

SUPREME COURT OF NIGERIA
8TH MAY, 2009. SC. 29/2000
CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,
W. S. N. ONNOGHEN, P. O. ADEREMI,
C. M. CHUKWUMA-ENEH, JJSC

1. SAMUEL ONONUJU
2. FREDERICK AZUBUINE APPELLANTS
(Representing Ndumanya family of
Umuohi, Okija)

AND

1. ATTORNEY-GENERAL, RESPONDENTS
ANAMBRA STATE
2. COMMISSIONER FOR WORKS,
LANDS AND TRANSPORT,
ANAMBRA STATE
3. CHIEF EMMANUEL EZE ONWUKA

APPEALS - Grounds - Nature - Determinants of - Is whether they reveal a misunderstanding or misapplication of the law by lower court - Or whether they question the evaluation of facts by it (H1)

APPEALS - Grounds - Nature - Whether of law or fact - Grounds 1, 2, 3, & 5 are grounds of law in that their nature excludes exercise of discretion - By the court - In answering the questions raised thereby (H2)

LAND USE ACT - Revocation - Claim for nullification - Proof of title - Applicability - Though issue of title be incidental to claim - Plaintiff is not required to establish title - On the authority of Dzungwe case (H3)

LAND USE ACT - Holders of land - Prior to Land Use Act - Effect of Act on their interests - Such land is properly vested in them - Not even government can deprive them of it - Unless by compulsory acquisition in accordance with the Act (H4)

LAND USE ACT - Notice of revocation - Service - Validity of - Respondents failed to comply with provisions of the Land Use Act - If any service was done at all - It was in violation of s. 28 thereof (H5)

LAND USE ACT - Compulsory acquisition - Public purpose requirement - Import - It must be for public purpose or it is invalid - And a subsequent grant to a private person can never be construed as public purpose (H6)

FACTS

Plaintiffs/appellants sued defendants/respondents at the High Court contesting the purported compulsory acquisition of the land in dispute, as well as the subsequent grant of a portion of the land to the 3rd respondent, by the 1st and 2nd respondents. The case of appellants was that they were not served with the requisite notice of revocation in accordance with the provisions of the Land Use Act and as such the purported compulsory acquisition was invalid. Further, that even if the requisite notice had been properly served, the subsequent grant of a portion of the land to a private person invalidates the acquisition for want of compliance with the requirement that acquisition must be for public purpose.

After hearing, the learned trial judge dismissed the appellants' claims in its entirety. Aggrieved, appellants appealed to the Court of Appeal. By a majority judgment, the appeal was dismissed and the judgment of the trial court upheld. Still dissatisfied, appellants have come on a further appeal to the Supreme Court.

ISSUES FOR DETERMINATION

(1) Was the acquisition of the 15,025 hectares granted to the 3rd respondent invalid null and void?

(2) Was the majority decision of the court below correct in law when it upheld the finding of the trial court that notices of revocation were served on the appellants?

(3) Was the majority judgment of the court below right in holding as did the trial court that the 15,025 hectares of land granted to the 3rd respondent was for public purposes or for a continuation of the public purposes for which the Federal Government built low cost houses on the adjacent 5 hectares of land?

(4) Was the Certificate of Occupancy granted to the 3rd re-

spondent by the Chairman of the Ihiala Local Government Council on the 27th of April 1989, valid?"

(2) *"(1) Whether the Court of Appeal was right in striking out the issue of the Pre-Land Use Act title or holding of the plaintiffs/appellants on the ground that the issue was not raised by anybody and that the plaintiffs/appellants are not claiming for compensation when there was evidence that the issue arose both at the trial court and the court below.*

(2) Whether the plaintiffs/appellants, having failed to prove ownership or Pre-Land Use Act title or holding of the land in issue, have locus standi to institute the action as respects their claim for compensation and reversion."

HELD (Unanimously allowing the appeal per **ADEREMI JSC**)
APPEALS - Grounds - Nature - Determinants of

1. In determining whether a ground of appeal alleges an error of law or fact, it has been held that the general requirement or duty of the court is to examine thoroughly the grounds of appeal to see whether the grounds reveal a misunderstanding by the lower tribunal of the law or a misapplication by it, of the law to the facts already proved or admitted, in which case it would be question of law; or one that will require questioning the evaluation of the facts by the lower tribunal before the application of the law, in which case, it would amount to a question of mixed law and fact. (p. 1371 C)

APPEALS - G rounds - Nature - Whether of law or fact

2. Reading ground 1 on the Notice of Appeal, it seems clear to me that the question the court is called upon to answer here is one which is in accordance with a rule of law i.e. Section 44 (e) of the Land Use Act Chapter 202 - this certainly excludes exercise of discretion in answering that question as the court thinks fit in accordance with what is considered to be the truth or otherwise of the matter. Ground 1 in my respectful view, is a ground of law simpliciter. Ground 2 in the Notice of Appeal calls for the construction of the decision of the Court of Appeal in INTEGRATED RUBBER PRODUCTS LTD. V. OVIawe (1993) 5 NWLR (pt.243) 572 - for this question I do not hesitate in saying that this ground is also of law simpliciter. Ground 3 relates to the validity of the Certificate of Customary Right of Occu-

pancy put up by the 3rd respondent. It is settled in law that no extrinsic evidence will ever be allowed to add to or vary the terms of any instrument the like of the Certificate mentioned in this ground. This ground calls for an answer in accordance with the rule of law. It is therefore a ground of law. Intrinsic in ground 5 is the issue of whether the grant of the land in dispute to the 3rd respondent was for a public purpose as known to law. This no doubt certainly excludes exercise of discretion in answering the question as the court thinks fit in accordance with what is considered to be the truth or otherwise. Again, this is a ground of law. (p. 1371 F)

Revocation - Claim for nullification - Proof of title

3. It has been contended by the 1st, 2nd and 3rd respondents/cross-appellants that the plaintiffs did not prove their title to the land and therefore they are not entitled to the reliefs sought. All I wish to say is that on the authority of “DZUNGWE” cited above, the plaintiffs/appellants need not go further to prove his title to the land beyond the averments I have extracted from their pleadings. When this same point was taken at the court below, Salami JCA in his dissenting judgment reasoned thus: -

“The appellants, strictly sensu, did not seek for a declaration of title in their claim before the trial court. The claims of the appellants for declaration for nullification of certain actions taken by government officials which they consider inimical to their interests, even though the issue of title might be incidental to the claim, it is not a matter for a declaration of title - for that case, it would not be required of the plaintiffs to establish their title to the land in dispute, especially so when the respondents were not seriously challenging their title to the land.”

I endorse the above holding of the learned jurist. I could not agree more. (p. 1376 G)

Holders of land - Prior to Land Use Act - Effect of Act

4. On the state of the pleadings, the plaintiffs/appellants were holders or occupiers of the land in dispute prior to the promulgation of the Land Use Act; they therefore had the land in dispute properly vested in them. It follows that no one, including the government, can deprive a holder or occupier of a parcel of land unless the land is ac-

quired compulsorily in accordance with the provisions of the Land Use Act e.g. for overriding public interest or for public purpose by the Local Government or State Government. See Sec. 28 (1), (2) and (3) of the Land Use Act; and by virtue of Section 28 (4) of the said Act, payment of compensation is also a condition precedent to the validity of such acquisition. (p. 1377 C) B

Notice of revocation - Service - Validity of

5. I agree with the view of Salami JCA that the respondents failed to comply with the provisions of the Act going by the evidence before the trial court. If any service was done at all, it was done in violation, again, of the provisions of Section 28 (6) of the Act which read: C

“The Revocation of a Right of Occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor; and notice thereof shall be given to the holder.” D

(Underlining mine for emphasis) (p. 1378 H)

Compulsory acquisition - Public purpose requirement

6. The 1st, 2nd and 3rd respondents have cited the decision in LAWSON V. AJIBULU (1991) 6 NWLR (pt.195) 44, the principles enunciated in that case is inter alia that where a parcel of land is not properly acquired for public purpose, the acquisition is invalid notwithstanding that E

(1) there was a lapse of time between the date of acquisition and the transfer of land to a third party F

(2) that the parcel of land was only a small portion of a larger parcel of land so acquired (as in the instant case), since the law in matters of acquisition does not concern itself with the smallness or largeness of the land acquired by the Government.. G

What is important is that if there has to be a compulsory acquisition of land, it must be done in accordance with the law, that is to say, that the acquisition must be for public purpose of the State.

Certainly the transfer or grant of the land in dispute to the 3rd respondent can never be construed for public purpose nor is it for the overriding interest of the public. (p. 1379 B) H

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Service of notice - There are other modes beside personal service

The testimony of DW3 is that the appellants refused to sign for the notices. The question is if that was the situation the respondents still
 B had the other modes of service stated in subsections (b) and (c) of section 44 of the Act to adopt but there is no evidence on record that the respondents adopted either of the modes of service of the notice of revocation on the appellants. (p.1389 C)

REPRESENTATION

Mr. J. A. Osighala for the Appellants.

Mrs. V. O. Onwuka, Chief State Counsel, Ministry of Justice, Anambra State, for the 1st and 2nd Respondents.

D Chief Tochukwu Onwugbufo, S.A.N. for the 3rd Respondent with him, Mr. Uchenna Aghadiuno.

CASES REFERRED TO

OGBECHIE V. ONOCHIE (1986) 2 NWLR (pt.23) 484

E METAL CONSTRUCTION (W.A.) LTD. V. MIGLIORE (1990) 1 NWLR (pt.126) 299

P. N. UDOH TRADING CO. LTD. V. ABERE (2001) 1 NWLR (pt.723) 114

F LAWSON V. AJIBULU (1997) 6 NWLR (pt.507) 14

DZUNGWE V. GBISHE & ANOR (1985) 2 NWLR (pt.8) 528

OGUNLEYE V. ONI (1990) 2 NWLR (pt.135) 745

Ifediorah v. Ume 1988 2 NWLR part 74 page 5

Rabiu v. State 1980 8-11 S.C. page 130

G Dawodu v. Ologundudu 1986 4 NWLR part 33 page 104

Ogbuche v. Onochie 1986 2 NWLR part 23 page 484

Nwadike v. Ibekwe 1987 4 NWLR part 67 page 718

STATUTES REFERRED TO

H Land Use Act, ss. 28, 44 & 50

Land Use Edict, No. 2 of 1979 of Anambra State as validated by Land Use (Validation) Act 1979, Cap 203, L.F.N., s. 36

Constitution of the Federal Republic of Nigeria, 1979, s. 40

LEAD JUDGMENT BY ADEREMI JSC

This is an appeal against the majority judgment of the Court of Appeal, Enugu Division (hereinafter referred to as the court below) coram Thompson Akpabio JCA of blessed memory and Niki Tobi JCA (as he then was) delivered on 13th of July 1998 dismissing the appeal of the plaintiff who was the appellant before the court below thus upholding the judgment of the trial court which had dismissed the plaintiff's case on the 24th of October 1994. ^B

The appellants in this appeal were the plaintiffs in Suit No. HN/53/90; (1) Eng. Samuel Ononuju and (2) Frederick Azubuine (representing Ndumanya Family of Umuohi, Okija) as plaintiffs and (1) Attorney-General, Anambra State, (2) Commissioner for Works, Lands and Transport, Anambra State and (3) Chief Emmanuel Eze Onwuka, as defendants. The plaintiffs had before the High Court of Justice, Anambra State sitting at Nnewi Judicial Division, taken action against the defendants, claiming against them jointly and severally as follows: - ^C

“(1) A declaration that the purported acquisition of the plaintiffs’ land, of the Annual Value of N100,000.00 by the Anambra State Government acting through the 2nd defendant is unconstitutional, null and void and not effective to divest the plaintiffs of their title to the said land. ^E

(2) A declaration that the Certificate of Occupancy issued by the Chairman of the Ihiala Local Government Authority and dated 27th April, 1989, purportedly granting a portion of the plaintiffs’ land to the 3rd defendant is otiose, ineffective to transfer any title to the 3rd defendant and contravenes the constitutional rights of the plaintiffs to their land. ^F

(3) IN THE ALTERNATIVE, if the plaintiffs’ land was at any time legally vested in the Federal Government, a declaration that it is unconstitutional and a contravention of the law empowering the compulsory taking over of a subject’s land to grant a portion of the plaintiffs’ land to the 3rd defendant for his private purpose. ^G

(4) IN THE ALTERNATIVE, if the plaintiffs’ land ever legally vested in the Federal Government, a declaration that the Chairman, Ihiala Local Government Authority was and is not competent to grant the Certificate of Occupancy dated 27th April, 1989, in respect of the said land to the 3rd defendant and the said Certificate conveyed ^H

no legal interest in the plaintiffs' land to the 3rd defendant.

(5) IN THE ALTERNATIVE, if the plaintiffs' land ever legally vested in the Federal Government, a declaration that on failure of the object of public purpose for which the land was acquired compulsorily the land reverted to the plaintiffs.

B *(6) N10,000.00 general damages against the 3rd defendant for his continuing trespass to the plaintiffs said land.*

and (7) An injunction restraining the defendants and each of them by themselves or through their agents, servants or privies from remaining on the plaintiffs' land or doing any act thereon which interferes with the plaintiffs' possession of the same."

C
D
E Pleadings filed and exchanged by the parties are (1) the statement of claim dated 14th August, 1990, (2) the statement of defence of the 3rd defendant dated 25th October, 1990 and (3) the statement of defence of the 1st and 2nd defendants dated 12th November, 1990. Both parties called evidence at the trial, to prove the respective averments contained in their different pleadings. After taking the final addresses of the counsel appearing for the parties, in a reserved judgment delivered on the 24th October, 1994, the trial judge dismissed the plaintiffs' claims in toto.

Being dissatisfied with the said judgment, the plaintiffs appealed to the court below. After hearing the counsel appearing for the parties on the respective briefs of arguments filed on behalf of the clients, the court below, in reserved judgments delivered on the 13th of F July 1998, by a majority judgment (Akpabio JCA and Tobi JCA - as he then was), dismissed the appeal of the plaintiffs/appellants with costs. But on the same date, by a minority judgment wherein Salami JCA dissented, the appeal of the plaintiffs/appellants was allowed, G the decision of the trial court including the order as to costs were set aside.

H Being dissatisfied with the majority judgment of the court below, the present appellants have appealed to this court by way of a Notice of Appeal filed on 3rd September 1998 which carries five grounds of appeal. Also, the 1st and 2nd respondents being dissatisfied with part of the majority judgment relating to the issue of proof of title to the land in dispute by the appellants prior to the Land Use Act as averred in paragraph 4 of the statement of claim and for which, according to the 1st and 2nd respondents, they joined issue with the

plaintiffs/appellants, that aspect have been struck out in the majority judgment on the ground that it was a non-issue, they have cross-appealed to this court by a Notice of Cross-Appeal dated 15th July, 2002 which carries three grounds. For similar reason, the 3rd respondent has also cross-appealed to this court by way of a Notice of Cross-Appeal dated 22nd June, 2002 which itself has three grounds. B

When this appeal came before us for argument on the 9th of February 2009, Chief Onwugbufo learned senior counsel for the 3rd respondent sought and obtained the leave of court to withdraw the Notice of Preliminary Objection filed on the 24th of April 2006 C and the second arm of the Notice of Preliminary Objection filed on 27th June, 2007 and all the arguments canvassed in support of the two Notices as contained in the brief of argument of his client. Immediately thereafter but on the same day, Mr. Osighala, learned counsel for the appellants, adopted his clients' brief filed on the 21st of August 2000 and the plaintiffs/cross-respondents' brief deemed properly filed on the 26th March, 2007 and urged that the appeal be allowed while the cross-appeals be dismissed. Mrs. Onwuka, Chief State Counsel, Ministry of Justice, Anambra State representing 1st and 2nd respondents, adopted her clients' brief of argument filed on E the 17th of June 2002 and urged us to dismiss the appeal; she also adopted the 1st and 2nd cross-appellants' brief filed on the 29th of April 2004 and urged us to allow the cross-appeal. Chief Onwugbufo, learned senior counsel for the 3rd respondent adopted his client's F brief filed on 21st June, 2002 his cross-appellant's brief filed on 23rd April 2004 and the 3rd cross-appellant's reply brief filed on the 25th of May 2007, he submitted that issues Nos. 3 and 4 on the appellants' brief did not arise from the court below's judgment and consequently, those two issues be struck out; he finally urged us to dismiss G the appeal but to allow the cross-appeal of his client. The appellants have distilled four issues from their five grounds of appeal for determination; and as set out in their said brief of argument; they are as follows: -

"(1) Was the acquisition of the 15,025 hectares granted to the 3rd respondent invalid null and void?" H

"(2) Was the majority decision of the court below correct in law when it upheld the finding of the trial court that notices of revocation were served on the appellants?"

(3) *Was the majority judgment of the court below right in holding as did the trial court that the 15,025 hectares of land granted to the 3rd respondent was for public purposes or for a continuation of the public purposes for which the Federal Government built low cost houses on the adjacent 5 hectares of land?*

B (4) *Was the Certificate of Occupancy granted to the 3rd respondent by the Chairman of the Ihiala Local Government Council on the 27th of April 1989, valid?"*

C The 1st and 2nd respondents for their part raised four issues for determination by this court, as contained in the brief of argument, they are in the following terms: -

D “(1) *Whether the plaintiffs proved the ownership of the land in dispute as required by law having regard to the pleadings and the evidence. If so, was the acquisition of 20,025 hectares of land by the Federal Government through the State Government which later granted a portion of it to the 3rd respondent valid in law, having regard to the concurrent findings of facts by the two lower courts.*

E (2) *Whether the procedure for the Revocation of the Rights of Occupancy over the land in dispute especially as to service of Notice was valid, in law and whether on the receipt of compensation by the members of the plaintiffs’ family whom the plaintiffs, on record, represent did not debar the Plaintiffs from questioning the Revocation of Rights of Occupancy as found by the High Court and a majority of the Court of Appeal.*

F (3) *Was the lease of part of the acquired land by the Federal Government to the 3rd defendant for socio-economic purposes to wit:*

G *‘Building extension of low cost houses embarked upon by the Federal Government invalid, null and void after acquisition of the land and payment of compensation to the land owners by the Federal Government as found by the Court of Appeal and the lower court.’*

H (4) *Whether the Customary Right of Occupancy granted to the 3rd Respondent by the Chairman of Ihiala Local Government Council was valid having regard to the circumstances of the case.”*

As I have said above, Chief Onwugbufo learned Senior Counsel representing the 3rd respondent had on the 9th of February 2009 when this appeal came before us for argument sought and obtained

the leave of court to abandon his Issue No. 1 and the arguments canvassed thereunder; the said issue reads: -

“Whether the court below was right in striking out the Issue of pre-Land Use Act title of the plaintiff/appellant having regard that without such proof the plaintiff/appellant cannot establish their locus standi to institute the action neither can they as they have done claim any reversionary title or interest in the land in dispute. Put the other way, is the proof of pre-Land Use Act title or holding of the plaintiff/appellant not a sine qua non to the institution of this action and obtaining the reliefs sought particularly as to their reversionary interests.”

With issue No. 1 abandoned, the 3rd respondent is now left with three issues which as contained in his brief of argument are thus:

“(2) now (1) Whether the court below was right in holding, as was held by the trial court, that the Notices of Revocation was served on the plaintiffs/appellants in accordance with Section 44 of the Land Use Act and Section 36 of the Land Use Edict No. 2 of 1979 of Anambra State as validated by the Land Use (Validation) Act of 1979. (see Section 1 of the Land Use Act (Validation of Certain Laws) Act Cap 203 Laws of the Federation, (see also Section 50 of the Land Use Act Cap 202 Laws of the Federation.

(3) now (2) Whether the court below was right in holding, as did the trial court that the acquisition of the said land by the Federal Government and the transfer of same to the 3rd respondent for socio-economic purpose was not a transfer or lease within the meaning of ‘public purpose’ or an extension of ‘public purpose’ under the Land Use Act 1978 and thus void.

(4) now (3) Whether the Right of Occupancy granted to the 3rd respondent by Ihiala Local Government under the direction of the Federal Government was valid exercise of the power of the Local Government under the law?”

As I have said above, the 1st and 2nd respondents filed a cross-appeal and the two jointly filed a cross-appellants’ brief on the 29th of April 2007. They have jointly raised three issues for determination, and as contained in their afore-said cross-appellants’ brief, they are as follows: -

“(1) Whether the proof of the Pre-Land Use Act, title or holdings of the plaintiffs/appellants is not sine qua non or fundamental

issue to vest them with the locus to institute this action and seek the relief they claimed in view of their pleadings and evidence.

(2) *Did the parties (plaintiffs/appellants, defendants/ Cross-appellants) join issues on the Pre-Land Use Act title of the appellants to the land in dispute and jurisdiction to entertain the action in view of the locus of the plaintiffs in the issues before the lower court and the court trial.*

(3) *Can the lower court decline to deal on crucial issues put before it when no decision had been given on them but simply refer to the issues in a sweeping statement as non issues."*

Similarly, the 3rd respondent as said above, filed a cross-appeal and in his cross-appellant's brief, he raised two issues for determination, they are as follows: -

"(1) Whether the Court of Appeal was right in striking out the issue of the Pre-Land Use Act title or holding of the plaintiffs/appellants on the ground that the issue was not raised by anybody and that the plaintiffs/appellants are not claiming for compensation when there was evidence that the issue arose both at the trial court and the court below.

(2) Whether the plaintiffs/appellants, having failed to prove ownership or Pre-Land Use Act title or holding of the land in issue, have locus standi to institute the action as respects their claim for compensation and reversion."

At this stage, I consider it necessary to deal with the first arm of the Notice of Preliminary Objection filed on 27th June 2007, the second arm of that objection having been withdrawn by the learned counsel for the 3rd defendant/respondent. In the first arm of the said objection, the 3rd respondent has argued that grounds 1, 2, 3 and 5 on the Notice of Appeal are grounds of fact or mixed law and fact which require leave of court before they can be argued and since, according to him, no such leave has been obtained, he argued that the said grounds of appeal are not to be entertained. For a proper consideration of the Preliminary Objection, I am of the view that I should reproduce the said grounds of appeal; they are as follows:-

(1) The majority Justices of the court below erred in law in holding that the learned trial judge's finding that notices of acquisition of the land in dispute were duly served on the appellants as prescribed by Section 44 (e) of the Land use Act Chapter 202 by

being posted on abandoned houses not on the land the subject of the suit and on some trees was correct when: -

(a) The pre-requisites for service by posting were not complied with

(b) The said section prescribes that reasonable enquiry should first be made to ascertain the name or address of a holder or occupier of the land on whom the notice should be served and there was no evidence of any such enquiry. B

(c) The second requirement that where this was not practicable the notice should be addressed to the holder or occupier by the description of "holder" or "occupier" of the land calling it by its name to which it relates and then delivering the notice to some person on the premises was not complied with. C

I do not consider it necessary to quote all the particulars as set out in the Notice of Appeal; suffice it to stop at particular (c) *supra* since the purpose of the preliminary objection is to find out whether the grounds are those of law or not. D

I now reproduce the other grounds in part: -

(2) The court below in its majority judgment misdirected itself in law in dismissing the plaintiff/appellants' appeal in reliance of the following passages culled from the decision of the Court of Appeal, Benin Division in *Integrated Rubber Products Limited V. Oviawe* (1999) 5 NWLR (pt.243) 572. E

On what is a public purpose.

The establishment of an Industrial Residential Layout is a public purpose as defined in Section 2 (h) of the Public Lands Acquisition Law and acquisition for purpose thereof will qualify as acquisition for public purpose *Bello V. Diocesan Synod* (1973) 1 All NLR (pt. 1) 247; *Peenok Investments Limited V. Hotel Presidential Limited* (1983) 4 NCLR 122 referred to and distinguished at p. 586 paras E - F. F

On the effect of a grant of Certificate of Occupancy over land

By virtue of Section 14 of the Land Use Act, once the Governor grants a Certificate of Occupancy to a person, Customary title over that piece of land the subject-matter of a Certificate of Occupancy cannot defeat the grantee's right. H

Some of the relevant particulars are hereunder reproduced

(c) The 3rd respondent, the grantee of a customary right of occupancy was not building low cost houses in continuation of the

purpose for which the Federal Government compulsorily acquired the adjoining land as wrongly held by the trial court and confirmed by the court below.

(e) The 3rd defendant built flats for commercial purposes which he let out to tenants at a rent above that stipulated in the Control of B Rents Edict. The 3rd defendant was erecting a hotel for commercial purposes.

(f) It is not the law as erroneously held by the court below that a Certificate of Occupancy obtained by fraud as in this case overrides C the right of occupancy of the holder or owner.

(3) The court below as did the trial court erred in law in giving any validity to the Certificate of Customary Right of Occupancy flaunted by the 3rd respondent when the said document was ineffective, invalid, null and void, in law.

D (5) The court below erred in law in upholding the funding of the trial court that the grant of the land in dispute to the 3rd respondent was for a public purpose as known to law and was as continuation of the public purpose for which the Federal Government acquired the land compulsorily.

E Particulars of Error

(a) The public purpose stated by the acquiring authority for the compulsory acquisition was for building low cost houses.

(b) In 1990 when the formal attempt at acquisition was made, F the Federal Government had completed the building of low cost houses allocated to Ihiala Local Government Area on 5 hectares of land.

(c) The government did not require the additional 15.025 hectares which it purported granted to the 3rd respondent.

G (d) Low cost housing estates were not intended for bank managers, university lecturers and medical doctors but for persons in the low income group.

(e) The 3rd respondent admitted charging a rent of N300.00 per mensem per flat which is more than 800% of the maximum rents H prescribed for the flats the 3rd respondent built on the land which N420.00 per annum according to the First Schedule to the Landlord and Tenant Law in force in Anambra State.

(f) Building and operating a restaurant or a bank or a hotel did not come within the definition of public purpose under the Land Use

Act.

As I said above, the 3rd respondent, by the first arm of his Preliminary Notice of Objection is contending that grounds 1, 2, 3, and 5 on the Notice of Appeal are of facts or mixed law and facts and to be valid for consideration, the leave of court must be sought and obtained. This condition precedent not having been fulfilled, those grounds, it was contended, are incompetent. Suffice it to say that only ground of law simpliciter does not require leave for its validity before an appellate court. Let me start by saying that the line of distinction between law simpliciter and mixed law and fact is one that is very thin. In other words, the line of distinction is one that is fraught with some difficulties. ***In determining whether a ground of appeal alleges an arm of law or fact, it has been held that the general requirement or duty of the court is to examine thoroughly the grounds of appeal to see whether the grounds reveal a misunderstanding by the lower tribunal of the law or a misapplication by it, of the law to the facts already proved or admitted, in which case it would be question of law; or one that will require questioning the evaluation of the facts by the lower tribunal before the application of the law, in which case, it would amount to a question of mixed law and fact.*** See (1) OGBECHIE V. ONOCHIE (1986) 2 NWLR (pt.23) 484, (2) METAL CONSTRUCTION (W.A.) LTD. V. MIGLIORE (1990) 1 NWLR (pt.126) 299 and (3) P.N. UDOH TRADING CO. LTD. V. ABERE (2001) 1 NWLR (pt.723) 114.

Reading ground 1 on the Notice of Appeal, it seems clear to me that the question the court is called upon to answer here is one which is in accordance with a rule of law i.e. Section 44 (e) of the Land Use Act Chapter 202 - this certainly excludes exercise of discretion in answering that question as the court thinks fit in accordance with what is considered to be the truth or otherwise of the matter. Ground 1 in my respectful view, is a ground of law simpliciter. Ground 2 in the Notice of Appeal calls for the construction of the decision of the Court of Appeal in INTEGRATED RUBBER PRODUCTS LTD. V. OVIawe (1993) 5 NWLR (pt.243) 572 - for this question I do not hesitate in saying that this ground is also of law simpliciter. Ground 3 relates to the validity of the Certificate

of Customary Right of Occupancy put up by the 3rd respondent. It is settled in law that no extrinsic evidence will ever be allowed to add to or vary the terms of any instrument the like of the Certificate mentioned in this ground. This ground calls for an answer in accordance with the rule of law. It is therefore a ground of law. Intrinsic in ground 5 is the issue of whether the grant of the land in dispute to the 3rd respondent was for a public purpose as known to law. This no doubt certainly excludes exercise of discretion in answering the question as the court thinks fit in accordance with what is considered to be the truth or otherwise. Again, this is a ground of law. Let me say that in substance, this appeal revolves round the interpretation of the provisions of the Land Use Act. It is therefore my judgment that all the grounds of appeal are valid; a fortiori, the appeal is consequently valid. This being the end of my treatment of the first arm of the Notice of Preliminary Objection filed on the 27th of June 2007, I shall now proceed to discuss the substantive appeal.

I have had a careful reading of all the issues raised for determination and it is my view that they are all interwoven into one and other. I shall therefore take all of them together. The appellants, through their brief of argument, after reviewing all the pieces of evidence led before the trial court, submitted that the Notice of Revocation was not served on the plaintiffs/appellants in compliance with the provisions of Section 44 of the Land Use Act. And since service of Notice of Revocation of Rights of Occupancy is a sine qua non to a valid compulsory acquisition of land, as rightly subscribed to by all the parties, it was again submitted that the acquisition was vitiated by failure to serve Notice of Revocation as prescribed by law. On the contention of the 1st and 2nd defendants/respondents/cross-appellants as pleaded in paragraph 11 of their defence that the publication in the Government Gazette of Anambra State satisfied the statutory requirement of notice to owners or holders, the appellants argued, relying on the decision in *INTEGRATED RUBBER PRODUCTS NIGERIA LTD. V. OVIawe* (1992) 5 NWLR (pt. 243) 572, that the publication in the gazette without personal service of the Notice of Revocation did not meet the requirement of the law such as to save the compulsory acquisition. They also referred to paragraph 4 of the statement of defence of the 1st and 2nd defendants/respondents

wherein they averred:

“..... that the land in dispute is apart of greater area of land acquired in 1982 by the Anambra State Government for the public purpose of the Federal Government of Nigeria.”

And they submitted that any purported compulsory acquisition in 1982 without a notice of revocation of rights of occupancy, a fact, according to them, rightly found by the two courts below and the counsel for the parties, is invalid, null and void and therefore, they finally submitted on this point that the evidence of DW2- Valentine Sunday Nwoye, a Lands Officer attached to Department of Lands, Zonal Office, Abakaliki goes to no issue.

On Issue No. 3 it was argued that the 3rd respondent to whom the grant of the land was made never used it for public purpose within the definition of Section 50 of the Land Use Act, rather he built flats on it part of which he let to bank workers, lecturers in nearby university and some private individuals from which he collected rents; while the majority judgment held that the purpose for which 3rd respondent turned the land into use was for public purpose, that minority judgment, which they argued, reflects the correct position of the land, held otherwise. It was submitted though the land was ostensibly acquired for public purposes but later used for other purposes, on the authority of the decision in *OSHO V. FOREIGN FINANCE CORP.* (1991) 4 NWLR (pt.184) 157 the revocation of the statutory right of occupancy was vitiated and the order made pursuant to it became unlawful.

On Issue No. 4, it was argued that the 3rd respondent did not apply for Certificate of Occupancy over the land, the evidence before the court, was that it was Okija Industry Nigeria Limited or the Umuezeagumpi Umuofor Community Development that applied and the only connection between the 3rd respondent and the real applicant for the issuance of Certificate of Occupancy was that 3rd respondent was its director and/or Chairman; this, in principle of law, is wrong. Suffice it to say that the appellants, in their brief, dropped the issue of jurisdiction of the High Court to try case relating to title to land located in a rural area in view of the decision of this court on *ADISA V. OYINWOLA* (2000) 10 NWLR (pt.674) 116 which has laid that point to rest. They finally, however urge that the majority judgment of the court below which affirmed the judgment of the trial

court and substitute it with the minority judgment of the court below.

The 1st and 2nd respondents have argued that failure of the plaintiffs to plead and lead evidence of who were their ancestors, how they came into the land and in short, failure to plead clearly their traditional history and lead evidence therein was fatal to their case placing reliance of many decisions the like of *MOGAJI & ORS VS. CADBURY CO. (EXPORT) LTD.* (1985) 2 NWLR (pt.7) 393; *OKO V. IGWESHI* (1997) 4 NWLR (pt.497) 51 and *LAWSON V. AJIBULU* (1997) 6 NWLR (pt.507) 19. The plaintiffs, it was argued should be held as having failed to prove their case and it should be dismissed.

On Issue No. 2, it was argued that the Notice of Revocation - Ex. J showed the totality of the kind to be acquired and was duly addressed to the holder or occupier and to the whole of Okija Community. The Notice it was further argued, was gazetted but the owners or occupiers failed to show up despite all efforts, it was again submitted, hence the notice was pasted on conspicuous places on the land to be acquired. The revocation of Rights of Occupancy and the service of the Notice of Revocation was therefore proper in law.

On Issue No. 3, after reviewing the provisions of Section 28 (1) and (3) and (7) of the Land Use Act, it was submitted that the lease of the land to the 3rd respondent was regular and proper and in particular when compensation had been paid in accordance with the provisions of Sections 35 (1) of the Land Use Act, Section 40 (a) of the 1979 Constitution the plaintiffs therefore have no locus standi to bring this action. They urged that the appeal be dismissed.

On Issue No. 2 in the 3rd respondent's brief, (Issue No. 1 having been withdrawn) it was submitted strenuously as did the 1st and 2nd respondents in their brief that the service of the notice of revocation, having regard to the evidence on record was served in accordance with the provisions of Section 44 of the Land Use Act and Section 36 of the Land Use Edict, No. 2 of 1979 of Anambra State as Validated by the Land Use (Validation) Act 1979 Cap 203 Laws of the Federation. Similarly, after referring to the evidence on record, it was submitted in respect of Issue No. 3 that the grant or lease of part of the acquired land to the 3rd respondent for socio-economic purpose was valid, as according to him, it was for public purpose within the definition of Section 51 of the Land Use Act, the case of *LAWSON*

V. AJIBULU (1997) 6 NWLR (pt.507) 14. And on Issue No. 4 which is on the issue of the validity of the Certificate of Occupancy granted to the 3rd respondent, it was submitted that it was the 3rd respondent that actually applied for the customary right of occupancy over the said land and not Okija Industries Ltd.. or Umuofor Community Bank. Again, it was further argued that the issuance of the Certificate of Occupancy by the Local Government was, going by the record, at the instance of the Federal Government who directed the Local Government to do so on its behalf since the land is located in a rural area. He urged the court to strike out this issue as merely academic and being irrelevant. Finally, on Issue No 5, it was submitted that in view of the concurrent findings of facts by the two courts below, this court ought not to disturb them while, in conclusion, it was urged that the appeal be dismissed.

I shall start the consideration of this appeal from the pleadings of the parties in paragraph 1 of the statement of claim, the plaintiffs bringing this action in a representative capacity, aver that they are members of the Ndumanya extended family of Umuohi Okija and that they were the undisputed communal owners of the land in dispute which they inherited from their ancestors and were in exclusive possession thereof on the passing of the Land Use Decree in 1978 under which they became entitled to a Customary Right of Occupancy over same. It is on this all-important averment that they founded their claims for declaration -that the acquisition of their land without notice was null and void and unconstitutional and order setting aside the Certificate of Occupancy granted to the 3rd respondent over the land etc. - the comprehensive claims are set out above. Again, from the pleadings and as agreed by the parties, the land in dispute is in a non-urban area. A holder or occupier of a land whether developed or undeveloped in any area not in an urban area, under a recognised customary tenure before the commencement of the Act in March 1978 would continue to have the land vested in him and enjoy such rights and privileges on the land subject to the Act as if a Customary Right of Occupancy had been granted him by the Local Government of that area; see DZUNGWE V. GBISHE & ANOR (1985) 2 NWLR (pt.8) 528 where at page 540 Aniabolu JSC opined: -

“Section 36 of the Act has transitional provisions relating to the land situate in non-urban area such as the land in dispute in this case.

Sub-section (2) thereof deals with agricultural lands while sub-section (4) relates to developed lands. In either case, the holder of the Customary Right of Occupancy of such lands shall continue to hold the land and would be entitled as of right to a Certificate of Occupancy under the Act, neither the Governor nor the Local Government would have a right to divest such land from the person in whom the land was properly vested by the issue of Certificate of Occupancy over the land to another person in whom the land was not vested.”

(Underlining mine for emphasis)

What was the case of the 1st , 2nd and 3rd defendants as demonstrated through their respective pleadings. All they have pleaded is that the land in dispute is a part of greater area of land acquired in 1982 by the Anambra State Government for the public purpose of the Federal Government of Nigeria. It was their further averment that after the said acquisition by the Federal Government, appropriate compensation was paid to the identified claimants and that Government went into possession - thus making the land a “State Land”. Notice of Revocation of Right of Occupancy was published in the Anambra State of Nigeria Official Gazette No. 16 Volume 15 of 3rd of May 1990. The 3rd defendant had been granted a Customary Right of Occupancy dated 27th April 1989 by the Ihiala Local Government in respect of the land in dispute. From the case of the 1st and 2nd defendants, it is clear that/their claim to title to the land is founded upon “ACQUISITION” by the Federal Government. The validity of the title of the Government will depend on the validity of the acquisition in accordance with the laid-down principles of relevant laws which I shall later treat in this judgment. And since the 3rd defendant is claiming to have derived title from the 1st and 2nd defendants, his fate would be determined by theirs. ***It has been contended by the 1st , 2nd and 3rd respondents/cross-appellants that the plaintiffs did not prove their title to the land and therefore they are not entitled to the reliefs sought. All I wish to say is that on the authority of “DZUNGWE” cited above, the plaintiffs/appellants need not go further to prove his title to the land beyond the averments I have extracted from their pleadings. When this same point was taken at the court below, Salami JCA in his dissenting judgment reasoned thus: -***

“The appellants, stricto sensu, did not seek for a declaration of title in their claim before the trial court. The claims of the appellants for declaration for nullification of certain actions taken by government officials which they consider inimical to their interests, even though the issue of title might be incidental to the claim, it is not a matter for a declaration of title - for that case, it would not be required of the plaintiffs to establish their title to the land in dispute, especially so when the respondents were not seriously challenging their title to the land.”

I endorse the above holding of the learned jurist. I could not agree more.

As I have said above, ***on the state of the pleadings, the plaintiffs/appellants were holders or occupiers of the land in dispute prior to the promulgation of the Land Use Act; they therefore had the land in dispute properly vested in them. It follows that no one, including the government, can deprive a holder or occupier of a parcel of land unless the land is acquired compulsorily in accordance with the provisions of the Land Use Act e.g. for overriding public interest or for public purpose by the Local Government or State Government. See Sec. 28 (1), (2) and (3) of the Land Use Act; and by virtue of Section 28 (4) of the said Act, payment of compensation is also a condition precedent to the validity of such acquisition.*** See OGUNLEYE V. ONI (1990) 2 NWLR (pt.135) 745. The fundamental question to now ask is whether there was a proper acquisition of the land in 1982? Put in another way, was the Notice of Revocation duly served on the appellants as required by law? The key witness on this issue is DW³ - Valentine Sunday Nwoye, Land Officer and a civil servant attached to the Department of Lands, Zonal Office, Abakaliki; in his testimony he said: -

“There was in 1990 a Notice of Acquisition which I served at Okija

on receipt of the Notice from Enugu I went to Okija with a staff from office, Mr. S. Nwangwu who incidentally is a native of Okija

We served the Notices but they refused to sign. We saw some abandoned low cost houses on the land. We pasted the notices on the

houses. We pasted a notice on a wooden fence and wire fence to the entrance. I pasted on some trees I saw there. I pasted the notices on every conspicuous place within the land. I made enquiries as to the owners. We then went to the Ihiala Local Government. We served the notice on him. We met the Secretary Mr. Ogu and asked him to
 B *get the Local Councillor to publicise the acquisition. We sent some of the Notices to the churches for public announcement”*

In the majority judgment, in ascribing evidential value to this evidence, Akpabio JCA who read the lead judgment said: -

C *“First, there can be no argument that effective service of Notice of Revocation is a sine qua non to any valid acquisition of land by any Government, be it Federal, State or Local Government.”*

After reproducing the evidence of DW3 as I did supra, he continued to say: -

D *“At the end of the exercise, the learned trial judge Offiah J. was satisfied with the above evidence that the Notice of Revocation was effectively served as required by Sec 44 (e) of the Land Use Act and I agree with him.”*

However, in the minority judgment, Salami JCA on the same
 E issue said: -

“The respondents having failed to establish compliance with the provisions of the Act, the acquisition, in my view, is bad ab initio and any act predicated upon the unlawful acquisition is equally bad. The acquisition on behalf of the Federal Government as well as sub-
 F *sequent grant to the third respondent are bad.”*

Section 44 (a), (b) and (c) of the Land Use Act which relates to the service of Notice provides: -

“Any notice required by this Act to be served on any person
 G *shall be effectively served on him -*

(a) By delivering it to the person or who it is to be served or

(b) by leaving it at the usual or last known place of abode or

(c) By sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode.”

H ***I agree with the view of Salami JCA that the respondents failed to comply with the provisions of the Act going by the evidence before the trial court. If any service was done at all, it was done in violation, again, of the provisions of Section 28 (6) of the Act which read:***

“The Revocation of a Right of Occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor, and notice thereof shall be given to the holder.”

(Underlining mine for emphasis)

The evidence on record show that no compensation was paid to the appellants. ***The 1st, 2nd and 3rd respondents have cited the decision in LAWSON V. AJIBULU (1991) 6 NWLR (pt.195) 44, the principles enunciated in that case is inter alia that where a parcel of land is not properly acquired for public purpose, the acquisition is invalid notwithstanding that***

(1) there was a lapse of time between the date of acquisition and the transfer of land to a third party

(2) that the parcel of land was only a small portion of a larger parcel of land so acquired (as in the instant case), since the law in matters of acquisition does not concern itself with the smallness or largeness of the land acquired by the Government..

What is important is that if there has to be a compulsory acquisition of land, it must be done in accordance with the law, that is to say, that the acquisition must be for public purpose of the State.

Certainly the transfer or grant of the land in dispute to the 3rd respondent can never be construed for public purpose nor is it for the overriding interest of the public. For all I have been saying, Issues Nos. 1, 2, 3 and 4 in the appellants brief are answered in the negative. Issue No. 1 in the brief of the 1st and 2nd respondents, having regard to what I have said above is Non Sequitur. Issues No. 2, 3 and 4 therein are resolved against them (1st and 2nd respondents). Issues Nos. 2, 3 and 4 in the brief of the 3rd respondents (Issue No. 1 having been withdrawn) are answered in the negative; they are resolved against the 3rd respondent. In the meantime, it is my judgment that the appeal is meritorious and it is accordingly allowed.

I shall now proceed to the cross-appeal of the 1st and 2nd respondents and that of the 3rd respondent - the theme of both of which is against that part of the decision of the court below in which the court below struck out the issue of non-proof of title to the land

in dispute by the appellants prior to the Land Use Act. I have said it in this judgment that from the reliefs claimed, the issue of title does not arise in this case. I have said above that the appellants, based upon the materials before the court were holders or occupiers of land and by virtue of that, they had the land vested in them and were entitled
B to enjoy the rights and privileges on the land subject to the Land Use Act. They have by their pleadings satisfied the requirements of the law. A proper and valid acquisition of their land must be subject to strict compliance with the relevant provisions of the Land Use Act as
C to acquisition of land. That I have said the cross-appellants have failed to do. The cross-appeals of the 1st , 2nd and 3rd respondents are, consequently, adjudged by me to be unmeritorious.

In the final analysis, the appeal having succeeded the judgment of the trial court including the cost awarded and the majority
D judgment of the court below including the costs awarded are hereby set aside. I affirm the dissenting judgment. The plaintiffs/appellants are entitled to all the reliefs claimed in paragraph 14 of their statement of claim dated 14th August 1990. The appellants are entitled to the costs of this appeal which I assess in their favour at N50,000.00
E against each set of the 1st and 2nd respondents jointly and the 3rd respondent separately.

The cross-appeals of the 1st and 2nd cross-appellants jointly and the 3rd respondent separately being unmeritorious are hereby
F dismissed with costs of N50,000.00 against the 1st and 2nd cross-appellants jointly and costs of N50,000.00 against the 3rd respondent separately; both costs being in favour of the plaintiffs/appellants/cross-respondents.

G

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Aderemi JSC. I entirely agree with it. There is nothing I can usefully add.

H

MUKHTAR JSC

This appeal against the majority judgment of the Court of Appeal, Enugu Division revolves around the acquisition and grant of

the plaintiffs/appellants expanse of land situate at Akoba Umuohi in Okija, which they inherited from their ancestors and which they owned communally in exclusive possession. In the High Court of Anambra State, Nnewi Judicial Division, the plaintiffs who are now the appellants sought the following reliefs inter alia against the respondents:-

“(a) A declaration that the purported acquisition of the plaintiffs’ land, of the annual value of N100,000 by the Anambra State Government acting through the 2nd defendant is unconstitutional, null and void and not effective to divest the plaintiffs of their title to the said land;

“(b) A declaration that the Certificate of Occupancy issued by the chairman of the Ihiala Local Government Authority and dated 27th April, 1989, purportedly granting a portion of the plaintiffs’ land to the 3rd defendant is otiose, ineffective to transfer any title to the 3rd defendant and contravenes the constitutional rights of the plaintiffs to their land;

“(c) In the alternative, if the plaintiffs’ land was at any time legally vested in the Federal Government, a declaration that it is unconstitutional and a contravention of the law empowering the compulsory taking over of a subject’s land to grant a portion of the plaintiffs’ land to the 3rd defendant for his private purpose;.....”

The learned trial judge found the acquisition of the land in dispute proper and legal, and so the grant to the 3rd respondent. Finally he held that, ‘As the grant is justified in law the plaintiffs claim is therefore bound to fail’. On appeal to the court below, by a majority decision, the court affirmed the decision of the trial court, while a minority judgment allowed the appeal and set aside the decision of the trial court. In the appeal before this court are five grounds of appeal, from which four issues for determination were distilled in the appellants’ brief of argument. These issues are:-

“(1) Was the acquisition of the 15.025 hectares granted to the 3rd respondent invalid, null and void?

“(2) Was the majority decision of the court below correct in law when it upheld the finding of the trial court that notices of revocation were served on the appellants?

“(3) Was the majority judgment of the court below right in holding, as did the trial court, that the 15.025 hectares of land granted to the 3rd respondent was for public purposes for which the Federal

Government built low cost houses on the adjacent 5 hectares of land?

(4) Was the certificate of occupancy granted to the 3rd respondent by the chairman of the Ihiala Local Government Council on the 27th of April, 1989, valid?

The respondents also raised issues in their briefs of argument, but I will adopt the above issues for the determination of this appeal, particularly highlighting the argument on issues (1) and (2) *supra*.

A Notice of Preliminary objection was filed by the 3rd respondent, raising the following objections:-

“(1) The grounds of appeal particularly grounds 1, 2, 3 and 5 thereof are grounds of fact or mixed law and fact which requires leave of this Honourable Court before they can be filed or entertained and since no such leave has been sought or obtained the grounds are incompetent and liable to be struck out.

(2) Issues nos 3 & 4 formulated from grounds 2, 3, and 5 of the grounds of appeal are incompetent as they did not arise from the decision of the Court of Appeal and thus not appellable.”

In the 3rd respondent’s brief of argument, the learned senior counsel proffered argument that a ground of appeal is a ground of appeal in law if there is wrong application of law to an undisputed fact, relying on the cases of *Ihor Ltd. v. FCMB Limited* 2002 4 NWLR part 157 page 427, and *Metal Construction v. Miglori* 1990 1 NWLR part 126 page 299. According to the learned senior counsel since the facts therein in ground (1) are disputed and the court cannot determine the issue unless it refers to evidence on record, it is a ground of mixed law and facts for which leave of court must be sought and obtained. As no such leave was obtained, the grounds of appeal are incompetent and are liable to be struck out. See *Ogbuche v. Onochie* 1986 2 NWLR part 23 page 484, *Camas v. NAB* 1997 3 NWLR part 496 page 625 and *Nwadike v. Ibekwe* 1987 4 NWLR part 67 page 718. Perusing the said ground (1) of appeal very carefully I fail to see that it is not a ground of law, most especially as it involves the purport and essence of a section of the Land Use Act, which sets out the mode of the service of a notice of revocation or acquisition. The particulars supporting the ground may have been unnecessarily prolix and contain review of evidence, but that does not change the complexion of the ground. The ground remains that of law and does not require leave of the court and so it is valid. See *Ifediorah v. Ume*

1988 2 NWLR part 74 page 5, Rabi v. State 1980 8-11 S.C. page 130, and Dawodu v. Ologundudu 1986 4 NWLR part 33 page 104.

The same goes for grounds (2) (3) and (5) of appeal. I disagree with the learned senior counsel that the court has to go into the evidence to determine these grounds of appeal. They are grounds of law, as they call for the interpretation of the law. See the above authorities. It is my view that the first arm of the notice of preliminary objection of 27/6/07 has no merit, and deserves to be dismissed in its entirety. The second arm of the preliminary objection was withdrawn by the learned senior counsel in the course of the hearing of the appeal, and so it is struck out.

Now, to the appeal proper. Looking at the case as a whole, I am of the view that issues (1) and (2) are the gravamen of this appeal, for the outcome of the determination of the proceeding issues will depend on the determination of the said issues (1) and (2), for they are the pivot of the case, dealing with the validity of the revocation of the land claimed by the plaintiffs/appellants. It is on record that the appellants' pleaded that the notice of revocation to their rights of occupancy was not served on them as prescribed by section 44 of the Land Use Act. I will reproduce the relevant averment hereunder. It reads thus:-

"(11) The plaintiffs contend that they were not notified of any Federal Government acquisition of their land and that the chairman of the Ihiala Local Government Authority possessed no title known to the Land Use Decree or the Land Use Edict of Anambra State which he purported to grant to the 3rd defendant in the aforesaid certificate of occupancy."

In response to the above averment the 3rd defendant/respondent averred the following:-

"7. In answers to paragraph 11 of the statement of claim the 3rd defendant avers that the plaintiffs knew of the acquisition of the land by the Federal Government but were not entitled to any notice for the following reasons:

(a) The family they purport to represent has no land in the area in dispute.

(b) The 2nd plaintiff is not from Umundumanya.

(c) When the Federal Government paid compensation to the former holders of the land and they are locked up in litigation over

the compensation money the plaintiffs did not join in the battle because they know they have no land in the area acquired by the Federal Government and again they did not complain."

The 1st and 2nd defendant/respondents made the following averments in their statement of defence:-

B *"8. The first and the second defendants aver that the land in dispute has since the said acquisition become State Land.*

9. The plaintiffs have no legal rights whatsoever in respect of the land, and any right which they might have had in the past was
C *extinguished by virtue of the said acquisition for which adequate compensation had been paid.*

11. The defendants will at the trial rely on the Notice of Revocation of Right of Occupancy as published in the Anambra State of Nigeria Official Gazette No. 16 Vol. 15 of 3rd May, 1990 as per the
D *Anambra State Notice No. 76 therein."*

The 1st appellant in his evidence denied that he knew that prior to the acquisition, the Anambra State Government published a notice of revocation of the right of occupancy over the land. According to him by the time he read a publication on notice of revocation,
E the case was already in court. The third plaintiff witness also denied that the government pasted some notices on the land informing the land owners they were revoking their rights. D.W.3, Valentine Sunday Nwoye, a civil servant attached to the department of Land Zonal Office Abakaliki testified to pasting the notice of acquisition all over
F the land in dispute, and as the occupants refused to accept service, he swore to an affidavit of service, which he tendered in evidence, together with the notice, and they were both marked Exhibits 'G' and 'H'. The notice of revocation is dated 11th of April 1990, and
G the affidavit of service was sworn to on 22/5/90. The notice, Exhibit 'G', purportedly served on the appellants has incorporated therein inter alia the following paragraph:-

"2. This notice is published to formalize an acquisition made during the last civilian regime in 1982. Compensation was paid by
H *the Federal Ministry of Works, and Housing through the Consultant Estate Valuers and Surveyors, Messrs. Chinwuba, Odumodu & Co., on the 9th of December, 1982 to those concerned."*

My understanding of the above excerpt of Exhibit 'G' is that the notice provided for by section 28 of the land Use Act Cap. 202,

Laws of the Federation of Nigeria 1990 was not served on the appellants until after the revocation. It is instructive to note that whereas the said section 28 of the Land Use Act talks of when to serve the notice, the 1st respondent did not comply with the provision of the law. For purpose of clarity, I will reproduce the law here below. Section 28 reads as follows:-

“28(4) 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.

(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.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under sub section (6) of the Section or on such later date as may be stated in the notice.”

Clearly, the said service by DW3, negated the spirit of the above provisions’, particularly Section (7) which specifies that the right of the holder will be extinguished only after the receipt of the notice. This brings me to the provision of Section 44 of the said Land Use Act, which states the modes of service and in particular the relevant mode as, stipulated in Section 44(e) place of abode. It reads thus:-

(e) If it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served by addressing it to him by the description of holder” or “occupier” of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.”

It is instructive to note that Exhibit ‘G’ did not bear ‘holder’ or ‘occupier’ and so it did not comply with the provision, and so the provision cannot be invoked.

Section 44 of the land Use Act has not been complied with. In the circumstances the notice and revocation of the land was invalid and null and void. See the case of Nigeria Engineering Works Ltd. v. Denap Ltd. 2001 18 NWLR part 746 page 726. In the light of all the discussions supra I do not endorse the majority finding of the court

below which reads:-

"I am satisfied therefore that the rights of the appellants to the land in dispute was effectively revoked by the Notice Exhibit J. and that the land in dispute was effectively and validly acquired by the Government of Anambra State for overriding public purpose."

B In the circumstance that there was no valid revocation of the land in dispute, the right of the appellants in the land remains with them, as it has not been extinguished. Since this is the position, there was nothing to grant to the 3rd respondent. The decisions of the two
C lower courts were in error and cannot stand, I have read in advance the lead judgment of my learned brother Aderemi, JSC, and I am in full agreement with him that the appeal is meritorious and should succeed and the cross appeal has no substance. I also allow the appeal and dismiss the cross-appeal. I abide by the consequential orders
D made in the lead judgment.

ONNOGHEN JSC

E This is an appeal against the judgment of the Court of Appeal holden at Enugu in appeal NO. CA/E/188/96 delivered by that court on the 13th day of July, 1998 in which it dismissed the appeal of the appellants against the judgment of the Anambra High Court, holden at Nnewi Judicial Division, Nnewi in suit NO. HN/53/90 delivered on
F the 24th day of October, 1994 in which the court dismissed the claims of the appellants, then plaintiffs.

The appellants had claimed five declarations, damages for trespass and injunction to restrain the defendants/respondents by themselves, their agents or privies from entering the land and doing any
G thing inconsistent with the plaintiffs' right of customary possession and user of the said Akabo Umuohi land.

Apart from the main appeal, there are two cross appeals by the respondents against the judgment of the lower court. The issues identified by learned counsel for the appellants in the appellants' brief
H of argument are as follows:-

" 1. Was the acquisition of the 15.025 hectares granted to the 3rd respondent invalid, null and void?

2. Was the majority decision of the court below correct in law when it upheld the finding of the trial court that notices of revocation

were served on the appellants?

3. Was the majority judgment of the court below right in holding, as did the trial court, that the 15.025 hectares of land granted to the 3rd respondent was for public purposes or for a continuation of the public purposes for which the Federal Government built low cost houses on the adjacent 5 hectares of land. B

4. Was the certificate of occupancy granted to the 3rd respondent by the Chairman of the Ihiala Local Government Council on the 27th of April, 1989 valid? “

While the issues formulated for determination in the 1st and 2nd cross appellant's brief of argument are as follows:- C

“1. Whether the proof of the Pre-Land Use Act title or holdings of the plaintiffs/appellants is not sine qua non or fundamental issue to vest them with the locus to institute this action and seek the relief they claimed in view of their pleadings and evidence. D

2. Do the parties (Plaintiffs/Appellants, Defendants/Cross Appellants) join issues on the Pre-Land Use Act title of the Appellants to the land in dispute and jurisdiction to entertain the action in view of the locus of the plaintiffs in the issues before the lower court and the court of trial. E

3. Can the lower court decline to deal on crucial issues put before it when no decision had been given on them but simply refer to the issues in a sweeping statement as non issues. “

Learned Senior Counsel for the 3rd respondent/cross appellant formulated two (2) issues for the determination of the 3rd respondent's cross appeal. The issues are as follows:- F

“Whether the court below was right in striking out the issue of the Pre-Land Use Act title or holding of the Plaintiffs/Appellants on the ground that the issue was not relied by anybody and that the Plaintiffs/Appellants are not claiming for compensation when there was evidence that the issue arose both at the trial court and the court below. “ G

It is very clear that the issues in the cross appeals are very identical. However, the need to determine the issues raised in the cross appeals depends on the outcome of the determination of the issues in the main appeal. H

Looking at the main appeal, the main issue calling for determination, which is also the real issue in the lower courts, is whether the

compulsory acquisition of the appellants' land is valid in law and, if so, whether the grant of the portion to the 3rd respondent/cross appellant was for public purposes or for continuation of public purposes.

It is clear from the above issue that if it is found, at the end that the acquisition or revocation was invalid and consequently null and void, any grant to the 3rd respondent/cross appellant would automatically be non-existent on the principle of *nemo dat quod non habet*. The pivot of the case therefore is simply whether the acquisition of the land in dispute is valid having regards to the law relevant thereto as every other incidents will flow from the validity or otherwise of the said acquisition.

The facts of the case have been detailed in the lead judgment of my learned brother, ADEREMI, JSC just delivered, a draft of which I had the advantage of reading before hand, and I have no intention of repeating them herein except as may be needed for the determination of the issue under consideration.

It is the case of the appellants that no notice of revocation/acquisition of their right of occupancy by the 1st and 2nd respondents was served on them and that the revocation was not for public purposes as required by law in that it was for the private benefit or purpose of the 3rd respondent who built houses on the land which he rented to tenants who paid rents to him.

On the other hand, the respondents contend that proper notice of revocation/acquisition was given by the 1st and 2nd respondents to the appellants and that the acquisition/revocation was for public purposes and consequently valid. The pleadings of the 1st and 2nd respondents actually talks of publication of the notice of acquisition or revocation in the Anambra State Government Gazette.

Under section 44 of the Land Use Act, notice of revocation of rights of occupancy on occupiers of the land to be acquired shall be served by:

- (a) delivering it to the person on whom it is to be served; or
- (b) leaving it at the usual or last known place of abode of the person, or
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode, or
- (d) - - - — — — — —

(e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of “holder” or “occupier” of the premises (naming them) to which it relates, and by delivering it to some persons on the premises or if there is no person on the premises to whom it can be delivered by affixing it, or a copy of it, to some conspicuous part of the premises. B

The question is whether the respondents served notice of revocation on the appellants; not whether there was publication of a notice of acquisition in the Cassette. While the respondents say they did, the appellants contend that they were not served. The testimony of DW3 is that the appellants refused to sign for the notices. The question is if that was the situation the respondents still had the other modes of service stated in subsections (b) and (c) of section 44 of the Act to adopt but there is no evidence on record that the respondents adopted either of the modes of service of the notice of revocation on the appellants. It is settled law that revocation of a right of occupancy can only be valid if notice of same has been issued and served on the owner or occupier of the property concerned. D

As regards the further testimony of DW3 that some notices were pasted on trees, wooden fences etc, there is the testimony of 1st appellant and 3rd respondent to the effect that the land in dispute was bulldozed before 1990 and was consequently barren; so where were the trees? Although the trial court believed the testimony of DW3 on the issue of service of notice of revocation based on the demeanor of DW3 which finding was affirmed by the lower court, I hold that where the belief of the lower courts is inconsistent with relevant facts in evidence of the witnesses showing that his testimony cannot be true, as in the instant case, such a belief in the evidence/testimony will carry no weight. In any event, the 1st and 2nd respondents pleaded service of notice of acquisition by publication in the Gazette not personal service on the appellants. The evidence of DW3 is therefore contrary to the pleadings. E F

I hold the further view that the lower court was in error when it held that publication in the Gazette constituted sufficient notice to the appellants as it is settled law that such a publication without personal service of same on the person (s) concerned does not make The acquisition/revocation valid - see Integrated Rubber Products H

Nigeria Ltd. vs Oviawe (1992) 5 NWLR (pt. 243) 572. In any event, if it were the intention of the legislature that publication in the government gazette satisfies the statutory mode of service of notice of revocation to owners and holders of rights of occupancy sought to be revoked -thereby, it would have stated so in no uncertain terms.

B It is clear from the above that the revocation of the rights of the appellants on the land in question was invalid for reasons of non service of the statutorily required notice of revocation/acquisition and consequently null and void ab initio. It follows therefore, and very
C clearly too, that any subsequent step taken by the 1st and 2nd respondents in consequence of the revocation/acquisition, such as a grant of a portion of the purportedly acquired land to the 3rd respondent for whatever purpose - whether public or private is clearly null and void as you cannot put something on nothing and expect it
D to stand. Secondly, it is a principle of our law that you cannot give what you do not have as expressed in the latin maxim thus: Nemo dat quod non habet.

It is therefore very clear from the resolution of the main issue in this appeal as demonstrated supra and its consequent effect on the
E transactions leading to the institution of the action, that the appeal is meritorious and ought to be allowed. It is for the above reasons and the more detailed ones contained in the lead judgment of my learned brother ADEREMI, JSC that I too allow the appeal and set aside the
F judgments of the lower courts and in their place, enter judgment in favour of the appellants as per their claims before the trial court.

I abide by the other consequential orders contained in the said lead judgment including the order as to costs.

Appeal allowed.

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CHUKWUMA-ENEH JSC

I have had the advantage of reading before now the lead judgment prepared by my learned brother Aderemi, JSC. He has
H treated exhaustively the preliminary objection. I am at one with him that grounds 1, 2, 3 and 5 of the notice of appeal are all grounds of law which do not require leave of Court.

The issue of Notice of Revocation of Rights of Occupancy has continued to be the undoing of many an exercise of compulsory

acquisitions of land for public use by Governments as in this case. It calls for a thorough understanding of the provisions of section 44 of the Land Use Act on the matter particularly in the area of service of notices of revocation on holders of Rights of Occupancy. This issue has been thoroughly thrashed out in the lead judgment of my learned brother that I have to agree with his reasoning and conclusion on the issue and that the appeal has merit. B

On the issue of whether the acquisition of the said land by the Federal Government and the transfer of the same to the 3rd respondent can be construed for public purpose, I am of the same opinion that it cannot be so construed and as having been done in the overriding public interest. C

For the reasons ably set out in the lead judgment which I have read before now, I agree with my learned brother Aderemi, JSC that the appeal has merit and should be allowed. I too allow it and endorse all the order contained therein. D

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