

**SUPREME COURT OF NIGERIA**

8TH JULY, 2005. SC. 21/2001

**CORAM:- I. L. KUTIGI, A. O. EJIWUNMI, D. MUSDAPHER,  
I. C. PATS-ACHOLONU, S. A. AKINTAN, JJSC**

1. ALHAJA SABIRIYU SHITTU

2. AMINU SHITTU

3. BASHIRU SHITTU ..... DEFENDANTS/APPELLANTS

4. RABIATU SHITTU

AND

OTUNBA OYEWOLE FASHAWE ..... PLAINTIFF/RESPONDENT

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APPEALS - Grounds of Appeal - Issues for determination - Must fall within the scope of grounds of appeal - Where issues fall outside it - Appeal is incompetent (H1)

APPEALS - Courts - Jurisdiction - Supreme Court - Has no jurisdiction to hear appeals - From the decisions of the High Court - Its jurisdiction - Is limited to a complaint - On decision of the Court of Appeal (H2)

LAND LAW - Title - Proof - Burden of proof - In civil matters - Is always on the party who makes an assertion - And he must satisfy the court - That he is entitled to the declaration sought (H3)

EVIDENCE - Appeals - Documents - Admissibility - Where court wrongly admits inadmissible evidence - And such evidence is acted upon - Appellate Court has the duty to exclude such evidence (H4)

EVIDENCE - Admissibility - Objection - Where a party fails to object to the admission of an inadmissible evidence - He cannot be allowed to raise an objection - At the appeal stage - Unless the evidence - Was absolutely legally inadmissible (H5)

COURTS - Appeals - Reversal - Evidence - Admissibility - Where inad-

missible evidence is admitted - Court should reject the evidence - And consider if there is any remaining legal evidence to sustain the claim (H6)

PRACTICE & PROCEDURE - Parties - Evidence - Appearance of a party - In court to give evidence - Is not necessary - Where the claims are proved to the satisfaction of the court (H7)

### **FACTS**

Before the High Court of Lagos State, the plaintiff/respondent made claims against the defendants/appellants for declaration that he is entitled to the statutory right of occupancy to the property at No. 19 Oluwasanmi Close, Mafolukwu Oshodi, Lagos, possession of the said property, declaration that the defendants have incurred forfeiture of their tenancy in respect of the said house and an injunction restraining the defendants from occupying the house as tenants. The plaintiff claimed that he purchased the property from PW1, Alhaji Olaofe Popoola for a consideration of N500,000.00. The Ogunolowo family as owners of the land, leased the property through its accredited representatives and principal members to one Micheal Oladipo Ogunjobi for the consideration of N3,000.00.

The Deed of lease was registered. Micheal Ogunjobi on the 11/7/1980 also executed a deed of assignment of the property to Alhaji Lasisi Shittu who put up a building on the disputed property. On the 27/11/1990, Alhaji Lasisi Shittu was alleged to have executed a Deed in favour of Alhaji Popoola who transferred his interest by a Deed of Assignment to the plaintiff. Before the transfer of the property, Alhaji Lasisi Shittu borrowed money from Alhaji Popoola and pledged the property to him. He also agreed that if he fails to pay the debt, Alhaji Popoola should purchase the property. The Title Deed was therefore given to him as security for the loan. The trial court found for the plaintiff and granted all his prayers. The 2nd to 5th defendants appealed to the Court of Appeal but the appeal was dismissed. They have further appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

(1) *“Whether on a proper evaluation and appraisal of the pleaded*

*facts, evidence adduced therefore and the documentary evidence relied upon by the respondent, the lower court made a correct finding that the respondent's case is more acceptable than that of the appellants.*

*(2) Whether the lower court's finding that respondent's entitlement to No. 19, Olusanmi Close, Mafoluku, property in dispute, is based on Exhibit E is not perverse in view of pleaded facts in paragraphs 15 to 17 of the Amended Statement of Claim and evidence of sale to respondent by P. W. 1 and Exhibit D in support of the said sale.*

*(3) Whether respondent's claim can be sustained on his document of title relied upon which document is unpleadable and inadmissible and ought to be expunged having been wrongly admitted. If the document is expunged whether the decision of the lower court would have been otherwise moreso that respondent pleaded that tenants in the property failed to recognize him as owner and they never atoned to him"*

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

***Grounds of Appeal - Issues for determination***

1. These issues formulated and submitted by the respondent do not seem to emanate from the grounds of appeal filed against the judgment of the Court of Appeal by the appellants. Issues for determination must fall within the scope or ambit of the grounds of appeal; any issue for determination falling outside the ambit or scope of the grounds of appeal is incompetent. See *Adelusola v. Akinde* (2004) 5 S.C. (Pt. II) 71; (2004) Vol. 8 MJSC 33. Issues for determination whether filed by appellant or respondent must be tailored to the real and crucial issues in controversy. See *Ibrahim v. Ojomo* (2004) 1 S.C (Pt. II) 136; (2004) Vol. 4 MJSC 143. An issue for determination is a point so crucial that when decided one way or the other affects the fate of the appeal, it is a point that when decided in favour of a party, he is entitled to win the appeal. (p. 2377 F)

***Jurisdiction - Supreme Court***

2. Another point worth of mentioning in passing is that the issues for determination as formulated by the respondent's counsel indicate discussions on the treatment of the matters raised as dealt with by the trial High

Court. This court has clearly and obviously no jurisdiction to hear and consider appeals from the decisions of the High Court. The jurisdiction of this court is limited to a complaint on a decision of the Court of Appeal and the issues formulated by the respondent are only concerned with the decision of the trial High Court. It is for the above that I consider the respondent's brief incompetent and is accordingly struck out by me. I shall discuss this appeal by reference only to the appellant's brief of argument. (p. 2378 B)

***Title - Proof - Burden of proof***

3. Now, there is no doubt that in an action for declaration for title to land such as in this case, a plaintiff can only ordinarily succeed on the strength of his case and may not rely on the weakness of the case of the opposing party to obtain judgment. The grant of declaratory reliefs has always been dependent on the discretionary power of the courts. The burden is always on the plaintiff to prove his case on the preponderance of evidence or balance of probabilities. It is elementary law that the burden of proof in a civil matter is always on the party who makes the assertion and he must satisfy the court that he is entitled to the declaration sought as it relates to the land in dispute. This means that where the parties give evidence as to the claim before the court, judgment will be given to the party whom the evidence tilts in favour of in the case. (p. 2380 D)

***Appeals - Documents - Admissibility***

4. Now, it has been strongly suggested that Exhibits C, D and E being inadmissible documents both the trial court and the Court of Appeal were wrong not to expunge them, in the case of *Olukade v. Alade* (1976) 2 S.C. (Reprint) 83; (1976) 2 S.C. 183, this court summarized the general rule on the effect of the admission of inadmissible evidence:-

*"A court is expected in all proceedings before it to admit and act only on evidence which is admissible in law. (i.e. under the Evidence Act or any relevant enactment in a particular case or matter) and so if a court should inadvertently admit inadmissible evidence it has the duty not to act on it."*

This rule is very strict. Thus, where a court wrongfully admits inadmissible evidence, it ought as a duty, to disregard the inadmissible evidence in consideration of the judgment in the matter. Where such evidence has been wrongfully admitted and acted upon and whether or not the opposing party objects or not, an appellate court has the duty to exclude such evidence and decide the case only on the legally admissible evidence. But in this connection, it must be borne in mind that there are two categories of inadmissible evidence. Evidence that is absolutely inadmissible in law is not within the competence of the parties to admit by consent or otherwise. It is a document which is by law inadmissible. The second class of inadmissible evidence is, for example, a document which is admissible in law but upon fulfilling certain conditions, parties may by consent admit it notwithstanding the conditions not being fulfilled, e.g., the admission of unstamped instrument required to be stamped. (p. 2380 H)

***Where a party fails to object to inadmissible evidence***

5. It is also the law, in the latter case, where a party fails to object to the admission of an inadmissible evidence at the trial, he cannot be allowed to raise an objection at the appeal stage unless the evidence was absolutely legally inadmissible.

In the instant case, now Section 15 of the Land Instruments Registration Law of Lagos State is the statutory authority relied on by the learned counsel for the appellant to found his objection to Exhibits C, D and E. It reads:-

*“No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered.”*

xx.

These exhibits, in my view, fall under Section 15. They were not registered, they were wrongly pleaded and pleaded as they were by law inadmissible in evidence. The courts have the bounden duty to reject them even where the opposing party did not object to their being tendered in evidence. But in this proceedings, the appellant merely pleaded that Exhibits C, D and E were not registered in accordance with the law, but led no evidence whatever to establish the fact. In my view, it may be that

the appellants had abandoned the complaint since they led no evidence to establish the non-registration and also failed not only to object, but did not cross-examine the respondent's witness on this score nor did they call any witness to refer to the issue. It is trite law that pleading is no evidence.

B (p. 2381 H)

***Appeals - Reversal - Evidence***

6. The law is that even where inadmissible evidence is admitted, the trial Judge or an appellate court should reject the evidence and after expunging such evidence shall consider if there is any remaining legal evidence to sustain the claims. The wrongful admission of evidence will not itself create a ground for the reversal of a case unless the appellate court would have come to a different decision without such evidence. See *Ajayi v. Fisher* supra; *Idundun v. Okumagba* (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227. Accordingly, I find the complaint of the appellants on this score not made out. The Court of Appeal, in my view, rightly affirmed the decision of the trial court. There was abundant evidence accepted by the trial court after duly appraising and evaluating all the evidence adduced before it. The Court of Appeal was therefore justified in affirming the findings of fact. (p. 2383 A)

***Parties - Evidence - Appearances of a party***

7. Now, the other issue is the effect to his claims by the respondent when he did not give evidence to recite his prayers before the trial Judge. Although the learned counsel raised the issue in his address before the trial Judge, the trial Judge did not discuss the issue in his judgment. But the issue came to Court of Appeal not as an issue raised by the appellant which was not decided by the trial court but seemingly as a fresh issue because it did not arise from the judgment of the trial court. The Court of Appeal, in my view, dealt with the matter adequately and properly. It is correctly stated in my view that there is no necessity for a party to appear in court and give evidence so long as the claims are proved to the satisfaction of the court. I find the appellants' complaint on this point invalid. In the end, I find the appeal of the appellants unmeritorious and is accordingly

dismissed by me. (p. 2383 E)

### **REPRESENTATION**

Kunle Oyewo, for the Appellant

J. Akanike, for the Respondent.

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### **CASES REFERRED TO**

Onifade v. Olayiwola (1990) 7 NWLR (Pt. 161) 130

Okoye v. Nigerian Construction and Furniture Co. Ltd. (1991) 6 NWLR (Pt. 199) 501 C

Sanusi v. Ayoola (1992) 9 NWLR (Pt. 265) 275

Igago v. The State (1999) 10-12 S.C. 84; (1999) 14 NWLR (Pt. 637) 1

Timitimi v. Amabebe (1953) 13 WACA 274

Ajayi v. Fisher (1956) FSC 90

D

James v. Mid Motors (1978) 11-12 S.C. (Reprint) 25; (1978) 11-12 B.C. 31

Minister v. Azikiwe (1969) 1 All NLR 49

Kale v. Coker (1982) 12 S.C. (Reprint) 118; (1982) 12 S.C. 252

E

Etim v. Ekpe (1983) NSCC 86

Igbodim v. Obianke (1976) 9-10 S.C. (Reprint) 108; (1976) 9-10 S.C. 108

Carlen (Nig.) Ltd. v. Unijos (1994) 1 NWLR (Pt. 323) 631

Kalio v. Kalio (1975) 2 S.C. (Reprint) 14; (1975) 2 S.C. 15

F

Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128

Adefulu v. Okulaja (1996) 9 NWLR (Pt. 475) 668

Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 247) 220

G

### **STATUTES REFERRED TO**

Evidence Act, 1990 ss. 76 & 132

Land Instrument Registration Law, Laws of Lagos State, 1994 ss. 2& 26

Land Use Act Cap. 202 LFN, 1990 ss. 22 & 26

H

**LEAD JUDGMENT BY MUSDAPHER JSC**

In his Amended Statement of Claim, in Suit No. LD/3396/95 at Lagos Judicial Division of the High Court of Lagos State, the plaintiff B claimed against the defendants as follows:-

“(1) A declaration that the plaintiff is the person entitled to the statutory right of occupancy and/or Certificate of Occupancy of all that piece or parcel of land together with the storey building consisting of six flats thereon situate, lying and being at No. 19, Oluwasanmi Close, C Mafoluku, Oshodi, Lagos State and more particularly described and delineated in the Survey Plan No. FL 502 of 29/9/72 drawn by A-G. Adebogun, licensed surveyor.

(2) Possession of the said property and N100,000.00 (One Hundred D Thousand Naira) only being accrued rents in respect of the said property. The defendants, their servants, agents and/or privies on the property in dispute.

(3) A declaration that the defendants have incurred forfeiture of E their tenancy in respect of the said storey building, subject matter of this suit.

(4) A PERPETUAL INJUNCTION restraining the defendants, by themselves, their servants, agents and/or privies, howsoever called, from F occupying the said house as tenants or otherwise.”

After the delivery and exchange of pleadings, the matter went to trial. The plaintiff did not give evidence but called two witnesses. The 1st defendant a tenant in the premises, testified for himself and denied the claims of the plaintiff. The 2nd - 5th defendants called 3 witnesses. At the conclusion of the taking of oral evidence, the parties submitted written addresses. In his judgment delivered on 5th December, 1996, the learned trial Judge found for the plaintiff and entered judgment in terms of the Amended Statement of Claim recited above. The 2nd - 5th defendants felt G aggrieved with the judgment and appealed to the Court of Appeal. In its decision delivered on the 21st day June, 2000, the Court of Appeal, Lagos Division, dismissed the appeal of 2nd to 5th defendants and this is a further H appeal with leave to this court. The Notice of Appeal contains the following



grounds of appeal :-

“1. MISDIRECTION OF FACT

The learned Justices of the Court of Appeal misdirected themselves on the facts when they gave wrong appraisal of the evidence given and the documents tendered by the 1st and 2nd plaintiffs’ witnesses and came to an erroneous conclusion that:-

*“On the preponderance of evidence the respondent’s case was more acceptable than that of the appellant., Ref: Mogaji v. Odofin (1978) 4 S.C. (Reprint) 53, 65; (1978) 4 S.C. 91 at 93.”*

Thereby occasioning miscarriage of justice.

PARTICULARS OF MISDIRECTION

(a) The documentary evidence relied on by plaintiff both at the lower courts to prove his entitlement to 19 Oluwasanmi Close, Mafoluku, Oshodi, Lagos State are:-

(a) Deed of Assignment dated 7/2/1995 tendered as Exhibit D.

(b) Deed of Assignment from Lasisi Shittu to the assignor of the plaintiff dated 27/11/92 tendered as Exhibit C. Both documents classify as instrument under Section 2 of the Land Instrument Registration Law, Cap. 111, Laws of Lagos State, 1994.

(c) The two instruments listed in (a) and (b) were not registered as such they shall not be pleaded or given in evidence in any court affecting land unless the same has been registered.

(d) The fact that no objection was taken as to their admissibility does not save them since the exclusion is enjoined by law.

(e) In determining the preponderance of evidence under Mogaji v. Odofin, court should have regard as to whether evidence offered is admissible. Plaintiff’s claim is grounded on an evidence which is in no circumstance admissible in law.

(f) Neither of the two witnesses for plaintiff adduce any evidence in line with reliefs sought by the plaintiff at the court of trial, as such the learned trial Judge erred in awarding those reliefs gratuitously which act was erroneously confirmed by the lower court.”

2. ERROR IN LAW

The learned Justices of the Court of Appeal erred in law in basing the

entitlement of the plaintiff on Exhibit “E” an undated Deed of Agreement between Alhaji Salawudeen Olaofe Popoola (P.W.1) and Alhaji Lasisi Shittu in contract with the pleaded fact at paragraphs 15 and 16 of the amended Statement of Claim which as (sic) occasion (sic) a miscarriage of justice by stating:-

B “As already observed Exhibit “E” shows payment by 1st P.W coupled by the fact that he was put into possession by late Alhaji Lasisi Shittu. These facts are capable of vesting in P.W. 1 an equitable interest. Respondent’s equitable interest is recognized and valid in law except if  
C there is some other person(s) who can show better title.”

PARTICULARS OF ERROR

(a) P.W.1 (Alhaji Salawudeen Olaofe Popoola) confirmed selling the property in dispute to plaintiff by virtue of Exhibit D., he himself having  
D produced same by virtue of Exhibit C. Both exhibits offend against the provisions of Section 15 of the Land Instruments Registration Law, Cap. 111, Laws of Lagos State. They should be expunged as they are inadmissible in all circumstances.

E b(i) Exhibits C and D as documents of completed transactions of sale of land made since coming into effect of the Land Use Act, Cap. 202, LFN 1990 ought to be declared null and void as the two documents have no consent of the Governor of Lagos State and they are not made subject to the said current law under Sections 22 and 26 of the Land Use Act.

F (c) Plaintiff never at any time relied on Exhibit E, the Deed of Agreement of his vendor (Alhaji Salawudeen Olaofe Popoola) as his entitlement to the land in dispute as borne out in paragraphs 15 and 16 of the Amended Statement of Claims but on a Deed of Assignment dated 7/  
G 2/1995 tendered as Exhibit D which instrument offends Section 15 of the Land Instruments Registration Law of Lagos State.

(d) The plaintiff at no time relied on any equitable interest, as such it is respectfully submitted that the Justices of the Court of Appeal were  
H making a fresh case for the parties in stating that “respondent’s equitable interest is recognized as valid in law except there is some other person(s) who can show better title,” without affording the parties to make any input.

2. The learned Justices of the Court of Appeal misdirected

themselves in failing to make a proper appraisal of the evidence of the parties on the record when they relied heavily on the learned trial Judge's finding that:-

*"I hold that there was a transaction between the parties and this in my view is a financial transaction, this led Alhaji Lasisi Shittu to deposit his title deeds with the 1st P.W. There is evidence of Kayode Sunmonu who witnessed the whole transaction between the late Alhaji and the 1st P.W. He confirmed all the transactions between the two parties. The children of the deceased did not know anything about the transaction and the deposit of their father's title deeds with the 1st P.W. and the selling of the house to the 1st P.W."*

(a) The said transaction has been reduced into writing as such it is the document embodying the transaction that should be placed before the court by virtue of Sections 76 and 132 of the Evidence Act, 1990.

(b) The documentary evidence of the plaintiff, i.e., Exhibit D, is totally unpleadable and cannot be given in evidence to buttress plaintiff's entitlement.

(c) The onus of proof is on the plaintiff who ought to rely on the strength of his case, not on the weakness of the defence.

(d) Should admissible, relevant, credible and probable evidence be taken into consideration the imaginary scale of justice tilts in favour of the defendants.

In compliance with the rules of this court, briefs of argument were filed and exchanged and at the hearing of the appeal learned counsel adopted and relied on the argument canvassed in their written briefs. Before the consideration of the issues for the determination submitted by counsel in their written briefs, it is convenient at this stage to set out the facts.

The plaintiff's claims have been recited at the beginning of this judgment. He claimed to have purchased the property situate, lying and being at 19 Oluwasanmi Close, Mafoluku Oshodi, Lagos State, from P.W. 1, Alhaji Salawudeen Olaofe Popoola for a consideration of N500,000.00. The property is called Block XIV (14) Plot 30 at Ogunolowo lay out, consisting of six flats. The Ogunolowo family as owners of the land leased,

the property through its accredited representatives and principal members to one Michael Oladipo Ogunjobi; the consideration was N3,000.00. The Deed of Lease was registered as No. 65 at Page 65 Vol. 675, Land Registry Lagos. Mr. Michael Oladipo Ogunjobi also on 11/7/1950 executed a Deed of Assignment of the property to Alhaji Lasisi Shittu who put up the building aforesaid on the disputed property. On the 27/11/1990, Alhaji Lasisi Shittu was alleged to have executed a Deed of Assignment in favour of Alhaji Popoola, P.W.1 in this proceedings who as mentioned above transferred his interest by a Deed of Assignment to the plaintiff. It is also alleged that before the transfer of the property to Alhaji Popoola, P.W. 1, the late Alhaji Lasisi Shittu borrowed money from him and pledged the property to him. Alhaji Lasisi Shittu also agreed that if he failed to pay the debt, Alhaji Popoola had the first option to purchase the property. The title deeds were given to him as security for the loan. The plaintiff originally commenced this proceedings at the trial court against 6 persons alleged to be the tenants occupying the six flats. It was later that 4 others, the 7th to 10th defendants were joined as the necessary parties for the effectual and effective determination of all the issues in dispute. The original 1st to 4th and 6th defendants were struck out as they were sued as tenants and were not actually tenants in the disputed property. The 5th defendant became the 1st defendant and 7th to 10th defendants became the 2nd to 5th defendants and they were representing the estate of late Alhaji Lasisi Shittu. The 1st defendant claimed to be tenant in the premises and mentioned the other tenants, he did not recognize any other landlord except Alhaji Lasisi Shittu. The 2nd to 5th defendants, heirs of Alhaji Lasisi denied that Alhaji Lasisi Shittu assigned or transferred the disputed property to anybody. As mentioned above, the trial Judge found for the plaintiff and granted all the prayers recited at the beginning of this judgment. The appeal by the 2nd to 5th defendants to the Court of Appeal was dismissed.

Now, the 2nd to 5th defendants shall hereinafter be referred to as the appellants and the plaintiff the respondent. Distilled from the grounds of appeal, the learned counsel for the appellants has submitted the following issues for the determination of the appeal:-

(1) *“Whether on a proper evaluation and appraisal of the pleaded*

*facts, evidence adduced therefore and the documentary evidence relied upon by the respondent, the lower court made a correct finding that the respondent's case is more acceptable than that of the appellants.*

(2) *Whether the lower court's finding that respondent's entitlement to No. 19, Olusanmi Close, Mafoluku, property in dispute, is based on Exhibit E is not perverse in view of pleaded facts in paragraphs 15 to 17 of the Amended Statement of Claim and evidence of sale to respondent by P. W. 1 and Exhibit D in support of the said sale.*

(3) *Whether respondent's claim can be sustained on his document of title relied upon which document is unpleadable and inadmissible and ought to be expunged having been wrongly admitted. If the document is expunged whether the decision of the lower court would have been otherwise moreso that respondent pleaded that tenants in the property failed to recognize him as owner and they never atoned to him"*

The learned counsel for the respondent on the other hand has submitted the following issues as arising for the determination of the appeal:-

“(1) *Whether the trial court properly evaluated the evidence before him having regard to the circumstances of the case.*

(2) *Whether the High Court correctly admitted evidence “Exhibit E” which is the Deed of Assignment between the respondent's predecessor-in-title and the first appellant's husband.*

(3) *Whether the High Court granted reliefs not sought by the respondent.”*

**These issues formulated and submitted by the respondent do not seem to emanate from the grounds of appeal filed against the judgment of the Court of Appeal by the appellants. Issues for determination must fall within the scope or ambit of the grounds of appeal; any issue for determination falling outside the ambit or scope of the grounds of appeal is incompetent. See Adelusola v. Akinde (2004) 5 S.C. (Pt. II) 71; (2004) Vol. 8 MJSC 33. Issues for determination whether filed by appellant or respondent must be tailored to the real and crucial issues in controversy. See Ibrahim v. Ojomo (2004) 1 S.C (Pt. II) 136; (2004) Vol. 4 MJSC 143. An issue**

**for determination is a point so crucial that when decided one way or the other affects the fate of the appeal, it is a point that when decided in favour of a party, he is entitled to win the appeal.** See *Onifade v. Olayiwola* (1990) 7 NWLR (Pt. 161) 130; *Okoye v. Nigerian Construction B and Furniture Co. Ltd.* (1991) 6 NWLR (Pt. 199) 501. In this correction, see also *Sanusi v. Ayoola* (1992) 9 NWLR (Pt. 265) 275; *Igago v. The State* (1999) 10-12 S.C. 84; (1999) 14 NWLR (Pt. 637)1.

**Another point worth of mentioning in passing is that the issues for determination as formulated by the respondent's counsel indicate discussions on the treatment of the matters raised as dealt with by the trial High Court. This court has clearly and obviously no jurisdiction to hear and consider appeals from the decisions of the High Court. The jurisdiction of this court is limited to a complaint on D a decision of the Court of Appeal and the issues formulated by the respondent are only concerned with the decision of the trial High Court. It is for the above that I consider the respondent's brief incompetent and is accordingly struck out by me. I shall discuss this E appeal by reference only to the appellant's brief of argument.**

The learned counsel for the appellant has argued all the three issues together and I shall accordingly treat them together. For the appellant, it is submitted that in an action for declaration of title to land, the plaintiff F must succeed on the strength of his own case and not on the weakness of the defendant's case who has not filed a counter-claim. Learned counsel referred to and relied on the following cases:- *Kodilinye v. Odu* (1935) 2 WACA 536; *Woluchem v. Gudi* (1981) 5 S.C. (Reprint) 178; (1981) 5 S.C. 72; *Queen v. Uche* (1994) 6 NWLR (Pt. 350) 529. It is further argued that G the burden is on the plaintiff to prove his case on the preponderance of evidence or balance of probabilities. By paragraph 19 of the Amended Statement of Claim, the respondent pleaded that the appellant refused to "atone tenancy or acknowledge" his ownership of the property in dispute. H To prove his ownership, the appellant pleaded and relied on Exhibit D. It is submitted that Exhibit D was an invalid document because it is a registerable instrument which has not been registered contrary to Sections 2 and 15 of the Land Instrument Registration Law of Lagos State, 1994,

as such, it cannot be pleaded nor admitted in evidence. It is submitted further that the document. Exhibit D, was admitted in the absence of the appellants' counsel who denied the validity of the document in their Amended Statement of Defence. It is submitted, in any event, Exhibit D is inadmissible in law and the court had no discretion in the matter, it ought to have been expunged from the record. Learned counsel referred to Onwumelu v. Duru (1997) 10 NWLR (Pt. 525) 337; Ganiyan Kale v. Madam Y Coker & Ors. (1982) 12 S.C. (Reprint) 118; (1982) 12 S.C. 252, Olukade v. Made (1976) 2 S.C. (Reprint) 83; (1976) 2 S.C 183. B

Learned counsel further argued that the Court of Appeal was in error to have allowed Exhibit D when the document was inadmissible in law. See Alimi v. Obawole (1998) 6 NWLR (Pt. 555) 591; Ita v. Ekponyong (2001) 1 NWLR (Pt. 587) 613; Ajayi v. Fisher (1958) SCNLR 279; Sadhwani v. Sadhwani (Nig) Ltd. (1989) 2 NWLR (Pt. 101) 72; Owoyin v. Omotosho (1961) 2 SCNLR 57; Chigbu v. Towimas (Nig) Ltd. (1999) 3 NWLR (Pt. 593) 115; Agbaja v. Adigun (1995) 1 NWLR (Pt. 269) 261. C

It is again added that Exhibits B and C should suffer the same fate as they were not registered. It is also argued that the respondent having failed to give evidence, and there was no evidence whatever on the reliefs claimed by him, the reliefs must be deemed to have been abandoned and the courts ought not to have granted them. Learned counsel referred to and relied on Bello v. Otolorin (1996) 9 NWLR (Pt. 470) 49; Ekpenyong v. Nyong (1975) 2 S.C. (Reprint) 65; ( 1975) 2 S.C. 71; Ajakaiye v. Ideahai (1994) 8 NWLR (Pt. 364) 504; Carlen (Nig.) Ltd. v. Unijos (1994) 1 NWLR (Pt. 323) 631; Kalio v. Kalio (1975) 2 S.C. (Reprint) 14; (1975)2 S.C. 15; Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128; Adefulu v. Okulaja (1996) 9 NWLR (Pt. 475) 668; Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 247) 220. It is again submitted that if Exhibits B, C and D are expunged from the records being inadmissible there was no evidence available that will sustain the respondent's claim. See Idundun H v. Okumagba (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227. It is further argued that the appellants called 3 witnesses not 2 witnesses as found by both the trial court and the Court of Appeal and if the evidence E  
F  
G

tendered by the appellant is properly evaluated, it should be accepted as good and credible. See *Ifeajuna v. Ifeajuna* (1992) 7 NWLR (Pt. 513) 405.

It is further argued that Exhibit E is the loan agreement which undoubtedly proved the loan transaction between Alhaji Salawudeen B Olaofe Popoola and Alhaji Lasisi Shittu as the borrower. Exhibit E is not evidence of purchase by Exhibit C which was not a registered instrument and therefore inadmissible.

The learned counsel for the appellant finally conceded that the appellate court such as the Supreme Court should not ordinarily disturb C concurrent findings of fact of two lower courts but may do so where special circumstances arise. Special circumstances in this connection include the admission of inadmissible evidence accounted in the absence of appellant's counsel in spite of the protest raised by counsel in the D pleadings. This court was urged to allow the appeal and reverse the judgments of the lower courts or remit the case back to the High Court of Lagos State for trial de novo before another judge.

**Now, there is no doubt that in an action for declaration for title E to land such as in this case, a plaintiff can only ordinarily succeed on the strength of his case and may not rely on the weakness of the case of the opposing party to obtain judgment. The grant of declaratory reliefs has always been dependent on the discretionary power of the F courts. The burden is always on the plaintiff to prove his case on the preponderance of evidence or balance of probabilities. It is elementary law that the burden of proof in a civil matter is always on the party who makes the assertion and he must satisfy the court that he is entitled to the declaration sought as it relates to the land in G dispute. This means that where the parties give evidence as to the claim before the court, judgment will be given to the party whom the evidence tilts in favour of in the case.** To discharge this onus, in the instant case, the respondent called 2 witnesses who gave evidence as to H what transpired between the deceased Lasisi Shittu and Alhaji Popoola and the respondent on the other hand. In addition, the respondent relied upon documents Exhibits A, B, C, D and E.

**Now, it has been strongly suggested that Exhibits C, D and E**



being inadmissible documents both the trial court and the Court of Appeal were wrong not to expunge them, in the case of Olukade v. Alade (1976) 2 S.C. (Reprint) 83; (1976) 2 S.C. 183, this court summarized the general rule on the effect of the admission of inadmissible evidence:-

*“A court is expected in all proceedings before it to admit and act only on evidence which is admissible in law. (i.e. under the Evidence Act or any relevant enactment in a particular case or matter) and so if a court should inadvertently admit inadmissible evidence it has the duty not to act on it.”*

This rule is very strict. Thus, where a court wrongfully admits inadmissible evidence, it ought as a duty, to disregard the inadmissible evidence in consideration of the judgment in the matter. Where such evidence has been wrongfully admitted and acted upon and whether or not the opposing party objects or not, an appellate court has the duty to exclude such evidence and decide the case only on the legally admissible evidence. See *Timitimi v. Amabebe* (1953) 13 WACA 274; *Ajayi v. Fisher* (1956) FSC 90. But in this connection, it must be borne in mind that there are two categories of inadmissible evidence. Evidence that is absolutely inadmissible in law is not within the competence of the parties to admit by consent or otherwise. It is a document which is by law inadmissible. See for example, *James v. Mid Motors* (1978) 11-12 S.C. (Reprint) 25; (1978) 11-12 B.C. 31, *Minister v. Azikiwe* (1969) 1 All NLR 49, *Kale v. Coker* (1982) 12 S.C. (Reprint) 118; (1982) 12 S.C. 252. The second class of inadmissible evidence is, for example, a document which is admissible in law but upon fulfilling certain conditions, parties may by consent admit it notwithstanding the conditions not being fulfilled, e.g., the admission of unstamped instrument required to be stamped. See *Etim v. Ekpe* (1983) NSCC 86. *Igbodim v. Obianke* (1976) 9-10 S.C. (Reprint) 108; (1976) 9-10 S.C. 108.

It is also the law, in the latter case, where a party fails to object to the admission of an inadmissible evidence at the trial, he cannot be allowed to raise an objection at the appeal stage unless the

evidence was absolutely legally inadmissible, see Igbohim v. Obianke supra.

**In the instant case, now Section 15 of the Land Instruments Registration Law of Lagos State is the statutory authority relied on by the learned counsel for the appellant to found his objection to Exhibits C, D and E. It reads:-**

*“No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered.”*

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

**These exhibits, in my view, fall under Section 15. They were not registered, they were wrongly pleaded and pleaded as they were by law inadmissible in evidence. The courts have the bounden duty to reject them even where the opposing party did not object to their being tendered in evidence. See Alade v. Olukade supra. Minister v. Azikiwe (supra). But in this proceedings, the appellant merely pleaded that Exhibits C, D and E were not registered in accordance with the law, but led no evidence whatever to establish the fact. In my view, it may be that the appellants had abandoned the complaint since they led no evidence to establish the non-registration and also failed not only to object, but did not cross-examine the respondent’s witness on this score nor did they call any witness to refer to the issue. It is trite law that pleading is no evidence. Although the learned counsel for the appellant raised the matter in his address before the trial court, yet the learned trial Judge did not deem it fit to consider it in his judgment because according to the judgment:-**

*“I have no iota of doubt that all the defendants and their witnesses knew nothing about the transaction between the 1st P.W. and late Alhaji Lasisi Shittu.”*

**As a matter of fact, the learned trial Judge came to the conclusion that the respondent was entitled to the judgment on the basis of the oral evidence of P.W. 1 and P.W.2, Kayode Sunmonu. The learned trial Judge said in his judgment:-**

*“There is the evidence of Kayode Sunmonu who witnessed the whole transaction between the late Alhaji Lasisi Shittu and the 1st P.W.*

*He confirmed all the transactions between the two parties. The children of the deceased (appellants herein) did not know any thing about the transaction, and the deposit of their father's title Deeds with the 1st P.W."*

The learned trial Judge, thus saw no need to even refer to the exhibits or the objection raised as to their admissibility in his judgment. **The law is that even where inadmissible evidence is admitted, the trial Judge or an appellate court should reject the evidence and after expunging such evidence shall consider if there is any remaining legal evidence to sustain the claims. The wrongful admission of evidence will not itself create a ground for the reversal of a case unless the appellate court would have come to a different decision without such evidence. See Ajayi v. Fisher supra; Idundun v. Okumagba (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C. 227. Accordingly, I find the complaint of the appellants on this score not made out. The Court of Appeal, in my view, rightly affirmed the decision of the trial court. There was abundant evidence accepted by the trial court after duly appraising and evaluating all the evidence adduced before it. The Court of Appeal was therefore justified in affirming the findings of fact.**

**Now, the other issue is the effect to his claims by the respondent when he did not give evidence to recite his prayers before the trial Judge. Although the learned counsel raised the issue in his address before the trial Judge, the trial Judge did not discuss the issue in his judgment. But the issue came to Court of Appeal not as an issue raised by the appellant which was not decided by the trial court but seemingly as a fresh issue because it did not arise from the judgment of the trial court. The Court of Appeal, in my view, dealt with the matter adequately and properly. It is correctly stated in my view that there is no necessity for a party to appear in court and give evidence so long as the claims are proved to the satisfaction of the court. I find the appellants' complaint on this point invalid. In the end, I find the appeal of the appellants unmeritorious and is accordingly dismissed by me. The respondent is entitled to costs assessed at N10,000.00 against the appellants.**

**KUTIGIJSC**

I read in advance the judgment just delivered by my learned brother, Musdapher. JSC. I agree with the conclusion that the appeal is unmeritorious and ought to be dismissed. The appeal is accordingly dismissed with N10,000.00 costs to the plaintiff/respondent against the 2nd - 5th defendants/appellants only.

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**C    EJIWUNMIJSC**

By this appeal, the appellants are seeking to have the judgment of the court below set aside on the following issues:

*“(1) Whether on a proper evaluation and appraisal of the pleaded facts, evidence adduced therefore and the documentary evidence relied upon by the respondent, the lower court made a correct finding that the respondent’s case is more acceptable than that of the appellants.*

*(2) Whether the lower court’s finding that respondent’s entitlement to No. 19, Olusanmi Close, Mafoluku property in dispute is based on Exhibit E is not perverse in view of pleaded fact in paragraphs 15 to 17 of the Amended Statement of Claim and evidence of sale to respondent by P.W.I and Exhibit D in support of the said sale.*

*(3) Whether respondent’s claim can be sustained on his document of title relied upon which document is unpleadable and inadmissible and ought to be expunged having been wrongly admitted. If the document is expunged, whether the decision of the lower court would have been otherwise more so that respondent pleaded that tenant in the property failed to recognize him as owner and they never atoned to him.”*

The learned counsel for the respondent, on the other hand, has submitted the following issues as arising for the determination of the appeal:

*“(1) Whether the trial court properly evaluated the evidence before him having regard to the circumstances of the case.*

*(2) Whether the High Court correctly admitted evidence “Exhibit E’ which is the Deed of Assignment between the respondent’s predecessor-*

*in-title and the first appellant's husband.*

*(3) Whether the court granted reliefs not sought by the respondent."*

But having regard to the facts in this appeal which had been copiously set out in the lead judgment, it is manifest that to succeed in this appeal, the appellants must show that the courts below made such errors, B either in the appraisal of the facts or their application of the law to the facts to warrant the intervention of this court. See Chief L. Oyelakin Balogun v Alhaji Busari Amubikahun (1989) 4 S.C. (Pt. 1) 167; (1989) 3 NWLR (Pt. 107) 18 and Dibiamaka v. Osakwe (1989) 3 NWLR (Pt. 107) 101. The C appellants have not, in my respectful view, been able to satisfy me that I ought to intervene to set aside the judgments of the courts below.

For the above reasons and the fuller reasons given in the lead judgment of my learned brother. Musdapher, JSC., this appeal is also D dismissed by me. And I abide with the order made as to costs.

### **PATS-ACHOLONU JSC**

I have read in draft the judgment of my learned and noble lord. E Musdapher. JSC., and I agree with him. I have nothing more to add.

### **AKINTANJSC**

The present respondent, as plaintiff, commenced this action at F Lagos High Court as Suit No. LD/3396/95 against the appellants, as defendants. His claims were for declaration that he is the person entitled to the statutory right of occupancy to the property at No. 19 Oluwasanmi G Close, Mafoluku, Oshodi. Lagos; possession of the said property; declaration that the defendants have incurred forfeiture of their tenancy in respect of the said house; and injunction restraining the defendants, their servants, agents and/or privies from occupying the said house as tenants. H Pleadings were filed and exchanged and the trial took place. At the end of the hearing and addresses from counsel in the case, the learned trial Judge entered judgment for the plaintiff as per his claims. The defendants' appeal to the Court of Appeal was dismissed. The present appeal is an appeal

against the judgment of the Court of Appeal. The parties filed their briefs in this court and formulated issues for hearing in the party's respective briefs.

The main point canvassed in the appeal which I will like to comment on is that in which the appellants were challenging the admission of the three documents - Exhibits C, D & E, on the ground that they were not registered as required by law. This point was not made an issue both at the trial High Court and the court below. Again, although the defendants referred to the omission to register the said documents in their pleadings, no evidence was led on the point and the matter was not even raised during the cross-examination of the plaintiff's witnesses. I therefore, entirely agree with the views expressed in the leading judgment just delivered by my learned brother, Musdapher. JSC., which I was privileged to have read before now, that the failure of the appellants to seriously raise the point both at the trial court and the court below means that they abandoned the reference they made to it in their pleadings.

The other issues raised in the appeal have been fully discussed in the leading judgment and I need not go into them because I fully agree with the reasoning and conclusion reached in the said leading judgment. In conclusion and for the reasons I have given above, and the fuller reasons given in the leading judgment which I also adopt, I hold that there is no merit in the appeal and I accordingly dismiss it with N10,000 costs in favour of the respondent.

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