

**SUPREME COURT OF NIGERIA**

15<sup>TH</sup> JUNE, 2007 SC.138/2002

**CORAM:- S. U. ONU, S. A. AKINTAN, M. MOHAMMED,  
I. F. OGBUAGU, I. T. MUHAMMAD, JJSC**

1. EMAVWORHE ETAJATA

2. JACOB OMONUWA ORHORHAWORIN ..... APPELLANTS

3. JOHNSON OLOGBO

AND

1. PETER IGBINI OLOGBO ..... RESPONDENTS

2. ITITI ONONYIVWITA

(for themselves and on behalf of the

Omovwiare Family Iwhrekpokpo village, Ughelli)

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APPEALS - Issues - Findings of fact - Though it is desirable for an appeal Court - To distinctly consider all issues before it - Lumpsom consideration unto approving trial Court's finding - Is proper here - As no injustice was done nor fair hearing denied (H1)

APPEALS - Issues - Retrial - Court of Appeal's alleged omission - To pronounce on Issue 1 - Cannot vitiate trial Court's good judgment unto a retrial - Given the circumstances (H2)

LAND LAW - Title - Document of - Should be registered to be admissible - But where wrongfully admitted - No probative value will be ascribed to it - And this case is distinguished from Ogunbambi case (H3)

COURTS - Appeals - Relief not claimed - Is not granted by the Court - But that is not the case here - Where Court of Appeal merely varied a relief - Granted by trial Court - Pursuant to its statutory powers (H4)

LAND LAW - Title - Receipts - Definition - If Exhibit D being a document of title - Was admitted as a receipt - It cannot be a proof of title - Seeing that purchase receipt - Is unknown to native law (H5)

LAND LAW - Title - Family land - Agreement document for sale of land  
- Was rightly relied upon - By the two courts below - In finding that the land belonged to respondents' family (H6)

### **FACTS**

Before the defunct High Court of Bendel State the plaintiffs/respondents filed this action against the defendants/appellants. Both parties were of same Omovwiare family of Igwrekpokpo village Ughelli LGA. Respondents averred that some portions of the land in dispute were sold/leased by appellants who realized over N50,000.00 and shared it among themselves to the exclusion of other family members. That appellants surreptitiously entered an agreement in 1961, with some members of Itoto family which purported to transfer title in the said land to appellants exclusively. Itoto was the family that had a boundary dispute with the parties' Omovwiare family in 1960. Respondents claimed inter alia, a declaration that the land in dispute is the family property of both parties, that an account be taken of sales made by appellants and that they pay over to respondents whatever is due to them. An injunction was also claimed.

Save where they made express admission, appellants denied each and every allegation of fact contained in the further amended statement of claim. At the conclusion of hearing, the trial Court granted the respondents' claim in part. Appellants' appeal to the Court of Appeal was dismissed while that Court varied/amended relief 1 granted by the trial Court. Still aggrieved, appellants have further appealed to the Supreme Court.

**HELD** (Unanimously dismissing the appeal per **MUHAMMAD JSC**)  
***APPEALS - Issues - Findings of fact***

1. Although it is desirable for an appeal court to consider all issues placed before it, each distinctly and on its merit, there is no law prohibiting such a Court to treat issues together as the facts and circumstances of the case may demand. It is a normal and perfect practice so long as it does not tantamount to a denial of fair hearing or cause a miscarriage of justice to any of the parties. It is my view that the method adopted by the lower

court where it treated all the issues in a lump-sum, was right. Secondly, it is clear from the outset of their judgment that the learned Justices of the Court below, per Ogundare, JCA (as he then was) who read the leading judgment, concurred with by Musdapher JCA, (as he then was) and Salami, JCA, that they were satisfied with the findings of facts and the conclusion arrived at by the learned trial Judge from the totality of the pleadings and the evidence laid before the trial court. The Court of Appeal was right in affirming/confirming the judgment of the trial court. This is because I am satisfied that both Courts below did their utmost best in arriving at their decisions. The duty of a Court as an umpire is to do substantial justice to the parties in the matter before it. As an appeal court, the Court below, or even this Court, is under a duty to have an impassionate consideration of the whole case placed before it on appeal. At the end of its consideration, it will be left with no option rather than to allow or dismiss the appeal. I am of the view, having taken into consideration the totality of the contents of the Printed Record placed before this Court, that the Court below was right in affirming the trial court's decision.

(p. 2847 A & D/ 2855 D)

### ***Issues - Retrial - Court of Appeal's alleged omission***

2. Now granted, even if for academic purposes, that the Court below did not make any pronouncement on issue one, I think that omission alone, given the circumstances of this appeal, cannot in my view vitiate the well researched judgment of the trial court to call for a retrial of same. From the few excerpts quoted from the proceedings of the trial court, I hold the view that the trial court had dealt with the case satisfactorily in conformity to what makes a judgment good. There was no denial of fair hearing. There was no miscarriage of justice. (p. 2848 H)

### ***Title - Document of***

3. The finding of the trial court above in respect of Exhibit 'A' is that it did not comply with the requirements of sections 2 and 16 of the Lands Registration Law. This was interpreted by the Court below to mean that although Exhibit 'A' was an instrument within the law but it had not

been registered in the proper office as specified, in section 3. And from section 16, I go a little further to add that Exhibit 'A' could not fall within the proviso made under section 16 as there was nothing in the records to show that it was a memorandum given in respect of an equitable mortgage affecting land in the State executed before the 1<sup>st</sup> day of July, 1944, and not registered under the lands Registration Law.

Another point of distinction is that the appeal on hand is quite distinguishable from the two cases of Djukpan v. Orovuyovbe (supra) and Ogunbambi v. Abowab (supra). In the appeal on hand, as seen previously, no question of money/receipt for money was involved between the parties. In the 1<sup>st</sup> case cited by the appellant, the land in dispute was pledged for £5.15. It was thus a case of redemption of land. In the 2<sup>nd</sup> case, it was a case of an agreement involving money. Thus, the two cases are different from this appeal and can hardly apply to the circumstances of this appeal.

Another important point is that although the learned trial Judge admitted the document i.e. Exhibit 'A' in evidence (without objection from the defendants), such mere admission of a document which otherwise was inadmissible and even though the opposing party did not object, cannot confer any right on the learned trial Judge to ascribe any probative value to that document. It is trite law that admitting a document in evidence whether wrongly or rightly is quite different from its proper valuation. (p. 2851 A)

#### **COURTS - Appeals - Relief not claimed**

4. It is true that the position of the law as expounded by learned Counsel for the appellants is that it is wrong for a Court to make an order which no party has asked for. This Court has made several pronouncements on that principle of the law. In the case of Yusuf v. Oyetunde (1998) 10 SCNJ 1 at page 20, for instance, this Court, per Uwais CJN, held as follows:-

*"The Court is not a father Christmas. It does not award what a party has not claimed."* But, may I remind the appellants that the respondents as plaintiffs in their claim contained in their further Amended Statement of Claim, prayed the trial court for the grant of:-

*"Any further or other reliefs."*

The court below did not make any new grant to a relief not claimed by the

respondents. It affirmed the relief granted by the trial court. So, that relief was already in existence. What the court below did was the amendment/variation to that relief i.e. No.1. Now, looking at the circumstances of the case as a whole and considering the enormous power the court below has been conferred with by both the Court of Appeal Act 1976 and Order 3 Rule 23 of the Court of Appeal Rules (as amended). It is not a novelty for the Court of Appeal to revisit any decision/order in the course of its consideration of an appeal brought before it, to review, vary or amend or even make a further order or orders, earlier made by the trial court even where not requested for by a party so long as, in its opinion, the justice of the case demands for that.

I therefore hold the view that the court below was quite correct in exercising its powers in effecting a variation to the earlier order made by the trial court. (p. 2852 E/ 2853 A & D/ 2855 B)

#### **Title - Receipts - Definition**

5. A receipt generally is that document or a piece of paper which signifies that goods or services have been paid for. It is an evidence of payment. In Bowes v. Foster (1858) 27 L.J. Ex. 262 at 266, Martin B. held that:-

*"To constitute a receipt of anything there must be a person to receive and a person from whom he receives, and something received by the former from the latter and that something must be a sum of money."*

Equally, in the case of General council of the Bar (England) v. Inland Revenue COMB. (1907) 1 KB 462 at 471, 472, 476 and 478, it was held that for a document to be a receipt:-

*"It must be a document whereby the receipt or deposit or payment of money is acknowledged or expressed."*

See also A-G v. Northwood Electric Light and Power Co. Ltd. (1947) KB 511 at 517, 518, per Lord Green MR.

Now, supposing that Exhibit D was admitted as receipt as argued by learned counsel for the appellants it would only establish an acknowledgment of the payment of money in respect of the land by the plaintiffs but not in proof of title to the land as the nature of the title relied upon by the plaintiffs was that of sale under customary law and not by virtue

of conveyance. After all, the general practice under native law is that the making and giving of receipts of purchase is unknown to native law and custom. (p. 2857 B)

#### B *Agreement document for sale of land*

6. In the present appeal and in order to show that Exhibit D was not admitted as a receipt, the trial court admitted it as a document simpliciter. This is what it said:-

C *“Document dated 2<sup>nd</sup> July, 1997 between the defendants and the witness is marked Exhibit D.”*

D P.W. 5 described in his evidence in chief that document as agreement made between him and the defendants. Thus, Exhibit D was an agreement between the respondents and P.W. 5. A written agreement of sale of land, even though under native law and custom is not the same with a purchase receipt as the two serve different purposes in such a transaction.

E I also had a closer look at the evidence of P.W. 5 and I find no conflict between it and Exhibit D and I am satisfied that the learned trial Judge correctly admitted it and relied on it in arriving at his conclusions. I am equally satisfied that the Court of Appeal was right in accepting the finding of the trial court that the land in dispute belonged to the Omovwiare family. (p. 2857 H)

#### F **NOTABLE POINTS OF INTEREST**

##### **OGBUAGU JSC**

##### *1. Equitable interest - Admissibility of unregistered instrument*

G Thus, where a purchaser of land or a lease, is in possession of land by virtue of a registrable instrument which has not been registered, and has paid the purchase money or the rent to the Vendor or the lessor, the purchaser or the lessee, has acquired an equitable interest in the land which is as good as a legal estate. In other words, a registrable instrument, which has not been registered, is admissible to prove an equitable interest and to prove the payment of purchase money or rent. (p.2867 B)

##### H *2. Creation of valid title under native law & custom*

There is evidence in the Records, that the said land, was held or owned by the Vendors, under Native Law and Custom, and as such, there is nothing like written agreements or contracts or registered conveyance which in the circumstances, are not necessary, to effect a valid sale under customary law. The payment of purchase money by the P.W.5 and the delivery of B possession to him, created, a valid title by Native Law and Custom. It need be stressed that the law, has long been settled that if land, as in the instant case leading to this appeal, is held under Native Law and Custom, any such out and out sale of such land, can by no stretch of imagination, C be treated as inferior to other modes of sale such as by way of conveyance or other written contracts. (p. 2867 F)

##### *3. Title under native law - Exhibit D was rightly admitted as a receipt*

D That Exhibit “D” was admitted as a receipt or as evidence of the payment of money in consideration of the said sale, is not in doubt. That the learned trial Judge stated that “the document dated 2<sup>nd</sup> July, 1977 between the Defendants and the witness is marked Exhibit “D”, with profound humility and respect, is of no moment. Afterwards, the learned counsel E for the Respondent, who undoubtedly, know the state of the law about unregistered instrument or document or transaction by natives under Native Law and Custom - Olorok, Esqr, requested or applied that the document was being tendered as a receipt. The decided authorities I have referred to F hereinabove, have held, that such a document, should go in and be treated as a receipt. The Purchase Receipt, is admissible in evidence though not registered. As a matter of fact, it is also settled that in order to transfer an absolute title under Native Law and Custom, it is necessary that such G sale as the one effected with the P.W.5 who gave evidence at page 197 of the Records about the presence of witnesses/witness including his brother Daniel Eghemeroho, should be concluded, in the presence of witnesses who actually saw the actual “Handing over of the Property”. So and in effect, once a document, shows simply, customary agreement over the H sale of a piece of land, it does not therefore, fall within the definition of an Instrument for the purpose of the Land Instrument Registration Law or Act. (p. 2868 C)

**REPRESENTATION**

Ovwohiorienta Esq. for the appellants.

Chief B. Oghenero Olorok for the respondents

B

**CASES REFERRED TO**

Okonji v Njokanma (1991) 7 N.W.L.R. (Pt. 202) 131

Joseph Akinola & Anor. v. Fatoyinbo Oluwo (1962) A.N.L.R. 224

Brawal Shipping v. Onwadike Co. (2000) 6 SCNJ, 508 at page 522

C

Oyediran v. Anise (1970) 1 All N.L.R. 313 at 317

Atanda v. Ajani (1989) 3 N.W.L.R. (Pt. 111) 511 at 539

Titiloye v. Olupo (1991) 7 N.W.L.R. (pt. 205) 519 at 529

Katto v. Central Bank of Nigeria (1991) 9 N.W.L.R. (pt. 214) 126 at 149

Ogunbiyi v. Ishola (1996) 6 NWLR (Pt.452) 12 (a) 24

D Tukur v. The Government of Taraba State & 2 ors. (1997) 6 NWLR (Pt.510)

549 @ 569- (1997) 6 SCNJ. 81 @ 99

Gurara Securities Finance v. T.I.C. Ltd. (1999) 2 NWLR (Pt.589) 29

Tijani v. Akinwunmi (1990) 1 NWLR (Pt.25) 237 C.A.

E

**STATUTES & RULES REFERRED TO**

Land Instrument Registration Law Bendel State, 1976 ss. 2 & 16

Land Use Act s. 40

F Court of Appeal Rules (as amended) 0.3 r. 23

**LEAD JUDGMENT BY MUHAMMAD JSC**

From available facts contained in the Printed Record of Appeal, both the Plaintiffs and the defendants before the High Court of the then Old Bendel State (trial court) were of same family i.e. OMOVWIARE family of IGWREKPOKPO village in Ughelli Local Government Area. The Plaintiffs claimed to sue for themselves and on behalf of the said family. The defendants were, sued in their Individual capacities. They denied that the plaintiffs were suing on behalf of Omovwiare family as the plaintiffs did not seek or had the consent of that family.

H The dispute was on land which formed part of Ugbusi land situated and

lying in Ughelli Local Government Area.

The plaintiffs claimed that some portions of the said land were sold or leased by the defendants to various persons for which the sum of over #50,000.00 (fifty thousand naira) was received by the defendants and shared among themselves to the exclusion of other members of Omovwiare family. The land, according to the plaintiffs contained plaintiffs' and other members of that family's rubber plantations; fish ponds; plaintiffs' buildings, juju shrine, cassava plants; fish traps and many other crops. Plaintiffs and other members of Omovwiare family and their maternal ancestor, Imohkwe, had undisturbed enjoyment and possession of the said land until 1977 when the defendants challenged the rights of the 1<sup>st</sup> plaintiff and Ediri Etajata rubber plantation to one Japan for building purposes. The land in dispute was founded by Imohkwe from time immemorial and was the first person to set foot on and to occupy the land when it was virgin forest. The appellants claimed further that the said Imohkwe shared the Ugbusi land and gave part to his daughter called Omovwiare and the remaining part to his other child called Itoto. Both plaintiffs and defendants are descendants of Omovwiare.

The plaintiffs claimed also that in 1960, there was a dispute between members of Omovwiare family and Itoto family over the boundary between their respective portions of the land. The dispute was settled on the 13th of August, 1960. After the settlement, the defendants told the plaintiffs and other family members that they, defendants as representatives of Omovwiare family would meet members of the Itoto family for the settlement terms to be put into writing and signed by the representatives of both families so as to avoid future boundary disputes. The defendants, according to the plaintiffs, instead of drawing up terms of settlement with the representatives of Itoto family, surreptitiously entered into an agreement dated the 1<sup>st</sup> day of April, 1961 with some members of the Itoto family which agreement purported to transfer the title in the said land to defendants exclusively. The defendants, plaintiffs further alleged, had since then kept the said agreement away from the plaintiffs and other members of Omovwiare family until early in 1977 when the 1<sup>st</sup> plaintiff and his mother tried to sell a portion of the said land to one Japan. The

defendants fraudulently prevented the plaintiffs and other members of Omovwiare family from having interest in and share of the proceeds from the sales of the various plots. They also refused to render account of the sale proceeds. The plaintiffs pleaded the particulars of the fraud alleged.

B Now, because of the defendants' refusal to give account of the proceeds of the sales of the land and for their refusal as well to share such proceeds, the plaintiffs resorted to filing of this suit. The claims indorsed in the writ of summons and as repeated in paragraph 25 of the Further Amended Statement of claim read as follows:-

C *"When defendants ignored the said letter plaintiffs were compelled to bring this action for themselves and on behalf of Omovwiare family against the defendants jointly and severally claiming as per writ as follows:-*

D *1. A declaration that the land in dispute known and called Ugbusi land situate and lying in Iwrekpokpo village within Ughelli Judicial Division is the property of the said family to which plaintiffs and defendants belong.*

E *2. A declaration that defendants hold the proceeds from the sales of several portions of the said Ugbusi land on trust for the said Omovwiare family.*

*3. That the said agreement dated 1<sup>st</sup> April, 1961 be declared null and void on the grounds of fraud.*

F *4. That an account be taken of such sales and of the money received from the sales of the several portions of the said land by defendants.*

*5. That defendants pay over to plaintiffs for the said family whatever is due to them after the taking of such account.*

G *6. An injunction restraining defendants, their agents from further sale of Ugbusi land without the consent and authorization of the plaintiffs and the other members of Omovwiare family.*

*7. Any further or other reliefs."*

H The defendants as per their further amended statement of defence, except where they made express admission, denied each and every allegation of facts contained in the further amended statement of claim filed by the plaintiffs. Defendants for instance denied emphatically that they sold or

leased the said land over #50,000.00 (fifty thousand naira) to various persons. They denied the existence of Itoto family land. They also denied that Imowhe, during his life time shared the afore-said land into two between his son Itoto and daughter Omovwiare. They averred that all Imowhe lands had since his death devolved according to Ughelli/Urhobo native law and custom on the descendants of Imowhe.

The matter proceeded to hearing at the end of which the trial court granted partially, the plaintiffs' reliefs in the following terms:-

(i) That the land in dispute is the property of the entire Omovwiare family.

(ii) Injunction restraining the defendants their servants or agent from further sales of the land in dispute without the authority and consent of the members of the Omovwiare family, was granted.

(iii) That the defendants were to account only for the sale to PW5. The defendants were dissatisfied with the decision of the trial court and appealed to the Court of Appeal, Benin Division. The court below, on 12<sup>th</sup> May, 1989, dismissed the appeal and affirmed the trial court's judgment except for relief (1) which was varied to read:-

*"It is hereby declared that the plaintiffs are entitled to a customary right of occupancy in respect of the land called Ugbusi land and shown on Exhibit C; less the area sold to PW 5 Johnson Ighomereho."*

Dissatisfied with the judgment of the court below, the appellants appealed to this court.

Briefs of argument including appellants reply brief were filed and exchanged by the parties. Learned Counsel for the appellants posed the following five issues for determination:-

G *"1. Whether the court of Appeal was right when it failed to consider and pronounce upon all the issues formulated by the Appellants from the grounds of appeal validly filed and thereby occasioning a grave miscarriage of justice.*

H *2. Whether the document, Exhibit 'A' which did not comply with Sections 2 and 16 of Lands Instruments Registration Law Cap 81 vol. 4 Laws of Bendel State of Nigeria 1976, is inadmissible, null and void and/or worthless for all purposes in the circumstances of this case.*

3. *Whether the Court of Appeal was right in its variation of the order/award made by the trial court in the circumstances of this case.*

4. *Whether having regard to the pleadings and evidence on record before it, the judgment of the Court of Appeal affirming/confirming the judgment of the trial court was right.*

5. *Whether having regard to Exhibit D and the evidence of P.W. 5, the Court of Appeal was right in accepting the finding of the trial High Court that the land in dispute belonged to the Omovwiare family."*

The learned Counsel for the respondents although largely centred his arguments on the Grounds of Appeal filed by the appellants, he, towards the end of his brief, seemed to have made some selective replies on the issues formulated by the appellants. He replied appellants' issues Nos. 1, 2, 3 and 4. (see pages 8 and 9 of the respondent's brief).

Although, strictly speaking, learned Counsel for the respondents did not make his arguments in line with the modus operandi of brief writing in the Court of Appeal and this court, one would forgive this failure by the learned Counsel for the respondents as brief writing system was by then just introduced. The mere fact that a brief was badly written by a party and except where it appears incomprehensible, the Court needs to consider it in the interest of justice. In fact the Court has power to correct errors in a faulty brief. See: *ACME Builders Ltd. v. KSWB* (1999) 2 N.W.L.R. (Pt. 590) 288.

In his submission on issue I learned Counsel for the appellants stated that the Court of Appeal was wrong when it completely failed to consider and pronounce upon issue No.1 whereas an appellate Court has a duty to consider all the issues placed before it for determination. He cited and relied on the cases of *Okonji v Njokanma* (1991) 7 N.W.L.R. (Pt. 202) 131 and *Anyaduba v. NRTC Ltd.* (1992) 5 N.W.L.R. (Pt. 243) 535. This omission by the Court of Appeal, learned Counsel argued, amounted to a denial of fair hearing and had occasioned a miscarriage of justice. He urged this court to set aside the decision of the court below and dismiss the plaintiffs'/respondents' case in its entirety.

Learned Counsel for the respondents while responding to appellants' issue 1, submitted that the lower court dealt with all the issues

together and considered them before reaching the decision of affirming the decision of the trial Judge. He argued further that the evidence of the plaintiffs/respondents is not at variance or in conflict with the plaintiffs' pleadings. Submitted for the respondents is that the appellants case supported the case of the respondents and so this appeal should be dismissed. Learned Counsel cited the case of *Joseph Akinola & Anor. v. Fatoyinbo Oluwo and Ors.* (1962) A.N.L.R. 224 at 225.

Now, from the Records of this appeal, three issues were formulated by the appellants before the court below for its determination. They are contained on page 281 of the Record. Specifically however, the appellants before this court in their issue No.1 alleged that the lower court completely failed to tackle/consider and pronounce upon issue No.1 submitted for its determination. Issue No. 1 before the lower court reads as follows:-

*"1. Given the state of plaintiffs' pleadings and evidence led, was the judgment justified or right?"* Tied to Ground one. (see page 281 of the Printed Record of Appeal).

It appears however, that the Court below formulated issue 1, I think in it's own words. It reads as follows: -

*"Can a judgment delivered in favour of plaintiff based on a case/ evidence at variance or in conflict with plaintiffs' pleadings stand? Can parties to a suit travel with impunity outside their pleadings?"*

After having set out appellants' issues 2 and 3 and the respondents' sole issue,

Ogundare JCA (as he then was) expressed his view on these issues and he said:-

*"In my view, issues 1 and 3 in the Appellants' brief amount to the same as question raised in Respondents' brief. I shall deal with all the issues together."*

The learned JCA went on to consider the issues and arrived at the conclusion which gave rise to this appeal. His other brothers on the Panel agreed with his reasoning process and the conclusions reached.

I think for the avoidance of doubt, I find it appropriate to have a look at the issues placed before the lower court and the consideration given to them by the Court below. These issues read as follows: -

*"1. Given the state of plaintiffs' pleading and evidence led, was*

*the judgment justified or right?"*

2. *Is the Document, Exhibit 'A' which did not comply with Sections 2 and 16 of Land Instrument Registration Law, Cap. 81 Vol. 4, Laws of Bendel State of Nigeria 1976, null and void and/or worthless for all purposes?*

3. *Was the evidence led in this case properly evaluated?"*

(see page 281 of the Printed Record of Appeal)

The respondents sole issue reads as follows:-

*"Is the land in dispute the property of Omovwiare family to which both parties belong or is it the property of the defendants exclusively?"*

(see page 301 of the Printed Record of Appeal)

It is clear to me from the above that:-

(a) appellants' issue No. 1 was on conflict between the respondents' pleadings and the evidence led before the trial court.

(b) appellants issue No. 2 was on the validity of Exhibit 'A'.

(c) appellants' issue No. 3 was on evaluation of evidence. Whether the trial court did so and

(d) respondents sole issue was on who had title to the property in dispute. Was it both parties to the dispute or the defendants/appellants?

I took time to go through the whole gamut of the judgment of the Court below (pages 304 - 335 of the printed Record of Appeal). What I found is that the Court below considered primarily two issues in its deliberations:-

(i) the issues of the Exhibits tendered generally but Exhibit 'A' in particular. The Court below agreed with the trial court that Exhibit 'A' did not qualify as a receipt as there was no question of money passing between the parties to Exhibit 'A'. Exhibit 'A' did not comply with the requirements of the law as to registration and was held to be ineffective to pass title to the appellants. The Court below found, rightly in my view, that although the learned trial Judge admitted the document in evidence at the trial, he was right in ignoring it in his consideration of the case.

(ii) that the Court below brought out clearly the evaluation of evidence conducted by the learned trial Judge. The Court below had no difficulty in agreeing with the trial court in accepting the case for the respondents and finding that the land in dispute belonged to the Omovwiare

family and it had no reason to interfere with the trial court's findings. (page 332 of the Record)

On the issue of discrepancy between the pleadings and the evidence led by the witnesses, the point of contention as raised by learned Counsel for the appellants is that whether an omission to pronounce on that issue by the court below did not amount to a denial to fair hearing, thereby occasioning a miscarriage of justice.

Permit me my Lords to observe that from decided cases of this court, it can conveniently be said that there are two schools of thought on the issue: the 1<sup>st</sup> school is the one that is of the view that such an omission is a denial to fair hearing and can occasion a miscarriage of justice. I will cite instances in support: My learned brother, Uwaifo, JSC, in answer to this issue once observed in the case of Brawal Shipping v. Onwadike Co. (2000) 6 SCNJ, 508 at page 522, as follows:

*"It is no longer in doubt that this court demands of, and admonishes the courts to pronounce, as a general rule on all issues properly placed before them for determination in order; apart from the issue of fair hearing, not to risk the possibility that the only issue decided by them could be faulted on appeal. It had made this clear in its observations in several cases including Oyediran v. Anise (1970) 1 All N.L.R. 313 at 317; Ojobue v. Nnubia (1972) 6 S.C. 27; Atanda v. Ajani (1989) 3 N.W.L.R. (Pt. 111) 511 at 539; Okonji v. Njokanma (1991) 7 N.W.L.R. (Pt. 202) 131 at 150, 151, 152; Titiloye v. Olupo (1991) 7 N.W.L.R. (pt. 205) 519 at 529; Katto v. Central Bank of Nigeria (1991) 9 N.W.L.R. (pt. 214) 126 at 149. Failure to do so may lead to a miscarriage of justice and certainly will have that result if the issues not pronounced upon are crucial. Consequently there could be avoidable delay since it may become necessary to send the case back to the lower court for those issues to be resolved. The obvious exceptions are when an order for a retrial is necessary or the judgment is considered a nullity, in which case there may be no need to pronounce on all the issues which could arise at the retrial or in a fresh action, as the case may be. See further, the cases of: Araka v. Ejeagwu (2000) SCNJ, 206."*

Ogwuegbu, JSC, expressed same view as above in the case of 7 UP Bottling Co. Ltd. & Ors. v. Abio & Sons Bottling Co. Ltd. (2001) 6 SCNJ,



18 at page 49:-

*“The Court of Appeal being an intermediate appellate court its decision do not enjoy the finality of those of Supreme Court by virtue of section 235 of the Constitution. Whereas the Supreme Court can determine an appeal on one of the issues submitted to it in an appeal, the Court of Appeal cannot afford to ignore other issues properly placed before it since its decision on one or some of the issues may be faulted on a further appeal to this Court. Where, however, an intermediate appellate court rests its decision on one of the issues, it should also express its views and pronounce on the other issues identified for its determination. Even where the intermediate court is of the settled view that the sole issue on which its decision is anchored will be upheld by the Supreme Court, it is prudent to express an alternative view.”*

Late Ogundare JSC, who as a JCA, wrote the leading judgment at the Court below, fell into this first school of thought, that of course is realizable from his pronouncements on same issue in numerous cases. The case of 7 UP v. Abiola & Sons (supra) is one of them. Where earlier on, the Court of Appeal, had held that the trial court had jurisdiction to entertain the suit before it, it (the Court of Appeal) was under no obligation to pronounce on the other issues argued. Ogundare, JSC said:-

*“I think the Court below was in serious error when it, per Ogebe, JCA, held that a resolution of the first issue, that is issue of jurisdiction alone would determine the outcome of the appeal. It cannot be said that the other three issues are subsumed in the question of jurisdiction which is which court as between the Federal High Court and the Kwara State High Court had jurisdiction to entertain the matter.....The Court below ought to have pronounced on each of these issues. It is dereliction of duty for it to refrain from pronouncing on the other three issues; it is however not a case of lack of fair hearing..... Ordinarily, the case ought to be sent back to the Court below to determine the issues not pronounced upon by it.”*

There is a plethora of authorities in support of that view. See for instance the cases of: Odunayo v. The State (1972) 8-9 SC 290, 296; Anyaduba v. Nigerian Renowned Trading Co. Ltd. (1992) 5 N.W.L.R. (Pt 243) 535 at 561 D-E; Bakare v. A.C.B. (1986) 3 N.W.L.R (Pt. 26) 47 at

58; Okonji v. Njokanma (1991) 7 N.W.L.R. (Pt. 202) 131; Ojogbue & Ors. v. Ajie Nunbia & Ors. (1972) 1 All N.L.R. (Pt. 2) 226 at 232; Jamgbadi v. Jamgbadi (1963) 2 SC. N.L.R. 311 (NSCC 281 at 282); Bayo v. Ahemba (1999) 10 N.W.L.R. (Pt.623) 381 at 392-393; Ifeanyichukwu (Osondu) Co. Ltd, v. Soleh Boneh (Nig.) Ltd. (2000) 5 N.W.L.R (Pt. 656) 322 at 251 F-H.

The second school of thought is of the view that where an appellate court is of the view that a consideration of one issue out of many is enough to dispose of the appeal, that court is not under any obligation to consider all the other issues posed. Permit me my Lords, here as well, to quote instances: In the recent case of 7 UP v. Abiola (supra); Onu, JSC, who happened to deliver the leading judgment, had this to say :-

*“It is for these reasons that I share the respondent’s view that having held that the trial court had jurisdiction to try the suit, the Court below was under no obligation to consider the other issues. The general rule, it is now well settled, is that an Appellate court has a duty to consider all the issues placed before it. Albeit, where it is of the view that a consideration of one of the issues is enough to dispose of the appeal, it is not under any obligation to consider all the other issues posed.*

*In the instant case where the Court below arrived at the view that the only “live” issue (the sole issue on jurisdiction) is enough to dispose of the appeal this Court will not impose upon it the obligation to consider all the other issues posed by the appellant..... The decision of the Court below, in my view, did not amount to a denial of fair hearing. That being so, I hold that it does not matter that the Court below failed to consider the other issues raised by the appellants in their brief and which failure did not occasion a miscarriage of justice.”*

My learned brother Onu, JSC, supported his view with the cases of Union Bank of Nigeria Ltd. v. Nwaokolo (1995) 6 N.W.L.R. (Pt 400) 127; Kotoye v. CBN (1980) 1 N.W.L.R. (Pt. 98) 419; Bamaïyi v. The State (2001) 8 N.W.L.R. (Pt. 715) 270; Mora & Ors. v. Nwalusi & Ors. (1962) H 1 All N.L.R. (Pt. 4) 68; Stool of Abinabina v. Enyimadu 12 WACA 171 at 173.

Kalgo, JSC, in the same case of 7UP v. Abiola (supra) expressed his views

as follows:-

*“It is well settled that an appeal court must consider all issues presented before it by the parties. There are however exceptions according to the facts and circumstances of each case. One of such circumstances as laid down by this Court is where the Court concerned is of the view that a consideration of one issue is enough to dispose of the appeal, it is not under any obligation to consider all the issues. See: Anyaduba v. N.R.T.C. Ltd. (1992)) 5 N.W.L.R. 535; Okonji v. Njokanma (1991) 7 N.W.L.R. (pt. 202) 131; Sanusi v. Ameyegun (1992) 4 N.W.L.R. (Pt. 237) 527. In this appeal, the Court of Appeal dealt with the issue of jurisdiction of the trial court to entertain the case and left the other ancillary issues which it considered as academic. In the light of the above authorities and what I said earlier about the issue of jurisdiction in the case I think that the Court of appeal was not wrong in failing to consider the other ancillary issues in the circumstances of this case. There is no miscarriage of justice as a result or denial of fair hearing.”*

The complaint in the appeal on hand, as highlighted earlier, is that the appellant is saying that the Court of Appeal breached a duty that was imposed on it by law in that it failed completely to consider issue No. 1 submitted to it for determination and consequently failed to make a pronouncement on whether or not the evidence led in the case was at variance with and/or in violent conflict with plaintiffs’/respondents’ pleadings which subsequently occasioned a miscarriage of justice. But, let me ask: is that assertion correct? **Although it is desirable for an appeal court to consider all issues placed before it, each distinctly and on its merit, there is no law prohibiting such a Court to treat issues together as the facts and circumstances of the case may demand. It is a normal and perfect practice so long as it does not tantamount to a denial of fair hearing or cause a miscarriage of justice to any of the parties.** In the cases I cited earlier for instance, Uwaifo, JSC, in Brawal Shipping v. Onwadike Co. (supra) resorted to such a practice. He said:-

*“I shall take issues 5 and 6 together from which I shall go on to the discussion of issue 2.”*

**It is my view that the method adopted by the lower court where it**

**treated all the issues in a lump-sum, was right. Secondly, it is clear from the outset of their judgment that the learned Justices of the Court below, per Ogundare, JCA (as he then was) who read the leading judgment, concurred with by Musdapher JCA, (as he then was) and Salami, JCA, that they were satisfied with the findings of facts and the conclusion arrived at by the learned trial Judge from the totality of the pleadings and the evidence laid before the trial court.** Ogundare made the following finding as can be seen on page 319 of the printed Record of Appeal:-

*“Evidence was led on both sides along the line of their pleadings. The learned trial Judge, in a considered judgment, summarized the case for the parties in the following words:-*

*“I have listened attentively to the submissions of both learned Counsel in the case. I have also examined the pleadings and the Exhibits tendered..... ‘There is evidence on both sides that both the plaintiffs and the defendants are of Omovwiare family .....”* (underlining supplied for emphasis).

That was the finding of the Court below. In agreeing with the above finding, I ventured to have a closer look at the Record. I discovered that the learned trial Judge took his time to summarise the evidence called by both the plaintiffs and the defendants. (See the Record of Appeal pages 256 - 263 for the plaintiffs and 263 -268 for the defendants.) The learned trial Judge then evaluated the evidence vis-à-vis the pleadings of the parties.

On page 268 of the Record, the learned trial Judge stated, among other things the following:-

*“I have listened attentively to the submissions of both learned Counsel in the case. I have also examined the pleadings and the Exhibits tendered..... There is evidence on both sides that both the plaintiffs and defendants are of Omovwiare family. It is common ground that the land in dispute is called Ugbusi land.....”* (underlining supplied for emphasis).

In fact the learned trial Judge took more pains to dissect the testimonies of all the witnesses called by the parties in line with what the respective parties pleaded. I will only cite the following:-

*"I have considered the evidence so far led by the parties, as well as the exhibits tendered in this case. The evidence of P.W.3 was that his people (Itoto) entered into agreement with the three defendants in respect of Itoto land and not Imowhe land ..... The document Exhibit 'A' no doubt, cannot in law transfer any title to anybody as it did not comply with the requirements of sections 2 and 18 of the Lands Instrument Regularation (sic) Cap 81 vol. 4 Laws of Bendel State of Nigeria 1976. It is therefore in my view unnecessary to ask Court to declare null and void, the said agreement on the ground of fraud. In fact no particulars of fraud were pleaded nor satisfactorily given in evidence. With regard to Exhibits E, F and G they settled nothing; save that in them, each of the defendants pleaded that the land belongs to his father. Exhibit D also does not confer valid title on P.W.5; rather it was tendered in this case as a receipt and nothing more."*

(underlining supplied for emphasis)

**Now granted, even if for academic purposes, that the Court below did not make any pronouncement on issue one, I think that omission alone, given the circumstances of this appeal, cannot in my view vitiate the well researched judgment of the trial court to call for a retrial of same. From the few excerpts quoted from the proceedings of the trial court, I hold the view that the trial court had dealt with the case satisfactorily in conformity to what makes a judgment good. There was no denial of fair hearing. There was no miscarriage of justice.** Then what is the complaint of the appellants?

In any event, there must be an end to litigation. This case is getting close to thirty years in the corridors of the Courts. I cannot be a party to causing more delays to a case with a chequered history of delays. Further delay in the case is detrimental to the successful parties. This issue has no merit and is resolved in favour of the respondents.

Issue No. 2 is on whether Exhibit 'A' was inadmissible, null and void or worthless. First and foremost, what is Exhibit 'A'? Pages 115-119; 128-133; 177-180; 190-193 of the record of appeal contain the 1<sup>st</sup> plaintiffs evidence in-chief; cross-examination and re-examination. It was through him that one agreement; between Itoto family and the three defendants

was tendered and admitted (without objection) and marked Exhibit 'A'. In his judgment, the learned trial Judge had this to say on Exhibit 'A'

*"The document Exhibit 'A' no doubt, cannot in law transfer any title to anybody as it did not comply with the requirements of Sections 2 and 16 of the Lands Instrument Regularation (sic) Law Cap. 18 (817) Vol. 4 Laws of Bendel State of Nigeria 1976. It is therefore in my view unnecessary to ask Court to declare null and void, the said agreement on the ground of fraud."*

The Court below found that Exhibit 'A' was an instrument within the law but it had not been registered in the office specified for that purpose. It was held by that Court that it could not be pleaded nor given in evidence by virtue of Section 16 of the Land Instruments Registration Law (supra) and was, by virtue of that provision, inadmissible. The Court below further held that Exhibit 'A' did not qualify as a receipt as there was no question of money passing between the parties to it. The learned Counsel for the appellants submitted that, Exhibit 'A' which did not comply with sections 2 and 16 of the Lands Instruments Registration Law, Cap 81 Vol. 4, Laws of the Bendel State of Nigeria, 1976 is not inadmissible, null and void or worthless for all purposes in the circumstances of the case. He further argued that violation of Sections 2 and 16 of the said Law does not render Exhibit 'A' null and void and it did not even render the document inadmissible for all purposes. Exhibit 'A' he contended further, was perfectly admissible as a memorandum evidencing a transaction under native law and custom between the parties therein mentioned. Learned Counsel cited and relied on the cases of Djukpan v. Orovuyovbe (1967) N.M.L.R. 287 and Ogunbambi v. Abowab (1951) 13 WACA 222.

Sections 2 and 16 of the Land Instruments Registration Law, Cap 81 Vol. 4, Laws of Bendel State of Nigeria, 1976 (hereinafter referred to for short, as Land Registration Law) are very relevant to the determination of this appeal. Section 2 therefore defines "instrument" to mean -

*"a document affecting land in the State - whereby one party (hereinafter called the grantor) confers, transfers, limits, charges or extinguishes in favour of another party (hereinafter called the grantee) any right or title to or interest in land in the State and*

includes:-

- (a) an estate contract;
- (b) a certificate of purchase;
- (c) a power of attorney under which any instrument may be executed;
- (d) a deed of appointment or discharge of trustees containing expressly or impliedly a vesting declaration and affecting any land to which section 27 of the Trustee Law extends but does not include a will;"

Section 16 provides:-

"16. No instrument shall be pleaded or given in evidence in any Court as affecting any land unless the same shall have been registered in the proper office as specified in section 3:

*Provided that a memorandum given in respect of an equitable mortgage affecting land in the State executed before the 1<sup>st</sup> day of July, 1944, and not registered under this Law may be pleaded and shall not be inadmissible in evidence by reason only of not being so registered."*

**The finding of the trial court above in respect of Exhibit 'A' is that it did not comply with the requirements of sections 2 and 16 of the Lands Registration Law. This was interpreted by the Court below to mean that although Exhibit 'A' was an instrument within the law but it had not been registered in the proper office as specified, in section 3. And from section 16, I go a little further to add that Exhibit 'A' could not fall within the proviso made under section 16 as there was nothing in the records to show that it was a memorandum given in respect of an equitable mortgage affecting land in the State executed before the 1<sup>st</sup> day of July, 1944, and not registered under the lands Registration Law.**

**Another point of distinction is that the appeal on hand is quite distinguishable from the two cases of Djukpan v. Orovuyovbe (supra) and Ogunbambi v. Abowab (supra). In the appeal on hand, as seen previously, no question of money/receipt for money was involved between the parties. In the 1<sup>st</sup> case cited by the appellant, the land in dispute was pledged for £5.15. It was thus a case of redemption of land. In the 2<sup>nd</sup> case, it was a case of an agreement involving money. Thus, the two cases are different from this appeal and can hardly apply to**

**the circumstances of this appeal.**

**Another important point is that although the learned trial Judge admitted the document i.e. Exhibit 'A' in evidence (without objection from the defendants), such mere admission of a document which otherwise was inadmissible and even though the opposing party did not object, cannot confer any right on the learned trial Judge to ascribe any probative value to that document. It is trite law that admitting a document in evidence whether wrongly or rightly is quite different from its proper valuation.** See: Fadlallah v. Arewa Textiles Ltd. (1997) 7 SCNJ, 202; Comptoir Commercial & Ind. SPR Ltd. v. Ogun State Water Corporation and Anor. (2002) 4 SCNJ, 342. Appellants' issue No. 2 is as well resolved in favour of the respondents.

Appellants' issue No. 3 is on whether the Court below was right in its variation of the award/order made by the trial Court. Learned Counsel for the appellants submitted that the Court below was wrong in its order varying the order/award made by the trial court as there was no evidence on record suggesting, that the plaintiffs/respondents were entitled to a customary right of occupancy. Further, there is nothing on record by way of evidence to show that the land in dispute is in a rural area or that it is not in an urban area. It was further contended for the appellants that the judgment of the trial court is inconsistent with the claim as there was no claim for a customary right of occupancy. The variation done by the Court below, learned Counsel stated, is not supported by the evidence on record and an appeal court cannot base award/order on speculation. And, as there was no cross appeal, nor Respondent's Notice, the order of variation of the judgment of the trial court was wrong. This, learned Counsel submitted, is because for a court to make an order which no party has asked for and which the parties were not heard is a breach of the party's constitutional right of fair hearing. Learned Counsel relied on the cases of Usikaro v. Itsekiri Land Trustees (1991) 2 N.W.L.R. (Pt. 172) 150 at 177; Odusote v. Odusote (1971) N.M.L.R. 228.

Learned Counsel for the respondents submitted that the Court below was right in varying the order/award made by the trial court in accordance with section 40 of the Land Use (Decree) Act 1978. There was no speculation but by law, the Court below was right to have applied the

law the way it did.

**It is true that the position of the law as expounded by learned Counsel for the appellants is that it is wrong for a Court to make an order which no party has asked for. This Court has made several pronouncements on that principle of the law. In the case of Yusuf v. Oyetunde (1998) 10 SCNJ 1 at page 20, for instance, this Court, per Uwais CJN, held as follows:-**

*“The Court is not a father Christmas. It does not award what a party has not claimed.”*

See further: Union Bank of Nigeria Ltd v. Ogboh (1995) 2 SCNJ 1; Olaopa v. Awolowo University Ile-Ife (1997) 6 SCNJ 46; Ugochuwku v. C.C.B. Nigeria Ltd. (1996) 7 SCNJ 22. It is equally true that reliefs granted by a Court must not be inconsistent with a party’s case and claim. See: Edebiri v. J Edebiri (1997) 4 SCNJ. 177.

**But, may I remind the appellants that the respondents as plaintiffs in their claim contained in their further Amended Statement of Claim, prayed the trial court for the grant of.-**

*“Any further or other reliefs.”*

I already set out the reliefs granted the respondents by the trial court. I also set out the relief amended or varied by the lower court. However, for the purposes of clarity, I think I should repeat what the court below said. It is as follows:-

*“Consequently, this appeal fails and it is hereby dismissed; the judgment of the Court below is affirmed except as regards claim (1) which is varied as follows :-*

*“It is hereby declared that the plaintiffs are entitled to a customary right of occupancy in respect of the land called Ugbusi land and shown on Exhibit C (respondents’ plan) less the area sold to P.W. 5, Johnson Ighowereho.”*

It is my understanding from the two excerpts i.e. the trials and the Court below’s judgments that **the court below did not make any new grant to a relief not claimed by the respondents. It affirmed the relief granted by the trial court. So, that relief was already in existence. What the court below did was the amendment/variation to that relief i.e. No.1.**

**Now, looking at the circumstances of the case as a whole and considering the enormous power the court below has been conferred with by both the Court of Appeal Act 1976 and Order 3 Rule 23 of the Court of Appeal Rules (as amended). It is not a novelty for the Court of Appeal to revisit any decision/order in the course of its consideration of an appeal brought before it, to review, vary or amend or even make a further order or orders, earlier made by the trial court even where not requested for by a party so long as, in its opinion, the justice of the case demands for that. Section 16 of the Act referred to above, provides:-**

*“16. The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for the purpose of such re-hearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or in the case of an appeal from the court below in that court’s appellate jurisdiction, order the case to be re-heard by a court of competent jurisdiction,”*

Order 3 Rule 23 of the Rules referred to above, provides:-

*“23.(1) The court shall have power to give any judgment or make any order that ought to have been made, and to make such further or other order as the case may require including any order as to costs.*

*(2) The powers contained in paragraph (1) of this rule may be exercised by the Court, notwithstanding that the appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.”*

I am supported again in my above views by an earlier decision of

this Court in the case of *Onuaguluchi v. Ndu* (2001) 3 SCNJ 110 at pages 119-120, where Uwaifo, JSC, stated:-

*"I do not consider it necessary to comment on the respondent reliefs sought before the Court of Appeal other than to say that Order 3 Rule 23 of the Court of Appeal Rules gives that Court the liberty to give appropriate reliefs on hearing an appeal and will not therefore be bound by the reliefs sought in the notice of appeal....."*

*This power may be exercised by the Court of Appeal as the justice of the case demands to make orders which the trial Court could have made. It could be in the form of consequential orders, or an order to correct a slip by the trial court. It is usually quite useful for the giving of a relief at the conclusion of an appeal which is appropriate to the occasion. See: Jadesinmi v. Okotie-Eboh (1986) 1 N.W.L.R. (Pt. 16) 264; Williams v. Williams (1987) 2 N.W.L.R. (Pt. 54) 66; Attorney-General Bendel State v. Aideyan (1989) 4 N.W.L.R. (Pt. 118) 646".*

**I therefore hold the view that the court below was quite correct in exercising its powers in effecting a variation to the earlier order made by the trial court.**

Learned Counsel for the appellants submitted on issue 4 that the judgment of the Court of appeal affirming/confirming the judgment of the trial court was wrong having regard to the pleadings and evidence on record.

I think in view of my holding earlier on the status of the pleadings and evidence placed before the trial court and the view held by the court below on same, I need waste no more time on further consideration of such matters. My simple answer to this issue is that **the Court of Appeal was right in affirming/confirming the judgment of the trial court. This is because I am satisfied that both Courts below did their utmost best in arriving at their decisions. The duty of a Court as an umpire is to do substantial justice to the parties in the matter before it. As an appeal court, the Court below, or even this Court, is under a duty to have an impassionate consideration of the whole case placed before it on appeal. At the end of it's consideration, it will be left with no option rather than to allow or dismiss the appeal. I am of the view, having**

**taken into consideration the totality of the contents of the Printed Record placed before this Court, that the Court below was right in affirming the trial court's decision.** This issue is resolved against the appellants.

Issue No. 5 deals with Exhibit 'D' and the evidence of P.W. 5. Learned Counsel for the appellants argued that the Court of appeal was wrong in using Exhibit D and the evidence of P.W. 5, to uphold the findings of the trial court that the land in dispute belongs to Omovwiare family. He argued further that Exhibit D cannot be used to reach this finding of fact as it was tendered for a particular purpose,, i.e. as a "receipt" evidencing payment of money. Learned Counsel cited and relied on a number of authorities including *Odinkenmere v. Impresit Bakalori (Nig.) Ltd.* (1995) 8 N.W.L.R. (Pt. 411) 52 at 67 para D; *Attorney-General Oyo State v. Fairlakes Hotels Ltd.* (No 2) (1989) 5 N.W.L.R. (Pt. 121) 255; *Basil v. Fayebe* (2001) 4 SC (Pt. 2) 119. Learned Counsel submitted that the principle of concurrent findings of fact is clearly inapplicable in this case and that this Court can make its own inferences and arrive at findings from those primary facts. He relied on the cases of *Kate Enterprises Ltd. v. Daewoo Nigeria Ltd.* (1985) 2 N.W.L.R. (Pt. 5) 116; *Olujinle v. Adeagbo* (1988) 2 N.W.L.R. (Pt. 75) 238, among others. Learned Counsel contended finally that the evidence of P.W. 5 on ownership of the land in dispute is clearly hearsay and inadmissible and cannot be used to reach the finding of fact accepted by the Court of Appeal.

Pages 195 - 196 contain the evidence of P.W. 5, Mr. Johnson Ighomereho, an Acting Deputy Commissioner of Police who bought a piece of land measuring 200x100ft, for #400.00(four hundred naira) from the defendants. Exhibit 'D' was admitted in evidence (with no objection), through P.W. 5. Below is what transpired at the trial court on the 20<sup>th</sup> February, 1984: P. W. 5 was testifying and he said:-

*"When, I paid the money i.e. #400.00 (which paid in 2-3 installments) the defendants gave me particulars of the owners of the land to me. They gave me the name of Omovwiare family which they purported to represent, the dimension of the land etc. I went to a solicitor called B. B. E. Emurotu to prepar (sic) title deed for me. Mr. Emurotu did and he*

*signed it. The 3 defendants' signed the document too. I also signed. The document was witnessed by my brother Daniel Ighomereho. My brother also bought a land from the defendants. I surveyed the land.*

*The agreement made between me and the defendants is tendered. Olokor B says that he tenders (sic) it as a receipt. Asheshe does not object. Document dated 2<sup>nd</sup> July, 1977 between the defendants and the witness is marked Exhibit D."*

(underlining supplied for emphasis).

C It can be seen from the above that it was one Mr. Olokor, who, I believe, was a counsel to the plaintiffs before the trial court who requested the trial court to admit the document prepared by Mr. B. B. E. Emurotu as a receipt. Although Mr. Asheshe, learned counsel for the defendants then did not object, the trial court just admitted it as a "Document" between the defendants and the witness i.e. P.W. 5.

D **A receipt generally is that document or a piece of paper which signifies that goods or services have been paid for. It is an evidence of payment. In Bowes v. Foster (1858) 27 L.J. Ex. 262 at 266, Martin B. held that:-**

E ***"To constitute a receipt of anything there must be a person to receive and a person from whom he receives, and something received by the former from the latter and that something must be a sum of money."***  
 F **Equally, in the case of General Council of the Bar (England) v. Inland Revenue COMB. (1907) 1 KB 462 at 471, 472, 476 and 478, it was held that for a document to be a receipt:-**

***"It must be a document whereby the receipt or deposit or payment of money is acknowledged or expressed."***

G **See also A-G v. Northwood Electric Eight and Power Co. Ltd. (1947) KB 511 at 517, 518, per Lord Green MR.**

H **Now, supposing that Exhibit D was admitted as receipt as argued by learned counsel for the appellants it would only establish an acknowledgment of the payment of money in respect of the land by the plaintiffs but not in proof of title to the land as the nature of the title relied upon by the plaintiffs was that of sale under customary law and not by virtue of conveyance. See: Ogunbambi v. Abowab (supra);**

Fakoya v. St. Paul's Church, Shagamu (1966) 1 All N.L.R. 74; Adesanya v. Aderonmu (2000) 9 N.W.L.R. (Pt. 672) 370.

**After all, the general practice under native law is that the making and giving of receipts of purchase is unknown to native law and custom.** See:- Aboyade Cole v. S. R. Folami (1956) SCNLR page B 180 or in (1956) FSC 66; Clay Ind. Nig. Ltd. v. Aina (1997) 8 N.W.L.R. (Pt. 516) 208; Odusoga v. Ricketts (1997) 7 N.W.L.R (Pt. 511) 1.

**In the present appeal and in order to show that Exhibit D was not admitted as a receipt, the trial court admitted it as a document simpliciter. This is what it said:-**

***"Document dated 2<sup>nd</sup> July, 1997 between the defendants and the witness is marked Exhibit D."***

**P.W. 5 described in his evidence in chief that document as agreement made between him and the defendants. Thus, Exhibit D was an agreement between the respondents and P.W. 5. A written agreement of sale of land, even though under native law and custom is not the same with a purchase receipt as the two serve different purposes in such a transaction.**

**I also had a closer look at the evidence of P.W. 5 and I find no conflict between it and Exhibit D and I am satisfied that the learned trial Judge correctly admitted it and relied on it in arriving at his conclusions. I am equally satisfied that the Court of Appeal was right in accepting the finding of the trial court that the land in dispute belonged to the Omovwiare family.**

Finally, I find no merit in this appeal. I hereby dismiss it. I affirm the judgment of the Court of Appeal Benin delivered on the 12<sup>th</sup> day of May 1989. The respondents are entitled to #10,000.00 costs from the appellants.

ONU JSC

I have had the opportunity to read before now the judgment just delivered by my learned brother Muhammad, JSC. I agree with him that

the appeal lacks substance and must perforce fail.

Besides, the decisions of the two lower courts amounting as they do to concurrent findings of fact, I do not intend on the authorities of numerous decided cases to interfere therewith.

B Accordingly, I dismiss the appeal affirm the decision of the court below and make the same consequential orders inclusive of those as to costs.

C

#### AKINTAN JSC

D The present respondents were plaintiffs in this action which was filed at the Old Bendel State High Court. They instituted the action in a representative capacity on behalf of themselves and their family. The present appellants were the defendants. They were said to be members of the same family. But they were sued in their individual capacities. The dispute arose over allegation by the respondents that the appellants sold portions of the family land in a village at Ughelli Local Government and failed to account for the proceeds of the sales to the family. The respondents therefore claimed, inter alia, in their said action, declaration that the said land is the property of the plaintiffs' said family; declaration that the appellants were holding the proceeds of sales of several portions of the land in trust for their said family; an account of the proceeds of sales, made by them; and an injunction restraining them from further sale of the land without the consent of the members of the family.

G Pleadings were filed and exchanged and the matter went for trial. At the conclusion of the trial, the learned trial Judge granted the plaintiffs' claim in part. The court held, inter alia, that the land was family property; that the appellants were to account to the respondents the proceeds from the sales they made; and an injunction restraining them from making further sales without the consent of the other members of the family. The respondents were also granted a customary right of occupancy of the land.

H The appellants were dissatisfied with the verdict and their appeal to the court below was dismissed. The present appeal is against the judgment

of the court below. The main issue raised and canvassed by the appellants in this court is that the court below failed to consider and pronounce upon all the issues formulated by the appellants from the grounds of appeal filed before the court below. I believe that the contention of learned counsel for the appellants, as canvassed in the brief, that an appellate court is duty bound to pronounce on all issues formulated by an appellant regardless of whether the out-come of such exercise would change the out-come of the appeal is totally erroneous. This is because the main role of an appellate court is to correct errors in the lower court's decision that are necessarily vital to the outcome of the case. The process of an appeal is not aimed at saddling the appellate court with the unnecessary burden of entertaining or resolving all issues raised in an appellant's brief regardless of whether the out-come of such exercise has any relevance to the justice of the entire case or likelihood of turning the verdict on appeal in favour of the appellant.

I had the privilege of reading the lead judgment written by my learned brother, I. T. Muhammad, JSC. The facts of the case are well set out therein and all the issues raised in the appeal are fully discussed. I entirely agree with his reasoning and conclusions as set out in the lead judgment. For the reasons given above and the fuller reasons given in the lead judgment, I also, hold that there is totally no merit in the appeal and I accordingly dismiss it with costs as assessed in the lead judgment

#### MOHAMMED JSC

G I have had the privilege of reading the judgment of my learned brother Muhammad, JSC which he has just delivered. The facts of the case which involves a land dispute between members of the same family, are well set out in the judgment. All the issues raised for determination in the appeal have been fully considered and resolved therein. I entirely agree that there is no merit at all in this appeal which ought to be dismissed. However, I wish to throw more light on the complaint of the Appellant contained in issue 3 which reads -



*“3. Whether the Court of Appeal was right in its variation of the order/award made by the trial Court in the circumstances of this case.”*

In his judgment delivered on 30<sup>th</sup> July, 1984, the learned trial judge after finding partially for the Plaintiffs, made the following orders B in their favour -

*“(1) That the land in dispute called Ugbusi land as shown in Exhibit ‘D’ is the property of entire Omovwiare’s family.*

*(2) Injunction restraining the Defendants, their servants or agents C from further sales of the land in dispute without the authority and consent of the members of Omovwiare family.*

*(1) The Defendants to account only for the sale to PW5”.*

However, the Court below after dismissing the appeal by the Defendants against the judgment of the trial Court containing the declaration and orders quoted above, in its judgment delivered on 12<sup>th</sup> May, 1989, D made variation in the judgment of the trial Court being, complained of in the issue now under consideration. Part of this judgment of the Court below reads -

*“Consequently this appeal fails arid it is hereby dismissed; the E judgment of the Court below is affirmed except as regards claim (1) which is varied as follows:-*

*‘It is hereby declared that the Plaintiffs are entitled to a customary right of occupancy in respect of the land called Ugbusi land and shown F on Exhibit C (Respondent’s plan) less the area sold to PW5 Johnson Ig-howereho vide section 40 of the land Use Act 1978.”*

It is quite clear that only the first relief granted to the Plaintiffs now Respondents by the trial Court that was varied by the Court below. The reasons for the variation as given by the Court below was mainly to bring relief (1) granted to the Plaintiffs by the trial Court in line with the judgment of that Court which affirmed the sale transaction between the Defendants/Appellants and PW5 of part of the Omovwiare family land which was the subject of the declaratory relief. In other words, the variation was made to exclude part of the land in dispute sold, to the PW5, which is no longer part of the Plaintiffs/Respondents family land that was the subject H of their action against the Defendants/Appellants. The variation was also

made by the Court below to bring the title of the Plaintiffs/Respondents declared in the first relief granted to them in line with the title recognized under Section 40 of the Land Use Act 1978 which provides -

*“40. Where on the commencement of this Act proceedings had been commenced or were pending in any Court or Tribunal (whether B at first instance or on appeal) in respect of any question concerning or pertaining to title to any land or interest therein, such proceedings may be continued and be finally disposed of by the Court concerned but any order or decision of the Court shall only be as respects the entitlement of C either of the parties to the proceedings to a right of occupancy, whether statutory or customary, in respect of such land as provided in this Act.”*

Furthermore apart from the fact that the variation of the award or order made by the trial Court in this respect is fully sanctioned by the provisions of Section 16 of the Court of Appeal Act 1976, it is also allowed D by the provisions of Order 3 Rule 23 of the Court of Appeal Rules which states -

*“23(1) The Court shall have power to give any judgment or make any order that ought to have been made, and to make such further or other E order as the case may require including any order as to costs.*

*(2) The powers contained in paragraph (1) of this rule may be exercised by the Court, notwithstanding that the Appellant may have asked that part only of a decision may be reversed or varied, and may also be F exercised in favour of all or any of the Respondents or parties, although such Respondents or parties may not have appealed from or complained of the decision.”*

This power of the Court of Appeal to amend or vary an award or order of the trial Court in exercise of its jurisdiction in hearing an appeal, G was considered and affirmed by this Court in Attorney-General of Bendel State & Ors v. Aideyan (1989) 4 N.W.L.R. (PT. 118) 646 at 680 - 681.

For the foregoing reasons therefore, I hold that the Court below was indeed right in its variation of the order and award made by the trial H Court in the circumstances of the present case.

Accordingly, for the above reasons and fuller reasons given in the leading judgment, I also dismiss this appeal and abide by the order on

costs in the leading judgment.

### OGBUAGU JSC

There were originally two Plaintiffs who brought the suit leading to this appeal, in a representative capacity on behalf of the Omovwiare Family, Iwrekpokpo Village, Ughelli, in the Ughelli Judicial Division of the former Bendel State, against the Defendants/Appellants who are of the same family/village. At the time this appeal was heard by this Court, the 2<sup>nd</sup> Plaintiff had died leaving the 1<sup>st</sup> Plaintiff/Respondent as the only surviving Plaintiff/Respondent. Also, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Appellants, had also died leaving the 3<sup>rd</sup> Defendant/Appellant as the only surviving Defendant.

At the trial High Court presided over by Maidoh, J. the Plaintiffs' case succeeded in part. In his Judgment, the learned trial Judge at page 272 of the Records, stated as follows:

*“(1) That the land in dispute called Ugbusi land as shown in Exhibit ‘D’ is the property of entire Omovwiare family.*

*(2) Injunction restraining the Defendants, their servants or agents from further sales of the land in dispute without the authority of Omovwiare family.*

*(3) The Defendants to account only for the Sale to P.W.5”.*

Dissatisfied with the judgment, the Defendants/Appellants, appealed to the Court of Appeal, Benin Division, (hereinafter called “the court below”) who in its Judgment delivered on 12<sup>th</sup> May, 1989 - per Ogundare, JCA, (as he then was) dismissed the appeal and affirmed the Judgment of the trial court except as regards claim (1) which it varied as follows: -

*“It is hereby declared that the Plaintiffs are entitled to a Customary right of occupancy in respect of the land called Ugbusi land and shown on Exhibit ‘C’ (Respondent’s plan) less area sold to P.W.5, Johnson Ighowiareho -vide section 40 of the Land Use Act 1978.....”.*

At page 332 of the Records, His Lordship, stated inter alia, as follows:

*“In my view, having regard to Exhibit D and evidence of P.W.5,*

*the trial Judge was right in accepting the case for the respondents and finding that the land in dispute belonged to the Omovwiare family. I have no reason to interfere with this finding”*

As rightly formulated by the court below at the beginning of its Judgment at page 304 of the Records,

*“The main question called for determination in this appeal is as to whether the land in dispute between the parties belongs to the Defendants/Appellants exclusively or to the Omovwiare family, to which the parties belong.....”.*

I wish to state that it was entitled to do so as this is also settled. See the cases of Ogunbiyi v. Ishola (1996) 6 NWLR (Pt.452) 12 (a) 24; (1996), 5 SCNJ. 143; Awomgbagbe Light Industries Ltd. v. Chinukwe & anor. (1995) 4 NWLR (Pt 390) 379; (1995) 4 SCNJ. 162 and Musa Sha (Jnr.) & anor. v. Da Rap Kwan & 4 ors. (2000) 5 SCNJ. 101 @ 127 just to mention but a few.

Aggrieved again by the sold decision, the Appellants, appealed to this Court originally on four (4) Grounds of Appeal. They later applied for leave to file and argue one (1) more Ground of Appeal as Ground 5. It turned out that three (3) other grounds, were added. In the Brief of Argument, five (5) issues, have been formulated for determination, namely,

*“1. Whether the Court of Appeal was right when it failed to consider and pronounce upon all the issues formulated by the Appellants from the Grounds of Appeal validly filed and thereby occasioning a grave miscarriage of justice.*

*2. Whether the document Exhibit ‘A’ which did not comply with Sections 2 and 16 of the Lands Instruments Registration Law Cap 81 Vol. 4, Laws of Bendel State of Nigeria 1976, is admissible, null and void and/or worthless for all purposes in the circumstances of this case.*

*3. Whether the Court of Appeal was right in its variation of the order/award made by the trial court in the circumstances of this case.*

*4. Whether having regard to the pleadings and evidence on record before it, the judgment of the Court of Appeal affirming/confirming the judgment of the trial court was right.*

*5. Whether having regard to Exhibit ‘D’ and the evidence of P.*

*W. 5, the Court of Appeal was right in accepting the finding of the trial High Court that the land in dispute belonged to the Omovwiare family”.*

On its part, the Respondents, formulated one (1) issue for determination/namely,

B “*Whether the land in dispute is the property of Omovwiare Family of Iwhrekpokpo Village to which both parties belong or whether the land belongs to the Defendants exclusively. This was the main issue dealt with after considering all the issues raised before the lower court”.*

C At the hearing of this appeal on 20<sup>th</sup> March, 2007, the learned counsel for the Appellant, submitted that the Respondent’s Brief has argued the Appellants Grounds of Appeal one after the other, rather than the issues. Although the learned counsel for the Respondent, did not reply to this assertion, I however, note at pages 8 and 9 of the said Brief, that only four (4) original issues of the Appellants, were argued, i.e. Issues 1, D 2, 3 and 4. I agree that in paragraph E page 4 of the Respondent’s Brief, it is titled, “*RESPONDENT’S REPLIES TO APPELLANTS GROUNDS OF APPEAL*” and from the said page 4 to page 8, the seven (7) Grounds of Appeal, were argued. It is now firmly settled that in Brief writing, it is E the issues that are argued and not Grounds of Appeal. However, no appeal will be refused on the ground of a defective Brief. See the case of Tukur v. The Government of Taraba State & 2 ors. (1997) 6 NWLR (Pt.510) 549 @ 569- (1997) 6 SCNJ. 81 @ 99 citing other decided cases therein. F In other words, the attitude of an Appellate Court and which is settled, is that it will use a Brief however inelegant it may be. See the cases of Gurara Securities Finance Ltd. v. T.I.C. Ltd. (1999) 2 NWLR (Pt.589) 29 C.A. citing several other cases therein and Sofolahan & 5 ors. v. Chief Folakan & 12 ors. (1999) 10 NWLR (Pt.621) 86 @ 96 citing the case of G Akpan v. Uyo (1986) 3 NWLR (Pt.26) 63.

In respect of Issue 1 of the Appellant, there is no doubt that it is now firmly settled that it is the duty of all courts except this Court, to consider all issues placed or raised and argued before them by all the parties except in the clearest cases. In this Court, if one (1) issue considered or determined by it, takes care of the entire appeal, it need not consider other H issues raised in that appeal. See the cases of Orubu v. National Electoral

Commission & 13 ors. (1988) 2 SCNJ. 254; Ifeanyichukwu (Osondu) Co. Ltd. v. Solel Boneh (Nig.) Ltd. (2000) 5 NWLR (Pt.656) 322; (2000) 3 SCNJ. 18 @ 38; Owodunni v. Registered Trustees of Celestial Church of Christ & 3 ors. (2000) 6 SCNJ. 299 @ 426 - 427 and Brawal Shipping (Nig.) Ltd. v. F. I. Onwadike Co. Ltd. & anor. (2000) 6 SCNJ. 508 @ 522 B where the rationale for the rule/proposition of the jaw, was/is restated. See also the cases of Ojogbue & ors. v. Ajie Nnubia & ors, (1972) 1 All NLR (Pt.2) 226 @ 232 - per Coker, JSC; Okonji & ors. v. Njokanma & ors. (1991) 7 NWLR (Pt.202) 131 (it is also reported in (1991) 9-10 SCNJ. 27) C and Anyaduba & anor. v. N.R.T.C. Ltd. (it is Nigeria Renowned Trading Co. Ltd. (No. 2) (1992) 5 NWLR (Pt. 243) 535 (it is also reported in (1992) 6 SCNJ. 204) cited and relied on in the Appellant’s Brief.

I note however, that the impression appears to be that the court below, dealt with and considered two (2) issues before reaching its said D decision affirming the decision of the, learned trial Judge. But such impression, in my respectful view, will be erroneous. This is because, from the said lone issue it formulated, it treated together, all the said issues of the Appellant and was thereafter, satisfied that from the totality of the E pleadings and evidence before the trial court, that the trial court, was right in its decision. See pages 319 to 325 of the Records.

I find no substance in this Issue 1 of the Appellant. I dismiss it together with all the arguments in respect thereof. F In respect of Issue 2, the court below agreed with the learned trial Judge who stated at pages 270 and 271 of the Records, inter alia, as follows:

*“The document Exhibit ‘A’ no doubt, cannot in law transfer any Title to anybody as it did not comply with the requirements of Sections 2 and 16 of the Lands Instrument Registration Law Cap. 81 Vol. 4 Laws of G Bendel State of Nigeria 1976. It is therefore in my view unnecessary to ask Court to declare null and void, the said agreement on the ground of fraud. In fact no particulars of fraud were pleaded nor satisfactorily given in evidence”.* H

It then held that although Exhibit ‘A’ was admitted by the trial court, that from its finding and holding as appears above, the learned trial Judge, was right in ignoring the said Exhibit ‘A’. I cannot fault this con-

clusion or view of the court below. Issue 2 is therefore, in my respectful view a non-issue.

As regards Issues No. 3 and 5, my quick answer is that there is, with respect, a misconception by the Appellant that Exhibit “D”, cannot be used to prove ownership of land. But in the instant case leading to this appeal, it is admissible as an acknowledgment of the payment of money and coupled with the P.W.5 being put in possession of part of the land in dispute, raises a presumption, that he entered into possession, under a contract of sale and from that this arose, an equitable interest capable of being converted into a legal estate by specific performance. See the cases of Obijuru v. Ozims (1985) 4 S.C. 142 @ 162 - 167; (1985) 2 NWLR (Pt.6) 167; Ogunbambi v. Abowab 13 WACA 222 @ 224; Chukwu & anor. v. Anaene & ors. (1973) 3 ECSLR 48 citing the case of Okpata & anor. v. Chief Obianor FSC. No. 201/59; Akingbade v. Elemosho (1964) 1 ANLR 154; Fakoya v. St. Paul’s Church Sagamu (1966) 1 ANLR 74 and Oni v. Arimoro (1973) NMLR 237 just to mention a few. I note that some of the above cases, were cited and relied on in the Appellant’s brief.

Thus, where a purchaser of land or a lease, is in possession of land by virtue of a registrable instrument which has not been registered, and has paid the purchase money or the rent to the Vendor or the lessor, the purchaser or the lessee, has acquired an equitable interest in the land which is as good as a legal estate See the case of Tijani v. Akinwunmi (1990) 1 NWLR (Pt.25) 237 C.A. In other words, a registrable instrument, which has not been registered, is admissible to prove an equitable interest and to prove the payment of purchase money or rent. See also the cases of Savage v. Sarrough (1937) 12 NLR 14; Oni v. Arimoro (1973) 3 S.C. 163; Bucknor-Madean v. Inlaks (1980) 8-11 S.C. 1 and Obijuru v. Ozims (supra) just to mention but a few.

This means that the variation order made by the court below in my respectful but firm view, was in order and in consonance with the justice of the case, having regard to all the circumstances of the case including the evidence of the P.W.5 and Exhibit ‘D’ which the trial court accepted and admitted. There is evidence in the Records, that the said land, was held or owned by the Vendors, under Native Law and Custom, and as such, there

is nothing like written agreements or contracts or registered conveyance which in the circumstances, are not necessary, to effect a valid sale under customary law. The payment of purchase money by the P.W.5 and the delivery of possession to him, created, a valid title by Native Law and Custom. See the cases of Isaac Yaya v. Mogaga 12 WACA 132; Ogunbambi v. Abowab (supra) @ Page 225 – per Verity, Ag. J. and Obijuru v. Ozims (supra) and many others already cited or referred to by me hereinabove.

It need be stressed that the law, has long been settled that if land, as in the instant case leading to this appeal, is held under Native Law and Custom, any such out and out sale of such land, can by no stretch of imagination, be treated as inferior to other modes of sale such as by way of conveyance or other written contracts. See the cases of Oshodi v. Balogun & ors. 4 WACA 1 @ 6; Suleiman & anor. v. Johnson 13 WACA 213; Aboyade Cole v. Folami (1956 - 60) NSCC 59 @ 61 - per Jibowu, Ag. FCJ.; Akingbade v. Elemosho (1964) 1 ANLR 154: (1964) All NLR 146 - per Ademola, CJN and Ayinla v. Sijuwola (1984) 5 S.C. 44 @ 77 and many others.

That Exhibit “D” was admitted as a receipt or as evidence of the payment of money in consideration of the said sale, is not in doubt. That the learned trial Judge stated that “the document dated 2<sup>nd</sup> July, 1977 between the Defendants and the witness is marked Exhibit “D”, with profound humility and respect, is of no moment. Afterwards, the learned counsel for the Respondent, who undoubtedly, know the state of the law about unregistered instrument or document or transaction by natives under Native Law and Custom - Olorok, Esqr, requested or applied that the document was being tendered as a receipt. The decided authorities I have referred to hereinabove, have held, that such a document, should go in and be treated as a receipt. See also the case of Djuknan v. Orovuyovbe (1967) NMLR 287; (1967) 1 All NLR 134. The Purchase Receipt, is admissible in evidence though not registered. See also the case of Cardoso v. Daniel (1986) 2 S.C. 491 @ 570.

As a matter of fact, it is also settled that in order to transfer an absolute title under Native Law and Custom, it is necessary that such sale as the one effected with the P.W.5 who gave evidence at page 197 of the

Records about the presence of witnesses/witness including his brother Daniel Eghemeroho, should be concluded, in the presence of witnesses who actually saw the actual “Handing over of the Property”. See the case of Erinosh v. Owokoniran & anor. (1965) NMLR 479. So and in effect, once a document, shows simply, customary agreement over the sale of a piece of land, it does not therefore, fall within the definition of an Instrument for the purpose of the Land Instrument Registration Law or Act. See Akingbade v. Elemosho (supra); Dr. Joseph Okoye v. Dumez Nig. Ltd. & anor. (1985) 1 NWLR (Pt.4) 783 @ 790 S.C; Agwunedu & 7 ors. v. Onwumene (1994) 1 NWLR (Pt.321) 375: (1994) 1 SCNJ. 106 (a), 119 - per Mohammed, JSC and also cited and relied on in the Appellant’s Brief.

I have gone this far, because of, with respect, the unnecessary fuss or the heavy weather made in the submissions at page 14 of the Appellant’s Brief and the Reply Brief in respect of Issues 3 and 5. As to the order of variation made by the court below, in my respectful view, there was even no need to rely on Section 16 of the Court of Appeal Act (hereinafter called the “Act”) and/or Order 3 Rule 23 of its Rules (hereinafter called “the Rules”). I say so because, it is further firmly settled that if a party received title to land under Native Law and Custom and there is proof or evidence that money was paid for the land coupled with an entry into possession (as in the instant case), it will be sufficient even to defeat the title of a subsequent purchaser of the legal estate, if the possession, is continuously maintained. See the cases of Orasanmi v. Idowu (1959) 4 FSC 40 and Soremekun v. Shodipo (1959) LLR. 30. In other words, if land is sold to a party, without the execution of a formal Deed of Conveyance, his interest, was no more than equitable. Therefore, if even it was an equitable interest, but if it is coupled with possession, it cannot be overridden by a legal estate. See the cases of Oshodi v. Balogun & ors. 4 WACA 1 @ 6 (supra) and Suleiman & ors. v. Johnson 13 WACA 213 supra) So, without even resorting to the said provision or power in the said Act and Rules, but since the P.W.5 had an equitable interest in the land the variation could rightly be made, more so, being a transaction effected under Native Law and Custom. The argument in the Appellant’s Brief at

page 8 that there was no evidence to show that the land in dispute is in a rural area, or that it is not in an urban area, with respect, does not arise in the circumstances. If it is not in a rural area, the original Appellants should have pleaded and given evidence to that effect but they did not.

For purposes of emphasis, I note that on the said 20<sup>th</sup> March, 2007 when this appeal came up for hearing, the learned counsel for the Appellant cited and relied on their case No 3 of their List of Authorities Alhaji Ishola v. Union Bank of Nig. Ltd. (2005) 6 NWLR (Pt. 922) 422 @ 439 (it is also reported in (2005) 2 SCNJ. 191 @ and (2005) 2 S.C. (Pt. II) 80 @ 89 in support of his submission that a document tendered for a particular purpose, cannot be used for any other purpose. He further submitted that Exhibit ‘D’, was used by the two lower courts as evidence of ownership and that this was wrong. That this Court, can exclude such evidence and so, can exclude any wrong use of a document.

I note that the above submissions, are the same as in the Appellant’s issues No. 3 and 5 at pages 7 and 14 of his Brief and Reply Brief. Even if it means repeating myself, the decided authorities I have referred to hereinabove in this Judgment some of which were cited and relied on in the Appellant’s Brief at page 7 thereof, have clearly and unambiguously, stated and restated, that a document such as Exhibit ‘D’, is not only admissible, but confers an equitable interest or title on the purchaser such as the P.W.5, more so as therein, there is evidence of payment of purchase of money and there is also evidence that the P.W.5 was given possession of the property sold to him. The court below, was therefore, right in it’s finding or holding in favour of the P.W.5 and also in the variation order it made. I therefore, answer in the Affirmative Issues No.3 and 5 of the Appellant and the arguments in support in the Appellant’s said Briefs.

Specifically, in respect of Issue No. 3, the court below, in my respectful but firm view, undoubtedly, evaluated the said Issue and came to the conclusion that the trial court was right in its decision that the land was jointly owned by the Omovwaire family.

Now, coming to the powers of the court below under the Act and the Rules, the Rule provides as follows:

“23(1) The Court shall have power to give any judgment or make

any order that ought to have been made, and to make such further or other order as the case may require including any order as to costs.

(2) The powers contained in paragraph (1) of this rule may be exercised by the Court, notwithstanding that the Appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the Respondents or parties, although such Respondents or parties may not have appealed from or complained of the decision”.

In the case of Mrs. Alero Jadesinmi (nee Okotie-Eboh) v. Adoh Okotie-Eboh & 5 ors. (1986) 1 NWLR (Pt.16) 264 (a), 280 S.C.; Nnamani, JSC, (of blessed memory) in his concurring Judgment, stated inter alia, as follows:

“There is no doubt in my mind that the provision in the Federal Appeal Act is intended among other things, to ensure the speedy administration of justice..... It is to achieve this speedy dispensation of justice, and to do substantial justice between the parties that Appellate Courts have been invested with power to do a number of things which the lower court would have done without having to send the suits back to those lower courts. See the case of Chairman of the Board of Inland Revenue vs. Joseph Reziallah & Sons Ltd. (1962) 1 All NLR 1; Ezera v. Ndukwe (1961) All NLR 564”.

His Lordship at page 281 thereof, referred to a similar provision in Section 22 of the Supreme Act 1976 and to some number of decided cases where the provision had been invoked in the past. See also the case of The Attorney-General of Bendel State & 2 ors. v. Aideyan (1989) 4 NWLR (Pt.118) 646 @ 681, per Nnaemeka Agu, JSC.

On the said decided authorities, I still maintain, that the court below, was right in its said Order and also pursuant to Section 40 of the Land Use Act, 1978 which it relied on.

Finally, I note that there are concurrent findings of fact by the two lower courts and on the numerous decided authorities in respect thereof, this Court, cannot interfere. It is from the foregoing and the fuller lead Judgment of my learned brother, Muhammad, JSC, that I too, find no merit in this appeal which fails. I too, affirm the decision of the court below and

I abide by the consequential Order in respect of costs.

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