

**SUPREME COURT OF NIGERIA**  
22ND JANUARY, 2010. SC. 283/2001  
**CORAM:- G. A. OGUNTADE, F.F. TABAI,**  
**I. T. MUHAMMAD, J. A. FABIYI, O. O. ADEKEYE, JJSC**

1. YELE OYENEYIN

(Trading under the name and style

OYENEYIN & SONS)

2. CHIEF T. A. ADEROBA ..... APPELLANTS/CROSS

(For himself & on behalf of ..... RESPONDENTS

LODUTI & AJAKA FAMILY)

AND

1. DR. A. AKINKUGBE

2. MR. O. AKINKUGBE ..... RESPONDENTS/CROSS

(Executors of the Estate of ..... APPELLANTS

High Chief E. A. Akinkugbe)

---

CONVEYANCING - Title - Grant of family land - Exhibits A and B - Validity - The exhibits are valid - Having been executed by the head and principal members - Of the grantor family - Contrary to allegation of appellants (H1)

LAND LAW - Title - Conferment of - Exhibit A and B - Efficacy of - Contrary to opinion of appellants - The exhibits are not void - But are legally viable documents conferring title (H2)

CONVEYANCING - Deeds - Earlier deed of gift - Recited in Exhibit A - Effect - Having embodied the deed in its recital - Exhibit A has subsumed the contents of the deed - So the deed no longer has legal recognition (H3)

DAMAGES - Award by trial court - Interference on appeal - Basis - Appellate court will not interfere - Unless trial court acted under wrong principles of law - Or in misapprehension of facts - Or considered irrelevant matters (H4)

COURTS - Error - Orders made contrary to findings - Correction on appeal - Court of Appeal gave order in favour of cross-appellants -

Who had lost on the issue - The order having been made by omission - Supreme Court is in a position to rectify it (H5)

LANDLORD & TENANT - Contracts - Enforceability - Tenancy law - Penalty clauses - Such clauses are unenforceable - Court cannot salvage obligations created by such clauses - By applying provisions of statutes - As it has no vires to make cases for parties (H6)

EVIDENCE - Land law - Title - Proof - Cross-appellants having pleaded - And led evidence that one of them sold the land to appellant - To their knowledge without their protest - The courts have no basis to set aside the transfer of land (H7)

### ***FACTS***

The plaintiffs/respondents/cross-appellants sued the 1st defendant/appellant/cross-respondent before the High Court of Ondo State claiming possession, damages for trespass and injunction in respect of the land in dispute. Respondents also claimed N100 per day from 1st December 1989 till possession is given up as penalty agreed between the parties in the event of 1st defendant/appellant failing to give up possession on an earlier agreed date which date had passed. 2nd defendant/appellant/cross-respondent intervened and got joined in the suit as 2nd defendant, whereupon he counter claimed against the rest of the parties claiming to be the ones entitled to whatever rentage due from 1st appellant in respect of the land in dispute in that the land belonged to them and not to respondents. The case of respondents was that their late father owned the land, as well as that originally granted to 1st defendant under a tenancy. The whole land was purchased by their father via two independent purchases as per the two deeds of conveyance tendered as Exhibits A and B. 1st defendant had later trespassed to the North and South of the land granted to him. In consequence, respondents had moved to recover possession of the entire land.

It was in evidence that following the move to recover possession, 1st defendant had agreed with respondents for a period of three years grace to enable him vacate failing which he agreed to pay the earlier-mentioned penalty of N100 per day as per Exhibit H. It was

also in evidence that the land North of the land granted to 1st defendant was actually sold to him by a member of respondents' family to the knowledge of the family. After hearing, learned trial judge granted respondents' claim in part, refusing the grant of the agreed penalty but granting a lump sum of N2,000 per annum instead in reliance on the Landlord and Tenant law of the State. It dismissed 2nd appellant's counter claim. Aggrieved, appellants appealed to Court of Appeal and respondents cross-appealed. The court dismissed the appeal but allowed the cross appeal in part by upholding the penalty clause but refused to grant possession of the land originally granted to 1st defendant to respondents. Still aggrieved, appellants have appealed to Supreme Court against the judgment of Court of Appeal. Respondents have also cross-appealed.

### **ISSUES FOR DETERMINATION**

#### **APPEAL:**

(i) Whether the Court of Appeal was right when it held that Exhibits "A" and "B" are valid and conferred valid title on the respondents when the grant made vide Exhibits A and B are void ab initio.

(ii) Whether the Court of Appeal rightly distinguished the present case from *Lawal v. G. B. Ollivant (Nig) Ltd (1922) All NLR pg. 211* without stating reasons and particulars of differences in the two cases.

(iii) Whether the Court of Appeal was right in justifying the award of trial court for the sum of N25,000 (twenty five thousand Naira) representing damages for the loss of economic trees when such has not been specifically pleaded or proved.

(iv) Whether the Court of Appeal was right in allowing the cross-appeal of the plaintiffs/respondents in its entirety having found that the trial court was right to have used the cross-appellants unchallenged evidence and held that the title in the land North of the saw-mill had passed to the 1<sup>st</sup> defendant.

(v) Whether the Court of Appeal rightly upheld the Penalty Clause contained in Exhibit H which is outside the ambit of the mandatory provision of the applicable law, on the ground that it is a voluntary agreement which is binding on the parties.

#### **CROSS APPEAL:**

(a) Whether or not the learned justices of the Court of Appeal were right in accepting the findings of the learned trial judge which

were based on evidence which was at variance with facts pleaded by the 1<sup>st</sup> defendant.

(b) Whether or not the learned justices of the Court of Appeal were right in accepting the findings of the learned trial judge that there was uncontroverted evidence of PW3 that a member of his family sold the land to the North of the sawmill to the 1<sup>st</sup> defendant.

**HELD** (Unanimously allowing the appeal in part while dismissing the cross-appeal per **ADEKEYE JSC**)

***Title - Grant of family land - Exhibits A and B - Validity***

1. The documents of title relied upon to prove their father's title to the land - which devolved on them as beneficiaries and executors of the estate of High Chief E. A. Akinkugbe are the Conveyances tendered and admitted as part of evidence as Exhibits A - B. The respondents gave evidence of the gift of the land in 1954, and the two conveyances executed in 1962.

The appellants challenged the signatories on the conveyance Exhibits A and B - that they were not made by the grantor Okedoko family in their representative capacity or by the accredited and principal members of the Loduti and Ajaka families. The misconception was laid to rest by the evidence of DW3 who identified the executors as head and principal members of Okedoko family under cross-examination. (pp. 451 F/452 B)

***Title - Conferment of - Exhibit A and B - Efficacy of***

2. Mere production of a valid instrument of grant does not necessarily carry with it an automatic grant of the relief of declaration. The production of an instrument of grant of title carries with it the need for the court to inquire into a number of questions including: -

- (a) Whether the document is genuine and valid
- (b) Whether it has been duly executed, stamped and registered
- (c) Whether the grantor had the authority and capacity to make the grant
- (d) Whether the grantor had in fact what he purported to grant
- (e) Whether it had the effect claimed by the holder of the instrument.

The learned trial judge in his well considered judgment scruti-

nized the conveyances Exhibits A and B and found that they complied with the factors adumbrated above.

Exhibits A and B contrary to the opinion of the appellants/cross-respondents, do not fit into the foregoing - they are not void ab initio but are legally viable documents. (pp. 452 C/453 A)

B

***Earlier deed of gift - Recited in Exhibit A - Effect***

3. The appellants contended that Exh. A which is the deed of conveyance made in 1962 and registered at Ibadan now Akure wherein the deed of gift made in 1954 was recited but not pleaded and tendered in evidence is fatal to the case of the respondents since the origin of their title in the parcel of land can be traced to the said deed of gift of 1954. C

I agree with the finding of the Court of Appeal that the deed of gift now embodied in the conveyance Exh. A as the recitals - give D absolute ownership of the land in question to the respondents. The conveyance has given formal recognition to the transfer of land by the grantor family to the deceased father of the respondent. Having embodied the deed of gift in the recital, of the conveyance, no legal recognition is attached to the deed of gift - which can no longer stand E on its own. Its content is now subsumed in the conveyance. (p. 453 D/G)

***Award by trial court - Interference on appeal - Bases***

4. An appellate court will not interfere with an award of damages by F a trial court unless in situations which include

- (a) Where the Court acted under wrong principles of law
- (b) Where the Court acted in disregard of applicable principles of law G
- (c) Where the Court acted in misapprehension of facts
- (d) Where the Court took into consideration irrelevant matters and disregarded relevant matters whilst considering its award
- (e) Where injustice will result if the appellate court does not act
- (f) Where the amount awarded is ridiculously low or ridiculously high that it must have been an erroneous estimate of the damages H

The Court of Appeal held that the appellants failed to show that the award of N25,000 damages by the trial court is affected by any of

the above mentioned factors. This court has no premise to change the view and conclusion of the trial court and the lower court on the award of damages. It is a discretion well exercised by the two lower courts. (pp. 455 G/456 C)

**B Orders made contrary to findings - Correction on appeal**

5. The cross-appellants have supplied the evidence required by the 1<sup>st</sup> respondent/cross-respondent to strengthen his case in the acquisition of the land North of the sawmill. The Court of Appeal concluded that the court was right to have made use of the unchallenged evidence of the plaintiffs/cross-appellants to vest title in the land North of the sawmill in the 1<sup>st</sup> defendant/cross-respondent. The court gave order in favour of the cross-appellants rather than the 1<sup>st</sup> cross-respondent - the cross-appellants having lost on that issue. I agree with the submission of the appellants. I regard the order of court as a mere omission which this court stands in a position to rectify. This issue is resolved in favour of the 1<sup>st</sup> defendant/cross-respondent. (p. 457 E)

**E Contracts - Enforceability - Tenancy law - Penalty clauses**

6. A penalty clause is defined in Black's Law Dictionary Eight Edition as

*A contractual provision that assesses against a defaulting party an excessive monetary charge unrelated to actual harm. Penalty clauses are generally unenforceable, particularly when clauses of the nature are designed to terrorize or frighten the party into performance.*

In the peculiar circumstance of Exh. H - where the penalty clause demands for the payment of N100 per day for occupation of land where the usual rent is N1000 annually is morally unjustifiable. The trial court cannot salvage an unenforceable transaction by applying the landlord and tenants law neither has the trial court the vires to formulate cases for the parties. I resolve this issue in favour of the appellants.

The amount awarded under the landlord and tenant Law is therefore uncalled for. Public Policy in Nigeria supports the fact that parties should be made to honour obligations entered into voluntarily between themselves to the extent that it is enforceable. (p. 459 F/H)

***Land law - Title - Proof***

7. In an effort to adduce evidence in support of their claim to title - the plaintiffs/cross-appellants gave away a portion of the disputed land to the 1st appellant/cross-respondent. The evidence of the cross-appellants strengthen the otherwise shaky and unstable evidence of the 1st appellant/cross-respondent to earn him the portion of the land. The owners of the land who should guard their property jealously were not opposed to the sale by their half brother - the courts have no basis to set aside the transfer of land. The 1<sup>st</sup> appellant cannot be a trespasser on his own land - therefore the claim for trespass must fail. Once there is no finding for trespass, an injunction cannot be granted as there is no possession in a party to protect. (p. 463 C)

**NOTABLE POINT OF INTEREST****ADEKEYE JSC*****1. Estoppel operates against cross-appellants***

The lower courts were right to have accepted the foregoing evidence to hold that the land North of the sawmill was already sold by a member of the plaintiffs/cross-appellants family to the 1<sup>st</sup> cross-respondent. The cross-appellants will in my view be estopped from reclaiming that particular land particularly when they had allowed the 1st cross-respondent to erect two buildings on the land. This issue is therefore resolved in favour of the cross-respondent. (p. 465 G)

**REPRESENTATION**

Mr. C. J. Chukura for the Appellants.

Mr. A. Thompson with him, S. Adetokunboh and Orisagbemi for the Respondents.

**CASES REFERRED TO**

Folami v. Cole (1990) 2 NWLR pt. 133 pg. 445

Nkado v. Obiano (1997) 5 NWLR pt. 503 pg. 31

Anyanwu v. Mbara (1992) 5 NWLR pt. 242 pg. 381

Oduaran v. Asarah (1972) 1 ALL NLR pt. 2 pg. 137

Onwugbufo v. Okoye (1996) 1 SCNJ pg. 1 at pg. 36

Osolu v. Osolu (2003) FWLR pt. 172 pg. 177 at pg. 1794

- Enilolobo v. Adegbesan (2000) 11 NWLR pt. 698 pg. 611  
 Brown v. Zibiri (2003) FWLR pt. 172 pg. 1920 at pg. 1934  
 Okafor v. A-G Anambra State (1991) 6 NWLR pt. 200 pg. 659  
 Kalio v. Woluchem & Anor (1985) 1 NWLR pt. 4 pg. 610 at pg. 612  
 Mogaji v. Cadbury Nig. Ltd (1985) 2 NWLR pt. 7 pg. 393 at pg. 425  
 B The Registered Trustees of the Apostolic Church v. Olowoteru (1990)  
 6 NWLR pt. 158 pg. 514  
 Nimanteks Associates v. Marco Construction Co. Ltd. (1991) 2 NWLR  
 pt. 174 pg. 411 at pg. 427  
 C Union Bank of Nigeria Limited v. Odusote Book Stores Limited (1995)  
 9 NWLR pt. 421 pg. 559 at pg. 585

### **STATUTE REFERRED TO**

Landlord and Tenants law, Cap. 55, Laws of Ondo State, ss. 5 and 6

D

### **LEAD JUDGMENT BY ADEKEYE JSC**

The parties in this appeal commenced an action before the High Court of Justice, Ondo State in the Ondo Judicial Division. The respondents-cross appellants as plaintiffs before the trial court sued  
 E the 1<sup>st</sup> appellant/cross-respondent claiming as follows:-

- (i) Possession
- (ii) N100 per day from the 1<sup>st</sup> December 1989 as agreed penalty until possession is given up
- (iii) N100,000 damages for trespass committed by the 1<sup>st</sup> defendant, his agents and privies to Chief E. A. Akinkugbe's land to the North and West of the area granted to the 1<sup>st</sup> defendant by the plaintiffs in 1972 which is verged black in the survey plan by G. G. Okusanya dated 2<sup>nd</sup> June 1992

G (iv) Perpetual injunction restraining the 1<sup>st</sup> defendant from committing further acts of trespass over the land referred to in (3) above

The 2<sup>nd</sup> appellant who was joined as 2<sup>nd</sup> defendant by the Order of the High Court dated 26<sup>th</sup> July 1990, counterclaimed against the respondents and the 1st appellant respectively as follows -

H (i) Declaration that the Loduti and Ajaka family are the one entitled to a grant of statutory right of Occupancy over the land in dispute at Lisaluwa otherwise called Oke-Obara, Ondo.

(ii) Declaration that the Loduti and Ajaka family as represented by the 2<sup>nd</sup> defendant are the ones entitled to collect rent from the 1<sup>st</sup>



defendant or anybody occupying the land in dispute, (iii) An order against the 1<sup>st</sup> defendant not to pay any rent in respect of the land in dispute to the plaintiffs or any other person except to the 2<sup>nd</sup> defendant's family.

(iv) An order against the 1<sup>st</sup> defendant to pay any rent due and any subsequent rent on the land in dispute to the 2<sup>nd</sup> defendant's family. B

(v) An order of injunction restraining the plaintiffs, their servants, privies, agents or anybody claiming through them from collecting rents from the 1<sup>st</sup> defendant or from anybody or all in respect of the land in dispute or from any claim to the land in dispute. C

Both defendants-appellants joined issues with the plaintiffs-respondents in their further Amended Statement of Defence as the matter proceeded to hearing. The two plaintiffs-respondents relied on their evidence and called two other witnesses. The respondents/ cross-appellants prosecuted the case as executors of the estate of their deceased father to whom they traced their root of title. They relied on Deed of Conveyance of the disputed land to their late father, Exhibit A dated the 10<sup>th</sup> of December 1962 from the Okedoko family, and remaining part of the land from the Loduti and Ajaka Families by virtue of Exhibit B another deed of Conveyance also dated 16<sup>th</sup> December 1962, a composite survey plan of the land Exh. K, notice of plaintiffs/respondents/cross-appellants' intention to terminate the tenancy and recover possession after three years grace given to the 1st appellant/cross-respondent to relocate his sawmill from the land in dispute, Exh. H and Letters of Probate incorporating the will of their deceased father, Chief S. A. Akinkugbe. The 1<sup>st</sup> and 2<sup>nd</sup> appellants/cross-respondents testified in person and called four other witnesses. In an exhaustive and considered judgment of the learned trial judge delivered on the 20<sup>th</sup> of February 1995, the court partially granted the claims of the respondents/cross-appellants against the 1<sup>st</sup> appellant as follows -

(a) The relief for possession

(b) Allowed N2000 per annum in accordance with Sections 5 and 6 of the Landlord and Tenants Law Cap 55 Laws of Ondo State, which turned out to be a sum of N10,500 for the period in the penalty clause of Exh. H instead of the N100 per day stipulated therein.

(c) N25,000 as damages for trespass committed by the 1<sup>st</sup>

appellant on the land - west of the sawmill. Dismissed the claim in respect of the land north of the sawmill with the two buildings and the fence erected in favour of the 1<sup>st</sup> appellant.

(d) Perpetual injunction in respect of the land on which the sawmill stands and the area west of it, as well as the lands described in Exhibits A and B shown on Exhibit K without the two buildings of the 1<sup>st</sup> defendant.

The court refused the 2<sup>nd</sup> appellant/cross-respondents counter claim in its entirety.

Being dissatisfied with the judgment, the appellants and the respondents appealed against it to the Court of Appeal. The Court of Appeal found no merit in the appeal and consequently dismissed it. The court however allowed the respondents' cross appeal. Being aggrieved by the judgment, the appellants filed a further appeal and the respondents a further cross-appeal to this court. Both parties exchanged pleadings. When the appeal was heard on the 26<sup>th</sup> of October 2007 - the appellant relied on the appellants' brief of argument filed on 13/7/05 wherein five issues were settled for determination by the court as follows: -

(i) Whether the Court of Appeal was right when it held that Exhibits "A" and "B" are valid and conferred valid title on the respondents when the grant made vide Exhibits A and B are void ab initio.

(ii) Whether the Court of Appeal rightly distinguished the present case from *Lawal v. G. B. Ollivant (Nig) Ltd (1922) All NLR* pg. 211 without stating reasons and particulars of differences in the two cases.

(iii) Whether the Court of Appeal was right in justifying the award of trial court for the sum of N25,000 (twenty five thousand Naira) representing damages for the loss of economic trees when such has not been specifically pleaded or proved.

(iv) Whether the Court of Appeal was right in allowing the cross-appeal of the plaintiffs/respondents in its entirety having found that the trial court was right to have used the cross-appellants unchallenged evidence and held that the title in the land North of the sawmill had passed to the 1<sup>st</sup> defendant.

(v) Whether the Court of Appeal rightly upheld the Penalty Clause contained in Exhibit H which is outside the ambit of the mandatory provision of the applicable law, on the ground that it is a vol-

untary agreement which is binding on the parties.

The respondents adopted and relied on the respondents' brief filed on 18/10/05 and formulated four issues for determination as follows: -

(1) Whether the Court of Appeal was right in not disturbing the High Court's decision granting possession to the respondent over the land described as sawmill. B

(2) Whether the Court of Appeal was right in justifying the award of the trial court for the sum of N25,000 (twenty five thousand Naira) as damages to the land described as being part of the sawmill. C

(3) Whether the Court of Appeal was right in upholding the terms of Exhibit H.

(4) Whether the Court of Appeal acted on the right principles in granting the respondents cross-appeal in its entirety. D

It is my candid view that the issues raised by the parties are similar in that they raise the same questions though couched differently. I intend to be guided by the issues formulated by the appellants.

#### Issue One E

Whether the Court of Appeal was right when held that Exhibits "A" and "B" are valid and conferred valid title on the respondents when the grant made vide Exhibits A and B are void ab initio.

The appellants submitted that the trial court gave judgment to the respondents on the strength of Exhibits A and B which judgment was confirmed and upheld by the Court of Appeal whereas the Okedoko family as a grantor did not make Exh. A in their representative capacity on behalf of the family nor was Exh. B made by the head and accredited principal members of Loduti and Ajaka families. Those who granted the land did so in their individual capacities. A grant of family land without the consent of the head and accredited principal members of the family is void in law. The Court of Appeal therefore erred when it held on to the evidence of PW3 that Loduti and Ajaka families gave land to his father in 1962 was unchallenged. The evidence was challenged by DW2 and 2<sup>nd</sup> appellant. There was no evidence to show that the land conveyed by Exhs. A and B was partitioned. Documents which are therefore a nullity and void in law cannot convey any title to the respondents. Cases were cited in sup- F G H

port of the foregoing

Folami v. Cole (1990) 2 NWLR pt. 133 pg. 445

Kalio v. Woluchem & Anor (1985) 1 NWLR pt. 4 pg. 610 at pg. 612

Adejumo v. Ayantegbe (1989) 3 NWLR pt. 110 pgs. 442 - B 448

Ekpendu v. Erika (1959) 4 FSC pg. 29

Ige v. Fagbohun (2002) FWLR pt. 91 pg. 1545 at pg. 1565

Mogaji v. Cadbury Nig. Ltd. (1985) 2 NWLR pt. 7 pg. 393

UBN Ltd v. Ozigi (1994) 3 NWLR pt. 33 pg. 385 C

Nimanteks Associates v. Marco Construction Co. Ltd. (1991) 2 NWLR pt. 174 pg. 411 at pg. 427

Niger Dams v. Lajide (1973) 5 SC pg. 207

The respondents replied that the Court of Appeal was right in D not disturbing the High Court's decision granting possession to the respondents over the land covered by the sawmill. The learned trial judge drew attention to the inconsistency in the pleadings of the 1<sup>st</sup> appellant and his evidence denying that a landlord and tenant relationship existed between himself and the respondents - a fact which E he later admitted that the relationship existed. The Court of Appeal preferred the claim to title made by the respondents to that of the 2<sup>nd</sup> respondent in view of the evidence proffered by the latter based on Exhs. A, B, F, G, H, J and K. The Court of Appeal found that the conveyance Exh. A was made for the purpose of formalizing the gift F made to the respondent's father in 1954 - and the court found nothing improper about them. As to the signature to Exhibit A, the Court of Appeal found that DW3 under cross-examination identified the persons who signed Exhibit A as head and principle members of the G Okedoko family. The court also found the evidence of traditional history given by DW2 in support of the appellants' claim to title of the land in dispute inconsistent. The respondent cited the case of Akibu v. Oduntan (2000) 13 NWLR pt. 685 pg. 446 at pg. 473 paragraphs G — H. The court is urged to resolve the issue in favour H of the respondents.

The respondents/cross-appellants as plaintiffs in the trial court claimed against the 2<sup>nd</sup> appellant and in the counterclaim defended the possession of the piece and parcel of land at Lisaluwa shown in the survey plan Exh. K dated the 2<sup>nd</sup> of June 1992. It is trite

that -

(1) When the issue as to which of the two claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe such possession and/or occupation to the person who proves a better title.

Aramire v. Awoyenu (1972) 1 NWLR pt. 1 pg. 101

Fuson v. Beyioku (1988) 2 NWLR pt. 76 pg. 263

Also where two parties are on land claiming possession, the possession being disputed, trespass can only be at the suit of that party who can show that title of land is in him.

Magaji v. Cadbury Nigeria Ltd (1985) 7 SC 59

Onwuka v. Ediala (1989) 1 NWLR pt. 96 pg. 182

Elehunde v. Adeyoju (2000) 10 NWLR pt. 676 pg. 562.

In the suit before the High Court, the respondents/cross-appellants as plaintiffs claimed for possession, trespass and perpetual injunction. Where a claim for trespass is coupled with a claim for an injunction - the title of the parties to the land in dispute is automatically put in issue - particularly in this case in view of the pleadings in the counterclaim of the 2<sup>nd</sup> appellant/cross-respondent.

Akintola v. Lasupo (1911) 3 NWLR pt. 180 pg. 508

Okorie v. Udom (1960) SCNLR p. 326

The Registered Trustees of the Apostolic Church v. Olowoteru (1990) 6 NWLR pt. 158 pg. 514.

The respondents/cross-appellants traced their root of title to the land in dispute to grants made to their deceased father, High Chief Sasere Akinkugbe by the Okedoko, Loduti and Ajaka families.

***The documents of title relied upon to prove their father's title to the land - which devolved on them as beneficiaries and executors of the estate of High Chief E. A. Akinkugbe are the Conveyances tendered and admitted as part of evidence as Exhibits A - B. The respondents gave evidence of the gift of the land in 1954, and the two conveyances executed in 1962.***

Production of document of title, which are duly authenticated is one of the five recognized ways in which ownership or title to land may be proved. It is the duty of the plaintiff in an action for declaration of title to land to adduce sufficient and credible evidence to establish the mode of acquisition of his title and the plaintiff must succeed on the strength of his own case

Idundun v. Okumagba (1976) 9 - 10 SC 227

Nkado v. Obiano (1997) 5 NWLR pt. 503 pg. 31

Onwugbufor v. Okoye (1996) 1 NWLR pt. 424 pg. 252

Atanda v. Ajani (1989) 3 NWLR pt. 111

Anyanwu v. Mbari (1992) 5 NWLR pt. 242 pg. 381

B Alii v. Alesinloye (2000) 6 NWLR pt. 660 pg. 177

***The appellants challenged the signatories on the conveyance Exhibits A and B - that they were not made by the grantor Okedoko family in their representative capacity or by the accredited and principal members of the Loduti and Ajaka families. The misconception was laid to rest by the evidence of DW3 who identified the executors as head and principal members of Okedoko family under cross-examination. (vide page 291 of the Record). Mere production of a valid instrument of grant does not necessarily carry with it an automatic grant of the relief of declaration. The production of an instrument of grant of title carries with it the need for the court to inquire into a number of questions including: -***

- (a) ***Whether the document is genuine and valid***
- E (b) ***Whether it has been duly executed, stamped and registered***
- (c) ***Whether the grantor had the authority and capacity to make the grant***
- F (d) ***Whether the grantor had in fact what he purported to grant***
- (e) ***Whether it had the effect claimed by the holder of the instrument.***

***The learned trial judge in his well considered judgment scrutinized the conveyances Exhibits A and B and found that they complied with the factors adumbrated above. Pages 304 of the Record.***

Enilolobo v. Adegbesan (2000) 11 NWLR pt. 698 pg. 611

H Romaine v. Romaine (1992) 4 NWLR pt. 238 pg. 650

Ngene v. Igbo (2000) 4 NWLR pt. 651 pg. 131

In law a void act is an act which has no legal effect or consequence. It does not confer any legal right or title whatsoever, and it does not also impose any legal obligation or liability on any one or

make any party liable to suffer any penalty or disadvantage.

Okafor v. A-G Anambra State (1991) 6 NWLR pt. 200 pg. 659

Saleh v. Monguno (2003) 1 NWLR pt. 801 pg. 221

**Exhibits A and B contrary to the opinion of the appellants/cross-respondents, do not fit into the foregoing - they are not void ab initio but are legally viable documents** - conveyances executed in 1962 to give legal recognition to the customary grant of land made in 1954 to the deceased father of the respondents/cross-appellants by the Okedoko family, Loduti and Ajaka families.

I resolve issue one in favour of the respondents.

Issue Two

Whether the Court of Appeal rightly distinguished the present case from Lawal v. G. B. Ollivant (Nig) Ltd. 1972 All NLR without stating reasons and particulars of differences in the two cases.

**The appellants contended that Exh. A which is the deed of conveyance made in 1962 and registered at Ibadan now Akure wherein the deed of gift made in 1954 was recited but not pleaded and tendered in evidence is fatal to the case of the respondents since the origin of their title in the parcel of land can be traced to the said deed of gift of 1954.** The appellants therefore urge this court to discountenance the finding and holding of the Court of Appeal as having occasioned a miscarriage of justice against the appellant and find in favour of the appellants as considered in the case of Lawal v. G. B. Ollivant (Nig) Ltd. that Exhibit A alone without recourse to unpleaded deed of gift made in 1954 - in favour of Chief E. A. Akinkugbe cannot grant title in land West of the sawmill in favour of the respondents.

**I agree with the finding of the Court of Appeal that the deed of gift now embodied in the conveyance Exh. A as the recitals - give absolute ownership of the land in question to the respondents. The conveyance has given formal recognition to the transfer of land by the grantor family to the deceased father of the respondent. Having embodied the deed of gift in the recital, of the conveyance, no legal recognition is attached to the deed of gift - which can no longer stand on its own. Its content is now subsumed in the conveyance.** It will

amount to an academic exercise by the court or legal semantics to elaborate on the position of an unpleaded document. The Court of Appeal said categorically on pg. 486 of the record that the case *Lawal v. G. B. Ollivant* is different from this case in hand. Cases are not to be cited at large. The facts of the case must be similar, whereas generally speaking cases are decided on their peculiar circumstance or facts. Citing cases that are inapplicable to the peculiar findings in a particular matter lead to grave misconception and ultimately miscarriage of justice. Embarking upon an exercise of comparing and distinguishing an irrelevant case amounts to an unproductive academic exercise - which the courts must shun in the furtherance of development of law. This issue is resolved in favour of the respondents.

### Issue 3

Whether the Court of Appeal was right in justifying the award of N25,000 (twenty five thousand Naira) representing damages for loss of economic trees where such has not been specifically pleaded.

The appellants submitted on this issue that the award of N25,000 as damages for the destruction of economic trees which was neither claimed in the respondents' pleading and not proved specifically was wrongly awarded and has no basis in law. The appellants cited the case of

*Incar Nigeria Ltd. v. Benson Transport Ltd. (1975) 3 SC pg. 177*

*Jaba v. Bassmar (1952) 14 WACA pg. 140*

The appellants further submitted that non payment of filing fees in respect of such award is fatal to such an award and same should be set aside. The appellants referred to the cases of

*Onwugbufor v. Okoye (1996) 1 SCNJ pg. 1 at pg. 36*

*Saudi v. Abdullahi (1989) 4 NWLR pt. 116 pg. 387*

The respondents submitted that the Court of Appeal was right in justifying the award of the trial court for the sum of N25,000 (twenty five thousand Naira) as damages to the land described as being west of the sawmill. At pg. 488 of the Record, the Court of Appeal found that the trespass to the said piece of land had been admitted by the 1st appellant - and in the circumstance damages was payable.

The court then enunciated the principle laid down in the case of *Union Bank of Nigeria Limited v. Odusote Book Stores Limited (1995) 9 NWLR pt. 421 pg. 559 at pg. 585* on when an appellate



court will interfere with the award of damages made by a trial court and concluded that the appellants have not satisfied the court of appeal that any of the circumstances enunciated in that case existed.

This court is duty bound to emphasize that issue of award of damages is usually the duty of the trial court. In the instance of this case the plaintiffs/respondents claimed before the trial court as relief number three -(3) N100,000 damages for trespass committed by the 1<sup>st</sup> defendant, his agents and privies to Chief E. A. Akinkugbe deceased land to the North and West of the area granted to the 1<sup>st</sup> defendant by plaintiffs in 1972 which is marked black in Survey plan drawn by E. F. Olusanya Licensed Surveyor dated 2<sup>nd</sup> June 1992.

At pages 350 - 353 the learned trial judge in his findings of fact concluded, particularly at pg. 352 that the 1st appellant abused the authority granted to him to enter the land on which his sawmill was built by moving over and encroaching on the plaintiffs' adjacent land without the permission and consent of the legal owners of the statutory right of occupancy to both parcels of land. Where a person having entered upon land under an authority given by law and subsequently abuses that authority, he becomes a trespasser ab initio, his conduct relating back so as to make his original entry tortious. He also held at pg. 351 that prove of ownership is prove of possession. The learned trial judge awarded a sum of N25,000 rather than N100,000 for the trespass of the 1<sup>st</sup> defendant into the land of the respondent West of the sawmill. Generally the trial court has discretion as to the quantum of damages it would award in a claim of damages for trespass. The assessment does not depend on any legal rules - but the discretion of court is however limited by usual caution or prudence and remoteness of damage when considering its award of damages. ***An appellate court will not interfere with an award of damages by a trial court unless in situations which include***

- (a) ***Where the Court acted under wrong principles of law***
- (b) ***Where the Court acted in disregard of applicable principles of law***
- (c) ***Where the Court acted in misapprehension of facts***
- (d) ***Where the Court took into consideration irrelevant matters and disregarded relevant matters whilst considering its award***
- (e) ***Where injustice will result if the appellate court does***

**not act**

**(f) Where the amount awarded is ridiculously low or ridiculously high that it must have been an erroneous estimate of the damages**

U.B.N. v. Odusote Bookstores Ltd (1995) 9 NWLR pt. 421 pg.

B 558

Solanke v. Ajibola (1969) 1 NMLR pg. 45

Ziks Press Ltd. v. Alvan Ikoku (1951) 13 WACA 188

Thompson v. Adefope (1961) 1 ANLR pg. 322

ACB Ltd. v. Apugo (2001) 5 NWLR pt. 707 pg. 653

C

**The Court of Appeal held that the appellants failed to show that the award of N25,000 damages by the trial court is affected by any of the above mentioned factors.** The amount was affirmed as damages from economic trees. **This court has no premise to change the view and conclusion of the trial court and the lower court on the award of damages. It is a discretion well exercised by the two lower courts.**

D

I resolve issue three in favour of the respondents.

Issue Four

E

Whether the Court of Appeal was right in allowing the cross-appeal of the plaintiffs-respondents in its entirety having found that the trial court was right to have used the cross-appellants' unchallenged evidence and held that title in the land North of the sawmill had passed to the 1<sup>st</sup> defendant/respondent.

F

The appellants in this issue complained that the order made by the Court of Appeal in the cross-appeal is at variance with its findings on issue one in the cross-appeal. The Court of Appeal should have allowed the cross-appeal of the plaintiffs/cross-appellants in part instead of finding merit in the cross-appeal. Where the finding of the trial court was neither disturbed nor impeached by the appellate court for any reason, the holding of such trial court should not be disturbed. The Court of Appeal should not have disturbed the holding of the trial court for any reason. The Court of Appeal made concurrent finding with the trial court conferring title in -the land in dispute North of the sawmill areas on the 1<sup>st</sup> appellant. The Court of Appeal should not make on order which is at variance with its finding. The appellants cited cases

H

Osolu v. Osolu (2003) FWLR pt. 172 pg. 177 at pg. 1794

Brown v. Zibiri (2003) FWLR pt. 172 pg. 1920 at pg. 1934

Agbaje v. Ajibola (2002) FWLR pt. 92 pg. 1677 at 1695.

The respondent submitted on this issue that the Court of Appeal acted on the right principles in granting the respondents' cross-appeal as it relates to the land described as being situate North of the sawmill. Having found that the respondent had proved better title to the said land as against the 2<sup>nd</sup> appellant through whom the 1<sup>st</sup> appellant was claiming the said land. The court had no option but to grant the respondents prayer for trespass an injunction. The appellants belated evidence that he purchased the land North of the sawmill from a member of the respondents' family was at variance with the case he put forward and therefore goes to no issue. The respondent urged the court to resolve the issue in favour of the respondent.

The lower court in the consideration of the cross-appeal agreed that the 1<sup>st</sup> appellant/cross-respondent did not plead fact of the sale of the land North of the sawmill to him by a member of the family of the cross-appellants but the cross-appellants pleaded it in their evidence and gave evidence through the 2<sup>nd</sup> plaintiff/cross-appellant to that effect. ***The cross-appellants have supplied the evidence required by the 1<sup>st</sup> respondent/cross-respondent to strengthen his case in the acquisition of the land North of the sawmill. The Court of Appeal concluded that the court was right to have made use of the unchallenged evidence of the plaintiffs/cross-appellants to vest title in the land North of the sawmill in the 1<sup>st</sup> defendant/cross-respondent. The court gave order in favour of the cross-appellants rather than the 1<sup>st</sup> cross-respondent - the cross-appellants having lost on that issue. I agree with the submission of the appellants. I regard the order of court as a mere omission which this court stands in a position to rectify. This issue is resolved in favour of the 1<sup>st</sup> defendant/cross-respondent.***

Issue Five

Whether the Court of Appeal rightly upheld the Penalty Clause contained in Exh. H which is outside the ambit of the mandatory provision of the applicable law, on the ground that it is a voluntary agreement which is binding on the parties.

The appellants submitted that the trial court did not re-write

the contract between the parties. The trial court only made effort to eradicate the illegality in the amount agreed on as penalty in Exhibit H. The amount N100 per day is excessive and does not conform with the express provisions of the landlord and Tenant Law - Section 5 and 6. The amount of N100 per day instead of N2000 per annum is undoubtedly excessive. The trial court allowed the respondents relief to the extent permitted by the applicable law. The appellant cites cases -

Abscoss Ltd. v. K.W.P.T. Ltd. (1987) 4 NWLR pt. 67 pg. 894

Sodipo v. Lemmin Kainem Oy & Anor (1986) 1 NWLR pt. 15 pg. 220 232 paragraphs pg 233

The respondents replied that the Court of Appeal was right in upholding the terms of Exhibit H - as it is not in all cases that equity will be invited to interfere in bargains made by parties. Payment of N100 per day if he failed to vacate the property described in the agreement on the date agreed is a penalty clause which is unenforceable in equity. Exh. H was made in the peculiar background of the 1st appellant denying the respondents to the land and setting that of the 2<sup>nd</sup> appellant against them. The 1<sup>st</sup> appellant cannot ask the court to grant him concession which will prevent the respondent from deriving benefit from an agreement which granted concession to him on the face of the record. The 1<sup>st</sup> appellant did not plead any defence against the penalty clause in the trial court, it cannot be raised at the Court of Appeal. Since the only complaint before the Court of Appeal was the amount awarded by the trial court invoking Sections 5 and 6 of the Landlord and Tenants Law of Ondo State, the 1<sup>st</sup> appellant should have filed a Respondent's Notice the Court of appeal was not in a position to entertain that point. The sum total of argument of the appellants under the issue is that parties to an agreement not under the mandatory provisions of Sections 5 and 6 of the Landlord and Tenant Law of Ondo State cannot enforce the provisions by a penalty clause. The 1<sup>st</sup> appellant and the respondents executed Exh. H - when the former was persistently in default of the payment of the rent of the landed property of the respondent where he operated his sawmill. It became apparent that he denied them as landlord of the property and recognized the 2<sup>nd</sup> appellant as the owner of the land. The respondents served him with notice to quit. He appealed for a period of three years to relocate. The respondents agreed with him

and his rent was slashed by half so as to facilitate his moving away from the land without hinderance. However in the agreement Exhibit H entered into by the parties, was inserted a clause that if the 1st respondent did not vacate the land after the three years requested by him - he was still occupying the land - and he would pay a penalty which is an amount of N100 per day for as long as he remains on the land. Exh. H is designed to make him quit the land of the respondents at all cost. His continued occupation of the land was against their interest. The peculiar circumstance of the agreement and the imposition of the penalty clause - the parties did not envisage the provisions of sections 5 and 6 of the landlord and tenant Law and nothing in the contents of Exhibit H is to bring it under the provisions of that law. He clearly understood the implications of such agreement. Exh. H imposed its own terms in the peculiar circumstance of the case which is binding on the parties. In view of the fact that this is not an ordinary landlord and tenant transaction, the peculiar nature of the transaction have brought it outside the scope of the landlord and tenant law. Penalty clause in Exh. H is a sanction imposed in the event of allowing a situation which could be prevented to happen. In enforcing the penalty clause in a contract one has to consider the circumstances of the particular case.

Stockholder v. Johnson (1954) 1 AH E. R. pg. 630

In the case, the 1<sup>st</sup> appellant was paying a rent of N1000 per annum while the penalty clause made provision for the payment of N100 per day until the 1<sup>st</sup> defendant vacates the land. **A penalty clause is defined in Black's Law Dictionary Eight Edition as**  
***A contractual provision that assesses against a defaulting party an excessive monetary charge unrelated to actual harm. Penalty clauses are generally unenforceable, particularly when clauses of the nature are designed to terrorize or frighten the party into performance.***

*For example a contract may provide that the promissory is to pay N5 on a certain event but if he fails to do so, he must then pay N500. A clause of that kind is called a penalty clause by lawyers. For several years, it has been the law that such promises cannot be enforced on the ground that it is unfair and unconscionable to enforce clauses which are designed to terrorize."*

**In the peculiar circumstance of Exh. H - where the pen-**

***alty clause demands for the payment of N100 per day for occupation of land where the usual rent is N1000 annually is morally unjustifiable. The trial court cannot salvage an unenforceable transaction by applying the landlord and tenants law neither has the trial court the vires to formulate cases for the parties. I resolve this issue in favour of the appellants. The amount awarded under the landlord and tenant Law is therefore uncalled for. Public Policy in Nigeria supports the fact that parties should be made to honour obligations entered into voluntarily between themselves to the extent that it is enforceable.***

In effect this appeal succeeds in part.

The respondents filed a cross-appeal against the decision of the Court of Appeal delivered on the 16<sup>th</sup> of May 2000. When the cross-appeal was heard on the 26<sup>th</sup> of October 2009, the cross-appellants adopted and relied on the cross-appellants brief filed on 30/1/09 wherein two issues were settled for determination as follows -

(a) Whether or not the learned justices of the Court of Appeal were right in accepting the findings of the learned trial judge which were based on evidence which was at variance with facts pleaded by the 1<sup>st</sup> defendant.

(b) Whether or not the learned justices of the Court of Appeal were right in accepting the findings of the learned trial judge that there was uncontroverted evidence of PW3 that a member of his family sold the land to the North of the sawmill to the 1<sup>st</sup> defendant. The cross-respondents adopted and relied on their brief deemed filed on 8/2/09. Wherein they adopted the two foregoing issues settled by the cross-appellants for determination for the purpose of this appeal.

**Issue One**

Whether or not the learned justices of the Court of Appeal was right in accepting the findings of the learned trial judge which were based on evidence which was at variance with facts pleaded by the 1<sup>st</sup> defendant.

The cross-appellants drew attention to the inconsistency in the evidence of the 1<sup>st</sup> appellant in court - where he admitted that he was challenged by a member of plaintiffs family Ibitoye while erecting a building on the land, North of the sawmill and he had to pay N3,000 to the same member as purchase price for the land. When he ac-

quainted the 2<sup>nd</sup> plaintiff who also challenged him during the construction of the building that he had purchased the land from his brother Ibiloje. He gave him the go ahead to carry on the construction.

The 1<sup>st</sup> appellant however pleaded in paragraphs 16 and 17 of the Further Amended Statement of Claim that he had no transaction with the plaintiffs/cross-appellants in respect of the land. B

The evidence of the 1<sup>st</sup> appellant/cross-respondent in court is at variance with the pleadings. The evidence of the 1<sup>st</sup> appellant/cross-respondent that he bought this piece of land from the plaintiffs' family is inadmissible. C

The learned trial judge should not have dismissed the plaintiffs/cross-appellants claim for injunction restraining the 1st defendant from committing acts of trespass over the said land. The Court of Appeal fell into the same error by holding that it is the duty of the plaintiffs/cross-appellants to adduce credible evidence to satisfy the trial court of their claim North of the sawmill. D

The cross-respondents submitted that the findings of the trial court was based on the evidence adduced by PW3 in-line with their statement of claim. The evidence supported the evidence adduced by the 1st defendant/cross-respondent in court. It was the case of the plaintiffs/cross-appellants - based on their pleadings and evidence in court that a member of their family sold the land - North of the sawmill to the 1st defendant/cross-respondent. It was the unchallenged evidence of the plaintiffs/cross-appellants and confirmed under cross-examination by the 1st defendant/cross respondent which passed the title in that portion of land to him. The cross-respondents cited cases E

Mogaji v. Cadbury Nig. Ltd (1985) 2 NWLR pt. 7 pg. 393 at pg. 425 F

Akpapuna & Anor v. Obi Nzeka & Anor (1983) 2 SCNLR pg. G

1

Gaji v. Paye (2003) FWLR pt. 163 pg. 1

This cross-appeal affects the judgments of the trial court and the lower court in respect of the portion of land North of the sawmill of the 1<sup>st</sup> appellant/cross-respondent which forms a fraction or a portion of the land of the deceased father of the plaintiffs/cross-appellants now subject matter of dispute. In the judgment of court and in the main appeal - there is ample evidence that regardless of the claim H

and in view of the unchallenged evidence to that effect, the trial court conceded ownership of the portion North of the sawmill on which the 1<sup>st</sup> defendant/cross-respondent had constructed houses to him. In view of the counter claim of the 2<sup>nd</sup> appellant/cross-respondent, the title of the land claimed by the plaintiffs/cross-appellants was put in issue. In the pleadings and evidence of the plaintiffs/cross-appellants particularly from PW3 - one of the beneficiaries of the Estate of Chief E. A. Akinkugbe and the 2<sup>nd</sup> plaintiff/cross-appellant, said a member of the family, his half blood brother had sold the land to the 1<sup>st</sup> defendant/cross-respondent for a sum of N3000. Though the evidence of PW3 in court was categorized as hearsay as he was not a party to the sale, the sale was confirmed by the 1<sup>st</sup> appellant/cross-respondent on oath. The learned trial judge after reviewing the entire circumstance of sale of that land - in the event that the 1<sup>st</sup> appellant/cross-respondent construction of his buildings on the land lasted over a period of years and to the knowledge of the plaintiffs/cross-appellants concluded in his judgment that -

*"If the plaintiffs were allowed to get judgment for possession or the land on which the 2<sup>nd</sup> plaintiffs two buildings were erected it would amount to Olabitoye Akinkugbe and his senior brothers of the half blood envisaging or trying to enjoy the benefit of the purchase price or the money or price of the land without consideration and yet allowed to recover possession -it would be most unjust and inhuman and it would amount to court being used as an engine of fraud to allow the plaintiff and Ibitoye Akinkugbe to benefit by pocketing the proceeds of the land viz N3000 and never the less the land itself."*

*It was the reasoning and conclusion of the Court of Appeal on the other hand that-*

*"It is trite law that a plaintiff has to rely on the strength of his own case and not on the weakness of the defence. See Mogaji v. Cadbury Nig. Ltd. (1988) 2 NWLR pt. 7 pg. 353 at pg. 429 Kodilinye v. Odu (1936) WACA pg. 336 at page 337 It is the duty of the plaintiff/cross-appellant to adduce credible evidence to satisfy the trial court of their claim to the land North of the sawmill. The plaintiffs instead of doing that adduced evidence to found title in the defendant -I am of the view that the trial court was right to have made use of that unchallenged evidence and hold that title in the land North of the sawmill had passed to the 1<sup>st</sup> defendant/cross-respondent."*



I agree with the foregoing conclusion of the lower courts. The onus is on the plaintiff in an action involving title to satisfy the court that he is entitled on the evidence brought by him to the declaration of title claimed. He must rely on the strength of his case and not on the weakness of the defendant's case.

Kodilinye v. Odu (1935) 2 WACA pg. 336 B

Akinola v. Olumo (1962) 1 SCNLR pg. 352

Oduaran v. Asarah (1972) 1 ALL NLR pt. 2 pg. 137

Idundun v. Okumagba (1976) 9 - 10 SC 227

Mogaji v. Cadbury Nig. Ltd (1985) 2 NWLR pt. 7 pg. 393. C

***In an effort to adduce evidence in support of their claim to title - the plaintiffs/cross-appellants gave away a portion of the disputed land to the 1st appellant/cross-respondent. The evidence of the cross-appellants strengthen the otherwise shaky and unstable evidence of the 1st appellant/cross-respondent to earn him the portion of the land. The owners of the land who should guard their property jealously were not opposed to the sale by their half brother - the courts have no basis to set aside the transfer of land. The 1st appellant cannot be a trespasser on his own land - therefore the claim for trespass must fail. Once there is no finding for trespass, an injunction cannot be granted as there is no possession in a party to protect.*** D E

This issue is resolved in favour of the 1<sup>st</sup> cross-respondent.

Issue No. 2 F

Whether the learned justices of the Court of Appeal were right in accepting the findings of the learned trial judge that there was uncontroverted evidence by PW3 that a member of his family sold the land to the North of the sawmill to the 1<sup>st</sup> defendant. G

The cross-appellants submitted on this issue that it was wrong for the Court of Appeal to have relied on evidence stated above as unchallenged evidence in that -

(a) It constitutes hearsay evidence as the PW3 was only stating what the 1<sup>st</sup> defendant told him H

(b) It is at variance with the case presented on the pleadings by the 1<sup>st</sup> defendant.

The Court of Appeal was right in granting the respondents cross-appeal as it relates to the land described as being North of the

sawmill as the respondent have proved better title to the land than the 2<sup>nd</sup> appellant/cross-respondent from whom the 1<sup>st</sup> appellant/cross-respondent derived his title. The decision of the Court of Appeal allowing the appeal in its entirety should be affirmed.

The cross-respondent submitted on this issue that the Court of Appeal was right in accepting the findings of the trial court that there were uncontroverted evidence of PW3 that a member of his family sold the portion of the land in dispute to the 1<sup>st</sup> defendant which evidence was supported by that of the 1<sup>st</sup> defendant. This court is urged to dismiss the cross-appeal.

In determining this issue it has to be explained that the claim for title between the plaintiffs/respondents/cross-appellants and the 1<sup>st</sup> and 2<sup>nd</sup> defendants/appellants/cross-respondents cover the entire land on which the sawmill of the 1<sup>st</sup> defendant/appellant/cross-respondent stands, the areas West and North of the sawmill where the cross-appellants alleged that he trespassed. He averred in his pleadings that he was granted a lease of the land by the 2<sup>nd</sup> defendant/appellant/cross-respondent and his family the Loduti Ajaka family. The pleadings of the parties will shed more light on the position of the land North of the sawmill which forms the subject matter of this appeal.

The relevant paragraphs of the pleadings of the cross-appellants in the 2<sup>nd</sup> Amended Statement of Claim as per order of court dated 30<sup>th</sup> July 1992 are paragraphs 18 - 20, which reads in paragraph 18 -

*"The plaintiffs say that when they challenged the 1st defendant on his acts of trespass on the plaintiffs land to the North of land covered by the lease agreement he informed them that the land was conveyed to him by a member of the Akinkugbe family."*

Paragraph 19

*"The plaintiffs say that the 1<sup>st</sup> defendant then proceeded to erect two buildings one of them being used as a Guest House on the said land."*

Paragraph 20

*"The plaintiffs say that as a result of the representation made by the 1<sup>st</sup> defendant that the land was conveyed to him by a member of their family the plaintiffs refrained from taking steps to eject him therefrom"*

In the evidence of the plaintiffs/cross-appellants before the trial court, the 2<sup>nd</sup> plaintiff/cross-appellant gave evidence as PW3 and said

*“Early in the 1980, 1981-1982 we noticed that the 1<sup>st</sup> defendant was erecting permanent structures, on the land North of the land we leased to him. I personally went to the land to challenge him. The reply of the 1<sup>st</sup> defendant was that my immediate junior brother Olabitoye Akinkugbe sold land to him. To avoid misgivings, we let go and allowed the 1<sup>st</sup> defendant to develop the land. We had allowed matters to rest.”* Vide pages 131 line 20 to 132 line 1.

On page 138 line 31-33 the witness further said -

*“I challenged him and he replied that it was my younger brother Olabitoye Akinkugbe who sold the plot of land on which he was erecting the building to him. I allowed dead dog to lie - we did not evict the 1<sup>st</sup> defendant.”*

Such is the nature of the evidence of the plaintiffs/cross-appellants to support a claim for declaration of title. Though the 1<sup>st</sup> defendant/1<sup>st</sup> cross-respondent pleaded in paragraph 17 of his Amended Statement of Defence, he denied coming to the land through the plaintiffs’ family. In his evidence before this court he revealed that: -

*“It was when I was laying the foundation that one Olabitoye, the junior brother of the plaintiffs came to challenge me and asked me to stop the erection of the house saying that the site was part of the land of the Estate of his father granted to him and that he could only allow me to build up the place on condition that I paid him the purchase price of N3,000 which I paid on the spot. It is the brother of the plaintiff who sold the land to me and that Loduti and Ajaka family let the same land to me.”*

The lower courts were right to have accepted the foregoing evidence to hold that the land North of the sawmill was already sold by a member of the plaintiffs/cross-appellants family to the 1<sup>st</sup> cross-respondent. The cross-appellants will in my view be estopped from reclaiming that particular land particularly when they had allowed the 1<sup>st</sup> cross-respondent to erect two buildings on the land.

This issue is therefore resolved in favour of the cross-respondent.

In sum there is no substance in the cross-appeal - it therefore fails and is dismissed accordingly. Judgment of the lower court is affirmed.

On the overall, the main appeal and the cross-appeal are unmeritorious. They are consequently dismissed. No order as to costs.

---

B **OGUNTADE JSC**

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Adekeye J.S.C. I would also dismiss the main appeal and the cross-appeal. I subscribe to the order on costs.

---

**TABAI JSC**

I was privileged to read, in draft, the lead judgment of my learned brother ADEKEYE JSC and I agree entirely with the reasoning and conclusions therein that both the main appeal and cross-appeal are devoid of any merit. The result is that I also dismiss both the main appeal and cross-appeal. I abide by the costs as assessed in the lead judgment.

---

**MUHAMMAD JSC**

I read before now the judgment of *my* learned brother, Adekeye, JSC. I find no merit in both the main appeal and the cross-appeal. I dismiss both. I endorse the order on costs made by Adekeye, JSC.

---

**FABIYI JSC**

I have had a preview of the judgment just delivered by my learned brother, Adekeye, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the main appeal as well as the cross-appeal are devoid of merit and should be dismissed. I too, hereby dismiss both appeals. I also endorse the order on costs as contained in the lead judgment.