

SUPREME COURT OF NIGERIA
23RD MAY, 2008 SC. 391/2002
CORAM:- A. I. KATSINA-ALU, S. A. AKINTAN,
M. MOHAMMED, W. S. N. ONNOGHEN,
I. T. MUHAMMAD, JJSC

GILBERT EZEIGWE	APPELLANT
AND		
AWAWA AWUDU	RESPONDENT

APPEALS - Land law - Issues - Validity - Issues of facts raised without leave - Of either the lower court or the appellate court - Such as issue of weight of evidence raised by appellant in this case - Is invalid (H1)

ILLITERATES - Documents - Illiterates Protection Law s. 3 - Nature of compliance - Strict compliance with the provisions is required - Substantial compliance is insufficient - Especially as between the illiterate and the writer of the document (H2)

LAND LAW - Documents - Illiterates Protection Law s. 3 - Nature of compliance - Strict compliance with the provisions is required - Substantial compliance is insufficient - Especially as between the illiterate and the writer of the document (H2)

FACTS

Plaintiff/Appellant sued Defendant/ Respondent claiming possession and ownership of plot 2, Block 250, Orije Layout, Port Harcourt, damages for trespass and injunction. It is common ground that the plot was originally allocated to respondent by the government of Eastern Nigeria. The case of the Appellant was that there was an agreement between the Respondent and the Appellant's late father for Respondent to assign her interest in the plot to Appellant's father for valuable consideration and that the agreement had been partially performed by the parties. Nevertheless, his claim is not for specific performance of any such agreement, but for declaration of title. For this he relied on an irrevocable power of attorney purportedly donated by the respondent to Appellant's late father, Exhibit A.

Exhibit A was made by the Appellant's late father and purportedly signed by Respondent. But Respondent was an illiterate and Exhibit A failed to comply strictly with requirements of section 3 of Illiterates Protection Law.

After hearing, learned trial judge dismissed the Appellant's case. Appellant's appeal to the Court of Appeal was also dismissed by that court, hence the instant appeal to the Supreme Court.

ISSUE FOR DETERMINATION

“Does Exhibit A, the Irrevocable Power of Attorney substantially comply with Section 3 of the Illiterates Protection Law and the other enabling laws including the Land Instruments Registration Law and whether the judgment is against the weight of evidence.”

HELD (Unanimously dismissing the appeal per **ONNOGHEN JSC**)
APPEALS - Land law - Issues - Validity

1. It should also be noted that the learned counsel for the respondent has not included the sub-issue of weight of evidence in the issue he has identified for determination.

I must observe that the sub-issue of weight of evidence being an issue of pure facts can only be taken in this court upon the leave of either the lower court or of this court. I have carefully gone through the record and it is very clear that appellant neither obtained the leave of the lower court nor of this court before appealing on the grounds of facts which is the focus of ground of the grounds of appeal earlier reproduced in this judgment. It is very important for all to note that rights of appeal are creatures of statute which must be exercised in accordance with the statutory provisions applicable.
(pp. 2286 D/2287 F)

LAND LAW - Documents - Illiterates Protection Law s. 3

2. In the first place it is implicit in the use of the words “*substantial compliance*” with Section 3 of the law in question that there was no complete or total or strict compliance with the provisions of the said law. I therefore find and hold that learned counsel for the appellant concedes that Exhibit A did not fully comply with the spirit and letter of Section 3 of the Illiterate Protection Law. The question for determination as put by learned counsel for the appellant is simply, whether

substantial compliance with the provisions of Section 3 of the Illiterates Protection Law is sufficient to validate a document such as Exhibit A, which would otherwise be invalid.

In other words, does the said section of the law require strict compliance? If it requires strict compliance, then any of the requirements not complied with will automatically render the document in question invalid for the purpose of the Illiterate Protection Law, the presumptions relied upon by learned counsel for the appellant notwithstanding. It is the view of the lower courts that the provisions of Section 3 of the Illiterates Protection Law must be strictly complied with for any document under the section to be valid. The question is whether they are correct in so holding.

In the case of *S.C.O.A Zaria v. Okon* (1959) 4 FSC 220 at 223, the Supreme Court, in interpreting the section held that:-

“The document on the face of it does not comply with the section. The object of the ordinance is to protect an illiterate person from possible fraud. Strict compliance therewith is obligatory as regards the writer of the document. If the document creates legal rights and the writer benefits thereunder, those benefits are only enforceable by the writer of the document if he complies strictly with the provisions of the ordinance. If a document which does not comply with the provisions of the ordinance creates legal right between the illiterate and a third party then evidence may be called to prove what happened at the time the document was prepared by the writer before the parties signed it. But the writer himself cannot adduce evidence in his own form to remedy the omission.”

The above statement of the law is very clear and unambiguous. I agree with the conclusion of the lower court on the issue that in view of the fundamental defects on Exhibit A - non-compliance with the strict provisions of Section 3 - the said Exhibit A cannot be used against the interest of the respondent although it was attested to before a Magistrate. (pp. 2288 F/2289 G)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Exhibit A is not a document of title

Exhibit A is simply an Irrevocable Power of Attorney donated by the

respondent to the appellant. It is not a document of title conferring any title to the property in issue on the appellant. So even if it complied with the relevant law, it would still have been necessary for appellant to prove title to the land. Did the appellant prove his alleged title to the land? It is settled law that in an action for declaration of title to land, a plaintiff must succeed on the strength of his case and not on the weakness of the defence.

The appellant has made heavy weather of the allegation that the respondent applied to the Ministry of Lands to assign her interest in the property in issue to the father of the appellant but as correctly found by the lower courts, there is no single document on record to support that claim. The application for the alleged assignment was never tendered neither was any such executed assignment. Exhibit D, relied upon by the appellant to submit that it is an admission against interest was never written by the respondent nor on her instructions. It was written by a government official. The whole file relating to the property was tendered and admitted in evidence but none of the documents contained therein is the alleged application of the respondent for the alleged assignment of the property. Even if Exhibit A could be relied upon, it does not deprive the respondent of her title to the property; the document being nothing other than an Irrevocable Power of Attorney - not a conveyance. In fact Exhibit "A" being an Irrevocable Power of Attorney allegedly donated by the respondent to the appellant is a clear evidence or confirmation of the fact that the title to the land in dispute resides in the respondent, the donor of that power. The only document that could have proved any passing of that title to the appellant would have been a conveyance or an assignment, none of which was said to have existed nor tendered in evidence in the case. It is therefore my view that despite the absence of leave to appeal on facts, the facts of the case on record clearly show that the appellant did not establish his title to the property in issue and that the lower courts are correct in so holding. (p. 2290 F)

H REPRESENTATION

Chief O. Ugolo SAN., (with him; I.I. Ikoani), for the Appellant.
C. N. Obulor, for the Respondent.

CASES REFERRED TO

Kodilinye v. Anatogu (1953) 1 WLR 231
Dawodu v. Damole (1962) 1 All NLR 702
Allie & Ors. v. Alhaji (1952) 13 WACA 320
Ajao v. Alao (1986) 5 NWLR (Pt.45) 802
Chime v. Ude (1993) 3 NWLR (Pt. 279) 78 at 81 ratio 4 B
See Jiboso v. Obadina (1962) WRNLR 303
U.A.C of Nigeria Ltd. v. Ajayi (1958) NNLR 33
S.C.O.A. Zaria v. Okon (1960) 4 FSC 220
Adeleja v. Fanoiki (1990) 3 S.C. (Pt.I) 130; (1990) 2 NWLR (Pt.131) C
137
Agbonifor v. Aiwereoba (1988) 1 NWLR (Pt.70) 325, 329
Nsiegebe v. Mgbememer (1996) 1 NWLR (Pt. 426) 607 at 610 - 611

STATUTES REFERRED TO

Evidence Act, ss. 114, and 123
Illiterates Protection Law, s. 3

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, holden at Port Harcourt, in appeal No. CA/PH/96/98, delivered on the 4th day of December, 2001, in which the court dismissed the appeal of the appellant against the judgment of the High Court of Rivers State in Suit No. PHC/218/90, delivered by Okor, J., on the 2nd day of May, 1997. F

In the further Amended Statement of Claim, the appellant, as plaintiff in the High Court, claimed against the respondent, then defendant, the following reliefs:-

“(1) A declaration that the plaintiff is entitled to the possession and ownership of Plot 2, Block 250, Orije Layout, Port Harcourt duly registered as No. 83 at page 83 in volume 433, Lands Registry, Enugu now kept at the Port Harcourt Lands Registry. G

(2) N100,000.00 (One Hundred Thousand Naira) only as damages for trespass. H

(3) Perpetual injunction restraining the defendant, her servants or agents from further interference with the said property.”

It is the appellant's case that his father, James Ezeigwe and the

- respondent entered into an agreement sometime in 1958, in which it was agreed by the parties thereto that the said father of the appellant will construct a 29 room building on a plot of land, now in dispute, which was leased to the respondent by the government of the then Eastern Nigeria for the sum of £6,000.00 (N12,000.00). The
- B appellant's father completed only 19 of the agreed 29 rooms; that when the father asked for payment from the respondent which she was unable to pay, the respondent allegedly applied for the land to be assigned to the plaintiff's father as shown in Exhibits E. F. & C,
- C contained in the Land Registry file which was tendered, admitted and marked as Exhibit C; that upon the death of the father, appellant stepped into his shoes and the respondent granted the appellant an irrevocable power of attorney, Exhibit A dated 25th June, 1966, in respect of the said property.
- D On the other hand, it is the case of the respondent that the plot of land in issue was allocated to her by the then government of Eastern Nigeria in 1958 and that she subsequently entered into an agreement with the father of the appellant to construct a building of 29 rooms thereon for the sum of £3,000.00 (N6,000.00) but that
- E the father of the appellant could only complete 19 of the rooms leaving the respondent to complete the remaining 10 rooms after the Nigeria Civil War; that in September, 1966, the appellant assisted her to escape to the North because Northerners were at the time being killed in Port Harcourt - the respondent being of Nupe extraction from the present day Niger State in Northern Nigeria; that before she escaped, she told the appellant to be collecting rents from the tenants in the property and the appellant requested the respondent to sign a document which would show the tenants that he had
- F the authority of the respondent to collect the rents which she signed without the contents being read over and interpreted to her as she is an illiterate; that the appellant took advantage of her and induced her to sign Exhibit A, which turned out to be an irrevocable power of attorney; that at the end of the civil war the respondent returned to
- G Port Harcourt and the property was duly released to her by the relevant authority of Rivers State and she had remained in possession ever since.
- H

At the end of the hearing, the learned trial Judge, after review-

ing and evaluating the evidence and the addresses of counsel, dismissed the claims of the appellant resulting in an appeal to the Court of Appeal where the issues for determination were as follows:-

“(1) Whether the learned trial Judge was not in error in rejecting as inadmissible the building agreement made in 1958, between plaintiff’s late father and defendant?” B

(2) Whether the learned trial Judge was not in error when he held that the defendant had proved that she executed Exhibit “A” through fraud perpetrated on her by the plaintiff?

(3) Whether the learned trial Judge ought to have expunged the evidence of the defendant, which evidence was uncompleted, and not subjected to cross-examination and if so, whether the omission resulted in a miscarriage of justice? C

(4) Whether the learned trial Judge was not in error when he held that the only document relied upon by plaintiff in proof of his case was an assignment, not executed, not registered and not before him. D

(5) Whether the plaintiff had proved his case on a preponderance of evidence.”

In resolving issue No. 1, the lower court agreed with the appellant that the trial court was in error in rejecting the building agreement of 1958, which agreement was admitted by both parties in their pleadings and evidence in court and accordingly admitted and marked the document as Exhibit CA 1 . However, after a close look at the said Exhibit CA 1, the lower court came to the conclusion that the document was of no assistance to the case of the appellant as it cannot assist in proving title to the disputed land and that “.....since there is clear evidence that one of the parties to the agreement has died, the agreement can no longer be enforced against the respondent.” There is no appeal against that finding/holding by the lower court. E
F
G

On issue 2, the lower court held that the appellant did not challenge the procedure adopted by the respondent at the trial court even in his address before that court neither did counsel for the appellant request the trial court for leave to cross-examine the respondent in respect of the evidence complained of before the substitution of the respondent neither was the lower court requested to H

expunge the said evidence-in-chief of the respondent after her substitution and that the learned counsel was therefore raising the issue for the first time before that court and without the leave of court and thus, resolved the issue against the appellant. Again there is no complaint against the above holding.

B On issue 3, the lower court held that Exhibit A does not comply with the strict provisions of the Illiterate Protections Law of Rivers State and therefore invalid even though the respondent failed to prove that the said Exhibit A was obtained by fraud as alleged in the pleadings since the standard of proof required is prove beyond reasonable doubt.

C On issue 4, the lower court held that learned counsel for the appellant "conceded that the legal title in the property still remains in the respondent but argued that Exhibit C and various documents contained therein showed that the respondent agreed to assign the property to the appellant's late father before he died and the appellant was executed." The court then held that there is no evidence in Exhibit C, to show that the respondent applied to the Ministry for assignment of the disputed property to appellant's deceased father.

E Finally, on issue 5 the court held that the appellant, in the circumstance failed to prove his claim before the court and that: "There was therefore no basis upon which the trial court could have granted the appellant possession and ownership of the disputed land" and accordingly dismissed the appeal. The present appeal is against that decision.

As can be gathered from pages 243 - 245 of the record, there are only two grounds of appeal in this appeal. They complain as follows :-

G *"GROUND OF APPEAL*

The learned Court of Appeal erred in law when it held as follows:-

H *"I have taken a look at Exhibit A and it has an illiterate jurat to the effect that the contents were interpreted to the respondent but there is nothing to show who the writer is, and his address as required by Section 3 of the Illiterates Protection Law. Exhibit A therefore, cannot be used against the interest of the respondent. Although it was attested before a Magistrate, it is strange that the Magistrate did*

not insist on compliance with Illiterate Protection Law before endorsing the document.

PARTICULARS

1. Exhibit A an Irrevocable Power of Attorney contained in (sic) illiterate jurat, the contents were interpreted to the respondent, and it was duly attested before a Magistrate. B

2. The maxim - *omnia praesumuntur* - accordingly duly applied.

3. There was substantial compliance with the provisions of Section 3 of the Illiterates Protection Law, and other enabling law including Land Instruments Registration Law. C

4. The judgment is against the weight of evidence."

I have had to reproduce the two grounds of appeal for reasons that will become obvious in the course of this judgment. However, it is very clear that the appellant is attacking the judgment of the lower court on the ground that Exhibit A, complied with Section 3 of the Illiterates Protection Law, contrary to the holding by the lower court and ought to have been given effect to by the said court and secondly, that on the totality of the facts on record the judgment of the lower court was erroneous. In short, the learned counsel for the appellant did agree with the decision of the lower court in respect of all the other issues so resolved by that court. D E

In the appellant's Brief of Argument deemed filed and served on 7/6/04, the learned counsel for the appellant, Chief Okwuchukwu Ugolo identified the following issue for determination:- F

"Does Exhibit A, the Irrevocable Power of Attorney substantially comply with Section 3 of the Illiterate Protection Law and the other enabling laws including the Land Instruments Registration Law and whether the judgment is against the weight of evidence." G

On the other hand, learned counsel for the respondent submitted the following issue for determination in the respondent's Brief of Argument deemed filed and served on 15/ 11/06:-

"Whether on a proper appraisal of all the evidence on record, the Court of Appeal was right to have held that Exhibit A (the Irrevocable Power of Attorney) did not comply strictly with the Illiterates Protection Law and such other related laws and so it could not operate to divest the defendant/ respondent of her title to the property." H

It is important to note that in the passage of the judgment quoted and attacked in the ground of appeal, the lower court did not say that Exhibit A, did not comply with the provisions of any other law other than Section 3 of the Illiterate Protection Law. That being the case, it is my considered view that a consideration of the provisions of any other law other than the provisions of the Illiterates Protection Law, in the instant appeal will not be relevant neither would that be said to have arisen from the decision or ratio decidendi of the lower court now on appeal. There was no issue as to the registration or otherwise of Exhibit A, under the Land Instruments Registration Law. Neither did the trial court decide on it, as well as the lower court. Whatever the lower court said touching and concerning the necessity for the Magistrate to have examined the document before attesting same is purely obiter dicta, and therefore not relevant. Therefore in the consideration of the issue before this court, I will be limited to the issue as to whether or not Exhibit A substantially complied with Section 3 of the Illiterates Protection Law being the issue framed by counsel for the appellant.

It should also be noted that the learned counsel for the respondent has not included the sub-issue of weight of evidence in the issue he has identified for determination.

In arguing the issue, learned counsel for the appellant submitted that there is no requirement on the part of the attesting Magistrate to insist on compliance with the Illiterates Protection Law before endorsing the document; that the Magistrate duly endorsed Exhibit A “as the illiterate grantor executed Exhibit A in his presence after the interpreter, D. C. Ogbuji duly read over the document and interpreted it in Hausa Language to the respondent. The document was stamped on 2/8/66 and registered as No. 56 at page 56 in volume 449 on 13/8/66.”

It is the further submission of learned counsel for the appellant that Section 118 of the Evidence Act, creates presumptions in favour of Exhibit A as it was duly executed before a Magistrate; that under Section 114 of the said Evidence Act and the maxim omnia praesumuntur rite esse acta, Exhibit A having been shown on its face to have been executed before a Magistrate, the lower court was bound to presume that it was regularly executed unless the contrary is proved;

that Exhibit A was more than 20 (twenty) years old at the time and as such under Section 123 of the Evidence Act there is a rebuttable presumption that it was executed and attested by the person by whom it purports to be executed, relying on the case of *Adeleja v. Fanoiki* (1990) 3 S.C. (Pt.I) 130; (1990) 2 NWLR (Pt.131) 137, *Agbonifor v. Aiwereoba* (1988) 1 NWLR (Pt.70) 325, 329, *Nsiegbe v. Mgbememer* (1996) 1 NWLR (Pt. 426) 607 at 610 - 611. B

Learned counsel argued that having found as a fact that Exhibit A was not obtained by fraud perpetrated against the respondent, the only logical inference the lower court ought to have drawn in the circumstances is that Exhibit A, was regularly executed as there was an illiterate jurat etc; that in view of the above submission, Exhibit A was in substantial compliance with the Illiterate Protection Law; that the lower courts erred in holding that the appellant failed to establish his claims before the court particularly as they failed to give effect to Exhibit A; that though the lower court held that fraud was not proved in respect of Exhibit A, the court surprisingly concluded that appellant did not tender any document of title and that its attention was not drawn to any where in the file of the Ministry of Lands where the respondent applied for the assignment of the disputed property to the father of the appellant; that if the court had placed weight on Exhibits A, D, E, F and G and also Exhibit CA 1, it would have found for the appellant. Learned counsel then proceeded to review the contents of Exhibits A, D, E, F and CA 1 and urged the court to allow the appeal. D E F

I must observe that the sub-issue of weight of evidence being an issue of pure facts can only be taken in this court upon the leave of either the lower court or of this court. I have carefully gone through the record and it is very clear that appellant neither obtained the leave of the lower court nor of this court before appealing on the grounds of facts which is the focus of ground of the grounds of appeal earlier reproduced in this judgment. It is very important for all to note that rights of appeal are creatures of statute which must be exercised in accordance with the statutory provisions applicable. G H

On his part, learned counsel for the respondent submitted that there is no doubt that the respondent is an illiterate who allegedly

executed Exhibit A contrary to the provisions of Section 3 of the Illiterates Protection Law which provision, learned counsel further submits is mandatory, relying on Salami v. Savannah Bank of Nigeria Ltd. (1990) 2 NWLR (Pt.130) 106 at 122, S. C. O. A. v. Okon (1959) 4 FSC 200 at 223 and Edokpolo Co. Ltd. v. Ohenhen (1994) 7 B NWLR (Pt.358) 511.

It is also the contention of learned counsel that the lower court having construed the provision of Section 3 of the Illiterate Protection Law vis-a-vis Exhibit A, the court was right in not attaching any weight to the said Exhibit A; that the presumptions raised in Sections 114; 118 and 123 of the Evidence Act and relied upon by learned counsel for the appellant are rebuttable presumptions which have been duly rebutted by evidence on record; that appellant was claiming title to land and must establish his case on the strength of his own case and not rely on the weakness of the defendant's case; that Exhibit D which has been relied upon heavily by the appellant was never made by the respondent but a third party who was completely unknown to the respondent, neither was the document made on her behalf or on her authority and therefore cannot be construed to be an admission against the interest of the respondent as argued by learned counsel for the appellant. Finally learned counsel urged the court to dismiss the appeal.

The issue under consideration remains: "Does Exhibit A, the Irrevocable Power of Attorney substantially comply with Section 3 of the Illiterates Protection Law....." The above issue is therefore very narrow in compass. ***In the first place it is implicit in the use of the words "substantial compliance" with Section 3 of the law in question that there was no complete or total or strict compliance with the provisions of the said law. I therefore find and hold that learned counsel for the appellant concedes that Exhibit A did not fully comply with the spirit and letter of Section 3 of the Illiterate Protection Law. The question for determination as put by learned counsel for the appellant is simply, whether substantial compliance with the provisions of Section 3 of the Illiterates Protection Law is sufficient to validate a document such as Exhibit A, which would otherwise be invalid.***

Section 3 of the Illiterate Protection Law provides as follows:-

“Any person who shall write any letter or document or at the request; on behalf, or in the name of any illiterate person shall also write on such letter or other document his own name as the writer thereof and his address and his so doing shall be equivalent to a statement:-

(a) that he was instructed to write such letter or document by the person for whom it purports to have been written and that the letter or document fully and correctly represent his instruction; and

(b) if the letter or document purports to be signed with the signatures or mark of the illiterate person, that prior to its being so signed, it was read over and explained to the illiterate person and that the signature or mark was made by such person.”

The parties agree that the respondent is an illiterate who thumb printed Exhibit A. Also not disputed is the fact that Exhibit A was endorsed before a Magistrate. Looking at the said Exhibit A, it was not franked by a legal practitioner neither has the writer of that document written his own name as the writer thereof and his address as required by the said Section 3 of the Illiterates Protection Law. The question is whether the failure of the writer of Exhibit A to endorse on the document his name, and address as required render Exhibit A unenforceable despite the fact that it was duly thumb printed by the respondent in the presence of a Magistrate which learned counsel for the appellant considers to be substantial compliance with the provision. I must note that the learned counsel for the appellant has cited no authority in support of his contention that where Section 3 of the Illiterate Protection Law has been substantially complied with as in the instant case, the said section has thereby been duly complied with. ***In other words, does the said section of the law require strict compliance? If it requires strict compliance, then any of the requirements not complied with will automatically render the document in question invalid for the purpose of the Illiterates Protection Law, the presumptions relied upon by learned counsel for the appellant notwithstanding. It is the view of the lower courts that the provisions of Section 3 of the Illiterate Protection Law must be strictly complied with for any document under the section to be valid. The question***

is whether they are correct in so holding.

In the case of *S.C.O.A Zaria v. Okon* (1959) 4 FSC 220 at 223, the Supreme Court, in interpreting the section held that:-

B *“The document on the face of it does not comply with the section. The object of the ordinance is to protect an illiterate person from possible fraud. Strict compliance there-with is obligatory as regards the writer of the document. If the document creates legal rights and the writer benefits thereunder,*
C *those benefits are only enforceable by the writer of the document if he complies strictly with the provisions of the ordinance. If a document which does not comply with the provisions of the ordinance creates legal right between the illiterate and a third party then evidence may be called to prove*
D *what happened at the time the document was prepared by the writer before the parties signed it. But the writer himself cannot adduce evidence in his own form to remedy the omission.”*

The above statement of the law is very clear and unambiguous. It is strange that learned counsel for the appellant never
E referred this court to any authority on Section 3 supra, including the above cited decision neither did he attempt to distinguish same from the facts of this case.

I agree with the conclusion of the lower court on the
F issue that in view of the fundamental defects on Exhibit A - non-compliance with the strict provisions of Section 3 - the said Exhibit A cannot be used against the interest of the respondent although it was attested to before a Magistrate. That
G apart, Exhibit A is simply an Irrevocable Power of Attorney donated by the respondent to the appellant. It is not a document of title conferring any title to the property in issue on the appellant. So even if it complied with the relevant law, it would still have been necessary for appellant to prove title to the land. Did the appellant prove his alleged title to the land?

H On the sub-issue of weight of evidence, it is settled law that in an action for declaration of title to land, a plaintiff must succeed on the strength of his case and not on the weakness of the defence. From the reliefs earlier reproduced in this judgment, the appellant is

not praying the court for an order that the respondent be compelled to assign the property to him as she allegedly agreed to do prior to the death of the father of the appellant. What he is claiming, in substance is title to the property, which pre-supposes that he already held one. Can it be said that he established his title? The appellant has made heavy weather of the allegation that the respondent applied to the Ministry of Lands to assign her interest in the property in issue to the father of the appellant but as correctly found by the lower courts, there is no single document on record to support that claim. The application for the alleged assignment was never tendered neither was any such executed assignment. Exhibit D, relied upon by the appellant to submit that it is an admission against interest was never written by the respondent nor on her instructions. It was written by a government official. The whole file relating to the property was tendered and admitted in evidence but none of the documents contained therein is the alleged application of the respondent for the alleged assignment of the property. Even if Exhibit A could be relied upon, it does not deprive the respondent of her title to the property; the document being nothing other than an Irrevocable Power of Attorney - not a conveyance. In fact Exhibit "A" being an Irrevocable Power of Attorney allegedly donated by the respondent to the appellant is a clear evidence or confirmation of the fact that the title to the land in dispute resides in the respondent, the donor of that power. The only document that could have proved any passing of that title to the appellant would have been a conveyance or an assignment, none of which was said to have existed nor tendered in evidence in the case. It is therefore my view that despite the absence of leave to appeal on facts, the facts of the case on record clearly show that the appellant did not establish his title to the property in issue and that the lower courts are correct in so holding.

In consequence, I find no merit whatsoever in this appeal which is accordingly dismissed with N50,000.00 costs in favour of the respondent.

H

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of

my learned brother, Onnoghen, JSC., in this appeal. I agree with it and, for the reasons he has given, too dismiss the appeal with N50,000.00 costs in favour of the respondent.

B

AKINTAN, JSC

This appeal is in respect of a dispute over a plot of land at Plot 2, Block 250, Orije Layout in Port Harcourt. The appellant, as plaintiff, instituted the action at Port Harcourt High Court against the respondent as defendant. His claim was for:-

"1. A declaration that the plaintiff is entitled to the possession and ownership of Plot 2, Block 250, Orije Layout, Port Harcourt duly registered as No. 83 at page 83 in volume 433, Land Registry, Enugu now kept at the Port Harcourt Lands Registry.

2. N100,000 only as damages for trespass.

3. Perpetual injunction restraining the defendant, her servant or agents from further interference with the said property."

The parties filed and exchanged pleadings and the trial took place before Okor, J. At the conclusion of the trial, the learned trial Judge, in his reserved judgment delivered on 2nd May, 1997, held that the plaintiff failed to prove his claim against the defendant. The entire action was accordingly dismissed. An appeal filed against the judgment to the Court of Appeal was also dismissed. The present appeal is against the judgment of the Court of Appeal.

The parties filed their respective Briefs of Argument in this court. The sole issue raised and canvassed in the appeal centered on the validity of the Power of Attorney granted by the respondent to the appellant in respect of the land in dispute. The Brief facts of the case are that the respondent was the owner of the plot in dispute. She had contracted the appellant's father to build a 29 room house on the land for a sum of Three Thousand Pounds (N6,000). But the man could only complete the building of 19 rooms while the respondent had to complete the remaining 10 rooms herself. The respondent, a Northerner from the present Niger State, had to leave Port Harcourt during the Nigerian civil war. She then mandated the ap-

pellant to assist her in collecting rents from the tenants in her house on the land in dispute. The appellant requested her to give him a written authority for the assignment she gave him. The written authority prepared by the appellant and admitted at the trial is the one now being relied on by the appellant as the document by which the respondent transferred her title in the land to him. The respondent, being an illiterate, the execution of the document was expected to comply with the provisions of Section 3 of the Illiterates Protection Law. The section provides as follows:-

“3. Any person who shall write any letter or document or at the request, on behalf, or in the name of any illiterate person shall also write on such letter or document his own name as the writer thereof and his address and his so doing shall be equivalent to a statement -

(a) that he was instructed to write such letter or document by the person for whom it purports to have been written and that the letter or document fully and correctly represent his instruction; and

(b) if the letter or document purports to be signed with the signature or mark of the illiterate person, that prior to its being so signed it was read over and explained to the illiterate person and that the signature or mark was made by such person.”

The position of the law is that the provisions of the said Section 3 of the Illiterates Protection Law must be strictly complied with. Thus, the effect of failure to comply strictly with the provisions of the law renders the document inadmissible in evidence: See *Eke v. Odolofin* (1961) All NLR 404, The object of the Illiterates Protection Law is to protect an illiterate person from possible fraud. Strict compliance with the law is therefore obligatory as regards the writer of the document. If therefore, a document creates legal rights and the writer benefits thereunder, those benefits are only enforceable by the writer of the document if he complies strictly with the provisions of the law. The writer himself cannot adduce evidence in his own favour to remedy an omission to comply with the provision of the law: See *U.A.C of Nigeria Ltd. v. Ajayi* (1958) NNLR 33 and *S.C.O.A. Zaria v. Okon* (1960) 4 FSC 220.

The Illiterates Protection Law precludes any inference that the illiterate person understood the contents of a document which does

not comply with its provisions: See *Ezera v. Ndukwu* (1961) All NLR 564. An illiterate is a person who is unable to write or read or understand a particular document. In the absence of evidence to the contrary, therefore, the fact that a person thumb-impressed a document is regarded as *prima facie* evidence that he was illiterate: See *Jiboso v.*

B *Obadina* (1962) WRNLR 303.

In the instant case, the fact that the respondent affixed her thumb-impression on the document relied on by the appellant is prima facie evidence that she was an illiterate. It has also been shown that the provisions of Section 3 of the Illiterates Protection Law were not strictly complied with. It follows therefore that the appellant could not be allowed to take any advantage conferred by that document.

C I had the privilege of reading the draft of the leading judgment written by my learned brother, Onnoghen, JSC. He has fully set out the facts of the case and discussed all the issues raised in the appeal. I entirely agree with his reasoning and conclusions. For the reasons I have given above, and the fuller reasons given in the leading judgment, I agree that there is no merit in the appeal and I accordingly dismiss it with costs as assessed in the leading judgment.

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MOHAMMED JSC

The appellant was the plaintiff at the trial High Court of Justice, Port-Harcourt, Rivers State. He brought his action against the respondent as defendant and claimed as follows -

F “(1) *A declaration that the plaintiff is entitled to the possession and ownership of Plot 2, Block 250, Orije Layout, Port-Harcourt duly registered as No. 83 at page 83 in Volume 433, Lands Registry, Enugu now kept at the Port-Harcourt Lands Registry.*

G (2) *N100,000.00 (One Hundred Thousand Naira) only as damages for trespass.*

(3) *Perpetual injunction restraining the defendant, her servants or agents from further interference with the said property.”*

H The case was heard on pleadings and at the end of the hearing, Okor, J., in his well considered judgment delivered on 21st April, 1997, dismissed the entire claims of the appellant. Part of this judgment at page 132 of the records reads:-

“In view of the foregoing, I hold that plaintiff has failed to prove his case and therefore not entitled to the declaration of title sought.

On the issue of damages for trespass, plaintiff had failed to prove exclusive possession of the property. This he has to establish before he can be awarded damages for trespass. See Chime v. Ude (1993) 3 NWLR (Pt. 279) 78 at 81 ratio 4. Similarly, plaintiff is also not entitled to perpetual injunction. Plaintiff before instituting this action ought to have considered the possibility of suing the defendant for specific performance but definitely not one for declaration of title.

In the main, the plaintiff’s case fails. It should be dismissed and it is hereby dismissed.”

The appellant’s appeal to the Court of Appeal against the judgment of the trial court, was also dismissed on 4th December, 2001. The appellant’s further and final appeal to this court therefore, is against these concurrent decisions of the two courts below. The only issue placed by the appellant for the determination of his appeal by this court is whether Exhibit A, the Irrevocable Power of Attorney, substantially complied with Section 3 of the Illiterates Protection Law. This issue was well considered and comprehensively resolved by my learned brother, Onnoghen, JSC, in his leading judgment in this matter. Having had the opportunity of reading this judgment before today, I am in complete agreement with it that there is no merit in this appeal.

In any case from the evidence on record, it is quite plain that the trial court was satisfied that the respondent as defendant in that court not only proved her title to the property in dispute from the lease dated 10th July, 1958, granted to her by the Government of the then Eastern Nigeria and the renewal of the same lease dated 12th January, 1966, but had also been in possession of the property and paying ground rents and property rates to the relevant authorities. The judgment of the trial court was therefore well founded in law and on facts. The court below acted rightly in not disturbing the judgment. I also, in the absence of a complaint raised in the issue for determination that the concurrent decisions of the courts below are perverse or do not flow from the evidence adduced by the parties, do not see any good ground to disturb these judgments. This is because in an action by a plaintiff for declaration of title to land, a find-

ing of fact that the land in dispute belongs to the defendant, as was the case in this appeal, is a finding that the plaintiff has failed to prove his title to the land. See *Ajao v. Alao* (1986) 5 NWLR (Pt.45) 802. This is why, in my view, the dismissal of the appellant's claims subsequently affirmed by the court below, was quite in order.

B This court now armed with the findings of fact of two lower courts on the same issues which have not been faulted by the appellant, will not normally disturb the findings. See *Kodilinye v. Anatogu* (1953) 1 WLR 231, *Dawodu v. Damole* (1962) 1 All NLR 702 and C *Allie & Ors. v. Alhaji* (1952) 13 WACA 320. This is so, particularly when the appellant had not shown or even suggested that the findings of fact in the instant case resulted in any miscarriage of justice.

Finally, it is with these observations that I also dismiss this appeal and abide by the order on costs in the leading judgment of my D learned brother, Onnoghen, JSC.

MUHAMMAD JSC

E I have had the advantage of reading the judgment of my learned brother, Onnoghen, JSC. I agree with my learned brother that the appeal has no merit whatsoever. I too, dismiss the appeal. I abide by all orders made in the leading judgment including order as to costs.

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