

**SUPREME COURT OF NIGERIA**

27<sup>TH</sup> APRIL, 2007. SC. 119\2000

**CORAM:- U.A. KALGO, G.A. OGUNTADE, M.A. MUKHTAR,  
W.S.N. ONNOGHEN, C.M. CHUKWUMA-ENEH, JJSC**

1. GODWIN NSIEGE ..... APPELLANTS  
2. SILAS NSIEGE

AND

1. OBINNA MGBEMENA  
2. OBIORA MGBEMENA ..... RESPONDENTS  
(For themselves and as representing the  
family of Chief W. M. MGBEMENA)

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LAND LAW - Title - Estoppel - Acquiescence - Meaning - Ezewani case  
- Reliance on acquiescence of plaintiff - When it was not pleaded - Nor  
suggested in alleged paragraphs of the defence - Is not proper - And  
Ezewani case is not applicable (H1)

LAND LAW - Title - Acquiescence - Pleadings - Suo motu finding by  
trial court - Based on acquiescence - Without hearing the parties - Con-  
stituted miscarriage of justice - As the issue was not pleaded (H2)

LAND LAW - Title - Acquiescence - Where the facts reveal that appel-  
lant - Did not sleep on his claim to property in dispute - Lower courts'  
finding of acquiescence - Cannot stand (H3)

LAND LAW - Title - Documents of - That are more than twenty years  
old - Being presumed to be regular under the Evidence Act - Effectively  
transferred title to the land in this case (H4)

LAND LAW - Possession - Constructive possession - Where respondent  
acquired the land by purchase - And was in possession till outbreak of  
the civil war - He is the owner in lawful possession (H5)

### **FACTS**

Before the Rivers State High Court Port Harcourt, plaintiff/appellant filed an action against the defendant/respondent. Plaintiff claimed a declaration of entitlement to rights of occupancy in respect of the parcel of land in dispute, voidity of Instrument of Transfer purportedly issued by the Abandoned Property Authority to the defendant and an injunction restraining the defendant from interfering with plaintiff's rights of occupancy. Pleadings were ordered, filed and exchanged between the parties who called witnesses in proof of their claims and defences.

The trial judge in his judgment raised the issue of acquiescence against the plaintiff suo motu without hearing the parties on that issue. He dismissed the plaintiff's claims. His appeal to the Court of Appeal was also dismissed. Still aggrieved, plaintiff has further appealed to the Supreme Court.

**HELD** (Unanimously dismissing the appeal though issue of acquiescence was resolved in appellant's favour per **KALGO JSC**)

#### ***Title - Estoppel - Acquiescence - Meaning***

1. Let me begin by defining "*acquiescence*". "*Acquiescence*" means assent to an infringement of rights either express or implied from conduct by which the right to an equitable relief is lost. It takes place when a person with full knowledge of his own rights and of any acts which infringe them, has, either at the time of infringement or after infringement by his conduct led the persons responsible for the infringement to believe that he waived or abandoned his rights". (See Dictionary of English Law by Earl Jowitt 2<sup>nd</sup> Edition 1965, page 36).

It is abundantly clear that the learned trial judge relied on the acquiescence of the plaintiffs, according to his findings, to dismiss their case.

In upholding the decision of the trial court, the Court of Appeal per Edozie JCA (as he then was) held that although the respondents did not specifically plead estoppel or acquiescence, as they should normally do, in the circumstances of this case, what was pleaded in paragraphs 11, 12, 17 and 21 of the Amended Statement of Defence indicated that they

were relying on the equitable defence. The Court of Appeal relied on the decision of this court *Obi Ezewani V. Obi Onwordi & Ors* (1986) 6 SC 402 at 456 where it was held that it was not necessary to specifically plead estoppel as a defence, other matters constituting estoppel are stated in such manner as to show that the party pleading relies upon them as a defence.

I have carefully examined the said paragraphs of the amended Statement of Defence and I also cannot see in all of them anything constituting a plea of acquiescence or estoppel raised by the respondents. They were only stating how the land in dispute was bought or purchased, from whom and when and also how the building plan was approved. There was nothing in any of the paragraphs to even indicate abandonment or waiver of the right by the appellants during the period in question. The appellants have therefore done nothing expressly or impliedly to give the respondents any impression that they are abandoning their right to the land in dispute. In fact the first part of paragraph 21, was to the contrary when it stated that the second plaintiff refused to give up possession. It is my view therefore that the decision in *Obi Ezewani's* case (*supra*) does not apply here, and I so hold. (p. 1787 E/1788 B/1789 D)

### ***Title - Acquiescence - Pleadings***

2. There is no doubt that the decision of the trial court was based on acquiescence of the appellants. And having found that acquiescence was not specifically pleaded and no facts pleaded upon which it could be inferred, the decision of the trial court to raise and rely on acquiescence *suo motu* cannot be justified. It is also trite law and well settled that where a court raises a new matter *suo motu* not canvassed by the parties before it, the court must give the parties the chance to address it on the matter, as failure to do so will constitute injustice and amount to miscarriage of justice to the parties if the court acts upon it.

I have read the address of learned respondent's counsel at the end of the trial on page 68 of the record of appeal, and I am of the view, that even if that amounted to raising the issue of acquiescence, it was not pleaded specifically with any particularity and when the court accepted

it, it should have called upon the appellant to address on it too. It did not and it acted fully and completely upon it in its judgment. The Court of Appeal was therefore wrong, in my view, for failure to consider the way in which the trial court decided the issue of acquiescence even if it was first raised by respondent in an address. In any case, the evidence of acquiescence must and can only validly be given in support of pleadings and since acquiescence was not pleaded, that evidence cannot be construed to support the plea of acquiescence and should be ignored.

(p. 1789 H/1790 F)

***Acquiescence - Where appellant did not sleep on his claim***

3. On the other hand, the appellant did not sleep on his rights nor give the impression that he has abandoned his claim. This was explained by his pleadings and evidence at the trial.

At the trial, 3 witnesses gave evidence for the appellants as plaintiffs and their evidence confirm that Dandeson Owhonda Nsiegbe was the original owner of the land in dispute and efforts to enter and clear the land was strongly challenged by D. O. Nsiegbe. There was also unchallenged evidence that the respondent being a policeman arrested D. O. Nsiegbe and locked him up, and he went on building on the land until he completed it. However during the Nigerian Civil War the respondent left Port Harcourt not being an indigene and D.O. Nsiegbe asked the 2<sup>nd</sup> appellant, his son, to occupy the building which he did up-till the case started and now.

It is therefore very clear from above that the appellants have been protesting on the challenge to their rights on the land in dispute. The question of acquiescence on the part of the appellants or their family does not therefore arise in the circumstances, and the finding on acquiescence by the trial court as confirmed by the Court of Appeal, cannot stand. I accordingly so hold and resolve issue I in favour of the appellants. (p. 1791 A/G)

***Title documents - That are more than twenty years old***

4. At the time of the trial in 1979, both documents were more than 20

years old. By the provisions of Section 122 of the Evidence Act, they are both presumed to have been executed and attested to by the persons by whom they purport to have been executed or attested. This presumption is not changed or affected by the general denial of the appellants that they did not sell or alienate the land in dispute or did not execute any of the said documents in the absence of specific proof and there was none. Therefore by Exhibit “J” D.W.1 had acquired legal interest in the original parcel of land sold to him by Dandeson Nsiegebe and the defendant/respondent had acquired legal interest in the piece of land sold to him by D.W.1 by virtue of Exhibit ‘B’ See *Idundun V. Okumagba* (1976) 9-10 SC. 246. (p. 1793 F)

### ***Constructive possession***

5. It is abundantly clear from the above that the respondent was in possession of the property and the land in dispute from the time he acquired it by purchase up-till the time he left Port Harcourt on the outbreak of the civil war in Nigeria. His departure from Port Harcourt was not voluntary at all and when on his return in 1973, he was granted Exhibit ‘F’ giving back his property, his possession is confirmed and it continued, so that even during his absence from Port Harcourt during the civil war, he was deemed to be in constructive possession of the land or property in dispute. Also possession may be inseparable from ownership in case of an innocent possessor who did not acquire the property by any fraudulent act. The respondent acquired the land and property in dispute by purchase and no fraud was involved and none of the documents were forged. I therefore find that he was the owner and in lawful possession of the land in dispute and resolve issues 2 and 3 in his favour.

For the reasons given above, I find no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal. (p. 1794 D)

### **REPRESENTATION**

No appearance by either party or their counsel.

**CASES REFERRED TO**

- Umar V. Bayero University (1988) 4 NWLR (pt. 86) 85 at 93  
Eholor V. Osayande (1991) 6 NWLR (pt. 249) 524  
Road Transport Employers Association of Nigeria V. National Union of  
B Road Transport Workers (1992) 2 NWLR (pt. 224) 381  
Oje V. Babalola (1991) 4 NWLR (pt. 185) 267  
Kallo V. CBN (1991) NWLR (pt. 214) 126 at 150  
Idundun V. Okumagba (1976) 9-10 SC. 246  
Pialo V. Tenalo (.1976) 12 SC 31 at page 37  
C Johnson V. Ayinke (1971) 1 All NLR 56 at page 62 - 63  
Ayinla V. Sijuwole (1984) 1 SCNLR 410 at page 419  
Oluwi V. Eniola (1967) NMLR 339 at 340  
Udo V. Obot (1989) 1 NMLR (pt. 95) 59  
D Wookey V. Pole & Ors 106 E. R. 839 at 841  
Ramadan V. Dyson [1988] 1 L.N.N.L. 129 at 140  
Ogunbambi V. Abowaba 13 W.A.C.A 222 at 224

E **STATUTE REFERRED TO**

Rivers State Abandoned Property Law 1969 Edict No. 8

**LEAD JUDGMENT BY KALGO JSC**

- F In the Rivers State High Court, Port Harcourt Judicial Division,  
the Appellants as Plaintiffs claimed against the respondents for -

“(i) A declaration that the plaintiffs are persons entitled to the  
rights or certificate of occupancy of the piece or parcel of land lying,  
situate and being at No. 43 Ikwerre Street, Diobu, Port Harcourt which is  
G verged YELLOW on Survey Plan No. CABR/35LD/79 of 31<sup>st</sup> January  
1979.

(ii) A declaration that the Instrument of Transfer purported to  
have been issued by the Abandoned Property Authority to the Defendant  
H in respect of the building on this land is null and void and of no effect  
whatsoever and is hereby revoked;

(iii) An injunction to restrain the Defendant whether by himself or  
his servants or agents or otherwise howsoever from interfering with the

*plaintiffs rights of occupancy of the said land”.*

Pleadings were ordered, filed and exchanged between the parties who thereafter called witnesses in proof of their respective claims and or defences at the trial. The learned trial judge Dappa J. delivered a considered judgment on 30<sup>th</sup> March 1984 dismissing the claims of the plaintiff/ B appellant. The plaintiff/Appellant then appealed to the Court of Appeal Port Harcourt Division, which also heard the appeal and dismissed it on 21<sup>st</sup> of May 1991. Still dissatisfied, the appellant appealed to this court this court, issue (iii) is properly distilled from ground of appeal 3 of the C appellants and will be considered in the appeal. I now consider the issues raised by the appellant in the appeal.

ISSUE I. This issue asked “*whether the Court of Appeal was right to uphold the judgment of the trial court on the ground of acquiescence*”. D In this issue the main grouse of the appellant is that the learned trial judge decided the case on acquiescence which was not pleaded by the respondent in his Statement of Defence without giving the appellants the opportunity to address the court on the matter, and the Court of Appeal brushed this aside and held that acquiescence was raised by the respondent at the E trial.

**Let me begin by defining “acquiescence”. “Acquiescence” means assent to an infringement of rights either express or implied from conduct by which the right to an equitable relief is lost. F It takes place when a person with full knowledge of his own rights and of any acts which infringe them, has, either at the time of infringement or after infringement by his conduct led the persons responsible for the infringement to believe that he waived or abandoned his rights”. (See Dictionary of English Law by Earl Jowitt 2<sup>nd</sup> G Edition 1965, page 36).**

In this case, the learned trial judge after reviewing the facts of the case in his judgment came to conclude thus: -

“*Save for the evidence by the 2<sup>nd</sup> plaintiff that the defendant came H measuring the land, that Dandeson Owhonda Nsiegebe asked him to stop measuring it, But that he refused which evidence, however is not based on pleadings, there is no iota of evidence that Dandeson Owhonda Nsiegebe*

*made any protests at all during the time the building was erected by the defendant..... The inference I draw from all this is that Dandeson or Dandeson Nsiegbe ..... did not throughout the time the defendant was building the house on the land protest against his doing so*  
 B .....If acquity (sic) will not allow Dandeson Owihonda Nsiegbe in the circumstances afterwards to assert his title to the land, it will not allow the plaintiffs, who claim to be his sons or children, to do so.

*For the above reasons this action is dismissed”.*

C From the above, **it is abundantly clear that the learned trial judge relied on the acquiescence of the plaintiffs, according to his findings, to dismiss their case.**

**In upholding the decision of the trial court, the Court of Appeal per Edozie JCA (as he then was) held that although the respondents did not specifically plead estoppel or acquiescence, as they should normally do, in the circumstances of this case, what was pleaded in paragraphs 11, 12, 17 and 21 of the Amended Statement of Defence indicated that they were relying on the equitable**  
 D **defence. The Court of Appeal relied on the decision of this court Obi Ezewani V. Obi Onwordi & Ors (1986) 6 SC 402 at 456 where it was held that it was not necessary to specifically plead estoppel as a defence, other matters constituting estoppel are stated in such**  
 E **manner as to show that the party pleading relies upon them as a defence.** The Court of Appeal in relying upon this decision referred to paragraphs 11, 12, -17 and 21 of the Amended Statement of Defence of the respondents which read: -  
 F

G *“11. The defendant avers that the second plaintiff was signatory to the said sale by Dandeson O. Nsiegbe.*

*12. The said Richard Ahumibe remained in open and uninterrupted possession of the land so purchased exercising diverse acts of ownership thereon until sometime in August 1956 when the said Richard Ahumide*  
 H *sold one portion of this land (measuring 100ft by 50 ft) now No.43 Ikwerre Street, Diobu, to the defendant and the remaining portion to Mr. B. Asinugo.*

*17. In March 1958, the defendant applied with a building plan to*



*Ikwerre District Council for approval to erect the building now standing on plot No. 43 Ikwerre Street, Diobu. The said building plan was signed by both Dandeson O. Nsiege and Richard Ahumibe as successive vendors on the one hand and W. N. Ngbemene as purchaser on the other hand of the property before the approval was given, (approved plan and receipt will be founded at the hearing of this suit)*

21. As the defendant was not prepared to sell the property, second plaintiff refused to give up possession.

Where upon the defendant says that the plaintiffs are not entitled to the reliefs and claims sought for in their statement of claim and will rely on all legal and equitable defences at the trial”.

Learned counsel for the appellants submitted in his brief that the contents of the above paragraphs cannot, by any stretch of imagination amount to pleading the defence of acquiescence specifically and with any particularity as required by law. **I have carefully examined the said paragraphs of the amended Statement of Defence and I also cannot see in all of them anything constituting a plea of acquiescence or estoppel raised by the respondents. They were only stating how the land in dispute was bought or purchased, from whom and when and also how the building plan was approved. There was nothing in any of the paragraphs to even indicate abandonment or waiver of the right by the appellants during the period in question. The appellants have therefore done nothing expressly or impliedly to give the respondents any impression that they are abandoning their right to the land in dispute. In fact the first part of paragraph 21, was to the contrary when it stated that the second plaintiff refused to give up possession. It is my view therefore that the decision in Obi Ezewani’s case (supra) does not apply here, and I so hold.**

The second point argued by the appellants counsel in this issue is that the learned trial judge raised this issue of acquiescence suo motu and did not give the appellants the opportunity to address the court on it before the decision was given. **There is no doubt that the decision of the trial court was based on acquiescence of the appellants. And having found that acquiescence was not specifically pleaded and no**

**facts pleaded upon which it could be inferred, the decision of the trial court to raise and rely on acquiescence suo motu cannot be justified. It is also trite law and well settled that where a court raises a new matter suo motu not canvassed by the parties before it, the court must give the parties the chance to address it on the matter, as failure to do so will constitute injustice and amount to miscarriage of justice to the parties if the court acts upon it. See Umar V. Bayero University (1988) 4 NWLR (pt. 86) 85 at 93; Eholor V. Osayande (1991) 6 NWLR (pt. 249) 524; Road Transport Employers Association of Nigeria V. National Union of Road Transport Workers (1992) 2 NWLR (pt. 224) 381; Oje V. Babalola (1991) 4 NWLR (pt. 185)267.**

The Court of Appeal properly directed its mind on the question of a court raising an issue suo motu when it held: -

*“The position of the law is that when a court decides to deal with an issue which is not raised by any of the parties before it, it is mandatory for the court before deciding the issue to give the parties the opportunity to address it on the issue. This is to ensure fairness to both parties as well as avoid an element of surprise. Kallo V. CBN (1991) NWLR (pt. 214) 126 at 150”.*

But after referring to the address of the respondent’s counsel at the trial on page 68 of the record, the Court of Appeal held that the trial court did not raise the issue of acquiescence suo motu. **I have read the address of learned respondent’s counsel at the end of the trial on page 68 of the record of appeal, and I am of the view, that even if that amounted to raising the issue of acquiescence, it was not pleaded specifically with any particularity and when the court accepted it, it should have called upon the appellant to address on it too. It did not and it acted fully and completely upon it in its judgment. The Court of Appeal was therefore wrong, in my view, for failure to consider the way in which the trial court decided the issue of acquiescence even if it was first raised by respondent in an address. In any case, the evidence of acquiescence must and can only validly be given in support of pleadings and since acquiescence was not pleaded, that**

evidence cannot be construed to support the plea of acquiescence and should be ignored.

**On the other hand, the appellant did not sleep on his rights nor give the impression that he has abandoned his claim. This was explained by his pleadings and evidence at the trial.** The following paragraphs of the statement of claim are relevant:-

*“15. Dandeson Owihonda Nsiegbe exercised maximum acts of ownership, possession, control and use of the land from the time it was given to him without let or hindrance from any quarters until he suddenly saw some labourers clearing the land. Dandeson drove the labourers away.*

*16. Later the defendant who was then a policeman came to the spot and arrested Dandeson and took him away to the Police Station, Diobu. It was about midnight before Dandeson was released on bail.*

*17. Thereafter the defendant pressed on with the work on the land, in the teeth of the protests of Dandeson Owihonda Nsiegbe and completed the building No. 43 Ikwerre Street, Diobu.*

*18. Owihonda Nsiegbe did not at any time sell, mortgage or lease the land to the Defendant or any body. Neither did the Nsiegbe family sell, mortgage or lease the land to the defendant or any person. The plaintiffs have also not sold or leased the land to any person.*

*20. During the Nigerian Crisis the occupants of the building left and the house became abandoned, property by operation of law.*

*21. After the liberation of Port Harcourt Dandeson Owihonda Nsiegbe ordered the 2<sup>nd</sup> plaintiff to occupy the house. The 2<sup>nd</sup> plaintiff has since been living there with his family”.*

**At the trial, 3 witnesses gave evidence for the appellants as plaintiffs and their evidence confirm that Dandeson Owihonda Nsiegbe was the original owner of the land in dispute and efforts to enter and clear the land was strongly challenged by D. O. Nsiegbe. There was also unchallenged evidence that the respondent being a policeman arrested D. O. Nsiegbe and locked him up, and he went on building on the land until he completed it. However during the Nigerian Civil War the respondent left Port Harcourt not being an**

indigene and D.O. Nsiegbe asked the 2<sup>nd</sup> appellant, his son, to occupy the building which he did up-till the case started and now.

It is therefore very clear from above that the appellants have been protesting on the challenge to their rights on the land in dispute. The question of acquiescence on the part of the appellants or their family does not therefore arise in the circumstances, and the finding on acquiescence by the trial court as confirmed by the Court of Appeal, cannot stand. I accordingly so hold and resolve issue I in favour of the appellants. I now deal with issues 2 and 3 together.

Issue 2 deals with whether the respondent was in possession of the land in dispute and Issue 3 deals with whether the respondents are the owners of the land in dispute.

In respect of these issues, let me now look closely at the facts of the case as disclosed in the evidence on the record. The land in dispute is situated in Rumuwoyi village area and is called “*Otumoye*” meaning “*Farm Land*”.

The evidence of the plaintiffs/appellants was to the effect that they originally owned the land in dispute and the defendant/respondent owned the building on it. D. W. I, Richard Duru Ahumibe, testified that in 1956, he bought a piece of land from Dandeson Nsiegbe, the father of the appellant measuring 214 ft. long and 140 ft. wide for 120 (one hundred and twenty pounds) he further said that when he bought the land from Dandeson Nsiegbe, the latter gave him a receipt which was also thumb-printed by the 2<sup>nd</sup> plaintiff/appellant. It was admitted in evidence without objection as Exhibit “J”. He further added that he sold part of the said land to the defendant/respondent for £180, and issued him a receipt - Exhibit “B” admitted in evidence without objection.

The defendant/respondent testified that he bought the land in dispute from DW. 1 and Exhibit ‘B’ was given to him as the receipt for the purchase. He then cleared the land and put up the building on it after obtaining approval of his building plan. The plan was signed by DW. 1, Dandeson Nsiegbe and himself. It was admitted in evidence as Exhibit ‘E’.

The defendant/respondent then built a house on the land. He said

in his evidence: -

*“I was living in the house until the outbreak of the Nigerian Civil War. I left the house when the Nigerian Troops came into Port Harcourt. After the cessation of the civil war the Abandoned Property Authority released the house to me and gave me a document transferring it to me”.* B

The transfer document was admitted in evidence as Exhibit “F”. He further explained that the house was transferred to him by the Abandoned Property Authority in 1973.

The appellants on the other hand confirmed in their testimony that the building on the land was built by the defendant/respondent and although they protested against it at the beginning, they later gave it up. The defendant/respondent “then occupied the building until the outbreak of the Nigerian Civil War. The appellants however denied the sale of the land in dispute to the defendant by their father Dandeson Nsiegebe. D

Exhibits ‘B’ and J are the purchase receipts respectively of the land in dispute and the larger parcel of land out of which the land in dispute was carved. These are the most important documents in this case. There is no doubt that the Nsiegebe family are the original owners of the land sold to D W. 1 per Exhibit J. It is also without any doubt, that Exhibit ‘B’ was the receipt for the purchase or sale of the land in dispute given to the defendant/respondent by D. W. 1. They were both admitted in evidence without any challenge and there was no iota of evidence that any of them was forged. **At the time of the trial in 1979, both documents were more than 20 years old. By the provisions of Section 122 of the Evidence Act, they are both presumed to have been executed and attested to by the persons by whom they purport to have been executed or attested. This presumption is not changed or affected by the general denial of the appellants that they did not sell or alienate the land in dispute or did not execute any of the said documents in the absence of specific proof and there was none. Therefore by Exhibit “J” D.W.1 had acquired legal interest in the original parcel of land sold to him by Dandeson Nsiegebe and the defendant/respondent had acquired legal interest in the piece of land sold to him by D.W.1 by virtue of Exhibit ‘B’ See Idundun V.** F G H

**Okumagba (1976) 9-10 SC. 246**, Pialo V. Tenalo (.1976) 12 SC 31 at page 37. Johnson V. Ayinke (1971) 1 All NLR 56 at page 62 - 63 Ayinla V. Sijuwole (1984) 1 SCNLR 410 at page 419.

There is un-contradicted evidence that after the respondent completed the building on the land in dispute, he occupied it until the commencement of the Nigerian Civil War when he left Port Harcourt and only returned in 1973. It was only during his absence that the 2<sup>nd</sup> appellant, occupied the same building. During this civil war period, the building was an abandoned property within the meaning of the Rivers State Abandoned Property Law (Edict No. 8 of 1969). When the respondent returned to Port Harcourt in 1973, after the civil war, the property was returned to him by an instrument of transfer - Exhibit 'F'. His effort to claim back the house from the 2<sup>nd</sup> appellant gave rise to the instant case.

**It is abundantly clear from the above that the respondent was in possession of the property and the land in dispute from the time he acquired it by purchase up-till the time he left Port Harcourt on the outbreak of the civil war in Nigeria. His departure from Port Harcourt was not voluntary at all and when on his return in 1973, he was granted Exhibit 'F' giving back his property, his possession is confirmed and it continued, so that even during his absence from Port Harcourt during the civil war, he was deemed to be in constructive possession of the land or property in dispute. Also possession may be inseparable from ownership in case of an innocent possessor who did not acquire the property by any fraudulent act. See Oluwi V. Eniola (1967) NMLR 339 at 340; Udo V. Obot (1989) 1 NMLR (pt. 95) 59, Wookey V. Pole & Ors 106 E. R. 839 at 841.**

**The respondent acquired the land and property in dispute by purchase and no fraud was involved and none of the documents were forged. I therefore find that he was the owner and in lawful possession of the land in dispute and resolve issues 2 and 3 in his favour.**

**For the reasons given above, I find no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal delivered on 28<sup>th</sup> June 1995. I award N10,000.00 costs to the respondents against the appellants.**

**OGUNTADE JSC**

The appellants were the plaintiffs at the Port-Harcourt High Court of Rivers State where they claimed against the respondents as the defendants the following reliefs:

*“(1) A Declaration that they are the persons entitled to the rights or certificate of occupancy of the piece or parcel of land lying situate and being at No. 43 Ikwerre Street, Diobu, Port Harcourt, which is verge YELLOW on survey Plan No. GABR/35LD/79 of 31<sup>st</sup> January, 1979.*

*(2) A Declaration that the Instrument of Transfer purported to have been issued by the Abandoned Property Authority to the Defendant in respect of the building on this land is null and void and of no effect whatsoever and is hereby revoked.*

*(3) An Injunction to restrain the Defendant whether by himself or his servants or agents or otherwise howsoever from interfering with the Plaintiffs’ rights of occupancy of the said land.”*

The parties later filed and exchanged pleadings after which the suit was heard by Dappa J. On 30/3/84, the trial judge in his judgment dismissed the plaintiffs’ suit. Dissatisfied the plaintiff brought an appeal against the judgment before the Court of Appeal, Port-Harcourt (hereinafter referred to as ‘the court below’). On 28/6/95, the court below in a unanimous judgment affirmed the judgment of the trial court and dismissed plaintiffs’ appeal. The plaintiffs have come before this Court on a final appeal. In their appellants’ brief, the issues for determination in the appeal were identified thus: -

*“(i) Whether the Court of Appeal was right to uphold the judgment of the trial court on ground of acquiescence?*

*(ii) Whether from the pleadings and evidence in this case, the respondents are in possession of the land in dispute?*

*(iii) Whether the respondents are the owners of the land in dispute.”*

As will shortly be made manifest from a discussion of the issues presented before the High Court for adjudication, the 2<sup>nd</sup> issue raised for

adjudication in this appeal would appear to be inappropriate. The dispute between the parties was not as to who had possession of the land in dispute but as to whether or not the title to the land in dispute which originally resided in plaintiffs' family was transferred to the defendants.

B The facts relied upon by the plaintiffs may be summarized thus:  
The land in dispute, known as 43 Ikwerre Street, Diobu, Port-Harcourt originally belonged to the plaintiffs' Nsiegbe family. The land devolved by inheritance on plaintiffs' father Dandeson Owhonda Nsiegbe. Later the  
C defendant came on the land and inspite of the protests by Dandeson Owhonda Nseigbe, the defendant erected the building now known as 43 Ikwerre Street, Diobu on the land. Plaintiffs' father did not sell his land to the defendant. Sometime in 1973, the defendant emerged to claim the ownership of the property. In 1975, the defendant gave a notice to quit to  
D the 2<sup>nd</sup> plaintiff who had meanwhile lived in the house. The defendant claimed that he had an Instrument transferring the property to him from the Abandoned Property Authority.

The case of the defendant on the other hand was that the plain-  
E tiffs' father Dandeson Owhonda Nsiegbe in May 1956 sold his parcel of land to one Richard Ahumibe which said land Richard Ahumibe divided into two parcels and sold the parcel now in dispute to him. The other parcel was sold to one Mr. B. Asinugo. In 1958, the defendant prepared  
F a building plan for the development of the land. Plaintiffs' father and Richard Ahumibe as the defendant's successive predecessors in title signed the building plan. The defendant erected the building now known as 43 Ikwerre Street, Diobu on the land.

Now on this state of pleading, the trial judge tried the suit. On the  
G pleadings of the parties, the core issue to be determined was whether or not plaintiffs' father had sold the property in dispute to one Richard Ahumibe who in turn sold the same to the defendant. The plaintiffs called two witnesses. The 2<sup>nd</sup> plaintiff was P.W.I. At pages 37-38 of the record,  
H the 2<sup>nd</sup> plaintiff testified as follows:

*“When our father was alive the defendant came and started measuring the area on which No. 43 Ikwerre Street is now built. Our father asked him to stop measuring it. He refused to stop, but went and invited*



*the police. The police came and arrested my father and detained him for one week. Before he was released on bail, the defendant had erected a house on the Site up to Window level. The defendant was himself a policeman. My father had no money to sue the defendant in Court; so he left the matter to lie.*

B

*The defendant is not a member of Nsiegbe family. He is not of Rivers State Origin. He is from Anambra State. "*

*During the Nigerian Civil War my father told me to move into 43 Ikwerre Street, saying that he did not sell the land on which the building was erected to anybody. I moved into the house and have been living in it since that time.*

C

*In 1973 the defendant came to me and said that he built the house. I replied 'Yes' and asked who gave him the land to build on. He replied that the land was sold to him by my late father. I asked him if there was any agreement made between him and my father and he answered 'yes'. He promised to produce the agreement on a later date. When he later came he said that the agreement was lost."*

D

Remarkably, at page 44 of the record, the 2<sup>nd</sup> plaintiff under cross-examination testified thus:

*"I know that 43 Ikwerre Street was an abandoned property. I did not know that it was released to the defendant. I know that 43, Ikwerre Street belongs to the defendant."*

F

*(italics mine)*

It cannot escape notice that although the plaintiffs' case was that their father never sold the land in dispute to the defendant, yet 2<sup>nd</sup> plaintiff agreed under cross-examination that the property on the land i.e. 43 Ikwerre Street belonged to the defendant.

G

The defendant testified in conformity with the averments on his Statement of defence. He stated that he brought the land in dispute from one Chief Richard Ahumibe and tendered as exhibit 'B' the receipt he obtained from his vendor. He tendered as Exhibit 'E' the building plan he made for the development of the land, which was signed by his vendor and plaintiffs' father. At page 48 of the record the defendant testified thus:

H

*"I was living in the house until the outbreak of the Nigerian Civil War. I left the house when the Nigerian troops came into Port- Harcourt. After the cessation of the Civil War the Abandoned Property Authority released the house to me and gave me a document transferring it to me.*

*B This document produced to me is the said document. Counsel seeks to tender document. Counsel seeks to tender document. Mr. Chinda has no objection. Document admitted and marked Exhibit 'F'. Since the transfer of the house to me, I have been paying the property rates on it upon receipt of demand notices."*

*C The defendant called a witness as D.W.I who was his vendor Chief Richard Ahumibe. D.W.I testified that he brought a parcel of land from plaintiffs' father in 1956 and later sold a portion thereof to the defendant. D.W.I tendered as exhibit J the receipt given him by plaintiffs' D father for the payment made for the land.*

*E The trial judge in his judgment at pages 86-87 of the record would appear to have taken the view that the defendant could not have derived a valid title to the land in dispute vide exhibits J and 'B'. Notwithstanding this reasoning, the trial judge invoked the equitable principle of acquiescence to conclude that the plaintiffs' case ought to be dismissed. He said:*

*F "Exhibit 'J' tendered by Chief Richard Ahumibe (D.W.I) and purported to be a receipt issued to him by Dandeson Owihonda Nsiegbe, being unregistered, could not and did not convey the land in dispute to him. Similarly and a fortiori, Exhibit 'B' issued to the defendant by the said Chief Richard Ahumibe, could not and did not convey the land to the defendant. Nevertheless, the defendant believed that he had purchased the land and proceeded to and did build on it. It was therefore the G duty of Dandeson Owihonda Nsiegbe to assert his title to the land as owner. He did not, but permitted the defendant, as I have found above, to build on it or acquiesced in his building on it. Thus, the defendant was led by him to expend money in building his house on the land. The principles of equity on the subject or behaviours of this sort are: -*

*H If a stranger begins to build on my land supposing it to be his own, and I perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me*

*afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title; and that it would be dishonest in me to remain fully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented.’ See Ramadan v. Dyson [1988] 1 L.N.N.L. 129 AT PAGE 140.’*

If equity will not allow Dandeson Owghonda Nsiegbe in the circumstances afterward to assert his title to the land, it will not allow the plaintiffs who claim to be his sons or children, to do so.

*For the above reasons this action is dismissed. It is unnecessary to decide whether Dandeson Owghonda Nsiegbe was literate or illiterate.”*

As I observed earlier, the court below affirmed the judgment of the trial court. It also accepted that the plaintiffs had acquiesced in the defendants assertion of ownership of the land in dispute. It went on further to hold that because the lands adjoining No. 43 Ikwerre Street had been sold to different persons, it was also likely that the land in dispute had also been sold as asserted by the defendant.

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Kalgo J.S.C. I agree with him that the two courts below were in error to have decided the case on the basis that the plaintiffs had acquiesced in the defendant’s claim to the ownership of the land in dispute. Simply put, the defendant never pleaded acquiescence and the case was never fought by parties on such basis. I therefore agree that this Court ought not to accept the reasoning of the two courts below.

Notwithstanding my views on the inappropriateness of relying on the equitable doctrine of acquiescence on the facts of this case, I am still of the view that the plaintiffs’ case was correctly dismissed. The 2<sup>nd</sup> plaintiff at page 36 of the record stated that the defendant built on plaintiffs’ land. He went on to say:

*“No. 43 Ikwerre Street is built on portion or part thereof. Our village is called Rumuoji and 43 Ikwerre is situate on it.”*

*By the above piece of evidence, it is clear that the plaintiffs were*

*natives of Rivers State. At page 28 of the record, the 2<sup>nd</sup> plaintiff said:*

*“The defendant is not a member of Nsiege family. He is not of Rivers State origin. He is from Anambra State .”*

*And at page 44 of the record 2<sup>nd</sup> plaintiff said:*

B *“I know that 43 Ikwerre Street was an abandoned property.”*

It seems to me that if indeed No. 43, Ikwerre Street, Diobu, now in dispute belonged to the plaintiffs, it would be unlikely that the same would have been classified as abandoned property since such classification would not be applicable to a property owned by indigenes of Rivers State under Section 2 of the Abandoned Property (Custody and Management) Edict No. 8 of 1969 which defines an abandoned property. According to the said section 2, an abandoned property is any property movable or immovable belonging to a person whose home town or place of origin is not situate in Rivers State of Nigeria which in the opinion of the Military Governor or the Authority has been abandoned by the owner thereof as a result of the civil war in Nigeria or the disturbances in the country leading to it, and is at the time of making of the Edict not in the physical occupation or under the personal control of the owner.

It seems to me that, it was the defendant, a native of Anambra State, and not the plaintiffs who are natives of Rivers State who could be regarded under Section 2 above as owners of an abandoned property, which by the admission of both parties No. 43 Ikwerre Street was. The defendant and not the plaintiffs was the one who built the property in dispute and who was forced to abandon it during the Nigerian civil war. In any case, the 2<sup>nd</sup> plaintiff in his evidence acknowledged that the property belonged to the defendant. There was indisputable evidence that the property was released only to the defendant. I am satisfied that the said property could, on the evidence, only have belonged to the defendant.

Further, I observed earlier that the defendant tendered in evidence as exhibit ‘B’ the receipt of the payment he made to Chief Richard Ahumibe. The receipt given to Chief Richard Ahumibe was also tendered as exhibit J. In furthering his reliance on the doctrine of acquiescence, the trial judge took the view that these receipts, being unregistered could not and ‘did not convey the land in dispute to the defendant’s predecessor in title.

I entirely agree. But it must be borne in mind that exhibit J was the receipt issued by the plaintiffs' father for the payment made to him. The possession of the receipt coupled with the fact that Chief Richard Ahumibe was actually in possession of land raises in his favour an equitable interest in the land, which would also raise the presumption that he bought the land. B In *Ogunbambi v. Abowaba* 13 W.A.C.A 222 at 224, the West African Court of Appeal discussed the position thus: -

*"In view of this definition I think the submission that the document in this case is an instrument within the meaning of the Ordinance is well founded and that it could not be either pleaded or given in evidence as affecting this land. It is evidence, however, of the payment of moneys and the question remains whether the proof of such payment coupled with the possession of the purchaser is evidence of such part performance that equities arise which, as is said by the learned author of Seaborne's Vendors and Purchases (8<sup>th</sup> Edition, page 22), 'cannot be administered unless the contract is regarded'. It is true that the purchaser (in this case the respondent) cannot rely upon the written document, for it is not registered and he is therefore debarred by statute from pleading it or giving it in evidence, save in the limited sense to which I have referred. It is true that the mere payment of money is not sufficient part performance for it is not unequivocal in the absence of the contract. But when this is coupled by his being let into possession of the property, it is to be presumed that he entered into the property not as a stranger and therefore prima facie a trespasser but under a contract for sale, and from this arises an equitable interest which may be converted into a legal estate by specific performance."* C D E F

It seems to me therefore, that the defendant who acquired his title from Chief Richard Ahumibe who had bought directly from plaintiffs father deserved to be allowed to keep his possession. G

It is for this and other more elaborate reasons in the lead judgment of my learned brother Kalgo J.S.C. that I would dismiss this appeal as H unmeritorious. I abide by the order on costs.

**MUKHTAR JSC**

I have had the privilege of reading in advance the lead judgment delivered by my learned brother Kalgo, JSC. It is on record that the plaintiffs/appellants claim in the court of first instance was for declaration of title to the land in controversy. In their statement of claim the appellants after pleading their ancestors interest to the land and their own accrued interest after his death, averred the following: -

“9. ....

*Dandeson Owghonda had as his share the area of land verged YELLOW on the survey plan filed along with this statement of claim. It is the land on which No. 43 Ikwerre Street now stands. Dandeson Owghonda Nsiegbe was the father of the plaintiffs. He was a farmer and planted yams on the land. His wives also planted cassava coco-yams etc., on the land.*

*11. Dandeson Owghonda Nsiegbe also built a thatch house on the land and lived in it with his family.*

*15. Dandeson Owghonda Nsiegbe exercised maximum acts of ownership possession, control and use of the land from the time it was given to him without let or hindrance from any quarters until he suddenly saw some labourers clearing the land. Dandeson drove the lawyers away.*

*16. Later the defendant who was then a policeman came to the spot and arrested Dandeson and took him away to the police station, Diobu.*

*17. Thereafter the Defendant pressed on with work on the land, in the teeth of the protests of Dandeson Owghonda Nsiegbe and completed the building at No. 43 Ikwerre Street, Diobu.*

*18. Dandeson Owghonda Nsiegbe did not at any time sell, mortgage or lease the land to the Defendant or anybody. Neither did the Nsiegbe family sell, mortgage or lease the land to the Defendant or any person. The plaintiffs have also not sold or leased the land to any person.”*

In their amended statement of defence the respondents pleaded their own case thus: -

“8. By virtue of an Instrument of Transfer dated 4<sup>th</sup> August 1973

*and signed by the Chairman, Rivers State Abandoned Property Authority the defendant became vested again after the war with the said property.....*

*9. Prior of (sic) the issue of the Instrument of Transfer mentioned in paragraph above, the defendant, upon a valid contract of sale/payment receipt was put into full possession of the said property by his vendor, one Richard Ahumibe.....*

*10. In May 1956 the said Richard Ahumibe bought a piece of land measuring 214ft by 140ft known and called ‘Otumonye’ of which the defendant’s land forms a portion from Mr. Dandeson O.Nsiegbbe.....*

*11. The defendant avers that the second plaintiff was signatory to the said sale by Dandeson O. Nsiegbe.*

*12. The said Richard Ahumibe remained in open and un-interrupted possession of the land so purchased exercising diverse acts of ownership thereon until sometime in August 1956 when the said Richard Ahumibe sold one portion of this land (measuring 10ft by 50ft) now No. 43 Ikwerre Street, Diobu, to the defendant and the remaining portion to Mr. B. Asinugo.*

*17. In March 1958, the defendant applied with (sic) a building plan to Ikwerre District Council for approval to erect the building now standing on plot No. 43 Ikwerre Street, Diobu. The said building plan was signed by both Dandeson O. Nsiegbe and Richard Ahumibe as successive vendors on the one hand and W. W. Mgbemene as purchaser on the other hand of the property before the approval was given.....”*

It is clear from the above averments that issues were joined on the interest and ownership of the property in dispute. Evidence were adduced by both parties in support of their averments, and it can be inferred from the judgment of the trial court that the evidence of the plaintiffs were not accorded with much strength as is illustrated in the excerpt of the judgment that I will reproduce below which reads thus: -

*“The plaintiffs, however, say that the defendant came measuring the land in 1956, that Dandeson Owhonda Nsiegbe asked him to stop doing so, but that he refused and rather went and invited the police who*

came and arrested Dandeson Owhonda Nsiegebe and detained him for one week before releasing him on bail, during which time the defendant erected the house to window level. This evidence by the plaintiff is not in accord with the pleadings “that some labourers came clearing the land that Dandeson drove the labourers away, that later the defendant who was a policeman came to the spot and arrested Dandeson and took him away to the police station, Diobu, and that it was about midnight before Dandeson was released on bail”. See paragraph 15 and 16 of the statement of claim.”

It is instructive to note that the appellants did not prove their case, as the evidence that was given did not support their pleadings, and the law is settled that evidence on facts not pleaded should be ignored, as they go to no issue. See *George & Ors v. Dominion Flour Mills* 1963 1 All NLR page 71, *Emegokwe v. Okadigbo* 1973 4 SC.113 and *Okagbue v. Romaine* 1982 5 SC. 133. Likewise, where evidence adduced is at variance with pleading, the proper order to make is to dismiss the claim. See *Oyediran v. Amoo* 1970 1 All N.L.R. 313.

The exhibits that were tendered by the respondents as evidence of purchase, (Exhibits ‘B’ and ‘J’) vested interest of the land in dispute on the respondents, and the Court of Appeal was right in finding that, “Richard Ahumibe had acquired a legal estate which is as good as a legal estate transferred to the defendant as per Exhibit B, it follows that the defendant had discharged the burden on him to show that the appellants’ father had divested himself of the ownership of the land in dispute and therefore the claim of the appellants as his successors-in-title to the land in dispute is not maintainable.”

I am in full agreement with the reasoning and conclusion reached in the lead judgment and abide by the orders made in the said judgment.

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### ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden at Port Harcourt in appeal No.CA/E/243/88 delivered on the 28<sup>th</sup> day of June, 1995 in which the appeal of the appellants was dismissed.

In suit No.PHC/260/79 the appellants, as plaintiffs, claimed the



following reliefs against the defendants/respondents:-

(i) *A declaration that the plaintiffs are the persons entitled to the rights or certificate of occupancy of the piece or parcel of land lying, situate and being at No.43 Ikwere Street, Diobu, Port Harcourt which is verged YELLOW on survey plan No.CABR/35LD/79 of 31<sup>st</sup> January 1979.* B

(ii) *A declaration that the Instrument of Transfer purported to have been issued by the Abandoned Property Authority to the Defendant in respect of the building on this land is null and void and of no effect whatsoever and is hereby revoked.*

(iii) *An injunction to restrain the Defendant whether by himself or his servants or agents or otherwise howsoever from interfering with the plaintiffs' rights of occupancy of the said land.* C

The suit was dismissed by the trial judge leading to the appeal to the Court of Appeal, which appeal, as stated earlier in this judgment was dismissed. The appellants' case is that the land in dispute at No.43 Ikwere Street, Mile 1. Diobu, Port Harcourt belongs to the NSIEGBE family of Rumuwoji, Diobu, Port Harcourt to which the appellants' belong and that the said land was allocated by that family to their father, Dandeson Owihonda Nsiegbe; that their father built a thatch house on the land which later fell making it necessary for him to subsequently build a zinc house along Ikwere Road where he lived though he remained in effective possession of the land in dispute by farming thereon until the respondents father came to build on the land; that their father resisted the entry but since the father of the respondents was a policeman he arrested and detained the father of the appellants at the police station and completed the building on the land; that during the Nigerian civil war appellants' father asked one of his sons, the 2<sup>nd</sup> appellant, to occupy the building which 2<sup>nd</sup> appellant did. The appellants denied that their father ever sold or leased or mortgaged or in any way alienated his right to the land to any person nor did any other member of the Nsiegbe family. D E F G

On the other hand, it is the case of the respondents that the appellants' father sold a large parcel of land (of which the portion in dispute was a part) to one Chief Richard Ahumibe who in turn sold the portion on which No.43 Ikwere road is built to the father of the respondents - the H

original defendant in the action - while another portion of the land bought by Chief Ahumibe was sold to one Mr. B. Asinugo; Chief Ahumibe testified as DW1 and stated that the father of the appellants gave him a receipt for the purchase of the land which he tendered and was admitted as exhibit J and that the 2<sup>nd</sup> appellant tumb-printed exhibit J; that when he sold part of that land to the original defendant (father of the respondents) both DW1 and the father of the appellants signed the receipt and that both himself (DW1) and the father of the appellants signed the building plan submitted by the father of the respondents to the Ikwere District Council then at Choba in respect of the building on the land in dispute.

In the amended appellants' brief of argument the following three issues have been identified by learned counsel for the appellants for the determination of the appeal: -

(i) *Whether the Court of Appeal was right to uphold the judgment of the trial Court on the ground of acquiescence?*

(ii) *Whether from the pleadings and evidence in this case, the respondents are in possession of the land in dispute*

(iii) *Whether the respondents are the owners of the land in dispute.*

I have had the privilege of reading in draft the lead judgment my learned brother Kalgo JSC in which he has exhaustively dealt with the issues in contention between the parties. I however wish to comment on issues 1 and 2.

It is very important to note that both parties agree that the father of the appellants, Dandeson Owhonda Nsiegbe, was the original owner of the land in dispute having been allocated the land by his family, the Nsiegbe family. The problem, however, is whether the said Dandeson Owhonda Nsiegbe sold portion of the land he owned to Chief Ahumide who in turn sold the portion in dispute to the father of the respondents as claimed by the respondents and DW1 or that the father of the respondents was a trespasser on the land in dispute. The lower courts held that there was such a sale by Dandeson O. Nsiegbe.

From the evidence on record, it is very clear that the father of the respondents built the house in dispute on the disputed land and lived therein before the Nigerian civil war and that after the said war, the prop-

erty was, by Instrument of Transfer issued by the Abandoned Property Authority, released to the original defendant the father of the respondents.

It must be noted that this appeal is against the concurrent findings of fact by the lower courts and it is the attitude of the Supreme Court not to interfere with such findings except in exceptional or special circumstances which include a demonstration of occurrence of a miscarriage of justice or a serious violation of some principles of law or procedure or where the findings are demonstrated to be erroneous or perverse - see *Abinabina Vs Enyimadu* 12 WACA 171; *Are Vs Ipaye* (1992) 2NWLR (pt.132) 298 at 308. In the instant appeal learned counsel for the appellants has not demonstrated to the satisfaction of this court that this is a proper case in which this court should intervene to set aside the concurrent finding of facts by the lower courts.

It is for these and the more detailed reasons contained in the lead judgment of my learned brother KALGO JSC that I too find no merit in the appeal, which is accordingly dismissed with costs as assessed and fixed in the said lead judgment.

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### CHUKWUMA-ENEH JSC

In this action the claim before the trial Court as set out in the Statement of Claim at P. 2 of the record is as follows:

*"(1) A declaration that the plaintiffs are entitled to the occupancy of the land lying situate and being at and known as No. 43, Ikwere Street, Diobu, Port Harcourt, in Port Harcourt City Local Government Area, Rivers State, Nigeria.*

*(2) A declaration that the Instrument of Transfer purported to have been issued by the Abandoned Property Authority to the Defendant in respect of the said property is null and void and is revoked.*

*(3) An injunction to retrain the Defendant whether by himself or his servants or agents or otherwise howsoever from interfering with the plaintiffs' Right of occupancy of the said land"*

At the trial Court, pleadings were ordered filed and exchanged between the parties. I couldn't agree more with the statement of facts as

very well set out in the lead judgment of my learned brother Kalgo JSC, and which I have had the advantage of a preview before now and I adopt the same for the purposes of this contribution. I also agree with his reasoning and conclusions. I have however to deal with one critical point B of the case arising out of issue three in the appellant's brief of argument which has posed the question of:

*"Whether the respondents are the owners of the land in dispute?"*

The turning point in the respondents case at the trial has been on C the legal effect of the two crucial exhibits i.e. Exhibits B & J, (the purchase receipts), (although registrable instruments they have not been registered) which have been tendered in proof of their contention of having interest in the land in dispute and also in their contention of their being in D open uninterrupted possession of the land in dispute by having put up a building thereon soon after paying for the land; in other words, the purchasers, of the land in dispute have taken possession by virtue of registrable instruments - Exhibits B & J. The important question from these scenarios and which I intend to examine here therefore, is whether as E found by the Court below the respondents have thereby acquired equitable interests that are as good as legal estates even as exhibits B & J being registrable instruments have not been registered. It is settled law that a purchaser of land who has paid and taken possession of the land by F virtue of a registrable instrument which has not been registered has thereby acquired an equitable interest which is as good as a legal estate: See: Bond V. Rosling (1861) 1 B & S 371. Parker V Taswell (1856) 2 DeG & J 559 and Dr. J. C. Okoye V. Dimez Nigeria Limited and Anor. (1985) 6 SC 3 at 12; (1985) 1 NWLR (Ft. 4) 783 The lower Court on the established facts G as gathered from the record and rightly in my view found the respondents in possession of land in dispute; a finding which the trial Court has failed to make inspite of the abundant evidence before it. See: Thomas V Thomas (1947) AC 48 and Fatoyinbo V Williams (1956) 1 FSC 89.

H It is on this premise that the equitable interest of the instant respondents and their vendors have been held to be as good as legal estates by the court below which also has in the result found that the respondents have discharged the onus of proof on them by proving that the

original owner of the land in dispute, Dandeson Ow'honda Nsiegbe (deceased), the appellants' father has been divested of his interest in the land in dispute. I must observe that the devolution of the land in dispute to the respondents from their vendor Richard Ahumibe has never been in issue. Definitely, Exhibit B is the purchase receipt issued by the respondents' vendor ( i.e. D.W.I, Richard Ahimibe) to the respondents father for the sale of the land in dispute while Exhibit J is the purchase receipt issued by the appellants' father to the respondents' vendor (i e. D.W.I) for the sale to him of a larger parcel of land of which the land in dispute forms a part.

With regard to the legal effect of Exhibits B & J, let me say that the Court below has dealt with the question admirably. But firstly, I have to start by examining this question from what happened at the trial Court where that Court found and held as at p. 86 on record that:

*“Exhibit ‘J’ tendered by Chief Richard Ahumibe (D.W.I) and, purported to be a receipt issued to him by Dandeson Ow'honda Nsiegbe being unregistered could not and did not convey the land in dispute to him. Similarly, and a **fortiori**, Exhibit B issued to the defendant by the said Chief Richard Ahumibe could not and did not convey the land in dispute to the defendant.”*

The beauty of this finding in the context is that it has conclusively held and rightly in my view that Exhibits B & J are purchase receipts in respect of the land in dispute inspite of its equivocation on whether they have conveyed the land in dispute. On the question of the respondent and their predecessor-in-title being in possession of the land in dispute the trial Court at p. 86 LL 14-21 of the record has made a profound finding of fact to the effect that the respondents built the house on the land in dispute and have lived there to the outbreak of the Civil War. And I quote as follows:

*“Nevertheless, the defendant believed that he had purchased the land and proceeded to and did build on it. It was therefore the duty of Dandeson Ow'honda Nsiegbe to assert his title to the land as owner. He did not, but permitted the defendant, as I have found above, to build on it or acquiesced in his building on it. Thus, the defendant was led by him to expend money in building his house on the land.”*

The foregoing constitutes solid findings of the respondents being in actual possession of the land in dispute after having paid for it. These findings of fact are based on pleaded facts. To further ground these foregoing findings I refer to paragraph 10 of the Statement of Defence at B P. 57 of the Record which has pleaded the purchase receipt of Exhibit J and paragraph 2 which has averred that Richard Ahumibe the respondents' vendor ever since Exhibit J has remained in open and uninterrupted possession of the larger land he purchased from the appellants' - C father until he sold a portion of that land to the respondents' father. Paragraph 9 of the Statement of Defence has averred that a purchase receipt (Exhibit B) has receipted the sale of the land in dispute to the respondents' father who on having taken possession built a house thereon where he lived until the outbreak of the Civil War. The evidence to the effect of D the above pleaded facts replete the record as per the extract above quoted from the record. I have reverted to these averments to show that the respondents and their predecessor-in-title paid for the land and have remained in undisturbed possession of the land until the out break of the E Civil War. Notwithstanding that Exhibits B & J are registrable instruments being purchase receipts and coupled with their having taken possession of the land, the respondents and their vendor have thereby acquired equitable interests thereof which otherwise are as good as legal F estates. This has resolved the poser formulated above as to the effect in law of Exhibits B & J based on the facts and findings in the case and that the respondents are the owners of the land in dispute in that by Exhibit B the legal estate has been transferred to them. The lower Courts finding in this regard cannot be flawed. I must all the same conclude this question G by adverting to the judgment of the Court below where it has eloquently set out the law and the authorities on this question at pp. 18 and 19 of the record of the judgment as follows:

H *"It is trite law that where a purchaser of land or a lessee is in possession of the land by virtue of a registrable instrument which has not been registered and has paid the purchase money or the rent to the vendor or the lessor; then in either case, the purchaser or the lessee has acquired an equitable interest in the land which is as good as a legal estate and*

*this equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity. A registrable instrument which has not been registered is admissible to prove such equitable interest and to prove payment of purchase money or rent: Savage V. Sarrough (1973) 13 N.L.R. 141, Ogunbambi V. Abowab (1951) 13 W.A.C.A. 222; Fakove V. Shagamu (1966) 1 All N.L.R. 74; Oni V. Arimono (1973) 3 SC 163, Bucknor-Maclean V. Inlaks (1980) 8 - 11 SC 1 and Obijuru V. Ozins SC 48/1984 delivered on 4<sup>th</sup> April, 1985 unreported per Bello J.S.C., as he then was, in Dr. J.C. Okoye V. Dumez Nig. Ltd. & Anor. (1985) 6 SC 3 at p. 12; (1985) 1 N.W.L.R. (Pt 4) 783. Since in the instant case, Exhibits B and J are as good as if they had been registered and by Exhibit J, Richard Ahumibe had acquired a legal estate which is as good as a legal estate transferred to the defendant as per Exhibit B, it follows that the defendant had discharged the burden on him to show that the appellants' father had divested himself of the ownership of the land in dispute and therefore the claim of the appellants as his successors-in-title to the land in dispute is not maintainable."*

Another question which otherwise has to be examined under this issue include particularly the burden of proof on the respondents who are seeking a declaration of title to the land in dispute. This is so not only because they are seeking a declaratory relief but also because the respondent and their predecessor-in-title have acknowledged that the land in dispute originally belonged to the appellants' family. The trial Court and the Court below have rightly found that the respondents have successfully discharged the burden of proving that the appellants family has been divested of ownership of the land in dispute. See: Onubruchere V. Esegine (1986) 2 SC 385 at 405 Bello v. Eweka (1981) 1 SC 101 at 102. I am satisfied that the respondents have clearly discharged that burden and therefore are entitled to judgment.

With this brief contribution and much fuller reasons given in the lead judgment of Kalgo JSC I hold that the appeal has merit. I also allow it and abide by the orders in the lead judgment.