

SUPREME COURT OF NIGERIA
27TH FEBRUARY, 2009. SC. 35/2004
CORAM:- D. MUSDAPHER, G. A. OGUNTADE, W. S. N.
ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, JJSC

DR. BENJAMIN OHIAERI APPELLANT
AND
1. ALHAJI B. I. YUSUF
2. HYDRO RESOURCES DEV. LTD.
3. MRS. CECILIA NKEMDILIM IBEKWE
4. MAUREEN UMEADI IBEKWE RESPONDENTS
(Sued as Executrix of late
Mr. Justice Daniel Ibekwe)
5. GOVERNOR OF LAGOS STATE
6. ATTORNEY- GENERAL AND
COMMISSIONER FOR JUSTICE
LAGOS STATE

LAND LAW - Agreement to sale - Effect - Where there is such agreement pursuant to which the purchaser makes part payment - And is put in possession - He acquires equitable interest as high as a legal estate (H1)

WORDS & PHRASES - Concur - Meaning - S. 2, Administration of Estate Law, Lagos State - Concurrence in the context is not synonymous with the word execution - It simply means agreement (H2)

ADMINISTRATION OF ESTATES - Multiple administrators - Execution of conveyance - One administrator can validly execute a conveyance - Provided it is done with the agreement of the other administrators (H3)

CUSTOMARY LAW - Family property - Disposition of - Where done by the head of family without consent of other family members - It is valid - Though it is voidable at the instance of those other family members (H4)

EQUITY - Land Law - Title - Priority of interests - Only a subsequent bonafide purchaser of a legal estate for value - Without actual, con-

structive or imputed notice - Can take priority over a prior equitable interest (H5)

EQUITY - Specific performance - Sale of land contract - Such contract attracts greater justification for a decree of specific performance - As the land may have a peculiar value (H6)

FACTS

Before the High Court of Lagos State, the 1st and 2nd respondents, as plaintiffs, sued the appellant, together with the 3rd to 6th respondents, as defendants. The claims of the plaintiffs were for sundry declarations, specific performance and injunctions, the purpose of which was to compel the 1st and 2nd defendants to perform the terms of an agreement to assign the unexpired residue of their leasehold, in the property in dispute, to the 2nd plaintiff. Only the appellant, as 3rd defendant, answered to the suit.

After hearing, the trial court gave judgment to the plaintiffs as prayed. Aggrieved, the appellant appealed to the Court of Appeal which dismissed the appeal. Appellant has come on a further appeal to the Supreme Court contending, inter alia, that the agreement to assign on which the plaintiffs founded their action was a nullity.

ISSUES FOR DETERMINATION

"1. Whether Exhibit "A" relied on by the lower court was capable of vesting the Plaintiffs/Respondents with an equitable interest in the property in dispute.

2. Whether the Purported Agreement by the 3rd Respondent to sell the property in dispute to the Plaintiffs/Respondents was capable of founding an order of specific performance.

HELD (Unanimously dismissing the appeal per **TABAI JSC**)

LAND LAW - Agreement to sale - Effect

1. The established legal principle is that where there is an agreement for sale of land either under native law and custom or any other mode of sale and for which the purchaser, acting within the terms of the agreement, makes full or part payment of the purchase price to the vendor and is in furtherance thereof put in possession, he has acquired an equitable interest in the property and which interest ranks as high as a legal estate and cannot therefore be overridden by a

subsequent legal estate created by the same vendor or his legal representative in favour of another person. (p. 465 D)

Concur - Meaning - S. 2, Administration of Estate Law

2. At the risk of repetition the provision states simply that where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part of this Law shall not be made without the concurrence therein of all such representatives. The text “shall not be made without the concurrence therein of all such representatives” should be accorded its clear literal construction. Concur means “to agree”. And concurrence simply means Agreement. In my view, therefore, the provision simply means that where there are two or more personal representatives a conveyance of real estate under this law shall not be made without the agreement of all such representatives. The word “concurrence” in the context is not synonymous with the word execution. (p. 467 E)

Concur - Meaning - S. 2, Administration of Estate Law

3. *Thus a conveyance can, under Section 4(2) of the Administration of Estate Law Cap 3 Laws of Lagos State, be validly executed by one of two or more personal representatives provided it is so executed and signed with the concurrence or agreement of such other personal representative.*

In the present case therefore the 1st Defendant who is 3rd Respondent, Mrs. Cecilia Nkemdilim Ibekwe being one of the Executrixes of the Estate of late Justice Daniel Ibekwe can, acting alone, validly execute an Agreement for the sale of the subject property provided it is so done with the concurrence or consent of the second Executrix Maureen Umeadi Ibekwe. And there is no evidence that the said Maureen Umeadi did not concur or agree. (p. 467 H)

Family property - Disposition of

4. The 3rd and 4th Respondents are mother and daughter respectively. And they are the two Administratrixes of the property. The property has since the death of Justice Daniel Ibekwe become family property. In these circumstances can any sale of the family property by the 3rd Respondent without the concurrence of the 4th Respondent create an equitable interest in favour of the purchaser. I shall

answer this question in the affirmative. The 3rd Respondent is the mother of the 4th Respondent and a number of other children. In the absence of any decision to the contrary she is presumed to be the head of the family. The established principle of customary law in Nigeria is that where the head of a family disposes of family property without the consent of the other members of the family it is still a valid sale, only voidable at the instance of those other members of the family. (p. 468 D)

C Title - Priority of interests

5. *The settled principle is that only a subsequent bonafide purchaser of a legal estate for value without notice can take priority over someone who had acquired a prior equitable interest over the same property.*

D Purchase “Without Notice” was explained to mean that the purchaser must have no notice of the existence of the equitable interest, that is, that he must have neither actual notice, nor constructive notice, nor imputed notice. It was also held that if the purchaser employs an agent such as a solicitor, any actual or constructive notice which the agent receives is imputed to the purchaser. In this case the uncontroverted evidence is that the same Chief Ladi Williams who brought the 2nd and 3rd Respondents together and indeed facilitated the sale of the property to the 2nd Respondent was also the agent of the Appellant and facilitated the conveyance of the property by the 3rd and 4th Respondents to the Appellant. Therefore the Notice actual or constructive of the prior equitable interest by Chief Ladi Williams is imputed to the Appellant. (p. 469 C/D)

G Specific performance - Sale of land contract

6. An action for specific performance arises once there exists a contract coupled with circumstances which make it equitable to grant a decree of same. This being a contract for the sale of land attracts a greater justification for a decree of specific performance because as opposed to other types of contract the land may have a special and peculiar value to the purchaser. The Plaintiffs/ Respondents have therefore every justification to claim for specific performance. With respect to the 3rd Respondent she must do equity for “equity looks on that which as done which ought to be done”. Put in another way, equity

imputes on her an intention to fulfill an obligation and the obligation is for her to specifically perform. The result is that I also resolve the 2nd issue in favour of the Respondents. (p. 470 C)

NOTABLE POINT OF INTEREST
ONNOGHEN JSC

B

1. Exhibit A is acknowledgment of payment

Exhibit A is an acknowledgment of receipt of payment of money by the 3rd respondent and all other beneficiaries of the estate of late Justice Dan Ibekwe which fact had not been denied by the 3rd and 4th respondents and any of the other beneficiaries of the said estate neither have they either collectively or individually taken any step known to law to challenge exhibit A - not even to offer such a challenge by way of defence to the action resulting in this appeal. C

I therefore agree with the lower courts that the failure of the D other administrators to contest, challenge or deny the agreement, exhibit A, to sell the land in dispute to the 1st and 2nd respondents is sufficient evidence of consent of all the administrators to the said agreement. (p. 475 B)

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REPRESENTATION

Mrs. Remi Olaopa, With her: Ayo Ademola for the appellant Akintunde Akinrimisi for the 1st and 2nd respondents.

Uko E. Udom, Esq. for the 3rd respondent

A. Haroun (S.S.C), Lagos State Ministry of Justice

Lawal Pedro Esq. with him: F. C. A. Okoli, K. A. Bakare CSC for the 5th and 6th respondents

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CASES REFERRED TO

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Shobajo v Irotun & Anor (2003) 4 NWLR (Part 840) 234

Kwara Investment Co. Ltd. v Garuba (2000) 10 NWLR (Part 674) 25 at 39

Omega Bank Plc v O.B.C Ltd. (2005) 8 NWLR (Part 928) 54 At 576 and 581

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Ibrahim v Ojomo & Ors. (2004) 4 NWLR (Part 862) 89 at 106-108
Help (Nig.) Ltd. v Silver Anchor (Nig) Ltd. (2006) 5 NWLR (Part 972) 196 at 208-209

Biyo v. Aku (1996) 1 NWLR (Part 422) 1

Adesanya v Otuewu (1993) 1 NWLR (Part. 270) 414
 Wakama v Kalio (1991) 8 NWLR (Part. 207) 123
 Universal Vulgarising (Nig) Ltd. v Ijesha United Trading Transport co. Ltd. (1992) 9 NWLR (part 266) 388
 Anaeze v Anuaso (1993) 5 NWLR (part 291) 1

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STATUTE REFERRED TO

Administration of Estate Law, Cap 3, Laws of Lagos State, s. 4 (2)

LEAD JUDGEMENT BY TABAI JSC

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This is an appeal against the judgment of the Court of Appeal delivered on the 8th of May, 2003. The action was initiated by a writ of summons issued at the High Court of Lagos State and was filed on the 18th of August, 1992. The Plaintiffs are the 1st and 2nd Respondents both at the court below and in this Court. The 3rd Defendant is the Appellant at the court below and before us. The claim as contained in the Amended Statement of Claim dated 22nd of April, 1996 was for the following reliefs:

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(i) *A Declaration that the Agreement made sometime in 1982 between the 2nd Plaintiff and the 1st and 2nd Defendants for the Assignment of the unexpired residue of the leasehold interest in the property known as Plot 1164 Saka Tinubu Street, Victoria Island, Lagos covered by Certificate of Occupancy issued on the 10th of February, 1983 and registered as No. 84 Page 84 in volume 1982 at the Lagos State of Nigeria Land Registry is valid, subsisting and binding between the parties.*

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(ii) *An Order of specific performance of the agreement made in 1982 between the 2nd Plaintiff and 1st and 2nd Defendants for the assignment of the unexpired residue of the leasehold interest in the property known as Plot 1164 Saka Tinubu Street, Victoria Island Lagos covered by Certificate of Occupancy issued on the 10th of February, 1983 and registered as No. 84 page 84 in volume 1982 at the Lagos State of Nigeria Land Registry is valid, subsisting and binding between the parties.*

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(iii) *A further declaration, that any purported sale, transfer, assignment and/or lease of the said property in favour of the 3rd Defendant or any other person is null and void and of no effect whatsoever.*

(iv) A perpetual injunction against the 3rd Defendant, his servants, agents and/or privies restraining them from further acts of trespass in the said property,

(v) Further order of perpetual injunction against the 4th and 5th Defendants restraining them, their agents or servants from granting consent in respect of any disposition of the said property in favour of the 3rd Defendant or any other person.

(vi) An order of possession of the said property in favour of the 2nd Plaintiff.

ALTERNATIVELY

The Plaintiff claims the sum of N150,000,000.00 (one hundred and fifty million Naira) being damages for breach of the agreement made in 1982 between the 2nd Plaintiff and the 1st and 2nd Defendants for the assignment of the unexpired residue of the leasehold interest in the property known as Plot 1164 Saka Tinubu Street Victoria Island, Lagos covered by Certificate of Occupancy issued on the 10th day of February, 1983 and registered as No 84 page 84 Volume 1982 at the Lagos State of Nigeria Land Registry.

Pleadings were filed and exchanged. Only the 3rd Defendant reacted to the processes served on him and filed his Statement of Defence. After both the Statement of Claim and Statement of Defence had undergone several amendments the matter proceeded to trial. By his judgment on the 24th of September, 1999 the learned trial Judge D.F. Akinsanya J. allowed the claim and granted all the reliefs (i)-(vi) as claimed. He also awarded the sum of N3, 500,000.00 to the Plaintiffs/Respondents representing damages for loss of use of the subject property. The 3rd Defendant/Appellant was not satisfied and proceeded to the Court below on appeal. By its judgment on the 8th of May 2003 the appeal was dismissed.

The 3rd Defendant-Appellant was still not satisfied and has come on appeal to this Court. It has to be noted that while the case was fought at the trial High Court and the Court of Appeal by 3rd Defendant/Appellant and the Plaintiffs and 1st and 2nd Respondents, the 3rd, 5th and 6th Respondents who never participated in the proceedings at the two courts below have also filed their briefs of argument. The Appellant's brief dated 17th of May, 2005 was prepared by Remi Olaopa (Mrs.). The 1st and 2nd Respondents brief dated 14th of March, 2006 was prepared by Tunde Akinrimisi. Uko

E. Udom prepared the 3rd Respondent's brief. And the brief of the 5th and 6th Respondents dated 11th of January 2007 was prepared by Lawal Pedro (now SAN).

In the Appellant's brief two issues for determination were identified, namely: -

B *"1. Whether Exhibit "A" relied on by the lower court was capable of vesting the Plaintiff/Respondent with an equitable interest in the property in dispute.*

C *2. Whether the Purported Agreement by the 3rd Respondent to sell the property in dispute to the Plaintiffs/Respondents was capable of founding an order of specific performance.*

These two issues were adopted by the Respondents in their respective briefs.

D The substance of the submissions of Remi Olaopa (Mrs.) in the Appellant's Brief is as follows: Learned counsel referred to the undisputed facts of the property being part of the Estate of late Hon. Justice Daniel Ibekwe and over which the 3rd and 4th Respondents (1st and 2nd Defendants are Administrators/Executrixes and submitted that the purported sale evidenced in Exhibit "A" without the concurrence of both Administrators is, by virtue of section 4(2) of the Administration of Estate Law Cap. 3 Laws of Lagos State, null and void. It is for the same reason that the Agreement in Exhibit "A" is incapable of founding an order of specific performance, counsel argued.

F As I stated earlier above the 3rd Respondent was the 1st Defendant at the trial court. She did not file a Defence, Nor did she take part in the proceedings thereat in any other way. She never filed an appeal to the court below. Nor has she filed an appeal to this court. She has however filed a brief urging in substance not to affirm the concurrent decisions of the two courts below.

G In the said 3rd Respondent's brief Uko E. Udem reiterates the principle that where a person pays for land, obtains receipt and takes possession of same he has an equitable interest in the land and relied on *Shobajo v Irotun & Anor (2003) 4 NWLR (Part 840) 234*

H Similarly, Where there is an agreement for the sale of land and the purchase price is paid to the vendor an equitable interest is created in favour of the purchaser counsel argued. It was the further argument of learned counsel that as between the Appellant on the

one hand and the 1st and 2nd Respondent on the other, there are conflicting equities and applying the latin maxim *qui prior est jure tempore potior est jure* - meaning he who is earlier in time is stronger in law - the Appellant having fully paid for and taken possession of the disputed property has acquired his equitable interest thereto. With respect to the Agreement for sale in Exhibit "A" it was the submission that the 3rd Respondent being only one of the two Administratrixes of the property cannot, without the concurrence of the 4th Respondent, bind the Estate of Late Justice Daniel Ibekwe. Reliance was placed on *Kwara Investment Co. Ltd. v Garuba* (2000) 10 NWLR (Part 674) 25 at 39; *Omega Bank Plc v O.B.C Ltd.* (2005) 8 NWLR (Part 928) 54 At 576 and 581 and section 4 (2) of the Administration of Estate Cap. 3 Laws of Lagos State. Learned counsel submitted that by virtue of the said provision the Agreement in Exhibit "A" entered into by only one of the two Administratrixes is null and void. Council relied further on *Ibrahim v Ojomo & Ors.* (2004) 4 NWLR (Part 862) 89 at 106-108. B
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On the 2nd issue it was the submission of the 3rd Respondent that the Agreement in Exhibit "A" upon which the Court below ordered specific performance is legally defective and that the disability therein vitiates the contract notwithstanding the manifest intention of the parties. Counsel cited *Help (Nig.) Ltd. v Silver Anchor (Nig) Ltd.* (2006) 5 NWLR (Part 972) 196 at 208-209, *Ibrahim v Ojomo (Supra)*, *Mohammed (Nig) Ltd.* (2002) 14 NWLR (Part.787) 335 at 360-361. In conclusion the 3rd Respondent urged this court to decide the use on the application of the correct legal principles. E
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On behalf of the 1st and 2nd Respondents Tunde Akinrimisi proffered the following arguments. Counsel referred to Exhibit "A" as a written acknowledgement of the payment and receipt of money for the sale of the subject property. According to counsel, it is an irrevocable evidence of an agreement to transfer title of the land to the 2nd Respondent. He submitted that where a person pays the purchase price of land and he is, in consequence thereof put in possession he acquires an equitable interest in the land which is as good as a legal Estate. For this submission he relied on *Adesanya v Otuewu* (1993) 1 NWLR (Part. 270) 414, *Wakama v Kalio* (1991) 8 NWLR (Part. 207) 123. It was counsel's further submission that Section 4(2) of the Administration of Estate Law Cap 3 Laws of Lagos State is G
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inapplicable since, according to him, the provision applies only to conveyances of legal title. With respect to the principle of priority of equities, counsel referred to the two transactions and submitted that since the Agreement for sale of the property to the 2nd Respondent was made in 1982 and the purported conveyance to the 3rd Defendant/ Appellant was made in 1985 the equities of the 2nd Respondent prevail.

With respect to the second issue learned counsel submitted that in a case of breach of contract for the sale of land the appropriate order is that for specific performance and not the award of damages which cannot be adequate remedy. He cited *Universal Vulgarising (Nig) Ltd. v Ijesha United Trading Transport co. Ltd.* (1992) 9 NWLR (part 266) 388 and *Anaeze v Anuaso* (1993) 5 NWLR (part 291) 1. It was further submitted that where the 1st and 2nd Respondents are proved to have been induced through Exhibit "A" to alter their position by taking possession and expending money on the land, it would be fraudulent on the part of the 3rd Respondent to set up invalidity of the contract as a defence. He relied on *International Textile Industry (Nig) Ltd. v. Aderemi* (1999) 8 NWLR (Part 614) 268 at 297-298 and *Adutuyi v. Aghojo* (1997) 1 NWLR (Part 705) 718, *Biyo v. Aku* (1996) 1 NWLR (Part 422) 1. Similarly the 3rd Respondent, having taken the benefits of the agreement in Exhibit "A" cannot turn round to say that the agreement is null and void, counsel further argued. Even if the agreement for the sale of the land were held to have been entered into single-handedly by the 3rd Respondent without the concurrence of the 4th Respondent, counsel argued, it is only avoidable at the instance of the 4th Respondent and that the 4th Respondent never took any step to void the contract in her life time. Finally it was urged on behalf of the 1st and 2nd Respondents that the appeal be dismissed and the decision of the courts below affirmed.

In the 5th and 6th Respondents' Brief Mr. Lawal Pedro, S.A.N. adopted the arguments of the 1st and 2nd Respondents on the 1st issue. Counsel agreed that concurrence in Section 4(2) of the Administration of Estate Laws of Lagos State means the concurrence of all the administrators or executors but submitted that evidence of such concurrence can be direct or implied. For this submission he relied on *Ibrahim v Ojomo* (2004) 1 SC (Part 11) 136 at 155. On the 2nd issue for determination counsel adopted the submissions of

the 1st and 2nd Respondents.

I have considered the evidence on record and the submission of the counsel for the parties. The facts of this case are essentially not in dispute. The 2nd Plaintiff who is also 2nd Respondent before us sometime in 1982 entered into an Agreement with the 1st Defendant who is 3rd Respondent herein for the sale of the property in dispute at the agreed sum of N850,000.00. And pursuant thereto the 2nd Respondent, as purchaser, paid to the 3rd Respondent, as vendor, the sum of N481, 000.00 representing the agreed part-payment. In July 1985 the self-same 3rd Respondent in conjunction with her daughter the 4th Respondent who is also the co-Administratrix of the property conveyed the same property to the 3rd Defendant who is the Appellant. The question is the legal incidence of these transactions.

The answer to this question is, in my consideration, not too far to seek. ***The established legal principle is that where there is an agreement for sale of land either under native law and custom or any other mode of sale and for which the purchaser, acting within the terms of the agreement, makes full or part payment of the purchase price to the vendor and is in furtherance thereof put in possession, he has acquired an equitable interest in the property and which interest ranks as high as a legal estate and cannot therefore be overridden by a subsequent legal estate created by the same vendor or his legal representative in favour of another person.*** The principle was examined in considerable details in *Ayinla v Sijuwola (1984) N.S.C.C. 301 at 312* The Supreme Court Per Nnamani JSC expanding the principle had this say -

"if a party received title to land under native law and custom and entered into possession and the same vendor conveyed the land to another purchaser executing a deed of conveyance, a claim that the first party's equitable interest was cut off by the latter bonafide purchaser would not be upheld. See Amao v Adebona (1962) L.L.R 125, Further, if there is proof that money was paid for land coupled with an entry into possession, it is sufficient to defeat the title of a subsequent purchaser of the legal, estate if the possession is continuously maintained. See T.A. Orasanmi v M. O. Idowu (1959) 4 F.S.C. 40. More close to the contention herein is the decision in Soremekun

v Shodipo (1959) L.L.R. 30 to the effect that if land is sold to a party without executing a formal deed of conveyance his interest was no more than equitable. Legal estate of the other party would be preferred to it if the party with the equitable interest is not in possession. All these cases appear to lay emphasis on possession. Even if it was an equitable interest, if it is coupled with possession it cannot be over-
ridden by a legal estate. This principle accords with the decision of the Privy Council in Oshodi v. Balogun & ors 4 WACA 1 at P. 6 and Suleiman & ors v. Johnson 13 WACA 213. Whether land is sold under native law and custom or merely sold but without executing a formal deed, it seems to me that if the purchaser is in possession for a long time the equitable interest thus created cannot be superseded by a subsequent legal estate. In effect it matures into a legal estate...

The above is a clear restatement of the principle.

See also *Registered Trustees of Muslim Mission Hospital Committee v. Oluwote Adeagbo (1992) 2 NWLR (Pt. 226) 670 at 706*

The emphasis is the payment of the agreed full or part of the purchase price coupled with possession by the purchaser. And I hold the view that possession in this context includes constructive possession. It is in evidence that the Respondents would have been in physical possession but for the fact that the 3rd Respondent/Vendor was still there. See the evidence of the PW2 at page 91 lines 16-17 of the record. Ordinarily *therefore the agreement for sale in Exhibit "A", being the one upon which the 2nd Respondent paid the purchase price coupled with his constructive possession of the land, entitles him to an equitable interest strong enough to defeat any subsequent legal estate created in favour of the 3rd Defendant/Appellant.*

That however is not the end of the matter. The legal challenge here is that the agreement for sale is null and void and does not enure to create any equitable interest in favour of the 2nd Respondent capable of defeating the subsequent legal estate of the 3rd Defendant/Appellant because it was made between the 2nd Plaintiff/Respondent and the 1st Defendant/3rd Respondent without the mandatory concurrence of the 2nd Defendant/4th Respondent who was a co-administratrix of the property and in contravention of the provisions of Section 4(2) of the Administration of Estates Law, Cap. 3 Laws of Lagos State 1962. It is the submission of the Appellant therefore that there existed no contract of sale of the dispute property let

alone one that supersedes the subsequent legal estate of the Appellant.

This is the crucial issue in this appeal and I have no doubt that there is a lot of force in the argument. But does it hold sway within the context of the provision and the facts and circumstances of this case. Section 4(2) of the Administration of Estate Law Cap 3 Laws of Lagos provides:

“Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part of this Law shall not, save as otherwise provided as respects trust estates, be made without the concurrence therein of all such representatives or an order of court, but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of court, and shall be effectual as if all the persons named as executors had concurred therein.”

Learned counsel for the Appellant argued that by reason of this provision the agreement not having been also signed and/or made by the second Administratrix is null and void. I am not, with respect, persuaded by this submission. ***At the risk of repetition the provision states simply that where as respects real estate there are two or more personal representatives a conveyance of real estate devolving under this Part of this Law shall not be made without the concurrence therein of all such representatives. The text “shall not be made without the concurrence therein of all such representatives” should be accorded its clear literal construction. Concur means “to agree”. And concurrence simply means Agreement. In my view, therefore, the provision simply means that where there are two or more personal representatives a conveyance of real estate under this law shall not be made without the agreement of all such representatives. The word “concurrence” in the context is not synonymous with the word execution. Thus a conveyance can, under Section 4(2) of the Administration of Estate Law Cap 3 Laws of Lagos State, be validly executed by one of two or more personal representatives provided it is so executed and signed with the concurrence or agreement of such other per-***

sonal representative.

In the present case therefore the 1st Defendant who is 3rd Respondent, Mrs. Cecilia Nkemdilim Ibekwe being one of the Executrixes of the Estate of late Justice Daniel Ibekwe can , acting alone, validly execute an Agreement for the sale of the subject property provided it is so done with the concurrence or consent of the second Executrix Maureen Umeadi Ibekwe. And there is no evidence that the said Maureen Umeadi did not concur or agree. It is my firm view therefore that the Appellant read the provision of Section 4(2) of the Administration of Estates Law Cap 3 Laws of Lagos State out of context and whose argument is therefore untenable. On this issue I am persuaded by the argument of learned counsel for the 5th and 6th Respondents Lawal Pedro. *Ibrahim v. Ojomo (Supra)* cited by him in my view is quite apposite to the facts and circumstances of this case.

The issue can still be examined from another perspective. **The 3rd and 4th Respondents are mother and daughter respectively. And they are the two Administrixes of the property. The property has since the death of Justice Daniel Ibekwe become family property. In these circumstances can any sale of the family property by the 3rd Respondent without the concurrence of the 4th Respondent create an equitable interest in favour of the purchaser. I shall answer this question in the affirmative. The 3rd Respondent is the mother of the 4th Respondent and a number of other children. In the absence of any decision to the contrary she is presumed to be the head of the family. The established principle of customary law in Nigeria is that where the head of a family disposes of family property without the consent of the other members of the family it is still a valid sale, only voidable at the instance of those other members of the family.** There are numerous authorities on the point amongst them *Folani v. Cole* (1990) 2 NWLR (Part 133) 445 at 453, 455 and 457, *Esan v Faro* 12 WACA 135; *Ajarho v Aghoghorvia* (1985) 4 SC 1; *Ekpendu v Erika* (1959) SC NLR 186; *Solomon v. Mogaji* (1982) 11 SC L. Thus even if It is accepted that the 3rd Respondent sold the property evidenced in Exhibit "A" without the consent or concurrence of the 4th Respondent it remains a valid sale voidable only at the instance of the said 4th Respondent. I hold on

conclusion therefore that Exhibit "A" remains a valid agreement of sale of the land in dispute and which has created an equitable interest in favour of the 2nd Respondent and which equitable interest ranks as high as and can even supersede a subsequent legal Estate created in favour of another person over the same land.

*The next question is that of determining the priority of the equities as between the 2nd Respondent and the Appellant. The Appellant claims to have acquired his legal estate over the property for value and without notice of the 2nd Respondent's equitable interest thereon. **The settled principle is that only a subsequent bonafide purchaser of a legal estate for value without notice can take priority over someone who had acquired a prior equitable interest over the same property.** (This is the principle in *Animashaun v. Olojo* (1990) 6 NWLR (Part 154) III at 121.*

There is no gainsaying the fact that the Appellant bought the property for value. The evidence is that he paid N1,000,000.00 to the selfsame 3rd Respondent. But can he be said to have bought the property bona fide and without notice. See *Animashaun vs. Olojo* (*Supra*). **Purchase "Without Notice" was explained to mean that the purchaser must have no notice of the existence of the equitable interest, that is, that he must have neither actual notice, nor constructive notice, nor imputed notice. It was also held that if the purchaser employs an agent such as a solicitor, any actual or constructive notice which the agent receives is imputed to the purchaser. In this case the uncontroverted evidence is that the same Chief Ladi Williams who brought the 2nd and 3rd Respondents together and indeed facilitated the sale of the property to the 2nd Respondent was also the agent of the Appellant and facilitated the conveyance of the property by the 3rd and 4th Respondents to the Appellant. Therefore the Notice actual or constructive of the prior equitable interest by Chief Ladi Williams is imputed to the Appellant.** On this issue the learned trial judge in his judgment at page 31 of the record had this to say.

"In spite of the search conducted at the Land Registry at the instance of the 3rd Defendant no incumbrance was found, yet the knowledge of the earlier sale to the Plaintiffs is impliedly imputed to the 3rd Defendant through the role of Chief Rotimi Williams Cham-

bers.”

I think I have every cause to endorse the above reasoning and conclusion. The knowledge of Chief Ladi Williams and indeed Chief Rotimi Williams Chambers about the prior sale to the 2nd Plaintiff/Respondent is, in law, imputed to the Appellant. The result is that he cannot claim protection under the doctrine of innocent purchaser for value without notice. He had notice or notice imputed to him and so the defence does not avail him.

In view of the foregoing considerations therefore I resolve the first issue in favour of the Respondent. With respect to the 2nd issue of whether the Agreement for sale between the 3rd Respondent and the Plaintiff/Respondent can found an action in specific performance, the answer, in my view is again in the Affirmative. ***An action for specific performance arises once there exists a contract coupled with circumstances which make it equitable to grant a decree of same. This being a contract for the sale of land attracts a greater justification for a decree of specific performance because as opposed to other types of contract the land may have a special and peculiar value to the purchaser. The Plaintiffs/ Respondents have therefore every justification to claim for specific performance. With respect to the 3rd Respondent she must do equity for “equity looks on that which as done which ought to be done”. Put in another way, equity imputes on her an intention to fulfill an obligation and the obligation is for her to specifically perform. The result is that I also resolve the 2nd issue in favour of the Respondents.***

On the whole I do not fancy any reason to disturb the decision of the two courts below which I therefore affirm. This appeal stands dismissed and is accordingly dismissed for lack of merit. I assess the costs of this appeal at N50,000.00 in favour of the Plaintiffs/Respondents.

H **MUSDAPHER JSC**

I have read before now the judgment of my Lord Tabai, JSC just delivered with which I entirely agree. For the same reasons canvassed in the judgment, I too find the appeal not made out. I dismiss the appeal and affirm the decisions of the courts below. I abide by

the order for costs proposed in the aforesaid judgment.

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Tabai JSC. I agree with his reasoning and conclusion. I would also dismiss the appeal as unmeritorious. I subscribe to the order on costs as made in the lead judgment.

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, holden at Lagos in appeal No. CAL/84/2000 delivered on the 8th day of May, 2003 dismissing the appeal of the appellant against the judgment of the High Court of Lagos State, holden at Lagos in Suit No. LD/259/92 delivered on the 24th day of September, 1999.

The plaintiffs/respondents instituted an action against the appellant and the defendants/respondents for the reliefs (as in lead Judgment) of the five defendants sued, only the 3rd defendant/ appellant entered appearance and filed a defence to the action. As stated earlier in this judgment, the trial court entered judgment in favour of the plaintiffs/respondents resulting in an appeal to the Court of Appeal which was dismissed by that court. The instant appeal is the final appeal on the matter the issues for the determination of which have been distilled in the appellant's brief of argument filed on the 17th day of May, 2005 by Remi Olaopa (Mrs.)

The issues were adopted by learned counsel for the 1st and 2nd respondents in their brief of argument filed on the 14th day of March, 2006 by Tunde Akinrimisi Esq. while the issues formulated by *Uko E. Udom Esq.* in the 3rd respondent's brief deemed filed on 2/12/08 identified identical issues with those of the appellant. In short the learned counsel for the 5th and 6th respondents also adopted the same issues for determination.

It is my considered view that the two issues constitute one issue which can be treated together. In effect, the issue is whether exhibit A vested an equitable interest in the property in dispute which is capable of grounding an order of specific performance.

In arguing the appeal, learned counsel for the appellant sub-

mitted that by virtue of the provisions of section 4(2) of the Administration of Estate Law Cap. 3, Laws of Lagos State, exhibit A, which purports to be an agreement for sale of the property, which is a subject of administration as part of an estate, is void for non-concurrence of the 1st and 2nd defendants who were joint administrators of the estate of late Justice Daniel Ibekwe; that exhibit A cannot, as a result, vest any equitable interest on the plaintiffs particularly as no order of court was sought and obtained in view of the non-concurrence of the said defendants; that any payment of money by a buyer to a purported vendor who lacks the authority to sell cannot vest in the purchaser any legal or equitable interest and as such no specific performance can be ordered in the circumstance, relying on *Incar (Nig.) Ltd. vs. Bolex Ent. (Nig) (2001) 12 NWLR (Pt.728) 646 at 670*; *Nlewedim v. Uduma (1995) 6 NWLR (pt. 402) 383*. Learned counsel urged the court to resolve the issue in favour of the appellant and allow the appeal.

On his part, learned counsel for the 1st and 2nd respondents submitted that the appellant, who was the 3rd defendant at the High Court, did not join issues on material facts with the 1st and 2nd plaintiffs/respondents on the statement of claim particularly as the 1st and 2nd defendants (3rd and 4th respondents) never filed a statement of defence denying the facts pleaded in the statement of claim; that exhibit A constitutes an irrevocable and undeniable evidence that there was an agreement to transfer title in the property to the 2nd respondent as a result of which the 1st and 2nd respondents part performed; that exhibit A qualifies as a written acknowledgement of receipt of payment of money from the 1st and 2nd respondents to the 3rd respondent and all other beneficiaries of the estate in question for the sale of the disputed property to the 2nd respondent, relying on the case of *Adesanya v. Otuewu (1993) 1 NWLR (Pt.270) 414 at 461*; *Wakama v. Kalio (1991) 8 NWLR (Pt. 207) 123*, that the fact that they agreed to sell the disputed property to the 2nd respondent and that they collected money in pursuance thereof go to show the genuineness of the intention to transfer the disputed property as at the time exhibit A was made.

Referring to section 4(2) of the Administration of Estate Law, supra, learned counsel conceded that one executor cannot competently convey title where there are two executors but submitted that

the instant case is not based on conveyance but an agreement to sell and as such the said section is inapplicable; that parties are not allowed to benefit from fraud committed which would be the case if exhibit A is said not to constitute a valid agreement for sale by virtue of which 3rd and 4th respondents and other beneficiaries of the estate received an advantage by way of payment for same. By way of an alternative submission, learned counsel stated that since the 3rd respondent, after signing exhibit A, joined others to sign exhibit N, it makes exhibit N defective to the extent that at the time of the signing, the 3rd respondent had nothing to convey thus leaving only the 4th respondent free to sign thereby making exhibit N to be of the same status with exhibit A and where two equities are equal, the first in time prevails thereby validating exhibit A; that the 4th respondent did not challenge the action of the 3rd respondent in signing exhibit A neither did any other beneficiary, nor did they contest the suit resulting in this appeal nor appealed against the decision of the trial court or of the lower court. B C D

Learned counsel for the 1st and 2nd respondents further submitted that the agreement by the 3rd respondent to sell the property to the 2nd respondent is enforceable by specific performance relying on *Incar Wig.) Plc v. Bolex Ent. Nig.)* (2001) 12 NWLR (Pt 728) 646 and urged the court to dismiss the appeal. E

I have to note that the brief of argument of the 3rd respondent deemed filed on 2/12/08 urges this court to set aside the decision of the lower court even though the 3rd respondent never appealed against the decision of the trial court and the lower court. The brief is definitely not that of a respondent properly so called and is consequently discountenanced by me, F

Lawal Pedro Esq., (now SAN), learned counsel for the 5th and 6th respondents submitted, in the brief of argument filed on their behalf on the 17th day of January, 2007 that the meaning of section 4(2) of Cap. 3 Laws of Lagos State is that the administrators or executors of an estate must concur in any form or manner in the sale of the landed property; that the concurrence may be carried into effect by one of the administrators executing the deed of conveyance or other instrument transferring interest in landed property - relying on the case of *Ibrahim v. Ojomo* (2004) 1 SC (Pt. 11) 136 at 155; that the failure of the other administrators to contest, challenge or deny G H

the agreement to sell the land in dispute to the plaintiffs is sufficient evidence of consent of all the administrators to the transaction; that the appellant has not stated why the court should interfere with the concurrent findings of fact by the lower courts on the issue of the consent of all the beneficiaries of the estate to the transaction in issue; B that there is nothing illegal or anti public policy in executing the agreement for sale of the land in dispute and as such the lower courts were right in ordering specific performance and urged the court to dismiss the appeal and affirm the decision of the lower court.

C Section 4(2) of the Administration of Estate Law, Cap 3, Laws of Lagos State which constitutes the bedrock of the issues for determination as formulated by learned counsel for the appellant provides as follows:-

“where as respects real estate there are two or more personal D representatives a conveyance of real estate devolving under this part of this law shall not save as otherwise provided as respects trust estate, be made without the concurrence therein of all such representatives or an order of court”. In interpreting the above section of the law, this court,

E In the case of Ibrahim vs Ojomo (2004) 1 SC (Pt.II) 136 of 155 held as follows:-

“The ... court has a duty to interpret section 4(2) properly, “Concurrence” as used in section 4 (2) can be established even outside the conveyance executed. This could be done by credible oral F evidence or evidence of minutes kept by the administrators (if any). Once such concurrence of all the administrators has been reached, it is then lawful for one or two of them to execute the relevant document of deed Such a Deed would then have been validly executed G by all the administrators. See the English case of Fountain vs. .Edwards (1975) 1 CH 1. It cannot therefore be right to say that if any two out of three sign in such a circumstance such conveyance is void by virtue of section 4(2). In the instant case it is not in doubt that exhibit D II was void, but not just because all three administrators did not sign H it, but because the three had not agreed to the transaction which the said exhibit D 11 purported to support”.

It should be noted that the 3rd and 4th respondents as well as the other beneficiaries of the estate never challenged exhibit A in any form; neither did they deny receiving the benefit from same. Even

when the 1st and 2nd respondents instituted the action, they never contested it neither have they appealed against the judgments of the lower courts against them. It is therefore very clear that the 3rd and 4th respondents together with the other beneficiaries of the estate in question are satisfied with the judgments of the lower courts on the issues. It is my view that the above facts clearly demonstrate concurrence of the 3rd and 4th respondents together with other beneficiaries with the agreement to sell the property to the 1st and 2nd respondents. Exhibit A is an acknowledgement of receipt of payment of money by the 3rd respondent and all other beneficiaries of the estate of late Justice Dan Ibekwe which fact had not been denied by the 3rd and 4th respondents and any of the other beneficiaries of the said estate neither have they either collectively or individually taken any step known to law to challenge exhibit A - not even to offer such a challenge by way of defence to the action resulting in this appeal. D

I therefore agree with the lower courts that the failure of the other administrators to contest, challenge or deny the agreement, exhibit A, to sell the land in dispute to the 1st and 2nd respondents is sufficient evidence of consent of all the administrators to the said agreement. E

The above findings being concurrent, the principle of law is that once there is such a finding this court will not disturb same except the appellant is able to show that the findings are perverse or that there was a substantial error, either in substantive or procedural law, which the appellant has failed to raise, let alone establish in the instant case. See *Ojo v. Anibire* (2004) 5 SC (Pt.1) at 13-14. F

On issue two, it has been established that there was an existing valid agreement between the relevant parties in relation to the sale of the property in dispute coupled with facts and circumstances on which the court can exercise its discretionary powers in equity to order specific performance of same, particularly where the agreement is *co-facie* not illegal or offend public policy, the court will definitely enforce same. In the instant case, since exhibit A satisfies the condition precedent to be so enforced, I hold the firm view that the lower court was right in affirming the order of specific performance made by the trial court in this case. G H

In conclusion, I too find no merit whatsoever in the appeal which is accordingly dismissed. I abide by the consequential orders

made in the lead judgment of my learned brother, TABAI, JSC including the order as to costs.

MUHAMMAD JSC

B I have had the opportunity of reading in advance the judgment of my learned, brother, Tabai, JSC, just delivered. I agreed with him that the appeal lacks merit. I, too, dismiss the appeal. I abide by all the consequential orders made in the lead judgment including
C order as to costs.

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