

SUPREME COURT OF NIGERIA
30TH APRIL, 2010. SC. 47/2003
CORAM:- M. MOHAMMED, I. F. OGBUAGU,
F. F. TABAI, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, JJSC

ALHAJI FATAI ADEKUNLE TERIBA APPELLANT
AND
AYOADE TIAMIYU ADEYEMO RESPONDENT

APPEALS - Issues - Number - Rule against proliferation - It is improper for issues for determination to outnumber grounds of appeal - They may only be equal to or less than the grounds of appeal (H1)

APPEALS - Findings of fact by trial court - Interference on appeal - Principles - It is not ordinarily interfered with - More so where it involves assessment of credibility of witnesses (H2)

CUSTOMARY LAW - Family property - Sale - Validity - Sale by member without consent of family head is void - But sale by the head without consent of principal members is only voidable (H3)

CUSTOMARY LAW - Headship of family - Qualification - For purposes of land transaction - The eldest member of a family is by virtue of that fact - Head of the family - Whether or not he is a mogaji (H4)

CONTRACTS - Validity - Misrepresentation - Effect - Party guilty of misrepresentation - Cannot rely on it to repudiate the contract - As equity will not allow a person to benefit from his own wrong (H5)

CONTRACTS - Words & phrases - "Misrepresentation" - Ingredients - To constitute misrepresentation - The misrepresenter and the misrepresentee - Must be distinct from one another (H6)

FACTS

The plaintiff/appellant initially sued defendant/respondent before the High Court of Oyo State holden at Ibadan. Subsequently two other persons were joined as 2nd and 3rd defendants respectively. By his amended statement of claim appellant claimed sundry

reliefs by which he asserted his entitlement to a certificate of occupancy in respect of the land in dispute. It was not in dispute between the appellant and respondent that the land originally belonged to the Yeosa family of Opopo Yeosa, Ibadan. Nor was it in dispute that appellant had by a deed of conveyance - Exhibit P4 - bought the land from five members of the family in representative capacity in 1964. It was also not in dispute that by another deed of conveyance - Exhibit D2 - the land was also sold to respondent by four members of the family in representative capacity in 1972. Three of the four members who executed Exhibit D2 were among the five persons that had earlier executed Exhibit P4.

However, though one Sunmonu Ojedutan was represented as, and executed, Exhibit P4 as Mogaji Yeosa, it was in evidence that he was not a Mogaji Yeosa at that time or at any other time. Nonetheless, he was the eldest person among the family members at the time. On the other hand, one Sanni Bakare who had executed Exhibit P4 as a principal member of the family, also executed Exhibit D2 this time as Mogaji Yeosa. The case of appellant was that having sold the land to him in 1964, the family's purported sale of the land to respondent in 1972 was void as they had no title left in the land to transfer. The case of respondent was that there was no Mogaji Yeosa at the time of execution of Exhibit P4 and since a Mogaji Yeosa is usually the head of the family it meant that the sale as per Exhibit P4 was without the consent of the head of the family and was as such void. At the end of hearing, trial court gave judgment to appellant. Aggrieved, respondent appealed to Court of Appeal which court allowed the appeal. Dissatisfied, appellant has brought this appeal against the judgment of Court of Appeal.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right or wrong in coming to the conclusion that the sale of the land in dispute to the Appellant was without the consent of the Head of the Yeosa family and therefore void.”

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

APPEALS - Issues - Number - Rule against proliferation

1. The settled principle is that it is not proper to proliferate issues for determination to the extent of their outnumbering the grounds of

appeal. This is because issues must of necessity be predicted on or arise from grounds of appeal; they can only be either equal to or less than the grounds of appeal and not more. Thus while two or more grounds of appeal can, by some dexterity, be considered in an issue, it is not desirable to split a ground of appeal into a number of issues. It is therefore not proper for the Appellant to adopt and rely on his arguments in respect of all the three issues formulated by him when, on his own admission or concession he has only ground 5 of the grounds of appeal subsisting. (p. 1590 B/E)

Findings of fact - Interference on appeal - Principles

2. The fundamental principle is that the duty of evaluation of evidence is pre-eminently that of the trial court which alone has the advantage of seeing and hearing the witnesses in the cause of their testimonies. And because the appellate court does not have that benefit of seeing and hearing the witnesses in the course of their testimonies, it would not ordinarily interfere with findings of facts of the trial court and this is particularly so where the evaluation involves the assessment of the credibility of witnesses. Where however, from the nature of the evidence, the evaluation would not entail demeanour and credibility of witnesses and simply entails the examination of oral and documentary evidence and making necessary deductions therefrom, the appellate court is in as vantage a position as the trial court to evaluate or re-evaluate same to see if the findings of the trial court are supported by the evidence. And where the findings of the trial court are not supported by the evidence then the appellate court can intervene and substitute therewith findings supported by the evidence. (p. 1593 D)

CUSTOMARY LAW - Family property - Sale - Validity

3. Both parties are also in agreement with respect to the legal principles on the sale of family property. The principles are as laid down in *EKPENDU vs ERIKA* (supra). The fundamental principles are that sale of family property by the head of the family with the consent of the principal members of the family is valid for all purposes. However while the sale of family property by members of the family without the consent of the head of the family is void ab initio, sale by the head of the family without the consent of the principal members of

the family is only voidable and thus remains valid unless and until it is voided by or at the instance of the principal members. (p. 1594 E)

CUSTOMARY LAW - Headship of family - Qualification

4. My view therefore is that although the description of Sunmonu Ojeduntan in Exhibit ‘P4’ as Mogaji was untrue in its strict natural sense, it is clear that he was, by virtue of his being the eldest member of the Vendor Yeosa family, presented to and understood by the Vendee Plaintiff/Appellant as head of the family qualified to lead the other principal members of the family in the sale in Exhibit ‘P4’. For the purpose of effecting land transactions, the fact of his not being the Mogaji of the family did not disqualify him from being the head of the family. (p. 1598 B)

CONTRACTS - Validity - Misrepresentation - Effect

5. Assuming, without conceding, that the description of Sunmonu Ojeduntan in Exhibit ‘P4’ was a misrepresentation, can the Yeosa family be heard to raise it to justify the sale of the property again to the 1st Defendant/Appellant in 1972? I am inclined to answer this question in the negative, the applicable equitable principle being that a person cannot benefit from his own wrong.

The Yeosa family having conveyed the property in 1964 for valuable consideration cannot turn round in 1972 to impugn its own earlier sale so as to justify a later sale. Specifically, Chief Sanni Bakare, Tijani Ladele and Salawu Alade (DW4) who participated in the earlier sale in Exhibit ‘P4’ should be estopped from raising the issue of misrepresentation so as to justify their sale of the property a second time in Exhibit D2. (p. 1598 E/H)

Words & phrases - "Misrepresentation" - Ingredients

6. To constitute a misrepresentation, the misrepresentor and the misrepresentee must be distinct from one another. Thus where a person who claims to have been deceived by a misrepresentation is in effect the same as the person who is alleged to have made it, then there is no misrepresentation in law.

In this case the Yeosa family which is said to have been affected by the misrepresentation is the same family that made it. This is so because the Plaintiff/Appellant who should be the misrepresentee never

complained that he was deceived by the Yeosa family's description of Sunmonu Ojeduntan in Exhibit P4 as Mogaji. (p. 1599 B/D)

REPRESENTATION

Lekan Awogbemila Esq. for the appellant
O.A. Lalude Esq. for the respondent.

B

CASES REFERRED TO

GALLIE vs LEE (1971) AC 1004 at 1026
BEGHA vs TIZA (2000) 4 N.W.L.R (Part 652) 193
EKANEM vs AKPAN (1991) 8 N.W.L.R (Part 211) 616
IBEKWE vs MADUKA (1995) 4 N.W.L.R (Part 392) 716
ADELAJA vs FANOIKI (1990) 2 N.W.L.R (Part 131) 137
FINEBONE vs BROWN (1999) 4 N.W.L.R (Part 600) 613
AGU vs IKEWIBE (1991) 3 N.W.L.R. (Part 180) 385 at 401
AKINTOLA vs BALOGUN (2000) 1 N.W.L.R (Part 642) 532
BANKOLE vs PELU (1991) 8 NWLR (PART 211) 523 at 536
OKONKWO vs OKOLO (1988) 2 N.W.L.R (Part 79) 632 at 652
MOMODU vs MOMOM (1991) 1 N.W.L.R (Part 169) 608 at 621
TINUBU vs KALIL & DIBBO TRANSS LTD (2000) 11 N.W.L.R (Part E 677) 171

C

D

E

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, s. 233(3)

F

BOOK REFERRED TO

Halsbury's Laws of England, 4th Edition, vol. 31 para 1084

LEAD JUDGMENT BY TABAI JSC

G

This appeal is against the judgment of the Ibadan Judicial Division of the Court of Appeal dated the 7th of December 1995. The initial action itself was commenced at the Ibadan Judicial division of the High Court of Oyo State on the 16th of May 1980 when the writ of summons was issued. A. T. Adeyemo was the sole Defendant. By an order of Court dated 2/11/1981 Mr. Adegboyega Adebayo Yinusa was joined as second Defendant. By yet another order of Court the 3rd Defendant was also joined.

In the amended writ of summons and amended Statement of

Claim the Plaintiff claimed as follows:

(a) *As against the first Defendant:*

(i) *Declaration that the Plaintiff is entitled to Certificate of Occupancy in respect of all that piece or parcel of land covered by Deed of Conveyance registered as Instrument No. 52 at Page 52 in Volume 1144 of the Land's Registry in the office at Ibadan, situate lying and being at Jokodo Akufo Road, Ibadan.*

(ii) *N1,000.00 (one thousand naira) being general damages for continuing trespass being committed by the 1st Defendant on the said land.*

(iii) *Injunction restraining the 1st Defendant, his servants, agents or privies from committing further acts of trespass on the land.*

(b) *As against the 2nd Defendant.*

(i) *Perpetual injunction restraining them, their agents or privies from committing further acts of trespass on the said land.*

(c) *As against the 3^d Defendant.*

(i) *An order setting aside the Certificate of Occupancy dated 2nd February, 1981 and registered as Instrument No. 14 at Page 14 in Volume 2356 of the Lands Registry in the office at Ibadan.*

The 2nd Defendant counter-claimed in the following terms:

(i) *The sum of N1,000.00 (one thousand naira) each against the Plaintiff and 1st Defendant for continued trespass on the land in dispute, and*

(ii) *Injunction restraining the Plaintiff and 1st Defendant by themselves or their agents and/or servants or any one coming to the land through them from continued acts of trespass on the land in dispute.*

After the exchange of pleadings the matter proceeded to trial.

In his judgment on the 30th of April 1985 the learned trial judge granted the Plaintiffs claims and made orders, the first three of which were couched as follows:

1. *I hereby set aside forthwith the Certificate of Occupancy dated 2nd February, 1981 and registered as No. 14 at Page 14 in Volume 2356 of the Lands Registry in the office at Ibadan in respect of the lands thereon and particularly described in the Deed of Conveyance registered as No. 3 at Page 3 in Volume 1362 of the Lands Registry in the office at Ibadan in favour of Mr. T.A. Adeyemo the 1st Defendant in this case.*

2. *I declare that the Plaintiff Mr. Fatai Adekunle Teriba is en-*

titled to Statutory Certificate of Occupancy in respect of all that piece or parcel of land covered by a Deed of Conveyance registered as instrument No. 52 in volume 1144 of the Lands Registry in the office at Ibadan.

3. N250.00 (two hundred and fifty naira) being damages for continuing trespass being committed by the 1st Defendant on the land. B

The 2nd Defendant's counter-claims were dismissed.

The 1st Defendant was aggrieved by the judgment and proceeded on appeal to the Court of Appeal. The notice of appeal was filed on the 6th of May 1985. The 2nd Defendant also filed a notice of appeal on or about the 19th of July 1985. Briefs of argument were duly filed and exchanged. There is no indication however that he (2nd Defendant) pursued the appeal. In the judgment on the 7th of December 1995 the appeal was allowed for reasons stated therein. Apparently because the 2nd defendant/Appellant therein did not pursue his appeal no pronouncement was made on the dismissal of the counter-claim. C D

The Plaintiff who was the Respondent therein has now come on appeal to this Court. Before this Court briefs of arguments have been filed and exchanged. The Appellant's Brief was prepared by Lekan Awogbemila and it was filed on the 14th of July 2005. He also filed a Reply to the Respondent's Preliminary Objection on the 27th of January 2010. Olukunle Adesola Lalude prepared the Respondent's Brief of argument and same was filed on the 3rd of June 2009. He also filed a Notice of Preliminary objection on that same 3rd of June 2009. The Preliminary objection is argued at Pages 4 to 5 of the Respondent's Brief. E F

Let me start with the preliminary point raised by the 1st Respondent. In the Appellant's Brief three issues for determination were proposed and they were stated therein to be predicated on grounds 5 to 6 of the Notice of Appeal, grounds 1, 2, 3 and 4 having been implicitly abandoned. With respect to ground 6 of the grounds of appeal the submission of learned counsel for the Respondent is that since the ground complains of weight of evidence, it is a ground of fact which can only be filed with the leave of Court by virtue of the provisions of section 233(3) of the Constitution. In his Reply to the Preliminary objection the Appellant conceded the point raised. Having G H

ing thus conceded the contention of the Respondent, the Appellant has only ground 5 of the grounds of appeal subsisting.

Although the Appellant stated that his three issues were derived from grounds 5 and 6 and notwithstanding his concession that he has only ground 5 of the grounds of appeal subsisting, he nevertheless went ahead to adopt the three issues he had submitted and argued in the Appellant's Brief. It is perhaps necessary to reiterate the principles governing grounds of appeal and issues raised therefrom. ***The settled principle is that it is not proper to proliferate issues for determination to the extent of their outnumbering the grounds of appeal. This is because issues must of necessity be predicted on or arise from grounds of appeal; they can only be either equal to or less than the grounds of appeal and not more. Thus while two or more grounds of appeal can, by some dexterity, be considered in an issue, it is not desirable to split a ground of appeal into a number of issues.*** See AGU vs IKEWIBE (1991) 3 N.W.L.R. (Part 180) 385 at 401; MOMODU vs MOMOH (1991) 1 N.W.L.R. (Part 169) 608 at 621; BANK OF THE NORTH LTD vs NA'BATURE (1994) 1 N.W.L.R. (Part 319) 235 at 243-244; ADELAJA vs FANOIKI (1990) 2 N.W.L.R. (Part 131) 137; BANKOLE vs PELU (1991) 8 NWLR (PART 211) 523 at 536.

It is therefore not proper for the Appellant to adopt and rely on his arguments in respect of all the three issues formulated by him when, on his own admission or concession he has only ground 5 of the grounds of appeal subsisting. In these circumstances I shall adopt the single issue for determination formulated by the Respondent. The issue is:

"Whether the Court of Appeal was right or wrong in coming to the conclusion that the sale of the land in dispute to the Appellant was without the consent of the Head of the Yeosa family and therefore void."

In my deliberations however, I shall consider such aspects of the submissions in the Appellant's Brief which are relevant to the single issue of the Respondent which I have adopted.

In his submissions learned counsel for the Appellant first restated the basic and fundamental principle in EKPENDU vs ERIKA (1959) 4 FSC 79 that sale of family land by family members without the consent of the family head is void; while sale by the family head

without the consent of the principal members of the family is only voidable. He referred to what he called a concurrent finding of the two lower courts to the effect that Sunmonu Ojeduntan being the eldest member of the Yeosa family was put in Exhibit 'P4' as the Mogaji by all principal members of the family including Sanni Bakare and submitted that even if there was misrepresentation as to his being a Mogaji it was only voidable and not void. It was his further contention that the misrepresentation, if at all, was only as to the contents of the Deed of Conveyance and not as to its class or character. Reliance was placed on HALSBURY'S LAWS OF ENGLAND 4th Edition Vol.31 paragraph 1084 and NIMOTA OLUWO vs R. O. ADEWALE (1964) NMLR 17. Learned counsel further referred to and relied on the opinion of Lord Wilberforce in the English case of SAUNDER'S vs ANGLIA BUILDING SOCIETY on appeal from GALLIE vs LEE (1971) AC 1004 at 1026 that "*a document should be held to be void (as opposed to voidable) only when the element of consent to it is totally lacking that is more concretely, when the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended*" See also (1970) 3 ALL E.R. 961 at 972. Counsel's further contention is that emphasis should be on the effect of the document as opposed to the nature or character of it and that it is only when the effect of document is fundamentally or essentially different from what was believed to be signed that the misrepresentation will make the transaction void. The principle that misrepresentation in a Deed generally only makes it voidable operates to vest in the person or persons put forward by the family with the capacity to contract on behalf of the family with the representee being at an election to affirm or disaffirm the contract, counsel argued. This, according to counsel, is all the more so because on the principle of VANDAPUYE & ORS vs BUTCH WAY (1951) 13 WACA 164 at 168, family ownership of land is as a unit and hence misrepresentation as well as alienation of family property should be as a unit. Learned counsel therefore urged that the misrepresentation of Sunmonu Ojeduntan as Mogaji was only voidable and that the Appellant's affirmative actions render the sale valid. He referred to and relied on OKONKWO vs OKOLO (1988) 2 N.W.L.R (Part 79) 632 at 652 that a transaction carried out by a person held out by the family members as head of the family is valid.

With respect to the sale or alienation of family property it was the submission of learned counsel that in Yoruba land the eldest member of a family is invariably the head and relied on *LEWIS & ORS vs BANKOLE & ORS* (1909) 1 NLR 8. Learned counsel contended that in Ibadan Mogaji is an office recognised by the Olubadan-in-

B Council upon presentation of somebody by the family to the Olubadan. Mogajiship, according to counsel, is an office invariably occupied by the head of the family and submitted therefore that the requirement of the law dealing with land matters is for the head of

C the family to consent with principal members of the family and not necessarily the Mogaji. With respect to the transaction in Exhibit 'P4' it was the contention of learned counsel that once Sunmonu can in law be regarded as the Head of the family being the eldest member of the family and was represented as such by the family during the

D transaction then the sale consented to by him is valid, arguing that a person can still be recognised as head of a family even if he is not a recognised Mogaji. The correct position, according to learned counsel, is that while a Mogaji is invariably the head of the family, the head of the family may not be a Mogaji until recognised as such by the

E Olubadan. It was finally submitted on this point that once the court below at Page 296 found that at the time of executing Exhibit 'P4' there was no Mogaji and so the family put forward Sunmonu Ojeduntan as the head and he, supported by all the principal members executed it, the sale was valid.

F Learned counsel for the Appellant argued in the alternative that although Sanni Bakare was not reflected in Exhibit 'P4' as the Mogaji of the Yeosa family having regard to the fact that he also consented to and signed the Deed of Conveyance Exhibit 'P4', the

G sale is valid notwithstanding the fact that Sunmonu Ojeduntan, as opposed to him, was reflected therein as Mogaji. In conclusion, it was urged that the appeal be allowed the judgment of the lower court set aside and that of the trial High Court restored.

H In the Respondent's Brief Olukunle Adesola Lalude proffered the following arguments. With respect to Exhibit 'P4' it was the submission of learned counsel for the Respondent that although the Court below held that the Yeosa family put forward Sunmonu Ojeduntan as the head of the family the court went further to hold that it was a misrepresentation as to class and character which therefore rendered

the transaction void. According to counsel there is unchallenged evidence as found by the Court below that Sunmonu Ojeduntan was not the oldest man and never made Mogaji of the Yeosa family. It was further contended that the finding by the trial court that Sanni Bakare was Mogaji was not only in error and perverse but inconsistent with the case pleaded at the trial. All the findings of facts by the court below are supported by credible evidence on record and therefore that there is no basis for any interference, counsel argued. Learned counsel argued that the sale in Exhibit 'P4' was without the consent of the Yeosa family and on the authority of *EKPENDU vs ERIKA* (supra) *OLORUNFEMI vs OJO* (1993) 8 N.W.L.R (Part 313) 542 and *OFUNDU vs ONNOHA* (1964) N.M.L.R. 120 it was void and urged there fore that the appeal be dismissed for lack of merit.

I shall now deliberate on the cases of the parties as contained in the pleadings, the mass of oral and documentary evidence and the address of counsel for the parties. But before doing so it is perhaps necessary to reiterate the respective duties of a trial and an appellate court in the evaluation of evidence. ***The fundamental principle is that the duty of evaluation of evidence is pre-eminently that of the trial court which alone has the advantage of seeing and hearing the witnesses in the cause of their testimonies. And because the appellate court does not have that benefit of seeing and hearing the witnesses in the course of their testimonies, it would not ordinarily interfere with findings of facts of the trial court and this is particularly so where the evaluation involves the assessment of the credibility of witnesses. Where however, from the nature of the evidence, the evaluation would not entail demeanour and credibility of witnesses and simply entails the examination of oral and documentary evidence and making necessary deductions therefrom, the appellate court is in as vantage a position as the trial court to evaluate or re-evaluate same to see if the findings of the trial court are supported by the evidence. And where the findings of the trial court are not supported by the evidence then the appellate court can intervene and substitute therewith findings supported by the evidence.*** See *AKINTOLA vs BALOGUN* (2000) 1 N.W.L.R (Part 642) 532; *TINUBU vs KALIL & DIBBO TRANSS LTD* (2000) 11 N.W.L.R (Part 677) 171; *BEGHA vs TIZA* (2000) 4 N.W.L.R (Part

652) 193; AKPULE vs AGBEOTU (1999) 10 N.W.L.R (Part 621) 107; MOGAJI vs ODOFIN (1978) 4 SC 91; FINEBONE vs BROWN (1999) 4 N.W.L.R (Part 600) 613.

In the instant case, although the learned trial judge made what looked like a passing remark about demeanour and credibility of one of the defence witnesses, the assessment of the evidence essentially does not involve credibility of witness. The result therefore is that both the Court of Appeal and this Court are in as good a position as the trial court to evaluate the evidence on record. The sole issue for determination is whether the Court of Appeal was right in its conclusion that the sale of the land in dispute to the Plaintiff/Appellant was without the consent of the Head of the Yeosa family and therefore void. I have earlier in this judgment made reference to the mass of oral and documentary evidence on record. It is my view however that this simple issue can be effectually resolved by a critical examination of Exhibits 'P4' and D2 and the oral evidence in relation thereto.

The Appellant's root of title is Exhibit 'P4'. That of the 1st Defendant/Respondent is Exhibit D2. The vendor family in both conveyances is the Yeosa family of Yeosa compound, Opopo Yeosa Ibadan. ***Both parties are also in agreement with respect to the legal principles on the sale of family property. The principles are as laid down in EKPENDU vs ERIKA (supra). The fundamental principles are that sale of family property by the Head of the family with the consent of the principal members of the family is valid for all purposes. However while the sale of family property by members of the family without the consent of the head of the family is void ab initio, sale by the head of the family without the consent of the principal members of the family is only voidable and thus remains valid unless and until it is voided by or at the instance of the principal members.***

Now both conveyances relate to the same property and therefore both cannot be valid. Only one of them is and should be declared to be valid. If on the totality of evidence before the court, the conveyance of 1964 in Exhibit 'P4' is declared to be valid, then the subsequent conveyance of 1972 in Exhibit D2 cannot be valid to transfer title to the 1st Defendant/Respondent. If on the other hand the court determines otherwise that the conveyance in Exhibit D2 is valid then the earlier conveyance in Exhibit 'P4' is invalid and the 1st

Defendant/Respondent will be declared to have acquired good title over the property in dispute. It is necessary therefore to critically examine the contents of the two documents and the oral evidence relating thereto to see which of the two documents conveyed valid title.

With respect to the vendors and purchaser of the property in dispute, the relevant portion of Exhibit 'P4' runs thus: B

"THIS INDENTURE DEED OF CONVEYANCE is made this 15th day of July 1964 BETWEEN (1) SUNMONU OJEDUNTAN YEOSA-MOGAJI YEOSA (2) ADEJUMO AMOO YEOSA (3) SANNI BAKARE YEOSA (4) OJO AYINDE YEOSA (5) TIJANI LADELE YEOSA and (6) SALAU ALADE YEOSA all of N.I/848, Yeosa compound, Opopo Yeosa, Ibadan Western Nigeria (hereinafter jointly referred to as the VENDORS which expression shall wherever the context so admits include their heirs legal personal representatives, successors and all other members of Yeosa family of Opopo Yeosa, Ibadan, Western Nigeria) of the one part AND FATAI ADEKUNLE TERIBA of E.9/53I, Loyola lane Ife Road, Agodi, Ibadan, Western Nigeria, (hereinafter referred to as the "PURCHASER" which expression shall wherever the context so admits include his heirs legal personal representatives and assigns) of the other part....." C D E

The relevant portion of Exhibit D2 reads:

"THIS INDENTURE is made this 1st day of May, 1972 between (1) Chief Sanni Bakare (Mogaji Yeosa family) (2) Alhaji Badiru Akande (3) Tijani Ladele (4) Salawu Alade all of Yeosa Compound, Opopo Yeosa, Ibadan for themselves and on behalf of the entire Yeosa family Ibadan, Western State of Nigeria (hereinafter called the "VENDORS" which expression shall where the context so admits include their heirs, successors executors, administrators and assigns) of the one part AND Ayo Adeyemo of Western State of Nigeria Housing Corporation Ibadan (hereinafter called the "PURCHASER" which expression shall where the context so admits include his heirs successors executors administrators and assigns) of the other part....." F G

It is clear from the contents of Exhibit 'P4' that it was made on the 15th day of July, 1964 by six members of the Yeosa family, amongst them, Sunmonu Ojeduntan Yeosa who was described therein as Mogaji Yeosa. He, Sunmonu Ojeduntan, and the five others were put forth as the accredited representatives of the family and jointly described therein as the "VENDORS" and which term was expressed to include H

their heirs, legal and personal representatives, successors and all members of the Yeosa family. And most significantly, the five others who executed the document with Sunmonu Ojeduntan include three of the four members of the family that executed Exhibit D2. They are Sanni Bakare Yeosa, Tijani Ladele Yeosa and Salau. Alade. From the B 15th of July, 1964 when Exhibit 'P4' was executed to the 1st of May, 1972 when Exhibit D2 was made, a period of about 8 years, there was no evidence of any voice of dissent of the Yeosa family against the earlier sale in Exhibit 'P4'. Rather all the available evidence point C irresistibly to the family's endorsement of the sale. The propriety and validity of the sale was never raised by any person or group within the family. I am not unmindful of suit No. 1/250/71 which challenged the conveyance in Exhibit 'P4' and two others. But that suit was filed 7 years after Exhibit 'P4' was executed and in any case it was dis- D missed.

On this question of the family's consent and thus validity of the conveyance in Exhibit 'P4', part of the evidence of the DW4 Salau Alade is relevant. On the 22nd of October, 1984 when he testified, he was the only surviving person out of the six signatories of Exhibit E 'P4'. Throughout his evidence he did not in any way try to impugn the regularity and validity of Exhibit 'P4'. Under cross-examination at Page 110A of the record he said:

"The plaintiff first bought land from us through Araha before F the 1st defendant bought his. I am the only living signatory out of all the signatories to Exhibit 'P4'. The person Sanni Bakare Yeosa is one and the same person as Sanni Lanlokun Bakare Yeosa. I was present when Exhibit 'P4' was executed. It is true that Sanni Lanlokun Bakare Yeosa was the only literate among us who signed his signature on G Exhibit 'P4'. All others thumb printed it. Out of the six of us who went to the court to execute Exhibit 'P4' Ojeduntan was the oldest. Ojeduntan and Badiru Akande were of the same age, I do not know the elder. "

And at page 111 lines 12-13 of the record the DW4 proceeded H to further emphasize the authenticity and validity of Exhibit 'P4' when he said:

"The signatories in Exhibit 'P4' knew of the contents as explained to them by the court before it was executed".

Despite the above unequivocal and strong evidence of the validity of

the sale in Exhibit 'P4' the DW4 was involved in the execution of Exhibit D2 eight years after.

Still on the representative capacity and authority of the "VENDORS" in the execution of Exhibit 'P4' part of the evidence of the DW2 is also relevant. The DW2 was Alhaji (Chief) Raufu Aiki Badiru a son of the DW1. On the 3rd of October, 1984 when he testified he was, according to him, the Mogaji of the Yeosa family. In his testimony under cross-examination at Page 109 lines 21-24 he had this to say of the Vendors in Exhibit 'P4':-

"Lanlokun Sanni Bakare was the Mogaji whom I succeeded. Adejumo Amoo Yeosa, Ojo Ayinde Yeosa, Tijani Ladele and Salawu Alade are principal members of the Yeosa family. All these persons are proper and full accredited representatives of Yeosa family." (underlining mine.)

The foregoing analysis clearly demonstrates the concurrence of the Yeosa family in the conveyance in Exhibit 'P4'.

The matter does not however end there. The crucial question is the determination of the appropriate status and designation of Sunmonu Ojeduntan when he led five principal members of the Yeosa family in the transaction in Exhibit 'P4' on the 15th of July, 1964. He was described in the document as Mogaji of Yeosa family. There is abundant evidence that he was neither the Mogaji on the 15th of July, 1964 nor at anytime thereafter. The description was wrong. There was a concurrent finding of the two courts below that the wrong description was a misrepresentation. But while the trial court held that the misrepresentation was only as to the contents and not as to the character and class of the Deed of Conveyance and therefore only voidable and not void, and that the plea of non est factum would not apply, the Court of Appeal thought otherwise. It held that the misrepresentation was as to the character and class of the deed and therefore void ab initio. It held further that as at the 15th of July, 1964 there was no Mogaji of the family and therefore that there was a vacuum and that the sale in Exhibit 'P4' was one without the consent of the head of the family and therefore void ab initio.

Thus while it was firmly established by credible evidence that Sunmonu Ojeduntan was not Mogaji as described in Exhibit 'P4' he was, by reason of his being the eldest member of the family, held out and projected by the family as its head capable of leading other fam-

ily members in any transaction for the sale of family land including the land in dispute. The Court of Appeal also made a specific finding to that effect at Page 296 of the record when it stated:

“That, to my mind confirms that the time of executing Exhibit ‘P4’ there was no Mogaji, and so the family put forward the oldest member of the family as their head. “

My view therefore is that although the description of Sunmonu Ojeduntan in Exhibit ‘P4’ as Mogaji was untrue in its strict natural sense, it is clear that he was, by virtue of his being the eldest member of the Vendor Yeosa family, presented to and understood by the Vendee Plaintiff/Appellant as head of the family qualified to lead the other principal members of the family in the sale in Exhibit ‘P4’. For the purpose of effecting land transactions, the fact of his not being the Mogaji of the family did not disqualify him from being the head of the family. It is my view that a statement of fact honestly made by a party cannot be held to be a misrepresentation simply because it turns out not to be quite correct. See the English cases of BISSET vs WILKINSON (1927) A.C 177 and SAMDERS vs GALL (1952) Current Property Law 343.

Let me examine this issue of misrepresentation from yet another perspective. ***Assuming, without conceding, that the description of Sunmonu Ojeduntan in Exhibit ‘P4’ was a misrepresentation, can the Yeosa family be heard to raise it to justify the sale of the property again to the 1st Defendant/Appellant in 1972? I am inclined to answer this question in the negative, the applicable equitable principle being that a person cannot benefit from his own wrong.*** In its adjudicatory functions, the court has a duty to prevent injustice in any given circumstance and avoid rendering a decision which enables a party to escape from his obligation under a contract by his own wrongful act or otherwise profit by his own wrongful act. In support of this, I rely on: EKANEM vs AKPAN (1991) 8 N.W.L.R (Part 211) 616 ADEDEJI vs NATIONAL BANK (NIG) LTD (1989) 1 N.W.L.R (Part 96) 212 IBEKWE vs MADUKA (1995) 4 N.W.L.R (Part 392) 716 F.B.N PLC vs MAY MED CLINICS (1996) 9 N.W.L.R (Part 471) 195 SERIKI vs ARE (1999) 3 N.W.L.R (Part 595) 469. ***The Yeosa family having conveyed the property in 1964 for valuable consideration cannot turn round in 1972***

to impugn its own earlier sale so as to justify a later sale. Specifically, Chief Sanni Bakare, Tijani Ladele and Salawu Alade (DW4) who participated in the earlier sale in Exhibit 'P4' should be estopped from raising the issue of misrepresentation so as to justify their sale of the property a second time in Exhibit D2. Such an act if allowed will make mockery of and defeat the very ends of justice. B

There is yet another reason why the finding of misrepresentation by the Court of Appeal cannot be justified; this has to do with the constituent elements of misrepresentation. **To constitute a misrepresentation, the misrepresenter and the misrepresentee must be distinct from one another. Thus where a person who claims to have been deceived by a misrepresentation is in effect the same as the person who is alleged to have made it, then there is no misrepresentation in law.** On this point see the English Case of ESSO PETROLEUM CO. LTD vs MARDON (1976) 2 ALL E.R. 5. and Halsbury's Laws of England fourth Edition Vol.31 paragraph 703 at Page 443. **In this case the Yeosa family which is said to have been affected by the misrepresentation is the same family that made it. This is so because the Plaintiff/Appellant who should be the misrepresentee never complained that he was deceived by the Yeosa family's description of Sunmonu Ojeduntan in Exhibit P4 as Mogaji.** Further more, it should be noted that for the purpose of sale of family property, the position of "Mogaji" is the same as that of a family head. A sale of family property led by a Mogaji of a family has the same legal effect as that led by a head of family. C
D
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The result is that the wrong description of Sunmonu Ojeduntan as Mogaji of the Yeosa family notwithstanding, he was, by virtue of his age in the family popularly acclaimed and presented as the head of the family to lead it in the sale transaction. In my view, the wrong description was nothing more than a mere misnomer. It was certainly not a misrepresentation as to affect the validity of the sale. The end result is that the single issue is resolved in favour of the Plaintiff/Appellant. G
H

In conclusion therefore I hold that the appeal has merit and is accordingly allowed. The judgment of the Court of Appeal be and is hereby set aside. That of the trial High Court delivered on the 30th

of April, 1995 is hereby restored. I assess the costs of this appeal at N50,000.00 (fifty thousand naira) only in favour of the Appellant against the 1st Respondent.

MOHAMMED JSC

B I have had the privilege before today of reading in draft, the judgment of my learned brother Tabai JSC which has just been delivered. The issues arising for determination in this appeal have been admirably and exhaustively considered and appropriately resolved
C in the leading judgment which I hereby adopt as mine as I have nothing useful to add to it. Accordingly I also allow the appeal and abide by the orders made in the judgment including the order on costs.

OGBUAGU JSC

D This is an appeal against the Judgment of the Court of Appeal, Ibadan Division (hereinafter called “the court below”), delivered on 7th December, 1995, allowing the appeal of the Defendants/Respondents in part and setting aside the Judgment of the High Court of
E Oyo State sitting at Ibadan - per Falade, J. in favour of the Plaintiff/Appellant.

Dissatisfied with the said Judgment, the Appellant has appealed to this Court on six (6) Grounds of Appeal. He has formulated three
F (3) issues for determination, from Grounds 5 to 6, namely,

“1. *Whether having affirmed the lower court Ruling that Sunmonu Ojeduntan was misrepresented by Yeosa family as head of family in the sale of land to the Appellant, the Court was right to nevertheless set aside exhibit P4 i.e. the 1964 conveyance by the*
G *family.*

2. *Whether a finding that there was no Mogaji meant there was no Head of Family.*

3. *Whether the court below was right to hold that no head of family consented to the sale of the land to the Appellant”.*

H On his part, the Respondent formulated a lone issue for determination. It reads as follows:

“*Whether the Court of Appeal was right or wrong in coming to the conclusion that the sale of the land in dispute to the Appellant was without the consent of the Head of the Yeosa family and there-*

fore void’.

A reading by me of the arguments in paragraphs 3.1 to 3.6 of the Respondent’s Brief, it seems to me that if Ground 6 - the omnibus ground of appeal is struck out, the only surviving ground, is Ground 5 from which the sole issue is distilled.

The Appellant claimed against the 1st defendant, the Declaration that the Appellant is entitled to a grant of Certificate of Occupancy in respect of the land in dispute, damages for trespass and against the 2nd defendant, injunction and against the 3rd defendant order of the court setting aside his Certificate of Occupancy. Later, the 2nd defendant was granted leave, to join the action as representative of Eleruku Section of Yeosa family and the 3rd defendant, was joined as a co-defendant in the application of the Appellant. Pleadings were filed and exchanged by the parties and after series of amendments to the pleadings, the matter proceeded to trial. At the close of the case of/for the parties and addresses of the learned counsel for the parties, in a well considered judgment, the learned trial Judge, found in favour of the Appellant on all his claims. The 1st defendant dissatisfied with the said decision, appealed to the court below which allowed his appeal in part. It is against the said decision of the court below, that the Appellant has appealed to this Court.

When this appeal came up for hearing on 9th February, 2010, Awogbemile, Esq. - learned counsel for the Appellant, adopted their Brief of Argument and their Reply Brief in respect of the Preliminary Objection of the Respondent. He urged the Court, to dismiss the Preliminary Objection and allow the appeal. Lalude, Esq. – the learned counsel for the Respondent, adopted their Brief and referred to their Brief in respect of the said Preliminary Objection which is incorporated in their Brief. He urged the Court to uphold or sustain the Objection and dismiss the appeal. Thereafter, Judgment was reserved till to-day.

As regards the Preliminary Objection, the Appellant in his Reply Brief, concedes the abandonment of Grounds 1, 2, 3, 4 and 6 of their Grounds of Appeal, hence he did not raise any issues in respect thereof. Since it is firmly settled that any ground or grounds of appeal in respect of which no issue or issues has or have been formulated, is or are deemed to have been abandoned and such must be struck out - See the cases of Onafade v. Olayiwola (1990) 7 NWLR

(Pt.164) 130; (1990) 11 SCNJ 10; Ndiwe v. Okocha (1992) 7 NWLR (Pt.252) 129; (1992) 7 SCNJ. 355 and Ngilari v. Mothercat Ltd. (1995) 8 NWLR (Pt.311) 377 C.A, the said grounds, are hereby and accordingly struck out. The Appellant did not seek leave of either the court below or this Court in respect of Ground 6 which is the omnibus ground and which is not at large, it is therefore, incompetent and it is also accordingly struck out.

As regards the remaining Ground 5, it is now settled that an issue formulated or distilled from a valid ground of appeal, must be considered. See the case of Otu v. ACB International Bank PLC & anor. (2008) 3 NWLR (Pt.1073) 179 cited and relied on by the Appellant (it is also reported in (2008) 1 SCNJ. 189). It is settled that an issue, is a point that has arisen in the pleadings of the parties which forms the basis of the dispute or litigation which requires resolution by a trial court. See the case of Oladipo & anor. v. Bank of the North Ltd. & anor. (2001) 1 NWLR (Pt.693) 285 @ 262.

A ground of appeal must either flow from, arise or relate to a judgment of the Court appealed from. It must be raised or distilled from a complaint. In other words, for an issue to be sustained, it must be formulated within the parameter of a ground of appeal and the ground, must be against the judgment of the court against which the appeal is lodged. See the cases of Ugo v. Obiekwe & ors. (1989) 1 NWLR (Pt.99) 566; (1989) 2 SCNJ. 95- (1989) 2 S.C. (Pt.II) 4 and Biocon Agrochemicals (Nig.) Ltd. & 3 ors. v. Kudu Holdings (PTV) Ltd. & anor. (2000) 15 NWLR (Pt.691) 493; (2000) 12 SCNJ. 272.

A reading of Ground 5 with the particulars by me puts me in no doubt, that it is a valid ground of appeal and the three (3) issues formulated from it, can be said by me, to cover the complaint in the said ground. The Objection in respect of Ground 5, is with respect, devoid of any substance. I accordingly refuse to uphold or sustain the said Objection. That Ground 5 stands as a valid ground of appeal. In any case, the Respondent has not shown that he has been prejudiced or that it will lead to a miscarriage of justice.

Now, coming to the issues of the Appellant and the lone issue of the Respondent, I note that at page 194 of the Records, after a thorough review or evaluation of the evidence before the learned trial Judge, he stated inter alia, as follows:

'From the foregoing, it is my considered view that members

of Yeosa family do their things in common and not by sections and that they sold and conveyed the land in dispute to the plaintiff in 1964.

[the underlining mine]

As to the claim for trespass. His Lordship, stated inter alia, thus:

"I cannot see how I can declare Exhibit P4 null and void and of no effect. Further, I find it very difficult to set it aside since the then Mogaji, Sanni Bakare, was a signatory and therefore the sale of the land therein is presumably with his knowledge, consent and authorization.

At this juncture, I believe and accept the evidence of the Plaintiff as to all acts of possession he pleaded and had on the land. It is true that the 1st defendant had built on the land, I accept his evidence on this point. But he built on a small portion of the Plaintiff's land. This was done about ten years after the plaintiff was seized of the land. He (1st defendant) is therefore liable to trespass. Injunction, however, follows trespass". *[the underlining mine]*

The above, are findings of fact which are borne out from the evidence and Exhibit P4 in the Records. They are not perverse. At page 195 thereof. His Lordship stated inter alia, as follows:

"I have held above that Sanni Bakare was the Mogaji of Yeosa family at the material time. He did not sell the land as a personal property but on behalf of Yeosa family. His sale and conveyance is valid until it is properly set aside by other members of Yeosa family. That which has not been done. The section to which other executors of Exhibit P4 belong is not material. Also, note should be taken that it was not sold for and on behalf of Egunjimi section of Yeosa family but for and on behalf of Yeosa family".

I note that the court below at page 315 of the Records, stated inter alia, as follows:

"In the final analysis the appeal succeeds on some of the grounds of appeal".

In spite of this finding and holding, it proceeded to set aside the entire judgment of the trial court. This was in spite of the fact that it is settled that success by a party in an issue, does not necessarily result in allowing an appeal. See the case of *The Vessel "Leona II"* & a nor, v. *Intergrated Oil & Gas Ltd. & First Fuel Ltd.* (2002) 12 SCNJ. 303 @ 325 - per Ayoola, JSC. I note however that at page 296 of

the Records, the court below stated inter alia, as follows:

“None of the signatories in Exhibit ‘P4’ was denied and Sanni Bakare who later became a Mogaji was also a signatory together with other principal members of Yeosa family”.

[the underlining mine]

B This was also the finding of the learned trial Judge and yet, the court below, held that the sale was without the consent of the head of the family and therefore, void. I also hold that this appeal is meritorious and I allow it.

C It is from the foregoing and the fuller lead Judgment of my learned brother, Tabai, JSC just delivered and which I had the privilege of reading before now and I agree with his reasoning and conclusion, that I too hereby and accordingly, set aside the Judgment of the court below allowing the appeal of the Respondent in part. It D should have dismissed that appeal in its entirety. Costs follow the event. The Appellant is entitled to costs of N50,000.00 (Fifty thousand naira) payable to him by the Respondent.

CHUKWUMA-ENEH JSC

E I have had the advantage of reading before now the judgment of my learned brother Tabai, JSC just delivered. I agree with his reasoning and conclusion that there is merit in the appeal and that it should be allowed. I, too allow it and restore the judgment of the trial F court with costs as stated in the lead judgment.

MUNTAKA-COOMASSIE JSC

I have had the advantage of reading in draft a copy of the leading judgment rendered by my learned brother Francis Tabai JSC. G I think his lordship has thoroughly and meticulously considered the live issues filed before us. His reasons and conclusions tally with my understanding of the law on the subject. I respectfully adopt same as mine. I agree entirely with the conclusion arrived at in the lead judgment. It is clear to me that the appeal is pregnant with a lot of merit H which made me to entirely agree with my learned brother that the appeal must, and is hereby allowed by me. I endorse the order as to costs.