

SUPREME COURT OF NIGERIA

27TH APRIL. 2007 SC. 375\2001

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

1. UNION BANK OF NIGERIA PLC.
2. ALHAJI MOHAMMED MOMOH APPELLANTS
AND
AYODARE & SONS (NIG.) LTD. RESPONDENT
-

LAND USE ACT - Alienation - Land subject to customary occupancy -
Can only be mortgaged with the local government's approval - Which
cannot be delegated (H1)

LAND USE ACT - Governor's consent - Where signed on a mortgage
by the Ag. Chief Lands Officer - Instead of the Governor's delegate - It
cannot be validated by s. 150 EA - As being in substantial conformity
(H2)

PLEADINGS - Mortgages - Governor's consent - Given the state of
pleadings - Lower courts rightly confined themselves - To issue of valid-
ity of the mortgages (H3)

LAND USE ACT - Instruments - Interest over land - Ajilo case - Where
the mortgage is void - For non compliance with s. 26 of the Act - Ex
turpi causa maxim - Cannot avail appellant (H4)

FACTS

Before the Lokoja High Court of Kogi State the Plaintiff/Respon-
dent filed an action against the defendants/appellants. Plaintiff claimed
inter alia, (1) a declaration that Plaintiff would not be indebted to 1st
defendant in the sum N307,680.25 or any sum at all. (2) a declaration
that the two deed of mortgages between the parties be declared null and
void for not being duly executed as required by law as no proper consent

was obtained from the Governor and the relevant Local Government.

The parties filed and exchanged pleadings after which the suit was tried. The trial judge found in favour of the plaintiff in respect of 4 of its claims. The defendants' appeal to the Court of Appeal was dismissed. Still dissatisfied, they have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether the learned Justices of the Court of Appeal were right when they held that the Deeds of Mortgage Exhibits 1 and D1 were invalid, null and void having been based on consent issued and signed by Ag. Chief Lands Officer or Permanent Secretary and Director-General, Kwara State Ministry of Lands and Housing respectively, who were not the appropriate : - authorities under the Land use Act.

(2) Whether on the peculiar facts of this case, the strict and inflexible application of the ratio decidendi in the case of SAVANNAH BANK LTD. V. AJILO & ANOR. [1989] 1 NWLR (Pt.97) 305 at 324 is not appropriate, distinguishable and inapplicable.”

HELD (Dismissing the appeal per **OGUNTADE JSC**, Onnoghen JSC dissenting)

LAND USE ACT - Alienation

1. Earlier in this judgment I reproduced Section 21(b) of the Act. The section states that it shall not be lawful to alienate by assignment or mortgage any land subject to any customary right of occupancy without the approval of the appropriate Local Government. The letter of approval reproduced above was signed by the Ag. Chief Lands Officer, Ministry of Lands and not by the Local Government concerned or who issued the customary right of occupancy.

As the trial judge found, there was no link or relationship established between the Local Government concerned and the Ag. Chief Lands Officer. Clearly therefore the letter could not be regarded as an approval within the intendment of Section 21(b) of the Act. Now, Section 45 of the Land Use Act provides:

“45(1) The Governor may delegate to the State Commissioner all or any of the powers conferred on the Governor by this Act subject to

such restrictions, conditions and qualifications, not being inconsistent with the provisions or general intendment of this Act as the Governor may specify.

(2) Where the power to grant certificate has been delegated to the State Commissioner, such certificates shall be expressed to be granted on behalf of the Governor.”

The above section 45(1) of the Act only gives a Governor the power to delegate the authority granted under the Act. There is no corresponding power of delegation granted to a Local Government. It is therefore untenable that the Ag. Chief Lands Officer, Ministry of Lands could exercise the power granted under the Act to the Local Government. The result is that the decision of the two courts below on Exhibit 1 is sound and on firm ground. (p. 2014 A)

Governor’s consent signed by the Ag. Chief Lands Officer

2. Section 22 of the Act postulates that the Governor shall sign the letter granting consent, a duty, which the Governor could and did validly assign to the commissioner for Lands and Housing. In the manner the case was fought at the High Court, the plaintiffs case was that the Governor or his delegate did not sign. Since the person who signed was not the Governor’s delegate it would be wrong to assume that the signature of the Ag. Chief Land Officer on exhibit D1 was an act done in a manner substantially regular on the face of it. The signature of the Ag. Chief Lands Officer on the letter attached to exhibit D1 cannot be seen as being in substantial conformity with the signature of the Governor or his delegate, the Commissioner for Lands and Housing. It seems to me therefore that section 150 of the Evidence Act does not lift appellant’s case any higher. (p. 2016 G)

PLEADINGS - Mortgages

3. It is of crucial importance for me to stress here that the defendant did not plead that the Commissioner for Lands and Housing had granted the consent and that the letter attached to Exhibit D1 only communicated the consent earlier granted. It is therefore irrelevant to consider whether or

not the Commissioner had antecedently granted his consent before the letter was written. Parties are bound by their pleadings. Similarly the court is also bound by the pleadings: See *Oke-Bola V. Molake* [1975] 12 SC. 61 at 62 where this court per Sowemino J.S.C. (as he then was) emphasized the importance of courts allowing themselves only to be governed and or directed by the issues raised through the parties pleadings. Pleadings must be seen as the engine room of litigation in cases fought in the High Court on the basis of pleading.

Given the state of pleadings on which the suit was tried, the trial court only needed to determine whether or not exhibits 1 and DI were in conformity with Sections 21(b) and 22 of the Land Use Act respectively. The trial court had no need to consider whether or not there existed anywhere some ‘consents’ more authentic or regular than Exhibits 1 and DI because no one pleaded such matter. It seems to me therefore that the trial court and the court below were right in confining themselves simply to a determination of the validity of Exhibits 1 and DI. (p. 2019 E)

E Instruments - Interest over land

4. However in the *Ajilo case* (*supra*) this Court considered the wording of Section 26 of the Act, which provides: “26. Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void.”

This Court took the view that it was undesirable to invoke the maxim *ex turpi causa non oritur action*. The court said at page 324 of the report:

“Although the 1st plaintiff/respondent by the tenor of the Land Use Act committed the initial wrong by alienating his statutory right of occupancy without prior consent in writing of the Governor, the express provision of the Land Use Act makes it undesirable to invoke the maxim ‘ex turpi causa non oritur action’ and the equitable principle enshrined in the case of *Bucknor-Macleans v. Maks Ltd.* [1980] 8-11 SC. 1”

I am satisfied that the two courts below were right in following the decision in *Savannah Bank (Nig.) Ltd. v. Ajilo* [1989] 1 NWLR (Pt.

97) 305 in view of the fact this court had directly adverted its mind to the state of the law and judicial authorities on the equitable doctrine in the maxim *ex turpi causa non oritur action*. It may seem wrong that the plaintiffs/respondents who had procured exhibits 1 and D1 later turned round to rely on the supposed invalidity of the exhibits but the decision of this Court in *Ajilo* is still binding on this Court. I have not been called upon to consider overruling same. (p. 2022 B)

NOTABLE POINTS INTEREST

MUKHTAR JSC

1. Statutes - When the hands of equity will be tied up by a statute I feel tempted to invoke the maxim against the plaintiff in this case. He obtained consents, which turned out to be non events. But I am bound by the authority in Ajilo's case. It appears as if equity must remain silent on the reserve bench while the Land Use Act is actively at play.

The law in contention here is section 22 of the Land Use Act, which provision reads as follows: -

"It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise however without the consent of the Governor first had and obtained." (p. 2024 B)

2. Governors consent - Need for watchfulness

The Court of Appeal in its judgment per Musdapher JCA (as he then was) rightly relied on the Savannah Bank case and the desirability to comply with the provisions of the Land Use Act thus: -

"Before I part with this judgment I may mention briefly, though it is despicable and morally wrong for the respondent to raise the issue of the "consents" which he had obtained. The appellants ought to know that those consents were not from the respective appropriate authority as directed by the Land Use Act. The appellants should have checked before executing the deeds and parting with their money. I agree with the learned counsel for the respondents that the maxim Ex Turpi causa non Oritur

action cannot apply vide Ajilo's case where the Supreme Court per Karibi-Whyte JSC stated that the express provisions of the Land Use Act makes it undesirable to invoke the maxim and the equitable principle enshrined. Bucknor Maclean vs Inlaks Nig. Ltd (1986) 8-11 SC."

B Indeed, I cannot agree more. The maxim *Ex Turpi cause non Oritur* though evocable in some cases that have similar irregularities that attracts such equitable reliefs, is definitely not evocable in this case.
(p. 2026 H)

C **ONNOGHEN JSC** (Dissenting)

3. Pleadings - When facts are deemed abandoned

It is very clear from the totality of the evidence in chief of the 2nd respondent that nothing was said about the validity or otherwise of the consents
D to mortgage the properties. It is settled law that where a party to an action fails to testify in support of facts in his pleadings those facts are deemed abandoned. In the instant case there is no evidence on record touching and concerning the validity of the consent to mortgage and in
E fact the mortgage itself. It is also settled law that address of counsel however brilliant, cannot take the place of evidence particularly where there is no evidence, as in the instant case, in support of the submission(s).
(p. 2036 H)

F *4. Governor's Consent can be conveyed by someone other than his delegate*

However, under section 45 of the Land Use Act, 1978, the Governor may delegate his power under the Act to a State Commissioner. In the
G instant case the power of the Governor to approve or consent to a mortgage transactions conferred by section 22(1) of the Land Use Act, 1978 was delegated to the Commissioner for Lands and Housing by virtue of the provisions of the Kwara State Legal Notice No. 4 of 1978. There is
H nothing in the said Land Use Act, 1978 which prevents someone other than the Governor himself or his delegate from conveying the consent so granted by the Governor or his delegate. In the instant case, the letter conveying the consent of the Commissioner who is the appropriate au-

thority was signed by the Acting Chief Lands Officer for the Permanent Secretary and eloquently speak for itself and constitutes the best evidence of its content I hold the considered view that the document, in the absence of any evidence to the contrary as in the instant case, is sufficient evidence of the consent of the Commissioner to the transactions B referred thereto, particularly as the respondents have failed to prove that the said Commissioner did not consent.

The respondents could have called the Commissioner to state whether or not he consented to the transaction, but they did not. It is settled law that he who alleges must prove. The burden of proof was on the respondents, which they failed to discharge. (p. 2037 C)

5. Governor's consent - What justice demands

It is my view that to hold that the document attached to Exhibit 1 does not constitute evidence of the fact that the appropriate authority did approve the transaction as held by the learned trial Judge is to be very technical particularly having regards to the fact that it was the respondent who applied for the consent or approval and did present same for the purpose of obtaining the loan which he duly utilized only turning around, when called upon to repay same with interest as previously undertaken, to say that there is no approval to the transaction.

Where there is anything or evidence from which the court can infer such an approval under the circumstances, it is my view that it will be in the interest of justice to do so rather than allow the mortgagee to eat his cake and still have it back. The court should resist at all cost the attempt at using it as an engine to further fraud or cheating or dishonesty."

It must be borne in mind that it is the duty of the respondents to obtain the consent of the appropriate authority, in this case, the Commissioner for Lands of Kwara State, to the transactions in issue which they purportedly did and on the basis of which they obtained the credits in issue. Now that they allege that the consents they obtained never came from the proper source and therefore invalid, it is their duty under the law to so prove. Having failed to discharge that burden, it is my considered view that the trial court was in error in holding as it did and that the

2004 Union Bank Plc v. Ayodare Ltd (2007) 4 KLR Oguntade JSC

lower court equally erred in affirming the erroneous decision of the trial court on the matter. (p. 2038 E)

REPRESENTATION

- B Mrs. V. O. Awomolo (Mrs. O. O. Adalumo, Eytayo Fatogun Esq. and Ms. L.S. Adzuanaga with her) for the Appellant.
B. K. Abu Esq. for the Respondent.

CASES REFERRED TO

- C Oke-Bola V. Molake [1975] 12 SC. 61 at 62
Bucknor-Macleans v. Maks Ltd. [1980] 8-11 SC. 1
Savannah Bank (Nig.) Ltd. v. Ajilo [1989] 1 NWLR (Pt. 97) 305
Solanke v. Abed [1962] 1 All N.L.R. 230
D NIDB vs Olalomi Industries Ltd, (2002) 5 NWLR (pt. 761) 532 at 547 - 548

STATUTES REFERRED TO

- E Evidence Act s. 150
Land Use Act ss. 21, 22, 26 & 45

LEAD JUDGMENT BY OGUNTADE JSC

- F The respondents in the appeal were the plaintiffs at the Lokoja High Court of Kogi State where they claimed against the appellants as the defendants the following reliefs:

“(i) A declaration that the plaintiff could not be indebted to the 1st defendant to the sum of N307,680.25 or any sum at all, when the plaintiff should have outstanding credit balance as a result of several payment which are in excess of the limited N45,000.00 covered by purported two deeds of legal mortgage

- (ii) A declaration that the purported deed of mortgage dated 2nd September, 1980; and 7th July, 1981 registered as No. 78 at page 78 in Vol. xii (misc) and No 81 at page 81 in Vol. xv (misc) at the Land Registry Ilorin in respect of plaintiff s landed property in Lokoja and Kabba respectively be declared null and void and of no effect in that: -*

(a) It was not duly executed as required by Law.

(b) No consent was sought and obtained from the appropriate authority the Governor and Oyi L.G.A. or B.I.K. L.G.A.) before the purported deeds of legal mortgage was (sic) executed.

(c) That the purported consent dated 9th July, 1980, 8th August, B 1980 and 2nd August, 1989 contained in the two deeds of legal mortgage were not granted by the Governor or appropriate authority or the Local Government as required by Law.

(iii) A declaration that the purported two deeds of legal mortgage C dated 2/9/80 and 7th July, 1981 first above described on which the 1st defendant sought reliance to compute or charge her interest and arrived at N307,680.25 as at 1989 be declared I null and void in that there was no stipulated interest or any interest rate contained therein as base interest as basis for computation of other subsequent interest or charges. D

(iv) A declaration that the 1st defendant cannot unilaterally and arbitrarily increase the banking interest payable on any loan, overdraft, or banking facilities granted to the plaintiff without the knowledge and consent of the plaintiffs. E

(v) An order or perpetual injunction restraining the 1st defendant by itself its servants, agents including the 2nd defendant or otherwise however from auctioning, selling, disposing or otherwise dealing with any rights, title, or interest or advertising for sale the plaintiff (sic) two F landed property situate and laying at Odo-Ero quarters, Kabba and Lokoja covered by Customary Right of Occupancy No. 1083 dated 7th Dec., 1972 respectively.”

The parties filed and exchanged pleadings after which the suit was G tried by Fabiyi J. (as he then was). On 21-09-95, the trial judge in his judgment, found for the plaintiff on claims (ii), (iii), (iv) and (v) above. The defendants were dissatisfied with the said judgment. They filed an appeal before the Court of Appeal, Abuja (hereinafter referred to as ‘the H court below’). The court below, in its unanimous judgment, on 13-04-2000, affirmed the judgment of the High Court and dismissed the appeal. Still dissatisfied, the appellants have come before this court on a final appeal. They raised four grounds of appeal out of which they formulated

two issues for determination namely:

B “(1) *Whether the learned Justices of the Court of Appeal were right when they held that the Deeds of Mortgage Exhibits 1 and D1 were invalid, null and void having been based on consent issued and signed by Ag. Chief Lands Officer or Permanent Secretary and Director-General, Kwara State Ministry of Lands and Housing respectively, who were not the appropriate : - authorities under the Land use Act.*

C “(2) *Whether on the peculiar facts of this case, the strict and inflexible application of the ratio decidendi in the case of SAVANNAH BANK LTD. V. AJILO & ANOR. [1989] 1 NWLR (Pt.97) 305 at 324 is not appropriate, distinguishable and inapplicable.*”

The respondents also formulated two issues for determination. The said issues are these:

D “(i) *Whether a transaction or any instrument purporting to alienate a customary right of occupancy of a land issued by a Local Government pursuant to Section 6 of the Land Use Act, without the prior consent of the appropriate Local Government Chairman as required by Section 21(b) of the Land Use Act, 1978 is not null and void.*

E “(ii) *Whether in the absence of a proper consent as required by section 22 of the Act in this case, the court below was justified to apply the principles enunciated (sic) in the case of SAVANNAH BANK OF NIGERIA V. AJILO [1989] 1 SCNJ.*”

F A comparison of the two sets of issues for determination raised by the parties to the appeal shows that they are similar. I shall be guided in this judgment by the appellants’ issues. It is necessary that I briefly discuss the facts leading to the dispute out of which this appeal arose. This will assist an appreciation of the issues as discussed in this judgment. The case made by the plaintiffs on their amended Statement of Claim is very brief and straightforward. It may be summarized thus:

G In 1980, the 1st plaintiff obtained from the 1st defendant, a bank, a H loan of N40 000.00. In order to secure the loan, it executed two deeds of mortgage of the 2nd plaintiffs two properties in favour of the 1st defendant. One of the properties was at Lokoja and the other at Kabba both in Kogi State. It would appear that the 1st plaintiff took other loans from 1st

defendant, which in 1989 brought the total amount owed to 1st defendant to N307,680.25. In 1989, the 2nd defendant as agent of the 1st defendant advertised in the New Nigerian newspapers the sale of 2nd plaintiffs two landed properties. In reaction the 1st and 2nd plaintiffs (now respondents) instituted against the defendants (i.e. appellants) the claims earlier set out B above.

The core issue in this appeal arises in relation .to the deeds of mortgage executed by plaintiffs to secure the loan. Sections 21, 22 and 26 of the Land Use Act, Cap. 202, Laws of the Federation 1990 provide: C

“21. It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever -

(a) Without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable sheriffs and Civil Process Law; or D

(b) In other cases without the approval of the appropriate Local Government.

22. It shall not be lawful for the holder of a statutory right of E occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the Governor first had and obtained:

Provided that the consent of the Governor – F

(a) Shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor; G

(b) Shall not be required to the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgage with the consent of the Governor; H

(c) To the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same.

(2) *The Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Governor in order that the consent given by the Governor under subsection (1) of this section may be signified by endorsement thereon.*

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

26. *Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void."*

It is apparent from the provisions of the Land Use Act reproduced above that a holder of a statutory right of occupancy who wishes to mortgage the property by assignment must first obtain the consent of the Governor of the State where the land is situate before carrying out the mortgage transaction. Similarly, the holder of a customary right of occupancy of land not in an urban area must obtain the consent of the Local Government where the land is situate. Where the requisite consent is not obtained, the transaction or instrument, which purports to confer or vest the property in any person, shall be null and void.

In the instant case, it was the plaintiffs who obtained the consents covering the mortgage transaction in respect of the two mortgaged properties. The plaintiffs, however, by the action they brought had contended that the consents obtained were invalid arising from the fact that the Governor or Local Government who should give these consents had not done so. In other words, that the persons who purported to give the consents given to the 1st defendant by the plaintiffs were not the appropriate persons to give such consent; and that for this reason, the mortgage transactions were null and void. The two courts below agreed with the plaintiffs. Were the two courts below right?

At the trial, the plaintiffs tendered as Exhibit 1 the mortgage deed executed between the parties on 2nd plaintiffs property at Kabba. The trial judge in his judgment at pages 102-103 of the record of proceedings expressed his impression on the letter of approval or consent attached to

exhibit 1 thus:

“The next issue is whether or not the two deeds of legal mortgage - Exhibits 1 and D1 are null and void. Exhibit 1 is a deed of legal mortgage on the 2nd plaintiffs property at Odo-Ero Quarters, Kabba under Certificate of Occupancy No. 005581 signed by Kabba Local Government Authority on 13th April, 1997. This is manifest on pages 5 and 6 of same. Section 21(b) of the Land Use Act, 1978 stipulates that approval to alienation shall be by the Local Government. The requisite consents in letters dated 8/8/80 and 2/8/89 attached to Exhibit 1 were signed by Ag. Chief Lands Officer for Permanent Secretary and Director of Lands for Director-General respectively. It appears that they have no nexus with Kabba Local Government. Or at least, their nexus has not been shown. They cannot take over the functions of the Local government as enjoined by section 21(b) of the Land Use Act, 1978. As if this was not enough hitch, the two officers who signed consent letters signed for Permanent Secretary who acted for Honourable Commissioner or Director General who acted for the State Governor. It is caught by the principle of delegates non potest delegare. “

Similarly, the court below in upholding the judgment of the trial court observed in its judgment at pages 195-196 of the record as follows:

“This means in my view that the deeds are clearly caught by the provisions of Section 26 of the Land Use Act. It reads: -

‘ Any transaction or any instrument which purports to confer or vest in any person any interest or right over land other than in accordance with the provisions of Act shall be null and void.’

This now brings me to the AJILO ‘S case; it is almost on all fours with the present case. There is no doubt that S.22 of the Land Use Act forbids a holder of a Right of Occupancy from alienating his right of occupancy or any part thereof without first obtaining the consent of the appropriate authority mandated under the act, the Governor in respect of a Statutory Right of Occupancy and the Local Government Council in respect of Customary Right of Occupancy. Section 26 as shown above expressly declares null and void any transaction, which does not conform with the provisions of S.22 of the Land Use Act. This was the decision in

AJILO'S case and with respect to the learned counsel for the appellant, the decision has not been overruled by the Supreme Court."

The appellant's counsel in his written brief before us has argued that the two courts below fell into an error by assuming that the consent
B to be given to alienation of land by mortgage pursuant to Section 22 of the Land Use Act must be given personally by the Governor and that the information to the applicant conveying such consent must similarly be conveyed personally by the Governor. It was submitted that the power to
C give the consent or approval required under Section 22 of the Land Use Act (hereinafter referred to as 'the Act') could be delegated to some other public functionaries. Counsel further submitted that in the course of the administration of his State, the Governor as the Chief Executive Officer of the State is expected to manage the affairs and resources of
D the State with the assistance of designated bureaucrats of various grades. Counsel relied on *Nwosu v. Imo State environmental Sanitation Authority [1990] 2 NWLR (Pt. 135) 688 at 718-719*. On the source of the power of the Governor to delegate his authority to give consent and approval
E under the Act, counsel referred to Section 45 of the Act. It was counsel's further argument that the crucial element is the granting of approval or consent by the Governor's delegatee which in this case is the Commissioner for Lands, and not the medium for the conveyance of the approval
F or consent to the applicant for such consent or approval. Still pressing forward his argument, appellant's counsel relied on Section 9 of the Act and Legal Notice No.4 of 1978 by which the Military Governor of Kwara State delegated his power in the grant of certificates of occupancy to the Kwara State Commissioner for Lands and Housing. Counsel referred to
G section 150 of the Evidence Act and *Magnussion v. Koiki [1991] 4 NWLR (Part 183) 119; N.I.D.B. v. Olalomi Industries Ltd. [2002] 5 NWLR. (Pt 761) 532 at 548-549 per Onnoghen J.C.A. (as he then was)*.

On the second issue for determination, appellant's counsel opined
H that it would be unjust having regard to the peculiar facts of this case to follow the decision in *Savannah Bank Ltd. V. Ajilo [1989] 1 SCNJ213*. Counsel made, a distinction between the facts in the instant case and those in *Savannah Bank v. Ajilo (supra)* At pages 23-24 of his brief,

appellant's counsel submitted thus:

"8.05. It is humbly submitted that the facts of this case and the Ajilo's case relied upon by the lower Court are distinct in many respects. The differences are as follows:

(i) The ratio decidendi in Ajilo's case is premised on the failure of the SAVANNAH BANK (NIG.) LTD. to obtain the consent ; of the Military Governor of Lagos State before the alienation of the certificate of occupancy by Ajilo to the bank.

(i) However, in this case, there is evidence that there was approval of the consent by the Honourable Commissioner for Housing while power was vested on the said commissioner under and by virtue of the provisions of Section 45(1) of the Land Use Act, 1978 while culminated in the enactment of the Kwara State Legal Notice titled:

'Delegation of Military Government's power Notice, 1978, Kwara State, legal notice No. 4 of 1978'

(iii) There was no iota of evidence in Ajilo's case as to whether any power was delegated. In Ajilo's case, there was no consent at all before the alienation was made to SAVANNAH BANK (NIG.) LTD.

(iv) The exercise of the powers vested in the Commissioner for Housing in respect of the approval of any assignment, mortgages, sub-lease, etc., are matters connected with the grant of certificates of occupancy under Section 45(1) & (2) of the Land Use Act were not raised in Ajilo's case.

8.06 It is therefore submitted that the application and full reliance on the decision of this Court in Ajilo's case by the lower Court led to a grave miscarriage of Justice because the necessary consent was obtained via the appropriate authority in exercise of the powers conferred by the relevant statute."

Relying further on *Ugochukwu v. Co-operative and Commerce Bank Nig. Ltd. [1996] 6 NWLR (Pt. 456) (524)* *Solanke v. Abed [1962] 1 SCNR 371. Oilfield Supply Centre v. Johnson [1987] 2 NWLR (Pt. 55) 625 and Savannah Bank Nigeria Ltd. v. Ajilo [1989] 1 NWLR (Pt. 97) 305*, counsel submitted that it would be inequitable to allow the plaintiffs to escape from their obligations to the appellant having regard to the fact

that the consents to the legal mortgage being challenged in the case were in fact procured by the plaintiffs.

The respondents in their brief raised a preliminary objection to the attempt made by appellant's counsel through his arguments to challenge the evidential basis upon which the issues were heard in the two courts below. It was contended that whether or not the properties, which were mortgaged, were in urban or non-urban area was not disputed. It was argued that if this court were to consider appellant's counsel's argument on the point, counsel would have been allowed to argue a ground of mixed law and fact or fact without obtaining leave.

The appellant filed a Reply brief in answer to the Preliminary Objection raised by the respondent.

I think that the attempt by the appellant's counsel in his arguments to show that the Governor of Kwara State could give the requisite consent to alienate the two properties in dispute by mortgage is an attempt to blur the clear distinction of the provisions of the Land Use Act which governed the issue of consent and or approval in urban and non-urban areas. It was not in dispute that the property in respect of which exhibit 1 was executed was at Kabba, a non-urban area and therefore covered by Section 21(b) of the Act being a property in respect of which only the appropriate Local Government could give the consent or approval to alienate by mortgage. As against this situation, it was also not in dispute that the property covered by Exhibit DI was at Lokoja, an urban area in respect of which only the Governor could give the consent or approval to alienate. Indeed, Exhibit 1 covers a land granted under a customary right of occupancy whilst Exhibit DI covers a land granted under a certificate of occupancy. I shall bear in mind the distinction between both in the discussion of the issues.

The consent letter tendered in evidence in relation to exhibit 1, the property situate at Kabba reads:

H “Ref. No. LAN/CUS/MORT/331/38
 Ministry of Works/Land Housing Environ
 Land Division
 P.M.B. 1425,

Ilorin, Kwara State.

Date 8th August, 1980.

Ayodele Dare

P.O. Box 37

Koja

Sir,

B

APPROVAL OF SUBLEASE/MORTGAGE/ASSIGNMENT OF
PROPERTY ERECTED AT KABBA COVER BY CUSTOMARY RIGHT
OF OCCUPATION NO.05581/81/77 TO THE UNION BANK OF NIGE- C
RIA

I am directed to refer to your letter application of 14/9/79 to in-
form you that the sublease/ Mortgage/Assignment of your landed prop-
erty covered by customary right of occupancy No. 005581/77 at Kabba,
has been approved by the Honourable Commissioner for N20,000.00 D
(Twenty Thousand naira) only.

.....
With effect from 1st August, 1980 subject to the submission of a
satisfactory deed of mortgage within four months and payment of stamp E
duty and registration fee. If a satisfactory deed of xxxxxxxxxxxxxxxx/
Mortgage/xxxxxxxxxxxxxxxx is not received for registration within four
months, then a penal rent of 10k per day will automatically be imposed
after four months, with effect from the date of this letter, and will remain F
in being until some time as a satisfactory deed is received in this Ministry
for Registration.

Yours faithfully,

Signed (B.D.Olle)

G

Ag. Chief Lands Officer

For Permanent Secretary

Copy to:

The Zonal Officer,

Ministry of Works, Lands and Housing

H

.....
Above for your information. Your file Reference is No.....

Delete as appropriate.

Chief Lands Officer.”

Earlier in this judgment I reproduced Section 21(b) of the Act. The section states that it shall not be lawful to alienate by assignment or mortgage any land subject to any customary right of occupancy without the approval of the appropriate Local Government. The letter of approval reproduced above was signed by the Ag. Chief Lands Officer, Ministry of Lands and not by the Local Government concerned or who issued the customary right of occupancy.

As the trial judge found, there was no link or relationship established between the Local Government concerned and the Ag. Chief Lands Officer. Clearly therefore the letter could not be regarded as an approval within the intendment of Section 21(b) of the Act. Now, Section 45 of the Land Use Act provides:

“45(1) The Governor may delegate to the State Commissioner all or any of the powers conferred on the Governor by this Act subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions or general intendment of this Act as the Governor may specify.

(2) Where the power to grant certificate has been delegated to the State Commissioner, such certificates shall be expressed to be granted on behalf of the Governor.”

The above section 45(1) of the Act only gives a Governor the power to delegate the authority granted under the Act. There is no corresponding power of delegation granted to a Local Government. It is therefore untenable that the Ag. Chief Lands Officer, Ministry of Lands could exercise the power granted under the Act to the Local Government. The result is that the decision of the two courts below on Exhibit 1 is sound and on firm ground.

The position in relation to Exhibit D1 deserves a separate consideration. The land covered by Exhibit D1 is situate at Lokoja and covered by a Statutory Right of Occupancy. Under Section 22 of the Act, consent to alienate or mortgage the same must be given by the Governor. It is unlawful for a holder to alienate or mortgage such land without the consent

of the Governor; and Section 26 of the Act makes a transaction carried out without the consent of the Governor null and void. However, the consent letter dated 9-7-80, which was attached to exhibit D1, one Mr. J. Ola Dada. Ag. Chief Land Officer signed for the Permanent Secretary who acted for the Honourable Commissioner.

There is no doubt that the Governor of a State can delegate his power to a Commissioner under Section 45 of the Act. There is also no doubt that by the Legal Notice No. 4 of 1978 the Governor of Kwara State did delegate his powers under the Act to the Commissioner for Lands and Housing. The said delegation reads:

“1. The holder of the office specified in the second column of the Schedule hereto is hereby delegated by the Military Governor of Kwara State of Nigeria to exercise the powers and perform the duties specified in the first column of Schedule which are conferred or imposed upon the Military Governor by the provisions of the Land Use Decree.”

The ease made by the respondents is that notwithstanding the delegation in the Legal Notice above, exhibit D1 was invalidly issued because only the Commissioner for Lands and Housing to whom the powers were delegated could validly give the consent to alienate by mortgage. “Now in *Savannah Bank Nig. Ltd. v. Ajilo* [1989] 1 NWLR (Pt. 97) 305, this Court took the view that the failure to comply with the provisions of Section 22 of the Act would be visited with the penalty provided under Section 26 of the Act and the deed of mortgage concerned declared a nullity. At page 337 of the report, this Court per Obaseki JSC said:

“It is my view too that any failure by a holder under Sections 34(2) or 36(2) of the Act to comply with the provisions of Section 22, would attract the full vigour of Section 26 of the Act and render a transaction or an instrument arising therefrom null and void. In the circumstances of this case, I would, as the two lower courts did, hold that the deed of mortgage dated 5th September 1980 (marked Exhibit A in these proceedings) executed by the 1st Plaintiff in favour of the 1st defendant bank to secure money owed it by the 2nd plaintiff company (Respondents herein) is null and void, the consent of Military Governor of-Lagos State having not been obtained before the execution of the Deed.”

The issue in the AJILO'S case (supra) would however appear to be slightly different to the one I have before me in this case. In the AJILO case, this Court in a general sense insisted on the necessity to comply with the provisions of section 26 of the Act which prescribe that non-compliance with Section 22 of the Act would lead to the transaction being declared null and void. In the instant case, the consent given vide exhibit D1 was signed by a person to whom no power was expressly delegated by the Governor. The argument of the appellant is that the Governor must necessarily exercise his powers through public functionaries and officials; and that therefore the letter attached to exhibit D1 should be seen as one emanating from the Commissioner for Lands and Housing to whom the power was delegated by the Governor. Appellant's counsel has in support of this argument directed my attention to section 150 of the Evidence Act, which provides:

150(2) When it is shown that any person acted in a public capacity, it is presumed that he had been duly appointed and was entitled to so act."

It seems to me that sub-section (2) of section 150 above is inapplicable to this case because the dispute here does not raise the question whether or not the person who signed exhibit D1 was validly appointed to any office. It is unhelpful to presume that a lands Officer, who ordinarily is a civil servant has been appointed a '*Commissioner for Lands and Housing*.' It seems to me also that one would need to engage in a measure of tortuous reasoning in order to presume that the consent of the Commissioner had been antecedently received before the letter attached to Exhibit D1 was written by Ag. Chief Lands officer. This is because **Section 22 of the Act postulates that the Governor shall sign the letter granting consent, a duty, which the Governor could and did validly assign to the commissioner for Lands and Housing. In the manner the case was fought at the High Court, the plaintiffs case was that the Governor or his delegate did not sign. Since the person who signed was not the Governor's delegate it would be wrong to assume that the signature of the Ag. Chief Land Officer on exhibit D1 was an act done in a manner substantially regular on the face of**

it. The signature of the Ag. Chief Lands Officer on the letter attached to exhibit D1 cannot be seen as being in substantial conformity with the signature of the Governor or his delegate, the Commissioner for Lands and Housing. It seems to me therefore that section 150 of the Evidence Act does not lift appellant's case any higher. B

My attention has been drawn to a decision of the Court of Appeal in *N.I.D.B. v. Olalomi Ind. Ltd.* [2002] 5 NWLR (Pt. 761) 532 at 548-549 per Onnoghen J.C.A. (as he then was). In that case my learned brother reasoned in his judgment at pages 547-548 of the report thus: C

"In considering this aspect of the case the learned trial judge found and held at page 135 of the record *inter alia*-as follows:

'It follows then that a State Commissioner is empowered to sign letter of consent. In the instant case, an Ag. Chief Lands Officer signed for the Permanent Secretary. I do not think this is right. It looks like the adage of a monkey sent with a message who in turn sends its tail to deliver the message to the addressee. This accords with the legal maxim that Delegatus with (sic) protest (sp) Delegare. 'A delegate cannot delegate.' This means that a person, to whom a power, trust or authority is given to act on behalf or for the benefit of another, cannot delegate it unless he is authorized to do so..... In the instant case, there is multiple delegation of the power conferred on the Commissioner. This has made nonsense of the Kwara State Legal Notice No. 41 1978. I hold that the consent signed by the Ag. Chief Lands Officer for, the Permanent Secretary is invalid and I hold that the maxim Delegatus non protest (sp) delegare is applicable to this case.' D E F

It is very obvious that the learned trial judge is very correct in his exposition of the maxim delegatus non protest delegare but I do not agree that the said maxim is applicable to the facts of this case. It is obvious that the learned trial Judge merely treated or assumed that the person who signed the document under consideration is the person allegedly consenting to or approving the mortgage transaction; in this case the Ag. Chief Lands Officer who signed same for the Permanent Secretary. If the learned trial Judge had read the body of the document particularly the G H

portion reproduced supra he would have seen clearly that what the Ag. Chief Lands Officer did on behalf of the Permanent Secretary is to inform the respondent of the approval of the commissioner for the mortgage transaction as required by the said respondent in his application.
B *This, it is my considered opinion does not make either the Permanent Secretary or the Ag. Chief Lands Officer a sub-delegate of the Hon. Commissioner for the purposes of approval of mortgage transactions, so as to render the maxim ‘Delegatus non protest delegare’ applicable. What the Ag. Chief Lands Officer did is merely to convey to the respondent the approval of the commissioner, who is the appropriate authority in that matter, as regards the application of the said respondent for that purpose.*
C

In short the document clearly and loudly speaks for itself and it is the best evidence of its contents. It is my considered view that the document is sufficient evidence of the approval of the Commissioner to the transaction referred thereto since it conveys the said approval. There is nothing in the law which prevents someone else other, than the delegate from conveying the approval so granted by the delegate.”
D

E With respect to my learned brother, I think that if what was to be proved before the trial court was whether or not the Commissioner for Lands and Housing had signed letter of consent, it would be an error to reason that the letter of consent placed before the court was merely the evidence that the appropriate Commissioner had previously granted his consent before the letter in question was written. In the instant case, the plaintiffs had in paragraphs 15 and 16 of their amended Statement of claim pleaded:
F

G *“15. The plaintiff will contend at the hearing of this suit that the two purported deeds of mortgage first above described were not duly executed as to warrant any exercise of the power of sale as per paragraph 14 above.*

H *16. The plaintiff will contend at the hearing of this suit that the landed property in the mortgage deeds at Odo-Ero Quarters, Kabba which is subject of customary Right of Occupancy and the purported consents dated 2nd August, 1989, 8th August, 1980 and 9/7/80 respectively are void and of no effect in that it was not granted in accordance with the relevant*

provision of the land Use Act, 1978.”

The defendant (i.e. appellant) joined issue with the plaintiff in paragraph 14 of the Statement of defence where it averred thus:

“14. Further on paragraph 16 the 1st defendant says that it granted all the facilities above stated on the understanding that the security given by the plaintiffs is correct and valid and the 1st defendant shall urge that if for any reason the plaintiff have misrepresented the situation to it, they should not be allowed to benefit from their wrong deed. The 2nd plaintiff also entered into an unlimited personal guarantee with the 1st defendant for the 1st plaintiff.”

At the trial the plaintiff testified through the 2nd plaintiff. The defendant also called one witness. On the state of pleadings, the case of the plaintiff was that the consents granted for the purpose of the mortgage transaction were invalid. The defendant on the other hand did not contend that the consents granted were valid. Rather, what they pleaded was that the plaintiffs procured the consents and gave them to it for the purpose of securing the loans, which the plaintiffs sought from it. The contention of the defendant did not create an issue as to the validity of the consents. However, whether or not exhibits 1 and D1 were in conformity with the law was a matter for the determination of the court. **It is of crucial importance for me to stress here that the defendant did not plead that the Commissioner for Lands and Housing had granted the consent and that the letter attached to Exhibit D1 only communicated the consent earlier granted. It is therefore irrelevant to consider whether or not the Commissioner had antecedently granted his consent before the letter was written. Parties are bound by their pleadings. Similarly the court is also bound by the pleadings: See *Oke-Bola V. Molake [1975] 12 SC. 61 at 62* where this court per Sowemino J.S.C. (as he then was) emphasized the importance of courts allowing themselves only to be governed and or directed by the issues raised through the parties pleadings. Pleadings must be seen as the engine room of litigation in cases fought in the High Court on the basis of pleading.**

See also *Orizu v. Anyaegbunam [1978] 5 SC.21 at 36* and *Adebisi*

v. Oke [1967] NMLR 64 at 66.

Given the state of pleadings on which the suit was tried, the trial court only needed to determine whether or not exhibits 1 and DI were in conformity with Sections 21(b) and 22 of the Land Use Act respectively. The trial court had no need to consider whether or not there existed anywhere some ‘consents’ more authentic or regular than Exhibits 1 and DI because no one pleaded such matter. It seems to me therefore that the trial court and the court below were right in confining themselves simply to a determination of the validity of Exhibits 1 and DI.

But the matter goes beyond that. The defendant had pleaded that the plaintiffs procured and gave it (the defendant) exhibits 1 and DI and that it (the defendant) placed reliance on the exhibits to grant the plaintiffs the loan sought. This brings me to appellant’s issue No. 2. Is it equitable to allow the respondents who had procured Exhibits 1 and DI to benefit from their own wrongful act by giving to the defendant as security for the loan consents known by them to be invalid? The decision in *Solanke v. Abed* [1962] 1 All N.L.R. 230 is in point here. In that case the Federal Supreme Court had to decide whether a tenancy agreement was null and void the same having been made in contravention of section 11 of the Land and Nature Rights Act (Chapter 105 of the 1948 edition) which declares null and void any transfer, mortgage or sale done without the consent of the Governor first had and obtained. The said section 11 provides:

“Except as may be otherwise provided by the regulations in relation to native occupiers, it shall not be lawful for any occupier to alienate his right of occupancy, or any part thereof by sale, mortgage, transfer of possession, sub-lease or bequest or otherwise howsoever without the consent of the Governor first had and obtained, and any such sale, mortgage, sub-lease, transfer or bequest, effected without the consent of the Governor, shall be null and void.”

The court at pages 233-234 of the report said:

“This leads me to consideration of the question whether the agreement was illegal for, if it be illegal, there is authority for saying that the

defendant could rely on his own wrongful act for reasons which are fully set out in Chitty on Contracts, (21st Edition), at page 470. It will, however, be unnecessary to consider whether the principles there set out apply in this action for trespass if the agreement was not, in fact, illegal, and this must first be considered. The question whether a contract declared void by Statute is illegal has been considered in a number of cases which are referred to in Maxwell on the interpretation of Statutes, (10th Edition), at page 212, where the position is set out in this way; -

It may, probably, be said that where a statute not only declares a contract void, but imposes a penalty for making it, it is not voidable merely. The penalty makes it illegal. In general, however, it would seem that where the enactment has relation only to the benefit of particular persons, the word "void" would be understood as "voidable" only at the election of the persons for whose protection the enactment was made and who are capable of protecting themselves, but that, when it relates to persons not capable of protecting themselves, or when it has some object of public policy in view which requires the strict construction, the word receives its natural full force and effect.

The Statute at present under consideration says that it shall be unlawful for the occupier to alienate his Right of Occupancy but the Statute does not provide any penalty for breach of the provision, nor would it appear necessary in the interest of public policy for an agreement of alienation to be treated as illegal. Public policy can be adequately safeguarded by the Government's power of revocation and right of re-entry previously mentioned. In these circumstances I would hold that the contract was not illegal. The reference in Maxwell referred to above also deals with the question of a contract being treated as voidable but this issue does not arise in this appeal.

For these reasons I am of the opinion that it was not open to the defendant in the circumstances of this case, to rely upon his own wrongful act so as to allege, as against the plaintiffs that the agreement of tenancy was null and void unenforceable under s.11 of the Land and Native Rights Act. The agreement was not illegal.

In the course of argument in this appeal mention was made of a

recent decision of the Privy Council in a case from East Africa where the Judicial Committee considered the position under the Kenya Crown Lands Ordinance between the signing of an agreement of alienation and the Governor's consent to the alienation. The case is *Denning v. Edwards* B (L961) A.C. 245, and the Judicial committee held under the wording of the Kenya law and circumstances of the case that the agreement was not void *ab initio*, but it remained inchoate pending the consent of the Governor."

C **However in the *Ajilo* case (*supra*) this Court considered the wording of Section 26 of the Act, which provides: "26. Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void."**

D **This Court took the view that it was undesirable to invoke the maxim *ex turpi causa non oritur action*. The court said at page 324 of the report:**

E ***"Although the 1st plaintiff/respondent by the tenor of the Land Use Act committed the initial wrong by alienating his statutory right of occupancy without prior consent in writing of the Governor, the express provision of the Land Use Act makes it undesirable to invoke the maxim 'ex turpi causa non oritur action' and the equitable principle enshrined in the case of *Bucknor-Macleans v. Maks Ltd. [1980] 8-11 SC. 1"****

G **I am satisfied that the two courts below were right in following the decision in *Savannah Bank (Nig.) Ltd. v. Ajilo [1989] 1 NWLR (Pt. 97) 305* in view of the fact this court had directly adverted its mind to the state of the law and judicial authorities on the equitable doctrine in the maxim *ex turpi causa non oritur action*. It may seem wrong that the plaintiffs/respondents who had procured exhibits 1 and DI later turned round to rely on the supposed invalidity H of the exhibits but the decision of this Court in *Ajilo* is still binding on this Court. I have not been called upon to consider overruling same.**

In the final conclusion, I would dismiss this appeal and affirm the

judgments of the two courts below. I award in favour of the respondents N10,000.00 as costs.

KALGO JSC

B

I have before today read the leading judgment of my learned brother, Oguntade, J.S.C. in this appeal and I agree with the reasoning and conclusions reached therein, which I adopt as mine. I therefore find that there is no merit in this appeal and I allow it and affirm the decision of the Court of Appeal delivered on 13th of April, 2000. I abide by the order of costs as assessed in the leading judgment.

C

MUKHTAR JSC

D

This is an appeal from the Abuja division of the Court of Appeal, which affirmed the decision of the High Court of Kogi State. The gravamen of this appeal is hinged on the validity of the deed of mortgage dated 2nd September, 1980; and 7th July, 1981 registered as No. 78 in that: -

E

“(a) It was not duly executed as required by law.

(b) No consent was sought and obtained from the appropriate authority the Governor and Oyi L. G. A. or B. I. K. L. G. A. before the purported deeds of legal mortgage was executed.

F

(c) That the purported consent dated 9th July, 8th August, 1980 and August, 1989 contained in the two deeds of legal mortgage were not granted by the Governor or appropriate authority or the Local Government, as required by law.”

G

In dealing with the issue of the authority of the source of the consent obtained by the respondents/plaintiffs and the authorities which the appellants sought to rely on in voiding the deed of mortgage, the learned trial judge in his judgment considered the decision in the case of Savanah Bank Limited & Anor v. Ajilo & Anr. 1989 1 SCNJ 213 upon which the learned counsel for the plaintiffs hinged their argument, thus:-

H

“After a very careful reading of both authorities, I form the view that Ajilo’s case is directly in point. It is more recent and had a full panel.

At page 180 it was pronounced thus: -

Although the 1st plaintiff/respondent by the tenor of the land Use Act committed the initial wrong by alienating his statutory right of occupancy without prior consent in writing of the Governor the express provisions of the Land Use Act makes it undesirable to invoke the maxim *exturpi causa non oritur* Action and the equitable principle enshrined in the case of *Bucknor Maclean v. Inlaks Nig. Limited* (1980) 8 S.C. 1.

I feel tempted to invoke the maxim against the plaintiff in this case. He obtained consents, which turned out to be non events. But I am bound by the authority in *Ajilo's* case. It appears as if equity must remain silent on the reserve bench while the Land Use Act is actively at play.”

The law in contention here is section 22 of the Land Use Act, which provision reads as follows: -

“It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise however without the consent of the Governor first had and obtained.”

The argument of learned counsel for the appellants in this appeal is that the consent obtained by an applicant must be that of the Governor or his delegates, upon satisfaction of all administrative, technical and such other requirements which would satisfy the Governor. The letter that purportedly conveyed the approval contains the following: -

“Ref. No LAN/CUS/MORT/331/38
Ministry of Works/Land Housing Environ
Lands Division
P.M.B, 1425
Ilorin, Kwara State
Date 8th August, 1980.

Ayodele Dare
P.O. Box 37
Koja
Sir,

APPROVAL OF SUBLEASE/MORTGAGE/ASSIGNMENT OF PROPERTY ERECTED AT KABBA COVERED BY CUSTOMARY RIGHT OF OCCUPANCY NO. 05581/81/77 TO THE UNION BANK OF NIGERIA LIMITED AT LOKOJA.

I am directed to refer to your letter application of 14/9/79 to inform you that the sublease/Mortgage/Assignment of your landed property covered by customary right of occupancy No. 005581/77 at Kabba, has been approved by the Honourable Commissioner for N20,000.00 (Twenty Thousand Naira) Only.

.....

With effect from 1st August, 1980 subject to the submission of a satisfactory deed of mortgage within four months and payment of stamp duty and registration fee. If a satisfactory deed of xxxxxxxx/Mortgage/xxxxxxx is not received for registration within four months, then a penal rent of 10k per day will automatically be imposed after four months, with effect from the date of this letter, and will remain in being until some time as a satisfactory deed is received in this Ministry for Registration.

Yours faithfully,

Signed (B.D. Olle)

Ag. Chief Lands Officer

For Permanent Secretary”.

So much heavy weather was made of the delegation of powers of the Governor on the Commissioner of Lands as per the provision of Section 45 of the Land Use Act supra. The said Section 45 provides the following :-

“45 (1) The Governor may delegate to the State Commissioner all or any of the powers conferred on the Governor by this Act, subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intendment of this Act as the Governor may specify.

(2) Where the power to grant certificate has been delegated to the State Commissioner, such certificate shall be expressed to be granted on behalf of the Governor.”

It is instructive to note that Section 22 of the Land Use Act supra

is very clear on who should give the consent required in that section, and indeed the prevision is categorical on whom the duty of consent is vested. The legislator or draftsman did not mince words in conveying the intendment of the sections. It specified that it is incumbent on the Governor to
B give the consent, but in situations where the Governor cannot give the consent himself, Section 45 (1) of the same law creates an avenue whereby the Commissioner of Lands can exercise the power to do so in the event that the Governor delegates the power of consent. At this juncture, I will
C read again the said approval reproduced above, (which even though talks about approval by the Honourable Commissioner), which was not written by the said commissioner but by an Ag. Chief Lands Officer, (not even the Permanent Secretary) of the Ministry. Now, where in that letter, has the approval been shown? Yes, the approval may have been given by
D the commissioner, but where is the approval? I agree that the author of the letter said there was purported approval, but I have not seen the actual approval, envisaged in Sections 22 read together with Section 45 of the Land Use Act supra. In fact subsection (3) of Section 45 supra
E throws more light on a situation where power has been delegated to the State Commissioner, for it has succinctly clarified what should obtain when a power delegated to a state Commissioner by a Governor is exercised. I have not seen or discerned from the approval letter that the consent envisaged in Section 22 of the Land Use Act accords with it. I
F believe that for it to fulfil the requirement and the provision of the said Section 22 of the Land Use Act it must be written and signed by the Commissioner of Lands. My view is that the said letter of approval does not suffice for the purpose of the mortgage deed, and has therefore negatively
G affected the validity of the mortgage, even though it was the respondents who facilitated the approval/consent, and who now wants to benefit from that act. It is indeed not morally right, but then one cannot circumvent the position of the law, and the legal authorities settled by this
H court.

The case of Savannah Bank (Nig) Ltd. V. Ajilo 1989 1 NWLR part 97 page 305 bias laid to rest a similar situation that is almost on all fours with the instant one. The Court of Appeal in its judgment per Musdapher

JCA (as he then was) rightly relied on the Savannah Bank case and the desirability to comply with the provisions of the Land Use Act thus: -

“Before I part with this judgment I may mention briefly, though it is despicable and morally wrong for the respondent to raise the issue of the “consents” which he had obtained. The appellants ought to know B that those consents were not from the respective appropriate authority as directed by the Land Use Act. The appellants should have checked before executing the deeds and parting with their money. I agree with the learned counsel for the respondents that the maxim Ex Turpi causa non Oritur C action cannot apply vide Ajilo’s case where the Supreme Court per Karibi Whyte JSC stated that the express provisions of the Land Use Act makes it undesirable to invoke the maxim and the equitable principle enshrined. Bucknor Maclean vs Inaks Nig. Ltd (1986) 8-11 SC.”

Indeed, I cannot agree more. The maxim Ex Turpi cause non D Oritur though evocable in some cases that have similar irregularities that attracts such equitable reliefs, is definitely not evocable in this case. The principles in the Savannah Bank case has not been overruled, as alluded by learned counsel for the appellant. E

In the light of the reasoning in this discussion, and the fuller ones in the lead judgment, I share the view that the appeal has not merit. I have read in advance the lead judgment’ delivered by my learned brother, Oguntade JSC. I am in full agreement with him that the appeal deserves F to be dismissed, and I so dismiss it, I abide by the consequential orders made in the lead judgment.

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden G at Abuja in appeal No. CA/A/34/97 delivered on 13/4/2000 in which it dismissed the appeal of the appellants against the judgment of the High H Court of Kogi State delivered in suit No. KWS/LO/53/89 on the 21st day of September 1995 in which it entered judgment for the plaintiffs who are the respondents in the instant appeal. It means the appellants have lost both at the trial court and the Court of Appeal.

The facts of the case which are that the 2nd respondent is the Managing Director of the 1st respondent and together they took loans from the 1st appellant bank. As security for the loans the respondents tendered two landed properties and executed deeds of legal mortgages B after obtaining consent.

The respondents, however, claimed that the Deeds were not executed as required by law and that the consents secured by them (the respondents) were not granted by the appropriate authority as envisaged C by the Land Use Act. The 1st appellant, after demanding the payment of the loans together with interests without success from the respondents, engaged the services of the 2nd appellant to sell the two landed properties, subject of the mortgages. The 2nd appellant advertised the properties for sale resulting in the respondents instituting the action leading to this ap- D peal in which, by paragraph 21 of the Amended Statement of Claim, the following reliefs have been claimed:

“(i) A declaration that the plaintiffs could not be indebted to the 1st defendant to the sum of N307,880.25 or any sum at all, when the E plaintiffs should have outstanding credit balance as a result of several payments which are in excess of the limited N45,000.00 covered by the purported two deeds of legal mortgage.

(ii) A declaration that the purported deed of legal mortgage dated F 2nd September, 1980 and 7th July, 1981, registered as No. 78 at page 78 in Vol. XII (Misc) and No. 81 at page 81 in Vol. XV (Misc) at the Lands Registry Ilorin in respect of plaintiffs landed property in Lokoja and Kaba respectively be declared null and void and of no effect in that: -

(a) It was not duly executed as required by law.
(b) No consent was sought and obtained from the appropriate au- G thority and OYI Local Government Council (or B.I.K. L. G.A.) before the purported deeds of legal Mortgage were executed.

(c) That the purported consents dated 9/ 7/1980, 8/8/1980 and 2/ H 8/1989 contained in the two deeds of legal mortgage were not granted by the Governor or appropriate authority or the Local Government as required by law.

(iii) A declaration that the purported two deeds of legal mortgage

dated 2/9/1 980 and 7/ 7/1981 first above described on which the 1st defendant sought reliance to compute or charge her interest and arrived at N307,680.25 as at 1989 be declared null and void in that there was no stipulated interest or any interest rate contained therein as basis for the computation of other subsequent interest or charges.

B

(iv) A declaration that the 1st defendant cannot unilaterally and arbitrarily increase the banking interest payable on any loan, overdraft or banking facilities granted the plaintiffs without the knowledge and consent of the plaintiffs.

C

(v) An order of perpetual injunction restraining the 1st defendant by itself, its servants, agents including the 2nd defendant or otherwise howsoever from auctioning, selling, disposing or otherwise dealing with any rights, title or interest or advertising for sale the plaintiffs two property situate and lying at ODO-ERO quarter, Kaba and at Lokoja covered by Customary Right of Occupancy No. 005581 dated 13/4/1977 and Statutory Right of Occupancy No. 1087 dated. 7/12/1972 respectively.”

D

The issues identified for determination by learned Senior Advocate of Nigeria, ROLAND OTARU Esq, in the appellants’ brief of argument filed on 12/11/03 and adopted in argument of the appeal on 30/1/07 are as follows: -

E

“(i) Whether the learned Justices of the Court of Appeal were right when they held that the Deeds of Mortgage Exhibits 1 & D1 were invalid, null and void, having been based on consent issued and signed by Ag. Chief Lands Officer or Permanent Secretary and Director-General, Kwara State Ministry of Lands and Housing, respectively, who were not the appropriate authorities under the Land Use Act.

G

(ii) Whether on the peculiar facts of this case, the strict and inflexible application of the ratio decidendi in the case of SAVANNAH BANK LTD VS AJILO & ANOR (1989) 1 NWLR (PT. 97) 305 at 324 is not appropriate, distinguishable and inapplicable.”

On the other hand, learned Senior Advocate of Nigeria, DR. ALEX A. IZINYON for the respondents, in the respondents brief or argument deemed filed on 13/3/06 and adopted in argument of the appeal has also formulated two issues for determination. The issues are as follows: -

H

(i) *Whether a transaction or any instrument purporting to alienate a customary right of occupancy of a land issued by a Local Government pursuant to section 6 of the Land Use Act, without the prior consent of the appropriate Local Government Chairman as required by section 21(b) of the Land Use Act 1978, is not null and void.*

(ii) *Whether in the absence of a proper consent as required by section 22 of the Act in this case, the court below was justified to apply the principle enunciated in the case of SAVANNAH BANK OF NIGERIA vs AJILO (1989) 1SCNJ.*

I am of the firm view that from the totality of the pleadings and evidence and the judgment of the lower courts thereon, the appellants' issue 1 forms the bedrock of the appeal. The question that emerges from issue 1 is simply whether there was a proper consent to mortgage the properties to the appellants. To answer that question, we have to take a look at the pleadings of the parties relevant to the issue.

In the Amended Statement of Claim at page 44 to 47 of the record, the respondents pleaded, inter alia, as follows: -

"5. *The plaintiff avers that sometime in 1980 he took an overdraft facilities not exceeding £40,000.00 from the 1st defendant and in consequence, a deed of legal mortgage (hereinafter referred to as the deed of mortgage) was purportedly executed for the total sum of ₦45,000.00 in the manner hereinafter.*

(a) *A deed of mortgage dated 2nd September, 1980 in respect of plaintiff landed property situate at Lokoja covered by the Statutory Right of Occupancy No. 1083 and the deed of mortgage registered as No. 78 at page 78 Vol. XII (Misc) in the land registry Ilorin for the sum of ₦20,000.00. The said deed is hereby pleaded. Notice is hereby given to the 1st defendant to produce the original of the said deed of mortgage.*

(b) *A deed of mortgage dated 7th July, 1981 in respect of the plaintiff landed property situate at Odo-Ero quarter, Kaba covered by the Customary Right of Occupancy No. 005581 and dated 13th April, 1977 and registered, as No. 81 at page 81 Vol. XV (Misc) at the Land Registry Ilorin for an initial sum of 20,000.00 but later up-stamped to ₦25,000.00. The said deed is hereby pleaded. Notice is hereby given to the 1st defen-*

dant to produce the original of the said mortgage.

16. The plaintiff will contend at the hearing of this suit that the landed property in the mortgage deeds at Odo-Ero quarters, Kaba which is subject of Customary Right of Occupancy and the purported consents therein dated 2nd August, 1989, 8th August, 1980 and 9/7/80— respectively are void and of no effect in that it was not granted in accordance with the relevant provision of the Land Use Act 1978.” B

I had earlier in this judgment reproduced relief 21(ii) which is relevant to the issue under consideration.

The reaction of the appellants in the Statement of Defence at pages 27 to 31 of the record are as follows: - C

“1. The Defendants deny paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the statement of claim and put the plaintiffs to the strictest proof of them. D

2. In answer to paragraph 5 of the Statement of Claim, the 1st defendant states that apart from the overdraft facility of N60,000.00 granted in 1980, the 1st plaintiff applied and was granted an additional facility of N160,000.00 (One Hundred and Sixty Thousand Naira) sometime in 1983 and this it fully utilized. E

13. The defendant in reply to paragraph 15 states the deed of legal mortgage is valid, subsisting and enforceable because of the following: - F

(a) The mortgage deed was executed by all the parties relevant to the transaction.

(b) The consent of the relevant authorities were sought and obtained for the transaction.

(c) The documents were duly stamped and registered as required by law. G

14. Further on paragraph 16 the 1st defendant says that it granted all the facilities above stated on the understanding that the security given by the plaintiffs is correct and valid and the 1st defendant shall urge that if for any reason the plaintiff have misrepresented the situation to it they should not be allowed to benefit from their wrong deed. The 2nd plaintiff also entered into an unlimited personal guarantee with the 1st defendant H

for the 1st plaintiff.”

From the relevant paragraphs of the pleadings of the parties, it is very clear that parties joined issues as to whether or not there were valid consents to mortgage the two properties for the loans admittedly granted by the 1st appellant to the 1st respondent and guaranteed by the 2nd respondent. It is the case of the respondents that there was no valid consent to mortgage as recognized by the Land Use Act, 1978. Having regard to the case of the respondents on the matter, it is very clear that for them to succeed being the plaintiffs, they must prove that there was neither no consent known to law or that the consents they presented to the appellants are invalid in law. It follows therefore that the burden of proving the invalidity of the consents lies on the respondents, particularly as there is prima facie evidence of the existence of consent provided by the respondents to the 1st appellant on the basis of which the loans were granted to the respondents as stated in the following words: -

“I am directed to refer to your application and to inform you that the mortgage of your landed property— has been approved by the Honourable Commissioner.”

It should be noted that throughout the testimony of the 2nd plaintiff who was the only witness for the plaintiffs no reference was made to the alleged invalidity of the consents What he did was simply to tender the legal mortgage, exhibit 1. It is also very important to note that the respondents, whose duty it is to prove the invalidity of the consents did not call or subpoenaed the Commissioner for Lands, Kwara State who was the delegate of the Military Governor of Kwara State for the purpose of grant of consents under the Land Use Act, 1978 and who is stated as having so consented to the transactions in issue, to say whether he consented or not From the state of the pleadings it is not the duty of the appellants to prove that the consent presented by the respondents for the transactions are valid. The respondents averred the negative and therefore are duty bound to prove same for them to succeed.

The totality of the evidence in chief of the 2nd plaintiff are reproduced hereunder, as follows: -

“2nd Plaintiffs Evidence: -

Christian, S/Bible, speaks English. I am Chief Ayodele Dare. I live at plot 1080 Ahmadu Ali Road, Lokoja, I am a businessman, I am a transporter, contractor and trader.

I know the plaintiff. I am the managing Director of the 1st plaintiff company. I know 1st defendant. I don't know the 2nd defendant as I have never met them before. I was owing according to them. The 1st defendant wanted to sell my property. I was not owing the 1st defendant I read from paper that the 2nd defendant, an auctioneer, wanted to sell my property. Sometime in 1980 I took overdraft of N40,000.00 from the 1st defendant's Branch at Lokoja. Later on, I was told to bring security for my loan. I gave them the certificate of occupancy of my house at Lokoja and the right of occupancy over my house at Kabba - my home town. The Bank Manager said he needed a deed of legal mortgage with me.

I ask my lawyer to ask for a copy of the legal mortgage from the Bank Manager. A copy of the legal mortgage was given to my lawyer. I can identify it if I see it. I see the original just handed over to me.

Izinyon: - I seek to tendered it.

Adesina:- No objection

Court: - Deed of legal mortgage dated 7/7/81 shall be admitted as Exhibit 1. It should be marked with red biro.

Taken as read.

SGD.

J.A. Fabiyi

Judge.

21/10/93.

After I signed Exhibit 1 I was given the sum of N40,000.00 I did not sign any other document apart from Exhibit 1.

I was running my current account with the 1st defendant bank. The account was in the name of Ayo Dare & Sons. I had about three or four accounts with the 1st defendant bank. The accounts were in the names of

1. Ayo Dare & Sons Nig. Ltd -1st Plaintiff.

2. Ayo Dare. The sum of N40, 000. 00 was given through the account of Ayo Dare & Sons Nig. Ltd - 1st plaintiff. I was operating the account. I used tellers to pay in into account and used cheque to with-

draw. Between 1980 - 83.

I paid in about N 100,000. 00 from 1983 -86, I paid in over N70,000.00 into the account. Since 1986, payments have been made into the account. Some counterparts of the tellers are with my lawyer. Some teller counter parts got burnt in an inferns, which gutted my house. I see some of the counter. Parts of the tellers.

Izinyon: - I seek to tender them. They are fifty-seven in all.

Adesina: - No, objection.

COURT: - In all, there are 57 counterpart tellers including empty ones. They shall be taken as Exhibit 2 and numbered serially from 1 - 57 respectively.

SGD.

J. A. Fabiyi

D Judge.

21/10/93.

I wrote to the manager asking for my statement of account but it was never given to me. I later received a shocking news from the manager that the sum of N75,000.00 that I had in my fixed deposit had been forfeited. They said they used it to pay the money allegedly owed to them. They fixed deposit of N75,000 was with the 1st defendant for over six months. I was not given any statement in respect of the fixed deposit I did not give any instruction to 1st defendant to use the N75,000 in my fixed deposit to reduce any indebtedness owned by the 1st plaintiff. I wrote to the Area Manager, Ibadan, to report what the Lokoja Branch Manager did without my instruction. I gave the original of the letter to the Bank Manager, Lokoja.

G I have asked for the original from the manager, Lokoja branch but he did not give it to me. I have a copy with my lawyer, I see the copy.

Izinyon: I seek to tender same.

Adesina: No objection

H Court: - Letter dated 31/1/85 shall be admitted as exhibit 3 to be marked in red. Taken as read.

SDG.

J. A. Fabiyi

Judge.

21/10/93.

I got a reply from the Bank's Area Manager, Ibadan. I have the reply with my lawyer. I see the reply.

Izinyon: - We seek to tender it

B

Adesina: - No objection

Court: - Letter dated 8/5/85 shall be exhibit 4 to be marked in red.

Taken as read.

SGD.

C

J. A. Fabiyi

Judge.

21/10/93

I see exhibit 4 page 2. The hearing is discharged of lien. (Read out by 'W').

D

What followed thereafter was that I was told that I was owing the Bank over N300,000.00. I see Exhibit I which is between Ayo Dare and Union Bank of Nigeria Ltd. No interest rate is stated in exhibit 1. At around that time, interest rate was between 7-9%. I know nothing about the. Central Bank. I dealt with Union Bank, Lokoja.

Apart from exhibit 1. No other document was given to me by the 1st defendant.

I was not given regular statements of my account, as it should be. I was not given any statement of account by the 1st defendant. I was not given any variation of interest rates.

F

The over-draft I took after the initial N40,000 was N100,000, which I used to buy vehicles and I have paid it up.

I signed a lien agreement with the 1st defendant. I signed lien when I obtained the overdraft of N100,000. I gave no other document personally to the 1st defendant. The C of O and R of O earlier mentioned were for my company - the 1st plaintiff. The houses mentioned in exhibit 1 belong to me as the managing Director of 1st plaintiffs. The two houses belong to the company.

G

I see page 6 of exhibit 1. The properties are in the name of Ayo Dare.

H

Izinyon: - At this stage, I apply for a short adjournment to enable us plead some facts which are not so explicit in our pleadings.

Adesina: - I oppose the application for adjournment. If an adjournment is granted, I ask for N500.00 cost.

B *Court: - CASE ADJOURNED to 13/12/93 for continuation of hearing. No costs awarded in the prevailing circumstance.*

SGD.

J. A. Fabiyi

Judge.

C *21/10/93.*

(On former oath) I see exhibit 1. It is between the 2nd plaintiff - myself and the 2nd defendant Bank. The 1st plaintiff has a company. I am the Director of the company. The property belongs to me personally and

D *not to the company. I did not convey the property to the 1st plaintiff.*

I see exhibit 2 in which the 1st plaintiff company transacted with the 1st defendant Bank. I was not given statement of account on regular basis. I did not receive any letter posted to me by the 1st defendant demanding payment of money from me. I want the court to restrain the 1st defendant from selling my own property on behalf of the 1st plaintiff. There was no time I gave my house to the 1st plaintiff. I am not owing the 1st defendant Bank. I signed a deed of guarantee.

F *Izinyon: - I apply to tender the deed of guarantees.*

Adesina: No objection.

Court: Deed of guarantee shall be admitted as exhibit '5' Taken as read.

SGD.

G *J. A. Fabiyi*

Judge.

27/4/94.

Exhibit 1 is dated 7/7/81. Exhibit '5' was executed on 29/1/82."

H *It is very clear from the totality of the evidence in chief of the 2nd respondent that nothing was said about the validity or otherwise of the consents to mortgage the properties. It is settled law that where a party to an action fails to testify in support of facts in his pleadings those facts*

are deemed abandoned. In the instant case there is no evidence on record touching and concerning the validity of the consent to mortgage and in fact the mortgage itself. It is also settled law that address of counsel however brilliant, cannot take the place of evidence particularly where there is no evidence, as in the instant case, in support of the submission(s). B

Secondly by the provision of section 22 of the Land Use Act, it is unlawful for the holder of a statutory right of occupancy granted by the Governor to alienate his whole interest or any part thereof by assignment, mortgage or otherwise howsoever without the consent of the Governor first had and obtained. C

However, under section 45 of the Land Use Act, 1978, the Governor may delegate his power under the Act to a State Commissioner. In the instant case the power of the Governor to approve or consent to a mortgage transactions conferred by section 22(1) of the Land Use Act, 1978 was delegated to the Commissioner for Lands and Housing by virtue” of the provisions of the Kwara State Legal Notice No. 4 of 1978. There is nothing in the said Land Use Act, 1978 which prevents someone other than the Governor himself or his delegate from conveying the consent so granted by the Governor or his delegate. In the instant case, the letter conveying the consent of the Commissioner who is the appropriate authority was signed by the Acting Chief Lands Officer for the Permanent Secretary and eloquently speak for itself and constitutes the best evidence of its content I hold the considered view that the document, in the absence of any evidence to the contrary as in the instant case, is sufficient evidence of the consent of the Commissioner to the transactions referred thereto, particularly as the respondents have failed to prove that the said Commissioner did not consent. D E F G

The respondents could have called the Commissioner to state whether or not he consented to the transaction, but they did not. It is settled law that he who alleges must prove. The burden of proof was on the respondents, which they failed to discharge. H

In the case of NIDB vs Olalomi Industries Ltd, (2002) 5 NWLR (pt. 761) 532 at 547 - 548 being a case of similar facts with the facts of this case, I expressed the following opinion which, I have since not seen

any reason to depart therefrom: -

“It is obvious that the learned trial judge is very correct in his exposition of the maxim *Delegatus non protest delegare* but I do not agree that the said maxim is applicable to the facts of this case. It is obvious that the learned trial Judge merely treated or assumed that the person who signed the document under consideration is the person allegedly consenting to or approving the mortgage transaction; in this case the Ag. Chief Lands Officer who- signed same for the Permanent Secretary. If the learned trial Judge had read the body of the document particularly the portion reproduced supra he would have seen clearly that what the Ag. Chief Lands Officer did on behalf of the Permanent Secretary is to inform the respondent of the approval of the Commissioner for the mortgage transaction as required by the said respondent in his application. This, it is my considered opinion does not make either the permanent secretary or the Ag. Chief Lands Officer a sub-delegate of the Hon. Commissioner for the purposes of approval of mortgage transactions, so as to render the maxim “*Delegates non protest delegare*” applicable. What the Ag. Chief Lands Officer did is merely to convey to the respondent the approval of the commissioner, who is the, appropriate authority in that matter, as regards the application of the said respondent for that purpose...

It is my view that to hold that the document attached to Exhibit 1 does not constitute evidence of the fact that the appropriate authority did approve the transaction as held by the learned trial Judge is to be very technical particularly having regards to the fact that it was the respondent who applied for the consent or approval and did present same for the purpose of obtaining the loan which he duly utilized only turning around, when called upon to repay same with interest as previously undertaken, to say that there is no approval to the transaction.

Where there is anything or evidence from which the court can infer such an approval under the circumstances, it is my view that it will be in the interest of justice to do so rather than allow the mortgagee to eat his cake and still have it back. The court should resist at all cost the attempt at using it as an engine to further fraud or cheating or dishonesty.”

It must be borne in mind that it is the duty of the respondents to obtain the consent of the appropriate authority, in this case, the Commissioner for Lands of Kwara State, to the transactions in issue which they purportedly did and on the basis of which they obtained the credits in issue. Now that they allege that the consents they obtained never came from the proper source and therefore invalid, it is their duty under the law to so prove. Having failed to discharge that burden, it is my considered view that the trial court was in error in holding as it did and that the lower court equally erred in affirming the erroneous decision of the trial court on the matter. B C

In conclusion, it is for the above reasons that I am unable to agree with the reasoning and conclusion of my learned brother OGUNTADE, JSC, in the lead judgment that the appeal is without merit and should be dismissed. I allow the appeal as being meritorious with N10,000.00 costs in favour of the appellants. Appeal allowed. D

CHUKWUMA-ENEH JSC

I have had the advantage of reading in advance the judgment prepared and just delivered by my learned brother Oguntade JSC and I adopt it as mine and agree that the appeal should be dismissed as lacking in merit. I abide by the orders contained in it. E F

G

H