

SUPREME COURT OF NIGERIA
28TH APRIL, 2006. SC. 307/2001
CORAM:- S. M. A. BELGORE, U. A. KALGO, N. TOBI,
G. A. OGUNTADE, M. MOHAMMED, JJSC

C.S.S. BOOKSHOPS LTD APPELLANT
AND
1. The Registered Trustees of Muslim
Community in Rivers State
2. Governor of Rivers State
3. Commissioner for Lands and RESPONDENTS
Housing Rivers State
4. Attorney General of Rivers State

APPEALS - Leave - Grounds of appeal - That are of mixed law and fact
- Will be struck out - In the absence of leave of court (H1)

APPEALS - Issues - Grounds of appeal - Competence - Allegation that
no issues were raised from grounds 5 & 13 - Is not correct (H2)

APPEALS - Decision - Grounds of appeal - Allegation that they did not
arise - From lower court's decision - Is not substantiated (H3)

LAND USE ACT - Title - Statutory right of occupancy - Where a party
was holder of a State lease title - At the commencement of the Act - He
shall continue to hold the land - As if he were holder of statutory right of
occupancy under s.34 (H4)

LAND USE ACT - Right of occupancy - Revocation of, by the Gover-
nor - Must be as provided in s. 28 of the Act - Or court will declare it
invalid (H5)

LAND USE ACT - Right of occupancy - Notice of revocation - Where
not adequate - Power of revocation - Was not exercised in compliance

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with the Act (H6)

LAND USE ACT - Right of occupancy - Revocation - Validity - Overriding public interest - Where one is a deemed holder of right - When non development will not matter - Revocation in this case - Was invalid (H7)

LAND USE ACT - Existing right - Grant of fresh right of occupancy - Over an existing interest - Is not tantamount to revocation of such interest (H8)

ACTIONS - Locus standi - Appeals - Invalid grant of right of occupancy - Failure of government - To continue in appeal proceedings - Does not remove locus standi of 1st respondent (H9)

JUDGMENTS - Decision - Appeals - Perverse decision - Meaning - Where Court of Appeal ignores relevant facts - Supreme Court will set its decision aside (H10)

FACTS

Before the Rivers State High Court Port Harcourt division, the plaintiff/appellant filed an action against the defendants/respondents. Appellant claimed that the purported revocation of its right of occupancy in respect of the Land in dispute, and grant of certificate of occupancy thereof to the 1st respondent is invalid and of no effect whatsoever. The facts of the case seem not to be in dispute. The property was in 1918 leased by the then Governor General of Nigeria on behalf of the Government of Nigeria to Elder Dempster and Co. Ltd for a term of 75 years commencing from 27-1-1918. The residue of the term of years was variously assigned to different parties until 1965 when the property was assigned to the appellant, the unexpired term then being 28 years, and the same right was duly registered. A building on the land was destroyed during the civil war between 1967 and 1970.

In 1985, the Military Governor of Rivers State acting under the Land Use Act, revoked appellant's right of occupancy, and subsequently

same property was granted to 1st respondent under a certificate of occupancy. The trial court found in favour of the appellant and granted all the reliefs claimed by it. 1st respondent's appeal to the Court of Appeal was allowed. 2nd to 4th defendants/respondents did not join in that appeal. Being aggrieved, appellant has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the appellants were persons in whom the land was vested immediately before the commencement of the Land Use Act 1978, entitling them to be deemed holders of statutory right of occupancy; and if the answer is in the positive whether the trial court adequately evaluated the evidence.

2. Was the revocation of the right of occupancy of the appellants in accordance with land Use Act 1978; and did the trial court adequately evaluate the evidence.

3. Was the grant of the right of occupancy to the 1st respondent by the 2nd respondent in accordance with the Land Use Act 1978.

4. Had the 1st respondent any locus standi in the court below.

HELD (Unanimously allowing the appeal per **MOHAMMED JSC**, **TOBI JSC**, having a different view on the issue of validity of some grounds of appeal)

Grounds of appeal - That are of mixed law and fact

1. Ground 4 is complaining on the finding of the court below that the land in dispute was undeveloped. The evidence on record is that while the appellants were saying that the land was developed, the respondents were claiming that it was not. Therefore since the ground of appeal is not predicated on accepted, undisputed or admitted facts between the parties, the ground at best is one of mixed law and fact. Ground 14 on the other hand is an omnibus around whose status as a ground of fact alone is obvious. Therefore, the two grounds of mixed law and fact and fact alone, could only have been filed with the leave of the court below or of this court as required by section 233(3) of the 1999 constitution. In the absence of the leave sought and granted before filing the two grounds, the grounds remain incompetent and are accordingly hereby struck out.

Consequently, issue No. 5 in the appellants brief arising from these grounds of appeal is hereby struck out. (p. 1391 E)

Grounds of appeal - Competence

B 2. Looking at ground 5, it complained against the failure of the court below to evaluate the evidence adduced on the development or otherwise of the property in dispute. This ground of appeal has been clearly covered under issues two and three in the appellants brief which touched on evaluation of evidence. Ground 13 on the other hand which complained C of the error of the court below in inferring from evidence that the appellants have lost interest in the property in dispute, is in my view adequately covered by the appellants' issue No. one which deals with the vested rights of the appellants over the property in dispute. Accordingly, I hold D that grounds 5 and 13 of the appellants' grounds of appeal are competent as they are covered by issues one, two and three in the appellants brief. (p. 1392 B)

E Grounds of appeal - Allegation

3. According to the 1st respondent, ground 6 of the appellants' grounds of appeal relates to an issue not decided by the court below. As that ground of appeal contains a quotation of what the court below said on F the question of locus standi which the which the appellants are challenging in this appeal, the ground cannot be said to have not risen from the decision of the court below. Ground 6 is quite competent and I so hold.

Next for consideration is whether grounds 7, 8, 9, 10 and 12 of G the appellants' grounds of appeal are incompetent on the ground that they do not arise from the decision of the Court of Appeal being appealed against as claimed by the 1st respondent in the preliminary objection. There is hardly any difference in my view between the ground upon which the competence of ground 6 was challenged and the ground upon H which these remaining five grounds are being challenged. To say that a ground of appeal does not relate to an issue decided by the court below is virtually the same as imputing that grounds of appeal do not arise from the decision of the same court. In any case, taking into consideration

that the trial High Court in its judgment granted all the reliefs sought by the appellants in their claim against the respondents which the court below in its judgment on appeal against the decision of the trial court, allowed the appeal of the respondents, set aside the judgment of the trial court in favour of the appellants and dismissed the appellants' claim containing all the reliefs granted by the trial court, grounds 7, 8, 9, 10 and 12 of the grounds of appeal which complained in the main against the dismissal of the appellants claim against the respondent, certainly arise from the decision of the court below and are therefore competent. This disposes the preliminary objection. (p. 1392 E)

Where a party was holder of a State lease title

4. It is not at all in dispute between the parties in this appeal that following the Deed of Assignment of State Land by indenture of a lease dated 27-1-1918 and subsequent assignments of the same up to 1965, the appellants had acquired and were holders of a State lease title over the land or property in dispute up to the date of 29-3-1978 when the Land Use Act came into force. In other words the evidence led by the appellants and even supported by the evidence of the witness of the 1st respondent who agreed that the land in dispute originally belong to the appellants, clearly established that the land in dispute was vested in the appellants immediately before the commencement of the Land Use Act. Consequently, the right of the appellants was protected under section 34 of the Land Use Act.

Applying the provisions of the Act quoted above to the undisputed facts of this case that the land in dispute located in the Urban Area of Port Harcourt Township was vested in the appellants immediately before the commencement of the Act in 1978, the same land in dispute shall continue to be held by the appellants as if the appellants were holders of statutory right of occupancy issued by the Governor under the Act. (p. 1396 A / G)

Right of occupancy - Revocation of by the Governor

5. It is not at all in doubt that the provisions of section 28 of the Act

contains comprehensive provisions to guide the Governor of a State in the exercise of his vast powers of control of land within the territorial areas of his State particularly the power of revocation of a right of occupancy. One of the preconditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In order not to leave the Governor in any doubt as to the conditions for the exercise of his powers, the law went further to provide adequate guidance by defining in clear terms what overriding public interest means in the case of a statutory right of occupancy under the Act in subsection (2) of section 28. What this means of course is obvious. Any revocation of a right of occupancy by the Governor in exercise of powers under the Act must be within the confine of the provisions of section 28 of the Act. Consequently, any exercise of this power of revocation for purposes outside those outlined or enumerated by section 28 of the Act or not carried out in compliance with provisions of the section, can be regarded as being against the policy and intention of the Land Use Act resulting in the exercise of the power being declared invalid, null and void by a competent court in exercise of its jurisdiction on a complaint by an aggrieved party. (p. 1399 H)

Right of occupancy - Notice of revocation

6. In the present case, one of the complaints of the appellants against the revocation of their right of occupancy was the failure of the 2nd respondent to issue and serve adequate notice of the intended revocation on them in advance. On this question of notice, the trial court in its judgment at page 134 of the record found as follows on the evidence:

“From the above it is clear that the notice of revocation published in the said Rivers State Government Notice No.235 dated 27th April 1985 and published in volume 17, No.27 of the Official Gazette was not a valid mode of service in accordance with the Land Use Act. This is because the mode fell short of the requirement in the Act. There was no personal service or in this case which is a registered company there was no service on the secretary or clerk of the company as provided for. The mode of service is therefore null and void and of no effect”

I entirely agree with the trial court on this finding on the question of notice particularly when the 2nd respondent whose powers were being challenged made no attempt to throw light on the question. The effect of the failure of the 2nd respondent to serve adequate notice on the appellants as required by the Land Use Act prior to the revocation of the right of occupancy means the power of revocation was not exercised in compliance with the provisions of the Act. On the need for notice to be served and its contents, see *L.S.D.P.C v. Banire* (1992) 5 NWLR (pt.243) 620. (p. 1401 B)

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Where one is a deemed holder of right

7. Furthermore, the other complaints of the appellants were that the revocation of their right of occupancy was not done in compliance with the Land Use Act section 28 in that the revocation was not done for overriding public interest as defined in the section and that the appellants were not afforded any hearing before being deprived of their right. All these complaints of the appellants which were fundamental and touching on denial of right under the constitution, remained unanswered by the respondents. The same issues were also not addressed by the court below which dwelled in the main on the question of whether or not the property in dispute between the parties was developed. What the court failed to realize was that the right of the appellants as deemed holders of right of occupancy under the land Use Act over the property in dispute located in the Port Harcourt Urban Area, remained unaffected under the Act irrespective of whether or not the land vested in the appellants was developed provided the land or property in question does not exceed half of one hectare. Apart from the property in dispute being described as plots A-F (1-6) in Block 77 in Port Harcourt Township Layout, there is no evidence on record that the property is more than half of one hectare which under section 34(5) of the Act, the appellants could have been entitled to hold as deemed holders of right of occupancy if the land was undeveloped. In any case the fact that the property was developed by having a residential building on it which was destroyed during the Nigerian Civil War contained in the evidence adduced by the appellants and

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accepted by the trial court remained on record in support of the case of the appellants. In the result, the findings of the trial court that the revocation of the appellants right of occupancy was invalid is quite in order on the evidence presented by the appellants and the law. The court below
B therefore acted in error in setting aside that decision.
(p. 1401 H)

Existing right - Grant of fresh right of occupancy

C 8. Having resolved the issue that the revocation of the appellants right of occupancy was invalid, the question of whether there was a valid grant of right of occupancy in respect of the same property to the 1st respondent had been definitely laid to rest. The reason is of course quite clear. This court has held in several decisions that the mere grant of a right of
D occupancy over an existing right of occupancy or interest, does not amount to the revocation of such existing interest as was being suggested in various arguments behind section 5(2) of the Land Use Act. See Ibrahim v. Mohammed (2003) 6 NWLR (pt.817) 615 at 645 where Kalgo JSC put
E the position of the law thus-

*"It is not in dispute that in the instant appeal, the respondent was not notified by the Governor of the intended revocation of his earlier grant exhibit 1 before granting exhibit A8 (A 13) to the appellant. This is
F a clear contravention of section 28(6) of the Act, it was also not shown by evidence that the respondent's land was required for public purposes or interest. The respondent was not heard before the grant of his land was made to the appellant and no compensation was offered or given to the respondent as required by the Act. It is my respective view therefore that
G under these circumstances the grant of the statutory right of occupancy over the same piece or parcel of land to which the respondent had earlier been granted certificate of occupancy, was invalid, null and void."*

Therefore in the instant case, the grant of the right of occupancy
H to the 1st respondent by the 2nd respondent which was done in violation of the provisions of section 28 of the Land Use Act is invalid, null and void and did not confer any valid title on the 1st respondent. This disposes the third issue for determination.(p. 1403 A)

Locus standi - Appeals - Invalid grant of right of occupancy

9. The fact that these set of respondents decided to abandon the 1st respondent in its fight to defend the invalid and unlawful grant of the property in dispute to it in spite of the fact that these respondents were the cause of its difficulties and the problems it faced in the prosecution of the appeal, defending the case and in the fact that it has interest in the matter which required the determination by the trial court and the court below, it cannot be said that the 1st respondent had no locus standi in the court below. In other words, until the final determination of the dispute between the 1st respondent and the appellants on which of the parties is the rightful holder of the right of occupancy in respect of plots (A-F) 1-6 Block 77 in Port Harcourt Township Layout by this court it cannot be said that the 1st respondent has no locus standi. The 1st respondent therefore had locus standi in the court below as an appellant whose interest in the land in dispute was the subject of litigation before that court. (p. 1404 A)

Appeals - Perverse decision - Meaning

10. The law is trite that a decision of a court is perverse when it ignores the facts or evidence adduced and admitted before it and, when considered as a whole, amounts to a miscarriage of justice. In such a case, an appellate court is bound to interfere with such a decision and to set it aside. The several decisions of this court upholding this principle of law include *Queen v. Ogoto* (1961) 2 SC 366.

Taking into consideration the evidence presented by the two disputing parties in this case in support of their claims over plots (1-6) A-F in Block 77 Port Harcourt Township Layout, I am of the firm view that the court below had clearly ignored relevant facts before it resulting in that court falling into the error of setting aside the judgment of the trial court. Consequently, this court in the determination of this appeal against the judgment of the court below which in all respects in law qualifies as a perverse decision, is duly bound to set it aside. (p. 1404 E)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. Basis for raising issues for determination

B In the 1st respondent's brief of argument, an erroneous view was held that having regard to the fact that out of the three issues raised by the parties in the appeal at the court below which determined the appeal on two of the three issues alone, only two issues could arise for determination in the appeal in this court. This is not the correct position in law. Issues arising for determination of an appeal are determined by the number of competent grounds of appeal filed by the appellant challenging the decision of the court being appealed against. The law is that neither a party nor a court is permitted to raise or deal with any issue which is not related to or does not arise from any ground or grounds of appeal.

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D (p. 1394 D)

2. Issues for determination - Must arise from the grounds of appeal

E The two issues under consideration covering the revocation of the appellants' right of occupancy over the property in dispute and granting of right of occupancy over the same property by the 2nd respondent to the 1st respondent, was not addressed at all in the 1st respondent's brief of argument. Instead, its learned counsel dwelled extensively in argument on the question of equitable defence of laches raised in the second issue for determination in the 1st respondent's brief which defence did not arise at all in any of the grounds of appeal filed by the appellants. It must be emphasized that issues for determination in an appeal must arise from the grounds of appeal filed by the appellant. Equally arising from this statement of the law is that the arguments in support of the issues must be traced to the issues and the grounds of appeal from which such issues were framed. (p. 1398 D)

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H **TOBI JSC**

3. Need for grounds of appeal to arise from the court's decision

The fifth objection is on grounds 7, 8, 9, 10 and 12. The objection is that they do not arise from the decision of the Court of Appeal. I have care-

fully read the 7-page judgment of the Court of Appeal and I entirely agree that the grounds do not arise from the decision of the court. They originated clearly from counsel and that is bad, very bad indeed. Counsel has no right to impute into a judgment what is not there. That is most unfair to the Judge who wrote the judgment. Our adjectival law requires counsel to prepare ground or grounds of appeal from the decision of the court. Where there is no decision on a point, there cannot be complaint. There can only be complaint on a decision. If the event was only on one ground or two, it could have been lightly dismissed as a slip but when the number goes to five, it is bad, to say the least. It is hoped that counsel will always concentrate on the decision of the court when framing ground or grounds of appeal. (p. 1409 D)

REPRESENTATION

Rob Iweka S.A.N., (Mrs. A. N. Iweka with him) for the appellant.
Mahmud Gafar Esq. (A. Aroye with him) for the 1st respondent.

CASES REFERRED TO

Queen v. Ogoto (1961) 2 SC 366

Mogaji v. Odofin (1978) 4 SC 91

Ebba v. Ogoto (1984) 1 SCNLR 372

Agbomeji v. Bakare (1998) 9 NWLR (pt.564) 1 at 8

N.E.P.A. v. Ososanya (2004) 5 NWLR (pt.867) 601 at 624-625

Nigeria Engineering Works Ltd v. Denap Ltd (2001) 18 NWLR (pt.746) 726

Ilona v. Idakwo (2003) 11 NWLR (pt.830) 53 at 83-84

Ibrahim v. Mohammed (2003) 6 NWLR (pt.817) 615 at 645

L.S.D.P.C v. Banire (1992) 5 NWLR (pt.243) 620

Nigerian Engineering Works Ltd v. Denap Ltd (2001) 18 NWLR (pt.746) 726 at 757

Osho v. Foreign Finance Corporation (1991) 4 NWLR (pt.184) 157

Olohunde v. Adeyoju (2000) 10 NWLR (pt.676) 562

Dantsoho v. Mohammed (2003) 6 NWLR (pt.817) 457 at 483

Ibrahim v. Mohammed (2003) 6 NWLR (pt.817) 615 at 644

Ogunleye v. Oni (1990) 2 NWLR (pt.135) 745 at 780

Adisa v. Oyinwola (2000) 10 NWLR (pt.674) 116 at 164

LEAD JUDGMENT BY MOHAMMED JSC

B This is an appeal against the judgment of the Court of Appeal Port
Harcourt Division which on 26-4-2001 allowed an appeal by the 1st de-
fendant from the decision of Manuel J. of the High Court of Justice of
Rivers State sitting at Port Harcourt delivered on 3-3-1997. The Court of
Appeal in its decision allowed the appeal, set aside the judgment of the
C trial court and dismissed the plaintiffs claim.

The appellants which were the plaintiffs at the trial High Court had
sued the respondents and claimed against them as defendants in para-
graph 27 of their amended statement of claim the following reliefs -

D “27. The 1st defendants (sic) have persisted and intend unless
restrained by the honourable court to repeat the acts complained of at
paragraph 26 above, and the plaintiffs claim:

(i) A Declaration that the purported publication in the Rivers State
E Government’s Notice No.235 of 27th April, 1985, purportedly revoking
the alleged rights of occupancy of the plaintiffs in and over plots A-F
Block 77 in Port Harcourt Township Layout does not constitute a valid
notice to the plaintiffs as envisaged by the Land Use Act 1978 and conse-
F quently the said revocation is illegal, null and void and of no effect what-
soever and does not extinguish the rights of occupancy of the plaintiffs.

(ii) A declaration that the purported revocation of the right of oc-
cupancy of the plaintiffs in and over the said plots A-F in Block 77 Port
Harcourt Township Layout aforesaid is null and void and of no effect and
G the said notices thereof are null and void and of no effect in that the said
revocation and the notices thereof are:-

(a) Not for the public purposes envisaged by the Land Use Act
1978.

H (b) Not for public purpose stated in the said notice.

(c) Ultra vires

(d) Capricious and

(e) An abuse of power.

(iii) A declaration that the purported revocation of the alleged right of occupancy in and over plots A-F Blocks 77 in Port Harcourt Township Layout contained in Government Notice No.235 dated 27th April 1985 and published in Official Gazette of Rivers State Government No.27 volume 17 is unconstitutional, null and void and of no effect in that it is contrary to the fundamental rights of the plaintiffs who were not heard or given opportunity to be heard before the purported revocation. B

(iv) A declaration that the notices aforesaid are not in accordance with the law.

(v) A declaration that the grant of certificate of occupancy to the 1st defendant by the 2nd defendant is inoperative, illegal, null and void and of no effect in that the said grant of certificate of occupancy: C

(a) Is ultra vires

(b) Is not for public purpose envisaged by the Land Use Act 1978 D

(d) Is not for public purpose as stated in the Government Notice No.235 of 27th April, 1985 and published in Rivers State Government Gazette No.27 volume 17

(vi) An order setting aside the said grant of certificate of occupancy by the 2nd defendant to the 1st defendant. E

(vii) A declaration that the plaintiffs are the persons in whom plots A-F Block 77 Port Harcourt Township Layout were vested immediately before the commencement of the Land Use Act 1978 and consequently are deemed to be and still are Holders of plots A-F Block 77 Port Harcourt Layout as if a statutory right of occupancy had been issued to them by the Governor of Rivers State. F

(viii) An injunction to restrain the defendants, their servants, agents and functionaries from unlawfully interfering in any way whatsoever with the plaintiffs occupation and enjoyment of the said properties and/or ejecting or attempting to eject the plaintiff, its servants, agents and workers from the said properties.” G

Before the case came up for hearing at the trial High Court, pleadings were duly filed, exchanged and subsequently amended by the parties. In the course of the hearing, the plaintiffs called two witnesses who testified in support of their claims while the 1st defendant called only one H

witness. Although the 2nd, 3rd and 4th defendants also filed a joint statement of defence which was later amended, no evidence was called to support the facts pleaded therein. As can be seen from the reliefs claimed by the plaintiffs, the subject matter of dispute between the parties are
 B plots A-F Block 77 in Port Harcourt Township Layout. The facts of this case as presented by the parties through their pleadings and witnesses being mainly supported by documents, are not in dispute between the parties. What was in dispute was the application of the law to the facts.

C The rights of the plaintiffs to the property in dispute originated from a lease dated 27-1-1918 signed by the then Governor General of Nigeria, between the Government of Nigeria and the Elder Dempster and Company Limited, by which the property known as plots A-F Block 77 in Port Harcourt Township Layout was leased out by the Nigerian Gov-
 D ernment to the Elder Dempster and Company Limited for a term of 75 years commencing from 27th day of January, 1918. On 10-6-1936, the Elder Dempster and Company Limited assigned the same property to E.D. Realisation Company Limited for all the residue of the term of years
 E then unexpired and the same was duly registered. Again on 25-1-1940, E.D. Realization Company Limited assigned the same property to the Church Missionary Trust Association Limited for all the residue of the term of years then unexpired and the same was duly registered in the
 F Land Registry. Later, on 28-1-1965, by another Deed of Assignment, the Church Missionary Trust Association Limited assigned the same property to the plaintiffs now appellants, C.S.S. Bookshops Limited for all the residue of the terms of years then unexpired and the same right was duly
 G registered. In the same year 1965 when the lease was assigned to the plaintiffs, the leasehold had an unexpired term of 28 years and there was a building standing on the property used for residential purposes by the staff of the plaintiffs. However the building was destroyed during the civil war in the area between 1967 and 1970. The plaintiffs however
 H continued to enjoy this leasehold interest on the property in dispute from 1965 up to 29-3-1978 when the Land Use Act came into operation. The plaintiffs continued to enjoy the interest in the property in dispute which devolved to it with the commencement of the Land Use Act until 27-4-

1985, when by a notice published in the Rivers State Government Gazette No.27 volume 17, the Military Governor of Rivers State of Nigeria the 2nd defendant, purported to have revoked the right of occupancy of the plaintiffs in the property in dispute without affording the plaintiffs the opportunity of being heard. Subsequently, the same property in dispute was granted to the 1st defendant by the 2nd defendant under a certificate of occupancy in exercise of powers under the Land Use Act. Aggrieved by the action of the 1st defendant in revoking their right of occupancy, the plaintiffs filed this action at the trial Port Harcourt High Court of Justice challenging the alleged revocation on the grounds among others that the revocation was illegal, null and void and of no effect whatsoever and did not extinguish the right of occupancy of the plaintiffs as the 1st defendant's action in the revocation was contrary to provisions of the constitution and the Land Use Act.

The 1st defendant on its part asserted that the action of the 2nd defendant in revoking the plaintiffs' right of occupancy was quite in order under the Law and so also was the grant of the same property in dispute to it by the 2nd defendant taking into consideration the fact that the 1st defendant had been using the property in dispute for special prayers for many years. The 1st defendant therefore merely regarded the action of the 2nd defendant in issuing a certificate of occupancy dated 27-4-1985 in respect of the Land in dispute to it, as only confirming the right of the 1st defendant over the property in dispute which it had been using before the coming into force of the Land Use Act in 1978.

At the end of the hearing of the case in the dispute between the parties in the course of which two witnesses were called by the plaintiffs while only one witness was called by the 1st defendant, a number of documents were tendered and received in evidence. The trial court after hearing the addresses of the learned counsel for the parties came to the conclusion that the plaintiffs had succeeded in proving their case against the defendants particularly the 2nd - 4th defendants who offered no defence to the action, and granted all the reliefs claimed by the plaintiffs. Apparently, the 2nd, 3rd and 4th defendants had no quarrel at all with this judgment against them and therefore did not appeal against it. The 1st

defendant however whose interest was at stake over the property in dispute, has appealed against the judgment to the Court of Appeal Port Harcourt Division, which after hearing the parties comprising the plaintiffs and the 1st defendant alone as active participants since the 2nd, 3rd and 4th defendants did not participate in that appeal, allowed the appeal, set aside the judgment of the trial High Court and dismissed all the plaintiffs claims. The present appeal now in this court is by the plaintiffs which were dissatisfied with the decision of the Court of Appeal dismissing their claims. Henceforth in this judgment, the parties shall be referred to as the appellants in place of the plaintiffs and the respondents instead of defendants.

In their Notice of Appeal dated 30-4-2001 and filed at the registry of the court below on 3-5-2001, the appellants challenged the decision of the Court of Appeal delivered on 26-4-2001 against them in 14 grounds of appeal from which the following five issues were formulated -

"1. Whether the appellants were persons in whom the land was vested immediately before the commencement of the Land Use Act 1978, entitling them to be deemed holders of statutory right of occupancy; and if the answer is in the positive whether the trial court adequately evaluated the evidence.

2. Was the revocation of the right of occupancy of the appellants in accordance with land Use Act 1978; and did the trial court adequately evaluate the evidence.

3. Was the grant of the right of occupancy to the 1st respondent by the 2nd respondent in accordance with the Land Use Act 1978.

4. Had the 1st respondent any locus standi in the court below.

5. Was the judgment supported by the weight of evidence."

In the respondent's brief filed by the 1st respondent, its learned counsel saw only two issues arising for determination from the 14 grounds of appeal filed by the appellants. The issues are

"1. Whether the land was vested in the appellant immediately before the commencement of the Land Use Act so as to be deemed holder of a statutory right of occupancy.

2. Whether the court below was right in holding that the trial court

ought not to have" granted the declarations sought in the circumstances of the case."

Although the 1st respondent's brief of argument contains arguments on preliminary objection raised regarding the competence or otherwise of some of the grounds of appeal filed by the appellants, no notice of the preliminary objection to the hearing of the appeal was filed by the 1st respondent as required by Order 2 Rule 9 of the this court within the period of three days prescribed. All the same since the appellants also have responded fully to the objections in the reply brief of argument, I shall deal with the preliminary objection first.

Without quoting grounds 1 and 3 of the grounds of appeal to show how these grounds do not relate the particulars thereof, it was argued by the 1st respondent's counsel that the two grounds are incompetent relying on the case of *Bala v. Bankole* (1986) 3 NWLR (pt.27) 141. On going through the two grounds of appeal together with their particulars, there is nothing in the framing of these grounds of appeal that may be regarded as having affected the competence of the grounds which are quite in order.

Grounds 4 and 14 on the other hand were described as grounds raising issues of mixed law and fact which required the leave of the court below or of this court before filing as prescribed by section 233(3) of the 1999 Constitution. **Ground 4 is complaining on the finding of the court below that the land in dispute was undeveloped. The evidence on record is that while the appellants were saying that the land was developed, the respondents were claiming that it was not. Therefore since the ground of appeal is not predicated on accepted, undisputed or admitted facts between the parties, the ground at best is one of mixed law and fact. Ground 14 on the other hand is an omnibus around whose status as a ground of fact alone is obvious. Therefore, the two grounds of mixed law and fact and fact alone, could only have been filed with the leave of the court below or of this court as required by section 233(3) of the 1999 constitution. In the absence of the leave sought and granted before filing the two grounds, the grounds remain incompetent and are accordingly**

hereby struck out. Consequently, issue No. 5 in the appellants brief arising from these grounds of appeal is hereby struck out. See. Ferodo Ltd v. Ibeto Industries Ltd (2004) 5 NWLR (pt.866) 317 at 344.

The next grounds of appeal attacked by the 1st respondent are
 B grounds 5 and 13 on which it was alleged no issues for determination
 have been distilled. Looking at ground 5, it complained against the
 failure of the court below to evaluate the evidence adduced on the
 development or otherwise of the property in dispute. This ground
 C of appeal has been clearly covered under issues two and three in
 the appellants brief which touched on evaluation of evidence. Ground
 13 on the other hand which complained of the error of the court
 below in inferring from evidence that the appellants have lost inter-
 D est in the property in dispute, is in my view adequately covered
 by the appellants' issue No. one which deals with the vested rights
 of the appellants over the property in dispute. Accordingly, I hold
 that grounds 5 and 13 of the appellants' grounds of appeal are com-
 petent as they are covered by issues one, two and three in the ap-
 E pellants brief.

According to the 1st respondent, ground 6 of the appellants' grounds of appeal relates to an issue not decided by the court below. As that ground of appeal contains a quotation of what the court
 F below said on the question of locus standi which the which the ap-
 pellants are challenging in this appeal, the ground cannot be said to
 have not risen from the decision of the court below. Ground 6 is
 quite competent and I so hold.

Next for consideration is whether grounds 7, 8, 9, 10 and 12
 G of the appellants' grounds of appeal are incompetent on the ground
 that they do not arise from the decision of the Court of Appeal
 being appealed against as claimed by the 1st respondent in the pre-
 H liminary objection. There is hardly any difference in my view be-
 tween the ground upon which the competence of ground 6 was chal-
 lenged and the ground upon which these remaining five grounds
 are being challenged. To say that a ground of appeal does not relate
 to an issue decided by the court below is virtually the same as im-

puting that grounds of appeal do not arise from the decision of the same court. In any case, taking into consideration that the trial High Court in its judgment granted all the reliefs sought by the appellants in their claim against the respondents which the court below in its judgment on appeal against the decision of the trial court, allowed the appeal of the respondents, set aside the judgment of the trial court in favour of the appellants and dismissed the appellants' claim containing all the reliefs granted by the trial court, grounds 7, 8, 9, 10 and 12 of the grounds of appeal which complained in the main against the dismissal of the appellants claim against the respondent, certainly arise from the decision of the court below and are therefore competent. This disposes the preliminary objection.

When this appeal came up for hearing in this court on 30-1-2006, only the appellants and the 1st respondent filed their respective briefs of argument. The other parties comprising of the 2nd, 3rd and 4th respondents were absent and not represented by counsel although they were duly served. In spite of the fact that these set of respondents were duly served with the appellants' and the 1st respondent's brief of argument, no respondents' brief of argument was filed on their behalf before the appeal came up for hearing. As the result of this situation, this court acted in accordance with the provisions of Order 6 rule 8(7) of the Supreme Court Rules, 1985 to deem the appeal argued on the appellants' and the 1st respondent's brief of argument only. This rule states:-

“(7) When an appeal is called, and it is discovered that a brief has been filed for only one of the parties and neither of the parties concerned nor their legal practitioners appear to present oral argument, the appeal shall be regarded as having been argued on that brief.”

See also the case of Franchal Nigeria Ltd v. Nigeria Arab Bank Ltd (2000) 9 NWLR (pt.671) 1 at 10 where Uwais, Chief Justice of Nigeria explained the position of the law. The present appeal was therefore heard on the appellants' and the 1st respondent's brief of argument alone. The action of the 2nd, 3rd and 4th respondents in this case means they are no longer prepared to play the role of co-respondents with the 1st respon-

dent in this appeal which is to demonstrate if appropriate, that no error was committed by the court below in the judgment and to defend, within the limits of the law, the decision appealed against. See *Ogunye v. The State* (1999) 5 NWLR (pt. 604) 548 at 563 where Iguh JSC outlined the role of a respondent in an appeal. I think this action on the part of these set of respondents who were the key players in the dispute between the appellants and the 1st respondent in this appeal, having declined to actively participate in the appeal at the court below where the 1st respondent was the appellant, is certainly taking the right path in declining to play the same role in this court where the appellants who were the successful parties at the trial court are now the appellants. In other words these respondents having thrown their weight behind the 1st respondent in this appeal in the struggle to defend the action at the trial court but failed to achieve the desired result, their decision to play the role of on-lookers in subsequent combat between the two parties may not be out of place having regard to the nature of the dispute and parties involved.

In the 1st respondent's brief of argument, an erroneous view was held that having regard to the fact that out of the three issues raised by the parties in the appeal at the court below which determined the appeal on two of the three issues alone, only two issues could arise for determination in the appeal in this court. This is not the correct position in law. Issues arising for determination of an appeal are determined by the number of competent grounds of appeal filed by the appellant challenging the decision of the court being appealed against. The law is that neither a party nor a court is permitted to raise or deal with any issue which is not related to or does not arise from any ground or grounds of appeal. See *Oniah v. Anyia* (1989) 1 NWLR (pt.99) 514; *Nwosu v. Udejaja* (1990) NWLR (pt.125) 188 and *Mark v. Eke* (2004) 5 NWLR (pt.865) 54 at 82. Therefore since the two issues formulated in the 1st respondent's brief have the backing of the grounds of appeal filed by the appellants, they are relevant for the determination of this appeal. The remaining four issues in the appellants' brief are equally potent having regard to the grounds of appeal in their support, I shall determine the appeal on the issues as identified in the appellants' brief .

The first issue for determination is whether the appellants were persons in whom the land or property in dispute was vested immediately before the commencement of the Land Use Act in March 1978 entitling them to be deemed holders of statutory right of occupancy. It was submitted for the appellants on the authority of the decision of this court B in *Nwocha v. Governor of Anambra State & Ors* (1984) 6 S.C. 362 at 403, that under the Land Use Act, the only right cognizable is the right of occupancy. According to the appellants, on the evidence adduced at the trial High Court particularly the contents of exhibit 'B' the deed of assignment in 1965, the land or property in dispute known as and called C plots 1-6 (A-F) in Block 77 Port Harcourt Township Rivers State, was assigned by the Church Missionary Association Limited to the Church Missionary Society (Nigeria) Bookshops, subsequently known as C.S.S, Bookshops Limited who are the appellants. The root of title of the appel- D lants in Exhibit 'B', argued the learned counsel, was traced in evidence to exhibits 'C', 'D', and 'E' which are leasehold titles deeds which originated from the Government of Nigeria, pointing out that from the oral and documentary evidence, the appellants as plaintiffs had established E that they were persons in whom the land known as and called plots 1-6 (A-F) in Block 77 Port Harcourt Township Rivers State was vested immediately before the commencement of the Land Use Act in 1978 thereby entitling the appellants to be deemed holders of statutory right of occu- F pancy.

For the 1st respondent however it was contended that the appellants were not and cannot be deemed holders of a statutory right of occupancy because of the nature of the appellants' interest before the promulgation of the Land Use Act; that the appellants being lessees of the G land which was State land, will remain on the land in accordance with the terms of the lease notwithstanding the promulgation of the Land Use Act, learned counsel further submitted that the appellants being in occupation of the Land in dispute under a lease cannot be regarded as a holder H of right of occupancy but as an occupier of the Land under the Land Use Act which defines who is a holder of right of occupancy and who is a mere occupier of Land. The case of *Ajiboye v. Yakubu* (1991) 6 SCNJ

69 was relied upon in support of the stand of the 1st respondent.

It is not at all in dispute between the parties in this appeal that following the Deed of Assignment of State Land by indenture of a lease dated 27-1-1918 and subsequent assignments of the same up to 1965, the appellants had acquired and were holders of a State lease title over the land or property in dispute up to the date of 29-3-1978 when the Land Use Act came into force. In other words the evidence led by the appellants and even supported by the evidence of the witness of the 1st respondent who agreed that the land in dispute originally belong to the appellants, clearly established that the land in dispute was vested in the appellants immediately before the commencement of the Land Use Act. Consequently, the right of the appellants was protected under section 34 of the Land Use Act which in sub-sections (1), (2) and (5) state as follows-

“34(1) The following provisions of this section shall have effect in respect of land in an urban area vested ; in any person immediately before the commencement of this Act.

(2) Where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor ; under this Act .

xx

(5) When on the commencement of this Act the Land is undeveloped, then -

(a) One plot or portion of the land not exceeding half of one hectare in area shall subject to subsection (6) of this , section, continue to be held by the person in whom the land was so vested as if the holder of the land was the holder of statutory right of occupancy granted by the Governor in respect of the plot or portion as aforesaid under this Act.”

Applying the provisions of the Act quoted above to the undisputed facts of this case that the land in dispute located in the Urban Area of Port Harcourt Township was vested in the appellants immediately before the commencement of the Act in 1978, the same land in dispute shall continue to be held by the appellants as if the

appellants were holders of statutory right of occupancy issued by the Governor under the Act. See *Ogunleye v. Oni* (1990) 2 NWLR (pt.135) 745 at 780; *Adisa v. Oyinwola* (2000) 10 NWLR (pt.674) 116 at 164 and *Ilona v. Idakwo* (2003) 11 NWLR (pt.830) 53 at 83. In view of the location of the land in dispute in the Urban Area of Port Harcourt Township, the argument of the 1st respondent that the appellants were only occupiers of the land in dispute under the Act immediately before the commencement of the Land Use Act is baseless because under the Act, the term “occupier” means a person lawfully occupying land under customary law. See *Ogunleye v. Oni* (supra) at page 783. The case of *Ajiboye v. Yakubu* (1991) 6 SCNJ 69 relied upon by the 1st respondent in which the land in dispute was held under customary law is not applicable to the present case which involves a dispute over plots of land in Port Harcourt Township Layout, which are the subject of a right of occupancy under the Land Use Act. I resolve this issue in favour of the appellants.

Next issue for determination is whether the revocation of the right of occupancy of the appellants was in accordance with the Land Use Act. The determination of this issue will also take care of the next issue No. 3 which is whether the grant of a right of occupancy to the 1st respondent by the 2nd respondent was in accordance with the Land Use Act. Learned counsel to the appellants observed that the 2nd respondent who revoked the appellants’ right of occupancy and granted a certificate of occupancy to the 1st respondent did not appeal against the judgment of the trial court and at the hearing did not call any witness. Learned counsel stressed that in support of their case at the trial court, the appellants challenged the validity of the revocation of their right of occupancy on a number of grounds including that -

“(1) the notice of revocation in the Gazette was null and void being contrary to the provisions of Land Use Act which prescribed personal service;

(2) the revocation was not for the public purpose as envisaged by the Land Use Act;

(3) the revocation was not for the public purpose stated in the said

notice; and

(4) the appellants were not heard before the revocation.”

Learned counsel further argued that the appellants led unshaken, uncontradicted and virtually unchallenged evidence in support of all these grounds and that by virtue of the decisions *Awani v. Olorunkosebi* (1991) 7 NWLR (pt.203) 336 at 356; *Bello v. Emeka* (1981) 1 SC 101 at 124; *Adejumo v. Ayetegbo* (1989) 3 NWLR (pt. 110) 417 and *Niger Construction Company Limited v. Okugbeni* (1987) 4 NWLR (pt.67) 784, the trial court was satisfied that the appellants had proved their claim that the revocation of their right of occupancy over the property in dispute and the granting of a certificate of occupancy by the 2nd respondent to the 1st respondent over the same property in dispute, was illegal, null and void and of no effect. To this end, concluded the learned counsel, the judgment of the court below allowing the 1st respondents’ appeal and dismissing all the reliefs granted to the appellants by the trial court, was given in error to warrant and justify its being set aside in allowing this appeal.

The two issues under consideration covering the revocation of the appellants’ right of occupancy over the property in dispute and granting of right of occupancy over the same property by the 2nd respondent to the 1st respondent, was not addressed at all in the 1st respondent’s brief of argument. Instead, its learned counsel dwelled extensively in argument on the question of equitable defence of laches raised in the second issue for determination in the 1st respondent’s brief which defence did not arise at all in any of the grounds of appeal filed by the appellants. It must be emphasized that issues for determination in an appeal must arise from the grounds of appeal filed by the appellant. Equally arising from this statement of the law is that the arguments in support of the issues must be traced to the issues and the grounds of appeal from which such issues were framed. I say no more.

The provisions of the law empowering the Governor to revoke right of occupancy granted by him or deemed granted by him under section 34(2) and (5) of the Land Use Act are contained in section 28 of the Act where the relevant subsections provide:

Act contains comprehensive provisions to guide the Governor of a State in the exercise of his vast powers of control of land within the territorial areas of his State particularly the power of revocation of a right of occupancy. One of the preconditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In order not to leave the Governor in any doubt as to the conditions for the exercise of his powers, the law went further to provide adequate guidance by defining in clear terms what overriding public interest means in the case of a statutory right of occupancy under the Act in subsection (2) of section 28. What this means of course is obvious. Any revocation of a right of occupancy by the Governor in exercise of powers under the Act must be within the confine of the provisions of section 28 of the Act. Consequently, any exercise of this power of revocation for purposes outside those outlined or enumerated by section 28 of the Act or not carried out in compliance with provisions of the section, can be regarded as being against the policy and intention of the Land Use Act resulting in the exercise of the power being declared invalid, null and void by a competent court in exercise of its jurisdiction on a complaint by an aggrieved party. See *Osho v. Foreign Finance Corporation* (1991) 4 NWLR (pt.184) 157; *Olohunde v. Adeyoju* (2000) 10 NWLR (pt.676) 562; *Dantsoho v. Mohammed* (2003) 6 NWLR (pt.817) 457 at 483 and *Ibrahim v. Mohammed* (2003) 6 NWLR (pt.817) 615 at 644 where in the judgment of this court, *Kalgo JSC* in the lead judgment had this to say on the exercise of powers of revocation of right of occupancy under section 28 of the Act-

“Furthermore, the Act itself provides some checks and balances which must be observed before making any grant, the conditions under which such grants can be revoked and what follows after such revocation. It provides under s.28 that the Governor can only revoke a right of occupancy for ‘overriding public interest which has been defined both in respect of statutory and customary rights of occupancy. If such powers of revocation are to be exercised, the holder of the right of occupancy must be notified in advance. Revocation of a right of occupancy for public

purpose or in public interest does not include the revocation of the right of a grantee for the purpose of vesting it in another. Therefore, since revocation of the grant involves the deprivation of the proprietary rights and obligations of a grantee, all the terms and conditions laid down by the Act must be strictly adhered to and complied with. And so far a revocation of a right of occupancy to be valid in Nigeria, it must be made strictly in compliance with s.28 of the Land Use Act."

In the present case, one of the complaints of the appellants against the revocation of their right of occupancy was the failure of the 2nd respondent to issue and serve adequate notice of the intended revocation on them in advance. On this question of notice, the trial court in its judgment at page 134 of the record found as follows on the evidence:

"From the above it is clear that the notice of revocation published in the said Rivers State Government Notice No.235 dated 27th April 1985 and published in volume 17, No.27 of the Official Gazette was not a valid mode of service in accordance with the Land Use Act. This is because the mode fell short of the requirement in the Act. There was no personal service or in this case which is a registered company there was no service on the secretary or clerk of the company as provided for. The mode of service is therefore null and void and of no effect"

I entirely agree with the trial court on this finding on the question of notice particularly when the 2nd respondent whose powers were being challenged made no attempt to throw light on the question. The effect of the failure of the 2nd respondent to serve adequate notice on the appellants as required by the Land Use Act prior to the revocation of the right of occupancy means the power of revocation was not exercised in compliance with the provisions of the Act. On the need for notice to be served and its contents, see *L.S.D.P.C v. Banire* (1992) 5 NWLR (pt.243) 620; *Nigerian Engineering Works Ltd v. Denap Ltd* (2001) 18 NWLR (pt.746) 726 at 757; and *Provost Lagos State College of Education v. Dr. Kolawole Edun or Ors* (2004) 6 NWLR (pt.870) 476 at 508. Furthermore, the

other complaints of the appellants were that the revocation of their right of occupancy was not done in compliance with the Land Use Act section 28 in that the revocation was not done for overriding public interest as defined in the section and that the appellants were not afforded any hearing before being deprived of their right. All these complaints of the appellants which were fundamental and touching on denial of right under the constitution, remained unanswered by the respondents. The same issues were also not addressed by the court below which dwelled in the main on the question of whether or not the property in dispute between the parties was developed. What the court failed to realize was that the right of the appellants as deemed holders of right of occupancy under the land Use Act over the property in dispute located in the Port Harcourt Urban Area, remained unaffected under the Act irrespective of whether or not the land vested in the appellants was developed provided the land or property in question does not exceed half of one hectare. Apart from the property in dispute being described as plots A-F (1-6) in Block 77 in Port Harcourt Township Layout, there is no evidence on record that the property is more than half of one hectare which under section 34(5) of the Act, the appellants could have been entitled to hold as deemed holders of right of occupancy if the land was undeveloped. In any case the fact that the property was developed by having a residential building on it which was destroyed during the Nigerian Civil War contained in the evidence adduced by the appellants and accepted by the trial court remained on record in support of the case of the appellants. In the result, the findings of the trial court that the revocation of the appellants right of occupancy was invalid is quite in order on the evidence presented by the appellants and the law. The court below therefore acted in error in setting aside that decision.

On the issue of whether the grant of the right of occupancy to the 1st respondent by the 2nd respondent in the circumstances of this case was in accordance of the Land Use Act, the answer is obviously in the

negative. This is because **having resolved** the issue that the revocation of the appellants right of occupancy was invalid, the question of whether there was a valid grant of right of occupancy in respect of the same property to the 1st respondent had been definitely laid to rest. The reason is of course quite clear. This court has held in several decisions that the mere grant of a right of occupancy over an existing right of occupancy or interest, does not amount to the revocation of such existing interest as was being suggested in various arguments behind section 5(2) of the Land Use Act. See Ibrahim v. Mohammed (2003) 6 NWLR (pt.817) 615 at 645 where Kalgo JSC put the position of the law thus-

"It is not in dispute that in the instant appeal, the respondent was not notified by the Governor of the intended revocation of his earlier grant exhibit 1 before granting exhibit A8 (A 13) to the appellant. This is a clear contravention of section 28(6) of the Act, it was also not shown by evidence that the respondent's land was required for public purposes or interest. The respondent was not heard before the grant of his land was made to the appellant and no compensation was offered or given to the respondent as required by the Act. It is my respectful view therefore that under these circumstances the grant of the statutory right of occupancy over the same piece or parcel of land to which the respondent had earlier been granted certificate of occupancy, was invalid, null and void."

See also Olohunde v, Adeyoju (2000) 10 "NWLR (pt.676) 562; Nigeria Engineering Works Ltd v. Denap Ltd (2001) 18 NWLR (pt.746) 726 and Iona v. Idakwo (2003) 11 NWLR (pt.830) 53 at 83-84. Therefore in the instant case, the grant of the right of occupancy to the 1st respondent by the 2nd respondent which was done in violation of the provisions of section 28 of the Land Use Act is invalid, null and void and did not confer any valid title on the 1st respondent. This disposes the third issue for determination.

The remaining issue of whether or not the 1st respondent had any locus standi in the court below has already been determined in the course of the determination of the preliminary objection of the 1st respondent

to the appellants grounds of appeal where I dealt with the effect of the failure of the 2nd, 3rd and 4th respondents to defend the case against them by the appellants in the trial court, the court below and in this court.

The fact that these set of respondents decided to abandon the 1st respondent in its fight to defend the invalid and unlawful grant of the property in dispute to it in spite of the fact that these respondents were the cause of its difficulties and the problems it faced in the prosecution of the appeal, defending the case and in the fact that it has interest in the matter which required the determination by the trial court and the court below, it cannot be said that the 1st respondent had no locus standi in the court below. In other words, until the final determination of the dispute between the 1st respondent and the appellants on which of the parties is the rightful holder of the right of occupancy in respect of plots (A-F) 1-6 Block 77 in Port Harcourt Township Layout by this court it cannot be said that the 1st respondent has no locus standi. The 1st respondent therefore had locus standi in the court below as an appellant whose interest in the land in dispute was the subject of litigation before that court.

The law is trite that a decision of a court is perverse when it ignores the facts or evidence adduced and admitted before it and, when considered as a whole, amounts to a miscarriage of justice. In such a case, an appellate court is bound to interfere with such a decision and to set it aside. The several decisions of this court upholding this principle of law include Queen v. Ogodo (1961) 2 SC 366; Mogaji v. Odojin (1978) 4 SC 91; Ebba v. Ogodo (1984) 1 SCNLR 372; Abisi v. Ekwealor (1993) 6 NWLR (pt.302) 643; Agbomeji v. Bakare (1998) 9 NWLR (pt.564) 1 at 8 Jack v. Whyte (2001) 6 NWLR (pt.709) 266; Odugbo v. Abu (2001) 14 NWLR (pt.732) 45; Incur (Nigeria) Plc v. Bolax Ent. (Nigeria) (2001) 12 NWLR (pt.728) 646; and N.E.P.A. v. Ososanya (2004) 5 NWLR (pt.867) 601 at 624-625. Taking into consideration the evidence presented by the two disputing parties in this case in support of their claims over plots (1-6) A-F in Block 77 Port Harcourt Township Layout, I am of the firm view that the

court below had clearly ignored relevant facts before it resulting in that court falling into the error of setting aside the judgment of the trial court. Consequently, this court in the determination of this appeal against the judgment of the court below which in all respects in law qualifies as a perverse decision, is duly bound to set it aside. B

In the final analysis and for all the reasons I have given in this judgment, I find myself agreeing with the learned senior counsel for the appellants that this appeal has merit. Accordingly, the appeal is hereby allowed. The judgment of the court below delivered on 26-4-2001 is set aside. C

In place of that judgment set aside, I restore and affirm the judgment of the High Court of Justice of Rivers State Port Harcourt delivered on 3-3-1997.

The appellants are entitled to costs which I assess at N5,000.00 in D the court below and N10,000.00 in this court.

BELGORE JSC

I find great merit in this appeal and as held by my learned brother, Mahmud Mohammed JSC the Court of Appeal was in error to have disturbed the clear and correct findings of trial High Court. For the full reasons in the lead judgment, I also allow the appeal and make the same F consequential orders as to costs. I restore the judgment of trial High Court.

KALGO JSC

I have had the opportunity of reading in advance the judgment of my learned brother Mohammed JSC in this appeal. In the judgment, all the issues arising for determination were in my view, painstakingly and fully considered. I entirely agree with and adopt as mine, all the findings and conclusions reached therein. I have nothing useful to add. I therefore H find that there is merit in the appeal. I accordingly allow it and set aside the decision of the Court of Appeal and restore that of the trial court. I

abide by the order of costs made in the said judgment.

TOBI JSC

B I have read in draft the judgment of my learned brother, Mohammed,
JSC just delivered and I agree with him. The case of the plaintiff/appellant
is that by a deed of assignment dated 28th January 1965 the Church
Missionary Trust Association Limited assigned the land in dispute to the
appellant “for all the residue of the term of years then unexpired” and same
C was registered as No. 78 at page 78 in Volume 416 of the Land Registry.
The building was destroyed during the Nigerian Civil War. The appellant
was continuously in occupation of the land from 1965 to 1978 when the
Land Use Act was promulgated. The appellant continued to remain in
D occupation when the 2nd respondent revoked the right of occupancy in
1985. He granted same to the 1st respondent.

The 1st respondent claimed that in 1981, the 2nd respondent re-
voked the right of occupancy of the appellant, cancelled the lease in 1981
E and gave the land to the 1st respondent, who fenced and laid foundation
to build a mosque. When the building got up to the DPC level, a police-
man came with a paper and asked the 1st respondent to stop work on the
land. Although DW1 said that the 1st respondent has not a certificate of
F registration, witness denied that the appellant is the owner of the land in
dispute.

The appellant filed an action claiming eight reliefs - six declara-
tions, one setting aside the grant of certificate of occupancy to the 1st
respondent and an injunction.

G The learned trial Judge gave judgment to the appellant as plaintiff.
The Court of Appeal set aside the judgment of the trial Judge and dis-
missed the claims of the appellant. The appellant has come to this court.

Briefs were filed and duly exchanged. The appellant formulated
H the following issues for determination:

“(1) *Whether the Appellants were persons in whom the land was
vested immediately before the commencement of the Land Use. Act 1978,
entitling them to be deemed holders of statutory right of occupancy; and*

if the answer is in the positive whether the trial court adequately evaluated the evidence.

(2) Was the revocation of the right of occupancy of the Appellants in accordance with Land Use Act 1978; and did the trial court adequately evaluate the evidence?

B

(3) Was the grant of a right of occupancy to the 1st Respondents by the 2nd Respondent in accordance with the Land Use Act 1978?

(4) Had the 1st Respondents any locus standi in the court below?

(5) Was the judgment supported by the weight of evidence?"

C

The 1st Respondent filed the following issues for determination:

"1. Whether the land was vested in the appellant immediately before the commencement of the Land Use Act so as to be deemed holder of a statutory right of occupancy.

2. Whether the Court below was right in holding that the trial Court ought not to have granted the declarations sought in the circumstances of the case.

D

As it is, Issue No. 1 of the appellant's brief and Issue No. 1 of the 1st respondent's brief are similar and they both deal with whether the land was vested in the appellant before the Land Use Act was promulgated.

E

The gravamen of the appellant's case is that the appellant by virtue of section 34(2) or (5) of the Land Use Act 1978 was holder of a right of occupancy, derived from a deed of assignment, Exhibit B. Learned counsel faulted the relation of the appellant's right of occupancy and granting a certificate of occupancy to the 1st respondent. He also challenged the locus stand of the 1st respondent in the case. The above, in a nutshell, is the case of the appellant.

G

The 1st respondent has raised a preliminary objection to some of the grounds of appeal. The appellant has replied to the preliminary objection in his Reply Brief. The fulcrum of the case of the 1st respondent is that the appellant cannot be deemed holder of a statutory right of occupancy because of the nature of its interest before the promulgation of the Land Use Act. Learned counsel for the 1st respondent understandably defended the judgment of the Court of Appeal when that court came to

H

the conclusion that if the learned trial Judge had properly evaluated the evidence, he would not have granted the declarations in favour of the appellant.

Let me first take the preliminary objection. The first is that the
 B particulars stated in respect of grounds 1 and 3 are completely unrelated
 to the grounds. I have examined the particulars related to grounds 1 and
 3 and I do not agree with learned counsel that they are completely unre-
 C lated to the grounds. Ground 1 complains of misdirection on evidence in
 respect of the vacant status of the land between 1969 to 1987. The par-
 ticulars, numbering seven, centre generally on section 34 of the Land
 Use Act; a section which essentially provides for the development or
 underdevelopment of the land. As the conclusions of the Court of Appeal
 complained on the findings of the trial Judge are based on the non-devel-
 D opment of the land in dispute, the objection fails.

Ground 3 complains of acts of user by the appellant over years
 and inactivity on its part. Particulars (i) and (viii) centre on acts of user.
 While particular (i) uses the relevant words “the appellant were using it
 E as prayer grounds”, particular (viii) uses the relevant words, “Acts of
 user or non-user of the said land”. It is good law that a relevant and
 related particular is enough to sustain a ground of appeal and I so hold.

The second objection is that grounds 4 and 14 raise issues of
 F mixed law and fact and the appellant needed leave of either the Court of
 Appeal or the Supreme Court. Although section 50 of the Land Use Act
 defines developed land, I agree with learned counsel that what consti-
 tutes developed land, within the meaning of the section, is a question of
 mixed law and fact for which leave is required. So too, ground 14 which
 G complains on weight of evidence. Accordingly, the objection on grounds
 4 and 14 succeeds.

The third objection is on grounds 5 and 13 and it is that they are
 not covered by any issue for determination. Grounds 5 and 13 are on
 H evaluation of evidence and interest on the land in dispute respectively.
 While Issue No. 1 for determination in the appellant’s brief in its double-
 barrelled content, cover evaluation of evidence and the appellant’s inter-
 est on the land in dispute, Issue No. 2 single-handedly deal with evalua-

tion of evidence in respect of the revocation of the right of occupancy of the appellant in accordance with the Land Use Act. The objection therefore fails.

The fourth objection is that ground 6 relates to an issue not decided by the court and is thus incompetent. With respect, I do not agree B with counsel. In dealing with the issue of locus standi, the Court of Appeal said:

“... it is my view that the issue whether the appellant has the locus standi at this appeal stage to challenge whether the land was developed C does not arise at all and I totally reject it.”

By the above, the Court of Appeal clearly considered the issue of locus standi of the respondent and rejected it. In the circumstance, the appellant has the right to raise the issue as a ground of appeal. After all, a ground of appeal is the complaint the appellant has against the judgment D of the court as an aggrieved party. The objection on ground 6 fails.

The fifth objection is on grounds 7, 8, 9, 10 and 12. The objection is that they do not arise from the decision of the Court of Appeal. I have carefully read the 7-page judgment of the Court of Appeal and I entirely E agree that the grounds do not arise from the decision of the court. They originated clearly from counsel and that is bad, very bad indeed. Counsel has no right to impute into a judgment what is not there. That is most unfair to the Judge who wrote the judgment. Our adjectival law requires F counsel to prepare ground or grounds of appeal from the decision of the court. Where there is no decision on a point, there cannot be complaint. There can only be complaint on a decision. If the event was only on one ground or two, it could have been lightly dismissed as a slip but when the number goes to five, it is bad, to say the least. It is hoped that counsel G will always concentrate on the decision of the court when framing ground or grounds of appeal.

I have dealt with the preliminary objection in some detail. It is good law that a single valid ground of appeal can sustain an appeal. Of H the fourteen grounds respondent raised objection on twelve grounds. He did not object to two grounds, that is, grounds 2 and 11. This apart, I have ruled that grounds 1,3,6, are valid. That left grounds 4, 6, 8, 9, 10,

12 and 14 which I hold are invalid for one reason or the other. In the circumstances the appeal is sustained by five grounds. I must therefore go to the merits of the appeal. I must however warn myself that I will avoid the issue or issues that directly affect the grounds that I have held
B to be invalid.

Let me first take Issue No. 1 of the appellant's brief which is not affected by any of the grounds I have held to be invalid. It has affinity with Issue No. 1 of the 1st respondent's brief. Both deal with the status
C of the land immediately before the promulgation of the Land Use Act.

What was the title or nature of the title of the appellant immediately before the promulgation of the Land Use Act in 1978? The land in dispute was granted the appellant by a deed of assignment in 1965, Exhibit B. Exhibit B originated from Exhibits C, D and E, leasehold title
D deeds.

Section 34(1) and (2) of the Land Use Act provides as follows:

*"(1) The following provisions of this section shall have effect in respect of land in an urban area vested in any person immediately before
E the commencement of this Act.*

*(2) Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory
F right of occupancy issued by the Governor under this Act."*

By the above two subsections, a person who has a developed land who has developed his land immediately before the promulgation of the Land Use Act will be deemed to be a holder of statutory right of occupancy in an urban area. Section 50 of the Act defines developed land as
G land *"where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes."* By the section, a land could be said
H to be developed even though it has no road, services, water, electricity, drainage, building, or structure. Land could be said to be developed under the second limb of the definition if there is development that enhances the value of the land for industrial, agricultural or residential purposes.

In examining whether the appellant is a holder of a certificate of occupancy or deemed certificate of occupancy over the land in dispute, the Court of Appeal said at page 198 of the Record:

“Under cross-examination, PW1 said that the original lease to Elder Dempster was in 1918 and had a life span of 75 years. He also admitted that the plaintiffs interest on the land expired in January 1993. Still under cross-examination, he said that the bungalow they had on the land was destroyed during the war. Still under cross-examination, he admitted that after the civil war in 1970, the land was bare and there was nothing on it. If as at 1970, the land was bare, the land, the respondent cannot be deemed to be a person entitled to be a holder or deemed holder of a certificate of occupancy of the land in view of section 34(5) (a) and (b) of the Land Use Act 1978.”

The Court cited the case of *Haruna v. Ojukwu* (1991) 7 NWLR (Pt 202) 207 in support of this conclusion.

I am in some difficulty to agree with the Court of Appeal that in answer to cross-examination, PW1 said that after the civil war in 1970, the land was bare. Let me quickly read the question and the answer:

“Q. After the civil war in 1970, what was on that land was bare land, there was nothing?”

A. Yes.”

In English Language, the above answer, in my humble opinion, does not bear the interpretation given by the Court of Appeal. I should have agreed with the Court of Appeal if the answer was, “No”. As the answer was Yes, the court was, with respect, wrong in the interpretation.

Assuming that I am wrong, there is still one important alternative position and it relates to the evidence of the war. PW1 said in his evidence that there was a residential bungalow on the land in dispute, which was destroyed during the war. I do not think there was a controverting evidence. I think the Court of Appeal believed that evidence, as the court referred to it to make the point of bareness of the land. If the residential bungalow on the land was destroyed during the war, it will be unfair and unkind to the appellant to hold against the appellant for an act that was

beyond its control, or for an act in which it was neither directly or indirectly responsible. Certainly, there is no evidence that the appellant instigated the war or was directly responsible for the outbreak of the war. And here, I take judicial notice of the fact that the appellant was referring to the Nigerian civil war which ended in January, 1970. As the evidence of PW1 on the destruction of the residential bungalow was believed by the Court of Appeal, that court ought to have come to the conclusion that the land could not have been bare but for the destruction during the war; a destruction the appellant could not police or stop.

There is one aspect of the case that the Court of Appeal did not consider, and it is important enough for the court to have considered it. It is in respect of the admission by the 1st respondent that the land in dispute belonged to the appellant. At page 77 of the Record, the following evidence came out under cross-examination:

“Q. Those who sued you are saying the land in dispute is their own.

A. Yes.

Q. How long have you lived in Port Harcourt?

A. I have been in Port Harcourt since 1969.

Q. I put it to you that the people who sued you own the land.

A. Yes, they had it for long.”

As indicated above, the Court of appeal relied on Haruna v, Ojukwu. The court said on the case at page 198 of the Record:

“In the case of Haruna v, Ojuwku (1991) 7 NWLR (Pt. 202) 207, it was held that to be deemed an owner or owner of a right of occupancy in an urban area three conditions must be satisfied namely:

1. The land must be in urban area;
2. You must have been holding it before the advent of the Land Use Act on 22/3/78;
3. You must have developed the land.

The Court of Appeal did not quarrel against (1) and (2) above but was against (3). Why? From the evidence of PW1, the land was developed and the development on the land was a residential bungalow which was destroyed during the war. As Haruna did not decide that the develop-

ment must be physically seen by the 2nd respondent before any act of revocation, I cannot go along with the decision of the Court of Appeal.

Because the Court of Appeal came to the conclusion that the appellant, failed woefully to prove that the land was developed, that court refused to take the vital issue of revocation of the land by the 2nd respondent, I will take it, in the light of the contrary position I have taken. B

I now go to the legality or otherwise of the revocation by the 2nd respondent. Section 28 of the Land Use Act provides for the revocation of a right of occupancy for overriding public interest. Section 28(2) provides that overriding public interest in the case of a statutory right of occupancy means (a) the alienation by the occupier by assignment, mortgage, transfer of possessive sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of the Act or of any regulations made thereunder; (b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purpose of the Federation; (c) the requirement of the land for mining purpose or oil pipelines or for any purposes connected therewith. Section 50 of the Act spells out the use of the land for public purpose. There are nine specific items. See generally *Ogundo v. Gbevbo* (1999) 9 NWLR (Pt. 617) 76; *Osho v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157. C D E F

The case law is in great proliferation. Any provision of the law which gives or governs compulsory acquisition of a person's property must be construed by the court fortissimo contra preferentes. Such a statute should be construed by the court strictly against the acquiring authority and sympathetically in favour of the complainant or the owner or possessor of the property against any irregularity in the procedure for acquisition as laid down by the enabling statute. See *Peenok Investments Ltd. V. Hotel Presidential Ltd.* (1983) 4 NCLR 122 at 115; *Alhaji Bello v. The Diocesan Synod of Lagos* (1973) 1 All NLR (Pt.1) 247 at 268; *Nigerian Telecommunications Ltd. V. C* (1992) 7 NWLR (Pt. 255) 543; *Osho v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157. G H

Where right of occupancy is stated to be revoked for public pur-

poses, there is the need to spell out the public purpose in the notice of revocation. See *Osho v.- Foreign Finance Corporation*, *supra*; *Ereken v. Military Governor of Mid-Western State* (1974) 10 SC 59; *Adukwu v. Commissioner for Works. Lands and Transport, Enugu State* (1997) 2 NWLR (Pt. 489) 588. The reason for revoking a person's right of occupancy must be stated in the notice of revocation notwithstanding that the Act did not expressly state that the specific ground of the revocation must be stated in the notice. See *Adukwu v. Commissioner for Works. Lands and Transport. Enugu State*, *supra*; *Nigeria Engineering Works Ltd. V.Denap Limited* (1977) 10 NWLR (Pt. 525) 481.

In exercising the Governor's power of revocation, there must be due compliance with the provisions of the Act, particularly with regard to giving of adequate notice of revocation to the holder whose name and address are well known to the public officer acting on behalf of the Governor. See *Nigerian Telecommunications Ltd. V. Chief Ogunbiyi*, *supra*; *Obikoya v. Governor of Lagos State*, *supra*. The purpose of giving notice of revocation of a right of occupancy is to duly inform the holder thereof of the steps being taken to extinguish his right of occupancy. In the absence of notice of revocation of right of occupancy, it follows that the purported revocation of the right of occupancy by the officer duly authorized by the Governor is ineffectual. See *Nigerian Telecommunications Ltd. V. Chief Ogunbiyi*, *supra*; *AG Bendel State v. Aideyan* (1989) 4 NWLR (Pt. 118) 646; *Nigerian Engineering Works Limited v, Denap Limited* (1997) 10 NWLR (Pt. 525)481.

Above all, revocation must comply strictly with the provisions of section 28 of the Act. Any non-compliance will result in the revocation a nullity. See *Obikoya and Sons Ltd. V. Governor of Lagos State*, *supra*; *Nigerian Telecommunications Ltd. V. Chief Ogunbiyi*, *supra*; *Adukwu v. Commissioner for Works. Lands and Transport, Enugu State*, *supra*.

I should now apply the law stated above to the facts of the case. It is the case of the appellant that no notice of revocation was served on it as required by the Land Use Act. This was not contested by the respondent. It is therefore accepted as the correct factual position. It is also the case of the appellant that the revocation was not for public purpose. This is

clear from the facts of the case. The revocation of the land for the purpose of granting same to build a mosque is certainly not a public purpose within the meaning of section 50 of the Land Use Act. It is a private purpose, not contemplated by the Act.

With the above conclusion, I do not think I will take the issue of ^B locus standi but I should ask why a party who will be directly affected by a decision of a court of law not have locus stand/ to defend himself? In sum, the appeal is allowed. I set aside the judgment of the Court of Appeal and affirm the decision of the High Court. I go along with my ^C learned brother, Mohammed, as to his order on costs.

OGUNTADE JSC

The appellant was the plaintiff at the Port-Harcourt High Court of ^D Rivers State where it claimed against the defendants some declaratory and injunctive reliefs in respect of a parcel of land known and described as plots 1-6 (A-F) in Block 77 Native Location Port Harcourt. The parties filed and exchanged pleadings after which the suit was tried by Manuel J. ^E On 3-3-97, the trial judge granted the claims of the plaintiff. The defendants were dissatisfied. They brought an appeal before the Court of Appeal, Port-Harcourt Division (hereinafter referred to as the court below). On 26-4-2001, the court below allowed the appeal, set aside the judgment of the trial court and dismissed plaintiffs suit. ^F

Dissatisfied, the plaintiff has come before this Court on a final appeal. In the appellant's brief filed on behalf of the plaintiff, the issues for determination were identified as the following:

"1) What is the nature of the interest of the Appellants in the ^G property in dispute.

2) Whether the inactivity and activity by the Appellants and the 1st Respondent respectively on the land constitute the statutory (Land Use Act) requirements in deciding the validity of the revocation of the ^H right of occupancy of the Appellants and subsequent grant of same to the 1st Respondent."

My learned brother Mohammed JSC has in the lead judgment discussed the issues for determination and come to the conclusion that this appeal has merit. I entirely agree with him. I only wish to emphasize some aspects of the judgment as they touch on the procedure to be followed in the revocation of statutory right of occupancy as provided under the Land Use Act, 1978.

It was undisputed that the land in dispute was first granted in 1918 to Elder Dempster and Company Limited for a term of 75 years. The land descended over the years through successive leases to some companies until it was granted to the plaintiff on 25-1-65 vide a Deed of-lease registered as No. 78 page 78 in Volume 416 at the land registry in Port-Harcourt. In 1965, when the residue of the lease on the land was assigned to the plaintiff, there was a residential building on the land. This was however destroyed during the civil war between 1967 and 1970. In March, 1978, at the time the Land Use Act came into force, the plaintiff was in possession of the land. However on 27-4-84, without any previous notice to the plaintiff, the Rivers State Government purported to revoke the right of occupancy of the plaintiffs. The Rivers State Government then purportedly granted a certificate of occupancy in respect of the same land to the 1st defendant. In these circumstances, the plaintiff sued claiming *inferred* for a declaration that the revocation of its certification of occupancy and the grant of a certificate to 1st defendant was null and void.

The essential foundation of plaintiff's claim was that the revocation of its certificate of occupancy was invalidly done. How did the 2nd to 4 defendants respond to this part of plaintiff's claim? In paragraphs 6 to 12 of their joint statement of defence, the 2nd, 3rd and 4th defendants pleaded thus:

“6. In further answer to paragraph 5 above, the 2nd - 4th defendant.....

(a) On or about 30th December 1981, the Rivers State Governor cancelled the unexpired portions of the lease of the plots in issue in exercise of the powers conferred on him by the state Lands (Cancellation of Leases) Edict, 1972 as amended by the State Lands (Cancellation of Leases) Amendment Edict, 1972 (No: 17 of 1972).

(b) By virtue of the said cancellation, whatever interest the plaintiffs had in the said plots, if any, became extinguished and the said plots became vested in the Rivers State Government as from 30th December, 1981.

7. (a) The State Lands (Cancellation of Leases Edict (No.5 of 1975 as amended by No. 17 of 1972 was an existing law within the meaning of section 224 of the 1979 Constitution and it remained in force till 2nd December, 1982, when the Supreme Court of Nigeria declared it unconstitutional and void.

(b) the 2nd - 4th defendants contend and shall contend at the trial that the cancellation of the lease of the plots in issue is legal, constitutional and as from 30th December, 1981, it had the effect of extinguishing the plaintiffs' alleged interest in the said plots.

8. The 2nd -4th defendants further contend that in so far as the Rivers State Governor acted under an existing law made after 15th January, 1966, this Honourable Court lacks jurisdiction to question the cancellation or determine any issue related thereto by virtue of the provisions of section 6(6)(d) of the 1979 Constitution of the Federal Republic of Nigeria.

9. The 2nd - 4th defendants deny all the averments contained in paragraphs 17 to 26 of the statement of claim and at the trial the plaintiffs shall be put to strict proof.

10. Further to paragraph 9 above, the 2nd - 4th defendants contend in the alternative that even if the matters pleaded in paragraphs 17 to 26 are established, the alleged breach of the law did not create any cause of action in the plaintiff against the. Rivers State Government in that:

(a) By 27th April, 1985, when the Government Notice No.235 was published, the plots in issue were no longer vested in the plaintiffs by virtue of the earlier cancellation of the leases pleaded in paragraphs 6, 7 and 8 above. The instrument was without effect as it was issued without realizing the true legal status of the plots in issue.

(b) The alleged instrument of revocation did not in any way interfere with the plaintiffs proprietary rights in the said plots.

(c) The plaintiffs have no locus standi to sue.

11. The 2nd - 4th defendants deny having breached the provisions of the Land Use Act and the 1979 Constitution; in the alternative, the 2nd - 4th defendants say that even if there were infractions of the Law, the plaintiffs had no standing to sue the defendants since it had no proprietary interest in the plots in issue, at the time when the said notice of revocation was published.

12. Concerning the averments contained in paragraph 25 of the statement of claim, the 2nd -4th defendants say that the 1st defendants were entitled to exercise acts of ownership over the said plots as statutory rights of occupancy in those plots had been granted to the 1st defendants by the Rivers State Governor.”

It is apparent from the extracts of the 2nd, 3rd and 4th defendants’ statement of defence reproduced above that the said defendants had only sought to justify their action in revoking plaintiffs certificate of occupancy by placing reliance on the State lands (Cancellation of Leases) Edict 1972 as amended by the State lands Cancellation of Leases) Amendment Edict, 1972. It did not occur to the 2nd, 3rd and 4th defendants that to the extent to which the 1972 Edict was inconsistent with the Land Use Act, which was elevated and given special place in the 1979 Constitution, the Edict would be invalid.

Now the power of a State Governor to revoke a certificate of occupancy which is deemed granted under section 34(2) and (5) of the Land Use Act is as set out under section 28 of the Act which provides:

“28(1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.

(2) Overriding public interest in the case of a statutory right of occupancy means -

(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease or otherwise of any right of occupancy or part thereof contrary to the provisions of -this Act or of any regulations made there under;

(b) the requirement of the land by the Government of the State or by a Local Government in the State, or the requirement of the Land by the Government of the Federation for public purposes of the Federation.

(c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice B declares such land to be required by the Government for public purposes.

(5) The Governor may revoke a right of occupancy on the ground of -

(a) a breach of any of the provisions which a certificate of occupancy is by section 10 of this Act deemed to contain; C

(b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 10 of this Act;

(c) a refusal or neglect to accept and pay for a certificate which D was issued in evidence of a right of occupancy but has been cancelled by the Governor under subsection (3) of section 9 of this Act.

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder. E

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice." F

Under Section 28 above, the circumstances are clearly set out in which the Governor may revoke. The 2nd, 3rd and 4th defendants did not plead facts raising any of the grounds set out under section 28 as the basis of their decision to revoke plaintiffs certificate of occupancy. Further, whereas the plaintiff pleaded the grounds it relied upon for contending that the acquisition of its land was invalid, including that - G

“(1) The notice of revocation was null and void being contrary to the provisions of Land Use Act which prescribed personal service;

(2) The revocation was not for public purpose as envisaged by the Land Use Act; H

(3) The revocation was not for the public purpose stated in the said notice; and

(4) *The appellants were not heard before the revocation.*”

They did not provide answers in their pleadings to the above grounds raised by the plaintiff. It was not shown that a personal service of the revocation notice was effected on the plaintiff. It was not shown
B that the land was required for public purpose. The trial judge in his judgment had said:

*“From the above it is clear that the notice of revocation published in the said Rivers State Government Notice No.235 dated 27th April
C 1985 and published in volume 17, No.27 of the Official Gazette was not a valid mode of service in accordance with the Land Use Act. This is because the mode fell short of the requirement in the Act. There was no personal service or in this case, which is a registered company, there was no service on the secretary or clerk of the company as provided for. The
D mode of service is therefore null and void and of no effect.”*

This Court has in a number of cases decided that the revocation of a certificate of occupancy done in a manner inconsistent with the provisions of section 28 of the Land Use Act will result in the exercise being
E declared null and void. See *Osho v. Foreign Finance Corporation* [1991] 4 NWLR (Pt.184) 157 and *Ibrahim v. Mohammed* [2003] 6 NWLR (Pt.817) 615 at 644. The conclusion is therefore inevitable that the revocation of plaintiff's certificate of occupancy is null and void.

F The plaintiffs claim that the grant of a certificate of occupancy in respect of its land to the 1st defendant be pronounced null and void would in my view amount to employing a gun to kill a fly, an over-kill perhaps. The conclusion that the revocation of plaintiff's certificate is null and
G void implies that there was no vacant land in respect of which a grant of a certificate of occupancy could be made to the first defendant.

I must express that the conduct of the public officials of Rivers State
H as represented in this case by 2nd, 3rd and 4th defendants is grossly unsatisfactory. They had with their eyes wide open engaged on a course that could have led to a religious conflict and disharmony.

They had plainly shown themselves as incapable of managing prudently the responsibilities of their offices. Why would public officials so flagrantly and without any pretensions as to conformity with laws which

are well-known seize the property of one citizen and hand it over to another. I should have thought that fairness, even-handedness and above all respect for the rule of law would characterize the behaviour and standards of such men who found ourselves in public offices. So much for this show of shame.

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In the final conclusion, I would also allow the appeal as in the lead judgment of my learned brother Mohammed JSC. I subscribe to the order on costs.

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