

SUPREME COURT OF NIGERIA
17TH FEBRUARY, 2006. SC. 179/2001
CORAM:- S. U. ONU, A. I. KATSINA-ALU, G. A. OGUNTADE,
M. MOHAMMED, I. F. OGBUAGU, JJSC

1. DIOKPA FRANCIS ONOCHIE

2. MR. P. D. OFILI

3. M. O. OSADEBE

..... APPELLANTS

(for themselves and on behalf of the
6 (six) sub-families of Umuaji Village,
Asaba excluding Ezeafadia sub family)

AND

1. FERGUSON ODOGWU

2. FELIX WAEMEMBU

3. OGBUEFINWANNUKWU

4. OGBOGUNWALUPUE

5. OKEIACHAMBA

6. NNYEMIKE HALIM

..... RESPONDENTS

7. CLIFFORD ODIWE

8. OKEI NWANJI

[for themselves and on behalf of
Umuezeafadia sub family of
Umuaji Village, Asaba.]

EVIDENCE - Admissibility - Duty of counsel - Where inadmissible evidence is tendered - Even with consent of the opposite party - Courts cannot act on it - Where it is inadmissible by law (H1)

EVIDENCE - Appeals - Documents - Where wrongfully received in evidence - Without objection of counsel - Appellate Court has jurisdiction - To exclude the document (H2)

STATUTES - Compliance - Exhibit - Public Archives Act s. 7 - Non Compliance with - Rendered exhibit 4 inadmissible (H3)

STATUTES - Interpretation - That appears to defeat intention of the legislature - Should not be followed - So as to give liberal interpretation to clear provisions (H4)

STATUTES - "Shall" - Where used in a Statute - Makes that provision mandatory (H5)

EVIDENCE - Public document - Reason for authentication of - Is to make it admissible - As proof of the original (H6)

APPEALS - Issues - Failure of intermediate appellate court - To consider all issues placed before it - Will not ground alteration of the judgment - In all cases (H7)

FACTS

Before the Delta State High Court Asaba, the plaintiffs/appellants filed an action against the defendants/respondents. Plaintiffs claimed inter alia, declaration that the land in dispute is the communal land of both parties, and that they are jointly entitled to right of occupancy over the said land. Pleadings were filed and exchanged. Plaintiffs called a witness from the National Archives office who tendered some documents (Exhibits 1-4), towards proving their claim. But the said documents did not comply with s. 7 of the Public Archives Act which provided that such documents shall bear the official seal of the Director of the department of Federal Archives and shall be certified to be true copies of the original.

The trial court relied on the said documents in finding in favour of the plaintiffs. Being dissatisfied the defendants appealed to the Court of Appeal which held that the documents were not admissible in evidence and allowed the appeal. The plaintiffs have now appealed to the Supreme Court as they were aggrieved by the lower court's decision, while the defendants cross appealed.

ISSUE FOR DETERMINATION

“Whether the /earned Justices of the court below were right in holding that

Exhibits 1-4 are inadmissible in evidence for non-compliance with Section 7 of the Public Archives Act”.

HELD (Unanimously dismissing the appeal and cross appeal per **OGBUAGUJSC**)

Courts cannot act on evidence that is inadmissible by law

1. In *Olukade v. Alade* (supra), it is settled that where inadmissible evidence has been admitted, it is the duty of the court, not to act upon it. It is immaterial that its admission, was as a result of the consent of the opposite party or that party’s default in failing to make objection at the proper time. That the Court of Appeal, has the power, to reject such evidence and decide the case on legal evidence.

In *Olukade v. Alade* (supra), it was held firstly, that where inadmissible evidence, is tendered, that it is the duty of the opposite party or his counsel, to object immediately. That if he fails to do so, that the trial court in civil cases, may and in criminal cases, must reject such evidence *ex proprio motu*.

Secondly, that where evidence is by law, inadmissible in any event, that it ought never be acted upon in Court (whether of first instance or of appeal) and that it is immaterial, that its admission in evidence, was as a result of consent of the opposite party or that party’s default in failing to make objection at the proper time. (pp. 709 C / 710 D)

Documents - Where wrongfully received in evidence

2. It is firmly established, that if a document is wrongly received in evidence before the trial court, an Appellate Court, has the inherent jurisdiction, to exclude it although counsel at the lower court, did not object to its going in.

Indeed, in the case of *Osho & anor. v. Michael Ape* (1998) 6 SCNJ. 139 @ 152 - 153. Onu, JSC. stated as follows:

“I am not oblivious of the facts that it is not the law that once a document is received in evidence without objection by a party then such a party is forever automatically estopped, even in the appellate court from raising the issue of its admissibility. Thus, if a document is unlawfully

received in evidence, an appellate court has inherent jurisdiction to exclude and discountenance the document even though counsel at the trial court did not object to its going into evidence”.

The learned Jurist, continued thus:

B “Accordingly, although a document was unlawfully received in evidence without objection by or on behalf of an appellant, it would still be open to him in the appellate court, particularly where such an appellant has suffered injustice as a result, or a miscarriage of justice is thereby occasioned, to object to it since it is the duty of the appellate court to exclude inadmissible evidence which was erroneously received in evidence during the trial”. (p. 712 A)

Public Archives Act s. 7 - Non-Compliance with

D 3. The court below, was therefore, right in my respectful view, when it held at the said page 248 of the Records, that the absence of the Director’s authorization to PW1 as well as the absence of authenticity by the Director’s Seal, is a clear non-compliance with the provisions of Section E 7 of the Public Archives Act.

I also agree with the court below, that the absence of the Director’s official seal, has certainly affected the authenticity of Exhibit 4, thereby, rendering it inadmissible under the said Act. The court below was right F also, when it held that the error of law committed by the trial court, occasioned a substantial miscarriage of justice and that without the admission of Exhibit 4 in evidence, the decision of that court would have been otherwise. (p. 713 F)

G ***STATUTES - Interpretation***

4. It is now firmly settled that in the interpretation of a Statute, where its interpretation, will result in defeating its object, the court would not lend its weight to such an interpretation. The language of the Statute, must not H be stretched, (as has been done in the Appellant’s Brief) to defeat the aim of the Statute.

In other words, the interpretation which appears to defeat the intention of the Legislature, should be bye-passed in favour of that which

would further the object of the Act.

This is why it is firmly settled that where the provisions of a statute are clear and unambiguous, the court, must give those provisions, their liberal and ordinary interpretation. (p. 714 E)

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"Shall" - Where used in a Statute

5. The provision of Section 7 of the Act as I have noted hereinabove in this Judgment and as held by the trial court, is so clear and unambiguous, that it needs no fanciful embellishments. Afterwards, the word “*SHALL*”, was interpreted in the case of Chief Ifezue v. Mbadugha & anor. (1984) 5 S.C. 79; (1984) 1 SCNLR 427; (1984) 15 NSCC 314. Its use in a statute or Rules of Court, makes it mandatory that the rule or provision, must be observed. In Longman Dictionary of the English Language, it is stated that “shall” is used to express a command or exhortation, or what is legally mandatory. (p. 715 C)

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Public document - Reason for authentication of

6. Now, in the case of Anyakora & 4 ors. v. Obiakor & 8 ors. (1990) 2 NWLR (Pt. 130) 52 C.A. which also dealt with the duty of a court in the construction of a statute like a document in Public Archives, it was held that the reasons for authenticating Public Documents by a designated official to enable its admissibility, are stated to be -

F

(a) to obviate the necessity of calling officials to come to testify as to the genuineness of copies made from original documents or records of a public nature.

(b) to preserve those original documents or records, from being removed from their proper place of custody through requests that they be tendered in court.

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It can/could be seen, why the mandatory nature/provision of the said Section 7 of the Act. When once the provision is complied with, “*such copy or reproduction shall be admitted in evidence as proof of the contents of the original documents as if it were the original document*”.

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The consequence of where inadmissible evidence, is admitted, is that it must be expunged, it being immaterial whether such evidence/

document was objected to or not. (p. 715 F)

APPEALS - Issues - Failure to consider all issues

7. Now, in dealing with this issue, there is no doubt and this is firmly
 B established in some of the decisions of this Court, to the effect, that it is
 the duty of an intermediate Appellate Court, to deal with/consider and
 pronounce on all issues properly raised before it except in clearest cases.
 The breach of this duty, may lead to an order for rehearing in appropriate
 cases. See Hon. Emmanuel O. Araka v. Ambrose N. Ejeagwu (2000) 12
 C SCNJ. 206.

Now, an order of rehearing, may be inappropriate, where it is clear,
 that no miscarriage of justice has been occasioned by the failure to deal
 with the issue or issues canvassed or that the irregularity, is not that of a
 D substantial nature so as to prejudice any of the parties.

As can be seen from what I have stated hereinabove, the learned
 counsel for the Cross Appellants conceded/confessed that the court below
 resolved issues No. 2 in their favour. Since issues four (4) and six (6), are
 E said by him, to be tied to and rest on Exhibit 4, and therefore, that the appeal
 had in effect succeeded on the said issues four and six, in my respectful
 view, the complaint in this issue, is uncalled for. The court below, as
 conceded by the learned counsel to the Cross Appellants, having consid-
 F ered and resolved the said issues in favour of the Cross Appellants, that
 it did not in so many words say that it also allowed the appeal on the other
 issues, at worst, is an irregularity that does not require this Court holding
 that there is a breach of fair hearing and ordering a rehearing. I so hold.

Since this Court, has by a majority, also held in the case of 7Up
 G Bottling Co. Ltd. & 2 ors v. Abiola & Sons Bottling Co. Ltd. (2001) 6
 SCNJ. 18 that although it is the duty of an Appellate Court to consider all
 issues placed before it, but that where it is of the view that a consideration
 of one, is enough to dispose of the appeal, it is not under any obligation to
 H consider all the other issues posed, this cross-appeal, is without merit and
 it fails. (pp. 717 B / 718 C & F)

REPRESENTATION

O. P. Ulasi, Esqr. for the Appellants/Cross Respondents

T. E. Uwhosetine, for the Respondents/Cross/Appellants, with him, C. A.

Aguyah, Esqr. and E. Emakpor, Esqr.

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CASES REFERRED TO

Owonyin v. Omotosho (1961) 1 ANLR (Pt. II) 304 @ 305; (1961) 2 SCNLR 57 @ 61

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Idowu Alashe & ors. v. Olori Ilu & ors. (1965) NMLR 60 @ 67

Mallam Yaya v. Mogoga 12 WACA 132 (g 133

Anyanwale & ors. v. Atanda & anor. (1988) 1 S.C. 1 @ S, (1988) 1 SCNJ. 1 @ 20

Osho & anor. v. Michael Ape (1998) 6 SCNJ. 139 @ 152 - 153

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Ansaldo Nig. Ltd. v. National Provident Fund Management Board (1991) 2 NWLR (Pt. 74) 392 @ 405, (1991) 3 SCNJ. 22

Hill v. East & West bock Co. (1884) A.C. 488 @ 456

Rein v. Lane (1867) L.R. 22. Q.B. 144 @ 157

E

Savanah Bank (Nig.) Ltd. & anor. v. Ajilo & anor. (1989) 1 NWLR (Pt. 97) 305 @ 326; (1989) 1 SCNJ. 169

Ojokolobo & ors. v. Alamu & anor. (1987) 3 NWLR (Pt.61) 377, (1987) 7 SCNJ. 98

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Chief Ifezue v. Mbadugha & anor. (1984) 5 S.C. 79; (1984) 1 SCNLR 427; (1984) 15 NSCC 314

Madam Alake Aroyewun v. Joseph Adenbanji (1976) 11 S.C. 33

Anyakora & 4 ors. v. Obiakor & 8 ors. (1990) 2 NWLR (Pt. 130) 52 C.A Saraki (Mrs.) v. Kotoye (1992) 9 NWLR (Pt.254) 156 @ 202, (1992) 12 SCNJ. 26

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Hon. Emmanuel O. Araka v. Ambrose N. Ejeagwu (2000) 12 SCNJ. 206
7Up Bottling Co. Ltd. & 2 ors v. Abiola & Sons Bottling Co. Ltd. (2001) 6 SCNJ. 18

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STATUTES & RULES REFERRED TO

Evidence Act ss. 97, 105, 109, 111 & 114

Public Archives Act s. 7

Supreme Court Rules O. 8 rr. 2 & 4

LEAD JUDGMENT BY OGBUAGU JSC

B The main appeal is against the decision of the Court of Appeal, Benin Division delivered on 4th April, 2001, allowing the appeal of the Defendants/Respondents from the decision of the High Court of Delta State sitting at Asaba delivered on 20th July, 1998 by Odita, J. The respondents have also cross-appealed.

C Dissatisfied with the said decision, while the Appellants, have appealed to this Court on three (3) grounds of appeal, the respondents' appeal, is based on one lone ground of appeal.

D The Respondents, have raised a Preliminary objection and contend that grounds 2 and 3 of the Notice of Appeal, are incurably bad and incompetent. They urge the court to strike out the said grounds and any arguments founded on them. The ground of the objection is stated as follows:

E “1. *Non-compliance with Order 8 Rules 2 & 4 of the Supreme Court Rules -*

(a) *Grounds 2 & 3 did not constitute or disclose any error in Law either on the main body and or with the particulars thereof. The particulars stated are mere factual arguments and not particulars of any error committed the learned Justices (sic) (meaning by) in the judgment complained of.*

(b) *The complaints in the two grounds of appeal are in fact and in effect complaints of facts or mixed law and fact and plaintiffs did not obtain leave to appeal as required by the Constitution”.*

G I note that at the hearing of this appeal, the learned counsel for the Respondents, did not apply/seek leave of the Court before the hearing of the appeal, to move the said objection. The consequence, is that the Preliminary objection, is deemed by the court, as having been abandoned. See - the cases of Chief Nsirim v. Nsirim (1990) 3 NWLR (Pt. 138) 295, (1990) 5 SCNJ. 174; Salami v. Mohammed (2000) 9 NWLR 469; (2000) 6 SCNJ. 281 and recently, Tiza & anor. v. Begha (2005) 5 SCNJ. 168 @

178 just to mention but a few. The preliminary objection is accordingly struck out.

The facts of the case briefly stated, are that the Appellants, were the plaintiffs in Suit No. A/24/95 at the High Court in Asaba, Delta State. They sued in a representative capacity and claimed declarations that the land in dispute, is the communal land of both the plaintiffs and the Defendants and therefore, that the two parties, are entitled to the Statutory or customary right of occupancy over the said land. Pleadings were filed and exchanged. After hearing evidence and the addresses of the learned counsel for the parties, in a considered judgment delivered on 20th July, 1998, the learned trial Judge entered judgment in favour of the Appellants in respect of the reliefs in Nos. 1, 2, 3 and 5 of their claims. He also made an order, setting aside as null and void, any sale, lease, mortgage, pledge, charge, exchange or any act touching the land in dispute. See pages 95 to 134 of the Records.

Dissatisfied with the said decisions, the Defendants/Respondents, appealed to the court below. The parties filed and exchanged their respective Brief of Argument. The parties also made oral submissions. The Court of Appeal, allowed the appeal and set aside the judgment of the trial court mainly on Issue No. 1 raised by the Appellants in that court. See pages 238 to 253 of the Records. Both sides have appealed against the said Judgment on different grounds.

The Appellants have formulated one (1) lone issue for determination, namely,

“Whether the /earned Justices of the court below were right in holding that Exhibits 1-4 are inadmissible in evidence for non-compliance with Section 7 of the Public Archives Act”.

At page 4 of the Respondents’/Cross-Appellants’ Brief, under *“PART II”*, they have formulated their issue No. 1, thus:

“ Whether the learned Justices were wrong in law in holding that Exhibits 1-4 did not comply with Section 7 of the Public Archives Act and therefore inadmissible in evidence?”.

In order to determine the said issues of the parties which are the same in substance, but are couched differently, it will be pertinent to reproduce the provisions of the said Section 7 of the said Act, (hereinafter

called “*the Act*”). It reads thus;

“*The Director shall have an official seal which shall be judicially noticed. When any copy or reproduction of a document in the custody of the Director is certified to be a true copy by the Director or by any officer of the Department of Federal Archives authorized by him in that behalf and is authenticated by such official seal, such copy or reproduction shall be admitted in evidence as proof of the contents of the original document as if it were the original document*”.

Now, in the court below. Issue No, 1 of the Respondents/Cross-Appellants is,

“*Was the learned trial Judge right in holding that Exhibits 1-4 complied with Section 7 of the Public Archives Act so as to render them inadmissible in evidence as originals?*”.

The learned trial Judge had, after unequivocally stating that Section 7 of the Act, is very clear and unambiguous, referred to the evidence of the P.W.1, who tendered the four (4) exhibits in question and at page 122 lines 12 to 24, he stated as follows:

“*I am firm that Section 7 of the Public Archives Act quoted above was meticulously complied with by P.W.1. I therefore, hold that Exhibits 1 to 4 are now original documents following Section 7 of the Public archives Act quoted above. Consequently I do not agree with Mr. Okonkwo. Sections 97(1) (e), 109(b), 111 and 114 of the Evidence Act do not prevent Exhibits 1 to 4 for (sic) (meaning from) being accepted as original documents. I accept them as such*”.

The court below, at page 247 lines 7 to 27, reproduced what it considered as the relevant portions of the evidence of the P.W.I and related the same to the said Section 7 of the Act. At pages 248 and 249, of the Records, it held [per Ba’aba, JCA,] as follows: -

“*From a careful study of section 7 of the Public Archives Act, it is clear in my view on the literal meaning that the any copy (sic) or reproduction of a document in the custody of the Director must be certified to be a true copy by the Director or by any officer of the Department of the Federal Archives authorized by him in that behalf and is authenticated by such official seal.*

It follows therefore that the absence of the director's authorization to PW1 as well as the absence of authenticity by the Director's Seal is a clear non-compliance with the provisions of section 7 of the Public Archives Act. It is therefore unsafe to assume that PW1 obtained the authorization of the Director in the absence of any evidence to that effect. The absence of the Director's official seal, has certainly affected the authenticity of Exhibit 4, thereby rendering it inadmissible under Section 7 of the said Act. I agree with the submission of the learned Senior Advocate of Nigeria for the appellants, that PW.1 himself did not claim that he was authorized by the Director in his evidence nor did he claim that Exhibit 4 was authenticated by the Director's official seal. The impression I have from the evidence of PW.1 is that he was directly contacted to tender the documents including Exhibit 4 and through his own efforts, traced the documents which he brought to the Court and tendered. It is interesting to note that PW1 in fact never mentioned the Director through out his evidence, giving an impression that as a Senior Archivist Asst. he is either unaware of the provision of Section 7 of the Public Archives Act or decided to ignore the said provisions. With respect, to the learned counsel for the respondents. I disagree with his submission that since Exhibit 4 was tendered without objection, the appellants can not now complain. There is statutory provision providing for the admission in evidence of a copy of (sic) (meaning or) reproduction of a document in the custody of the Director of the Department of the Federal Archives which I believe must be complied with in the tendering of such documents like Exhibit 4 in the instant case. With the greatest respects to the learned trial Judge, who apparently did not address his mind to the vital issues, relating to the admissibility of the documents, I disagree that section 7 of the Public Archives Act, was meticulously complied with the provisions of the said section 7, is inadmissible".

I agree.

It is noted by me and as rightly submitted by the learned counsel for the Respondents/Cross Appellants in the Brief, that not only did the Appellants and their learned counsel,, in any manner not fault the above pronouncements by the court below, at page 14 of their Brief, under their

paragraph 6. 08 after stating the “salient features of section 7”, stated as follows:

“Now, on each page of Exhibits 1-4, one can see the stamp of the Director of National Archives and the name, number and signature of PW1 showing that he signed each exhibit for and on behalf of the director. So far as can be visually ascertained from the record no trace of the Director’s seal (whether affixed or embossed) appears on any of the exhibits under consideration”. [the underlining mine.]

After the above concession underlined by me, at paragraph 6. 10 of their Brief, the following appear:

“Since the court below was satisfied or, at least, impressed that Exhibits 1-4 emanated from the National Archives albeit through the personal efforts of PW1 who brought them to court, the crucial and pertinent question which arises is this: Are Exhibits 1-4 absolutely inadmissible in evidence in all circumstances or at all events in law or are they inadmissible because the Director did not himself certify them or authorize their certification or because of the absence of the Director’s official seal?” [the underlining mine]

It is then submitted that Exhibits 1 - 4 do not belong to the kindred or class of documents which are absolutely inadmissible in evidence in any event in law. That their admissibility, is only dependent on or made subject to certain conditions. That since Exhibits 1-4 are not absolutely inadmissible in any event in law, but are admissible subject to certain conditions and since the same were admitted without any the respondents are deemed to have waived their right to complain and that the court below could not properly reopen the question as to their admissibility. The cases of Salawu Jagun Olukade (hot Salau Jagun Okulade) as stated in both Briefs of the parties) v. Abolade Agboola Alade (1976) 1 All MLR (Pt. 1) 67 @ 73 - 74 (it is also reported in (1976) 2 S.C. 183, 188 - 189) -per Idigbe, JSC; Chief Bruno Etim & ors v. Chief Okon Udo Ekpe & anor (1983) 3 S.C. 12 @ H 36-37 (it is also reported in (1983) 1 SCNLR 120) - per Aniagolu, JSC, and Oguma Associated Companies (Nig) Ltd. v. International Bank For West Africa Ltd. (1988) 1 NWLR (Pt. 73) 658 @ 670, - per Agbaje, JSC (it is also reported in (1988) 3 SCNJ. 13). Learned counsel also cited and relied

on the cases of Nathaniel Okeke v. Akunkwe Obidife & ors. (1965) NMLR 113 @ 115 ; Chukwura Akunne v. Mathias Ekwuno & ors. (1952) 14 WACA 59 @ 60; and Kossen (Nig.) Ltd. & anor. v. Savannah Bank of Nigeria Ltd. (1995) 9 NWLR (Pt. 420) 439. (It is also reported in (1995) 12 SCNJ. 29). He stated that all the above authorities and more, were extensively reviewed in the recent case of Unity Life & Fire Ins. Co. Ltd, v. International Bank of West Africa Ltd. (2001) 7 NWLR (Pt. 713) 610 @ 627 - per Iguh, JSC. He finally, cited and relied on the case of Ibrahim Khalil Yassin v. Barclays Bank DCO (1968) 1 All NLR 171 @ 179 - per Lewis, JSC.

But with the greatest respect, the said cases, are distinguishable to the admitted clear and unambiguous provision of Section 7 of the Act which is mandatory. In the first place, **in Olukade v. Alade (supra), it is settled that where inadmissible evidence has been admitted, it is the duty of the court, not to act upon it. It is immaterial that its admission, was as a result of the consent of the opposite party or that party's default in failing to make objection at the proper time. That the Court of Appeal, has the power, to reject such evidence and decide the case on legal evidence.** See also Owonyin v. Omotosho (1961) 1 ANLR (Pt. II) 304 @ 305; (1961) 2 SCNLR 57 @ 61 and Idowu Alashe & ors. v. Olori Ilu & ors. (1965) NMLR 60 @ 67; (both referred to by the court below); Yassin v. Barclays Bank D.C.O. (supra) and Jahanini v. Saibu (1977) 2 S.C. 89 @ 112 - 113: and many others.

I want to state straightway, that it is not true/correct, that there was no objection from the learned counsel of the Respondents/Cross-Appellants to the admissibility of the said Exhibits. At pages 50 - 52 of the Records, I note that when the learned counsel to the plaintiffs - Mr. Anyaduba sought to tender Exhibit 1 through the P.W.I, the learned counsel to the Respondents/Cross/Appellants - Mr. Okonkwo objected albeit on some other ground. He was overruled by the trial court, thus:

".....There is clear foundation was laid (sic). The document was pleaded. The document ought not to come from the trial court. How it got to the National Archives does not matter".

I am inclined to agree with the submission of the learned counsel

for the Respondents/Cross-Appellants at page 12 of their Brief, that in view of the stance of the learned trial Judge in respect of Exhibit 1, he was likely to overrule any subsequent objections to the admissibility of the other exhibits.

B In order to show that I am in no way “*speculating*”, since this Court is bound by the Records before it, I note that at page 118 lines 17 to 27 of the Records, the learned trial Judge stated as follows:

“.....*Mr. E. E. Okonkwo learned counsel for the Defendants launched heavy attach (sic) (meaning attack) on Exhibits 1, 2, 3 and 4*
C *tendered and relied upon in this case by the plaintiffs. He contended that Exhibits 1 to 4 are photocopies of Public Documents and that Sections 97(1) (e), 105(b) 111 and 114 of the Evidence Act put beyond doubt Exhibit 1 to 4 (sic) out of admissibility in this Court. He further contended*
D *that if his submission is accepted by the court, then this Court ought to dismiss the plaintiffs’ claim.*”. [the underlining mine]

Of course, Mr. Okonkwo, in my respectful view, was right and entitled to “launch” an attack on the admissibility of the said Exhibit in his
E address or even on appeal. This is because, **in Olukade v. Alade (supra), it was held firstly, that where inadmissible evidence, is tendered, that it is the duty of the opposite party or his counsel, to object immediately. That if he fails to do so, that the trial court in civil**
F **cases, may and in criminal cases, must reject such evidence ex proprio motu.**

Secondly, that where evidence is by law, inadmissible in any event, that it ought never be acted upon in Court (whether of first instance or of appeal) and that it is immaterial, that its admission in
G **evidence, was as a result of consent of the opposite party or that party’s default in failing to make objection at the proper time.**

As a matter of fact, the principle of English Common Law as to the different categories relating to admissibility of documents in evidence
H which were stated in the case of *Gilbert v. Endean* (1878) 9 Ch. 259, @ 269 were applied in *Olukade v. Alade’s* case (supra). It is not applied to Section 96 of the Evidence Act. Now, in the case of *Mrs. Elizabeth N. Anyaebosi v. R. T. Briscoe (Nig.) Ltd.* (1987) 6 S.C. 15 & 17. 21, 25. 43

- 52, 62-68, the different categories of evidence, were dealt with. See also recently, *Alhaji Shittu & 3 ors. v. Otunba Fashawe* (2005) 17 B.C. (Pt. II) 107; (2005) Vol. 12 MJSC 68 @ 86 - 90 - per Musdapher, JSC. For instance,

(a) document not one that is inadmissible in any event @ page 63 B
- per Karibi-Whyte, JSC.

(b) category of evidence legally inadmissible and cannot under any circumstances, constitute evidence in the case at the trial or an appeal even where admitted by consent. See *Owonyin v. Omotosho*; *Alashe v. Ilu*. *Yassin v. Barclays Bank D.C.O.* (all supra); *Ikenye v. Ofunne* (1985) 2 C
NWLR (Pt. 5) 1; *Osho & anor v. Ape* (1998) 6 SCNJ. 139 @ 152 - 153 and recently, *Nwanji v. Coastal Services (Nig.) Ltd.* (2004) 6 SCNJ. 146 @ 160 - 161; (2004) 11 NWLR (Pt. 885) 552, (2004) 6 - 7 S.C. 38 (Lawbreed Ltd.). D

(c) Category of evidence which is admissible if admitted without objection by the other party and where the admission, did not affect the result of the case. See *Ajayi v. Fisher* (1956) 1 FSC 90 @ 92, (1956) SCNLR. 279; *R. v. Thomas* (1958) 3 FSC 8; *Akadile v. The State* (1971) E
1 ANLR 18; *Idundun v. Okumagba v. Okumagba* (1976) 9 - 10 S.C. 227 & 245 and *Okeke v. Obidife* (supra) just to mention but a few. That is to say, that the other party, is not entitled thereafter, to complain where such evidence, was admitted at the trial without objection. See also *Dipo Ayinde* F
& anor. v. *Alhaji Salawu* (1989) 3 NWLR (Pt.109) 287: (1989) 5 SCNJ. 133.

I have stated that Mr. Okonkwo was right and entitled to raise the objection not only during the address at the trial court, but the objection, could be raised on appeal. This again is because, and this is settled, that G
neither a trial court nor the parties, have the power to admit without objection, a document that is no way or circumstance, admissible in law. See *Chief Etim v. Chief Ekpe* (supra); *Oba Oseni & 14 ors v. Dawodu & 2 ors.* (1994) 4 NWLR (Pt. 339) 390 @ 405 - 406; (1994) 4 SCNJ. (Pt. H
II) 197 citing *Alashe & ors. v. Ilu & ors.* and *Olukade v. Alade* (supra) and recently, *Chief Alao v. Akano & ors.* (2005) 4 S.C. 25 @ 32. (2005) 4 SCNJ. 65 @ 74; (2005) Vol. 10 MJSC (Monthly Judgments of the

Supreme Court of Nigeria) 137 @ 109.

It is firmly established, that if a document is wrongly received in evidence before the trial court, an Appellate Court, has the inherent jurisdiction, to exclude it although counsel at the lower court, did not object to its going in. See also Mallam Yaya v. Mogoga 12 WACA 132 (g 133 and of course, Alashe v. Ilu (supra), and Anyanwale & ors. v. Atanda & anor. (1988) 1 S.C. 1 @ S, (1988) 1 SCNJ. 1 @ 20.

Indeed, in the case of Osho & anor. v. Michael Ape (1998) 6 SCNJ. 139 @ 152 - 153. Onu, JSC. stated as follows:

“I am not oblivious of the facts that it is not the law that once a document is received in evidence without objection by a party then such a party is forever automatically estopped, even in the appellate court from raising the issue of its admissibility. Thus, if a document is unlawfully received in evidence, an appellate court has inherent jurisdiction to exclude and discountenance the document even though counsel at the trial court did not object to its going into evidence”.

The learned Jurist, continued thus:

“Accordingly, although a document was unlawfully received in evidence without objection by or on behalf of an appellant, it would still be open to him in the appellate court, particularly where such an appellant has suffered injustice as a result, or a miscarriage of justice is thereby occasioned, to object to it since it is the duty of the appellate court to exclude inadmissible evidence which was erroneously received in evidence during the trial”.

His Lordship cited or referred to several decided cases including those already cited and relied on by me hereinabove in this Judgment. In Nwanji v. Coastal Services (Nig.) Ltd. (supra), Uwaifo, JSC, stated that such evidence/document, must be discountenanced as it goes to no issue.

I note that the court below, also dealt with the effect of the admission of inadmissible document/evidence by a trial court. It referred to a number of cases - Union Bank of Nig. Ltd. v. Prof. Ozigi (1994) 3 NWLR (Pt. 332) 385, 402 (it is also reported in. (1994) 3 SCNJ. 42); Udeze & 2 ors. v. Chidebe & 4 ors. (1990) 1 NWLR (Pt. 125) 141 (it is also reported in (1990) 1 SCNJ. 104); Idundun v. Okumagba (1976) 9 - 10 5.

C. 227 (supra) and Oba Ipinlaiye II v. Chief Olukotun (1996) 6 NWLR (Pt. 453) 148, 167 - per Iguh, JSC, which it reproduced. (It is also reported in (1996) 6 SCNJ. 74 and Okonji & ors. v. Njokanma & ors. (1991) 7 NWLR (Pt. 202) 131, 146 (it is also reported in (1991) 9-10 SCNJ. 27).

I have deliberately gone this far because, in the instant case, the P.W.I, did not say or even suggest firstly, that the Director's seal or official seal (which shall be judiciously noticed, was/appears on any of the said exhibits. I have noted/reproduced hereinabove in this Judgment, that it is conceded by the Appellants and their learned counsel, that as far as can be Visually ascertained fromrecord, there is no trace of the Director's seal (whether affixed or embossed) that appears on any of the exhibits under consideration - i.e. Exhibits 1 to 4.

Secondly, there is no iota of evidence by/from the P.W.I, that he was ever/duly authorized by the Director in that behalf - i.e. when he the PW1 - a Senior Archivist Assistant, National Archives, Ibadan effected the said certification. The learned counsel for the Appellants under the said paragraph 6.08, stated that the certification of each of the said exhibits, was done/effected by the PW1 and "on behalf of the Director". But the PW1 did not say that before, during or after the said certification, he was so authorized to do so, by the Director on behalf of whom he signed the certification or that the Director, ever ratified such certification by him.

The court below, was therefore, right in my respectful view, when it held at the said page 248 of the Records, that the absence of the Director's authorization to PW1 as well as the absence of authenticity by the Director's Seal, is a clear non-compliance with the provisions of Section 7 of the Public Archives Act.

I also agree with the court below, that the absence of the Director's official seal, has certainly affected the authenticity of Exhibit 4, thereby, rendering it inadmissible under the said Act. The court below was right also, when it held that the error of law committed by the trial court, occasioned a substantial miscarriage of justice and that without the admission of Exhibit 4 in evidence, the decision of that court would have been otherwise.

With profound humility and respect, the submission in paragraph 6.19 of the Appellants' Brief that there is a presumption in favour of the PW1 that Exhibits 1-4 were certified substantially in accordance with the law relying on Section 114(1) & (2) of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria, 1990, is completely misconceived.

It is further submitted in paragraph 6.20 of the said Brief, "that once a document (such as Exhibits 1 - 4) is found to be admissible in law, the court is obliged to presume, that a certified copy of such a document, is genuine and that it has been regularly certified as a true copy by the officer charged with the responsibility of doing so. That the maxim of "*omnia praesumuntur rite esse acta*", operates in favour of the PW1 that he was duly authorized by the Director to certify the said Exhibits. The cases of *Re Randle, Nelson & anor. v. Akofiranmi* (1962) 1 SCNLR 252; (1962) All NLR 130 and *Obazee Ogiamien & anr. v. Obahon Ogiamien* (1967) NMLR 254; (1967) 1 All NLR 191, have been cited and relied on for this proposition.

Remarkably, the court below, and rightly in my view, never found the said exhibits to be admissible in law. Rather, the contrary was found and I agree. As rightly observed/noted by the court below, the PW1, did not claim that he was ever authorized by the Director to so certify nor did he claim that Exhibit 4 was authenticated by the Director's official Seal.

It is now firmly settled that in the interpretation of a Statute, where its interpretation, will result in defeating its object, the court would not lend its weight to such an interpretation. The language of the Statute, must not be stretched, (as has been done in the Appellant's Brief) to defeat the aim of the Statute. See *Ansaldo Nig. Ltd. v. National Provident Fund Management Board* (1991) 2 NWLR (Pt. 74) 392 @ 405, (1991) 3 SCNJ. 22.

In other words, the interpretation which appears to defeat the intention of the Legislature, should be bye-passed in favour of that which would further the object of the Act. See *Hill v. East & West bock Co.* (1884) A.C. 488 @ 456; *Rein v. Lane* (1867) L.R. 22. Q.B. 144 @ 157 and *Curtis's v. Stovin* (1889) 22 Q.B. D. 513 (both per Bowen, L.J. and in *Curtis's case* @ 519 - per Fry, L.J.); *Hansley v. Clevening* (1942) 2 K.B.

326 @ 330 - per Lord Green, M.R. For our local cases, see Savannah Bank (Nig.) Ltd. & anor. v. Ajilo & anor. (1989) 1 NWLR (Pt. 97) 305 @ 326; (1989) 1 SCNJ. 169 - per Obaseki, JSC, citing Shanuon Realities Ltd. v. Ville de St. Michael (1924) A.C. 185; International Bank for West Africa Ltd. v. Imano (Nig.) Ltd. & anor. (1988) 2 NWLR 633- per Wali, JSC. B

This is why it is firmly settled that where the provisions of a statute are clear and unambiguous, the court, must give those provisions, their liberal and ordinary interpretation. See Ojokolobo & ors. v. Alamu & anor. (1987) 3 NWLR (Pt.61) 377, (1987) 7 SCNJ. 98; Chief Mayaki & 2 ors. v. The Registrar Yaba Magistrate Court 4 & 5 ors. (1990) 2 NWLR (Pt. 130)43 C.A., just to mention but a few. C

The provision of Section 7 of the Act as I have noted herein-above in this Judgment and as held by the trial court, is so clear and unambiguous, that it needs no fanciful embellishments. Afterwards, the word “SHALL”, was interpreted in the case of Chief Ifezue v. Mbadugha & anor. (1984) 5 S.C. 79; (1984) 1 SCNLR 427; (1984) 15 NSCC 314. Its use in a statute or Rules of Court, makes it mandatory that the rule or provision, must be observed. See Mokelu v. Federal Commissioner For Works & Housing (1976) 3 S.C. 35 and Madam Alake Aroyewun v. Joseph Adenbanji (1976) 11 S.C. 33. **In Longman Dictionary of the English Language, it is stated that “shall” is used to express a command or exhortation, or what is legally mandatory.** See also the case of Amokeodo v Inspector-General of Police & 2 ors. (1999) 5 SCNJ. 71 @ 81 - 82. D

Now, in the case of Anyakora & 4 ors. v. Obiakor & 8 ors. (1990) 2 NWLR (Pt. 130) 52 C.A. which also dealt with the duty of a court in the construction of a statute like a document in Public Archives, it was held that the reasons for authenticating Public Documents by a designated official to enable its admissibility, are stated to be - E

(a) to obviate the necessity of calling officials to come to testify as to the geniuses of copies made from original documents or records of a public nature. H

(b) to preserve those original documents or records, from

being removed from their proper place of custody through requests that they be tendered in court.

It can/could be seen, why the mandatory nature/provision of the said Section 7 of the Act. When once the provision is complied with, “such copy or reproduction shall be admitted in evidence as proof of the contents of the original documents as if it were the original document”.

This is why, the trial court, as rightly held by the court below, was in grave error, after stating that Section 7 of the Act, “*is very clear and unambiguous*”, on the said evidence of the PW1, went ahead at the said page 122 lines 12 to 24, to make the said pronouncement which I had earlier in this Judgment, reproduced.

The consequence of where inadmissible evidence, is admitted, is that it must be expunged, it being immaterial whether such evidence/document was objected to or not. See the case of Saraki (Mrs.) v. Kotoye (1992) 9 NWLR (Pt.254) 156 @ 202, (1992) 12 SCNJ. 26 also referred to in the case of Egbaram & 2 ors. Akpotor & 3 ors. (1997) 7 SCNJ. 392 & 402.

I therefore, render my answer to the lone issue of the Appellants in the Affirmative/Positive, while in respect of that of the Respondent, it is in Negative.

In the final analysis or end result, I hold that this appeal, lacks merit in the extreme. It fails and it is accordingly dismissed. I hereby, affirm the decision of the court below. Costs follow the event. The respondents are awarded N10,000.00 (ten thousand naira) costs payable to them, by the Appellants.

THE CROSS APPEAL

In respect of the Cross-Appeal, the Respondents/Cross Appellants, have raised one issue for determination based on the single ground of appeal which reads as follows:

“The learned Justices of the Court of Appeal misdirected themselves in Law when they held:-

“Having disposed of the appeal on issue No. 1, I do not intend to proceed to determine the remaining issues as it will amount to an academic

exercise”.

The lone issue therefore, is,

Whether in the circumstance of the appeal the learned Justices were right when they held as reproduced hereinabove.

The appellants/cross respondents, have adopted the said issue of B the respondents/cross appellants.

Now, in dealing with this issue, there is no doubt and this is firmly established in some of the decisions of this Court, to the effect, that it is the duty of an intermediate Appellate Court, to deal with/consider and pronounce on all issues properly raised before it except in clearest cases. The breach of this duty, may lead to an order for rehearing in appropriate cases. See Hon. Emmanuel O. Araka v. Ambrose N. Ejeagwu (2000) 12 SCNJ. 206; Owodunni v. Registered Trustees of Celestial Church of Christ & 3 ors. (2000) 6 SCNJ. 299 © 426 D - 427 citing some other cases therein. Ifeanyichukwu (Osondu) Co. Ltd. v. Soleh Bonch (Nig.) Ltd. (2000) 5 NWLR (Pt.656) 322 @ 351; (2000) 3 SCNJ. 18 © 38 and many others.

I note that at page 16 in the Cross Appellants’ brief, it is stated that E the learned Justices, “*did in fact resolved (sic) issue no. 2 in favour of the defendants*”. At page 20 thereof under paragraph 3.3, the following appear’

“issues four and six are tied to and rest on exhibit 4. Having F resolved the question of admissibility of exhibit 4 and having held that exhibit 4 is not one of the five ways of proving title to land, the appeal had In effect succeed on issues four and six also. Consequently, the learned Justices ought not to have allowed the appeal only on issue no. 1 but also on issues 2, 4 and 6”. [the underlining mine] G

In No. 3 of their paragraph 4.00 under “CONCLUSION” of the said Brief, it is stated as follows:

“The appeal in the court below succeeded also on issues 2, 4 and H 6 and the judgment of the Court below ought to have been based on these issues also. The learned Justices were with respect wrong to have said that they allowed the appeal only on issue one when they in fact considered issue no. 2 and ought in the circumstance of this case to have considered

and based the judgment on the other issues canvassed in the brief". [the underlining mine]

Although it is now settled that the Judgment of the Appellate Court, is the lead Judgment - see the case of Chief Bola Ige v. Or. Victor Omololu Olunloyo & ors. (1984) 1 S.C. 258 @ 268 -per Obaseki, JSC. i.e. the Judgment of the majority, I observe that at pages 254 to 259 of the Records, Tobi, JCA (as he then was) in his concurring Judgment, considered other issues of the Cross Appellants before also allowing the appeal.

Now, an order of rehearing, may be inappropriate, where it is clear, that no miscarriage of justice has been occasioned by the failure to deal with the issue or issues canvassed or that the irregularity, is not that of a substantial nature so as to prejudice any of the parties. See Abilawon v. Akanji (1995) 7 NWLR (Pt. 406) 129; (1995) 7 SCNJ. 245.

The cross/Appellants or their learned counsel, have not in their Brief and/or in the Brief, stated what miscarriage of justice has been occasioned to the Cross Appellants for the failure of the court below, to state that it also allowed the appeal in respect of the said other issues. They have not told the Court both in their Brief or in oral submissions at the hearing of the appeal, what prejudice the Cross Appellants have suffered by such failure.

As can be seen from what I have stated hereinabove, the learned counsel for the Cross Appellants conceded/confessed that the court below resolved issues No. 2 in their favour. Since issues four (4) and six (6), are said by him, to be tied to and rest on Exhibit 4, and therefore, that the appeal had in effect succeeded on the said issues four and six, in my respectful view, the complaint in this issue, is uncalled for. The court below, as conceded by the learned counsel to the Cross Appellants, having considered and resolved the said issues in favour of the Cross Appellants, that it did not in so many words say that it also allowed the appeal on the other issues, at worst, is an irregularity that does not require this Court holding that there is a breach of fair hearing and ordering a rehearing. I so hold.

Since this Court, has by a majority, also held in the case of **7Up Bottling Co. Ltd. & 2 ors v. Abiola & Sons Bottling Co. Ltd. (2001) 6 SCNJ. 18** that although it is the duty of an Appellate Court to consider all issues placed before it, but that where it is of the view that a consideration of one, is enough to dispose of the appeal, it is not under any obligation to consider all the other issues posed, this cross-appeal, is without merit and it fails.

In the end result, for the reasons adumbrated by me hereinabove, this Cross Appeal, the lone ground of appeal and the issue in respect thereof, are dismissed by me. I also affirm the Judgment of the court below. No order as to costs.

ONUJSC

I entirely agree.

KATSINA-ALUJSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Ogbuagu JSC. I agree with it and, for the reasons he gives I too dismiss the appeal and the cross-appeal with N10,000.00 costs to the Respondents.

OGUNTADEJSC

The appellants and the respondents belonged to the same Umuaji village in Asaba. The respondents were of the Ezeafadia sub-family of the same village. The two parties were said to be the joint owners of the land in dispute. The appellants as plaintiffs at the Asaba High Court claimed against the respondents as the defendants the following reliefs:

(1) An order of court that the said land, Ani Nkpoko described as Ojimiyan, Ebeleogwegwe, Oduke and Ozalla Ubom which is clearly delineated in Plan No. CD/AN/D69/95 filed with this statement of claim is the communal property of : the plaintiffs and Defendants.

(2) Any order of court that the 6 sub-families represented by the plaintiffs namely: (1) Atufa (2) Umuda (3) Agueze (4) Nnikwu (5) Umuekwo (6) Afeke together with No. (7) Ezeafadia i.e. Defendants are jointly entitled to the statutory or customary Certificate of Occupancy.

B (3) Perpetual injunction to restrain the Defendants by themselves, their Agents, servants, privies or assigns from alienating the land by sale, lease, mortgage, pledge, charge, exchange, collecting rents, or in any other way dealing with the land whatsoever without the knowledge and consent in writing of the plaintiffs of Umuaji or the accredited leaders of Umuaji and
C in particular, the Diokpa of Umuaji.

(4) An order of court setting aside as null and void any sale, lease, mortgage, pledge, charge, exchange heretofore made by the Defendants.

D (5) An order setting aside as null and void any sale, lease pledge, exchange or any acts touching in the land hereinbefore made by the Defendants, their agents or privies.

(6) An order of court vesting the entire land on the Diokpa in trust
E for himself and on behalf of himself and the entire Umuaji including the Defendants.

(7) Costs of this action against the Defendants to be taxed by the Assistant Taxing Master of the High Court (i.e. The A.C.R.)”

F Parties filed and exchanged pleadings. The case proceeded to trial before Odita J. On 20/7/98, the trial judge gave judgment in favour of the plaintiffs. Dissatisfied, the defendants appealed to the Court of Appeal, Benin Division (Hereinafter referred to as the court below.) The court
G below on 4-4-2001 allowed the appeal and set aside the judgment in plaintiffs’ favour. In allowing the appeal, the court below expressed the view that exhibits 1 to 4 upon which the plaintiffs had relied in proof of their case at the trial court were in fact inadmissible documents. The court
H below discountenanced the documents and came to the conclusion that the plaintiffs case be dismissed.

Dissatisfied, the plaintiffs have brought this appeal before this court. In their appellants’ brief, they formulated one solitary issue for determination. The issue reads:

“Whether the leaned Justices of the court below were right in holding that exhibits 1-4 are inadmissible in evidence for non-compliance with section 7 of the Public Archives Act.”

In paragraphs 6 and 7 of their statement of claim, the plaintiffs had pleaded thus:

“6. Thus stated, the Diokpas and elders of the 7 sub-families on the 7th day of May 1956 at Umuaji listened attentively to the motion moved by the late R. D. Odogwu himself of Umuezeafadia stock, an upright man, proud, and one of the finest sons of Umuaji as well as Asaba moved a motion of the appointment of trustees for the more efficient management of the communal property. The motion was unanimously carried. The certified true copy of the resolution from the National Archives is hereby pleaded and will be founded upon at the trial.

7. The above resolution was sequel to the unnecessary litigations which flowed in the Asaba Native Court case No. 265/54 Nwabuokei Arinze v. G. W. Gwam in which Mr. G. W. Gwam of the Defendants family was sued to return the original copy of the resolution. The District Officer found against Mr. Gwam and the Resident Mr. H. L. M. Butcher, on appeal, upheld the judgment of the District Officer. The said judgments are hereby pleaded and will be founded upon at the trial.

In the attempt to prove the above averments, the plaintiffs called a witness Johnson Olusegun Faleye as P.W.I. In his evidence P.W.I testified thus:

“PW1, Johnson Olusegun Faleye (m) sworn on Bible states in English. I live at No. 3, Sanwo Close, Ibadan. I am Senior Archivist Asst. National Archives Ibadan. I am on subpoena to tender documents. I was to tender certified copy of some documents. I traced and found the documents at the National Archives. I have the certified copy of the relevant documents with me.....

I have also a document resolution certified true copy.

MR. ANYADUBA: seeks to tender it.

Resolution.

MR. OKONKWO: No objection.

COURT: Certified copy of Resolution dated

28/2/55 tendered admitted and marked Exhibit '4'."

It was upon the above piece of evidence that the admission in evidence of exhibits 1-4 was based.

Now, it was the contention of the appellants before us that the court below was wrong to have taken the position that exhibits 1 -4 were inadmissible. Counsel argued that when Exhibits 1-4 were tendered, defendants' counsel had not objected to their admission in evidence on the basis that Section 7 of the Public Archives Act was not complied with. Counsel relied on *Olukade v. Alade* [1976] 1 All NLR (Pt.1) 67; *Etim & Ors. v. Ekpe & Anor.* [1983] 3 S.C. 12; *Oguma Associated Companies (Nig.) Ltd. v. International Bank for West Africa Ltd.* [1988] 1 NWLR (Pt. 73) 658; *Unity Life & Fire Insurance Company Ltd. v. International bank for West Africa Ltd.* [2001] 7 NWLR (Pt.713) 610.

Section 7 of the Public Archives Act provides:

"The Director shall have an official seal which shall be judicially noticed. When any copy or reproduction of a document in the custody of the Director is certified to be a true copy by the Director or by an officer of the Department of federal Archives authorized by him in that behalf and is authenticated by such official seal, such copy or reproduction shall be admitted in evidence as proof of the contents of the original document as if it were the original document."

The above provision when broken down translates into this - that a document from the public archives to be receivable in evidence and treated as the original must:

1. Be certified to be a true copy by the Director of Public Archives or by an officer of the Department of the Federal Archives duly authorized.
2. Carry an official seal of the Director of Federal Archives, which alone shall be proof of the authenticity of the document.

Did exhibits 1 -4 conform with the requirements as stated above in section 7 of the Public Archives Act? I think not. Exhibit 1 was tendered as record of court proceedings in suit No. 265/54. Exhibit 2 was tendered as certified copy of judgment in suit No No. AD31/54. Exhibit 3 was tendered as a copy of the judgment in appeal No. 51/54. Exhibit 4 was tendered as a copy of resolution made on 28/2/55 by the representatives

of Umuaji community. Exhibits 1-3 are public documents and in judicial proceedings only certified true copies of them are receivable in evidence - see Sections 111 and 112 of the Evidence Act. These documents would not ordinarily be receivable in evidence unless they were shown to have been certified. However, section 7 creates an exception provided certain conditions were met. Unless the conditions laid down under section 7 of the Public Archives Act were met, exhibits 1 -3 would fall under the category of documents, which by law are absolutely inadmissible. B

Exhibit 4 is not a public document. It is ordinarily receivable in evidence if evidence is led to show that it is the original of the resolution taken by the Umuaji community and signed by their representatives. However, rather than show that Exhibit 4 was the original, the plaintiffs opted to follow the special procedure under Section 7. The plaintiffs therefore had the duty to meet the conditions created under the said section D 7.

A close examination of exhibits 1-4 reveals that none of them carries the official seal of the Director of Public Archives. They were therefore not certified as authentic documents from the Public Archives. With such lacuna, they become documents, which by law are inadmissible in any event irrespective of whether or not the defendants had objected when they were tendered in evidence. In *Olukade v. Alade* [1976] 1 All N.L.R. 56 at 61, this Court per Idigbe JSC observed: E

“However, in civil cases where the trial has been before a judge and jury the wrongful admission of evidence cannot be made a ground of appeal unless the appellant had formally objected to the evidence at the trial. In a trial by a judge alone, as in the case in hand, a distinction must be drawn between those cases where the evidence complained of is in no circumstances admissible in law and where the evidence complained of is admissible under certain conditions. In the former class of cases the evidence cannot be acted upon even if parties admitted it by consent and the court of appeal will entertain a complaint on the admissibility of such evidence by the lower court (although the evidence was admitted in the lower court without objection); in the latter class of cases, if the evidence was admitted in the lower court without objection or by consent of parties F G H

or was used by the opposite party (e.g. for the purpose of cross-examination) then it would be within the competence of the trial court to act on it and the court of appeal will not entertain any complaint on the admissibility of such evidence.”

B I am satisfied that exhibits 1-4 are documents which in no circumstances could be admissible in law with or without objection from defence counsel at the time they were tendered. The court below was therefore right to have excluded them from evidence.

C I would, as in the lead judgment of my learned brother Ogbuagu JSC also dismiss this appeal as unmeritorious. I would award the same costs as in the lead judgment.

D **MOHAMMED JSC**

I have been privileged before today to read in draft, the judgment of my learned brother Ogbuagu JSC which he has just delivered. I agree with his reasoning and conclusion that both the appeal and the cross-appeal E ought to be dismissed.

The appeal and the cross appeal are against the judgment of the Court of Appeal Benin Division delivered on 4-4-2001 allowing the appeal of the defendants challenging the final judgment of the High Court of Justice of Delta State Asaba given on 20-7-1998 in favour of the plaintiffs. F In the appeal before the Court of Appeal, six issues were presented to the court by the defendants/appellants in that court for the determination of their appeal which at the hearing, was determined on the first issue only. The remaining five issues regarded as academic by the court below in its G judgment allowing the appeal were not considered. The plaintiffs at the trial court who were the respondents at the court below, being dissatisfied with the judgment of that court have now appealed to this court by submitting a lone issue from their grounds of appeal for determination. This is the H issue -

“Whether the learned Justices of the court below were right in holding that Exhibits 1-4 are inadmissible in evidence, for non compliance with Section 7 of the Public Archives Act.”

The defendants as the successful appellants at the court below, were also not happy with the judgment of that court though in their favour because they felt that after allowing their appeal on the first issue, the court ought to have proceeded to resolve the remaining five issues in their favour. The only issue submitted for resolution by the respondents/cross-appellants is:

“Whether in the circumstance of the appeal, the learned justices were right when they said-

‘Having disposed of the appeal on issue No.1, I do not intend to proceed to determine the remaining issues as it will amount to academic exercise.’

From the record of this appeal, it is quite clear that Exhibit 1 is a record of Asaba Native Court in Suit No. 265/54 between Arinze and Gwam while Exhibit 2 is a record of appeal to the A.D.O Asaba Division in Appeal No. AD 31/54. Exhibit 3 on the other hand is a record of appeal No. 51/54 to the Resident’s Office at the hearing of which the alleged Umuaji Family Resolution of 1-9-1944, was admitted in evidence as Exhibit A. It was this same Umuaji Family Resolution of 1-9-1944 which the plaintiffs now appellants in this court, relied upon exclusively in support of their claim, that was tendered and admitted in evidence at the trial court as Exhibit 4. All these exhibits 1, 2, 3 and 4, were procured from the National Archives Ibadan for the purpose of proving the plaintiffs’ claim before the trial High Court. It is in line with the requirements of the law therefore to require the documents to comply with the provisions of section 7 of the Public Archives Act before being admitted in evidence. Furthermore, Exhibits 1, 2 and 3 being proceedings of courts, also required further certification under the Evidence Act before such documents could qualify for admission in evidence. Not having been so certified, the documents remained inadmissible in law. See sections 97(2)(c) 109, 111 and 112 of the Evidence Act and the cases of Minister of Lands, Western Nigeria v. Azikiwe (1969) 1 All NLR 49; Onobruhere v. Esegine (1986) 1 NWLR (pt.19) 799; Nzekwu v. Nzekwu (1989) 2 NWLR (pt.104) 373 and Araka v. Egbue (2003) 17 NWLR (pt.848) 1 at 18-20.

It is in the light of the foregoing that I also agree that the appeal is without merit. Accordingly the appeal is dismissed and I abide by the orders on costs in the lead judgment.

Cross-Appeal

B The complaint in the cross-appeal is rather misconceived. Taking
into consideration that the document Exhibit 4 being the Umuaji Family
Resolution of 1-9-1994, which formed the foundation of the plaintiffs/
appellants' claim for title to the land in dispute between the parties at the
C trial court, the declaration by the court below that the vital document is
inadmissible had virtually brought to an end the dispute between the parties
in favour of the defendants now respondents. To proceed to consider
other issues when the vital one, namely the issue on Exhibit 4 is out, will
D certainly amount to tackling hypothetical or academic issues, the resolution
of which this court had long stopped entertaining and had also warned
the lower courts not to delve into the unnecessary exercise. In other
words the law is firmly settled that where a question before the court is
entirely academic, speculative or hypothetical, an appellate court would
E decline to decide the point as did the court below in the instant case. See
Nwocha v. Governor of Anambra State (1984) 6 SC 362 (1984) 1 SC NLR
634; Governor of Kaduna State v. Dada (1986) 4 NWLR (pt.38) 687;
Richard Ezeanya & Ors v. Gabriel Okeke & Ors (1995) 4 NWLR (pt.388)
F 142 and Alii v. Alesinloye (2000) 6 NWLR (pt.660) 177 at 213. Accord-
ingly I also agree that the cross-appeal ought to be dismissed. It is hereby
dismissed.

G

H