

**SUPREME COURT OF NIGERIA**  
4TH APRIL, 2008 SC. 302/2002  
**CORAM:- S. U. ONU, D. MUSDAPHER, M. A.**  
**MUKHTAR, I. F. OGBUAGU, P. O. ADEREMI, JJSC**

S. O. ADOLE	..... APPELLANT
AND	
BONIFACE B. GWAR	..... RESPONDENT

---

LAND USE ACT - Pleadings - Location of the land - Where not pleaded - There can be no evidence to enable the court - To hold that the land is within urban area (H1)

APPEALS - Reversal - Error of lower court - That did not occasion a miscarriage of justice - Cannot ground setting aside of the judgment (H2)

LAND USE ACT- Statutory right of occupancy - Can be validly granted by the Governor vide s. 5(1) of the Act - But any existing grant is not thereby extinguished (H3)

LAND USE ACT - Statutory right of occupancy - Grant under s. 5(2) of the Act - Can only defeat existing vested right - If such right was revoked - Otherwise the later right will be invalidated (H4)

LAND USE ACT - Vested rights - Deemed right of occupancy - Cannot be extinguished under s. 5 of the Act - By mere grant of another right - Without its being properly revoked vide s. 28 of the Act - Only existing right like that of a licensee or mortgagee - Can be defeated by mere grant of a right of occupancy (H5)

LAND USE ACT - Valid title - Certificate of occupancy - Is not a conclusive evidence of a valid title - Proof of better title as in this case - Shall cause the court to set aside the certificate (H6)

LAND USE ACT - Revocation - Vested right - Extinguishing of - Can only be valid where same is revoked under s. 28 of the Act - Notice

of which must be served - In accordance with s. 44 of the Act (H7)

LAND USE ACT - Title - Root of - Where challenged - Claimant must prove validity of his root of title - And a better title in order to succeed (H8)

LAND LAW - Title - Declaration of - Is made in favour of the party that proves better title - Defendant/respondent by his pleadings and evidence - Has a better title to the land in dispute (H9)

### **FACTS**

Before the Benue State High Court, the plaintiff/appellant filed an action against the defendant/respondent. Appellant alleged that respondent trespassed into his piece of land along David Mark Bye Pass, Makurdi. He, therefore, claimed aggravated damages and perpetual injunction against respondent. Appellant relied on Exhibit 2 (Certificate of Occupancy No. BNA 5131) in proof of his title to the disputed property. Respondent for his part, filed a counter claim in his amended statement of defence with one relief, that he is deemed holder of a Certificate of Occupancy in respect of the land in dispute. At the end of hearing, the trial judge dismissed the counter claim and awarded title to appellant.

Respondent's appeal to the Court of Appeal was allowed on a ground different from the basis of Supreme Court's holding. Lower court found that appellant's Exhibit 2 (Certificate of Occupancy) was not made in error. But it held that appellant failed to prove his case as there was no evidence proving that the land is located within a designated urban area. It declared Exhibit 2 invalid. Being aggrieved, appellant has now appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

a) Were the learned Justices right in the circumstance of this case in holding that there was no evidence led to show that the land in dispute is within Greater Makurdi Urban Area. Or put in another way, did the plaintiff (appellant) on the evidence produced by him successfully establish that the land in dispute is situated within the Makurdi Urban Area.

b) Whether the power conferred on the Governor under Section 5(2) of the Land Use Act, 1978 presupposes prior strict compliance with Section 28 of the Act where there exist title holders to the land affected.

(c) Whether or not the Statutory Right of Occupancy issued to the appellant was validly granted and could therefore extinguish the respondent's title as a deemed title holder considering Sections 5 subsection 2 and 34 subsections 5 and 6 of the Land Use Act, 1978.

d) Whether or not the respondent, now appellant proved his title to the piece of land in dispute by the production of a document of title (Certificate of Occupancy No. BNA 5131) referred to as Exhibit 2 from the record and or, whether the costs of N5,000 awarded was not excessive.

***HELD*** (Unanimously dismissing the appeal per **ONU JSC**)  
***Pleadings - Location of the land***

1. By all necessary implications therefore, they, who wanted the court to hold that the disputed plot of land was within the Makurdi Urban Area, were required by law to plead the fact and prove the same at the hearing of their case. (See Order 25 Rule 4 of the Benue State High Court (Civil Procedure Rules), Edict, 1988). See also Section 135(1) of the Evidence Act). Nowhere in his Statement of Claim (see pages 4, 5 and 6 of the record) did he plead the fact to enable him give evidence on it at the trial. Rather, the appellant pleaded and tendered Certificate of Occupancy No. BNA 5131 (Exhibit 2) to prove only the fact that he is the rightful owner of the disputed plot, but not its situ. (See paragraphs 3 and 4 of the plaintiff/appellant's Statement of Claim on page 117 lines 13 and 14 of the record to the effect that "I told him that, that area is within urban area traditional title notwithstanding" did not only go to nothing, it was equally clearly bereft of the facts and details which would have led the trial court to believe and thereby concluded that the disputed plot was within Makurdi Urban Area.

From the foregoing, I hold the view that there was no evidence before the court below proving the location of the land in issue which would have enabled the court to arrive at the decision

that it falls within the area designated as urban under the 1984, Order. The learned Justices of the Court of Appeal were therefore right when having taken judicial notice of Gazette No. 21 Vol. 10 of 23rd May, 1985 which was published in the 1984, Order (See page 184 line 23 of the record), proceeded to hold that they did not find as such. (p. 1455 F)

***APPEALS - Reversal - Error of lower court***

2. This court has held in several cases that it is not every error of the lower court that will result in an appeal being allowed but only such errors that occasion grave miscarriage of justice. I am of the view that the error of the court below (if any) not being one that has occasioned a miscarriage of justice should not constitute the ground for setting aside the judgment of the court below. I accordingly decline to set aside the decision of the court. (p. 1456 H)

***Statutory right of occupancy - Can be validly granted by Governor***

3. It is trite that a deemed grant comes into existence automatically by the operation of law and the grantee acquires a vested right just as an actual grantee of a Right of Occupancy.

It is not in doubt that under Section 5(1) of the Land Use Act, it shall be lawful for the Governor to grant Statutory Right of Occupancy to any person in respect of land, whether or not in an Urban Area. Under Section 5(2) of the Act, when such grant is made, all existing rights to the use and occupation of the land so granted shall be extinguished.

Be it noted that the rights that are automatically extinguished following the exercise of the powers of the Governor under Section 5(2) of the Act, are “existing rights to the use and occupation of the land” such as the rights of licences, mortgages etc. but not vested rights such as Statutory Right of Occupancy actually or deemed granted which are recognised by the Act itself.

Where therefore there exists a prior grant, Section 5(2) of the Act, cannot be applied to defeat it, as the section cannot in that case be swallowed wholesale. (p. 1457 D)

***Statutory right of occupancy - Grant under s. 5(2)***

4. The section (i.e. Section 5(2) of the Act,) will only be able to defeat the existing vested right if such right is revoked under Section 28 of the Act for any of the reasons stated there-under. Otherwise, there will be in existence at the same time two valid Rights of Occupancy granted to different persons in respect of the same parcel of land, as was the case in the matter at hand. In such a case, it was contended, the latter Right of Occupancy is liable to be invalidated as the court below rightly did in this case. B

A deemed Statutory Right of Occupancy, being a vested right recognised by the Act itself, cannot be extinguished under Section 5(2) of the Land Use Act, by the issue of a Statutory Right of Occupancy over the same plot. The right can only be revoked under Section 28 of the Act. The only option open to the Governor of Benue State was to have first revoked the deemed Right of Occupancy of the respondent before granting Exhibit 2 to the appellant over the same plot of land. C

Having failed to do so, the court below also properly invalidated Certificate of Occupancy No. BNA 5131, issued without first revoking the pre-existing Right of Occupancy of the respondent. I so hold. (p. 1458 A) D

***Vested rights - Deemed right of occupancy***

5. A deemed Right of Occupancy is also a vested right recognised by the Act itself. Consequently, it must first have to be properly revoked or nullified before another Statutory Right of Occupancy can be issued in its place. See *Olohunde v. Adeyoju* (supra), per Uwaifo, JSC., at 505. The right will be properly revoked if and only if the revocation is done under Section 28 of the Land Use Act, for any of the reasons stated therein. E

Thus, being a vested right recognised by the Act itself, the deemed Right of Occupancy of the respondent cannot be lightly taken away from him, and worst of all, simply by the grant of another Right of Occupancy over the same land to the appellant by the Governor as was done in this case. Be it noted that it has long been settled by this court that one Right of Occupancy cannot just on its face extinguish another. F

Thus, the Statutory Right of Occupancy granted the appellant was incapable of and infact did not extinguish the respondent's deemed Statutory Right of Occupancy over the land. The provisions of Sections 2 and 5 of the Act are not applied, in my respectful view, to defeat vested rights. Rather, they are only applied to defeat existing rights to the use and occupation of the land such as the right of a licensee, a mortgagee etc. (pp. 1460 C/1462 A)

***Certificate of occupancy - Is not a conclusive evidence of a valid title***

6. A Certificate of Occupancy issued on the Land Use Act, it must be stressed, cannot be said to be conclusive evidence of any interest or valid title to land in favour of the grantee; it is only prima facie evidence of such right, interest or title without more and may in appropriate cases be effectively challenged and rendered in-valid, null and void.

Consequently, where it is proved, as in this case, that another person other than the grantee of a Certificate of Occupancy had a better title to the land, the court may have no option but to set aside the grant or discountenance it as invalid, defective or spurious as the case may be.

Considering the circumstances under which the appellant was granted Exhibit 2 over the land in issue, the only option open to the trial court was to have found as submitted above and to invalidate the grant to the appellant evidenced by Exhibit 2. Having failed to do so, the court below, therefore, properly held that Exhibit 2 was invalidly granted and accordingly properly invalidated the same. (p. 1461 A)

***Vested right - Extinguishing of***

7. Under the law, the only recognised manner of extinguishing a vested right is by revoking the same for any of the following reasons:

- (a) For overriding public interest.
- (b) For public purposes.
- (c) For breach of the provisions imposed by Section 10 of the Land Use Act.
- (d) for breach of any terms envisaged by Section 8 of the Act.

(e) For failure to comply with the requirements specified in Section 9(3) of the Act.

Even then, under Section 28(6) and (7) of the Act, notice of the revocation must be given to the holder of a vested right before such right can be revoked and the service of the notice must be in accordance with the provisions of Section 44 of the Act. It is only where such proper and adequate notice was given to the holder as stated above that his Right of Occupancy shall be extinguished on receipt of such notice. (p. 1462 D)

### ***LAND USE ACT - Title - Root of - Where challenged***

8. As to whether or not the appellant as plaintiff proved title to the plot of land in issue by the production of Exhibit 2, I am in agreement with the respondent's submission that the appellant did not prove his root of title. This is because, this court has held repeatedly that once a party pleads and traces his root of title to a particular source and the title is challenged, to succeed, the party must not only establish his title to the land in issue, he must also satisfy the court as to the title of the source from whom he claims.

Where a plaintiff, as in this case fails to prove the base upon which he founded his title, the claim will fail.

In other words where, as in the instant case, the respondent as the defendant/counter-claimant challenged the appellant's title (Exhibit 2) and it was the case of the respondent that he is not only a holder of a Statutory Right of Occupancy deemed to be granted by the Governor but also that even by traditional history and long possession, put his title in issue. Seepages 146 - 148 of the record. His title having been thus challenged, it was incumbent on the appellant as plaintiff to have proved the following:

- (a) The validity of Exhibit 2, his root of title.
- (b) That he has a better title as compared to the respondent as defendant. (p. 1463 C)

### ***Title - Declaration of***

9. As to whether the appellant has a better title as compared to the respondent, it is trite that where there are two claimants to a parcel of land, declaration of title is made in favour of the party that proves

better title. From the evidence adduced and the circumstances of the case in hand, I hold the view that the respondent proved a better title to the land in issue. He pleaded and proved that he is not only a holder of a Statutory Right of Occupancy under Section 34 of the Land Use Act, but also that even by traditional history and long possession, he has a better title to the land. (p. 1464 C)

## NOTABLE POINTS OF INTEREST

### C OGBUAGU JSC

1. *Land Use Act is not a draconian document or a magic wand*  
In the case of *Ogunleye v. Oni* (1990) 4 S.C. 130; (1990) 2 NWLR (Pt. 135) 745 at 752, 772 - 785; (1990) 4 SCNJ. 65 at 81-83, it was held that the Act is not a draconian document it is thought to be.  
D That land whether developed or undeveloped even say in a rural area held by a person under a recognized customary tenure before the commencement of the Act, will continue with such rights and privileges on the land, subject to the provisions of the Act. That whether developed or undeveloped, the holder, shall hold such land as if a Customary Right of Occupancy had been granted to him by the Local Government of that area. It is emphasized that the Act, is not a magic wand it is being portrayed to be or a destructive monster that at once swallowed all rights on land and the Governor or Local Government by mere issuance of a piece of paper, cannot divest families of their homes and agricultural lands overnight with a rich holder of Certificate of Occupancy, driving them out with bulldozers and cranes.  
E  
F That unless land is acquired compulsorily in accordance with the provisions of the Act, for example, for overriding public interest, or for public purpose, by the Local Government or State Government whereby, compensation must be paid, nobody shall be deprived of his land. (p. 1474 A)

### 2. *Effect of the Land Use Act*

H The lesson to be learnt by all adult Nigerian Citizens including Public Officers and Issuing Authorities under the Act, is to bear always in mind and in fact, appreciate that the Act, has not conferred any power or powers on any body and/or Authority, to divest original land own-



ers of their title to land vested in them before the commencement of the Act, unless pre-conditions set out in the Act have been met. In other words, the Act has not done away with all incidents of land ownership known to the people before its promulgation.  
(p. 1480 G)

B

### **ADEREMI JSC**

*3. There is sufficient proof that land in dispute is located in an urban area*

Exhibit 2 is a sufficient proof of the averments in paragraphs 3 and 4 C of the Statement of Claim that the land in dispute is located in an urban area. More importantly are the legislations referred to supra and relied upon by the appellant; they point conclusively and with legal force that the land is situate in an urban area. I cannot think of any other proof required to show that the land is located in an urban D area. Issue No. 1 is therefore resolved in favour of the appellant; the court below is wrong to have held that the plaintiff/ appellant failed to establish that the land in dispute is located in an urban area.  
(p. 1485 B)

E

*4. Interpretation of statutes on compulsory acquisition of property - Attitude of courts*

It is not in doubt that the main purport of the Land Use Decree or Act is about acquisition of land. The interpretative stance of the court in F construing any enactment relating to the acquisition of land has always remained the same. In Re Bowman South Shields (Thames Street) Clearance Order (1932) AER 257, the principle was lucidly stated at page 260 thus:-

*“When an owner of a property against whom an order has G been made under the Act comes into this court and complains that there has been some irregularity in the proceedings and that he is not liable to have his property taken away, it is right, I think that his case should be entertained sympathetically and that a statute under which he is being deprived of his rights to property should be construed H strictly against the local authority and favourably towards the interest of the appellant.”*

The above well known dictum was followed by this court in

Alhaji Bello v. Diocesan Synod of Lagos (1973) 3 S.C 103; (1973) 3 S.C (Reprint) 72, where it was stated that the principle guiding this court and indeed any court of law, in the interpretation of provisions of the Constitution and the statutes etc., is to construe fortissime contra proferentes any provision which gives them extraordinary powers of compulsory acquisition of the property of the citizen. (p. 1495 C)

### **REPRESENTATION**

G. I. Enebeli, for the Appellant.

C G. N. Gwebe, for the Respondent.

### **CASES REFERRED TO**

- Anla v. Ayanbola (1977) 4 S.C 63; (1977) 4 S.C  
 Oseni v. Dawodu (1994) 4 SCNJ (Pt. 2) 197 at 209  
 D Alli v. Alesinloye (2000) 4 S.C.(Pt. 1) 111; (2000) 4 SCNJ 264 at 297  
 Savannah Bank (Nig.) Ltd. v. Ajilo (2001) FWLR (Pt. 75) 513  
 Mohamoud J. Lababedi v. Lagos Metal Industries (Nig.) Ltd. (1973) 1 S.C. (Reprint) 1; (1973) NSCC.1 at 6  
 Ogunleye v. Oni (1990) 4 S.C. 130; (1990) 2 NWLR (Pt. 135) 745  
 E Olohunde & v. Prof. Adeyoku (2000) 6 S.C (Pt. III) 118  
 Aromire v. Awoyemi (1972) 2 S.C. (Reprint) 1; (1972) 1 All NLR (Pt.I) 101 at 112  
 Fasoro & v. Beyioku & Ors. (1988) 2 NWLR (Pt. 263) at 270-271  
 Dzungwe v. Gbishe (1985) 2 NWLR (Pt. 8) 528 at 540  
 F Odojin v. Ayoola (1984) 11 S.C. 42  
 Mogaji v. Cadbury (1985) 2 NWLR 393  
 AJani v. Ladepo (1986) 3 NWLR (Pt. 28) 276

### **STATUTES & RULES REFERRED TO**

- Constitution of the Federal Republic of Nigeria 1999, ss.43&44  
 Land Use Act, ss. 5(1)(a),28,34(2)  
 Evidence Act, s. 135(1)  
 Benue State High Court (Civil Procedure Rules), 1988 O. 25 R 4

H

### **LEAD JUDGMENT BY ONU JSC**

This is an appeal against the judgment of the Court of Appeal Jos, (per Obadina, Mangaji and Nzeako, JJCA.), delivered on 14th

May, 2002, in appeal No.CA/J/297/99, wherein they entered judgment for the respondent as appellant, allowed the appeal and the judgment of Ogbole, J., of the High Court of Benue State in Suit No. MHC/219/94, dated 28/6/99, set aside. Specifically, the declaration that the respondent (now appellant) was the title holder of the land in dispute and the injunction granted restraining the appellant/ B  
respondent as well as the general damages awarded are each set aside, dismissed the counter-claim and cost of N5,000 awarded in favour of the appellant/respondent.

The appellant's Statement of Claim (then as plaintiff at the trial C  
court) is on pages 4-6 of the record. The respondent's (then defendant) further Amended Statement of Defence is on pages 77 to 83 of the record. The appellant's Reply to the Statement of Defence is on pages 56 to 59 of the record. The evidence of the appellant and that of his witnesses is on pages 115 to 130 of the record. D

The respondent, as appellant's Brief of Argument is on pages 191 to 207 of the record. The appellant, as respondent's Brief of Argument, is on pages 208 to 256 of the record. The judgment of the Court of Appeal leading to this appeal is on pages 260 to 292. E  
Being dissatisfied with the judgment of the Court of Appeal, the appellant on 16/7/2002, filed a notice and grounds of appeal containing (4) grounds.

At the trial court, the court admitted fifteen exhibits prominent among which Exhibit 2, is Certificate of Occupancy No. BNA 5131, F  
in respect of a piece of land in the Makurdi Urban Area which is the subject of this appeal.

The appellant distilled four issues from his grounds of appeal which the respondent adopted for the determination in this appeal, to wit: G

a) Were the learned Justices right in the circumstance of this case in holding that there was no evidence led to show that the land in dispute is within Greater Makurdi Urban Area. Or put in another way, did the plaintiff (appellant) on the evidence produced by him successfully establish that the land in dispute is situated within the H  
Makurdi Urban Area. (Based on ground 1 of the grounds of appeal).

b) Whether the power conferred on the Governor under Section 5(2) of the Land Use Act, 1978 presupposes prior strict compli-

ance with Section 28 of the Act where there exist title holders to the land affected. (Based on ground 2 of the grounds of appeal).

(c) Whether or not the Statutory Right of Occupancy issued to the appellant was validly granted and could therefore extinguish the respondent's title as a deemed title holder considering Sections 5 subsection 2 and 34 subsections 5 and 6 of the Land Use Act, 1978. (Based on ground 3 of the grounds of appeal).

d) Whether or not the respondent, now appellant proved his title to the piece of land in dispute by the production of a document of title (Certificate of Occupancy No. BNA 5131) referred to as Exhibit 2 from the record and or, whether the costs of N5,000 awarded was not excessive. (Based on ground 4 of the grounds of appeal).

The facts of the case briefly put are as follows:-

The appellant, as plaintiff in the High Court of Benue State before Ogbale, J., claimed that the respondent as defendant trespassed into his piece of land. In consequence, he sought a declaration (declaratory) judgment that respondent as defendant trespassed into his piece of land along David Mark Bye Pass, Makurdi. He in addition claimed aggravated damages and perpetual injunction restraining the respondent, his servants or agents from entering upon the said property or doing any other acts thereon incompatible and inconsistent with the respondent's title and ownership of the said property. The defendant for his part, filed a counter-claim in his Amended Statement of Defence with one relief that he is a deemed holder of a Certificate of Occupancy in respect of the land in dispute.

Pleadings were exchanged and witnesses were called by the two parties at the hearing in the High Court.

In his judgment, the learned trial Judge dismissed the respondent's counter-claim and awarded title to the appellant with N15,000 damages and perpetual injunction restraining the respondent, his servants or agents from entering upon the said property. Dissatisfied with the decision of the trial court, the respondent appealed to the Court of Appeal, Jos, which found as a fact that as far as the issuance of the Certificate of Occupancy NO. BNA 5131 was concerned, it was not made in error but that it was genuinely made. Yet it went on to hold that there was no evidence before the trial court proving the location of the land in issue in order to arrive at a

decision that falls within the area designated as urban under the 1984, Order and therefore failed to prove his case. In the main, the judgment of Ogbole, J., in Suit No. MHC/219/94, dated 28/6/99, was set aside on 14/5/2002, and an injunction restraining the respondent/appellant from entering the piece of land with N5,000 costs against the respondent/appellant adding that the Certificate of Occupancy No. BNA 5131 issued to the appellant was invalid. B

The appellant being dissatisfied with the judgment of the Court of Appeal has now appealed to this court upon four (4) grounds as in the Notice of Appeal dated 15/7/2002, and filed on 16/7/2002, as C hereinbefore stated.

I will now proceed to consider below the issues serially as the (appellant) has done.

Issue 1:

The Benue State Land Use (Designation of Capital as Greater D Makurdi) Order, 1984 declared Makurdi an urban area and all areas specified in the Schedule to the Order within 16 kilometres radius. Section 5(1)(a) of the Land Use Act, empowers the Governor of a State to grant Statutory Right of Occupancy (Certificate of Occu- E pancy) to any person whether or not in an urban area. The possession of title document over the disputed plot by the appellant was not conclusive that the plot in issue was within the 16 kilometre radius constituting greater Makurdi nor within the Makurdi Urban Area as not all lands within the area called Makurdi are Urban Lands. There F was therefore, the need for the appellant to prove that the plot in issue was within the Makurdi Urban Area.

***By all necessary implications therefore, they, who wanted the court to hold that the disputed plot of land was within the Makurdi Urban Area, were required by law to plead the fact and prove the same at the hearing of their case. (See Order 25 Rule 4 of the Benue State High Court (Civil Procedure Rules), Edict, 1988). See also Section 135(1) of the Evidence Act). Nowhere in his Statement of Claim (see pages 4, 5 and 6 of the record) did he plead the fact to enable him give evi- H dence on it at the trial. Rather, the appellant pleaded and tendered Certificate of Occupancy No. BNA 5131 (Exhibit 2) to prove only the fact that he is the rightful owner of the disputed***

**plot, but not its situ. (See paragraphs 3 and 4 of the plaintiff/appellant's Statement of Claim on page 117 lines 13 and 14 of the record to the effect that "I told him that, that area is within urban area traditional title notwithstanding" did not only go to nothing, it was equally clearly bereft of the facts and details which would have led the trial court to believe and thereby concluded that the disputed plot was within Makurdi Urban Area.**

**From the foregoing, I hold the view that there was no evidence before the court below proving the location of the land in issue which would have enabled the court to arrive at the decision that it falls within the area designated as urban under the 1984, Order. The learned Justices of the Court of Appeal were therefore right when having taken judicial notice of Gazette No. 21 Vol. 10 of 23rd May, 1985 which was published in the 1984, Order (See page 184 line 23 of the record), proceeded to hold that they did not find as such.** This court was accordingly urged to affirm the Court of Appeal's decision, and not to disturb it even if this court finds that that court (court below) is in error in holding that there was no evidence before the trial court proving the location of the land in issue in order to arrive at a decision as the court did namely, that the land falls within the area designated as urban under the 1984, Order. This court was urged to so hold because the judgment of the court below was neither founded on this finding and conclusion nor on the fact that the Governor of Benue State did not first revoke the respondent's deemed Statutory Right of Occupancy over the plot in issue before issuing Exhibit 2 (Certificate of Occupancy No. BNA 5131) over the same plot to the appellant.

Thus, it was further argued, that even if the Justices of the court below had found proved that the disputed plot was situated in an Urban Area, this finding would have had no effect whatsoever on the court's subsequent findings on issue No. 1 and the decision reached.

**This court has held in several cases that it is not every error of the lower court that will result in an appeal being allowed but only such errors that occasion grave miscarriage**

**of justice.** See Oseni v. Dawodu (1994) 4 SCNJ (Pt. 2) 197 at 209, Anla v. Ayanbola (1977) 4 S.C 63; (1977) 4 S.C. (Reprint) 37 and Alli v. Alesinloye (2000) 4 S.C. (Pt. 1) 111; (2000)4 SCNJ 264 at 297. **I am of the view that the error of the court below (if any) not being one that has occasioned a miscarriage of justice should not constitute the ground for setting aside the judgment of the court below. I accordingly decline to set aside the decision of the court.**

Issue 2:

This issue raises the question whether in the exercise of his power under Section 5(2) of the Land Use Act, the Governor must first comply with Section 28 of the Act, where there exist two title holders to the same land. The two types of Rights of Occupancy recognisable in law are (1) Statutory Right of Occupancy granted by the Governor under Section 5(1)(a) of the Act.

(2) The Statutory Right of Occupancy deemed to be granted by the Governor pursuant to Section 34(2) of the Act. **It is trite that a deemed grant comes into existence automatically by the operation of law and the grantee acquires a vested right just as an actual grantee of a Right of Occupancy.** See - 1. Savannah Bank (Nig.) Ltd. v. Ajilo (2001) FWLR (Pt. 75) 513, 2. Sunmonu Olohunde & Anor. v. Prof. S. K. Adeyoju (2000) 6 S.C (Pt. III) 118; (2000) 6 SCNJ 470 at 505, per Uwaifo, JSC.

**It is not in doubt that under Section 5(1) of the Land Use Act, it shall be lawful for the Governor to grant Statutory Right of Occupancy to any person in respect of land, whether or not in an Urban Area. Under Section 5(2) of the Act, when such grant is made, all existing rights to the use and occupation of the land so granted shall be extinguished.**

**Be it noted that the rights that are automatically extinguished following the exercise of the powers of the Governor under Section 5(2) of the Act, are “existing rights to the use and occupation of the land” such as the rights of licences, mortgages etc. but not vested rights such as Statutory Right of Occupancy actually or deemed granted which are recognised by the Act itself.** See Olohunde v. Adeyoju (supra). **Where therefore there exists a prior grant, Section 5(2) of the**

**Act, cannot be applied to defeat it, as the section cannot in that case be swallowed wholesale.** See *Nigeria Engineering Works Ltd. v. Denap Ltd. and Anor.* (2001) 12 S.C. (Pt. II) 136; (2001)12 SCNJ 251 at 275, per Kalgo, JSC.

**The section (i.e. Section 5(2) of the Act,) will only be able to defeat the existing vested right if such right is revoked under Section 28 of the Act for any of the reasons stated thereunder. Otherwise, there will be in existence at the same time two valid Rights of Occupancy granted to different persons in respect of the same parcel of land, as was the case in the matter at hand. In such a case, it was contended, the latter Right of Occupancy is liable to be invalidated as the court below rightly did in this case.**

In the case in hand, the appellant himself admitted before the court below that the respondent's (the defendant at the trial court) father settled on the disputed land. At page 255 paragraph 1 of the record he stated thus:-

*"I am not in doubt that the defendant's (respondent in this appeal) father first settled on the alleged land in 1950, which at that time was a virgin land. After his death, the defendant took over the control and management of this vast land. There is no evidence to the contrary....."*

In the face of the admission and the evidence on the record indicating that the respondent had developed the land before the coming into effect of the Land Use Act, (see pages 146-147 of the record), by the operation of Section 34 of the Act, the respondent became or was deemed to hold a Statutory Right of Occupancy over the plot of land? The court below therefore properly held.

**A deemed Statutory Right of Occupancy, being a vested right recognised by the Act itself, cannot be extinguished under Section 5(2) of the Land Use Act, by the issue of a Statutory Right of Occupancy over the same plot. The right can only be revoked under Section 28 of the Act. The only option open to the Governor of Benue State was to have first revoked the deemed Right of Occupancy of the respondent before granting Exhibit 2 to the appellant over the same plot of land.** See 1. *Olohunde v. Adeyoju* (supra). 2. *Nigerian Engineering*



Works v. Denap (supra).

***Having failed to do so, the court below also properly invalidated Certificate of Occupancy No. BNA 5131, issued without first revoking the pre-existing Right of Occupancy of the respondent. I so hold.***

In the face of the above, it is clear that the interpretation of the learned Justices of the court below that Section 5(2) of the Land Use Act, presupposes strict prior compliance with Section 28 of the Act, where there exist an earlier grant is the correct interpretation. What their Lordships did at the court below was only to re-echo or apply the case cited above. It is certainly not the intention of the law makers, in my view, that the Land Use Act, be used to divest citizens of their traditional titles to land. Rather, the Act is meant to strengthen ownership that derives existence through traditional history, which is what the court below sought to enforce through its judgment. I therefore endorse the submission that this court should not disturb the judgment of the court below, not even for the reason that the respondent has excess land in Makurdi or that the court below did not make a finding on the issue. As no appeal has been lodged on this issue, no issue has therefore been consequently formulated for the determination of this court. A fortiori, I affirm the judgment of the court below on this point.

### Issue 3:

Issue No. 3 raises two questions for determination, to wit:

(a) Whether or not the Right of Occupancy evidenced by Certificate of Occupancy BNA 5131, granted to the appellant was validly granted?

(b) Whether the Right of Occupancy could extinguish the title of the respondent as a deemed holder.

### Question (a):

Section 34 of the Land Use Act, as it were, recognises the title of persons who were on the land before 1978 when the Act came into being. If the land was developed by such persons, they are deemed holders of Statutory Rights of Occupancies issued by the Governor by virtue of Section 34(2) and (3) of the Act. The right comes into existence automatically by the operation of law.

In the case in hand, it is in evidence and the court below so

found that the land in issue was held by the respondent and was indeed developed by him before the coming into existence of the Land Use Act in 1978. It is also in evidence that as far back as 1983, the land was the subject of the application for a Certificate of Occupancy on file No. BN 10617, at the instance of the respondent (See B page 1 of Exhibit 1). By the operation of Section 34 of the Act, the respondent who had, the land vested in him was deemed to have continued to hold the same as if he was the holder of a Statutory Right of Occupancy issued by the Governor under Section 5 of the Act. **A deemed Right of Occupancy is also a vested right C recognised by the Act itself. Consequently, it must first have to be properly revoked or nullified before another Statutory Right of Occupancy can be issued in its place. See Olohunde v. Adeyoju (supra), per Uwaifo, JSC., at 505. The right will be D properly revoked if and only if the revocation is done under Section 28 of the Land Use Act, for any of the reasons stated therein.** For whatever reason the right is being revoked, the revocation shall be signified by notice duly issued and shall become valid when received by the person with such vested right. See Sections E 28(6) and (7) of the Land Use Act.

In the case in hand, in the exercise of his powers under Section 5(1) of the Land Use Act (supra), in October, 1993, the Governor of Benue State granted Exhibit 2 (Certificate of Occupancy No. 5131,) F to the appellant over the land in issue over which the respondent already had title and is deemed to be granted a Statutory Right of Occupancy by the same Governor. There is no evidence that the government ever acquired this land. There is equally no evidence that the Governor revoked the respondent's deemed Statutory Right G of Occupancy under Section 28 of the Land Use Act before he (the Governor) made this latter grant vide Section 2 to the appellant.

The respondent's Statutory Right of Occupancy over the disputed land was therefore valid and subsisting at the time the Governor of Benue State granted Exhibit 2 to the appellant over the same H land. There were therefore in existence two valid rights of occupancy over the disputed land against the spirit of the law.

It is trite that where there exist at the same time two valid Rights of Occupancy to different persons in respect of the same land as in

this case, one must of necessity be valid. The invalid one must be the latter right granted without first revoking the former one under Section 28 of the Act. See Nigeria Engineering Works v. Denap (supra) per Ogundare, JSC. at 292.

***A Certificate of Occupancy issued on the Land Use Act, it must be stressed, cannot be said to be conclusive evidence of any interest or valid title to land in favour of the grantee; it is only prima facie evidence of such right, interest or title without more and may in appropriate cases be effectively challenged and rendered in-valid, null and void.*** See Mohamoud J. Lababedi v. Lagos Metal Industries (Nig.) Ltd. (1973) 1 S.C. (Reprint) 1; (1973) NSCC. 1 at 6.

***Consequently, where it is proved, as in this case, that another person other than the grantee of a Certificate of Occupancy had a better title to the land, the court may have no option but to set aside the grant or discountenance it as invalid, defective or spurious as the case may be.*** See Dzungwe v. Gbishe & Anor. (1985) 2 NWLR (Pt. 8) 528 at 540. 2. Ogunleye v. Oni (1990) 4 S.C. 130; (1990) 2 NWLR (Pt. 135) 735.

***Considering the circumstances under which the appellant was granted Exhibit 2 over the land in issue, the only option open to the trial court was to have found as submitted above and to invalidate the grant to the appellant evidenced by Exhibit 2. Having failed to do so, the court below, therefore, properly held that Exhibit 2 was invalidly granted and accordingly properly invalidated the same.*** The first question raised by issue 3, whether the Statutory Right of Occupancy (Exhibit 2) was invalidly granted the appellant is therefore resolved in the negative. Issue 3(b) raises the question whether the Right of Occupancy granted the appellant could extinguish the title of the respondent as a deemed holder.

It has been submitted in paragraph 5.03 and 6.01 hereof that the respondent is deemed holder of a Statutory Right of Occupancy over the land in issue, issued by the Governor by virtue of Section 34(2) and (3) of the Land Use Act, having had title to the land and also developed the same before 1978 when the Act came into force. Issue 3 formulated by the appellant's counsel itself draws the same

conclusion.

**Thus, being a vested right recognised by the Act itself, the deemed Right of Occupancy of the respondent cannot be lightly taken away from him, and worst of all, simply by the grant of another Right of Occupancy over the same land to the appellant by the Governor as was done in this case. Be it noted that it has long been settled by this court that one Right of Occupancy cannot just on its face extinguish another. See Nigeria Engineering Works v. Denap Ltd, (supra) per Kutigi, JSC. (as he then was), at 277. Thus, the Statutory Right of Occupancy granted the appellant was incapable of and in fact did not extinguish the respondent's deemed Statutory Right of Occupancy over the land. The provisions of Sections 2 and 5 of the Act are not applied, in my respectful view, to defeat vested rights. Rather, they are only applied to defeat existing rights to the use and occupation of the land such as the right of a licensee, a mortgagee etc.**

**Under the law, the only recognised manner of extinguishing a vested right is by revoking the same for any of the following reasons:**

- (a) For overriding public interest.
- (b) For public purposes.
- (c) For breach of the provisions imposed by Section 10 of the Land Use Act.
- (d) for breach of any terms envisaged by Section 8 of the Act.

(e) For failure to comply with the requirements specified in Section 9(3) of the Act. (See Section 28 (ibid), See also Olohunde v. Adeyoju (supra).

**Even then, under Section 28(6) and (7) of the Act, notice of the revocation must be given to the holder of a vested right before such right can be revoked and the service of the notice must be in accordance with the provisions of Section 44 of the Act. It is only where such proper and adequate notice was given to the holder as stated above that his Right of Occupancy shall be extinguished on receipt of such notice.**

In this case, no such notice was issued and served on the re-

spondent before the appellant was subsequently granted the Statutory Right of Occupancy evidenced by Exhibit 2. Exhibit 2 did not therefore extinguish the deemed Statutory Right of Occupancy of the respondent. Issue 3(b) is also resolved in the negative.

The sum total of all I have been saying is that Exhibit 2 did not therefore extinguish the deemed Statutory Right of Occupancy of the respondent. Issue 3(b) is also accordingly resolved in the negative. By the same token, I hold that their Lordships at the court below were right in their findings on issue 3 and their consequent judgment to decline to set aside the judgment of the court below.

#### Issue 4

I adopt my consideration of issue 3 above.

***As to whether or not the appellant as plaintiff proved title to the plot of land in issue by the production of Exhibit 2, I am in agreement with the respondent's submission that the appellant did not prove his root of title. This is because, this court has held repeatedly that once a party pleads and traces his root of title to a particular source and the title is challenged, to succeed, the party must not only establish his title to the land in issue, he must also satisfy the court as to the title of the source from whom he claims.*** See *Alli v. Alesinloye* (2000) 4 S.C (Pt. I) 111; (2000) 4 SCNJ 264 at 282-283.

***Where a plaintiff, as in this case fails to prove the base upon which he founded his title, the claim will fail.*** See *Primate Adejobi's case* (1978) 3 S.C. 65; (1978) 3 S.C. (Reprint) 47, *Odojin v. Ayoola* (1984) 11 S.C. 42, *Mogaji v. Cadbury* (1985) 2 NWLR 393 ratio 9 at 395 and 430, *Ajani v. Ladepo* (1986) 3 NWLR (Pt. 28) 276, following *Ekpo v. Ita* 11 NLR 68. ***In other words where, as in the instant case, the respondent as the defendant/counter-claimant challenged the appellant's title (Exhibit 2) and it was the case of the respondent that he is not only a holder of a Statutory Right of Occupancy deemed to be granted by the Governor but also that even by traditional history and long possession, put his title in issue. See pages 146 - 148 of the record. His title having been thus challenged, it was incumbent on the appellant as plaintiff to have proved the following:***

(a) *The validity of Exhibit 2, his root of title.*

**(b) That he has a better title as compared to the respondent as defendant.**

As regards the validity of Exhibit 2, it is clearly invalid, the same having been issued to the appellant while the respondent's prior title was still valid and subsisting. The submissions in paragraphs 5 and 6 are reiterated. I am therefore in agreement with the respondent's further argument that the appellant's title having failed to pass the acid test of the law, was accordingly declared invalid by the court below. He therefore failed to prove title to the land in issue.

**As to whether the appellant has a better title as compared to the respondent, it is trite that where there are two claimants to a parcel of land, declaration of title is made in favour of the party that proves better title. From the evidence adduced and the circumstances of the case in hand, I hold the view that the respondent proved a better title to the land in issue. He pleaded and proved that he is not only a holder of a Statutory Right of Occupancy under Section 34 of the Land Use Act, but also that even by traditional history and long possession, he has a better title to the land** (see pages 145-158 of the record). The superior title of the respondent was admitted by the appellant through his counsel at the court below when he said in his Brief of Argument to the court that;

*"There is ample evidence that the defendant had prior right over parcels (sic) land in Makurdi, which is an Urban Area, before the coming into effect of the Land Use Act in 1978. I am not in doubt that the defendant's father settled on the alleged land in 1950, which at that time was virgin land. After his death, the defendant took over the control and management of his vast land. There is no evidence to the contrary. See pages 224 and 225 of the record."*

Since as earlier pointed out, title can only be declared in favour of a person whose root is better, on the facts of this case, Exhibit 2 tendered by the appellant did not accord him a better right to the land he claimed over and above the respondent. Issue 4 is also resolved in the negative and I so hold.

In the result, this appeal fails and it is accordingly dismissed with N50,000 costs to the respondent.

**MUSDAPHER JSC**

I have read before now the judgment of my Lord, Onu, JSC., just delivered with which I entirely agree. In the aforesaid judgment his lordship has adequately and admirably dealt with all in issues submitted for the determination of the appeal. It is now beyond any doubt that under the Land Use Act, there exist two types of Statutory Rights of Occupancy viz, (1) Statutory Right of Occupancy granted by the Governor pursuant to Section 51(a) and (2) Statutory Right of Occupancy deemed granted by the Governor pursuant to Section 34(2). See *Olohunde v. Adeyoju* (2000) 6 S.C (Pt. III) 118; (2000) 6 SCNJ 470.

Therefore, the Statutory Right of Occupancy deemed to have been issued by the Governor under Section 34(2) held by the respondent is clearly an exception to the provisions of Section 5(2) See also Sections 43 and 44 of the 1999, Constitution, see also *Teniola v. Olohunkun* (1999) 4 S.C. (Pt. II) 23; (1999) 5 NWLR (Pt. 602)280.

The Governor under the provisions of the Act, no doubt has the power to revoke a Statutory Right of Occupancy granted by him or deemed to have been granted by him subject to certain constitutional conditions, e.g. a deemed grant cannot be revoked by merely the issuance of a Certificate of Occupancy without more. In the instant case, the Governor has not expressly revoked the deemed Statutory Right of Occupancy of the respondent, accordingly he has no power to grant the appellant a Right of Occupancy over the same land without complying with constitutional provisions. The respondent being deemed to be a holder of a Statutory Right of Occupancy his vested right cannot be extinguished by merely the issuance of a Right of Occupancy to the appellant under Section 5 of the Act, without first validly revoking the respondent's deemed Right of Occupancy. It is for the above and for the fuller reasons contained in the aforesaid judgment, that I too dismiss the appeal. I abide by the order for costs proposed in the judgment.

### MUKHTAR JSC

This is an appeal against the judgment of the Court of Appeal, Jos, which allowed the appeal and set aside the judgment in this case of the High Court of Benue State. The learned trial Judge had entered judgment in favour of the plaintiff, who is now the appellant, as per the reliefs he sought in his Statement of Claim as follows:-

*“Consequently, judgment is hereby entered for the plaintiff in the following sic:-*

1. A. *A declaration that the plaintiff is the owner of the landed property along David Mark Bye-Pass Makurdi consisting an area of 2957.711 square metres and covered by Statutory C of O No. BNA 5132.*

B. *A perpetual injunction restraining the defendant, his servants or agents from entering upon the said property or doing any other acts thereon incompatible and inconsistent with the plaintiff’s title and ownership of the said property.”*

Upon being dissatisfied with the decision, the defendant appealed to the court below, who in allowing the appeal held *inter alia* as follows: -

*“Specifically the declaration that the respondent was the title holder of the land in dispute and the injunction granted restraining the appellant as well as the general damages awarded are each set aside, the respondent having failed to prove his case”.*

Aggrieved by the above orders, the plaintiff appealed to this court on four grounds of appeal, from which he raised four issues for determination in his Brief of Argument. The Briefs of Argument exchanged by both parties were adopted by learned counsel at the hearing of the appeal. The issues formulated in the appellant’s Brief of Argument are as follows:-

*“a. Were the learned Justices right in the circumstance of this case in holding that there was no evidence led to show that the land in dispute is within Greater Makurdi Urban Area? Or put in another way, did the plaintiff/(appellant) on the evidence produced by him successfully establish that the land in dispute is situated within the Makurdi Urban Area. (Based on ground 1 of the grounds of appeal).*



*b. Whether the power conferred on the Governor under Section 5(2) of the Land Use Act, 1978, presupposes prior strict compliance with Section 28 of the Act, where there exist title holders to the land affected (Based on ground 2 of the grounds of appeal).*

*c. Whether or not the Statutory Right of Occupancy issued to the appellant was validly granted and could therefore extinguish the respondent's title as a deemed title holder considering Sections 5 subsection 2 and 34 subsections 5 and 6 of the Land Use Act, 1978. (Based on ground 3 of the grounds of appeal)*

*d. Whether or not the respondent, now appellant proved his title to the piece of land in dispute by the production of a document of title (Certificate of Occupancy No. BNA 5131), referred to as Exhibit 2 from the record and whether the cost of N5,000.00 awarded was not excessive. (Based on ground 4 of the grounds of appeal)."*

The respondent adopted the above issues in his Brief of Argument. The issues have been thoroughly treated in the leading judgment, so I will merely highlight issues (b) (c) and (d) supra.

On issue (b) supra, the learned counsel for the appellant has submitted that the learned Justice interpretation and assumption on the provisions of Sections 5(2) and 28 of the Land Use Act, was wrong and therefore misleading. Now, what do these provisions say, starting with Section 5(1) (a) (2) of the Land Use Act, Cap. 202, Laws of the Federation of Nigeria, 1990. These provisions state:-

*"5. (1) It shall be lawful for the Governor in respect of land, whether or not in an Urban Area.*

*(a) to grant Statutory Rights of Occupancy to any person for all purposes;*

*Then subsection (2) of the same Section (5) states -*

*"(2) Upon the grant of a Statutory Right of Occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the Statutory Right of Occupancy shall be extinguished."*

In the respondent's Brief of Argument, the learned counsel in Reply has distinguished the rights that are automatically extinguished under Section 5(2) supra, and those that are not so automatically extinguished. According to learned counsel the rights that are so automatically extinguished are the existing rights to the use and occupation of the land such as the Rights of licenses, mortgages, but not

vested rights such as Statutory Right of Occupancy actually or deemed granted which are recognized by the Act itself. He placed reliance on the cases of *Olohunde v. Adeyoju* (2000) 6 S.C. (Pt. III) 118; (2000) 6 SCNJ 470, and *Nigeria Engineering Works Ltd. v. Denap Ltd. & Anor.* (2001) 12 S.C. (Pt. II) 136; (2001) 12 SCNJ 251. Learned  
 B counsel further 5 argued that Section 5(2) of the said Land Use Act, will only be able to defeat the existing vested right if such right is revoked under Section 28 of the Act for any of the reasons stated there under. Perhaps at this juncture I should consider the salient  
 C provisions of Section 28, which states the following:-

*“28. (1) It shall be lawful for the Governor to revoke a Right of Occupancy for overriding public interest.*

*(2) Overriding public interest in the case of a Statutory Right of Occupancy means-*

D *(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation.*

E *(3) Overriding public interest in the case of a Customary Right of Occupancy means*

F *(a) The requirement of the land by the Government of the State or by a Local Government in the State in either case for public purposes in within the state, or the requirement of the land by the Government of the Federation for public purposes of the Federation;*

G *(4) The Governor shall revoke Right of Occupancy in the event of the issue of a notice by or on behalf of the President if such notice declare such land to be required by the Government for public purposes.*

*(6) The revocation of a Right of Occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder.*

H *(7) The title of the holder of a Right of Occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice.”*

I have taken the liberty of reproducing Section 2(b) supra, for the purpose of considering that aspect of the appellant's case which indicated that he was allocated the piece of land in dispute because the land he was earlier allocated was revoked by the Government, and he was allocated the land in dispute as an alternative. That aspect of the appellant's case is illustrated by the following evidence of the appellant to be found on page 116 of the printed record of proceedings :-

*"In 1956, when Government was trying to construct a road from High Level link of Ankpa quarters with High level across the Railway line, it affected my house in plot No. 163. The Government decided to revoke it and to give me an alternative plot with compensation. I was shown a plot within Makurdi Urban Area situated behind Government College and David Mark Bye Pass. It is plot No. BNA 5131."*

As can be understood from the above, the appellant may have alluded to the application of overriding public interest, (although not directly related to his revoked land but by extension). I.e. that the Governor was right to revoke the respondent's land in his favour. There was however nothing in the record of proceedings to signify that Sections (4) and (6) supra, were complied with i.e. the condition precedent to the revocation was not satisfied, and in fact compensation required by Section 29 of the Act was also not paid. It was incumbent on the learned court below to consider the provisions of Section 28 of the Act, supra and find on it. It has been established that the respondent is the title holder of the Right of Occupancy of the land in dispute, as is illustrated by the evidence of the respondent and the evidence of his witnesses. Worthy of note is the content of a letter on page (4) of the Ministry of Land's file Exhibit '9' dated 28th May, 1990, addressed to the Commissioner for Lands and Survey and signed by the respondent. Salient excerpt of the letter reads:-

*"The said land is situated along Ankpa quarters by the rail line behind Government College Makurdi. The said land has been a family land for the past 50 years. My father, his family and all my brothers are all resident on the land for the period earlier mentioned above. At a particular point in time some part of this land was allocated to some individuals and organizations, they are:-"*

1. *The 7th Day Adventist Church.*
2. *Mr. Chen.*
3. *Capt. Amange.*
4. *Mrs. Iwuala.*

B When the family saw to it that the greater portion of the land has been allocated to others leaving a very small portion to the family the family complained to the land office and the land office advised that since we are residents of the land for such a long period an application stating the names of family members be made to the Ministry so as to facilitate the allocation. This was done immediately as per the application dated 5th April, 1983.”

C The above letter has been supported by other pieces of evidence. The respondent in occupation by virtue of his family being in occupation for over 50 years as reflected in the excerpt reproduced above became a holder of a Right of Occupancy by virtue of Section 34 of the Land Use Act, which stipulates thus:-

“34. (1) *The following provisions of this section shall have effect in respect of land in an Urban Area vested in any person immediately before the commencement of this Act.*

E (2) *Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a Statutory Right of Occupancy issued by the Governor under this Act.*”

F There is no doubt that the respondent by operation of the above provision was the holder of the land in dispute and it can be revoked only if Section 28 of the said Act, is applicable and the provisions were complied with, which was not the case here. According to Section 51(1) of the Land Use Act, the interpretation of developed land is stated as follows:-

“developed land means land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes.

H Then, ‘agricultural purposes’ is described to ‘include the planting of any crops of economic value.’”

Evidence abound in the record of proceedings that such improvements/developments have been made on the land. In the circumstance, the title of the respondent or his family was not extinguished, as again, subsection (7) of Section 28 was not complied with. The respondent therefore remained the vested title holder of the piece of land in dispute, as opposed to mere existing rights to the use and occupation of the land referred to section in 5(2) of the Act. It has been established that the respondent had a better title to the land by operation of the law. See Provost, LACOED v. Edun (2004) 2 S.C (Pt. II) 17; (2004) 6 NWLR (Pt. 870) 476, Savannah Bank (Nig.) Ltd. v. Ajilo (1989) 1 S.C. (Pt. II) 90; (1989) 1 NWLR Pt. 97 page 305 and Adisa v. Emmanuel Oyinwola and Ors. (2000) 6 S.C. (Pt. II) 47; (2000) 10 NWLR (Pt. 674) 116, and so the Certificate of Occupancy, Exhibit ‘2’ granted to the appellant is invalid. See Nzungwe v. Gbishe & Anor. (1985) 2 NWLR (Pt. 8) 528, and Ogunleye v. Oni (1990) 4 S.C. 130; (1990) 2 NWLR (Pt. 135) 745. In this regard the lower court did not err when in the leading judgment the following was expressed -

*“Without doubt the exercise of the power conferred on the Governor under Section 5(2) of the Land Use Act, presupposes prior strict compliance with Section 28 of the Act, where there exists title holders to the land affected”.*

The gravamen of this appeal, in my opinion revolves around the interpretation of Sections (5), (28) and (34) of the Land Use Act, which I have carefully dealt with in this judgment. Suffice to say that the treatment of issues (2) and (3) vis-a-vis the said interpretations cover the kernel of the appeal and I don’t think I need to go any further, having been dealt with more thoroughly in the leading judgment of my learned brother, Onu, JSC. I agree with the reasoning and conclusion reached in the said judgment, and I also dismiss the appeal for lacking in merit. I abide by the consequential orders made in the leading judgment.

---

### OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Jos Division, (hereinafter called “the court below”) delivered on 14th

May, 2002, allowing the appeal of the 5 respondent who was the defendant in the trial court and setting aside, the judgment of the High Court of Benue State - per Ogbole, J., sitting at Makurdi delivered on 28th June, 1999, in favour of the appellant who was the plaintiff in that court.

B Dissatisfied with the said decision, the appellant has appealed to this court on four (4) grounds of appeal and raising in his Brief, four (4) issues for determination. The respondent has adopted the said issues which read as follows:

C *"a. Were the learned Justices right in the circumstances of this case in holding that there was no evidence led to show that the land in dispute is within Greater Makurdi Urban Area? Or put in another way, did the plaintiff (appellant) on the evidence produced by him successfully establish that the land in dispute is situated within the*  
D *Makurdi Urban Area. (Based on ground 1 of the grounds of appeal).*

*b. Whether the power conferred on the Governor under Section 5(2) of the Land Use Act, 1978, presupposes prior strict compliance with Section 28 of the Act, where there exist title holders to the land affected. (Based on ground 2 of the grounds of appeal).*

E *c. Whether or not the Statutory Right of Occupancy issued to the appellant was validly granted and could therefore extinguish the respondent's title as a deemed title holder considering Sections 5 subsection 2 and 34 subsections 5 and 6 of the Land Use Act, 1978.*  
F *(Based on ground 3 of the grounds of appeal).*

*d. Whether or not the respondent, now appellant proved his title to the piece of land in dispute by the production of a document of title (Certificate of Occupancy No. BNA 5131,) referred to as Exhibit 2 from the record and or, whether the cost of N5,000.00 awarded*  
G *was not excessive. (Based on grounds 4 of the grounds of appeal)."*

It seems to me that the crux of the case leading to this appeal, arose from or as a result of the revocation of the appellant's Right of Occupancy in respect of Plot No. 163, situate off 4th Avenue, Ankpa quarters, Makurdi. The said revocation order was predicated on the  
H intention of the State Government to create an access road that will link certain high level areas of the town to Ankpa quarters. The said Government later gave the appellant, an alternative plot of land situate behind the Government College, Makurdi and along David Mark

Bye-Pass. It turned out that the alternative piece of land, was part of a larger parcel of land which the respondent and his co-heirs, inherited from their late father who was the first to settle on the land. It is noted by me that the appellant, had admitted that he knows that the father of the respondent, had been in possession of the land in dispute. B

The dispute arose when the appellant visited the said plot of land and found some development going on the land by the respondent. When protests and petitions to the Bureau for Lands and Survey could or did not help matters, the appellant sued in the said High Court afore-mentioned claiming a declaration of title, perpetual injunction and N50,000.00 general damages for trespass. While the appellant based his root of title on the grant of the Statutory Right of Occupancy - Exhibit 2, that of the respondent, was based on traditional title or history of the said inheritance. He also claimed that he had been in possession of the said land, before the Land Use Act, of 1978. After the trial, the learned trial Judge, found in favour of the appellant, but the judgment, was set aside by the court below. The counter-claim of the respondent which was dismissed by the trial court which dismissal, was affirmed by the court below. There is no appeal against the said dismissal. D E

On 7th January, 2008, when this appeal came up for hearing, Enebeli, Esqr., - learned counsel for the appellant, adopted their Brief and urged the court, to allow the appeal. On the other hand, Gwebe, Esqr., - learned counsel for the respondent, also adopted their Brief and urged the court, to dismiss the appeal. Thereafter, judgment, was reserved till today. F

I will confine myself in this judgment, to issues (b), (c) and (d) which I will take together. It must be borne in mind always and this is settled, that the only innovation introduced by the Land Use Act, 1978 (hereinafter called "the Act"), is that it divests any claimant of radical title and limits the claim, to a Right of Occupancy. See the case of Madam Salami & Ors. v. Oke (1987) 4 NWLR (Pt. 63) 1; (1987) 9-10 SCNJ. 27. The powers however, of the Governor or Military Governor, had been exhaustively, explained by this court, in the case of Ajilo v. Savannah Bank (Nig.) Ltd. (or vice versa) (1989) 1 S.C. (Pt. II) 60; (1989) 1 NWLR (Pt. 97) 305; (1989) 1 SCNJ. 169. H

In the case of *Ogunleye v. Oni* (1990) 4 S.C. 130; (1990) 2 NWLR (Pt. 135) 745 at 752, 772 - 785; (1990) 4 SCNJ. 65 at 81-83, it was held that the Act is not a draconian document it is thought to be. That land whether developed or undeveloped even say in a rural area held by a person under a recognized customary tenure before the commencement of the Act, will continue with such rights and privileges on the land, subject to the provisions of the Act. That whether developed or undeveloped, the holder, shall hold such land as if a Customary Right of Occupancy had been granted to him by the Local Government of that area. It is emphasized that the Act, is not a magic wand it is being portrayed to be or a destructive monster that at once swallowed all rights on land and the Governor or Local Government by mere issuance of a piece of paper, cannot divest families of their homes and agricultural lands overnight with a rich holder of Certificate of Occupancy, driving them out with bulldozers and cranes. That unless land is acquired compulsorily in accordance with the provisions of the Act, for example, for overriding public interest, or for public purpose, by the Local Government or State Government whereby, compensation must be paid, nobody shall be deprived of his land. That a State Government, has no right to dispose a person of his property which is lawfully acquired, without reason and that reason, shall be in the public interest without adequate provision made in the enabling statute, to pay compensation that is just.

In the case of *Ajilo & Anor. v. Savannah Bank (Nig.) Ltd.* (supra), also reported in (1987) 2 NWLR (Pt. 57) 421, it was held that the Act vests in the Military Governor, no more than Administrative or Management powers over land in Urban Area. That he is only a trustee and does not become the beneficial owner.

Indeed, in the case of *Chief Titiloye & Ors. v. Chief Olupo* (1991) 9-10 S.C. 120; (1991) 7 NWLR (Pt. 205) 519 at 530; (1991) 9-10 SCNJ. 122 at 130, this court, held that Section 9(i) paragraph (b) of the Act, empowers the Military Governor to issue a Statutory Right of Occupancy to a person who is already in occupation of land under a Customary Right of Occupancy. That the Customary Right of Occupancy, enjoyed by such a person, does not have to be first revoked before he can be granted a Statutory Right of Occupancy



because, upon such a grant, all existing rights on that parcel of land are automatically extinguished.

It was held also that holding of a Certificate of Occupancy, is prima facie evidence of title of the land covered by it and its exclusive possession, is rebuttable. This is why where there had been a grant say under the land tenure law, any subsequent grant to another person without revoking the earlier grant is ineffective. B

In fact, in the case of Foreign Finance Corporation v. Lagos State Development & Property Corporation & 2 Ors. (1991) 5 S.C. 59; (1991) 5 SCNJ. 52 at 70, it was held inter alia, that the purposes C for which the power of revocation of a Right of Occupancy was conferred on the Military Governor of a State, have been clearly set out in the Act. That any revocation for purposes outside the ones, prescribed even though ostensibly for purposes prescribed by the Act, is against the policy and intention of the Act and can be declared invalid and null and void by a competent court of law. D

It need be stressed and this also settled that once it is proved or admitted that the original title, vests in one of the parties as is the case in the instant case leading to this appeal, the burden of proof that the party has divested himself of title, rests upon the one who asserts that E the other party has been divested of the ownership. See the case of Oyovbiare & 2 Ors. v. Omamurhamu (1999) 7 S.C. (Pt. I) 21; (1999) 7 SCNJ. 60 at 69 citing the cases of Thomas v. Holder (1946) 12 WACA 78 and Ishiba & Ors. v. Hamson & Ors. (1967) 1 All ER at 10. F

Thus, as was explained in the case of Ogunleye v. Oni (supra), inter alia,

*“This is the weakness of a Certificate of Occupancy issued in such a case. It is never associated with title. Thus, where as in this case, a Certificate of Occupancy has been granted to one of the claim- G ants who has not proved a better title it has been granted against the letters and spirit of the Land Use Act”.*

Finally, in the case of Olohunde & Anor. v. Prof. Adeyoju (2000) 6 S.C (Pt. III) 118; (2000) 6 SCNJ. 470 -per Iguh JSC., it was held H inter alia as follows;-

i. that the law is settled that when the issue is as to which of two claimants has a better right to the possession or occupation of a piece or parcel of land in dispute, the law, will ascribe such possession and/

or occupation to the person who proves a better title thereto.

The cases of *Aromire v. Awoyemi* (1972) 2 S.C. (Reprint) 1; (1972) 1 All NLR (Pt.I) 101 at 112 and *Fasoro & Anor. v. Beyioku & Ors.* (1988) 2 NWLR (Pt. 263) at 270-271; (1988) 4 SCNJ. 23, were referred to.

B ii. that a Certificate of Statutory or Customary Right of Occu-  
pancy issued under the Act, cannot be said to be conclusive evidence  
of any right interest or valid title to land in favour of the grantee.  
That it is best, only a prima facie evidence of such right interest or  
C title without more and may in appropriate cases, be effectively chal-  
lenged and rendered invalid and null and void. See also the case of  
*Lababedi v. Lagos Metal Industries (Nig.) Ltd.* (1973) 1 S.C. (Re-  
print) 1; (1973) NSCC 1 at 6.

iii. that where a Certificate of Occupancy has been granted to  
D one of two claimants who has not proved a better title, it must be  
deemed to be defective and to have been granted or issued errone-  
ously and against the spirit of the Act and the holder of such Certifi-  
cate would have no legal basis for a valid claim over the land in issue.  
So too, where it is shown by evidence that another person other than  
E the grantee of a Certificate of Occupancy had a better right to the  
grant, the court may have no option but to set aside the grant or  
otherwise discountenance it as invalid, defective and/or spurious as  
the case may be. The cases of *Joshua Ogunleye v. Oni* (supra) and  
F *Dzungwe v. Gbishe & Anor.* (1985) 2 NWLR (Pt. 8) 528 at 540,  
were referred to.

iv. that for a Certificate of Occupancy under the Act to be there-  
fore valid, there must not be in existence at the time the Certificate  
was issued a Statutory or Customary owner of the land in issue who  
G was not divested of his legal interest to the land prior to the grant.  
I note that the court finally held that the said land, was at all material  
times vested in the defendants' family whose evidence of radical title  
in their ancestor - Olohunde and that the devolution of the land  
down to the said defendants, were not challenged at the trial.

H I have deliberately dealt hereinabove with the general propo-  
sition of the law relating to issuance of Certificate of Occupancy and  
revocation by a Governor. As could be seen, the circumstances in the  
case of *Olohunde & Anor. v. Prof. Adeyoju* (supra), are substantially

similar to the instant case leading to this appeal. In other words, the respondent, proved that title of the land in dispute, is vested in him and his family and that they are/were in possession of the said land at the commencement of the Act. The appellant as noted by me hereinabove, admitted this fact. In effect, on this ground alone, it is beyond controversy that the court below, was justified and right when it found in favour of the respondent. B

However, for the avoidance of doubt, I note that even in the appellant's Brief (as respondent) at the court below which was partly reproduced in the Judgment of that court, at pages 17 and 18, the following appear inter alia:- C

Page 17

*"..... It is clear from the paragraphs referred to above that he (meaning the present respondent) inherited vast parcels of land of undeveloped land. There is ample evidence that the defendant's father had prior existing right over parcels (of) land in Makurdi Town which is an Urban Area before the coming into effect of the Land Use Act in 1978".* D

Page 18

*"..... I am not in doubt that the defendant's father first settled on the alleged land in 1950, which at that time was a virgin land. After his death, the defendant took over the control and management of his vast land. There is no evidence to the contrary."* E F

(the underlining mine)  
At page 283 of the Records, the court below - per Mangaji, JCA. (of blessed memory), stated inter alia, as follows:-

*"Having admitted that the appellant had customary title over the land in issue as well as some vast piece of land (not subject of any action) how then was the appellant divested of his title. It is fundamental to note the law had recognized the existence and superiority of customary title over land where ever it exists. The Land Use Act, was in no way enacted with the aim of divesting citizens of their traditional title to land through the issuance to non-title holders Certificate of Occupancy. For from it. The Act is meant to strengthen ownership of land that derive existence through traditional history. It is for that reason that the Act recognizes the existence of the title of a customary* H

*land owner over his parcel of land as a deemed holder where such land exists before the commencement of the Land Use Act. The radical title over land which a holder has before the commencement of the Land Use Act, however can be revoked for public interest as specified under Section 28 of the Act.....”*

B I cannot agree more. This is settled law and I have also in this judgment, stated so in some of the decided authorities. See also the case of Alhaji Kyari v. Alhaji Alkali & 2 Ors. (2001) 5 S.C. (Pt. II) 192; (2001) 5 SCNJ. 421 at 449 citing the cases of Savannah Bank (Nig.) Ltd. Ajilo (supra) and Alhaji Adisa v. Emmanuel Oyinwola & 4 Ors. (2000) 6 S.C. (Pt. II) 47; (2000) 10 NWLR (Pt. 674) 111; (2000) 6 SCNJ. 290; (2000) FWLR (Pt. 8) 1349.

C From the facts found by the court below and as provided by Section 98 of the Act, where title to a piece of land is revoked, it is D mandatory to put the title holder on notice about the revocation. Section 88(6) of the Act, provides as follows:

*“The revocation of a Right of Occupancy shall be signified under the land of a public officer duly authorized in that behalf by the Military Governor and notice thereof shall be given to the holder.”*

E (the underlining mine)

In other words, notice of revocation of title and service of such notice to the said holder, are two (2) mandatory requirements that have to be complied with strictly. From the Records, the court below F stated that it perused through it over and over, but could not find any evidence that the respondent’s title over the land in dispute, was duly revoked and that the Notice of Revocation, was never or properly given or communicated to the respondent. It found also as a fact, that no notice was ever prepared by a public officer duly G authorized by the Military Governor in that behalf not to talk of serving the same on the respondent. I myself, have seen no such evidence from the records. My inference or conclusion and as was found as a fact by the court below, is that it was the usual “Military might” that was being or was exercised by arbitrarily converting the respondent’s said H land to a layout. See also the case of Osho & Anor. v. Foreign Finance Governor of Mid-Western State (1974) 10 S.C 57; (1974) 10 S.C. (Reprint) 42. At pages 288 to 289 of the records, the court below found as a fact and held inter alia, as follows:

*"It is my view that appellant's (meaning the respondent in the instant appeal) title to the land in issue was not revoked and Government did not acquire the said land for the obvious reason that no evidence exists on record. The issuance of exhibit 2 (Statutory Right of Occupancy No. BNA 5131) cannot stand on its own. It is always a by-product of a duly and lawfully acquired. Once issued when a deemed right exists and not revoked, the Statutory Right, of Occupancy becomes a worthless document because there cannot exist concurrently two title holders over one and the same piece of land in the context of the appeal at hand. What is obvious therefore is that the appellant who is a deemed holder of title over the land in issue has valid title but the respondent (i.e. the appellant in this appeal) who had prior title acquires no title by reason only of the Certificate of Occupancy he possessed. Issuance of Statutory Certificate of Occupancy is not a measure aimed at divesting customary title holders of their land holding without Justification ....."* (the underlining mine)

I again agree as the above is supported by the decided authorities of this court in this regard. See also the case of Nigerian Engineering Works v. Denap Ltd. & Anor. (2001) 12 S.C. (Pt. II) 136; (2001) 12 SCNJ. 251 at 275 - per Kalgo, JSC. (as he then was), 292 - per Ogundare, JSC. (as he then was), and 271 - per Kutigi, JSC., (as he then was now CJN). His Lordship at page 289, then stated inter alia, as follows:

*".....The Statutory Right of Occupancy No. BNA 5131, issued to the respondent (now appellant) is not validly granted and could not therefore have the effect of defeating appellant's (now respondent) title over the land in dispute. It has no effect whatsoever just as it could not extinguish the title of the appellant rooted in traditional history and which title has not been revoked. The issue is decidedly resolved in favour of the appellant."* (the underlining mine)

I cannot fault the above. It is the justice of the controversy supported by both Statutory and legal decided authorities as noted in this Judgment. See also the case of Alhaji Kari v. Alhaji Ganaram & 2 Ors. (1997) 2 NWLR (Pt. 488) 380 at 398, 400; (1997) 2 SCNJ. 138; (1997) 2 SCNJ. 38, in which it was held that a Right of Occu-

pancy granted under the Act, is not revocable except as provided in Section 28 of the Act. Belgore, JSC. (as he then was), at page 400, had this to say inter alia:-

B “Where there is a subsisting Right of Occupancy, it is good against any other rights. The grant of another Right of Occupancy over the same piece of land will therefore be merely illusory and invalid.....”  
(the underlining mine)

C Not quite dissimilar from this case, this court - per Mohammed, JSC., dealt with the same issues in the recent case of C. S. S. Bookshop Ltd. v. The Registered Trustees of Muslim Community in Rivers State & 3 Ors. (2006) 4 S.C. (Pt. II) 142 at 155-164; (2006) 11 NWLR (Pt. 992) 530 at 565-568; (2006) 6 SCM 38 at 58; (2006) 4 SCNJ. 310 at 328-334.

D Before concluding this judgment, I am obliged to refer to or state the attitude of the courts in interpreting or in the construction of expropriatory statutes including the Land Use Act which was thoroughly dealt with by this court, in the case of Abioye & 4 Ors. v. Yakubu & 5 Ors. (1991) 6 S.C. 72; (1991) 15 NWLR (Pt. 190) 130  
E at 205, 206 - per Bello, CJN., 222-223, - per Obaseki, JSC., 231 - per Karibi-Whyte, JSC., and 251 - per Nnaemeka-Agu, JSC., (it is also reported in (1991) 6 SCNJ 69). Nnaemeka-Agu, JSC., stated inter alia as follows:

F “..... For, it is settled that any law which has the effect of depriving a citizen of any right to his property must be construed, in the absence of clear words to the contrary, in such a manner as to preserve the citizen’s rights to the property. For this see Din. v. Attorney-General of the Federation (1988) 9 S.C. 19; (1988) 4 NWLR (Pt. 87) 147 at Pg. 184; (it is also reported in (1988) 9 SCNJ. 14); Walsh v. Secretary of State for India (1863) 10 H.L.C. 367; Belfast Corporation v. O.D. Cars Ltd. (1960) A.C. 490.”  
G

H The lesson to be learnt by all adult Nigerian Citizens including Public Officers and Issuing Authorities under the Act, is to bear always in mind and in fact, appreciate that the Act, has not conferred any power or powers on any body and/or Authority, to divest original land owners of their title to land vested in them before the com-

mencement of the Act, unless pre-conditions set out in the Act have been met. In other words, the Act has not done away with all incidents of land ownership known to the people before its promulgation. See also the case of The Registered Trustees of the Apostolic Church v. Mrs. Olowoleni (1990) 9-10 S.C. 174; (1990) 6 NWLR (Pt. 158) 514 at 527, 529; (1990) 10 SCNJ. 69 and Section 34 (5) B and (6) of the Act.

In conclusion, I had the privilege of reading before now, the leading judgment of my learned brother, Onu, JSC., just delivered. I agree with him that the appeal fails. I too, dismiss the same and I hereby and accordingly affirm the said decision of the court below. I abide by the consequential order in respect of costs. C

### ADEREMI, JSC

The appeal before us is against the judgment of the Court of Appeal (Jos Division) delivered on 14th May, 2002, in Appeal No. CA/J/297/99; Boniface B. Gwar v. S.O. Adole in which the court below entered judgment for the present respondent as appellant before it, by setting aside the judgment of the High Court and dismissing the counter-claim. The appellant who was the plaintiff before the trial court (the High Court of Justice of Benue State of Nigeria holden at Makurdi) had, by paragraph 14 of his Statement of Claim sought three reliefs against the respondent, who was the defendant before that court; they are in the following terms :- D E F

*“(1) a declaration judgment that the plaintiff is the owner of the landed property along David Mark Bye-Pass Makurdi, consisting an area of 2,957,711 square metres and covered by Statutory Certificate of Statutory Certificate of Occupancy No. BNA 5131.* G

*(2) a perpetual injunction restraining the defendant, his servants or agents from entering upon the said property or doing any other acts thereon incompatible and inconsistent with the plaintiff’s title and ownership of the said property.*

*(3) N50,000.00 being general and/or aggravated damages for trespass.” H*

The present respondent who was the defendant at the trial court had also counter-claimed against the plaintiff/appellant claim-

ing as follows:-

*“(1) a declaration that he is a deemed holder of a C of O in respect of the land (plot) in dispute.*

*(2) order of court setting aside the C of O issued to the plaintiff and directing the Bureau for Lands and Survey to revoke same for*  
B *being issued in error; and*

*(3) a declaration that the defendant is entitled to a C of O in respect of the land (plot) in dispute.”*

Pleadings were ordered, filed and exchanged between the  
C parties. The case thereafter proceeded to trial with both sides calling evidence in support of the averments in their respective pleadings; at the end of which addresses of their respective counsel were taken. In a reserved judgment delivered on the 25th of June, 1999, the trial court granted the reliefs sought by the plaintiff in a modified form.  
D The modification being that the sum of N15,000.00 was awarded as general damages against the defendant. Suffice it to say that the counter-claim of the defendant was dismissed in toto.

Being dissatisfied with the judgment of the trial court, the defendant, who is now the respondent before us, appealed against the  
E judgment of the court below which court, as I have said above, after taking arguments of the respective counsel along side the Briefs filed on behalf of the counsel, in a reserved judgment delivered on 14th May, 2002, allowed the appeal and consequently, set aside the judgment of the trial court. I have earlier said that the trial court dismissed  
F the counter-claim of the defendant before it, now the respondent before this court. Suffice it to say that there was no appeal against the order dismissing the counter-claim. The plaintiff, as respondent before the court below, being dissatisfied with the judgment of the court  
G below has appealed to this court by a Notice of Appeal dated 15th July, 2002, and which contains four grounds of appeal. Distilled from the said four grounds of appeal and as set out in the appellant's Brief of Argument filed on 25th November, 2002, are four issues which are in; the following terms:-

H *“(1) Were the learned Justices right in the circumstances of this case in holding that there was no evidence led to show that the land in dispute is within Greater Makurdi Urban Area? Or put in another way; did the plaintiff/appellant, on the evidence produced by him*



*successfully establish that the land in dispute situated within the Makurdi Urban Area.*

*(2) Whether the power conferred on the Governor under Section 5(2) of the Land Use Act, 1978, presupposes prior strict compliance with Section 28 of the Act, where there exists title holders to the land affected.* B

*(3) Whether or not the Statutory Right of Occupancy issued to the appellant was validly granted and could therefore extinguish the respondent's title as a deemed title holder considering Sections 5 (2) and 34 (5) and (6) of the Land Use Act, 1978.* C

*(4) Whether or not the respondent, now appellant proved his title to the piece of land in dispute by the production of a document of title (Certificate of Occupancy No: BNA 5131,) referred to as Exhibit 2 from the record and/or whether the cost of N5,000.00 awarded was not excessive."* D

The respondent adopted, through his Brief of Argument filed on the 24th of January, 2003, the four issues quoted above which the appellant formulated for determination by this court. When this appeal came before us for argument on the 7th of January, 2008, Mr. Enebeli, learned counsel for the appellant, referred to, adopted and relied on his client's Brief of Argument filed on the 25th of November, 2002, and urged on this court to allow the 5 appeal. Mr. Gwebe, learned counsel for the respondent, referred to, adopted and relied on his client's Brief of Argument filed on the 24th of January, 2003, and urged on this court to dismiss the appeal. E F

On issue No. 1 which relates to the location of the land in dispute, the appellant, in his Brief of Argument, referred to the provisions of Section 3 of the Land Use Act, Cap. 202, Laws of the Federation of Nigeria, 1990, which reads:- G

*"Subject to such general conditions as may be specified in that behalf by the National Council of States, the Governor may for the purposes of this Act by order, published in the State Gazette designate the parts of the area of the Territory of the State constituting and in an Urban Area;"* H

and submitted that, pursuant to the aforementioned section, the Governor of Benue State enacted Land Use (Designation of Capital) as Greater Makurdi Order, 1984 per Gazette No. 21, Volume 10 of

23rd May, 1985, wherein Makurdi was declared an Urban Area among other areas like Gboko, Oturkpo, Katsina-Ala, etc. The Order so published commenced from 31st August, 1985. And relying on Sections 73 and 74 (1)(a) of the Evidence Act, 1990, he argued that a court of law is enjoined to take judicial notice of the fact that the land consisting of Makurdi is within the Urban Area - for according to him, the enactment has a force of law and need not be proved. He finally urged, on this issue, that the court below should be held to be in error for holding otherwise and going ahead to pronounce that the trial Judge employed his personal knowledge to hold that the area of the land was within greater Makurdi area. For his part, the respondent on the same issue submitted that no facts were pleaded and none was proved at the hearing of the case that the land was within Urban Area. The *ipsi dixit* of the appellant during the trial that the land was within Urban Area would not suffice, as it was argued, there were no facts pleaded on which that evidence would rest. I think the argument of the appellant on this issue is on *a firma terra*. Paragraphs 3 and 4 of the Statement of Claim constitute sufficient information of the location of the land in dispute.

Paragraph 3 aforesaid reads:-

*"The plaintiff is the rightful owner of the piece of land known as BNA 5131, (hereinafter referred to as the land) situate behind Government College, Makurdi along David Mark Bye-Pass and covered by a Benue State Certificate of Occupancy Registered No. 86 at Page 86 in Volume 10 of the Register of instruments affecting land at Makurdi."*

Paragraph 4 reads:-

*"The land BNA 5131, is all that land consisting an area of 2957.711 square metres, measuring 102.43m. 91.35m. 32.44m and 30.51m at the North South West and East boundaries respectively and surrounded by beacons Numbers MK2752, MK2745, MK2746, MK2747 bounded in the South by an access road and on the North by a piece a of land allocated to Seventh Day Adventist Church and to the West by an undeveloped piece of land."*

Exhibit 2 - the Certificate of Occupancy was tendered in evidence by the appellant; the endorsement contained in the Schedule to Exhibit 2 reads:-

**“BENUE STATE OF NIGERIA**

**CERTIFICATE OF OCCUPANCY NO BNA 5131:**

*All that piece of land situated at Greater Makurdi in the Makurdi Urban Area of the Benue State, consisting of an area of 2957.711 square metres the boundaries of which are delineated by a Red verged line on the attached plan.....”* B

Exhibit 2 is a sufficient proof of the averments in paragraphs 3 and 4 of the Statement of Claim that the land in dispute is located in an urban area. More importantly are the legislations referred to supra and relied upon by the appellant; they point conclusively and with legal force that the land is situate in an urban area. I cannot think of any other proof required to show that the land is located in an urban area. Issue No. 1 is therefore resolved in favour of the appellant; the court below is wrong to have held that the plaintiff/appellant failed to establish that the land in dispute is located in an urban area. C D

I shall now proceed to take the other three issues together. On issue No. 2 which relates to the question as to whether the power conferred on the Governor under Section 5(1) and (2) of the Land Use Act, presupposes prior strict compliance with the provisions of Section 28 of the same Act, where there exist title holders to the land affected. The appellant after referring to the above-mentioned sections together with Sections 28 of the Act and 34(5) and (6) of the Act and the decisions in Abioye v. Yakubu (2002) 1 NLLC 12; Osho v. Philips (1972) 3 S.C. 259; (1972) 3 S.C. (Reprint) 226, submitted that strict compliance with the provisions of Section 28 of the Act, where there exist title holders to the land affected is not intended. It was urged that the decision of the court below on this point should be set aside. E F G

On issue No. 3 which relates to whether or not the Statutory Right of Occupancy No. BNA 5131, issued to the appellant was validly granted and could therefore extinguish the title of the respondent as a deemed holder having regard to the provisions of Sections 5(2) and 34 (5) and (6) of the Act, it was submitted that since the land in issue is situated within urban area and the land is undeveloped, the deemed holder is only guaranteed a right to a portion thereof not exceeding half hectare in size while his rights in undevel- H

oped land in excess of the stipulated ceiling must be declared to be extinguished and such land is liable to be taken over by the Governor for redistribution. Concluding the argument on this point, it was further submitted that the Certificate of Occupancy issued to the appellant based on the above facts was validly issued and having not  
 B been revoked, it has extinguished the rights of the former holder of the undeveloped land in question, that is the respondent.

On issue No. 4 which relates to how to prove title to land and the award of damages, the appellant in his Brief of Argument submitted that by tendering Exhibit 2 - the Certificate of Occupancy which  
 C was duly authenticated by the Governor of Benue State, the appellant has satisfied one of the five ways to establish title to land which is proof of grant by the production of document of title. The court below, it was finally submitted, erred in law in setting aside the judgment of the trial court. In countering the submissions of the appellant through his Brief of Argument, the respondent, through his Brief of Argument, on issue No. 2 submitted that in exercising his right under Section 5(2) of the Land Use Act, the Governor must first comply with the provisions of Section 28 of the Act, where there exist two  
 E title holders on the same land; adding that under the Land Use Act, there exist two types of Rights of Occupancy viz: (1) Statutory Right of Occupancy granted by the Governor pursuant to Section 5 (1)(a) of the Act and (2) the Statutory Right of Occupancy deemed to be  
 F granted by the Governor pursuant to Section 34(2) of the Act; reliance was placed on the decisions in *Savannah Bank (Nig.) Ltd. v. Ajilo* (2001) FWLR (Pt. 75) 513 and *Sunmonu Olohunde & Anor. v. Prof.S.K. Adeyoju* (2000) 6 S.C, (Pt. III) 118; (2000) 6 SCNJ 470. Advancing the argument further, it was submitted that Section 5(2)  
 G Of the Act, will only be able to extinguish the vested right if such right has been revoked under Section 28 of the Act, for any of the reasons stated thereunder. Applying the afore-mentioned provisions of the Act to the facts of this case, it was again submitted that the deemed Statutory Right of Occupancy held by the respondent, being a vested  
 H right recognised by the Act itself cannot be extinguished under Section 5(2) of the Act, by the issuance of a Statutory Right of Occupancy over the same plot of land without prior revocation of that title under Section 28 of the Act. Having failed to do so, the court below,

it was finally submitted on this point, was right in revoking the C of O granted to the appellant by the Governor.

On issue No. 3, reference was made to the evidence on record which the court below properly found to be true that the land in dispute was held by the respondent and was indeed developed by him before the coming into existence of the Land Use Act in 1978; there was that uncontroverted evidence that, way back in 1983, the land in dispute was the subject of the application for a Certificate of Occupancy on File No. BN 10617, at the instance of the respondent. It was therefore submitted that by the operation of Section 34 of the Act, the respondent who had the land vested in him must be deemed to have continued to hold the same as if he was the holder of a Statutory Right of Occupancy issued by the Governor under Section 5 of the Act. Reviewing the testimonies of the parties, he submitted that there is no evidence that the Government ever acquired the land in dispute and no evidence that the Governor ever revoked the respondent's deemed Statutory Right of Occupancy under Section 28 of the Land Use Act, before he (the Governor) made the grant of Exhibit 2. It was further submitted that a Certificate of Occupancy issued under the Land Use Act, is not a conclusive evidence of any interest or valid title to land in favour of the grantee; it is only a prima facie evidence of such right, interest or title which is open to be challenged in appropriate case; reliance was placed on the decision in Lababebi v. Lagos Metal Ind. Ltd. (1973) 1 S.C. (Reprint) 1; (1973) NSCC 1. Such appropriated case is that of the circumstances of the instant case where there is another person other than the grantee of the C of O who had a better title to the land; and that is the respondent here; support for this submission was found in the cases of Dzungwe v. Gbishe & Anor. (1985) 2 NWLR (Pt. 8) 528 at 540 and Ogunleye v. Oni (1990) 4 S.C. 130; (1990) 2 NWLR (Pt. 135) 745, adding that the C of O, Exhibit 2 granted to the appellant was incapable of and could not extinguish the respondent's deemed Statutory Right of Occupancy over the land. On issue No. 4, after reviewing the evidence on record, it was submitted that the respondent, beyond any doubt, has proved a better title to the land in dispute. While the appellant urged that the appeal be allowed, the respondent in concluding his submission, urged that the appeal be dismissed.

The whole case turns on the interpretation of the relevant provisions of the Land Use Act, which are germane to this case. Let me quickly say that a community reading of all the provisions of the Act leaves me with the impression that the Act has not wiped out or divested citizens of their rights over their land. And as would be seen Anon from the judicial decisions through the interpretations given to many of the provisions, the courts have made the Act to acquire human face. No doubt, the Act has removed the radical title in land from the individual citizens and vested it in the Governor of each State in trust for the use and benefit of all Nigerians. Thus, the control and management of the land in urban areas in each State are vested in the Governor; while other land, subject to the Act is under the control and management of the Local Government of the area in which the land is situated.

I consider it very appropriate and indeed very helpful to me, for a proper consideration of the submissions to reproduce the provisions of Sections 5(1) and (2); 28 and 34 (5) and (6) of the Land Use Act, Cap. 202, Laws of the Federation of Nigeria, 1990.

Section 5(1) and (2)

“(1) It shall be lawful for the Governor in respect of land, whether or not in an urban area -

(a) to grant *Statutory Rights of Occupancy* to any person for all purposes;

(b) to grant *easements appurtenant* to *Statutory Rights of Occupancy*;

(c) to demand rental for any such land granted to any person;

(d) to revise the said rental -

(i) at such intervals as may be specified in the *Certificate of Occupancy*,

(ii) where no intervals are specified in the *Certificate of Occupancy* at any time during the term of the *Statutory Right of Occupancy*.

(e) to impose a penal rent for a breach of any covenant in a *Certificate of Occupancy* requiring the holder to develop or effect improvements on the land, the subject of the *Certificate of Occupancy* and to revise such penal rent as provided in Section 19 of this Act.

(f) to impose penal rent for a breach of any condition, express or implied, which precludes the holder of a Statutory Right of Occupancy from alienating the Right of Occupancy or any part thereof by sale, mortgage, transfer of possession, sub-lease or bequest or otherwise howsoever without the prior consent of the Governor.

(g) to waive, wholly or partially, except as otherwise prescribed, all or any of the covenant or conditions to which a Statutory Right of Occupancy is subject

where, owing to special circumstances, compliance therewith would be impossible or great hardship would be imposed upon the holder.

(h) to extend except as otherwise prescribed, the time to the holder of a Statutory Right of Occupancy for performing any of the conditions of the right of Occupancy upon such terms and conditions as he may think fit.

(2) Upon the grant of a Statutory Right of Occupancy under the provisions of subsection (1) of this section, all existing Rights to the use and occupation of the land which is the subject of the Statutory Right of Occupancy shall be extinguished.”

On a true construction of the provision of Section 5(1) of the Act and having regard to what I have said in this judgment that the Act has taken away the radical title from the individual citizens and vested same in the Governor or the appropriate authority, as the case may be, the act of a Governor or the appropriate authority in granting Statutory Right of Occupancy in respect of a parcel of land, whether or not in the urban area, to any person enjoys legal backing. And the effect of such a grant under the provisions of Section 5(2) of the said Act, truly construed, is the revocation of all existing rights over the said land. However, it has been judicially said that the aforementioned provision of Section 5(2) would not preclude the court from setting aside the grant of a Statutory Right of Occupancy in appropriate cases where the justice of the matter so requires even after the issuance of the certificate. See *Saude v. Abdullahi* (1989) 7 S.C. (Pt. II) 116; (1989) 1 NWLR (Pt. 116) 387. Let me say that a Certificate of Occupancy, whether it is Statutory or Customary in nature, issued out under the Land Use Act, is not conclusive evidence of any right, interest or even valid title to land in favour of the grantee. It seems to me that at best, it is a prima facie evidence of

such right, interest or title, without more. See *Ogunleye v. Oni* (1990) 4 S.C. 130; (1990) 2 NWLR (Pt. 135) 745. The power of the Governor to grant Statutory Right of Occupancy or Customary Right of Occupancy by the appropriate body must not be exercised whimsically such as to deprive someone who had had lawful right or title to a parcel of land prior to the promulgation of the Land Use Act Decree now Act (the Military). Hence, they (the Military) made transitional provisions for the preservation of the interests in land held by persons prior to the coming into being of the Decree - Section 34 (1), (5) and (6) of the Act.

Section 34 (1) provides:-

Subsection (1)

*“The following provisions of this section shall have effect in respect of land in an urban area vested in any person immediately before the commencement of the Act:*

*Subsection (5)*

*“Where on the commencement of the Act the land is undeveloped, then -*

*(a) one plot or portion of the land not exceeding half of one hectare in area shall subject to subsection (6) of this section, continue to be held by the person in whom the land was so vested as if the holder of the land was the holder of a Statutory Right of Occupancy granted by the Governor in respect of the plot or portion as aforesaid under this Act; and*

*(b) all the rights formerly vested in the holder in respect of the excess of the land shall on the commencement of this Act be extinguished and the excess of the land shall be taken over by the Governor and administered as provided in this Act.”*

Subsection (6)

*“Paragraph (a) of subsection (5) of this section shall not apply in the case of any person who was on the commencement of this Act also the holder of any undeveloped land elsewhere in any urban area in the State and in respect of such a person all his holdings of undeveloped land in any area in the State shall be considered together and out of the undeveloped land so considered together -*

*(a) one plot or portion not exceeding half of one hectare in area shall continue to be held by such a person as if a Right of Occu-*



pancy had been granted to him by the Governor in respect of that plot or portion; and

(b) the remainder of the land (so considered together) in excess of half of one hectare shall be taken over by the Governor and administered in accordance with this Act the rights formerly vested in the holder in respect of such land shall be extinguished.” B

The above provisions generally protect the interest of a person in the land held by him prior to the coming into being of the Act. Under the Constitution of the federal Republic of Nigeria, (the 1963, 1979 and 1999 Constitutions), the right to acquire and own land in any part of the country is constitutionally guaranteed. Also, the Constitution accords the legal right to the Government to compulsorily acquire land in any part of the country for public use. These constitutional provisions have never been tampered with under the military and democratic dispensations. The relevant provisions under the 1999, D Constitution are Sections 43 and 44.

Section 43 provides:-

“Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.” E

Section 44(1) provides:-

“No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things - F

(a) requires the prompt payment of compensation therefore; and

(b) gives to any person claiming such compensation a right of G access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.”

As I have pointed out earlier in this judgment, Sections 43 and 44 of the Constitution were never suspended by the Military. Now H that the Land Use Decree has assumed the toga of an Act under the democratic dispensation, no provision of the Act can override the provisions of Sections 43 and 44 of the 1999, Constitution. Indeed,

if any of the provisions of the Act stands inconsistent with those of the Constitution, to the extent of the inconsistency, they are null and void and of no effect. That even the Military did not intend capricious or arbitrary revocation of Right of Occupancy under Section 5(1) and (2) of the then Decree now Act by the Governor or any appropriate authority was clearly expressed in Section 28 of the Act, which reads:-

Section 28

Subsection (1)

C *"It shall be lawful for the Governor to revoke a Right of Occupancy for overriding public interest."*

Both subsections (2) and (3) of the section go ahead to define what overriding public interest in the case of a Statutory Right of Occupancy and Customary Right of Occupancy mean. To effect a lawful acquisition of land, the notice of acquisition must be issued to the public by the Governor and that notice must clearly indicate that the land intended to be acquired is for no other thing than for public purposes;

Section 28(4) says:-

E *"The Governor shall revoke a Right of Occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes."*

F Subsection (5) of the Act spells out the grounds for revocation of a Statutory Right of Occupancy. And to ensure the control of the power to revoke a Right of Occupancy in respect of a parcel of land, subsection (6) of the Act says in an unmistakable term, that the right to revoke shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be served on the holder personally. Lastly, for a valid revocation of Right of Occupancy, whether Statutory or that of a deemed holder, Section 29 of the Act makes the prior payment of compensation to the holder a sine qua non. Having regard to what I have said of the various provisions of the Act which I have set out above, I have no hesitation in holding that the provisions of Section 5 of the Act cannot be interpreted in isolation; they must be read and interpreted in conjunction with Section 28 aforesaid. In so holding, I am fortified by

two decisions of this court. The First of the two is Teniola & Ors v. Olohunkun (1999) 4 S.C. (pt. II) 23; (1999) 5 NWLR (Pt. 602) 280, this court at pages 300-301 reasoned:-

*“One of the reasons for holding that there has been is an improper issuance of such certificate, is where another person’s right in the land was subsisting at the time the certificate of occupancy was issued. This view was held in the court of appeal in a case which subsequently came on appeal to this court; The Registered Trustees, Apostolic Church v. Olowoleni (1990) 9-10 S.C 174; (1990) 6 NWLR (pt.158) 14. In the Court of Appeal, Wali, JSC. (as he then was), was reported to have said:-*

*“The right of an existing holder or occupier of a parcel of land is not automatically extinguished by the mere issuance of a certificate of occupancy to another person under color of a person in occupation. It does not automatically extinguish the right of any other person having a customary right as the respondent in this case.”*

This passage was reacted to by Nnaemeka-Agu, JSC., at pages 535-536 inter alia, as follows:-

*“Worse for the appellants, the certificate of occupancy which they are relying upon to support their right to possess the land has been sufficiently impugned ..... It is clear that the certificate of occupancy was granted to them by the ministry of works, Lands and Survey over land which was held customarily by the respondent without any Notice of revocation of her Right of Occupancy as required by law ..... I therefore agree with Wali, JCA. (as he then was), that a Certificate of Occupancy is only prima facie evidence of title or exclusive possession and that the exclusive rights provided for in favour of a person in possession of such certificate under Section 20 of the Land Tenure Law of Kwara State is available only to a person who is entitled and has been lawfully granted a Certificate of Occupancy .....*”

Continuing on the same page, Uwaifo, JSC. (as he then was), reasoned:-

*“I am not unaware of the provision of Section 5 of the Lands Use Act, 1978, but I cannot overlook the immense hardship and perhaps instability socially which subsection 2 thereof may create if the power under it was exercised without regard to its consequences.*

*For instance, it must be a matter for concern whether a later grant may (capriciously) undermine and thereby impliedly revoke an earlier grant for which no compensation may be paid for any development undertaken on the basis of the grant since that subsection provides that -*

B *5(2) Upon the grant of Statutory Right of Occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is subject of the Statutory Right of Occupancy shall be extinguished.*

C *I believe that section must, in appropriate circumstances, be read along with Section 28 which deals with the power of the Governor to revoke Rights of Occupancy which Rights of Occupancy include, in my opinion, deemed Rights of Occupancy derived under Section 34(2) and 36(4) and its effect made to be so confined to*  
D *situations for making a revocation, which must recognise existing rights, in order not to needlessly defeat an earlier grant. It is only then the issue of compensation shall fairly and properly arise by virtue of Sections 29, 30 and 35 of the Act. It seems reasonable to say that revocation ought to precede Section 5(2) where there is a subsisting prior*  
E *interest."*

Having set out the position of the law on this crucial point as judicially stated, can it be said that the court below was in error in holding that the Certificate of Occupancy granted to the plaintiff/  
F appellant was not validly granted and therefore incapable of invalidating or defeating the defendant/respondent's customary title over the disputed plot of land. Before I answer that question, I wish to preface it with certain salient facts on record. The plaintiff/appellant had conceded that there was no evidence to the contrary that the  
G defendant/respondent's father first settled on the land in 1950 when the land was a virgin one and that after his death, his son, the defendant/respondent took over the management and control of the said land. There is no evidence that the Government acquired any land which includes the land in dispute. No notice of acquisition was even  
H served on the defendant/appellant nor any compensation paid to him over the land. For Exhibit 2 - the Certificate of Occupancy issued to the plaintiff/appellant to be valid, the deemed Right of Occupancy of the defendant/ respondent must first be revoked after payment of

the appropriate monetary compensation should have been made to him - no evidence of any of the above. While I will concede that revocation of Right of Occupancy made pursuant to Section 28 of the Land Use Act, by the State Governor or Administrator (which is not the case here borne by the evidence or record) is prima facie lawful, it will nonetheless be declared void where it is established that the land was not properly acquired for public purpose. See Lawson v. Ajibulu (1991) 6 NWLR (Pt. 195) 44 and Ereku v. Mil. Gov. of Mid-Western State (1974) 10 S.C. 59; (1974) 10 S.C. (Reprint) 42. B

There is no evidence of the revocation of the deemed Right of Occupancy that inured to the benefit of the defendant/respondent. It is not in doubt that the main purport of the Land Use Decree or Act is about acquisition of land. The interpretative stance of the court in construing any enactment relating to the acquisition of land has always remained the same. In Re Bowman South Shields (Thames Street) Clearance Order (1932) AER 257, the principle was lucidly stated at page 260 thus:- C D

*“When an owner of a property against whom an order has been made under the Act comes into this court and complains that there has been some irregularity in the proceedings and that he is not liable to have his property taken away, it is right, I think that his case should be entertained sympathetically and that a statute under which he is being deprived of his rights to property should be construed strictly against the local authority and favourably towards the interest of the appellant.”* E F

(Underlining mine for emphasis)

The above well known dictum was followed by this court in Alhaji Bello v. Diocesan Synod of Lagos (1973) 3 S.C 103; (1973) 3 S.C (Reprint) 72, where it was stated that the principle guiding this court and indeed any court of law, in the interpretation of provisions of the Constitution and the statutes etc., is to construe fortissime contra proferentes any provision which gives them extraordinary powers of compulsory acquisition of the property of the citizen. G

For the umpteenth time, let me say that the Act has not done away with all incidents of land ownership known to the people prior to its promulgation. Land is very much being held under customary tenure even though dominion is in the Governor. Before proceeding H

to answer that all-important question, I shall like to recall the illuminating dictum of this court in C.S.S. Bookshops Ltd. v. R.T.M.C.R.S. (2006) 4 S.C. (Pt. II) 142; (2006) 11 NWLR (Pt. 992) 530, where at pages 565-568, this court, per Mohammed, JSC., said and I quote:-

*"It is not at all in doubt that the provisions of Section 28 of the Act contains comprehensive provisions to guide the Governor of a State in the exercise of his vast powers of control of land within the territorial areas of his State particularly the power of revocation of a Right of Occupancy. One of the pre-conditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In order not to leave the Governor in any doubt as to the conditions for the exercise of his powers, the law went further to provide adequate guidance by defining in clear terms what overriding public interest means in the case of Statutory Right of Occupancy under the Act in subsection (2) of Section 28. What this means of course is obvious. Any revocation of a Right of Occupancy by the Governor in exercise of powers under the Act must be within the confine of the provisions of Section 28 of the Act. Consequently, any exercise of this power of revocation for purposes outside those outlined or enumerated by Section 28 of the Act or not carried out in compliance with the provisions of the section can be regarded as being against the policy and intention of the Land Use Act, resulting in the exercise of the power being declared invalid, null and void by a competent court in exercise of its jurisdiction on a complaint of an aggrieved party....."*

*In the present case, one of the complaints of the appellants against the revocation of their Right of Occupancy was the failure of the 2nd respondent to issue and serve adequate notice of the intended revocation on them in advance.*

*.....*  
*I entirely agree with the trial court on this finding on the quest of notice particularly when the 2nd respondent whose powers were being challenged made no attempt to throw light on this question. The effect of the failure of the 2nd respondent to serve adequate notice on the appellants as required by the Land Use Act prior to the revocation of the Right of Occupancy means the power of revocation was not exercised in compliance with the provisions of the*

Act.....

*Therefore in the instant case, the grant of the right of Occupancy to the 1st respondent by the 2nd respondent which was done in violation of the provisions of Section 28 of the Land Use Act, is invalid, null and void and did not confer any valid title on the 1st respondent."*

B

The C.S.S. Bookshops Ltd.'s case is materially on all fours with the instant case. The conclusion reached by the court below is unsailable in that going by the evidence on record, the respondent remains the holder of a Statutory Right of Occupancy over the land in dispute which is deemed to be granted by the Governor of Benue State pursuant to Section 34(2) and (3) of the Land Use Act and Exhibit 2 the Certificate of Occupancy, issued in favour of the appellant is lacking in legal efficacy.

C

For what I have been saying and most especially for the comprehensive reasoning contained in the leading judgment of my learned brother, Onu, JSC., I do not hesitate in saying that this appeal is unmeritorious. It must be dismissed and I accordingly dismiss it while I subscribe to the order as to costs in the leading judgment.

E

F

G

H