at pages 96, 111 and 118 respectively of the Records. In the face of these pieces of evidence, the appellant made heavy weather of the reference in the schedule to Exhibit 2 of the land "being in Rigachikun in Kaduna Local Government" and submitted that Exhibit 2 could not therefore be over the land in dispute. In doing so, the appellant had carefully quoted only the first part of the schedule to Exhibit 2 and ignored the rest of the schedule which further located the piece of land in the ground by property beacons Nos KDB.2329, KDB.2317, KDB.2318 and KDB.2319.

The appellant clearly failed to advert to the facts that the visit of the trial court to the land in dispute at Kachia Road, Kakuri established the above property beacons on the ground. Be it noted that the trial court had concluded at the locus in quo that it is the same land granted the respondent vide Exhibit 2 that the appellant was claiming.

Furthermore, the schedule to Exhibit 2 clearly states that the piece of land granted therein is more particularly described as a piece of land as shown on Kaduna Sheet 109. A look at Exhibit 2 indicates that the sketch drawn from Kaduna Sheet 109 (supra), clearly fixes the piece at Kachia

Road, Kakuri.

D.W.3, D.W.4 and D.W.5 therefore considered that the reference to Rigachikun was clearly a mistake which could be corrected as the respondent had applied for a piece of land at Kachia Road, made a sketch of same and it was from the application and sketch that Exhibit 2 was eventually issued.

D.W.3 had with emphasis and particularity stated as follows:-

“The Sketch Map was by plaintiff’s showing Ungwan Television Kaduna South. The plaintiff s Application was processed to Certificate level..... By looking at or observing the schedule and sketch in the certificate one will be able to trace where the piece of land is situate.”

In the ensuing cross-examination, the witness stated: as follows:-

“Rigachikun is not in Kaduna Local Government. The schedule describe sketch in Kaduna Sheet 109. The sketch attached referred to sheet 109... Here the sketch is more accurate. The sketch is not showing a piece of land in Rigachikun.....”

The insertion of Rigachikun in the schedule is a mistake. This is a mistake that can be corrected....”

D.W.4 equally stated that the appellant and the respondent applied for the same piece of land, the appellant’s application being made in March, 1982 while the respondent’s own was on 1/4/82, but that it was the respondent that was granted the land.

D.W.5 also agreed that respondent applied on 1/4/82 and that he submitted a sketch which is on page 3 of Exhibit 7. He then stated on page 118 of the records as follows:

“By this sketch, I would say the land located at Kachia Road therefore is not located at Rigachikun... It is from the application and sketch that eventually the plaintiff was issued Certificate of Occupancy. There is a conflict between schedule and title deed, the conflict is resolved by reference to the file and made necessary corrections. The title deed prints have an edge over the schedule. The title deed print is reproduction of Kaduna Sheet 109. The title deeds print carries more accurate description than schedule. The title deed print refers generally to the area where the defendant also applied. It does not show piece of land in

Rigachikun area. The description on the schedule must have been a mistake.....”

From the foregoing, I agree with the respondent that copious evidence was adduced on which the trial court relied in holding that Exhibit 2 was over the piece of land in dispute and on which the court below affirmed the finding. A fortiori, I am in agreement with the respondent that it is sufficient evidence to support the concurrent finding of the two lower courts on this issue and that same not being perverse, ought not to be disturbed, but rather affirmed.

It is the appellant’s contention that in the circumstances only the Governor could amend Exhibit 2 and that there is no case for rectification before the court. With due respect, the issue here is not correction of Exhibit 2 but rather one of showing on the balance of probability that Exhibit 2 is over the piece of land in dispute. This, I agree with the respondent, had been abundantly demonstrated in argument. The appellant has argued at page 2 of his brief that the identity of the land in dispute was not in issue; that it was settled and agreed upon by both parties. I am in entire agreement with this submission and to further add that it ought not to be an issue before this court as well.

For the above reason, I have no hesitation in answering the second issue as herein canvassed in the affirmative.

ISSUE III

This issue postulates that if the answer to issues I and II above are in the affirmative, whether in the circumstances, on the authority of *Teniola v. Olohunkun* (1999) 4 SCNJ 92, the appeal ought to be dismissed.

As the consideration of this issue hinges on an affirmative answer to the first and second issues, then appellant’s appeal will be brought squarely within the four walls of the decision of this court in the case of *Teniola v. Olohunkun* (supra) 92 at page 103.

In that case, the respondent had relied on the Statutory Certificate of Occupancy in his claim. The appellant contended that the Certificates relied upon by the respondent were irregular and unlawfully obtained as the appellant had a Customary Right of

Occupancy over the land prior to the statutory grant to the respondent. However, the appellant did not counter-claim to set aside the grant to the respondent.

Ayoola, JSC., delivering the leading judgment held at page B 103 as follows:-

*“The grants to the plaintiff were made in exercise of statutory power vested in the Governor... where in the exercise of statutory power grants of Statutory Rights of Occupancy have been made without want of authority or capacity, the court will not treat the grants as if they have not been made and proceed to determine the rights of the parties as if those grants have ceased to be in existence. There may be circumstances in which there are facts which if established by evidence, may justify the exercise of the court’s discretion to set aside a grant of Right of Occupancy. A party cannot however, rely on such facts of justification for entering on land subject of the grant against the wish of the holder, while the grant subsisted and had not been set aside. The facts which may justify the setting “aside of a grant of Right of Occupancy cannot be used as defence in an action in trespass when the Grant which vested exclusive possession in the holder had not itself been set aside. **The proper thing to do is to advance those facts in an action to set aside the grants...**” To treat the grant as annulled when no such remedy has been sought in the action and to hold that the party challenging the grant has a right to enter the land as if the holder of a right had at no time been granted the right cannot at all be right...”*

The appellant’s case herein falls within the four corners of this decision. He, (appellant), had been aware that the respondent had been granted a Right of Occupancy over the piece of land in dispute by the Kaduna State Government since 1984. He took no visible steps and even when a claim was filed against him, he did not counter-claim to have the grant to the respondent set aside. See also Saude v. Abdullahi (1989) 7 S.C (Pt. II) 116; (1989) 4 NWLR (Pt. 116) H 387 at 416 (per Obaseki, JSC); Dabup v. Kolo (1993) 12 SCNJ 1 at page 21 (per Ogundare, JSC) and Titilayo v. Olupo (1991) NWLR (Pt. 205) 519 at 530.

I agree with the respondent that upon the above authorities, the

consideration of any other issue or issues in this appeal will be merely an academic exercise - an exercise this court would not indulge in because their outcome (if decided one way or the other), would neither confer benefit on, nor injure any of the parties, but merely expose or expound the law. See *Adelaja v. Alade* (supra) at page 245; and *Eperokun v. University B of Lagos* (1989) 4 NWLR (834) 52 at 67. In the instant case, the appellant having not counter-claimed to set aside Exhibit 2, the court below, in my view, properly ought to have affirmed the judgment of the trial High Court. This appeal ought therefore to be, dismissed. Accordingly, I answer this C issue in the affirmative.

ISSUE IV

This issue asks whether the Court of Appeal was right to have affirmed the judgment of the trial court.

I agree with the respondent's submission that the court below D properly affirmed the judgment of the trial court in view of the fact that he (respondent) had discharged the burden of proof that lay on him whereas the appellant for his part could not mount any credible defence to tilt the scale. In a matter like this, judgment is given to E the party with the better title.

Indeed, on whether the respondent had discharged the burden of proof required of him, I agree with him that on his claim based on a Statutory Certificate of Occupancy which confers exclusive pos- F session, the respondent need do no more than produce and tender the Statutory Certificate of Occupancy and show that same is over the piece of land in dispute.

By a long line of decided cases by the Supreme Court, it is now G trite and settled law that there are five different ways of establishing title to land as enunciated in:

1. *Idundun v. Okumagba* (1976) 9-10 S.C (Reprint) 140; (1976) 10 S.C 227 at 246 (per Fatayi-Williams, JSC., as he then was)
2. *Teniola v. Ohunkun* (supra) and
3. *Ayoola v. Odofin* (1984) 2 S.C 120 to the effect that proof of any H one of them is sufficient to establish title.

Thus, in the instant case, the respondent having produced

Exhibit 2, the Statutory Certificate of Occupancy, - had clearly discharged the burden required of him.

Having discharged the burden of proof on his part, the burden shifted to the appellant to rebut his (respondent's) case. In the first place and as demonstrated under Issue III above, the appellant having not filed a counter-claim to set aside the respondent's Exhibit 2, his defence necessarily must fail.

In the second place, the concurrent finding of both the High Court and the Court of Appeal on the admissibility and evidential value of appellant's Exhibit 3, has not been challenged by way of appeal to this court. That being the case, the fact remains that the appellant cannot rely on same herein in the Supreme Court. Where a party has not challenged a finding by way of appeal, that finding stands vide Leventis Technical v. Petrojessica (1999) 4 S.C (Pt. I) 66; (1999) 4 SCNJ 121 at 127; Iseru v. Catholic Bishop (1997) 4 SCNJ 10 at 115.

As Exhibit 3 is the alleged customary ownership of the piece of land in dispute, all appellant's alleged acts of possession (which are not even conceded) derived from Exhibit 3, the alleged grant in 1968 by the Sarkin Kakuri Gwari. The law is equally settled that where the radical title pleaded is not proved, it is not permissible to support a non-existent root of title with acts of possession. It is not permitted to substitute a root of title that has failed with acts of possession which could have derived from the root. See Odofin v. Ayoola (supra) at 116 and Ndukwe v. Acha (1985) 5 SCNJ at 28 at 38-39.

The appellant in relying on the grant to him by the Sarkin Kakuri Gwari completely failed to advert to the decision of this court in the case of Ganken v. Ogechukwu (1993) SCNJ (Pt. 2) pages 272-275 which placed a burden on the appellant to show the authority and capacity of the Sarkin Kakuri Gwari to make the grant. The Land Tenure Law then in force in 1968, particularly by Section 38(1) Cap. 59 Laws of Northern Nigeria, was considered by this court which held that it must be shown that the District Head comes within the definition of Native Authority in Section 38(1) as a condition precedent to make the

grant. See also Section 2 of the Native Authority Law Cap. 77 Laws of Northern Nigeria 1963 which was equally considered. Both lower courts discountenanced appellant's Exhibit 5, the Local Government Certificate of Occupancy. The appellant has equally not appealed against this concurrent finding to this court, that finding equally stands. The combined B effect is that the appellant is bereft of any iota of defence whatsoever. The appellant moreover put forward some strange argument in his brief to the effect that his root of title and prior possession were independent of Exhibits 3 and 5 and that quite aside from these two exhibits, the appellant C relied on his oral grant in 1963.

Be it noted that the appellant had pleaded in paragraph 5(1) of his Amended Statement of Claim that in 1968 he was granted the piece of land by the Sarkin Kakuri Gwari evidenced by Exhibit 3. In his evidence-in-chief, however, he now backdated his alleged grant D to 1963. I agree with the respondent's submission that appellant must be held bound by his pleading and that evidence of an oral grant in 1963 clearly is contrary to the pleading and goes to no issue. Clearly too, Exhibit 3 is the appellant's root of title. By his pleading E and admissible evidence followed by his argument that his oral grant is independent of Exhibit 3 clearly amounts to an afterthought. F

The respondent having discharged the onus of proof required of him and the appellant for doing nothing to rebut his (respondent's case) F the court below, rightly in my view, properly affirmed the judgment of the trial court.

In the result, my answer to Issue IV is in the affirmative.

In conclusion, this appeal fails and it is accordingly dismissed with G N10,000.00 costs to the respondent.

UWAIS CJN

I have had the advantage of reading in advance the judgment read H by my learned brother, Onu, JSC. I entirely agree with him that this appeal is devoid of merit.

Accordingly, I too hereby dismiss the appeal with N10,000.00

costs to the respondent against the appellant.

EJIWUNMIJSC

I have had the privilege of reading in advance the judgment of my brother, Onu, JSC. And I agree with him that this appeal lacks merit.

This appeal stems from the judgment of Kaduna Division of the Court of Appeal (Coram, Salami, Omodei & Umoru, JJCA.). By its judgment delivered on the 5th of December, 2000, the court affirmed the judgment of the trial court which had upheld the claims of the respondent as set out in his Writ of Summons:

“1. A declaration that the plaintiff is the owner and therefore entitled to possession, beneficial ownership and user of the plot of land subject to the Statutory Certificate of Occupancy No. NC. 8764 granted by the Kaduna State Government.

2. An injunction restraining the defendant, his employees, servants, privies or agents from further trespassing or in any way interfering with the plaintiff’s title and user the said plot of land.

3. The sum of N10,000.00 as general damage(s) for trespass and acts of waste committed on the said plot of land by the defendant.”

The dispute which led to the commencement of this action by the respondent arose from the claim of the appellant that the land had previously been granted to him in 1968 with the customary right of ownership to the disputed land by the late Sarkin Kakuri Gwari, Mallam Angulu. The appellant claimed that he went into possession thereof. As part of the exercise of possessory rights, he planted a lot of economic trees on the land. He further claimed that he was in the process of building his dwelling house thereon, that the property was demolished along with other houses in the area.

At the trial of the action, the appellant relied on Exhibits 3 & 5, as his own documents of title. Exhibit 3 dated 11th February, 1968, was the grant of the land in dispute given to him by late Sarkin Kakuri Gwari, Mallam Angulu. The trial court found that there are several defects in Exhibit 3, (Hausa written note) in so far as it purported to confer interest in land on the appellant. Also, at it was not registered as a registerable

instrument pursuant to Section 3(2) of the Land Registration Law Cap. 85 of the Laws of Kaduna State 1991, it was inadmissible in evidence by virtue of Section 15 of the said Law. In the course of his judgment, the learned trial Judge after a careful examination of Exhibit 3 came to the conclusion that it was of no assistance to the appellant. He then rejected Exhibit 3. B Exhibit 5, the Certificate of Occupancy No. 14827 issued to the appellant by the Kaduna Local Government in respect of the disputed land in 1983, was also found by the learned trial Judge unhelpful to his case as Exhibit 5 is illegal and void. He came to that conclusion after a careful examination of the provisions of the Kaduna State Legal Notice No.8 of 1980, Legal C Notice No.7 of 1982, the Land Use Act 1978 and the Kaduna State (Designation of Land in Urban Area) Order 1982.

On the other hand, the learned trial Judge accepted the evidence of the respondent with regard to how he became possessed of the land, as D he said thus:-

“... it is on record that the plaintiff applied for that piece of land in dispute, the application was processed and the grant of a right of occupancy was made to the plaintiff on 1/4/82 as per Exhibit 1 for E commercial purpose. This grant contained at page 11 of Exhibit 2, which was signed by the then Governor of Kaduna State. This title deed is referred to as Certificate of Occupancy No. NC 8764.

The Governor exercised this power pursuant to Section 5(1) (a) of F the Land Use Act.”

The learned trial Judge, having regard to the evidence before him, upheld the claims of the respondent. The appellant’s appeal to the Court of Appeal was not also successful, he had appealed to this court.

It is evident in this appeal that the resolution of the dispute between G the parties rests on who of the two has the better title. In this regard, it is to be borne in mind that it is settled law that there are five different ways of establishing title to land. See *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 10 NSCC 445 at 454; 1976 10 S.C. 277; *Ayoola v. H Odofin* (1984) 2 S.C. 120; *Ezokuwu v. Ukachukwu* (2004) 7 SCNJ 189. And as the appellant clearly failed to establish a good title to the disputed land against the respondent, his claim to the disputed land must fail. His

claim to the disputed land was therefore properly rejected by the courts below. And I so hold. In the result, his appeal to this court, being unmeritorious, is hereby dismissed by me for the above reasons and the fuller reasons given in the leading judgment. I also award costs in the sum of N10,000.00 to the respondent.

TOBI JSC

C There are two competing claims to title in this matter. That is the usual trend in land matters on title. And so there is nothing new about the competing claims. The plaintiff, who is the respondent in this appeal, traced his title to Exhibit 2, the Certificate of Occupancy No. NC8764 of 1990. The defendant, who is the appellant, traced his title to 1963. He D claimed that he has been in possession of the land in dispute since 1963.

The fulcrum of this appeal is Exhibit 2 vis-a-vis the claim of the appellant to long possession. The appellant relied on Exhibits 3 and 5. While Exhibit 3 is the notice written in Hausa given to the appellant bearing names E of witnesses and the stamp of Sarkin Kakuri Gwari, Mallam Angulu, Exhibit 5 is the Local Government Certificate of Occupancy of Kaduna State issued in 1983. The learned trial Judge did not assign any probative value to them. He said at page 45 of the Record:

F *“Having discountenanced Exhibits 3 and 5, the defendant is left with no documents to support his claim of title over the piece of land in dispute situate at Kakuri along Kachia Road, Kaduna.”*

What did the Court of Appeal say on the two exhibits? On Exhibit 3, the court said at page 238 of the Record:

G *“The second issue to be considered on the admissibility of the contents of the document is the incompetence of the said letter of transfer of interest in land. It is our law that any document purporting to convey interest in land must be under seal. The letter dated 11/12/68 purporting H to convey interest in land to the appellant is not only under seal, the contents of the letter is unintelligible to the court. In my judgment the learned trial Judge was right to reject the contents of the letter as evidence in proof of ownership of interest in land.”*

On Exhibit 5, the Court of Appeal said at pages 238 and 239:

“The defendant also tendered Exhibit 5 which is a certificate of occupancy issued by the Local Government over a parcel of land. The identity of that particular land had not been determined as evidence showed that (a) the land over which the Local Government made a grant is within an Urban Area which has been so declared before the Local Government to make the grant to the defendants, (b) The said land has been granted to the plaintiff by the government of Kaduna State and the evidence of the 5th defence witness show that the defendant known (sic) that the particular land located in Kachia Road opposite the television village has being (sic) granted to the plaintiff.”

The above are concurrent findings of fact of the High Court and the Court of Appeal which I cannot interfere with because they are clearly borne out from the evidence before the trial court. I should have been able to interfere with the findings if they were perverse. Unfortunately for the appellant, the findings are not perverse.

On Exhibit 2, the learned trial Judge said at pages 175 and 176 of the Record:

“Indeed, it is on record that the plaintiff applied for that piece of land in dispute, the application was processed and the grant of a right of occupancy was made to the plaintiff on 1/4/82 as per Exhibit 1 for commercial purpose. This grant contained at page 11 of Exhibit 7 NCL/17989. Subsequently, title deed executed Exhibit 2, which was signed by the then Governor of Kaduna State. This title deed referred to as Certificate of Occupancy No. NC8764. The Governor exercised this power pursuant to Section 5(1)(a) of the Land Use Act.”

The Court of Appeal said at pages 239 and 240 of the Record:

“The statement of the trial court appear to be made in the context of the proof of declaration sought by the plaintiff, when he tendered the statutory Certificate of Occupancy, and the failure of the defendant on whom the onus of rebuttal now shifts to show that the Certificate of Occupancy was fraudulent. Instead the evidence of defence witnesses 4 and 5 show that the said Exhibit 2 is valid.”

Again, the above are concurrent findings of fact which I cannot

fault because they are borne out from the evidence before the trial court.

I see in this case adverse possession on the part of the appellant. Where possession is adverse or encumbered, the party in possession cannot claim better title to a later true holder of the title. By virtue of the true holder of title, the so-called possession is ab initio voidable and it will be voided at the instance of the person who has title. And that person in this case is the respondent.

It is in the light of the above reasons and the more comprehensive reasons given by my learned brother, Onu, JSC., that I too dismiss the appeal. I award N10,000.00 costs to the respondent.

EDOZIEJSC

I read in advance the draft of the leading judgment just delivered by my learned brother, Onu, JSC. I agree with his reasoning and conclusion in dismissing the appeal.

The subject matter in contention between the parties culminating in the present appeal is the title to a disputed plot of land situated along Kachia Road, Kakuri, in Kaduna State. Both parties claimed to have derived title thereto on the basis of the documents of title which they produced and tendered in evidence.

Admittedly, the production of documents of title is one of the recognized methods of proving title to land, see *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227 at 246; *Piario v. Tenalo* (1976) 12 S.C. (Reprint) 19; (1976) 12 S.C 31 at 37. But such a document of title must be admissible in evidence and be of such a character as to be capable of conferring valid title on the party relying on it. Discussing the nature and character of such a document of title, this court, in the case of *Romaine v. Romaine* (1992) 4 NWLR (Pt. 238) 650 at 662 observed thus:-

"I may pause here to observe that one of the recognized ways of proving title to land is by production of a valid instrument of grant: See Idundun v. Okumagba (1976) 9-10 S.C. 227; Piario v. Tenalo (1976) 12 S.C. 31 p. 37; Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 318. But it does

not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance on such an instrument inevitably carries with it the need for the court to inquire into some or all of a number of questions including: B

- (i) whether the document is genuine and valid;*
- (ii) whether it has been duly executed, stamped and registered;*
- (iii) whether the grantor had the authority and capacity to make the grant;*
- (iv) whether the grantor had in fact what he purported to grant; and C*
- (v) whether it has the effect claimed by the holder of the instrument.”*

With the guiding principles enunciated above, it is easy to appraise the documents of title produced by the parties in support of their claims. D The respondent tendered and relied on Exhibits 1 and 2. The former is the letter granting him right of occupancy over the land in dispute while the latter is the Certificate of Occupancy in respect of the land. They were issued by the Governor and Exhibit 2 was duly registered in the Land E Registry Office, Kaduna. It is common ground that the land in dispute is in an urban area. By Section 5 (1)(a) of the Land Use Act, Cap. 202, Laws of the Federation 1990, it shall be lawful for the Governor in respect of land, whether or not in an urban area, to grant statutory rights of F occupancy to any person for all purposes. And by Section 9 of the aforesaid Land Use Act, the Governor is authorized to issue a Certificate of Occupancy as evidence of a statutory right of occupancy so granted. The respondent's Certificate of Occupancy having been issued by the G appropriate authority and duly registered is, at least, prima facie, evidence or presumption of title in favour of the respondent in respect of the land in dispute: See Kyari v. Alkali (2001) 5 S.C. (Pt. II) 192; (2001) 11 NWLR (Pt. 724) 412, Ngene v. Chike Igbo & Anor (2000) 4 NWLR (Pt. 651) 131, Mogaji v. Cadbury (Nig) Ltd. (1985) 2 NWLR (Pt. 7) 393. The respondent's H Certificate of Occupancy, Exhibit 2, having raised a presumption of title in his favour, the appellant, to succeed, has the duty to rebut that presumption. To this end, he relied on his own documents of title Exhibits

3 and 5. Exhibit 3, dated 11th February, 1968, was the grant of the land in dispute to him by late Sarkin Kakuri Gwari, Mallam Angulu. Apart from the several defects of this Exhibit 3, in so far as it purported to confer interest in land and was not registered, as a registrable instrument pursuant to Section 3(2) of the Land Registration Law Cap. 85 of the Laws of Kaduna State 1991, it was inadmissible in evidence by virtue of Section 15 of the said Law. It is, therefore, of no assistance to the appellant. Nor is his position improved by Exhibit 5 which is the Certificate of Occupancy over the land in dispute granted to him by the Kaduna Local Government. As earlier noted, the land in dispute is located in an area designated as urban. By Section 6(1) of the Land Use Act supra, a Local Government has no power to grant a right of occupancy over land in an urban area. It, therefore, follows that the Kaduna Local Government acted ultra vires and illegally in issuing Exhibit 5. Both Exhibits 3 and 5 relied upon by the appellant are valueless documents and as such are incapable of rebutting the presumption of title in favour of the respondent created by his impeccable Certificate of Occupancy Exhibit 3.

Another issue hotly contested and agitated in this appeal relates to the identity of the land covered by the Certificate of Occupancy Exhibit 2, which indicated that the land in question was in “Rigachikun in Kaduna Local Government”. Exhibit 2 contains the numbers of the pillar beacons that demarcate the land in dispute and it is these beacons that are relevant in identifying the land in dispute. The reference in Exhibit 2 to “Rigachikun” which is not in Kaduna Local Government was demonstrably established by witnesses on both sides and accepted by the two lower courts to be an error. In this regard, the maxim falsa demonstratio non nocet (false description does not vitiate) applies : See Smith v. Ridgway (1866) L.R. Ex 331, Ex Ch.

In the light of the foregoing and the more comprehensive reasons stated in the leading judgment, I hold the view that the appeal lacks substance. Accordingly, I dismiss it with costs as assessed in the leading judgment.