

SUPREME COURT OF NIGERIA

11TH MAY, 2007 SC. 226\2001

**CORAM:- A. I. KATSINA-ALU, N. TOBI, I. F. OGBUAGU,
F. F. TABAI, P. O. ADEREMI, JJSC**

BROSSETTE MANUFACTURING NIG LTD.

(NOW Automobile & Engr. Ind. Nig. Ltd.) APPELLANT
AND

1. M/S OLA ILEMOBOLA LIMITED

2. THE GOVERNOR OF KADUNA STATE RESPONDENTS

**3. HON. ATTORNEY-GENERAL OF KADUNA
STATE**

**4. DIRECTOR-GENERAL DEPARTMENT OF
LANDS, SURVEY AND COUNTRY PLANNING**

LAND USE ACT - Certificate of occupancy - Revocation of in this case
- Was only on ground of holder's failure - To secure Governor's consent
to a sublease s. 22(1) of the Act - Yet written agreement is presupposed
- Before seeking Governor's consent (H1)

EVIDENCE - Documents - Land matters - Expunged exhibit - Trial
Court's reliance on oral evidence - Of expunged documentary evidence
is wrong - Seeing that documentary evidence excludes oral evidence
(H2)

LAND USE ACT - Title - Governor's consent - Agreement prepared in
anticipation - Remains inchoate till consent is obtained - Such document
cannot transfer title (H3)

LAND USE ACT - Leases - Appeals - Governor's consent - Entering into
written sublease agreement - Before seeking Governor's consent - Is not
unlawful - As rightly held by Court of Appeal (H4)

FACTS

The plaintiff/1st respondent was on 21-9-1977 granted a Statutory Right of Occupancy in respect of plot No. 4 Kaduna South, Maichibi Close, Industrial Estate Kaduna. Some time in 1981, it extended a 10 year sublease to the 4th defendant/appellant vide an undated undelivered agreement signed by the parties in consideration of the sum of N180,000.00. Plaintiff who neglected to apply to the Governor for consent to lease, nevertheless put 4th defendant into possession. 4th defendant complained to the Governor, who upon satisfying himself that the refusal to apply for requisite consent was wilful, revoked the plaintiff's Right of Occupancy and granted the land to 4th defendant vide a fresh statutory Right of Occupancy.

Plaintiff filed this action before the High Court challenging the revocation of its said Right of Occupancy, contending that the revocation order is defective in law for not being in compliance with the provisions of the Land Use Act. The trial Judge held that the revocation was valid and consequently dismissed the plaintiff's action. Plaintiff's appeal to the Court of Appeal was allowed. Being dissatisfied, 4th defendant has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

"whether the 1st Respondent as Plaintiff and holder of the statutory right of occupancy over the land in question had alienated his right of occupancy or part thereof by sublease without the consent of the Governor first had and obtained."

HELD (Unanimously dismissing the appeal per **KATSINA-ALU JSC**)
Certificate of occupancy - Revocation of in this case

1. It will be seen clearly that the only ground for the revocation contained in the notice of revocation set out above is the sublease of the property to a third party without the consent of the Governor. It was said that the Plaintiffs action was in contravention of section 22(1) of Land Use Act 1978.

The law in this regard is now settled.

Section 22(1) quoted above is clear and unambiguous. The sec-

tion clearly prohibits the holder of a statutory right of occupancy from alienating his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise without the consent of the Governor first had and obtained.

But the holder of a statutory right of occupancy is certainly not prohibited by Section 22(1) of the Land Use Act, 1978 from entering into some form of negotiation which may end with a written agreement for presentation to the Governor for his necessary consent. I think this is good sense because the Governor when giving his consent may require the holder of the statutory right of Occupancy to submit an instrument executed in evidence of the assignment, mortgage or sublease in order that his consent under subsection (1) may be signified by endorsement thereto:

What is more, sections 22(2) and 26 presupposed the existence of an agreement of a sort before the Governor's consent. (p. 2248 B)

Documents - Land matters - Expunged exhibit

2. Exhibit 3 in the present case is the agreement to sublease. It was not dated. It was not delivered. Although it was admitted in evidence, the learned trial Judge expunged it in the course of his judgment. There was therefore no agreement as envisaged by sections 22(2) and 26.

The learned trial Judge fell back upon oral evidence of the documentary evidence which he had rejected.

The learned trial Judge was dearly in error. This Court in *Olaloye v. Balogun* (1990)5 NWLR (Pt .148)24 said that:

"This court in Abiodun v. Adehim (1962)1 ALL NLR 550 at 555 relying on section 131(1} of the evidence Act has said that once there is a documentary evidence of sale of land, oral evidence of the sale would be excluded and the question as to what land was sold has been settled by the document. So in the instant case oral evidence as to the land sold by each of Exhibits K, K1 -K3 is inadmissible." (p 2249 D)

LAND USE ACT - Title - Governor's consent

3. The agreement, Exhibit 3, was prepared in anticipation of obtaining

Governor's consent.

In his evidence the Plaintiff said:

"the document was not dated because we had not yet obtained the approval of the Governor."

B The legal consequence of this is that the agreement was inchoate or at best a mere escrow till the consent of the Governor was obtained. What this means is this. That agreement did not and could not transfer title in land. (p. 2250 A)

C ***Leases - Appeals - Governor's consent***

4. The Court of Appeal in the course of its judgment held as follows:

"Section 22 of the Land Use Act Cap. 202 of the Laws of Federation of Nigeria 1990 does not render null and void or illegal a purported sublease. Such an agreement would only be dormant or inchoate and creates no legal relationship until the requisite consent is sought and obtained from the appropriate authority. That this was the intention of the appellant was quite manifest from his testimony before the learned trial Judge. Section 22(2) of the Land Use Act envisages a situation whereby some form of agreement would be presented to the Governor to which he would consent or withhold his consent. It is not likely to be the intention of the maker of the enactment for the Governor to accede to a mere intention of the parties. I think some concrete terms should be agreed to by the parties for presentation to the Governor. In my respectful opinion what the appellant and fourth respondent did in Exhibit 3 substantial compliance with provisions of Section 22 of the Land Use Act."

G One can hardly fault the views expressed above.

I agree entirely with the Court of Appeal. In the result I find that there was nothing contrary to law in entering into written agreement for the sub-lease before the Governor's consent was obtained. (p. 2250 E)

H **NOTABLE POINTS OF INTEREST**

TOBI JSC

1. Oral evidence of rejected document cannot be relied upon

With the greatest respect, the learned trial Judge got it wrong. While he

got the one expunging *Exhibit 3* right, he got the one where he relied on what he called “*the abundant oral evidence before the court*” wrong. Where there is documentary evidence on an aspect of a party’s case, no oral evidence is admissible on that aspect. This is because our adjectival law does not admit oral evidence on an aspect or area covered by a B document. A party cannot benefit from two ways: documentary evidence and oral evidence. He can only lead evidence in respect of one and not the two of them. But this principle of law is subject to an important qualification and it is this. If the parties by their *ad idem* agree by oral C agreement to change part of the written agreement, the court will not reject the oral agreement. But that is not the position here.

As the learned trial Judge rightly rejected *Exhibit 3*, he was no more competent to fall back on the oral evidence on the same aspect or D area. (p. 2253 A)

OGBUAGU JSC

2. A deed must be delivered to become effective

I note that at the time the Appellant instigated or alleged by his letter, that E the 1st Respondent, had sub-leased the property without the consent of the Governor, it did not realize that that complaint, will boomerang against it. This is because, the sub-lease had not been dated, not stamped and not registered. In other words, the agreement had not been delivered. Surely F and this is settled, a Deed becomes effective in law, at the time of delivery. See Awojugbagbe’s case (*supra*). A contravention of Section 22 of the Act will occur in the case of a proper/conclusive alienation of a right of occupancy carried out by a Deed, at the time when the relevant deed G was delivered and not at the time when it was executed or even sealed. So, if a Deed is delivered after the Governor’s consent, there will be no contravention of Section 22 of the Act.

This is because, in my respectful view, it is settled that a transaction created by a Deed, will not come into effect prior to the delivery of H the Deed. In other words, a Deed only becomes effective, upon its delivery. So, until the time specified had arrived or the condition had been performed or the Governor has given his consent, the instrument, will

not be a Deed so to speak, but is a mere Escrow. (p. 2262 D)

3. Escrow defined

What is an Escrow? In the book authority of Norton Upon Deeds 1st

B Edition, page 15, Escrow is defined as follows:

"..... *an instrument delivered to take effect on the happening of a specified event, or upon the condition that it is not operative until some condition is performed, then pending the happening of the event or the performance of the condition, the instrument is called an*
C *Escrow until the specified time has arrived or the condition has been performed, the instrument is not a deed. It is a mere escrow*".

(p. 2263 B)

D *4. A party should not benefit from his own wrong*

In order to have its way, the Appellant, wrote the male fide Petition and colluded with the Government officials, to have the Certificate of Occu-

E of the said property.

It perhaps, naturally, jubilated when the trial court found in its favour. When that Judgment was set aside by the court below, it still wants to benefit from its own wrong or mischief. This Court will not oblige it. This is because, it will not allow any person or party or body, to
F benefit from his or its own wrong. (p. 2269 D)

REPRESENTATION

G Rotimi Oguneso Esq. with him, O. I. Olorundare, Esqr., for the 1st Respondents.

Hon. Attorney-General and Commissioner for Justice, Kaduna State for 2nd, 3rd and 4th Respondent.

H **CASES REFERRED TO**

Awojugbagbe Light Ind. Ltd. v. Chinukwe (1995) 4 NWLR (Pt.390) 379

Olaloye v. Balogun (1990) 5 NWLR (Pt 148)24

Abiodun v. Adehim (1962)1 ALL NLR550 at-555

Anambra State Housing Development Corporation v. Emekwue (1996)1
SCNJ 98 at 132-133

Goddard v. Denton (1584) 76 E.R. 396 P.C

Mowatt v. Castle Street and Iron Works (1887) 34 Ch. D. 58

Vicent v. Premo Enterprise Ltd. (1969) 2 Q.B.609

B

STATUTE REFERRED TO

Land Use Act ss. 22, 26 and 28(5)

C

LEAD JUDGMENT BY KATSINA -ALU JSC

This is an appeal against the decision of the Court of Appeal, Kaduna Division delivered on 14 December, 1999 which allowed the appeal of the Plaintiff.

D

The 1st Respondent M/S Ola Ilemobola Co. Ltd. as Plaintiff in the trial High Court claimed against the Defendants as per paragraph 42 of her amended statement of claim. The said paragraph 42 reads as follows:

“42. WHEREOF the plaintiff prays this Honourable Court for the following orders -

(a) That the purported order of revocation of the plaintiff right of occupancy dated the 12th day of June, 1986 does not apply to the plaintiff right of occupancy with certificate of occupancy No. NC3640 dated the 21st day of September, 1977.

F

(b) That the purported order of revocation of the plaintiff right of occupancy dated the 12th of June, 1986 is null and void and of no effect whatsoever since same took retrospective effect.

(c) That the revocation order is defective in law since same is not in compliance with the provisions of the Land Use Act of. 1978.

G

(d) A declaration that the plaintiff is still the rightful holder of the right of occupancy over the said piece of land known as No. 4 Maichibi Close and covered by a certificate of occupancy No. 3640 and dated the 21st day of September, 1977.

H

(e) The plaintiff also claim against the defendants jointly and or severally as follows: -

(i) *The sum of =N=50,000.00; (Fifty thousand Naira) only being expenses incurred in clearing and fencing the said plot of land known as No. 4 Maichibi Close, Kaduna South as special damages.*

(ii) *The plaintiff further claim the sum of =N=1.5 million (One million and five hundred thousand naira) only as general damages and loss of use of the said piece or parcel of land."*

The plaintiff essentially brought this action challenging the revocation of the statutory right of occupancy over a plot of land known as Plot, No. 4, Kaduna South, Maichibi Close, Industrial Estate Kaduna. At the close of pleadings, parties called evidence and addressed the trial court. In the course of his address, learned counsel for plaintiff abandoned the prayer for damages.

In his judgment delivered on 3 November, 1993, the learned trial Judge held that the revocation order was valid and consequently dismissed the plaintiffs action.

The plaintiff appealed against the dismissal of his claim to the Court of Appeal. The plaintiff s appeal was allowed.

Being dissatisfied with the judgment of the Court of Appeal, the 4th Defendant Brossette Manufacturing Nigeria Ltd. has appealed to this Court.

The facts, which led to the institution of this action, are short. The plaintiff was granted the Right of Occupancy over Plot No. 4 Maichibi Close on 21 September 1977. Sometime in the year 1981 it extended into a Lease Agreement with the 4th Defendant for a ten year period: The consideration was =N=18,000.00 per annum. By the Plaintiffs admission, it was paid the sum of =N= 180,000.00 for the ten year period. The plaintiff, however, neglected to apply to the Governor for consent to lease. It nonetheless put the 4th Defendant into possession of the property. The 4th Defendant complained to the Governor of Kaduna State. After exchange of correspondence, the Governor having satisfied himself that the refusal of the plaintiff to apply for requisite consent was wilful, revoked the Right of Occupancy granted to the Plaintiff.

Based on the grounds of appeal filed, the appellant has raised two issues for determination on page 2 of the Appellant's brief of argument. These are:

(1) Whether the 1st Respondent had not admitted the fact that he sub-leased the property in dispute covered by Certificate of Occupancy No. 3640 and received consideration therefrom in the sum of ₦180,000.00 without the requisite consent of the Governor of Kaduna state first sought and obtained - Ground 1.

(2). Whether having regard to the facts contained in printed record before the Lower Court the learned Justices of the Court of Appeal were not in grave error in invalidating the revocation order of the interest of the 1st Respondent over the land in dispute - Ground 2.

For its part, the 1st Respondent formulated a lone issue for determination, which reads:

“Whether the Court of Appeal was right in its application of section 22(1) & (2) of the Land Use Act to the facts of this case having regard to the decision of the Supreme Court in Awojugbagbe Light Ind. Ltd. v. Chinukwe (1995) 4 NWLR (Pt 390) 379 (sic) and other Supreme Court cases on the content of revocation notice.”

The all important issue for determination is whether the 1st Respondent as Plaintiff and holder of the statutory right of occupancy over the land in question had alienated his right of occupancy or part thereof by sublease without the consent of the Governor first had and obtained. In order to satisfactorily consider this issue, recourse must be had to the pleadings and the evidence before the court.

In paragraph 42 of the amended statement of claim the Plaintiff claimed as follows:

“(42). WHEREOF the Plaintiff pray this Honourable Court for the following Orders: -

(a) That the purported order of revocation of the Plaintiff right of occupancy dated the day 12th of June, 1986 does not apply to the Plaintiff Right of Occupancy with Certificate of Occupancy No. NC 3640 and dated the 21st day of September, 1977.

(b) That the purported order of revocation of the plaintiff Right of Occupancy dated the 12th day of June, 1986 is null and void and of no effect whatsoever since same took retrospective effect.

c. That the revocation order is defective in law since same is not

compliance with the provision of the Land Use Act Of 1978.

d. A declaration that the Plaintiff is still the rightful holder of the Right of Occupancy over the said piece of land known as No. 4 Maichbi Close and covered by a Certificate of Occupancy No. NC 3640 and dated the 21st day of September, 1977.

e. The Plaintiff also claim against thee defendants jointly and or severally as follows: -

1. The sum of =N=50,000.00 (fifty thousand Naira) only being expenses incurred in clearing and fencing the said plot of land known as No. 4 Maichibi Close, Kaduna South as special damages.

(11) The Plaintiff further claim the sum of =N=1.5 Million (one million and five Hundred thousand naira, only as general damages and loss of use of the said piece or parcel of land."

Earlier in the pleadings, the Plaintiff pleaded in paragraphs 12, 13, 14, 15,16, 20, 21, 23, 24 and 25 as follows:

"12. That based oh the agreement reached between the Plaintiff and the 4th Defendant, a sublease agreement was drawn up between the Plaintiff and the 4th Defendant for the proposed sublease of the Plaintiff plot of land. And the said sublease agreement is hereby pleaded and will be founded and relied upon at the hearing of this suit.

13. That after the preparation of the sublease agreement, it could not be registered as there was embargo in the Kaduna State Land Registry by the government in power in Kaduna State.

14. That in order not to contravene the terms of the grant, Plaintiff approached one Alhaji A. O. Ja'afaru, the Chief Land Officer who advised that the sublease agreement could be signed by the parties but not to be dated pending when embargo will be lifted. And the Plaintiff hereby pleads copy of their letter dated the 29th of March; 1985 and will find and rely on same at the hearing of this suit.

15. That on the premises of the averment contained in paragraph H 12 of this statement of claim, the Plaintiff and the 4th Defendant's Company agreed into signing the sublease agreement without inserting any effective date its commencement as manifest in the sublease agreement hereby pleaded.

16. That the Plaintiff after signing the sub-lease agreement and not been able to register same at the Land Registry due to the embargo did not notify the 4th defendant of the embargo.

20. That while the Plaintiffs Managing Director/ Chairman was in his home-town undergoing treatment the 4th Defendant on lifting the embargo took it upon themselves to have the sublease agreement perfected as manifest in the 4th Defendant's letter with Ref. No. JAO/10/1177 / 82-A and dated the 21st day of October, 1982 and same is hereby pleaded and will be founded and relied up on at the hearing of this suit.

21. That the 4th Defendant on the 9th May of December, 1982 did write another letter to their Solicitors requesting them to laise with the Plaintiff to ensure that the sublease agreement was duly registered and was given the free hand to have same registered, that the said letter dated the 9th day of December, 1982 is hereby pleaded and will be found and relied upon at the hearing o this suit.

22. That at the time the 4th Defendant's Company wrote the two letters referred to in paragraph 20 and 21 of this statement of claim, the proposed sub-lease was yet to take effect same was not operative; and consequently could not be registered.

23. That the 4th defendant's Companion the 10th day of November, 1982 did write another letter to their solicitors reminding them of the registration of the sublease agreement, that the said letter with Ref. No. JAO/BA/666/82-A and dated 10th November, 1982 is hereby pleaded and will be relied upon at the hearing of this action.

24. That the 4th Defendant not being able to register the said sub-lease agreement as same was yet to become operational due to lack of date of commencement of the sub-lease demanded the original copy of the Certificate of Occupancy from the Plaintiff contrary to the proposed sublease agreement.

25. That the Plaintiff is refusing to hand over the certificated occupancy to the 4th, Defendant's company who then needed same to raise loan from their bankers then reported the Plaintiff to the 3rd Defendant complaining of illegal sublease against the Plaintiff."

In its re-action the 4th Defendant in paragraph 14 of its amended

statement of defence averred as follows: -

“14. In further answer to paragraphs 21, 22, 23 and 24 of the statement of claim; the 4th Defendant will contend at the hearing of this suit as follows: -

B *(a) That the 4th Defendant never assumed responsibility for registration of the sublease referred to in the statement of claim.*

C *(b) That when its interest became adversely affected by the conduct of the Plaintiff, the 4th Defendant instructed its Solicitors Messrs Aliyu Umaru & Partners to communicate directly with the Plaintiff, at the time of hearing of this suit, the 4th Defendant will rely on letter No. AUP/ BRO/VOL/1/34 dated 29th October, 1984 written to the Plaintiff by the 4th Defendant's Solicitors and for the purpose of this, the Plaintiff is hereby given notice to produce the original copy of the said letter.*

D *(c) That the Plaintiff did not even bother to reply the letter pleaded in paragraph 14(b) of this statement of defence.*

E *(d) That consequent upon the Plaintiffs refusal to comply with the terms contained in the letter referred to in paragraph (14(b) of this statement of defence, the 4th Defendant's. Solicitors wrote a letter No.AUP/ BRO/VOL.1 /84 dated 11th March, 1985 to the 3rd Defendants in which the 4th Defendant sought the intervention of the Kaduna State Government in the matter. At the hearing of this suit the 4th Defendant will rely on the said letter.”*

F What has emerged clearly from the pleadings cited above is that the parties had entered into an agreement to sublease, which was to be presented to the Governor for his necessary consent. It is common ground that the agreement did not bear any endorsement of the Governor's consent. I must stress that the agreement was not registered and delivered.

G What then was the evidence before the trial court? PW1 was Al-haji Muraina Ilemobola, Director of the Plaintiff company. In his evidence in-chief he said inter alia thus:

H *“I know Brossette Nig. Ltd. I know a company called Automobile and Engineering Industries Nigeria Ltd. I know that Automobile and Engineering Industries Nigeria Ltd. is the new name of Brossette Manufacturing Nigeria. Ltd. M. Ola Ilemobola Enterprises Nigeria Ltd. had*

an arrangement with Automobile and Engineering Nigeria Limited at a time. The arrangement was in writing, but it was not dated

The document was not dated because we had not yet obtained the approval of the Governor”

Under cross-examination this witness testified thus:

“Automobile and Engineering Industries Ltd. is the same company with Brossette Nigeria Limited. I collected ₦180,000.00 from Brossette Nigeria Ltd. with the hope that after obtaining the Governor’s consent, I will give lease 3 of the land to them. I did not intend to lease the whole land to the company i.e. Brossette Nigeria Limited. At that time there was an embargo on land transactions during the tenure of Governor Balarabe Musa, ”

It will be seen clearly that the Plaintiff led evidence in line with its pleadings. That there were negotiations between the Plaintiff and the 4th Defendant, which ended with a written agreement for presentation to the Governor for his necessary consent. That is to say that the sublease agreement was understood and entered into subject to the consent of the Governor.

It was against this state of affairs that the Governor of Kaduna State revoked the Plaintiffs certificate of occupancy over No. 4 Maichibi Close, Southern Kaduna. The revocation notice was admitted in evidence as Exhibit 4(a) which reads as follows:

“AND WHEREAS the said M/S Ola Ilemobola Trading Company illegally subleased their title to Brossette Manufacturing Nig. Limited without the formal consent of the Commissioner for Lands thereby contravening Section 28-(1) of the Land Tenure Law Cap. 59 and Section 22 of the Land Use Act of 1978: AND WHEREAS: I intend to revoke this title for breach of contract and contravention of both, the Land Tenure Law Chapter 59 and Land Use Act of 1978 and as recommended by the Kaduna State Land Use and Allocation Committee NOW THEREFORE in exercise of the powers conferred upon me by Section 28(1)(2) of the Land Use Act of, 1978 I hereby revoke with effect from the 10th day of March, 1981 the said right of occupancy of the said M. Ola Ilemobola Trading Company Ltd. over that piece of land at No. 4 Maichibi Close,

Kaduna South on the plan in the schedule to the said certificate of occupancy numbered NC 3460.

*Given under my hand this
12 day of 6 1986*

B

The Governor

Kaduna State of Nigeria. “

It will be seen clearly that the only ground for the revocation contained in the notice of revocation set out above is the sublease of the property to a third party without the consent of the Governor. It was said that the Plaintiffs action was in contravention of section 22(1) of Land Use Act 1978.

The law in this regard is now settled. Section 22(1) of the Land Use Act 1978 reads:

D “22(1) *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 howsoever, without the consent of the Governor first*
E *had and obtained.”*

Section 22(1) quoted above is clear and unambiguous. The section clearly prohibits the holder of a statutory right of occupancy from alienating his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise without the consent of the Governor first had and obtained.

But the holder of a statutory right of occupancy is certainly not prohibited by Section 22(1) of the Land Use Act, 1978 from entering into some form of negotiation, which may end with a written agreement for presentation to the Governor for his necessary consent. I think this is good sense because the Governor when giving his consent may require the holder of the statutory right of Occupancy to submit an instrument executed in evidence of the assignment, mortgage sublease in order that his consent under subsection (1) may be signified by endorsement thereto: See Awojugbagbe Light Ind. Ltd. v. Chinukwe (1995) 4 NWLR (Pt.390) 379 where section 22(1) of the Land Use Act was exhaustively dealt with.

What is more, sections 22(2) and 26 presupposed the existence of an agreement of a sort before the Governor's consent. Sections 22(2) and 26 of the Land Use Act provide as follows:

"22(2) The Governor when giving his consent to an assignment, mortgage or sublease 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.

"26 Any transactions 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."

Exhibit 3 in the present case is the agreement to sublease. It was not dated. It was not delivered. Although it was admitted in evidence, the learned trial Judge expunged it in the course of his judgment. There was therefore no agreement as envisaged by sections 22(2) and 26.

The learned trial Judge fell back upon oral evidence of the documentary evidence, which he had rejected. He said: -

"The provision of section 15 of the Land Registration Law and 21(4) of the Stamp Duties Law make Exhibit 3 inadmissible in evidence. Exhibit 3 ought not to have been pleaded or tendered in evidence and its admissibility (sic) by the court was wrong, accordingly there fore Exhibit 3 is hereby expunged from the records. The abundant oral evidence before the court that the plaintiff entered into a lease agreement with the 4th defendant, without the consent of the 1st defendant and without same being stamped and registered is however admissible evidence and same remains part of the records of the court."

The learned trial Judge was dearly in error. This Court in Olaloye v. Balogun (1990)5 NWLR (Pt 148)24 said that:

"This court in Abiodun v. Adehim (1962)1 ALL NLR550 at-555 relying on section 131(1} of the evidence Act has said that once there is a documentary evidence of sale of land, oral evidence of the sale

would be excluded and the question as to what land was sold has been settled by the document. So in the instant case oral evidence as to the land sold by each of Exhibits K, K1 -K3 is inadmissible.”

The agreement, Exhibit 3, was prepared in anticipation of obtaining Governor’s consent.

In his evidence the Plaintiff said:

“the document was not dated because we had not yet obtained the approval of the Governor.”

The legal consequence of this is that the agreement was inchoate or at best a mere escrow till the consent of the Governor was obtained. What this means is this. That agreement did not and could not transfer title in land. See: Anambra State Housing Development Corporation v. Emekwue (1996)1 SCNJ98 at 132-133 where this court held as follows:

“Being a mere escrow, therefore the Deed of Lease passed no interest in the property to the Defendant. It follows therefore that whatever view one takes of Exhibit 3 they did not pass any interest in the property here concerned to the Defendant and he consequently acquired no legal title to the property.”

The Court of Appeal in the course of its judgment held as follows:

“Section 22 of the Land Use Act Cap. 202 of the Laws of Federation of Nigeria 1990 does not render null and void or illegal a purported sublease, such an agreement would only be dormant or inchoate and creates no legal relationship until the requisite consent is sought and obtained from the appropriate authority. That this was the intention of the appellant was quite manifest from his testimony before the learned trial Judge. Section 22(2) of the Land Use Act envisages a situation whereby some form of agreement would be presented to the Governor to which he would consent or withhold his consent. It is not likely to be the intention of the maker of the enactment for the Governor to accede to a mere intention of the parties. I think some concrete terms should be agreed to by the parties for presentation to the Governor. In my respectful opinion what the appellant and fourth re-

spondent did in Exhibit 3 was in substantial compliance with provisions of Section 22 of the Land Use Act.”

One can hardly fault the views expressed above.

I agree entirely with the Court of Appeal. In the result I find that there was nothing contrary to law in entering into written agreement for the sub-lease before the Governor’s consent was obtained.

In conclusion, this appeal is devoid of merit. Accordingly I dismiss it and affirm the judgment of the Court of Appeal.

The 1st Respondent M/S Ola Ilemobola Co. Ltd. is entitled to costs assessed at N10,000.00.

TOBI JSC

The 1st respondent was the plaintiff in the High Court. The appellant was the 4th defendant in that court. On 21st September, 1977, he was granted a Right of Occupancy on or in respect of Plot No. 4 Maichidi Close. Following an agreement between the 1st respondent and the appellant, a sub-lease agreement was drawn between them. It was for a duration of ten years. It was not registered. The consideration was N18,000.00 per annum. 1st respondent was paid N180,000.00 for a period of ten years. It did not apply to the Governor for consent to lease. Appellant was put in possession. It complained to the 2nd respondent; the Governor of Kaduna State. The 2nd respondent revoked the Right of Occupancy granted to the 1st respondent.

1st respondent sued in the name of Brossette Manufacturing Ltd. which is now Automobile and Engineering Industries (Nig.) Ltd. The learned trial Judge dismissed the case. He said in the last paragraph of the judgment at page 160 of the Record:

“Exhibit 4(a) is not a piece of legislation in any sense, it simply extinguished the title of the plaintiff with effect from the 10th day of March, 1981. In conclusion therefore I hold that 1st respondent validly, properly and rightly revoked the plaintiff’s Certificate of Occupancy and the revocation of the said Certificate of Occupancy is legal and proper in law.”

The Court of Appeal allowed the appeal. That court was not satisfied with the conduct of the appellant who was the 4th respondent in the court. The court lashed the respondent at page 224 of the Record:

B *“The fourth respondent deserves whatever eventually befalls him and deserves no sympathy for his fate or misfortune. Its hands were soaked in blood and could not expect equity to come to his aid. The outcome of this appeal is not against an innocent third party but a party who deliberately set out to plan and execute evil and has unfortunately, sorry fortunately reaped whirlwind.”*

C Aggrieved, the appellant has come to this court. Briefs were filed and duly exchanged. The appellant formulated two issues. The 1st respondent formulated one issue. The main issue is whether the order of revocation by the 2nd respondent is legal or lawful.

D I should take *Exhibit 3* first. It is the sublease agreement. It was not dated. Learned counsel for the appellant submitted that the Court of Appeal was wrong in holding that *Exhibit 3* was admissible in proof of the evidence of an agreement. Learned counsel for the 1st respondent E submitted that the Court of Appeal was right in holding that the trial Judge cannot after expunging *Exhibit 3* from the record, fall back upon oral evidence of the documentary evidence which he had already rejected.

F In rejecting *Exhibit 3*, the learned trial Judge said at page 153 of the Record:

G *“The provisions of sections 15 of the Land Registration Law and 21(4) of the Stamp Duties’ Law make Exhibit 3 inadmissible in evidence. Exhibit 3 ought not to have been pleaded or tendered in evidence and its admissibility by the court were wrong. Accordingly therefore Exhibit 3 is hereby expunged from the records.”*

The learned trial Judge however relied on the oral evidence on the issue of lease agreement. He said on the same page:

H *“The abundant oral evidence before the court that the Plaintiff entered into a lease agreement with the 4th Defendant without the consent of the 1st Defendant and without same being stamped and registered is however admissible evidence and same remains part of the records of this*

court.”

With the greatest respect, the learned trial Judge got it wrong. While he got the one expunging *Exhibit 3* right, he got the one where he relied on what he called “*the abundant oral evidence before the court*” wrong. Where there is documentary evidence on an aspect of a party’s case, no oral evidence is admissible on that aspect. This is because our adjectival law does not admit oral evidence on an aspect or area covered by a document, A party cannot benefit from two ways: documentary evidence and oral evidence. He can only lead evidence in respect of one and not the two of them. But this principle of law is subject to an important qualification and it is this. If the parties by their *ad idem* agree by oral agreement to change part of the written agreement, the court will not reject the oral agreement. But that is not the position here.

As the learned trial Judge rightly rejected *Exhibit 3*, he was no more competent to fall back on the oral evidence on the same aspect or area. My learned brother has usefully cited the case of *Olaloye v. Balogun* (1990) 5 NWLR (Pt.148) 24 on the issue. I need not go further. I also agree with him that *Exhibit 3* is a mere escrow.

Section 22(2) of the Land Use Act is clearly on the point. It provides:

“*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 caveat given by the Governor under sub-section (1) of this section may be signified by endorsement thereon.*”

Section 22(2) is clear as to what the holder of a statutory right of occupancy must do to obtain the consent of the Governor. He must submit an instrument executed in evidence of the alienation by way of assignment, mortgage or sublease. This case involves a sublease. The question is whether an instrument was executed as required by section 22(2)? The answer is no.

What is the effect of not complying with section 22(2). The an-

swer is in section 26. By the section, 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 the Act shall be null and void. The section is mandatory and failure to comply with the provisions of the Land Use Act will nullify the transaction or instrument. As *Exhibit 3* did not comply with section 22(2) of the Act, it is null and void, vide section 26.

In *Awojugbagbe Light Industries Limited v. Chinukwe* (1995) 4 NWLR (Pt. 390) 379, this court held that section 22(1) of the Land Use Act prohibits the holder of a statutory right of occupancy from alienating his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise without the consent of the Governor first had and obtained. This court also held that section 26 of the Act expressly provides that any transaction which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of section 22(1) shall be null and void. The case has stated the correct position of the law. I therefore, with respect, do not agree with the submission of learned counsel for the appellant that the decision has no legal effect in the light of the evidence of DW1.

Learned counsel for the appellant submitted that the Court of Appeal ought to have invoked its power under section 16 of the Court of Appeal Act in the evaluation of *Exhibit 3* on the ground that the exhibit was wrongly rejected. The submission, with the greatest respect, is neither here nor there. As opposed to the view of learned counsel, *Exhibit 3* was rightly expunged from the Record after admission. I cannot fault the reasons given by the learned trial Judge for expunging *Exhibit 3* and so a section 16 power was not available to the Court of Appeal. And so, the case of *Mba v. Agu* (1999) 9 SCNJ 84 cited by counsel is not helpful to the case of the appellant.

Learned counsel also submitted that a wrongful exclusion of a vital and material evidence is tantamount to violation of right of fair hearing. I have the impression that counsel is referring to the exclusion of *Exhibit 3*. I have seen in recent times counsel forcing into cases the

principles of fair hearing even when they are so distant from the case. The principles of fair hearing will not be invoked in favour of a party where the trial Judge correctly expunges an exhibit earlier admitted. It is only when the document is wrongly or wrongfully expunged from the record that a party can be heard to canvass to an appellate court that he B was denied fair hearing. The law is elementary that a trial Judge has the right to expunge from the record a document which he wrongly or wrongfully admitted. He can do so *suo motu* at the point of writing judgment. He needs no prompting from any of the parties, although a party is free to call his attention to the document at the stage of address. Where a trial C Judge is wrong in expunging a document, the appellate process will correct it and so an argument that the Judge ought to have expunged the document *suo motu* at the stage of writing judgment, will not avail the party wronged. After all, it is better for a Judge to expunge *suo motu* D a document which is clearly inadmissible under the Evidence Act than allow it to be on the record to give headache to the appellate court. As the appellate court has the competence to expunge it from the record, why not the trial Judge? E

Learned counsel relied heavily on the evidence of DW1. He submitted that as DW1 gave evidence in favour of 2nd, 3rd and 4th respondents who are not parties to *Exhibit 3*, the learned trial Judge ought to have considered the evidence of DW1. I think I have taken the issue F when I dealt with the procedural status of oral evidence in the face of documentary evidence covering the whole field. Let me take it in respect of DW1 for whatever it is worth.

And so I ask: what did DW1 say? Part of his evidence reads:

“Between April and September, 1977 one the M. Ola Ilemobole G Trading Company was allocated a plot at No. 4 Maichibi Close Kaduna South Industrial Area under a right of occupancy No. NC. 3640 and it was for industrial purpose. The grant was subject to the condition that the Company should make an improvement within 2 years of the grant. H Furthermore the grantee was to pay rents in every January of the year. The grantee Company was not to mortgage or sublet or assign the plot without the consent of the Governor sought and obtained. These were

some of the conditions of the grant. The terms and conditions of the grant are contained in the letter of offer and the Certificate of Occupancy itself. Exhibit 2 is the Certificate of Occupancy issued to the Company in 1981 the company sublet the empty or undeveloped plot of land to Brossette Nigeria Ltd. at the rent of N18,000.00 per annum and had collected the sum of N18,000.00(sic) being payment for 10 years in advance. The grantee Company should have obtained the consent of the Governor before subletting the plot but it did not do so. The grantee company did not pay rent for the years 1982-1985. The sublease was entered into on or about the 11/3/81. The grantee company did not make any improvement on the plot between 1977 and 1981 and at the time of making the sublease we issued a letter dated 25/3/85 to the company to come and settle the arrears of grant rent upon becoming aware that they had not paid the grant rents. The company did not come to pay and after the expiration of the notice we issued another warning letter dated 20/5/85 to the company. The company was given another 3 weeks within which to pay the arrears of grant rents. I can identify the letter of 25/3/85 because of the date of the letter and its signatory one A. Y. Alhassan. This is the letter.”

It is clear that DW1 was narrating so much of *Exhibit 3* and he cannot do that in the light of the exhibit. That is the point the learned trial Judge got wrongly. That is the point the Court of Appeal got rightly. That is the correct position of the law. And so the evidence of DW1 as it relates to *Exhibit 3* that was expunged from the record goes to no issue.

It is for the above reasons and the more comprehensive reasons given by my learned brother, Katsina-Alu, JSC that I too dismiss the appeal. I also award 1st respondent N10,000. 00 costs.

OGBUAGUJSC

I have had the privilege of reading in advance, the lead Judgment of my learned brother, Katsina-Alu, JSC. I agree with his reasoning and conclusion that the appeal is devoid of any merit and stands dismissed. However, for purposes of emphasis, I will make my own contribution.

This is an appeal (described in the 1st Respondent's Amended Brief of Argument as "*unnecessary appeal*") against the decision of the Court of Appeal, Kaduna Division and (hereinafter called "*the court below*") delivered on 14th December, 1999 allowing the appeal of the Plaintiff/1st Respondent and setting aside, the order of dismissal of its claims by the trial court and its stead, granted the reliefs sought by the 1st Respondent.

Dissatisfied by the decision, the Appellant, has appealed to this Court on three (3) Grounds of Appeal in its Amended Notice of Appeal dated and filed on 9th June, 2006. Without their particulars, they read as follows:

"GROUND 1

The learned Judges (sic) (meaning Justices) of the Court of Appeal misdirected themselves in law when without fully advertng their minds to the peculiar facts of this case stated thus:

"Section 22 of the Land Use Act Cap 202 of the Laws of the Federation of Nigeria 1990 does not render null and void or illegal a purported sublease, such an agreement would only be dormant or inchoate and creates no legal relationship until the requisite consent is sought and obtained from the appropriate authority. That this was the intention of the appellant was quite manifest from his testimony before the learned trial Judge Section 22(2) of the Land Use Act envisages a situation whereby some form of agreement would be presented to the Governor to which he would consent or withheld his consent. It is not likely to be the intention of the maker of the enactment for the Governor to accede to a mere intention of the parties. I think some concrete terms should be agreed to by the parties for presentation to the Governor. In my respectful opinion what the appellant and fourth respondent did in exhibit 3 is substantial compliance with provisions of Section 22 of the Land Use Act (supra) "

and this occasioned a serious miscarriage of Justice.

GROUND 2

The Learned Justices of the Court of Appeal erred in law when they granted the Plaintiff's claims and set aside the revocation of the Plaintiff's right of Occupancy when from the facts on the record the

Plaintiff did not prove his case.

GROUND 3

The Learned Justices of the Court of Appeal erred in law when they invalidated the revocation of' the 1st Respondent's Right on the decision of Awojugbagbe Light Industries Limited v. Chinukwe (1995) 4 NWLR (Pt.390) without adverting their minds to the factual situations that arose in this case".

I note that in its Amended Brief of Argument, the 1st Respondent gave Notice of Preliminary Objection in respect of the said grounds submitting that they are grounds of mixed law and facts which it says, are incompetent for want of compliance with Section 233 (3) of the Constitution of the Federal Republic of Nigeria, 1999. This Court, has laid down that the test to be applied in determining whether a ground of appeal, is one of law alone or of mixed law and fact in the cases of Ogbechie v. Onochie (1986) 2 NWLR (Pt.23) 484 @ 191 and Nwadike & ors. Ibekwe & ors. (1987) 4 NWLR (Pt.67) 718 @ 755, (1987) 11-12 SCNJ. 72. The phrase "a question of law" and a "question of fact", was examined in the case of Metal Construction (West Africa) Ltd. v. D.A. Migliore & ors. In re Miss C. Ogundare (1990) ANLR 142 @ 149-150; (1990) 1 NWLR (Pt.126) 299 @ 320; (1990) 2 SCNJ. 20 (vice versa). Thus, it is not the label given to a particular ground, that determines its nature, that is, whether of law alone, of mixed law or fact or facts simpliciter. A ground of law is appealable to this Court, without leave and in other cases, it must be with the leave of this Court. See the case of Chief Obatoyinbo & anor. v. Oshatuba & anor. (1996) 5 SCNJ. 1 @ 16 - per Ogundare, JSC (of blessed memory). With the greatest respect to learned counsel for the 1st Respondent, after a careful perusal of the three (3) grounds of Appeal by me, I have no hesitation in holding, that they are all grounds of law and are appealable to this Court as of right and therefore, no leave of either the court below or this Court, is required. This is because, grounds 1 and 3, complain against the application of the law to the undisputed facts before the court below, while ground 2, relates to a matter of inference to be drawn from the said facts before the court below. I therefore, overrule the said Preliminary Objection.

Now, to the merits of the appeal. The Appellant, has formulated two (2) issues for determination, namely,

“(1) Whether the 1st Respondent had not admitted the fact that he sub- leased the property in dispute covered by Certificate of Occupancy No. 3640 and received consideration therefrom in the sum N180,000.00 without the requisite consent of the Governor of Kaduna State first sought and obtained - Ground.

(2) Whether having regard to the facts contained in printed record (sic) before the Lower Court the Learned Justices of the Court of Appeal were not in grave error in invalidating the revocation order of the interest of the 1st Respondent over the land in dispute - Ground 2.

On its part, the 1st Respondent, has formulated one lone issue for consideration, namely,

“ Whether the court of Appeal was right in its application of Section 22(1) & (2) of the Land Use Act to the facts of this case having regard to the decision of the Supreme Court in AWOJUGBAGBE LIGHT INDUSTRIES LTD. V. CHINUKWE (1985) 4 NWLR (Pt.390) pg 379 and other Supreme Court cases on the content of revocation notice”.

I agree with the, learned counsel for the 1st Respondent, that the crucial and all important issue for determination, is whether the 1st Respondent, had in fact and indeed, sub-leased or alienated the subject-matter of the dispute, without the consent of the Governor being sought and obtained. I will therefore, reproduce the provisions of Sections 22(1) & (2) and 26 of the Land Use Act.

“22(1) 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, sub-lease or otherwise howsoever without the consent of the Governor first had and obtained”.

“22(2) The Governor when giving his consent to an assignment, Mortgage or sublease 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”.

“26. Any transactions 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”.

Firstly; the position of Section 22 of the Act, is undoubtedly that a holder of a right of occupancy, may enter into an agreement or contract, with a view to alienating his said right of occupancy. In entering into such an agreement or contract, he does not need the consent of the Governor. He merely operates within the first leg/stage of a “transfer on sale of an estate in land” which leg/stage, ends with the formation of a binding contract for a sale constituting an estate contract at best. However, when he comes to embark on the next leg/stage of alienating or transferring his right of occupancy which is done or effected by a Conveyance or Deed, which culminates in the vesting of the said right in the particular “purchaser”, he must obtain the consent of the Governor in order to make the transaction valid. If he fails to do so, then the transaction, is null and void under Section 22 of the Act. See the case of International Textile Industries (Nig.) Ltd. v Dr. Aderemi & 4 ors. (1999) 6 SCNJ. 46.

Now, in the book Authority of Conveyancing Laws & Practice by Barnsley, 1973 Edition at page 4, it is stated that a transfer on sale of an estate in land, is divisible into, two distinct stages, namely,

- (i) the contract stage ending with the formation of a binding contract for sale.
- (ii) the conveyance stage culminating in the legal title vesting in the purchaser by means of the appropriate instrument under seal.

As held in the above case -per Uwaifo, JSC, it follows that it is only after a binding contract for sale is arrived at, that the need to pursue the procedure for acquiring title, will arise. It does therefore, mean, that it is when the obtainment of the necessary consent to alienate the property becomes an issue in order to make the alienation valid. See the case of Denning v. Edwards (1961) A.C. 245 (P.C.) referred to in the case of Awojugbagbe Light Industries Ltd. v. Chinukwe & anor. (1995) 4 NWLR

(Pt.390) 379; (1995) 4 SCNJ. 162. In effect, there is need for some form of written agreement to be entered into, before applying for the Governor's consent.

Secondly, I note that Exhibit 3 is/was not dated. It is now firmly established that for an agreement of a lease to be valid, it is essential that there must be an agreement on the date of commencement of the term. In other words, both the commencement and the maximum duration of the term, must either be certain or capable of being rendered certain, before the lease takes effect. In the case of *Marshall v. Berridge* (1881) 19 Ch. D. 233 @ 245, Lush, L.J. stated inter alia, as follows:

"There must be a certain beginning and a certain ending, otherwise it is not a perfect lease, and a contract must in order to satisfy the Statutes of Frauds, contains this reference".

In the case of *Harvey v Pratt* (1965) 2 All E.R. 786 @ 788 C.A., Lord Denning, stated inter alia, as follows:

"It is settled beyond question that in order for there to be a valid agreement for a lease, the essentials are that there shall be determined not only the parties, the property, the length of the term and the rent, but also the date of commencement".

See also the case of *Lace v. Chantler* (1944) K.B. 368 @ 370-371. In the case of *Okechukwu v. Onuorah* (2000) 12 SCNJ. 146 @ 153, Belgore, JSC, (as he then was), referred to the case of *Osho & anor. v. Foreign Finance Corporation & anor.* (1991) 4 NWLR (Pt.184) 157, 197; (1991) 5 SCNJ. 52 as to the requirements of a valid contract to include, complete agreement leaving no ambiguity as to its purport, the identification of the parties to the agreement and the commencement and the duration of the agreement.

In this case, there is the unchallenged and uncontroverted evidence of the Plaintiff/1st Respondent through PW1, that the sub-lease - Exhibit 3, was not dated because, the parties had not got/obtained the approval/consent of the Governor. See pages 90 & page 91 - PW1's evidence under cross-examination. I have noted in this Judgment, that there is the need for some form of a written agreement to be entered into, before applying for the Governor's consent. See also, the pleadings of

the 1st Respondent in paragraphs 12 to 16, 22, 24 and 25 of the Amended Statement of Claim at page 47/52 and 49/54 of the Records. In Okechukwu v. Onuorah's case (supra) which also dealt with commencement date as in the instant case leading to this appeal, Iguh, JSC, at page 157, stated B that in order to have a valid agreement for a lease (here a sub-lease), that it is essential that it should appear either in express terms or by reasonable inference from the language used in the instrument, on what day, the term is to commence. Ayoola, JSC, on his part at page 160, referred to C Halsbury's Laws of England, 4th Edition Vol. 27 (1) paragraph 205 where the following appear:

"A tenancy for a term of years arises by express contract or by Statute, and it is essential to the contract that the commencement and duration of the Term should be so defined as either to be certain in the D first instance, or to be capable of being afterwards ascertained with certainty".

I note that at the time the Appellant instigated or alleged by his letter, that the 1st Respondent, had sub-leased the property without the E consent of the Governor, it did not realize that that complaint, will boomerang against it. This is because, the sub-lease had not been dated, not stamped and not registered. In other words, the agreement had not been delivered. Surely and this is settled, a Deed becomes effective in law, at F the time of delivery. See Awojugbagbe's case (supra). A contravention of Section 22 of the Act will occur in the case of a proper/conclusive alienation of a right of occupancy carried out by a Deed, at the time when the relevant deed was delivered and not at the time when it was executed or G even sealed. So, if a Deed is delivered after the Governor's consent, there will be no contravention of Section 22 of the Act.

This is because, in my respectful view, it is settled that a transaction created by a Deed, will not come into effect prior to the delivery of the Deed. In other words, a Deed only becomes effective, upon its delivery. H So, until the time specified had arrived or the condition had been performed or the Governor has given his consent, the instrument, will not be a Deed so to speak, but is a mere Escrow. See also Halsbury's Laws of England 4th Edition, Vol. 12 paragraph 1329 - citing the cases of

Goddard v. Denton (1584) 76 E.R. 396 P.C.; where though, the deed was undated but it had been delivered; Mowatt v. Castle Street and Iron Works (1887) 34 Ch. D. 58 and Vicent v. Premo Enterprise Ltd. (1969) 2 Q.B.609.

What is an Escrow? In the book authority of Norton Upon Deeds 1st Edition, page 15, Escrow is defined as follows:

"..... an instrument delivered to take effect on the happening of a specified event, or upon the condition that it is not operative until some condition is performed, then pending the happening of the event or the performance of the condition, the instrument is called an Escrow until the specified time has arrived or the condition has been performed, the instrument is not a deed. It is a mere escrow".

The cases of Beesly v. Hallward Estates Ltd. (1961) 1 Ch. 105 @ 116; Xenos v. Wickham (1966) L.R.2 (H.L) 296 @322 and Vincent v. Preno Enterprises Ltd. (supra) are/were referred to.

In the case of Anambra State Housing Development Corporation v. Emekwue (1996) 1 SCNJ. 98 @ 114 - per Belgore, JSC, (as he then was); 122 - per Wall, JSC and 132 - 133 - per Ogundare, JSC, the deed was signed, but not delivered, it was held that non-delivery, was due to the failure of the Respondent, to fulfill a fundamental condition to pay the full price within the stipulated time. The case of Awojugbagbe etc. v. Chinukwe (supra) was also referred to.

Ogundare, JSC, (of blessed memory), had this to say inter alia:

"Being a mere escrow, therefore, the Deed of Lease passed no interest in the property to the defendant. It follows therefore, that whatever view one takes of Exhibit O, they did not pass any interest in the property here concerned to the defendant and be consequently acquired no legal title to the property As there was no need for the defendant to execute any Deed of Surrender since title has not passed to him. I cannot say there was an agreement which he breached by his refusal to execute such a deed"

[the underlining mine]

At page 3 of the Appellant's Brief, in the said evidence of the PW1, reproduced therein, the following, is included: "..... I personally signed

the agreement but it was not dated". I note that the Appellant, included the following statement - "He went further to state that exhibit 8 was not dated because approval of the Governor was not obtained.....". Pages 95-97 of the Records, were therein referred to. This last sentence, B is the crux of the matter and the Appellant, did not controvert this relevant and weighty evidence. Heavy whether has been made in the said Brief about the signing. That the 1st Respondent signed the document, on the decided authorities, was/is of no moment. I so hold. I

C It is conceded at page 5 of the Appellant's Brief that Section 22 of the Act "does not prohibit any form of negotiation prior to the drawing up of an agreement in the hope of obtaining consent to that agreement". At page 10 of the said Brief, it is again conceded, that *"based on the decision of Awojugbagbe Light Industry (supra) there is nothing D wrong in forming an intention to sublease"*. But it is with respect, "lamely" submitted that the Act, frowns at and prohibits, "deliberate steps" being taken by a holder of a Certificate of Occupancy to circumvent the clear provision of the law. But the evidence of the PW1, runs contrary to this E speculation which does not apply to the instant case. The 1st Respondent, never neglected to obtain the said consent as borne out by his evidence both in-chief and under cross-examination. I so hold.

Of course, as rightly found as of fact and held by the court below F at page 212 of the Records, firstly, that the purport of the said evidence of the PW1 that the document - Exhibit 3, was not dated because they had not obtained the approval of the Governor, is/was that the contract or sub-lease, is/was inchoate and creates/created, no legal relationship. Secondly, the agreement prepared in anticipation of receiving the G Governor's consent, is inchoate and does not transfer any interest in law. Bello, CJN, in Awojugbagbe's case (supra), referred to such an agreement, as a mere escrow or purported agreement. That the date will be inserted, after the requisite consent had been received and the agreement H is ready for delivery. In its Judgment at page 3/137 of the Records, the following inter alia, appear under cross-examination of the P.W.I:

"He (meaning the PW1) collected the sum of N180,000.00 from Brossette Nigeria Limited (meaning the Appellant) with the hope of ob-

taining the consent of the Governor then lease land to them He had no intention to leasing the whole land to Brossette Nigeria Limited. '.....'..

[the underlining mine]

At page 4/138, it is recorded inter alia, as follows:

"..... In one of the letters from the 3rd Defendant to him, he said the 3rd Defendant alleged that he had sublet No. 4 Maichibi Close to Brossette Nigeria Limited an allegation which he denied. He admitted signing Exhibit 3..... .."

[the underlining mine]

Interestingly, the Court of Appeal in the said Awojugbagbe's case (supra) which came on appeal to this Court, held that the execution of a document or deed of mortgage, before submitting it to the Governor for his consent, did not contravene Section 22 of the Act. The following appear in that said, Judgment inter alia:

"There is nothing in the Act preventing prior execution of an instrument before an approach is made to the Governor for his consent so that the provisions that the consent of the Governor must first be had and obtained before a mortgage can be made, means no more than the agreement entered into, will remain inchoate until the Governor's consent thereon is sought and obtained. Governor would be handicapped in his duty to protect public policy if he gives his consent blindfolded. Public policy is better protected by his having fore-knowledge of what he is called upon to consent to. Consenting to a sublease, mortgage, transfer of possession prior to the parties drawing an agreement is analogous to buying a pig in the poke. Section 22(2) seems to be".

See also the case of Anambra State Housing Dev. Group v. Emekwue (supra) @ 132 -133 - per Ogundare, JSC, (of blessed memory).

At page 220 of the Records, the court below stated inter alia, as follows:

"Exhibit 3 is inchoate (sic) agreement as escrow which becomes registrable after the consent had been obtained and delivered by inserting a date subsequent to the receipt of the Governor's consent It is not an illegal document. The revocation of the appellant's statutory right of

occupancy on the ground that he had no consent of the Governor before drawing it up appears improper since it seems to derive support for what it did from the provisions of Section 22 (2) of the Land Use Act (supra). The position would have been different if it had dated or delivered the document. It is” not execution of the document that is frowned upon but delivery of the same before or without obtaining Governor’s consent”.
[the underlining mine]

I agree.

C At page 213 of the Records, the court below, stated inter alia, as follows:

“Section. 22 of the Land Use Act Cap 202 of the Laws of Federation of Nigeria 1990 does not render null and void or illegal a purported sublease, such an agreement would only be dormant or inchoate (sic) and creates no legal relationship until the requisite consent is sought and obtained from the appropriate authority. That this was the intention of the appellant was quite manifest from his testimony before the learned trial judge, Section. 22(2) of the Land Use Act envisage a situation whereby some form of agreement would be presented to the Governor to which he would consent or with-hold his consent. It is not likely to be the intention of the maker of the enactment for the Governor, to a mere intention of the parties. I think some concrete terms should be agreed to by the parties for presentation to the Governor. In my respectful opinion what the appellant and fourth respondent did in Exhibit 3 is substantial compliance with provisions of Section-22 of the Land Use Act (supra).....”

The above are findings of fact and holdings and I also agree.

G Thirdly, I note that the learned trial Judge at page 15/153 of the Records, held that Exhibit 3, was inadmissible in that it constituted a breach of the conditions for the grant of the Certificate of Occupancy. Although, His Lordship, raised this issue *suo motu* in his judgment, he proceeded to expunge it from the Records. I am aware and this is settled H that neither a trial court, nor the parties, have the power to admit without objection, a document that is no way or circumstances, admissible in law. See *Alase & ors. v. Ilu & ors. (1965) NMLR 16@ 77; Olukade Abolade Alade (1976) 1 ANLR (Pt1) 67* and *Oba Oseni & 14 ors. v.*

Dawodu & 2 ors. (1994) 4 NWLR (Pt.339) 390 @ 456; (1994) 4 SCNJ. (Pt.II) 197. In my respectful view, if a trial court during its final judgment, finds out that it erroneously admitted a document that is definitely inadmissible in law, in any event, it can ignore/discountenance the same. But erroneously, with respect. Exhibit 3, was voided as inadmissible, on B the ground that it was a registrable instrument and that it was not stamped or registered under Sections 15 of the Land Registration Law and 21(4) of the Stamp Duties Law.

Now, what is the effect or consequence of the learned trial Judge C expunging Exhibit 3 from his records? I or one may ask. In my respectful view, having expunged it, it is no longer of any moment or consequence. It no longer forms a part of his Record. That being the position, the Appellant, cannot now eat his cake and have it so to say. It can no longer anchor or find its case on Exhibit 3 that is no longer part of the D Records. Its case or appeal to this Court, is founded on quick sand with no foundation at all. I note that the Appellant has not appealed against the said fact or order expunging Exhibit 3 from the Records. As far as I am concerned, that is the end of this appeal. This Court or a court, cannot E act on a document or evidence, not before it. This is trite. On this ground/ point and on any of the first and second points discussed by me in this Judgment, or on all the three (3) points this appeal has collapsed like a pack of cards. But I am not yet done. F

I note that the Revocation Notice served on the 1st Respondent, did not give as a reason for the revocation, the non-payment of rent, but on the “grant” of the sub-lease, without the consent of the Governor. The Revocation Exhibit 4(a) reads in part, as follows:

*“AND WHEREAS the said M/S Ola Ilemobola Trading Company G
illegally subleased their title to Brossette Manufacturing Nig. Limited
without the formal consent of the Commissioner for Lands thereby con-
travening Section 28 - (1) of the Land Tenure Law Cap 59 and Section
22 of the Land Use Act of 1978.”* H

[the underlining mine]

I also note that the recommendation of the Kaduna State Land Use and Allocation Committee that the Right of Occupancy granted to the 1st

Respondent be revoked, was based on a Petition by the Appellant who was the 4th Defendant/Respondent and who eventually, was allocated the very land which was the subject of revocation. After it lost at the court below, it wants now, to benefit from its own wrong by bringing this appeal and the question of non-payment of rent is being “hung” or “waved” before this Court. I note that a copy of the said Recommendation, was never served on the 1st Respondent. Although, I also note that the Certificate revoked, is/was No 3460 instead of 3640 of the 1st Respondent. But this fact, has not been made an issue in this Court, because I note that at page 108 of the Records that, DW1 - An Assistant Director, in the land Department, stated in his evidence in-chief, that it was a typographical error and his evidence, was not challenged. So, I ignore the error. I also note that even the Revocation, was made to be retrospective. Exhibit 4(a), was given in 1986, but related back to 1981. So, I or one may ask, if the Revocation is with effect from 1981, will the Kaduna State Government, be entitled to payment of rent for the period of 1982 to 1985? So, which ever way one looks at this matter, the said Government or Committee, cannot be complaining of non-payment of rent when as at 1981, the 1st Respondent, would not have been accused of non-payment of rent even if it was a reason for the revocation and I hold that it was not the reason. As I have stated and found as a fact and hold in this Judgment, a copy of the Recommendation of the Land Use and Allocation Committes, was never served on the 1st Respondent.

I will pause here to deprecate the conduct of the Appellant in all the circumstances of this case. It may be suggested or argued that the 1st Respondent after collecting the sum of N180,000.00 (one hundred and eighty, thousand naira) from the Appellant, was unable to pay the rent that was alleged to be due. Apart from such suggestion or argument bothering on morality or sentiment which has no place in our courts, Exhibit 3, whose contents are clear and unambiguous, states that the revocation was effective from 1981. That means that even the reason of non-payment of rent, was/is bogus in that as at 1981, the 1st Respondent could not have been owing arrears of rent for 1982-86 amounting to N9,544.00 (Nine thousand five hundred and forty-four Naira),

However, in the Judgment of the trial court, the evidence of the PW1, is recorded at page 4/138 of the Records inter alia, as follows:

“He said he made a part payment of the ground rents from 1982 - 1985 because of disagreement as to the amount payable..... The witness also agreed (i.e. under cross-examination) that he and the 3rd Defendant entered into communication on issue of payment of ground rents.....” B

So, it cannot/could not be that he refused or neglected to pay the rents. In any case, from what I have stated in this Judgment on the law or principle that an escrow agreement, cannot ripen until the event has occurred or the condition is met, there is no way, the 1st Appellant, can or could be accused of being dishonest or breaching the terms of Exhibit 3. Afterwards, the Appellant, was in possession of part of the land or property of the 1st Respondent. The 1st Respondent’s grouse, was that the Appellant, wanted to claim the entire property instead of the portion which he the 1st Respondent insists it granted to the Appellant. In order to have its way, the Appellant, wrote the male fide Petition and colluded with the Government officials, to have the Certificate of Occupancy of the 1st Respondent, revoked and then be granted to it, the whole of the said E property.

It perhaps, naturally, jubilated when the trial court found in its favour. When that Judgment was set aside by the court below, it still wants to benefit from its own wrong or mischief. This Court will not oblige it. This is because, it will not allow any person or party or body, to benefit from his or its own wrong. See the cases of Solanke v. Abed (1962) 1 All NLR 230; (1962) NRNLR 92 and Re London Celluloid Y.O (1888) 3 Ch. D. 206. The Appellant, going by its Petition alleging illegal sublease, eventually became a party, to the alleged illegal sub-lease. G

The 1st Respondent pleaded in paragraph 41 of its Amended Statement of Claim about the above facts and curiously and significantly as also stated by the court below at page 224 of the Records, in its paragraph 18 of its Statement of Defence, the Appellant, admitted the said H averment in the 1st Respondent’s paragraph 41 thereof. I am not surprised that the court below, stated inter alia, as follows:

“The fourth respondent deserves whatever eventually befalls him

(sic) and deserves no sympathy for his fate or misfortune. Its hands were soaked in blood (sic) and could not expect equity to come to his (sic) aid. The outcome of this appeal is not against an innocent Third party but a party who deliberately set out to plan and execute evil and has unfortunately, sorry, fortunately reaped whirlwind”.

I agree, except that, with respect, I do not agree about the Appellant, soaking its hands in blood, although this expresses the disgust of the learned Justice in respect of the whole or entire scenario in all the circumstances of this case.

In concluding this perhaps, lengthy Contribution/Judgment, it is from the foregoing and the fuller lead Judgment of my learned brother, Katsina-Alu, JSC, that I too, dismiss this appeal that is very unmeritorious. I too, affirm the painstaking and well and thorough considered Judgment of the court below -per Salami, JCA. I also award N10,000.00 (ten thousand naira) costs in favour of the 1st Respondent payable to it by the Appellant.

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TABAI JSC

I had the privilege to read, in draft, the leading judgment of my learned brother Katsina-Alu JSC. The judgment of the court below was founded mainly on the strict interpretation of the contents of the Revocation Notice Exhibit 4(a). The ground for the revocation is stated therein to be illegal sublease of the property to the 4th Respondent without the formal consent of the Commissioner for Lands. The notice is silent on the question of the Respondent’s default in paying the ground rents. I do not think it is proper to look beyond the Notice of Revocation itself to ascertain the reasons for the revocation. I agree with the reasoning and conclusion in the leading judgment that the appeal be dismissed. I also agree on the issue of costs.

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ADEREMI JSC

The appeal here is against the judgment of the court below delivered on 14th December, 1999 allowing the appeal, of the 1st respondent who was the plaintiff in the trial court. By paragraph 42 of its amended B statement of claim the 1st respondent as plaintiff before the trial court claimed the following reliefs: -

“(42) *WHEREOF the plaintiff prays this Honourable Court for the following orders: -*

(a) *That the purported order of revocation of the plaintiffs right of occupancy dated the 12th day of June 1986 does not apply to the plaintiff right of occupancy with certificate of occupancy No. NC3640 dated the 21st day of September 1977.*

(b) *That the purported order of revocation of the plaintiff right of occupancy dated 12th of June, 1986 is null and void and of no effect whatsoever since same took retrospective effect.*

(c) *That the revocation order is defective in law since same is not in compliance with the provisions of the Land Use Act of 1978.*

(d) *A declaration that the plaintiff is still the rightful holder of the right of occupancy over the said piece of land known as No.4 Moriolubi Close and covered by a Certificate of Occupancy No. 3640 and dated the 21st day of September, 1977.*

(e) *The plaintiff also claim (sic) against the defendants jointly and severally as follows: -*

(i) *the sum of N50,000 (fifty thousand naira) only being expenses incurred in clearing and fencing the said plot of land known as No.4 Moriolubi Close, Kaduna South as special damages.*

(ii) *The plaintiff further claim the sum of N1.5 million (one million and five hundred thousand naira) only as general damages and loss of use of the said piece or parcel of land.”*

Sequel to the close of pleadings of the parties, calling of evidence in proof of the averments in the respective pleadings of the parties and the final addresses of their respective counsel during which the learned counsel for the plaintiff sought and obtained the leave of court to with-

draw the prayer for damages, the learned trial judge, in a reserved judgment delivered on the 3rd of November, 1993 dismissed the plaintiffs suit. Suffice it to say that the appeal lodged by the plaintiff to the court below succeeded hence the judgment of 14* December 1999, is appealed against
B in this court.

I shall not go over the facts leading to the present appeal as they have been succinctly stated in the leading judgment of my learned brother, Katsina-Alu JSC. I need however to say that the purport of this action is to challenge the revocation of the statutory right of occupancy over a
C plot of land known as Plot no.4, Kaduna South, Moriolubi Close, Industrial Estate, Kaduna. The plaintiff/1st respondent had been in possession of the said parcel of land since 1977 and later in 1981 it extended into a Lease Agreement with the 4th defendant/respondent for a period often
D years for a consideration of N1 80,000.00 which it admitted, was paid by the 4th respondent. It (the plaintiff/1st respondent) put the 4th respondent into possession of the said property despite the fact that it (the plaintiff/1st respondent) had failed to apply for the consent of the Government to
E lease. The complaint by the 4th defendant/respondent to the Governor of Kaduna State led to the latter revoking the Right of Occupancy granted to the plaintiff/1st respondent. The action of the Governor of Kaduna State was the foundation for the action at the trial court. A careful reading of
F the pleadings which the parties filed and exchanged patently shows that the parties entered into a written agreement of sub-lease which was to be presented to the Governor for his consent. That agreement was never presented to the Governor and so it did not bear in writing, the Governor's consent and consequently, could not have been registered. One Alhaji
G Muriaina Ilemobola, the director of plaintiff/1st respondent, in his oral testimony admitted that there was an agreement between the plaintiff/1st respondent and the appellant to lease a parcel of land to him; the agreement though in writing was not dated and therefore could not be submitted to the Governor for his consent. So there was that mutual understanding between the two of them that the said written agreement was entered into subject to the consent of the Governor. The plaintiff/1st respondent, at the time material to this case, was a holder of a statutory
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right of occupancy in respect of the land, and as such a holder, he was not prohibited by Section 22 (1) of the Land Use Act 1978 from entering into an agreement in respect of a parcel of land and which agreement may at the end be presented to the Governor for his necessary approval or consent. That section however prohibits any transaction or instrument whereby the holder of statutory right of occupancy purports to alienate as a complete action in any legally acceptable form of transfer without first seeking and obtaining the consent of the Governor. At the time of such negotiation any agreement that might have been evolved therefrom is said to be inchoate or a mere escrow. Until the consent of the Governor is obtained no legal interest can pass that was the decision in the case of *Dennings v. Edwards* (1961) A.C. 245 in which the Privy Council reached in construing the provisions of Section 88 of the Crown Lands Ordinance (Laws of Kenya, 1948) which are in pari materia with the provisions of Section 22 of the Land Use Act. I need here say that the decision in the *Dennings* case was cited with approval by the Supreme Court in *Awojugbagbe Light Industries Ltd. v. Chinukwe* (1995) 4 NWLR (pt.390) 379 (Full Court) which has now become locus classicus on this aspect of the law. I should not be mistaken, to be saying that the Governor does not possess the power to revoke any right of occupancy. No the point is that that power is circumscribed by the provisions of Section 28 (5) of the Land Use Act which are in the following terms: -

“The governor may revoke a right of occupancy on the grounds of: -

(a) a breach of any of the provisions which a Certificate of Occupancy is by Section 10 of the Act deemed to contain.

(b) a breach of any term contained in the Certificate of Occupancy or in any special Contract made under Section 8 of the Act.

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

See *C.S.S. Bookshops Ltd. v. R.J.M.C.R.S.* (2006) 11 NWLR (pt.992) 530 the Revocation Notice which was tendered as Exhibit 4 (a) is a letter dated 12th June 1986 and signed by the Governor himself did

not contain any reason within the purview of Section 28 (5) of the Land Use Act. I will also agree with the judgment of the Court of Appeal as correctly stating the position of the law.

In the final analysis, for the little have said supra but most especially for the detailed reasoning of my learned brother, Katsina-Alu JSC contained in the leading judgment, I agree with him in toto that this appeal is unmeritorious. It must be dismissed and I accordingly dismiss it while affirming the judgment of the Court of Appeal and I do abide, by all other consequential orders made in this appeal including the order as to costs.

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