

SUPREME COURT OF NIGERIA

27TH APRIL, 2007 SC. 61\2002

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

COL. NICHOLAS AYANRU (RTD.) APPELLANT
AND
MANDILAS LIMITED RESPONDENT

ACTIONS - Reliefs - Declaratory relief - Onus of proof on plaintiff -
Must be by credible evidence - For court to grant the relief - Not the
admission of defendant (H1)

ACTIONS - Leases - Signature - Declaration that lease is void - On
ground of signature thereon not being appellant's - Should be dismissed
- As appellant failed to prove that the signature on top of his name - Was
not signed by him (H2)

EVIDENCE - Evaluation - Literacy - Appeals - Where trial court fails to
properly evaluate the evidence on record - Court of Appeal rightly did so
- In holding that appellant is literate (H3)

EVIDENCE - Signature - Proof - Comparing the undisputed signature -
With that sought to be proved - Confirms that the disputed signature is
signed by appellant (H4)

EVIDENCE - Leases - Execution - Where appellant derived monetary
benefit - Vide receipt admittedly signed by him - He cannot deny execut-
ing the lease - More than ten years thereafter (H5)

ILLITERATES - Signature - Proof of illiteracy - Cannot be by oral evi-
dence - Other documents admittedly written and signed by appellant -
Negate his claim of being illiterate (H6)

APPEALS - Issue - Not considered by Court of Appeal - Occasioned no miscarriage of justice - In view of it's decision - On the main issue (H7)

FACTS

Before the Lagos State High Court of Justice, plaintiff/appellant filed an action against the defendants/respondents. In his amended claim, plaintiff claimed that he is not bound by the lease in question and sought a declaration that the lease dated 24 - 8 - 1970, registered in the Lands Registry Benin City is a nullity. At the hearing, plaintiff testified in support of his claim and also called one of his sons who gave evidence as PW2. The defendant on his part called 2 witnesses. It is the case of the plaintiff that he was an illiterate and did not understand the content of the lease in dispute before executing it. Plaintiff claimed that the renewal of lease between him and the defendant was for a term of 25 years for which he received a payment of £2880.00. That in 1977 however, he discovered the existence of deed of lease for a term of 93 years purported to have been executed between him and defendant in the Land Registry. Plaintiff denied executing this document claiming that being an illiterate he could not have signed the deed of lease in dispute. Defendant who agreed it had been dealing with plaintiff for over 30 years, maintained that the parties agreed to terms of the supplementary lease before it was executed on 24 - 8 - 1970. That the lease was duly signed by plaintiff who all along had written several correspondences signed by himself and sent to the defendant thereby showing that plaintiff is literate.

In his judgment, the trial court found in favour of the plaintiff and held that he is not bound by the deed of lease in issue. The defendant's appeal to the Court of Appeal was allowed and trial court's judgment was set aside. Being dissatisfied, the plaintiff has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether or not having regard to the evidence on record, the Appellant as Plaintiff at the trial Court had proved his claim for declaration that he did not sign or execute the Deed of Lease dated 24th August, 1970 between himself and the Respondent.

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

Declaratory relief - Onus of proof on plaintiff

1. The requirement of the law regarding the onus placed on a party claiming a declaratory relief as claimed by the Appellant in the present case is trite. A claim for a relief of declaration, whether of title to land or not, is not established by an admission by the Defendant, because the Plaintiff must satisfy the Court by cogent and credible evidence called by him to prove that as a claimant, he is entitled to the declaratory relief. It is the law that a Court does not grant declaration on admission of parties because the Court must be satisfied that the Plaintiff on his own evidence, is entitled to the relief claimed. In this respect, it is for the Plaintiff to prove his case and not for the Defendant to disprove the Plaintiff's claim. Therefore, where the Plaintiff on his own evidence failed to prove his claim for declaration, his claim must be dismissed. See *Agbama v. Owa* (2004) 13 N.W.L.R. (PT. 889) 1 at 17. (p. 1908 A)

Leases - Signature - Declaration that lease is void

2. There was no effort by the Appellant to prove his claim for a declaration that the Lease dated 24th day of August, 1970 and registered at No. 7 at page 7 in volume 95 of the lands Registry Benin City is a nullity. This, is because from the Deed of Lease Exhibit B and F tendered by the Appellant in the course of giving his oral evidence that he did not sign the document, it is quite clear that there is a signature bearing the name of the Appellant which was witnessed by one Mr. Omosigho whose address is P & T Department Benin City, who was a Civil Servant. If indeed the Appellant knew that he had not signed the document or that he had never seen the document at all, it was not difficult for him on the discovery of the document to have traced Mr. Omosigho who was shown on the document as his witness to the execution thereof, to come and tell the Court that it was not the Appellant who signed the document. While it was the duty of the Appellant as a Plaintiff seeking the indulgence or discretion of the trial Court for his declaratory relief that the Deed of Lease Exhibit B and F was a nullity to have called Mr. Omosigho to give

evidence in support of the relief being sought, the trial Court wrongly placed the burden of calling this vital witness on the Respondent which was not in Court seeking for any declaratory relief from the Court. Having failed to prove his claim for declaratory relief on his own evidence, B the trial Court ought to have dismissed the claim without even turning to consider the Respondent's defence contained in the evidence of DW2 and other documents admitted in evidence which were not referred to at all in the evidence of the Appellant. (p. 1909 D)

C ***EVIDENCE - Evaluation - Literacy***

3. The law is that where a trial Court fails to properly evaluate the evidence on record or erroneously does so or the conclusion reached is not supported by the evidence on record, then the Court of Appeal in the D interest of justice must exercise its own powers of reviewing those facts and drawing the appropriate inference from the proved facts.

In the instant case, the circumstances surrounding the finding by the Court below that there was enough evidence before the trial Court to E have found that the signature on Exhibit B and F was that of the Appellant are partly contained in the judgment of that Court at page 310 of the record where the court said -

It is trite law that where there is factual situation which raises the F presumption of literacy the onus of rebuttal of such presumption rests on the party that asserts illiteracy. In this case the Plaintiff has the burden to prove his illiteracy. See Anaeze v. Anyaso (1993) 5 N.W.L.R. (PT. 291) 1. Thus considering the evidence adduced before the lower Court and the conduct of the Plaintiff and in line with the decided authorities cited G above, I hold that the trial judge was in error when he concluded that the Plaintiff is an illiterate. His conduct and actions clearly show that he understood the nature, purpose and consequence of his transaction with the Defendants with regard to the supplemental lease and it should there- H fore be enforceable against him."

I have no reasons whatsoever to disagree with the correct statement of the law and the final conclusion arrived at by the Court below in finding on the evidence on record that the Supplementary Lease Exhibit B

and F which the Appellant failed to prove that he did not execute in spite of the available evidence on the face of the document tendered by him that he had done so, is indeed enforceable against him. (p. 1910 C/H)

Signature - Proof

4. In line with the provisions of Section 61(1) and (2) of the Evidence Act which provides for the method of proving signature by comparing the undisputed signature on a document with that sought to be proved, the evidence of DW2 who was the Company Secretary of the Respondent and who in the course of his duties had occasion to go through the file of the Appellant's property containing relevant documents signed by the Appellant, is indeed relevant. DW2 identified the signature of the Appellant on the Deed of Lease Exhibit 'A' which the Appellant himself agreed was executed by him but not by thumb impression as claimed in his oral evidence but by signing his name as shown on the document. The witness also identified the signature of the Appellant on the receipts Exhibits G - G3 for the payment of rents received from the Respondent by the Appellant also signed by the Appellant, particularly the receipt for the payment to him of the sum of £2,880 Exhibit G3 which the Appellant himself admitted issuing to the Respondent and which receipt contained his signature. Clearly, the signature on the documents admitted to have been signed by the Appellant exhibit or show the same similarities with the disputed signature on the Deed of Lease Exhibit 'B' and F which DW2 said was signed by the Appellant. The Court below was therefore right in accepting the evidence. (p. 1911 F)

Leases - Execution

5. The payment of the sum of £2,880 to the Appellant before the expiry of the term of 25 years in the Deed of Lease executed in 1952 between the parties, is certainly not part of the rents agreed under the Deed of Lease Exhibit A which the Appellant agreed to have executed. As there was no explanation from the Appellant as to the actual purpose for that payment, the payment must be regarded as a condition for the execution of the Deed of Lease Exhibit B and F as shown on face of the document

which made clear provision for the payment of that sum of money the receipt of which was acknowledged by the Appellant on the execution of the document by the parties. Therefore the Appellant having shown to derive some benefit from the document Exhibit B and F, executed on 24th August, 1970, can not be allowed to disown it by coming to the trial Court more than 10 years after the coming into force of the Deed to challenge the document. (p. 1912 B)

Signature - Proof of illiteracy

6. On the claim of the Appellant that he did not sign or execute Exhibit B and F because he was illiterate, with the evidence on record, particularly the documents comprising the Deed of Lease Exhibit 'A', the letters written and signed by him, the receipts for the rents of his premises issued and signed by him, the Appellant was very far from the point of proving that he was the illiterate he claimed to be, taking into consideration that he was a professional driver presumably with a professional Drivers Licence! See *Anaeze v. Anyaso* (1993) 5 N.W.L.R. (PT. 291) 1 at 32 where Karibi-Whyte J.S.C. said -

“There, is clearly no doubt that the question of whether a person is illiterate or not is one of fact, which can be determined on the evidence before the trial Court. It can also be determined from a presumption drawn upon the facts before the Court.

In any case, it must be emphasized that the fact that the Plaintiff/Appellant was an illiterate cannot be proved satisfactorily by oral evidence as illiteracy is not an object that can be seen, heard, touched, smelled or perceived in any physical form that can be identified for the purpose of being described by any witness in oral evidence to satisfy the requirement of proof under the Evidence Act. Definitely on the evidence on record, the Appellant had woefully failed to prove that he was an illiterate who cannot read or write in any language. (p. 1912 F/1913 C)

Issue - Not considered by Court of Appeal

7. With regard to the complaint of the Appellant that the Court below did not consider and decide on his notice to affirm the judgment of the trial

Court on other grounds, the failure to do so by the Court below did not in my view, occasion any miscarriage of justice on the face of that Court's decision that the Appellant was not an illiterate to warrant the application of Section 8 of the Lands Instrument Registration Law, sought to be relied upon by the Appellant.

B

On the whole this appeal lacks merit. (p. 1913 E)

REPRESENTATION

Obi Okwusogu Esq. for the Appellant.

C

Olayode Delano Esq. with N. O. Bada Esq. for the Respondent.

CASES REFERRED TO

Agbama v. Owa (2004) 13 N.W.L.R. (PT. 889) 1 at 17

D

Anaeze v. Anyaso (1993) 5 N.W.L.R. (PT. 291) 1

David Fabunmi v. Abigail Ade Agbe (1985) 1 N.W.L.R. (PT. 2) 299 at 318

Lawal v. Dawodu (1972) 8 & 9 S.C. 83 at 114 - 117

Fashanu v. Adekoya (1974) 6 S.C. 83 at 91

E

Tsokwa Motors (Nig.) Ltd. v. Union Bank of Nigeria Ltd (1996) 6 N.W.L.R. (PT. 471) 129

N.E.P.A. v. Inameti (2002) 11 N.W.L.R. (PT. 778) 379 at 427

Kodilinye v. Odu (1935) 2 W.A.C.A. 336

F

Woluchem v. Gudi (1981) 5 S.C. 291

Ogundairo & Ors. v. Okanolawon & Ors. (1963) 1 ALL N.L.R. 358

Bello v. Eweka (1981) 1 S.C. 101

Motunwase v. Sorungbe (1988) 5 N.L.W.R. (PT. 92) 90

G

Ogunjumo v. Ademola (1995) 4 N.L.W.R. (PT. 387) 254

Kwajaffa v. Bank of the North Ltd (2004) 13 N.W.L.R. (PT. 889) 146 at 172

Ndayako v. Dantoro (2004) 13 N.W.L.R. (PT. 889) 187 at 214

Lawal v. G. B. Ollivant Nig. Ltd. (1972) 3 S.C. 124

H

Ntiashagwo v. Amodu (1959) W.R.N.L.R. 273

STATUTES REFERRED TO

Evidence Act ss. 6, 61, 97, 99, 100, 101, 107, 108 and 149

Lands Instrument Registration Law s. 8

LEAD JUDGMENT BY MOHAMMED JSC

B Mr. Ekhaton Ayanru who described himself as a professional driver, took out a writ of summons as a Plaintiff in the High Court of Justice of Lagos State against Mandilas Limited as the Defendant. In the writ of summons dated 17th November 1980, the Plaintiff claimed against the Defendant as follows -

C *“The Plaintiff’s claim against the Defendant is for a declaration that he (the Plaintiff) is not bound by the Deed of Lease dated 24th August, 1970 registered as No. 7 at page 7 in volume 95 of the lands Registry Benin City purporting to be made between him and the Defendant in respect of the Plaintiffs property situate at 3 Murtala Mohammed Road (formerly No. 3 Mission Road) Benin City.*

D *ALTERNATIVELY, the Plaintiff “claims a declaration that the E said Deed of Lease is a nullity.”*

However, in the Plaintiffs amended statement of claim filed at the trial High Court on 29th April, 1987, by paragraph 15 thereof at pages 124 - 125 of the record of appeal, the Plaintiff reframed his claim as follows

F *“15. The Plaintiff avers that he is not bound by the said lease and that it is a nullity. THEREFORE the Plaintiff claims a declaration that the said lease dated 24th day of August, 1970 and registered at No. 7 at page 7 in volume 95 of the lands Registry Benin City is a nullity.”*

G The Plaintiff’s claim was heard by the trial Court on this amended statement of claim and the 4th amended statement of Defence of the Defendant at pages 129 - 131 of the record of the appeal. At the hearing of the case, the Plaintiff testified in support of his claim and also called one H of his sons who gave evidence as PW2. The Defendant on its part called two witnesses one of who merely produced and tendered in evidence the original of the Deed of Lease, Exhibit ‘F’.

The case of the Plaintiff at the trial Court was that the Defendant

is his tenant occupying his property No. 3 Mission Road, now Murtala Mohammed Road Benin City. Initially the lease between the parties was for 4 years at the end of which term it was renewed for a term of 25 years. The Plaintiff said he executed this lease by thumb impression with the approval of the Oba of Benin. The certified true copy of this Deed of lease was in evidence as Exhibit "A". However, in 1970, the Plaintiff agreed with the Defendant that at the expiration of the then current term of 25 years, the tenancy was to be further extended by 6 years at a yearly rent of £480 but that the rent for the whole of the term of 6 years being £2,880.00 was to be paid to the Plaintiff immediately while the yearly rent for the then current term of 25 years which had 5 years to run, should continue to be paid yearly. Pursuant to this agreement the Plaintiff said he was paid the agreed sum of £2,880.00. Although later on he received some " documents from the Defendant pertaining to the new agreement, he did not bother to read them since he had already been paid. In 1977 however, the Plaintiff discovered the existence of Deed of Lease for a term of 93 years purported to have been executed between him and the Defendant in the land registry. The Plaintiff denied executing this document claiming that being an illiterate who could not read nor write in English or any other language, could not have signed the Deed of Lease said to have been executed on 24th August, 1970 and registered in the land registry. The Plaintiff therefore asked the trial Court for a declaration that he was not bound by the Deed of Lease, which was in evidence as Exhibit B and F, the document being a nullity.

The Defendant which agreed that it had been dealing with the Plaintiff for over 20 years before the action at the trial Court over its occupation of the Plaintiff's property on Mission Road now Murtala Mohammed Road Benin City, maintained that the parties agreed to the terms of the Supplementary Lease before it was executed by the parties on 24th August, 1970; that the lease was duly signed by the Plaintiff who all along in the course of his dealings with the Defendant over the demised property, held out himself as a literate person particularly having regard to the frequent written correspondence received from the Plaintiff in respect of the Plaintiff's property, which correspondence were duly

signed by him. It was the case of the Defendant therefore that the Deed of Lease executed by the parties on 24th August, 1970, is valid and that the Plaintiff was bound by it.

In his judgment delivered on 22nd September, 1989, Agoro J, formulated the following two issues for determination -

“(i.) *Whether the due execution by the Plaintiff of the Deed of Lease Marked Exhibit B and F has been Established as required by law.*

“(ii.) *If the answer to (i) is in the affirmative, whether the Plaintiff is entitled to avoid the said Deed of Lease by raising plea of NON ES FACTUM or that the Plaintiff did not know or understand the nature and contents of the said Deed of Lease.*”

After quoting and relying on the provision of Sections 99 and 107 of the Evidence Act, the learned trial judge made the following findings at page 149 of the record -

“I have already stated the Plaintiff denied, both on the pleading and in evidence, that he signed the Deed of Lease marked Exhibit B and F. But in an effort to prove due execution of the said Deed of lease by the Plaintiff, the learned Counsel for the Defendant in his final address urged the Court to compare the Plaintiffs signatures on Exhibits D and ‘G - G3’ in relation to the demised premises during the period 1957 to 1970, with the signatures on Exhibit B and F which is in dispute in the present action. I have compared the Plaintiff’s signature on the Deed of Lease marked Exhibit “D” with the signature on Exhibit “B”, “F” “G - G3” and I am satisfied and as a fact that “the signature on Exhibits D, G, and G1 were written by one and the same person, while the signatures on Exhibit “B” F and G3 were written by another person. That is to say, the Plaintiff signed the documents marked Exhibits D, G and G1”; while another person signed the documents marked Exhibits “B”, F, G2 and G3’. There is no other legally and admissible evidence before this Court either by the witness (Mr. Omosigho) or any other person who could confirm that it was the Plaintiff who signed Exhibit B and F in their presence. The only witness who said he was familiar with the signature of the Plaintiff was Mr. Gaoff Ayanru (PW2). His evidence which I accept, was that the signature of the Lessor on Exhibit B was not that of his

father (Plaintiff)."

Having thus resolved the main issue in dispute between the parties and after resolving the second alternative issue, the learned trial judge found in favour of the Plaintiff .by granting the declaration sought in the following terms -

"In the result of this action based upon the decisions reached on the two issues formulated for determination, it seems to me that the Plaintiff is entitled to the declaration that the Plaintiff in this suit is not bound by the Deed of Lease dated 24th August, 1970 registered as No. 7, at page 7 in volume 95 of the Lands Registry in the office of Benin City, Bendel State, nor is the said Deed of Lease enforceable against the Plaintiff in this suit in respect of the Plaintiff's property situate at No. 3 Murtala Mohammed Road (formerly No. 3 Mission Road) Benin City, Bendel State of Nigeria."

On appeal against this judgment by the Defendant to the Court of Appeal Lagos Division although three issues for determination were identified in the Appellant's and Respondent's brief of argument, the main issue was whether on pleadings and evidence at the trial Court, it was proved that the Plaintiff being illiterate did not sign or execute the Deed of Lease Exhibit B and F. In a unanimous judgment of the Court of Appeal delivered on 31st January, 2000, the Defendant's appeal was allowed and the judgment of the trial Court was set aside and replaced with an order dismissing the Plaintiff's action for declaration that he did not sign or execute the Deed of Lease dated 24th August 1970. In coming to this decision, the Court of Appeal exercised its power of re-evaluation of the evidence on record. This further and final appeal to this Court, is by the Plaintiff who was aggrieved by the judgment of the Court of Appeal. Hence forth in this judgment, I shall refer to the Plaintiff as the 'Appellant' and the Defendant as the 'Respondent.'

In the brief of argument filed by the Appellant who also filed a reply brief of argument, four issues for determination were raised thus -

" 1. Whether the lower Court was not wrong in holding that the High Court ought to rely on DW2's evidence of opinion in determining whether the Plaintiff signed the lease in issue (Exhibit 'B' and 'F')?"

“2. Whether the lower Court was entitled to reverse the High Court’s findings that the Plaintiff was an illiterate who could not understand the contents of Exhibit ‘B’ (and ‘F’)?

3. Whether the lower Court was not wrong in holding that the High Court could not rely on the evidence of the Plaintiff and PW2, his son, to find the Plaintiff was an illiterate who did not endorse Exhibit ‘B’ (and ‘F’)?

4. Whether the lower Court ought not to have considered the Appellants’ Notice to Affirm Judgment on other grounds’ and give effect to the same.”

In the Respondent’s brief of argument however, the Appellant’s issue No. 4 was adopted in addition to the following two issues -

“ 1. Was the evidence of DW2 (sic) was admissible evidence for consideration in the determination whether the Plaintiff signed Exhibit ‘B’.

2. Whether the Plaintiff was estopped by conduct from denying that he was literate.”

From the circumstances giving rise to the action filed by the Plaintiff now Appellant at the trial Court, it is quite clear that the real dispute between him and his tenant, centered on whether or not the Plaintiff was fully aware of the existence of the Deed of Lease Exhibit B and F and also if the Plaintiff did not sign or execute the document as claimed by him in the present case. In other words the real and main issue for determination in this appeal is whether or not having regard to the evidence on record, the Appellant as Plaintiff at the trial Court had proved his claim for declaration that he did not sign or execute the Deed of Lease dated 24th August, 1970 between himself and the Respondent. In fact this is the issue argued in the Appellant’s brief under the heading of - ‘Did Plaintiff execute the lease (Exhibit B (and F))?’ When issues 1 and 2 in the Appellant’s brief of argument were argued together. Virtually, similar arguments were repeated in the Appellants’ reply brief.

It is the contention of the Appellant on this issue that he gave evidence that he was illiterate who could not read or write in any language which evidence was corroborated by the evidence of his son,

PW2 who testified that himself or some of his brothers, must be present to read any document to the Appellant before execution. This evidence was not countered by any evidence from the Respondent which only relied on the documents produced alleged to have been signed by the Appellant showing that he was literate. Learned Counsel quoted the entire evidence given by DW2 at page 137 of the record and submitted that DW2 having admitted that he was not present when Exhibit B was executed, not being familiar with the signature of the Appellant, could not have compared the signature of the Appellant on documents to come to the conclusion that the Appellant signed Exhibits G - G3, H and F. Learned Counsel referred to the finding of the learned trial judge on the evidence and the reasons for the reversal of that finding by the Court below and argued that the lower Court clearly misdirected itself in reversing the judgment of the trial Court which was based on eye witness of PW2 as opposed to the hearsay evidence of DW2 accepted by the Court below; that the Appellant and PW2 having denied executing Exhibit B and F, the onus had shifted on to the Respondent to call evidence to prove due execution of the document and having failed to do so satisfactorily, the trial Court was right to have applied the presumption under Section 149 of the Evidence Act against the Respondent.

On the finding of the Court below that the Appellant was estopped by his conduct in exchanging correspondence with the Respondent raising presumption of literacy which the Appellant failed to rebut under the principle laid down in *Anaeze v. Anyaso* (1993) N.W.L.R. (PT. 291) 1, learned Counsel pointed out that the case relied upon is distinguishable from the present case where there is oral evidence of the Appellant and his son PW2, duly accepted by the trial Court to remove any presumption of literacy on the part of the Appellant. Relying on the case of *S.C.O.A. Zaria v. Okon* (1995) Ft S.C 562, learned Appellant's Counsel observed that the fact that the Appellant signed some of the documents admitted in evidence, does not mean that he was not illiterate.

With regard to the alleged failure of the court below to decide on the Appellant notice to affirm the trial court other ground particularly the provisions of Section 8 of the Land Instruments Registration Law, learned

Counsel cited the case of *Balogun v. Labiran* (1988) 3-N.W.L.R. (PT. 80) 66 and submitted that the action of the Court below, had deprived the Appellant of his right of fair hearing resulting in the decision of that Court capable of being described as a miscarriage of justice.

B The Respondent's Counsel however, submitted that the Court below was right in its judgment that the trial Court did not perform its duty of properly evaluating the evidence adduced by the parties before it in coming to the conclusion that the Appellant, as Plaintiff, had proved his case. To this end argued the learned Counsel, the Court below was right in stepping into the shoes of the trial Court in evaluating the evidence before arriving at its decision that the appeal before it had merit resulting in setting aside the judgment of the trial Court. The cases relied upon in support of this argument include *Abisi v. Ekwealor* (1993) 6 N.W.L.R. (PT. 302) 643 at 673 and *Igbodum v. Obianke* (1976)9- 10S.C. 179 at 191.

On the relevance of the evidence of DW2, learned Counsel referred to Sections 97(i); 61(i); 101 and 108(i) of the Evidence Act and E agreed that while under Section 100 of the same Evidence Act the burden of proving the signature of the Plaintiff on Exhibit B and F was on the Defendant now Respondent, that burden had been effectively discharged on proper evaluation of the evidence of DW2 and the documents tendered and received in evidence by the trial Court. To this end, learned F Counsel stressed that the Court below was right in its judgment that DW2 who was not present when Exhibit B and F was executed, was quite competent to give evidence of opinion that the

Appellant signed the document in question. As for the question of G whether the Appellant were illiterate, learned Counsel relied on the decision of *Anaeze v. Anyaso* (1993) 5 N.W.L.R. (PT. 291) 1 and argued that the finding of the Court below based on the evidence on record that the Appellant having signed documents written in English without any interpretation, was estopped from denying that he was literate, was quite in H order. With regard to the argument of the Appellant that the failure of the Court below to consider the Appellant's notice to affirm the judgment of the trial Court on other grounds that the Appellant being illiterate was not

bound by the Deed of lease Exhibit B and F for its failure to comply with the provisions of Section 8 of the Lands Instrument Registration Law, learned Counsel to the Respondent pointed out that the Appellant's application to file the notice out of time having failed to seek a deeming order that the arguments on the matter in the brief be deemed properly filed, the lower Court was right in ignoring the argument. B

In resolving this issue, it is important to observe that the relationship between the parties in this appeal started since 1st January, 1950 when a Deed of Lease dated 6th May, 1952, registered as No. 22 page 22 in volume 12 of the Land Registry then in Ibadan came into force between the parties. The Lease, which was in respect of No. 3 Mission Road Benin City, was to last for 25 years on a yearly rent of £59. The Respondent was paying the agreed rents while the Appellant on being paid used to issue receipts to the Respondent over the period this agreement lasted. However, before the end the terms of the Lease, some sort of revision of the original lease was agreed between the parties in 1970. While the Appellant was saying that he had agreed to an extension of the term for 6 years from the end of the original term of 25 years, the Respondent insisted that the parties had agreed on a supplementary lease for a term of 93 years from the date of expiry of the original term contained in the Deed of Lease executed by the parties on 24th August, 1970 registered at No. 7 page 7 in volume 95 of the Land Registry in the office at Benin. It was on the discovery of the existence of this Supplementary Deed of Lease between the parties that resulted in the Appellant filing an action at the trial Lagos State High Court and in paragraph 15 of his amended statement of claim averred that he was not bound by the said Lease which he described as a nullity and sought for the following declaratory relief from the Court - D E F G

“THEREFORE the Plaintiff claims a declaration that the said lease dated the 24th day of August, 1970 and registered at No. 7 at page 7 in volume 97 of lands Registry Benin City is a nullity.” H

It is in the light of the relief sought by the Appellant as Plaintiff at the trial Court that I shall first tackle the main issue for determination in this appeal as to whether or not having regard to the evidence on record,

the Appellant as Plaintiff had established his claim to have been entitled to judgment.

The requirement of the law regarding the onus placed on a party claiming a declaratory relief as claimed by the Appellant in the present case is trite. A claim for a relief of declaration, whether of title to land or not, is not established by an admission by the Defendant, because the Plaintiff must satisfy the Court by cogent and credible evidence called by him to prove that as a claimnant, he is entitled to the declaratory relief. It is the law that a Court does not grant declaration on admission of parties because the Court must be satisfied that the Plaintiff on his own evidence, is entitled to the relief claimed see David Fabunmi v. Abigail Ade Agbe (1985) 1 N.W.L.R. (PT. 2) 299 at 318; Kodilinye v. Odu (1935) 2 W.A.C.A. 336 and Woluchem v. Gudi (1981) 5 S.C. 291; Ogundairo & Ors. V. Okanolawon & Ors. (1963) 1 ALL N.L.R. 358; Bello v. Eweka (1981) 1 S.C. 101; Motunwase v. Sorungbe (1988) 5 N.L.W.R. (PT. 92) 90; Ogunjumo v. Ademola (1995) 4 N.L.W.R. (PT. 387) 254; Kwajaffa v. Bank of the North Ltd (2004) 13 N.W.L.R. (PT. 889) 146 at 172 and Ndayako v. Dantoro (2004) 13 N.W.L.R. (PT. 889) 187 at 214. **In this respect, it is for the Plaintiff to prove his case and not for the Defendant to disprove the Plaintiff's claim. Therefore, where the Plaintiff on his own evidence failed to prove his claim for declaration, his claim must be dismissed. See Agbama v. Owa (2004) 13 N.W.L.R. (PT. 889) 1 at 17.**

In the present case, the Appellant as Plaintiff testified that the Respondent was his tenant in respect of his property at No. 3 Mission Road Benin. The certified true copy of the Deed of Lease which the Appellant agreed was executed by him and the Respondent though by signing his name and not by thumb printing as he testified in his oral evidence, was in evidence as Exhibit A while the original document was in evidence as Exhibit "D". Although the Appellant in the evidence agreed that he had received the sum of £2,880 from the Respondent for which he issued a receipt on 24th May, 1970, he said the money was part of the rents for the unexpired term of 25 years lease earlier granted to the Respondent. He

denied signing or executing the Deed of Lease dated 24th August, 1970, which was in evidence as Exhibit. B for the certified true copy, and Exhibit 'F' for the original document, emphasizing that he was an illiterate and could not understand the contents of the document. The oral evidence of the Appellant's son who testified as PW2 was also to the B same effect that the Appellant who was illiterate did not sign the Deed of Lease Exhibit B and F which were admitted by consent while the Appellant was giving his evidence in chief. The evidence of the Appellant and his son PW2 was that none of them ever came into contact or saw the C Deed of Lease Exhibit B and F which contained a signature in the name of the Appellant which PW2 said was not the signature of the Appellant without any further explanation. No attempt was made by the Appellant and his witness to specifically refer to Exhibit B and F to say that the signature shown to be that of the Appellant in the document, was not D made by the Appellant. In others words **there was no effort by the Appellant to prove his claim for a declaration that the Lease dated 24th day of August, 1970 and registered at No. 7 at page 7 in volume 95 of the lands Registry Benin City is a nullity. This, is because E from the Deed of Lease Exhibit B and F tendered by the Appellant in the course of giving his oral evidence that he did not sign the document, it is quite clear that there is a signature bearing the name of the Appellant which was witnessed by one Mr. Omosigho F whose address is P & T Department Benin City, who was a Civil Servant. If indeed the Appellant knew that he had not signed the document or that he had never seen the document at all, it was not difficult for him on the discovery of the document to have traced G Mr. Omosigho who was shown on the document as his witness to the execution thereof, to come and tell the Court that it was not the Appellant who signed the document. While it was the duty of the Appellant as a Plaintiff seeking the indulgence or discretion of the trial Court for his declaratory relief that the Deed of Lease H Exhibit B and F was a nullity to have called Mr. Omosigho to give evidence in support of the relief being sought, the trial Court wrongly placed the burden of calling this vital witness on the Respondent**

which was not in Court seeking for any declaratory relief from the Court. Having failed to prove his claim for declaratory relief on his own evidence, the trial Court ought to have dismissed the claim without even turning to consider the Respondent's defence contained in the evidence of DW2 and other documents admitted in evidence which were not referred to at all in the evidence of the Appellant.

Coming back to the second angle of this issue regarding the evaluation of the evidence on record particularly the evidence of DW2 done by the Court below before coming to the conclusion that there was enough evidence to prove that the Appellant executed the Deed of Lease Exhibit B and F, the action of the Court below in this respect was quite in order. **The law is that where a trial Court fails to properly evaluate the evidence on record or erroneously does so or the conclusion reached is not supported by the evidence on record, then the Court of Appeal in the interest of justice must exercise its own powers of reviewing those facts and drawing the appropriate inference from the proved facts.** See *Lawal v. Dawodu* (1972) 8 & 9 S.C. 83 at 114 - 117; *Fashanu v. Adekoya* (1974) 6 S.C. 83 at 91; *Tsokwa Motors (Nig.) Ltd. v. Union Bank of Nigeria Ltd* (1996) 6 N.W.L.R. (PT. 471) 129 and *N.E.P.A. v. Inameti* (2002) 11 N.W.L.R. (PT. 778) 379 at 427.

In the instant case, the circumstances surrounding the finding by the Court below that there was enough evidence before the trial Court to have found that the signature on Exhibit B and F was that of the Appellant are partly contained in the judgment of that Court at page 310 of the record where the court said -

"The facts pleaded by the Plaintiffs show that he had prior to the existence of the disputed document (Exh. B) he had transacted with the Defendant's company in writing and signed and executed some documents (e.g. Exh. A written in English language. DW2 testified to that effect and it was on the basis that he identified his signature. In these documents there, was no jurat. It is trite law that where there is factual situation which raises the presumption of literacy the onus of rebuttal of such presumption rests on the party that asserts illiteracy. In this

case the Plaintiff has the burden to prove his illiteracy. See Anaeze v. Anyaso (1993) 5 N.W.L.R. (PT. 291) 1. Thus considering the evidence adduced before the lower Court and the conduct of the Plaintiff and in line with the decided authorities cited above, I hold that the trial judge was in error when he concluded that the Plaintiff is an illiterate. His conduct and actions clearly show that he understood the nature, purpose and consequence of his transaction with the Defendants with regard to the supplemental lease and it should therefore be enforceable against him."

I have no reasons whatsoever to disagree with the correct statement of the law and the final conclusion arrived at by the Court below in finding on the evidence on record that the Supplementary Lease Exhibit B and F which the Appellant failed to prove that he did not execute inspite of the available evidence on the face of the document tendered by him that he had done so, is indeed enforceable against him. The reason is quite plain from the evidence.

Even looking at the Appellant's case from the aspect of the argument of his learned Counsel that the Respondent which was asserting that the signature on Exhibit B and F is that the Appellant had the duty to prove that fact under section 100 of the Evidence Act, that onus had been effectively discharged by the evidence of DW2 and the various documents produced and tendered in evidence without any objection by the Appellant. In line with the provisions of Section 61(1) and (2) of the Evidence Act which provides for the method of proving signature by comparing the undisputed signature on a document with that sought to be proved, the evidence of DW2 who was the Company Secretary of the Respondent and who in the course of his duties had occasion to go through the file of the Appellant's property containing relevant documents signed by the Appellant, is indeed relevant. DW2 identified the signature of the Appellant on the Deed of Lease Exhibit 'A' which the Appellant himself agreed was executed by him but not by thumb impression as claimed in his oral evidence but by signing his name as shown on the document. The witness also identified the signature of the Appellant on the receipts Exhibits G - G3

for the payment of rents received from the Respondent by the Appellant also signed by the Appellant, particularly the receipt for the payment to him of the sum of £2,880 Exhibit G3 which the Appellant himself admitted issuing to the Respondent and which receipt B contained his signature. Clearly, the signature on the documents admitted to have been signed by the Appellant exhibit or show the same similarities with the disputed signature on the Deed of Lease Exhibit 'B' and F which DW2 said was signed by the Appellant. The C Court below was therefore right in accepting the evidence. The payment of the sum of £2,880 to the Appellant before the expiry of the term of 25 years in the Deed of Lease executed in 1952 between the parties, is certainly not part of the rents agreed under the Deed of Lease Exhibit A which the Appellant agreed to have executed. As D there was no explanation from the Appellant as to the actual purpose for that payment, the payment must be regarded as a condition for the execution of the Deed of Lease Exhibit B and F as shown on face of the document which made clear provision for the payment of that sum of money the receipt of which was acknowledged E by the Appellant on the execution of the document by the parties. Therefore the Appellant having shown to derive some benefit from the document Exhibit B and F, executed on 24th August, 1970, can F not be allowed to disown it by coming to the trial Court more than 10 years after the coming into force of the Deed to challenge the document.

On the claim of the Appellant that he did not sign or execute Exhibit B and F because he was illiterate, with the evidence on record, G particularly the documents comprising the Deed of Lease Exhibit 'A', the letters written and signed by him, the receipts for the rents of his premises issued and signed by him, the Appellant was very far from the point of proving that he was the illiterate he claimed H to be, taking into consideration that he was a professional driver presumably with a professional Drivers Licence! See *Anaeze v. Anyaso* (1993) 5 N.W.L.R. (PT. 291) 1 at 32 where Karibi-Whyte J.S.C. said -

“There, is clearly no doubt that the question of whether a person is illiterate or not is one of fact, which can be determined on the evidence before the trial Court. It can also be determined from a presumption drawn upon the facts before the Court. The decisions of *Lawal v. G. B. Ollivant Nig. Ltd.* (1972) 3 S.C. 124; *Ntiashagwo v. Amodu* (1959) W.R.N.L.R. 273 Cited by the learned Counsel to the appellant are to the point.”

Certainly, on the evidence on record in the instant case, the Appellant cannot be described as illiterate as defined in the case of *African Produce Sales Co. Ltd v. E. Aya & Anor.* (1963) 1 S.C.N.L.R. 197 at 201 - 202. **In any case, it must be emphasized that the fact that the Plaintiff/Appellant was an illiterate cannot be proved satisfactorily by oral evidence as illiteracy is not an object that can be seen, heard, touched, smelled or perceived in any physical form that can be identified for the purpose of being described by any witness in oral evidence to satisfy the requirement of proof under the Evidence Act. Definitely on the evidence on record, the Appellant had woefully failed to prove that he was an illiterate who cannot read or write in any language.**

With regard to the complaint of the Appellant that the Court below did not consider and decide on his notice to affirm the judgment of the trial Court on other grounds, the failure to do so by the Court below did not in my view, occasion any miscarriage of justice on the face of that Court’s decision that the Appellant was not an illiterate to warrant the application of Section 8 of the Lands Instrument Registration Law, sought to be relied upon by the Appellant.

On the whole this appeal lacks merit. Accordingly the appeal is hereby dismissed and the judgment of the Court below delivered on 27th April, 2000 is hereby affirmed with no order on costs.

KALGO JSC

I have had the opportunity of reading in advance the judgment of

my learned brother Mohammed JSC just delivered. I entirely agree with his reasoning and conclusion reached therein. I therefore find that there is no merit in the appeal. I accordingly dismiss it and affirm the decision of the Court, of Appeal. I abide by the order of costs made in the said judgment.

MUKHTAR JSC

The claim by the appellant who substituted the plaintiff in the court of first instance is predicated on the following averments in his amended statement of claim, which read thus: -

“7. Sometime in 1977 as a result of certain information which came to his knowledge, the plaintiff discovered that the company were (sic) laying claim to a lease of 93 years.

8. Further enquires revealed that there was in the land Registry Benin City document registered as No. 7 page 7 in volume 95 purporting to be a lease of the said premises granted by the plaintiff to the company.

8. (a) The plaintiff thereafter instructed a solicitor to take the matter up with the defendant company: the plaintiffs letter sent by registered post to the defendant dated 11th October, 1977 is hereby pleaded.

9. The plaintiff cannot read or write the English or any other language.

10. The fact averred in the proceeding paragraphs is known to the company and to the defendant.

11. The plaintiff did not authorize any person to negotiate or agree the terms of the said lease on his behalf.

12. The plaintiff avers that he did not execute the said lease nor did he at any material time know the nature and contents thereof.

13.

14. The plaintiff will contend that the alleged execution and registration of the lease are in contravention of the provisions of the land Instruments Registration Law.

15. The plaintiff avers that he is not bound by the said lease and that it is a nullity.

WHEREFORE the plaintiff claims a declaration that the said lease dated the 24th day of August, 1970 and registered as No. 7 at page 7 in volume 95 of the Lands Registry in the office at Benin City is a nullity.”

To prove some of the above pleadings, the son of the original B plaintiff, a GeoffAyanru gave the following evidence inter alia: -

“My father is illiterate. He cannot read or write in any language. I or any of my brothers must be present to read any document before its execution. I have never previously come across the document marked C Exhibit “B”. But sometime in 1983, my father gave me a document to read to him and I translate it to Edo language. The document was never signed by anybody. I did not read any other document to my father in 1982.”

Then under cross-examination P.W 2 said: - D

“The signature on Exhibit B is not that of my father. I had seen my father in 1973 sign documents. I have never seen a copy of Exhibit ‘A’ previously..... I don’t know about the transaction I respect E of the property in dispute.”

By the above pieces of evidence the PW 2 tried to establish the illiteracy of the plaintiff, but as far as the very transaction in respect of the property in controversy was concerned, the witness did not throw much light on the authenticity of the said Exhibit ‘B’, other than that the F signature on Exhibit ‘B’ is not that of his father. When one considers this evidence against the backdrop of the fact that he said he was not the only one that aids his father in the understanding and execution of documents, the evidence of the witness and his father is short of the element of proof G of the plaintiff/appellant’s case, as found by the Court below in an extract of its judgment which reads thus: -

“It is a long existing principle of law that he who asserted must prove. See Okubule v. Oyagbola (1990) 4 NWLR (part 147) 723 Isewary v. Ezeinika (1951) 13 W.A.C.A. 290 Odukwe v. Ogunbiyi (1998) 8 NWLR H (part 561) 339. From the facts of the present case the trial judge merely relied on the evidence of the plaintiff and that of his sone (sic) PW 2 and concluded that the plaintiff was an illiterate and that the lease was unen-

forceable. Besides the evidence of DW 2 to the contrary there are also evidence that the plaintiff executed a similar deed of lease in his own handwriting made in English language as well as the evidence of collection of payment for the extended lease agreement, which the learned trial judge ought to have considered. If he had done so he would have reached different conclusion.”

I consider the above finding correct, for I also agree that the evidence adduced by the appellant were not cogent enough to prove his case. I cannot overemphasize the all important position of the law that he who asserts must prove, and that civil suits are decided on preponderance of evidence. See Imana v. Robinson 1979 3 - 4 SC 1, George v. U.B.A. 1972 8-9 S.C. 264, section 135 of the Evidence Act Cap. 112, 1990 Laws of the Federation of Nigeria, and Elias v. Omo-Bare 1982 5 S.C. 25.

In this case the appellant failed to prove his assertion, and even though no onus shifted, the defendant/respondent vide DW 2 adduced evidence to show that Exhibit ‘B’ was executed by the appellant. For this reasoning and the fuller ones in the lead judgment, I also dismiss the appeal, as it has no merit whatsoever. I agree entirely with the lead judgment just delivered by my learned brother Mohammed JSC. I abide by the consequential orders made in the lead judgment.

F —————
ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden at Lagos in appeal No.CA/L/27/95 delivered on the 31st day of January, 2000 in which it allowed the appeal of the present respondent against the decision of the High Court of Lagos State in suit No. LD/1437/80 delivered on the 22nd day of September, 1989 in which the trial court held, inter alia at pages 151 - 152 as follows: -

“I am satisfied and hold as a fact that the plaintiff is an illiterate because he could not read or write in any language. I am also satisfied and hold as a fact that the Deed of Lease, Exhibit B and F which was purported to have been executed by the plaintiff, does not comply with the provisions of the illiterates Protection Act, Cap. 83, which is in pari

material with the illiterates Protection Law Cap. 55 Laws of Lagos State, 1973.

Accordingly, I am satisfied and hold as a fact that the said Deed of Lease, Exhibit B & F is unenforceable against the plaintiff. In the result of this action based upon the decisions reached on the two issues formulated for determination, it seems to me that the plaintiff is entitled to the declaration that the plaintiff in this suit is not bound by the Deed of Lease dated 24th August, 1970 registered as No. 7 at page 7 in volume 95 of the Lands Registry in the office at Benin City Bendel State, nor is the said Deed of Lease enforceable against the plaintiff in this suit in respect of the plaintiff's property situate at No. 3 Murtala Mohammed Road, (formerly No.3 Mission Road) Benin City, Bendel State of Nigeria..."

The present respondent was dissatisfied with that judgment and appealed to the Court of Appeal which allowed same resulting in the instant appeal before this court where the issues identified for determination in the appellant's brief of argument filed on 7/6/02 by B.A.M. FASHANU Esq., learned counsel for the appellant, are stated as follows:

"4.1 Whether the lower court was not wrong in holding that the High Court ought to rely on DW2's evidence of opinion in determining whether the plaintiff signed the Lease in issue (Exhibit "B" & "F")?"

4.2 Whether the lower court was entitled to reverse the High Court's findings that the plaintiff was an illiterate who could not understand the contents of Exhibit "B" (and "F")?"

4.3 Whether the lower court was not wrong in holding that the High Court could not rely on the evidence of the plaintiff and PW2, his son, to find that the plaintiff was an illiterate who did not endorse Exhibit "B" (and "F")?"

4.4 Whether the lower court ought not to have considered the appellant's "Notice to Affirm Judgment on Other Grounds" and given H effect to the same?"

The appellant was the plaintiff at the trial court claiming a declaration that he is not bound by a lease agreement dated 24th August 1970

said to be made between him and the defendant/respondent, concerning his property known as No.3 Murtala Mohammed Road, Benin City and registered as No.7 Vol. 7 at page 95 of the lands Registry Benin City on the ground that he did not sign the disputed lease agreement (Exhibit “B” and “F”) since he is an illiterate as he can neither read nor write and did not know the nature and contents of the Deed of Lease before registration.

On the other hand the defendant/respondent denied that the appellant is an illiterate and stated that he signed exhibit B being fully aware of its terms and conditions; that appellant also signed corrections made in the lease; that over the period of twenty years the appellant had held himself out to be literate by signing documents sent to the respondent and was therefore estopped from claiming to be illiterate.

It follows therefore that the main issue before the lower courts is whether the appellant signed the Deed of Lease or not. The fact is that the disputed lease is not the first time the parties, were entering into the relationship of landlord and tenant as there is evidence that there was an earlier lease agreement for twenty-five years in relation to the said property. That Deed of Lease was made on the 6th day of May, 1952 and was tendered and admitted in evidence as exhibit A (copied at pages 165 - 172 of the record). At page 170 of the record it is very clear that EKHATOR’ ANYARU, the original plaintiff and appellant signed exhibit A, not that he thumb printed same which could have been the case if he were to have been an illiterate as claimed. It is also clear that exhibit A was executed by the original plaintiff /appellant in the presence of the then Oba of Benin, Akenzua II and the then Lt. Governor of Western Region of Nigeria. It is not the case of the appellant that the original plaintiff/appellant did not execute exhibit A by signing his name thereon.

In his testimony before the trial court, DW2 stated at page 137 of the record, inter alia, as follows: -

“..... I joined the company in 1974 and have had accession to go through the relevant file in this matter. I have also seen several correspondence on this matter. These are some of the letters found in the file now admitted as Exhibit G - G3, Exhibit G.3 were signed by the plaintiff

whose signatures I recognize on the exhibits. This is yet another letter from the same file now admitted as Exhibit “H”. Exhibit “H” bears the signature of the plaintiff.....”

In holding that the original plaintiff/appellant is an illiterate and did not sign exhibit B, the trial court reasoned as follows: - B

“That is to say the plaintiff signed the documents marked exhibit D, G and G1 while another person signed the documents marked exhibit B, F, G2 and G3. There is no other legally admissible evidence before this court either by the witness (Mr. Ontosigho) or any other person who could confirm that it was the plaintiff who signed exhibit B & F in their presence. The only witness who said he was familiar with the signature of the plaintiff was Mr. Geoff Ayanru. His evidence which I accept was that the signature of the lessor on exhibit B was not that of his father (plaintiff)” C
D

It should be noted that if it is true, as alleged by the appellant, that the original plaintiff/appellant was an illiterate who can neither read nor write, then it means the original plaintiff/appellant would not have a signature to be identified except, of course his thumb impression. However the above passage confirms the fact that the original plaintiff/appellant did not thumb print but “*signed the documents marked exhibit D, G and G1....*” The above finding is strange for a person portrayed as being incapable of reading or writing anything. In any event, the finding confirms the fact that the original plaintiff/appellant did have a signature that can be identified. E
F

However, the Court of Appeal did not agree with the trial court on the passage reproduced earlier in its judgment. The lower court held that the only legally admissible evidence relevant to prove the plaintiffs signature on exhibit B was not the evidence of PW2. The court stated as follows: - G

“By this conclusion the learned trial judge did not consider other evidence adduced in the case. It is clear from the record that D W2 while giving evidence testified that having seen several correspondence on exhibit B he could identify the plaintiffs signature thereon. It is trite law that a witness who was not present as such did not see a document in H

dispute written or signed could depose his opinion that the signature or handwriting is that of a particular person. It is not necessary that a witness who deposes his opinion should have seen the person whose signature or handwriting is in question sign it at all for it will be sufficient B if he has received documents purporting to be signed by him”.

It is therefore the view of the lower court that the trial court did not give adequate consideration to the evidence of DW2, which I had earlier reproduced in this judgment, and consequently held that “The piece C of evidence of DW2 could be legally admissible in establishing whether the Plaintiffs/Respondent’s signed Exhibit B”.

I hold the considered view that not only is the above decision of the lower court supported by the evidence on record, it is also a true statement of the applicable law to the relevant facts. It is settled law that D where a trial court fails in its duty of evaluation of evidence and finding of facts, which is its primary responsibility so to do, the failure signifies an open invitation to the appellate court to make its own finding from the evidence available on record, and will interfere with the finding of the E trial court since it is in as good a position as the trial court on that score particularly when such evaluation does not involve the issue of credibility of witnesses - see Abisi Vs Ekwealor.(1993) 6 NWLR 643 at 673; Igbodim Vs Ubianke (1976) 9 - 10 S.C 179 at 191; Adeleke Vs lyanda (2001) 13 F NWLR 1 at 20.

It is for these and the fuller reasons contained in the lead judgment of my learned brother MOHAMMED JSC; the draft of which I had the privilege of reading; that I agree that the appeal is without merit and G should be dismissed. I order accordingly and abide by the consequential orders contained in the said lead judgment including the order as to costs.

CHUKWUMA-ENEH JSC

H I have read before now the judgment prepared and delivered by my learned brother Mohammed JSC. I agree with his reasoning and conclusions that the appeal should dismissed. I also dismiss it and I abide by the orders contained therein.