

**SUPREME COURT OF NIGERIA**

4TH MARCH, 2005. SC. 70/1998

**CORAM:- S. M. A. BELGORE, S. U. ONU, A. O. EJIWUNMI,  
N. TOBI, D. O. EDOZIE, JJSC**

CHIEF S. L. DUROSARO ..... APPELLANT  
AND  
T. A. A. AYORINDE .....RESPONDENT

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COURTS - Evidence - Previous proceedings - Or conviction - Should not be relied upon by court - In coming to a conclusion (H1)

EVIDENCE - Documents - Admissibility - Wrongfully admitted document - Not shown to have adversely affected appellant's case - Will not ground a reversal of the decision (H2)

LAND LAW - Title - Evidence - Failure to present evidence by defendant - Leaves plaintiff's claims unchallenged (H3)

APPEALS - Concurrent findings - Wrong acceptance of facts - Or wrong application of the law - Must be shown to secure a reversal (H4)

**FACTS**

Before the High Court Ibadan, the plaintiff/respondent filed an action against 16 defendants including the appellant who was the 4th defendant. Respondent claimed declaration of title, damages for trespass and injunction restraining the defendants from committing further acts of trespass on the land in dispute. Pleadings were ordered, filed and exchanged between the parties. Respondent gave evidence and called 4 witnesses. Several documents were tendered and accepted as evidence, including Exhibit F which was a previous criminal proceedings over forgery of a Deed of Conveyance (Exhibit E) in respect of the land in dispute. It was the said forged Deed, Exhibit E, that was used in conveying the land in dispute to the appellant. Respondent through valid evidence established his root of title, sale of the land to him under native law and custom in

1972 followed by a Deed of Conveyance in his favour. And that he took possession, dug a well and constructed a prefabricated building on the land.

The appellant gave no evidence but rested his case on the respondent's case. The trial court found in favour of the respondent and found 5 of the defendants liable in trespass. Names of other defendants were struck out from the suit. Being aggrieved with the judgment the 4th defendant/appellant appealed to the Court of Appeal. His appeal was dismissed. He has further appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

*“(1) Did the respondent impeach the appellant’s conveyance, which was earlier in time by credible and admissible evidence?”*

*“(2) Whether or not the subsidiary issues raised by the appellant before the Court of Appeal are competent, particularly the wrongful admission of Exhibit “F”.*

**HELD** (Unanimously dismissing the appeal per **EJIWUNMI JSC**)  
***COURTS - Evidence - Previous proceedings***

1. The point taken on appeal against the conclusion of the court below appears to be that no reliance should have been placed on Exhibit F by the courts below being a judgment on a criminal proceedings in which the appellant was not a party to. In support of that contention, he referred to the following cases: - *Hollington v. F. Hewthorn & Coy. Ltd.* (1943) 2 All ER 35; *Oyewole v. Kelani* (1948) WACA 327; *Nwachukwu v. Egbuebu* (1990) 3 NWLR (Pt.139) 435. I think the point is well taken. It is no longer disputable having regard to the authorities cited above that a court should not place reliance on a conviction recorded in another court to come to its own conclusion in a civil trial between parties other than those convicted as a result of a criminal trial. It is safer in the interest of justice that the court should come to a decision on the facts placed before it, without regard to the result of other proceedings before another tribunal. (p. 743 D)

***Wrongfully admitted document***

2. But, where a document such as Exhibit F as in the instant case, was

admitted during the trial, the question that must be considered is, whether the court in the evaluation of the facts depended on that document to come to its conclusion. If the case for the respondent could be established without that document, Exhibit F, then the admission of that document cannot be said to have affected adversely the decision of the trial court. In such a situation, the onus lies on the appellant to show that the case made out against him was adversely affected by the admission of Exhibit F. It is my considered view that the appellant failed to discharge that burden before this court and I must therefore uphold the conclusion reached by the court below that the trial court was right to have upheld the claims of the respondent. (p. 744 B)

***Title - Failure to present evidence by defendant***

3. It must be borne in mind that even though the appellant had not filed a counter-claim and therefore thought that he was not obliged to defend anything, yet in the face of the evidence that the land was not sold to him by anyone with the authority so to do, he ought to have called in my view, evidence in furtherance of his claim and to challenge the claims of the respondent.

It is patent from the printed record that there was nothing to challenge the claims of the respondent in respect of the disputed land. In other words, the evidence in this case is clearly all one way. And as I have already stated above, the appellant has not shown why the appellate court should intervene in his favour. (p. 744 F)

***Concurrent findings - Wrong acceptance of facts***

4. It ought to be borne in mind that this court will not lightly intervene to set aside the concurrent findings of the court below. For such an intervention to occur, the appellant must show that the facts so found and accepted by the courts below were not borne out by the evidence on the printed record or that they proceeded from the wrong application of the facts to the law.

As the appellant in my own view has not provided such argument to persuade me to reverse the findings of the courts below, I must dismiss the appeal. (p. 745 F)

## NOTABLE POINTS OF INTEREST

### TOBI JSC

#### *1. When Statement of Defence deemed abandoned*

- B It is surprising that a plaintiff imputes criminality in a document that is relied upon by a defendant who does not see the necessity of giving exculpatory evidence. And it is more surprising when that defendant comes before this court to complain that the judgment against him should not be allowed to stay.
- C It is elementary law that where a defendant fails to give evidence at the trial, his Statement of Defence is deemed abandoned. This is because pleadings, by their nature and character, cannot speak. They speak through witnesses and as long as a party refuses or fails to call witnesses to articulate their content, they remain dormant process in the court's file.
- D As a matter of law, they are moribund and no court of law is competent to resuscitate or revive them. (p. 749 A)

### EDOZIE JSC

#### *2. How to treat evidence in previous proceedings*

- E Admittedly, the law is that evidence of a witness taken in earlier proceedings is not relevant in a later trial except for the purpose of discrediting such a witness in cross-examination and for that purpose only. It is not permissible to treat evidence in previous proceedings as one of truth. (p. 750 E)

#### *3. Effect of wrongful admission of inadmissible evidence*

- G Where inadmissible evidence is admitted without objection at the trial, the failure of a party to object will not prevent its inadmissibility from being raised and determined on appeal. It is also settled law that the wrongful admission of inadmissible evidence may or may not lead to the reversal of the judgment appealed against. It will not lead to such a reversal where the inadmissible evidence did not occasion any miscarriage of justice or affect the decision of the court in anyway. (p. 750 H)

#### *4. Need for the defence to lead evidence*

H The plaintiff/respondent and his witnesses led evidence to disprove the

claim but the 4th defendant/appellant led no evidence in support of his pleadings. It is settled law that averments in pleadings are not evidence of matters averred therein. Thus, the evidence led by the plaintiff/respondent to disprove the validity of Exhibit E was unchallenged. It has long been firmly established that where relevant admissible and credible evidence stands unchallenged, uncontradicted, the court has no alternative but to accept it and act on it to establish or controvert a fact or matter in issue. (p. 751 H)

### **REPRESENTATION**

A. O. Abiose Esq., for the Appellant.

Chief M. O. Ayorinde, (with him, K. F. Eludofor), for the Respondent.

### **CASES REFERRED TO**

Hollington v. F. Hewthorn & Coy. Ltd. (1943) 2 All ER 35

Oyewole v. Kelani (1948) WACA 327

Nwachukwu v. Egbuebu (1990) 3 NWLR (Pt.139) 435

U.A.C. (Nig.) Ltd. v. Fasheyitan (1998) 7 S.C. (Pt.II) 35; (1998) 11 E  
NWLR 179

Lasisi Oyewunmi Aroyewun & Ors. v. Oba Yesufu Adeola Adediran  
(2004) 7 SCNJ 240

Alade v. Aborishade (1960) SCNLR 398; (1960) 5 FSC 167, 171

Asuquo Udo Enang & Anor. v. Edem Udo Ekanem & Ors. (1962) 1 All  
NLR 530

Alade v. Olukade (1976) 1 S.C. (Reprint) 83; (1976) 10 NSCC 34-35

Savannah Bank Ltd. v. Pan Atlantic (1987) 1 NWLR (Pt.49) 212

Idundun v. Okumagba (1976) 9-10 S.C. (Reprint) 140; (1976) 9-10 S.C.  
227 at 245

### **LEAD JUDGMENT BY EJIWUNMI JSC**

The action which led to this appeal was commenced in the Ibadan Judicial Division of the High Court of Oyo State of Nigeria by the respondent as plaintiff, against sixteen (16) defendants including the

appellant in this appeal, in Suit No. 1/168/83, for the following claims:-

“1. A declaration that the plaintiff is entitled to the statutory right of occupancy in respect of the land verged red in Plan No.FA11,770 filed with this Statement of Claim.

B 2. N1,000 as damages against each of the defendants for his acts of trespass on the said land since 1981.

3. Injunction restraining the defendants, their servants, agents, privies and other persons claiming through any of them from committing further acts of trespass on, or coming to the land.”

C Pleadings were subsequently ordered, filed and exchanged between the parties. During the course of the proceedings, some of the parties applied for and obtained leave to amend their pleadings, which were duly amended and exchanged.

D In the course of the trial, the respondent gave evidence in support of his case and called four witnesses including the 2nd defendant who gave evidence as the 4th plaintiff witness. Also, the respondent tendered documentary evidence which were accepted and marked Exhibits “A”, “B”, “C”, “D”, “E”, “F”, “G-G1”, “H-H1”, “J”, “K”, “L”, “M”, “N” re-  
E spectively. Among them are: the Deed of Conveyance, Exhibit “A”, with which the disputed land was conveyed to the respondent. Exhibit “B” was the agreement between the respondent and one Kayode Ogunfalu for the purchase from him of his alleged interest in a part of the disputed land by  
F the respondent. Exhibit “M” is the survey plan of the disputed land. And Exhibit “E” was the Deed of Conveyance with which the disputed land was allegedly conveyed to the 4th appellant. This Deed of Conveyance was established to have been forged by two persons, namely, Akanmu Gbadamosi and Ayisatu Amori Gbadamosi, who falsely claimed that the  
G Deed of Conveyance was that which conveyed the property to Chief S. L. Durosaro, 4th defendant/appellant by the land owning family.

H With the conclusion of the case for the respondent before the learned trial Judge, learned counsel for the appellant rested the case of the appellant on that of the respondent and therefore declined to call any evidence. Learned counsel for the 5th-12th defendants similarly rested the case of those defendants on that of the respondent and they did not

also lead any evidence in defence of the action against them.

After addresses by learned counsel for the parties, the learned trial Judge delivered a well-considered judgment. In the course of that judgment, he found that the following facts were properly established by the respondent. These are: that the land in dispute was part of the land that originally belonged to the Samologbe family. The said land was subsequently granted to the Akanji Ogunseye family by the Samologbe. The Akanji Ogunseye family then sold the disputed land to the respondent under native law and custom in 1972. This was followed by a Deed of Conveyance to the respondent at his request. The respondent thereafter took possession of the land and exercised thereon rights of ownership such as digging a well, construction of a prefabricated building, cleared and fanned the land. When the respondent discovered that the appellant was laying claim to the disputed land, he went to see him so as to know what rights he had to the land so that the dispute if any could be resolved amicably. The appellant then gave to the respondent a copy of the Deed of Conveyance, which he had with him as evidence of the sale of the land to him. However, the investigation that was subsequently earned out in respect of that Deed of Conveyance showed that it was a forgery. For that forgery, the vendors of the appellant were prosecuted for forging the signature of Madam Ifafunke Abebi who at the time was the head of the Akanji Ogunseye family.

The learned trial Judge, on the basis of the above pieces of evidence and other related evidence, held as follows, and I quote:-

*“Finally, the plaintiff succeeds in all his claims against the 4th, 13th, 14th, 15th and 16th defendants and they are hereby allowed. In the event, I hereby make a declaration that the plaintiff is entitled to a right of statutory occupancy in respect of all piece and parcel of land shown on Plan No.FA11770 made by A. O. Adebogun, Licensed Surveyor, on the 12th day of April, 1984 and thereon edged Red and which plan was tendered and in evidence as Exhibit M in these proceedings. I also hereby find that the 4th, 13th, 14th, 15th, and 16th defendants are liable to the plaintiff in trespass and I make an award of N1,000.00 against each of them in favour of the plaintiff. In consequence, I hereby make an order of perpetual*

*injunction restraining the 4th, 13th, 14th, 15th and 16th defendants from committing further acts of trespass on the land in dispute. The plaintiff's case against the 2nd and 5th-12th defendants is hereby struck out. As the 1st and 3rd defendants are dead, they are hereby struck out of this action."*

B I have deliberately set out the orders made by the learned trial Judge so as to make the point that the appeal to the court below should not have been encumbered with the names of those who have not been found liable by the learned trial Judge. From a careful reading of those orders made by the trial court, it is manifest that only the 4th, 13th, 14th, C 15th and 16th defendants were found liable. And it is evident from the printed record that it was only the 4th defendant who appealed against the judgment and orders of the trial court. In this regard, I refer to the only Notice of Appeal filed against the judgment and it was on behalf of the 4th defendant alone. It is, therefore, my view and with due respect to learned D counsel that this appeal should have been between the appellant and the respondent only. The court below should not have been wearied with all the names of persons who have not appealed against the judgment of the trial court.

E In the event, the court below considered the appeal as presented to it. And after due consideration of the arguments of counsel in respect of the appeal, the court below dismissed it. As the appellant was still not satisfied with the judgment of the court below, he has filed a further appeal F to this court.

Pursuant to the grounds of appeal filed, the appellant in the brief filed on his behalf by his learned counsel, O. A. Abiose, Esq., raised two issues for the determination of the appeal. Also the respondent in his brief raised two issues, which in my view are similar to those raised in the G appellant's brief.

For that reason, this appeal would be considered in the light of the issues identified in the appellant's brief and which are -

"(1) *Did the respondent impeach the appellant's conveyance, which was earlier in time by credible and admissible evidence?*

H (2) *Whether or not the subsidiary issues raised by the appellant before the Court of Appeal are competent, particularly the wrongful ad-*



*mission of Exhibit "F".*

The learned counsel for the appellant argued two issues together in his brief. The argument of learned counsel for the appellant was mainly directed against the conclusion of the court below that the trial court was right, having regard to the evidence lead at the trial, to have held that the respondent established his claim against the appellant. Moreso as the appellant in the face of the evidence led by the respondent did not give evidence to challenge any of the facts led in support of the case for the respondent.

**The point taken on appeal against the conclusion of the court below appears to be that no reliance should have been placed on Exhibit F by the courts below being a judgment on a criminal proceedings in which the appellant was not a party to. In support of that contention, he referred to the following cases: - Hollington v. F. Hewthorn & Coy. Ltd. (1943) 2 All ER 35; Oyewole v. Kelani (1948) WACA 327; Nwachukwu v. Egbuebu (1990) 3 NWLR (Pt.139) 435. I think the point is well taken. It is no longer disputable having regard to the authorities cited above that a court should not place reliance on a conviction recorded in another court to come to its own conclusion in a civil trial between parties other than those convicted as a result of a criminal trial. It is safer in the interest of justice that the court should come to a decision on the facts placed before it, without regard to the result of other proceedings before another tribunal.**

On the basis of that contention, it is argued for the appellant that the trial court should not have admitted Exhibit F during the trial; as that evidence is inadmissible. That position, he further contends, remains incontestable whether or not the appellant objected to the admission of the documents. For that contention, he referred to the principle espoused in Alade v. Olukade (1976) 2 S.C. 183 at pp. 187-190, where this court held that the position of the law is that a distinction ought to be drawn between documents that are inadmissible on conditions and those that are inadmissible in any event. Whilst in the case of the former the document may be admitted where there is no objection; in case of the latter, the document is inadmissible in spite of the absence of objection. The above proposition

no doubt remains a good guide for a court faced with the decision to admit or not to admit a document in the course of a trial.

**But, where a document such as Exhibit F as in the instant case, was admitted during the trial, the question that must be considered is, whether the court in the evaluation of the facts depended on that document to come to its conclusion. If the case for the respondent could be established without that document, Exhibit F, then the admission of that document cannot be said to have affected adversely the decision of the trial court. In such a situation, the onus lies on the appellant to show that the case made out against him was adversely affected by the admission of Exhibit F. It is my considered view that the appellant failed to discharge that burden before this court and I must therefore uphold the conclusion reached by the court below that the trial court was right to have upheld the claims of the respondent.**

Before concluding, it is pertinent to comment upon an aspect of this appeal. Now, it is clear that the case of the appellant was based even if it is by inference on the premise that the appellant was the owner of the disputed land by virtue of the sale of the said land to him in 1958. It is significant that the appellant did not lead any evidence to establish that fact. **It must be borne in mind that even though the appellant had not filed a counter-claim and therefore thought that he was not obliged to defend anything, yet in the face of the evidence that the land was not sold to him by anyone with the authority so to do, he ought to have called in my view, evidence in furtherance of his claim and to challenge the claims of the respondent.** In this regard, I refer to the evidence of the surveyor, Adesina Olufemi Adebogun, 1st plaintiff witness, who testified thus:-

*“.....Mr. Justice Ayorinde had earlier obtained a conveyance of his land from the family. Mr. Justice Ayorinde took me on the land and indicated to me the cause of dispute on his own portion of the land. I thereafter produced a plan and made copies of it available to the plaintiff. The plan is numbered FA 11770 and signed by me on the 12th day of April, 1984. This is the plan tendered, no objection, admitted in evidence and marked Exhibit M.”*

And also the 4th plaintiff witness, Adebayo Abinde who said inter

alia thus:-

*"I belong to Samologbe family. I am the 2nd defendant. I know the land in dispute. Samologbe had land in the area of the land in dispute. Government had land in the area of the land in dispute. Government acquired our land sometime ago. I do not know the date. We appealed to the Government which released the land to us. I know the plaintiff. He has interest on the land acquired. I know when the plaintiff acquired the land from Fafunke and others to whom our father gave the land. I have heard of Alhaji Ogunseye family. My ancestor granted the land in dispute to Akanki Ogunseye as a gift. The children of Ogunseye sold the land to Justice Ayorinde. My family was told before the sale to the plaintiff. We were there when the sale took place and we showed the boundaries of the land granted to Ogunseye to them."*

**It is patent from the printed record that there was nothing to challenge the claims of the respondent in respect of the disputed land. In other words, the evidence in this case is clearly all one way. And as I have already stated above, the appellant has not shown why the appellate court should intervene in his favour. In this respect, it ought to be borne in mind that this court will not lightly intervene to set aside the concurrent findings of the court below. For such an intervention to occur, the appellant must show that the facts so found and accepted by the courts below were not borne out by the evidence on the printed record or that they proceeded from the wrong application of the facts to the law.** See *Akeredolu v. Akinremi* (1989) 5 S.C. 102; (1989) 3 NWLR (Pt. 108) 64; *Osho v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157; *U.A.C. (Nig.) Ltd. v. Fasheyitan* (1998) 7 S.C. (Pt.II) 35; (1998) 11 NWLR 179; *Lasisi Oyewunmi Aroyewun & Ors. v. Oba Yesufu Adeola Adediran* (2004) 7 SCNJ 240.

**As the appellant in my own view has not provided such argument to persuade me to reverse the findings of the courts below, I must dismiss the appeal.** The appeal is accordingly dismissed by me and I hereby uphold the judgment of the court below. The sum of N10,000.00 is awarded in favour of the respondent.

**BELGORE JSC**

The appellant rested his case entirely on the case of the plaintiff/ respondent and thus offered no evidence. The case of respondent was clearly proved on the evidence on record, even without adverting to Exhibit F, admission of which the appellant is averse. The appeal itself is based on concurrent findings of clear undisputed facts of the trial court which the Court of Appeal had no reason to upset.

I also agree with the lead judgment that this appeal has no merit and dismiss it with N10,000.00 costs to the respondent.

**ONU JSC**

I have been privileged to read before now the judgment just delivered by my learned brother, Ejiwunmi, JSC. I agree with him that the decisions of the two courts below constitute the clearest concurrent findings by the two lower courts which ought not be disturbed unless there is some miscarriage of justice, or a violation of some principles of law or procedure. See *Wankey v. The State* (1993) 5 NWLR (Pt.295) 542 at 552; *Okagbue v. Romaine* (1982) 5 S.C (Reprint) 66; (1982) 5 S.C. 133 at 170; *Elike v. Nwankwoala* (1984) 12 S.C. 301 at 325 and *Evans v. Bartlam* (1937) AC 473.

As in the instant case, more parties than were necessary were initially joined as defendants in the action as well as in the appeal to the court below where strictly speaking, only the appellant and the respondent were parties and were so treated till the proceedings, rightly in my view, terminated in the appellant's favour, I see no reason to disturb the decision arrived at which is neither erroneous in substantive nor procedural law vide *Alhaji K. O. S. Are & Anor. v. Raji Ipaye & Ors.* (1990) 2 NWLR (Pt.32) 298 at 317; *Enang v. Adu* (1981) 11-12 S.C. (Reprint) 17; (1981) 11-12 S.C. 25 at 42; *Ojomu v. Ajao* (1983) 9 S.C 22 at 53; *Lokoyi v. Olojo* (1983) 8 S.C 61 and *Ibodo v. Enarofia* (1980) 5-7 S.C (Reprint) 29; (1980) 5-7 S.C 42 at 58.

For the foregoing reasons and the fuller ones contained in the leading judgment of my learned brother, Ejiwunmi, JSC., I too dismiss the appeal and make similar consequential orders inclusive of the costs awarded therein.

B

### TOBI JSC

I have read the judgment of my learned brother, Ejiwunmi, JSC., and I agree with him that this appeal must be dismissed, as it lacks merit. C

As usual, there are two competing claims to the land in dispute which seem to have a common origin of Samologbe family. It is the case of the plaintiff/respondent that he purchased the land in dispute under native law and custom from the accredited representatives of the Akanji Ogunseye family in 1972. The family executed a Deed of Conveyance (Exhibit A) in his favour in the same year. He claimed that the Akanji Ogunseye family derived their title to the land in dispute from Samologbe family, the acknowledged original owners of the land. He also claimed that on purchase of the land, he exercised various acts of ownership which he pleaded in his Statement of Claim. D E

The 4th defendant/appellant's case is that the land in dispute formed part of landed property which originally belonged to the Samologbe family. That family made a grant to Akanji Ogunseye, a grant which later devolved on his family. He claimed purchasing the land in dispute from the Akanji Ogunseye family in 1958; a purchase which was evidenced by a Deed of Conveyance executed in his favour in 1958. The Deed of Conveyance was admitted as Exhibit E. The 4th defendant/appellant, like the plaintiff/respondent, also pleaded acts of ownership and possession which remained undisturbed until the plaintiff/respondent interfered. While the plaintiff/respondent led evidence at the trial, the 4th defendant/appellant and other defendants did not lead evidence. They rested their case on that of the plaintiff/respondent. F G H

The learned trial Judge arrived inter alia at the following findings: (1) The land in dispute was part of the land that originally belonged to Samologbe family. (2) The Samologbe family granted the land to Akanji

Ogunseye family. (3) The Akanji Ogunseye family sold the land to the plaintiff under native law and custom. (4) The land was later conveyed to the plaintiff/respondent by means of a Deed of Conveyance (Exhibit A). (5) The 4th defendant/appellant and some other persons committed trespass on the land.

The learned trial Judge entered judgment in favour of the plaintiff/respondent against the 4th defendant/appellant and others.

Not satisfied, an appeal was lodged. The Court of Appeal dismissed the appeal and affirmed the decision of the trial court. Still not satisfied, the appellant has come to this court.

The issue for determination, as rightly formulated by the appellant, is the question as to who between the appellant and the respondent acquired a valid title from the Akanji Ogunseye family. In determining the issue, this court sees a straight “battle” between Exhibit A and Exhibit E. While Exhibit A is the Deed of Conveyance of the respondent, Exhibit E is the Deed of Conveyance of the appellant.

Giving evidence on the lack of veracity or authenticity of Exhibit E, the respondent gave evidence on the criminal case relating to the matter:

*“I was in court when Gbadamosi Akanmu and Ayisatu Gbadamosi were charged to the Magistrate’s Court. I was a witness..... I applied for the evidence of Fafunke Abebi at the Magistrate’s Court..... I have a certified true copy of the judgment of Aguda, J., (as he then was), on the appeal in the case. Tendered, no objection. Admitted and marked Exhibit F.”*

Although the respondent led evidence as to the criminality involved in Exhibit E vide Exhibit E the appellant did not deem it necessary to give evidence. He rather rested his case on that of the respondent. The legal implication is that the appellant will stand or fall by the evidence of the respondent and he fell in the two courts below and he is also falling here.

It is surprising that a plaintiff imputes criminality in a document that is relied upon by a defendant who does not see the necessity of giving exculpatory evidence. And it is more surprising when that defendant comes before this court to complain that the judgment against him should not be allowed to stay.

It is elementary law that where a defendant fails to give evidence

at the trial, his Statement of Defence is deemed abandoned. This is because pleadings, by their nature and character, cannot speak. They speak through witnesses and as long as a party refuses or fails to call witnesses to articulate their content, they remain dormant process in the court's file. As a matter of law, they are moribund and no court of law is competent to resuscitate or revive them. B

I think I can stop here. This is a bogus appeal. I dismiss it and affirm the decision of the Court of Appeal. I abide by the costs awarded by my learned brother, Ejiunmi, JSC. C

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### **EDOZIE JSC**

I had a preview of the judgment just read by my learned brother, Ejiunmi, JSC., and I agree with his reasoning and conclusion in dismissing the appeal. D

The bone of contention is the title to a disputed piece and parcel of land. It was common ground that the Samologbe family originally had radical title of the said land and that under native law and custom it granted the land to Akanji Ogunseye family. It is the plaintiff/respondent's case that in 1972, he bought the land in dispute for £1000 (now N2000) from the accredited representatives of Akanji Ogunseye family and this is evidenced by a Deed of Conveyance, Exhibit A, dated 14th August, 1972, registered as No.26 at page 26 in volume 1390 of the Land Registry's Office, Ibadan. On the other hand, the 4th defendant/appellant alleged in his pleadings that he too purchased the said land in dispute in 1957 from the same Akanji Ogunseye family and that a Deed of Conveyance was executed in his favour by the head and principal members of Akanji Ogunseye family. But this assertion was denied in the plaintiff/respondent's reply to the 4th defendant/appellant's Statement of Defence wherein the plaintiff/respondent averred that the 4th defendant/appellant's Deed of Conveyance dated 10/7/58 registered as No.21 at page 21, in volume 263 in the Land Registry Office Ibadan was not executed by the principal representatives of the Akanji Ogunseye family and that the name of Madam Ifafunke Abebi therein was forged by one Ayisatu Amori Gbadamosi who E F G H

was subsequently convicted for forgery in charge No. 1/1075C/80 and the conviction affirmed in Appeal No. 1/CA/75. At the trial, the plaintiff/respondent led evidence and called witnesses to substantiate his claim. He tendered his conveyance admitted as Exhibit A and to show that the 4th defendant/appellant's conveyance was forged, he also tendered it and it was admitted as Exhibit E. The proceedings of the court in respect of the forgery case was admitted as Exhibit F. The 4th defendant/appellant declined to call evidence rather he preferred to rest his case on that of the plaintiff/respondent.

The trial court upheld the plaintiff/respondent's claim to the land in dispute and this was affirmed by the court below. In the further appeal to this court, the contention of the 4th defendant/appellant was that the court proceedings, Exhibit F, was inadmissible in evidence to establish the forgery of his conveyance, Exhibit E. Admittedly, the law is that evidence of a witness taken in earlier proceedings is not relevant in a later trial except for the purpose of discrediting such a witness in cross-examination and for that purpose only. It is not permissible to treat evidence in previous proceedings as one of truth: see Alade v. Aborishade (1960) SCNLR 398; (1960) 5 FSC 167, 171; Asuquo Udo Enang & Anor. v. Edem Udo Ekanem & Ors. (1962) 1 All NLR 530; Arikun v. Ajiwogbo (1962) 2 SCNLR 369; (1962) 1 All NLR 629, Obawole v. Coker (1994) 5 NWLR (Pt. 345) 416 at 433, Sanyaolu v. Coker (1983) 3 S.C. 124.

Where inadmissible evidence is admitted without objection at the trial, the failure of a party to object will not prevent its inadmissibility from being raised and determined on appeal. In Alade v. Olukade (1976) 1 S.C. (Reprint) 83; (1976) 10 NSCC 34-35, this court held that a court is expected in all proceedings before it to admit and act only on evidence which is admissible in law and therefore, if a court should inadvertently admit inadmissible evidence, it is duty bound not to act upon it: see Owonyin v. Omotosho (1961) 2 SCNLR 57, Alashe v. Olori Ilu (1964) 1 All NLR 399. It is also settled law that the wrongful admission of inadmissible evidence may or may not lead to the reversal of the judgment appealed against. It will not lead to such a reversal where the inadmissible evidence did not occasion any miscarriage of justice or affect the decision of the court in anyway: see Ogunsina v. Matanmi (2001) 4 S.C. (Pt.I) 84;



(2001) 9 NWLR (Pt. 718) 286. Nwaeze v. State (1996) 2 NWLR (Pt 428) 1; M.C.C. Ltd. v. Azubuike (1990) 3 NWLR (Pt. 136) 74; Ajayi v. Fisher (1956) 1 SCNLR 279; Orosunlemi v. State (1967) NMLR 278.

In the instant case, it seems to me that if Exhibit F and the evidence in respect of the forgery case is expunged or disregarded, there still remains credible evidence to sustain the judgment in favour of the plaintiff/respondent. From their pleadings, both parties joined issue on whether or not the 4th defendant/appellant's Deed of Conveyance, Exhibit E, was executed by the principal members of Akanji Ogunseye family. The plaintiff/respondent and his witnesses led evidence to disprove the claim but the 4th defendant/appellant led no evidence in support of his pleadings. It is settled law that averments in pleadings are not evidence of matters averred therein; see Savannah Bank Ltd. v. Pan Atlantic (1987) 1 NWLR (Pt.49) 212, Okagbue v. Romaine (1982) 5 S.C (Reprint) 66; (1982) 5 S.C. 133, Mishizawa Ltd. v. Strichard N. Jetheson's (1984) 3 S.C 234 at 363, Fabunmi v. Agbe (1985) 3 S.C 28 at 73. Thus, the evidence led by the plaintiff/respondent to disprove the validity of Exhibit E was unchallenged. It has long been firmly established that where relevant admissible and credible evidence stands unchallenged, uncontradicted, the court has no alternative but to accept it and act on it to establish or controvert a fact or matter in issue: see Olujinle v. Adeagbo (1988) 2 NWLR (Pt.75) 238; Adeyomo v. Ayantegbe (1989) 3 NWLR (Pt.110) 417; U.B.A. Ltd. v. Achoru (1990) 6 NWLR (Pt. 156) 254, Omoregbe v. Lawani (1980) 3-4 S.C (Reprint) 140; (1980) 3-4 S.C 108 at 117.

There was therefore on record credible evidence to disprove the validity of the 4th defendant/appellant's Deed, Exhibit E. To this extent therefore, the admission of the court proceedings, Exhibit F, did not occasion any miscarriage of justice. As was decided by this court in Idundun v. Okumagba (1976) 9-10 S.C (Reprint) 140; (1976) 9-10 S.C 227 at 245, any wrongful admission of evidence shall not constitute a ground for reversing a decision unless the party complaining can show as well that without such evidence the decision complained of would have been otherwise. Indeed, the averments in the plaintiff/respondent's pleadings relating to Exhibit F constitutes what is often referred to as over pleading

and under the rules of pleadings, a pleader who has pleaded more than he strictly needed to have done can disregard the surplus averments and rely only on the relevant and more limited ones; see *Nwankwere v. Adewunmi* (1967) NMLR 45.

B        It is for the forgoing reasons in addition to those more elaborately set out in the leading judgment of Ejiwunmi, JSC., that I, also, dismiss the appeal and abide by the consequential order as to costs made in the said judgment.

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