

SUPREME COURT OF NIGERIA
16TH JULY, 2010 SC. 322/2001
CORAM: - D. MUSDAPHER, W. S. N. ONNOGHEN,
I. F. OGBUAGU, F. F. TABAI,
M. S. MUNTAKA-COOMASSIE, JJSC

CHIEF T. OKEOWO	APPELLANT
AND		
ATTORNEY-GENERAL OF		
OGUN STATE	RESPONDENT

COURTS - Land matters - Findings of fact - Finding as to service by pasting - Whether perverse - In view of the evidence before the trial court - And believed by it - The finding is not perverse (H1)

LAND LAW - Compulsory acquisition - Service of notice - Dispensing with personal service - Though personal service is ordinarily mandatory - It may be dispensed with - Where it is difficult to trace the land owner (H2)

FACTS

The plaintiff/appellant sued defendant/respondent before the High Court of Ogun State claiming two declarations and an injunction by which he challenged the compulsory acquisition of his parcel of land by the Ogun State Government as null and void for alleged want of service of the notice of revocation. In the alternative, appellant claimed the sum of N25m (twenty five million naira) as compensation for the acquired land. It was not in dispute that the parcel of land was acquired within a large expanse of land of about eighty square kilometers the various parts of which belonged to different persons in Edu village Igbesa. It was also undisputed that several parcels of the acquired land were unoccupied at the material time. The case of respondent was that when the land was identified for acquisition, the notice was prepared and copies served on the affected land owners found in occupation. But where there were no occupiers, the notices were affixed on conspicuous portions of the land after which the notice was published in the Gazette.

On the other hand appellant contended that in so far as no notice was shown to have been pasted on his particular piece of land, the purported service on him was invalid and the acquisition of his land was unlawful. Nevertheless, upon the publication of the notice in the Gazette, appellant had reacted by filing a claim for compensation from the government alongside other owners of land within the area marked for acquisition and was paid the sum of N10,000 (ten thousand naira). After hearing, the learned trial judge found and held that the land was duly acquired by the government. However he granted the alternative relief of appellant by awarding him the sum of N34,000 (thirty four thousand naira) as compensation. Dissatisfied, appellant appealed against the judgment to Court of Appeal which court dismissed the appeal. Still aggrieved, this is a further and final appeal to the Supreme Court by the appellant.

ISSUES FOR DETERMINATION

“(a) Whether the finding of the lower court that the acquisition notices were affixed to conspicuous portions of the appellant’s land is perverse having regard to the evidence before the court.

“(b) Whether the provisions of Sections 5 and 9 of the Public Land Acquisition of Western Nigeria on the issuance and service of acquisition notice on the plaintiff as a person interested in part of the land, the subject-matter of the acquisition was complied with?”

HELD (Unanimously dismissing the appeal per **ONNOGHEN JSC**)
Finding as to service by pasting - Whether perverse

1. Whereas appellant denied service by pasting on his parcels of land, there is evidence by the respondents which was believed by the trial court, of pasting the said notice on conspicuous portions of the acquired land, which land includes the portions originally belonging to the appellant. It should be noted that appellant had no one on his parcels of land at the time; the portions were vacant.

It is therefore clear from the evidence that the finding by the trial court, which was confirmed by the lower court, that notice of acquisition were pasted on conspicuous portions of the acquired land, is not perverse as the acquired land included two parcels of the land originally belonging to the appellant. (p. 2373 H)

Service of notice - Dispensing with personal service

2. In *Ibafon Co. Ltd vs Nigerian Ports Plc* (2000) 6 NWLR (Pt. 667) 86, it was held that personal service of the notice is mandatory. From the above provisions, publication of the notice of acquisition in the Gazette comes after personal service had been effected.

However, the above two cases are distinguishable from the instant case on the facts particularly as the owners of the properties involved in those cases were ascertainable and could be traced without difficulties but no notice of acquisition was served on them as required by law, before their said properties was compulsorily acquired. In the instant case, however, the land acquired is a large expanse of land of 80 (eighty) kilometers and appellant's two parcels or pieces of land making up the 80 (eighty) kilometers land had no one living on them on whom the notices could have been handed over, which made it necessary for the respondent to paste the notices on conspicuous portions of the 80 (eighty) kilometers land which includes the two portions of land belonging to the appellant, before finally publishing the said notice in the Gazette. (p. 2376 B/C)

REPRESENTATION

T. E. Williams Esq. (SAN)., (with him, O. E. Osunbade and O. K. Ogunsakin) for the Appellant
 Akin Osinbajo Esq. (A-G Ogun State), (with him, P. O. Akinsinde Esq. Ogun State Min. of Justice), for the Appellant

CASES REFERRED TO

Woluchem & ors. v. Gudi & ors. (1981) 5 S.C. 319 @ 326
Williams vs Akintunde (1995) 3 NWLR (Pt. 381) 101 AT 114
Ibafon Co. Ltd vs Nigerian Ports Plc (2000) 6 NWLR (Pt.667) 86
Ezekwesili vs Agbapuonwu (2003) 9 NWLR (Pt. 825) 337 at 380
A-G Bendel State vs Aideyan (1989) 4 NWLR (Pt. 118) 648 at 678
Chief Chukwuagor v. Obiora (1987) 13 NWLR (pt.61) 454; (1989) 7 SCNJ. 191
Obikoya and Sons Ltd vs Governor of Lagos State (1987) 1 NWLR (Pt. 50) 385
Overseas Construction Co. (Nig.) Ltd. v. Creek Enterprises (Nig.) Ltd. (1985) 3 NWLR (Pt.13) 407

STATUTE REFERRED TO

Public Lands Acquisition Law, Cap 105, Vol. 5, Laws of Western Region 1959, ss. 5 and 9

B

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Ibadan, in appeal NO. CA/1/117/97 delivered on the 7th day of June, 2001 dismissing the appeal of the appellant against the judgment of the High Court of Ogun State in suit NO, HCT/59/87 delivered on the 17th day of December, 1992 dismissing the case of the appellant, then plaintiff before that court.

Appellant had instituted the action against the respondent, then defendant, claiming the following reliefs;

D

“1. (i) A declaration that the purported compulsory acquisition of land by Ogun State Notice NO. 109 dated the 7th of May 1977 and published at pages 66 - 67 of Ogun State of Nigeria Gazette is null and void and of no effect.

E

(ii) A declaration that the aforementioned Notice does not affect the right of occupancy vested in the plaintiff in and over the two pieces or parcels of land situated lying and being at Idaose Farmland at Edu Village, Igbesa in Egbado Division and described in two Deed of Conveyance one of which is dated 10th May, 1976 and registered as NO. 6 at page 6 in Volume 7 of the Land Registry in the office at Abeokuta and the other is dated 22nd October, 1976 and registered as NO. 50 at page 50 in Volume 27 of the said Lands Registry.

F

(iii) An injunction restraining all agents, servants or officers of the Ogun State Government whomsoever from making use of the said pieces of land without the consent of the plaintiff.

G

2. In the alternative, the plaintiff claims the sum of N25 million naira (N25,000,000.00) against the Ogun State Government as compensation for the acquired land”.

H

From the record, Ogun State Government compulsorily acquired a large expanse of land of about eighty square kilometers at Agbara in the State which area included two pieces or parcels of land owned by the appellant situate at Idaose farmland in Edu Village Igbesa. The two pieces of land, together measured 27.63 hectares.

A notice of acquisition of the land dated 7th May, 1977 was

published at pages 66 - 67 of Ogun State Gazette NO. 8 Volume 2 of 19th May, 1977. Appellant's main complaint is that the notice of acquisition was not served on him personally or on his agents in actual occupation of the land.

It is however, the case of the respondent that when the entire land for acquisition was identified and the notice prepared, the said copies were served on the affected land owners; that where there were no occupiers, the notices were affixed on conspicuous portions of the land after which the notice was published in the Gazette; that the notices in respect of the appellant were duly pasted at conspicuous portions of the land in compliance with the provisions of Section 9 of the Public Lands Acquisition Law Cap. 105 Volume 5, Laws of Western Region 1959, as personal service on the appellant was impossible.

The trial court found and held that the land was duly acquired by the government as a result of which appellant's claims Nos 1 (i) - 1 (iii) were dismissed while the alternative claim for compensation was granted, and the sum of N34,537.00 (thirty -four thousand, five hundred and thirty-seven naira) awarded as compensation payable with 10% (ten percent) compound interest thereon from 25th October, 1985 until the amount is finally liquidated.

Appellant was not satisfied with that judgment and consequently appealed to the lower court as stated earlier in this judgment which court dismissed the appeal and affirmed the judgment of the trial court. The present further appeal is against the decision of the lower court so rendered.

The issues formulated by learned counsel for the appellant, IFEANYI NWEZE ESQ. in the appellant's brief filed on 5th April, 2002 are as follows:

"(a) Whether the finding of the lower court that the acquisition notices were affixed to conspicuous portions of the appellant's land is perverse having regard to the evidence before the court.

(b) Whether the provisions of Sections 5 and 9 of the Public Land Acquisition of Western Nigeria on the issuance and service of acquisition notice on the plaintiff as a person interested in part of the land, the subject-matter of the acquisition was complied with?"

The above issues were duly adopted by learned counsel for the respondent, AKINLOLU OSINBAJO ESQ., HON. A-G for

Ogun State in the brief of argument filed on 5th October, 2009.

In arguing issue 1, learned counsel referred to page 63 of the record where appellant is recorded as saying that he was not served with notice of acquisition prior to the acquisition, and at page 68 of the record where appellant is also reported as saying that copies of the notice of acquisition were not fixed on his land; that appellant became aware of the acquisition from the publication in the Gazette; that DW2 stated at page 70 of the record that he was one of the officers who went to the acquired land to serve notices of acquisition and that they pasted the notices on strategic places on the acquired area; that the lower court was in error when at page 111 of the record, it held that there was no occupier on the appellant's land as a result of which notices of acquisition were affixed on conspicuous portions of the land; that the said finding was not supported by the evidence as DW2 never referred to the land of the appellant in his testimony, but the entire 80 (eighty) hectares of the acquired land; that the finding of the lower court on the issue is therefore perverse and urged the court to so hold.

It is the further submission of learned counsel that the trial court never found as a fact that notice of acquisition was posted on the land of the appellant, though the court found generally that such notice was affixed on some conspicuous parts of the land not that it was so done on the appellant's land; that everyone whose land forms part of the 80 (eighty) kilometer acquired land is entitled to be given a notice of acquisition of his land and that service on one part of the land cannot be service on the other part and that fixing of notice on any portion is service on the person who owns that portion only and urged the court to resolve the issue in favour of the appellant.

On his part, learned counsel for the respondent submitted that the finding of the lower courts complained of is not perverse as same is supported by the evidence on record particularly that of DW2 who stated that notice was pasted on strategic places on the acquired land, which is what is required by Section 9 of Cap. 105, Laws of Western Region of Nigeria, 1959; that it would be impossible to paste the notice on every portion or inch of the entire 80 (eighty) kilometer acquired land and urged the court to resolve the issue against the appellant.

The law is that *“the evaluation of evidence and the ascription*

of probative value to such evidence are the primary functions of a court of trial which saw, heard and duly assessed the witnesses. Where, as in the present case, a court of trial unquestionably evaluates the evidence and justifiably appraises the facts, what the Court of Appeal ought to do is to find out whether there is evidence on record on which the trial court could have acted. Once there is sufficient evidence on record from which the trial court arrived at its findings of fact, the appellate court cannot interfere” - See Ezekwesili vs Agbapuonwu (2003) 9 NWLR (Pt. 825) 337 at 380.

The case of the appellant, as presented in the brief of argument is not that he was not aware of the acquisition of the land in question. His case is that no notice of acquisition of the land was served on him in person or on anybody on the land on his behalf or pasted on any conspicuous portion of his two portions or parcels of land so compulsorily acquired; that he only became aware of the acquisition through the notice published in the Government Gazette. It is not the case of the respondent that appellant was personally served with the notice neither did the respondent contend that someone else on appellants land was served with same on appellant's behalf. It is however, the case of the respondent, as testified to by DW2, that notices of the acquisition was pasted by DW2 and others on conspicuous portions of the 80 (eighty) kilometer acquired land which of course includes the portions of land belonging to the appellant.

It is the appellant's case that the respondent ought to have gone further to prove that the conspicuous portions of the land on which the notice was pasted included the two portions or parcels of land originally belonging to the appellant to make the pasting proper service of same on the appellant.

The trial court however accepted the evidence of DW2 as constituting proper service of the notice on the appellant, which finding was confirmed by the lower court. The question before this court is whether the said finding is perverse so as to render the same liable to be set aside by this court.

To me the issue involved is very simple. ***Whereas appellant denied service by pasting on his parcels of land, there is evidence by the respondents which was believed by the trial court, of pasting the said notice on conspicuous portions of the acquired land, which land includes the portions originally be-***

longing to the appellant. It should be noted that appellant had no one on his parcels of land at the time; the portions were vacant.

It is therefore clear from the evidence that the finding by the trial court, which was confirmed by the lower court, that notice of acquisition were pasted on conspicuous portions of the acquired land, is not perverse as the acquired land included two parcels of the land originally belonging to the appellant.

It should be noted that the purpose of the notice is to make appellant and others affected by the acquisition aware of the intention of the respondent with regards to the land in question and that appellant took advantage of the notice to present his claim for compensation in respect of the acquisition to the respondent - See *Exhibit C*.

On issue 2, learned counsel referred the court to Section 9 of the Public Land Acquisition Law and submitted that an act which confers extraordinary power of compulsory acquisition of the property of citizens must be construed strictly, relying on *Bello vs The Diocesan Synod of Lagos* (1973) ALL NLR (Reprint) 196; that Section of the Public Lands Acquisition law, Cap 105, Laws of Western Region of Nigeria provides that notice be given to all persons interested in the land to be acquired either personally or left at their last usual place of abode or business or left with the occupier of the land or affixed upon some conspicuous part of the land; that before the mode of service of (c) and (d) can be resorted to, there must be evidence that the person to be served is absent from Nigeria, or that his last known place of abode or business cannot, upon reasonable enquiry be known, relying on the Court of Appeal decision in *Obikoya and Sons Ltd vs Governor of Lagos State* (1987) 1 NWLR (Pt. 50) 385; that there was no evidence that the respondent resorted to pasting the notice on this property after a reasonable inquiry failed to locate the plaintiff or his address; that service other than personal service or service by leaving the notice at the last place of abode or business of the party involved can only be valid when the provision of section 9 of the law had been complied with; that since it was not so complied with in this case, the mode of service adopted by the respondent in this case is null and void and urged the court to so

declare.

It is the further submission of learned counsel that there is no allegation by the respondent that appellant's last place of abode or business could not be found on reasonable enquiry; that the appellant's land is a subject of a registered conveyance which provides notice to all and sundry, including the respondent, as the custodian of the documents, by virtue of which the identity of the appellant would have been known with little effort; that there being no strict compliance with the law, the acquisition is invalid. B

On his part, learned counsel for the respondent referred the court to Section 9 (i) (c) of the Public Lands Acquisition Law supra and submitted that it is virtually impossible to ascertain the owners of such a large track of land by merely going through all the conveyances at the Lands Registry in the office at Abeokuta thereby making the option of pasting the notice of acquisition the best mode of service; that DW2 testified to the fact that he was one of those who pasted the notice at strategic portions of the land in question; that it was after doing that, that the notice was published in the Gazette as required by law; that statutes should be interpreted in a way to avoid absurdity, relying on *Williams vs Akintunde* (1995) 3 NWLR (Pt. 381) 101 AT 114, and urged the court to hold that the lower courts were correct in their interpretation of Sections 5 and 9 of the law in question; that this court should not interfere with the concurrent findings of the lower courts to the effect that appellant was duly served with the notice of acquisition and urged the court to resolve the issue against dismiss the appeal. C D E F

Section 5 of the law provides as follows:-

"When ever the governor resolves that any lands are required for a public purpose he shall give notice to the persons interested or claiming to be interested in such lands, or to the person entitled by the law to sell or convey the same or to such of them as shall after reasonable enquiry be known to him (which notice may be as in Form A in the Schedule or to the like effect)". G

On the other hand, Section 9 (i) provides as follows:- H

"Every notice under Sections 5 and 8, shall either be served personally on the persons to be served or left at their last usual place of abode or business, if any such place can after reasonable enquiry be found, and in case any such parties shall be absent from Nigeria,

or if such parties or their last usual place of abode or business after reasonable enquiry cannot be found such notice shall be left with the occupier or shall be affixed at some conspicuous part of such lands”.

It is settled law that there should be strict compliance with the issue of serving notice on land owners or interested persons in compulsory acquisition of land in accordance with the above provisions of the law. For instance, ***in Ibafon Co. Ltd vs Nigerian Ports Plc (2000) 6 NWLR (Pt. 667) 86, it was held that personal service of the notice is mandatory. From the above provisions, publication of the notice of acquisition in the Gazette comes after personal service had been effected.*** Sea also A-G Bendel State vs Aideyan (1989) 4 NWLR (Pt. 118) 648 at 678; Bello vs Diocesan Synod of Lagos (1973) NSCC 137 at 149.

However, the above two cases are distinguishable from the instant case on the facts particularly as the owners of the properties involved in those cases were ascertainable and could be traced without difficulties but no notice of acquisition was served on them as required by law, before their said properties were compulsorily acquired. In the instant case, however, the land acquired is a large expanse of land of 80 (eighty) kilometers and appellant’s two parcels or pieces of land making up the 80 (eighty) kilometers land had no one living on them on whom the notices could have been handed over, which made it necessary for the respondent to paste the notices on conspicuous portions of the 80 (eighty) kilometers land which includes the two portions of land belonging to the appellant, before finally publishing the said notice in the Gazette. It is also in evidence that after the publication, appellant submitted a claim for N10,000.00 (ten thousand naira) by way of compensation for the acquired portions of his land, as found by the trial court and affirmed by the lower court.

In dealing with the issue, the lower court held, at page 111 of the record of appeal as follows:-

“All landlords found on their farms shall be served personally or they can be left at their last usual place of abode or business. All the absent landlords, where the last usual place of abode or business cannot be found - such notice will be left with anybody found occupying the land, and if there be no occupier the notice shall be affixed

to some conspicuous parts of the land. The evidence of DW2, who was one of the officers who went to the land to serve notices revealed that because the Agbara acquisition was a large one - the officers of the Lands Division went on the acquired area as a team and served villagers who were ready to receive notices from them. They placed notices on strategic places and gave the acquisition notice to Egbadô South local Government for distribution. In the case of the appellant, there was no occupier on his land, notices were affixed to conspicuous portions of his land. The appellant expected that he should be traced through the registration of his land at the Lands Registry. The respondent replied that the mode and manner of registration of land at the Lands Registry makes it impracticable to ascertain the owners of land without being in possession of instruments relating to the land. It would become onerous for the land officers to make use of lands register to identify land owners in respect of 80 (eighty) square kilometers of acquired land. Section 9 (i) of Public Lands Acquisition Law, 1959 expects that the last usual place of (sic) abode or business shall be located after reasonable enquiry - the Acquisition Law does not place any onerous or cumbersome task on the land officer to discover land owners by all means for the purpose of serving them personally. Hence I agree with the learned trial judge that the appellant was adequately served with notice of the acquisition by affixing same to strategic areas of his farmland. This was followed by publication in the Gazette which he admitted being aware of following which the appellant claimed compensation a sum of N10,000.00 (ten thousand naira) in Exhibit C. What shall amount to service of notice on land owners in land acquisition cases shall be determined by the circumstance of each particular case guided by the provisions of Section 9 (1) of the Public Lands Acquisition Law 1959. It is trite that an appellate court will not disturb or interfere with the findings of the trial court because it did not see, nor hear parties and their witnesses nor observed their demeanour in the witness box, unless such findings were unreasonable, or perverse or unsupported by evidence. In this appeal the findings of the trial court cannot be said to be unreasonable, perverse or unsupported by evidence".

I agree with the above holding of the lower court and have nothing useful to add. I must, however, reemphasize the fact that it is not the case of the appellant that he never had notice of the acquisi-

tion nor took steps following the said acquisition to obtain monetary compensation from the respondent in respect of appellant's acquired two pieces or parcels of land. The trial court found and believed the testimony of DW2 that notices of acquisition were pasted or affixed in strategic portions of the 80 (eighty) square kilometer acquired land which included the land of appellant and that such service constituted proper service on the appellant. The lower court agreed with it and I have no reason at all to disagree. I therefore resolve issue 2 against the appellant.

In conclusion, having resolved both issues against the appellant, it is obvious that the appeal has no merit and is consequently dismissed by me with N50,000.00 (fifty thousand naira) costs in favour of the respondent.

Appeal dismissed.

MUSDAPHER JSC

I have had the honour to read in advance the judgment of my Lord Onnoghen, JSC just delivered with which I entirely agree. For the same reasons so admirably set out in the judgment, which reasons, I with respect, adopt as mine, I too, find the appeal as lacking in merit. The two issues submitted by the appellant, for the determination of the appeal are resolved against the appellant. Therefore appeal is denied and is accordingly dismissed. I abide by the order for costs proposed in the aforesaid judgment.

OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Ibadan Division (hereinafter called "the court below") delivered on 7th June, 2001, dismissing the appeal to it by the Appellant and affirming the Judgment of the High Court of Ogun State, holden at Ota - per Bakre, J. delivered on 17th December, 1992 also dismissing the claim of the Appellant and awarding some sum of money as compensation in respect of his alternative claim.

Dissatisfied with the said Judgment, the Appellant has further appealed to this Court on two (2) grounds of appeal. He has also formulated two (2) issues for determination, namely,

“(a) Whether the finding of the Lower Court that the acquisition notice were (sic) affixed to conspicuous portions of the Appellant’s land is perverse having regard (sic) to the evidence before the court?”

“(b) Whether the provisions of Sections 5 and 9 of the Public Land Acquisition of Western Nigeria on the issuance and service of acquisition notice on the Plaintiff as a person interested in part of the land, the subject-matter of the acquisition was complied with?”

I note that the Appellant did not state under which ground of appeal each of the above issues, were distilled from. The consequence is now firmly settled. I take it however, that since there are only two grounds of appeal, the two issues are framed therefrom. I note also that the Respondent, has adopted the said two issues.

When this appeal came up for hearing on 26th April, 2010, Williams, Esq. (SAN) - the leading learned counsel for the Appellant, adopted their Brief of Argument. He told the Court that the Notice of Acquisition, was never served on the Appellant at the/his last known address. That it is true that they asked for compensation, but that they just got a little of what they asked for which receipt, they duly acknowledged.

The leading learned counsel for the Respondent - Osinbajo, Esq.- the Attorney-General of Ogun State, also adopted their Brief of Argument which he said they filed with the leave of the Court. He told the Court that the court below, found as a fact that the Appellant, was served with the Notice of Acquisition. That the Appellant confirmed that he also saw the said publication in the Gazette. That the law allows alternative mode of service by pasting and that it was the alternative mode of service as found by the trial court. He therefore, submitted that there was proper service of the said Notice of Acquisition. That compensation was ordered by the trial court and that the same, was paid and accepted by the Appellant. He finally, urged the Court to dismiss the appeal. As Williams, Esqr. (SAN), in reply told the Court that he had already adopted their Brief of Argument, Judgment was reserved till today.

In dealing with the said issues of the parties, it is clear to me that the totality of the Appellant’s case, is that the notice of the acquisition, was not served on him. That he read about it, in or from the Gazette which was published by the Ogun State Government. On

the other hand, the Respondent's case, is that the Notice of Acquisition, was duly served on the Appellant and that he, as a result of the receipt of the said Notice, claimed compensation evidenced in Exhibit C.

In my respectful view, the material evidence of the DW2, the Principal Estates Assistant in the Ministry of Works and Housing, Lands Division as an Inspector of Land at page 70 of the Records which led to the findings of the two lower courts that the Acquisition Notices were affixed to conspicuous portions of the Appellant's land which form part of the area of acquisition, is pertinent in the determination of this appeal, I will reproduce the same for the avoidance of any doubt, it is inter-alia, as follows:

"..... In 1977 I was working with the then Ministry of Works and Housing, Lands Division as an Inspector of Land. The inspectors serve notices on acquired land..... The land at Agbara now being used by OPIC was acquired in 1977 and I was one of the officer (sic) that went to the land to serve notices The purpose of the acquisition is for Industrial and Commercial estates..... The affected claimants sent in their claims. Because the Aghara Acquisition was a very large one, the officers from the Land Division went as a team and served on villages (sic) who were ready to receive from us. We then pasted the notice (sic) on strategic place on the acquired area. We also gave the acquisition notices to the then Agbado South Local Government. The acquisition was published in the Ogun State Gazette No.109 of 19th May 1977 Pursuant to the acquisition we received very many claims. Witness identifies exhibit "C".....".

[the underlining mine]

I note that the acquired land, is 80 (eighty kilometres square) which includes the said land of the Appellant. I also note that the said evidence of the DW2 which is clear and unambiguous, was never challenged or discredited under cross-examination. That the said notice was not served personally on the Appellant, with respect, is of no moment. I say so because, the relevant law - i.e. Section 9(1) of the Public Lands Acquisition Law. Cap. 105 Vol. 15 Law of Western Nigeria 1959 provides as follows:

"Every notice under sections 5 and 8 shall either be served personally on the persons to be served or left at their last usual place

*of abode or business, if any such place can after reasonable inquiry be found and in case any such parties shall be absent from Nigeria or if such parties or their last usual place of abode or business after reasonable inquiry cannot be found, such notice shall be left with the occupier of such land or if there be no such occupier a shall be af-
fixed conspicuous part of such lands.* B

(c) All notices served under the provisions of this Law shall be published once at least in the State Gazette ".

[the underlining mine]

At page 50 of the Records, after the learned trial judge had properly evaluated the evidence before him, he stated inter alia, as follows: C

"It is my finding that from the circumstances stated by the defendant, notice of acquisition was served in accordance with the law and later published in the official Gazette". D

His Lordship at page 51 continued, inter alia, as follows:

"After a sober look at the facts as presented by the plaintiff and the defendants I am satisfied that the notice of the acquisition was served upon the plaintiff according to law".

The court below - per Adekeye, JCA (as he/she then was) at page 111 of the Records, stated inter alia, as follows: E

"..... Hence I agree with the learned trial judge that the appellant was adequately served with notice of the acquisition by affixing same to strategic areas of his farmland. This was followed by publication in the gazette which he admitted being award of following which the appellant claimed compensation a sum (sic) N10,000 in Exhibit C". F

After referring to Section 9(1) Of the Law as reproduced by me in this Judgment, it stated inter alia, as follows: G

"It is trite that an appellate court will not disturb or interfere with the findings of the trial court because it did not see, nor hear parties and their witnesses nor observed their demeanour in the witness box, unless such findings were unreasonable, or perverse or unsupported by evidence. In this, appeal the findings of the trial court cannot be said to be unreasonable perverse or unsupported by evidence". H

[the underlining mine]

The above is borne out from the Records and cannot fault it.

I agree. See also the case of *Chief Ezekwesili & 12 ors. v. Chief Agbapuonwu & 2 ors.* (2003) 9 NWLR (Pt. 825) 337 @ 380 cited and relied on in the Respondent's Brief. (It is also reported in (2003) 4 SCNJ. 174).

At page 112 thereof, it concluded thus:

B “The appeal lacks merit and it is hereby dismissed”.

The attitude of this Court in respect of concurrent findings of facts and holdings, is no longer in doubt. See also the cases of *Woluchem & ors. v. Gudi & ors.* (1981) 5 S.C. 319 @ 326, 328; *Overseas Construction Co. (Nig.) Ltd. v. Creek Enterprises (Nig.) Ltd.* (1985) 3 NWLR (Pt.13) 407 and *chief Chukwuagor v. Obiora* (1987) 13 NWLR (pt.61) 454; (1989) 7 SCNJ. 191; just to mention but a few.

D If there is any appeal that lacks substance in the extreme, this is one of them. After the Appellant had collected the compensation awarded to him by the trial court, he still pursued this appeal up to this Court. I say no more about this matter.

E It is from the foregoing and the fuller Lead Judgment of my learned brother, Onnoghen, JSC just delivered and which I had the privilege of reading before now, that I too, dismiss this appeal and I abide by the order in respect of costs therein awarded in favour of the Respondent.

F

MUNTAKA-COOMASSIE JSC

I have read in advance the lead judgment of my learned brother Walter Onnoghen JSC, I entirely agree with his lordship that the appeal lacks merit same is consequently dismissed. I have nothing more pressing or important to chip in. I endorse, with respect, the orders made by my learned brother and the award of costs.

Appeal is dismissed.

H