

SUPREME COURT OF NIGERIA
20TH JANUARY, 2012. SC. 290/2003
CORAM: - **W. S. N. ONNOGHEN, J. A. FABIYI, S.**
GALADIMA, N. S. NGWUTA, M. U. PETER-ODILI, JJSC

ALHAJI SOHO DAN AMALE APPELLANT
AND
1. SOKOTO LOCAL GOVERNMENT
2. CHAIRMAN, SOKOTO LOCAL
GOVERNMENT RESPONDENTS
3. ATTORNEY-GENERAL OF
SOKOTO STATE

JUDGMENTS - Appeals - Findings of fact - Binding nature - Where there is no appeal - Against a finding upon which judgment is predicated - The finding remains intact (H1)

COURTS - Jurisdiction - Fundamental right - Enforcement of - Trial court can only proceed to enforce a fundamental right of an applicant guaranteed under Chapter IV of Constitution - If the main relief discloses a breach of such right (H2)

LAND LAW - Right of occupancy - Revocation of - Propriety - Respondents can legally revoke the grant made to appellant - By virtue of Land Use Act ss. 28(1)(2)(b) (6) and (7) (H3)

ACTIONS - Nature - Determination of - It is appellant's claim that determines the nature and competence of a suit - Thus appellant's claim is for declaration of title - And not breach of fair hearing (H4)

COURTS - Issues - Raising suo motu - Propriety - It is wrong for court to raise a point suo motu - And resolve a case on that basis - Without inviting the parties or their counsel to address it on the point (H5)

JURISDICTION - Issue of - When to raise - It can be raised at any stage in trial court or on appeal - And can be raised by any party or suo motu by the court (H6)

COURTS - Jurisdiction - Raising suo motu - Propriety - Where there is clear want of jurisdiction in the court - It is the duty of the judge to raise the issue suo motu - If the parties fail to do so (H7)

FACTS

Plaintiff/appellant commenced this action before the High court of Sokoto State. He filed a motion ex parte seeking for leave of the court to enforce his fundamental right which he felt was breached by defendants/respondents when his movable and immovable properties situate at Sokoto metropolis were compulsorily acquired by the then Military Governor of Sokoto State. On 9th December, 1994, the court granted leave to appellant to enforce his fundamental right. Consequently, appellant filed a motion on notice praying the court for the following reliefs inter alia, a declaration voiding the acquisition of his properties by respondents, a declaration that the revocation of his right of occupancy violates his fundamental rights to fair hearing, injunction restraining respondents from interfering with appellant's rights and award of damages to the tune of N25,000,000.00.

The court granted the reliefs sought by appellant. Being dissatisfied, respondents appealed to the Court of Appeal, Kaduna division. At the hearing, the court invited appellant to address it on whether or not the action, as constituted, can properly be brought under the Fundamental Rights (Enforcement Procedure) Rules. Thereafter, the court set aside the decision of the trial court on the ground that the action which in essence was a claim in respect of title to land and compulsory acquisition was improperly commenced under the above stated Rules. Aggrieved, appellant has appealed to Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether the court below was right in dismissing the appellant's action at the trial court on the ground that he could not challenge the act of compulsory acquisition of his landed property by Sokoto State Government via the Fundamental Rights Enforcement Procedure Rules.

(2) Whether the court below was right in not only raising the issue of the competence of the action at the trial Court suo motu and basing its decision thereon without hearing argument from all the

parties to the case, particularly when the respondents (appellants in the court below) had withdrawn Ground 5 of their appeal challenging the competence of the action.”

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

Appeals - Findings of fact - Binding nature

1. Learned counsel further submitted that the Court below found that the acquisition of the respondent’s right for the purpose of Sokoto Local Government expanding a cattle market under the Land Use Act, Cap 202 which permits of compensation and right of access to Court does not tantamount to infringement of respondent’s Fundamental Right guaranteed under Section 40 of the Constitution”. Learned counsel submits that as the appellant did not challenge the conclusion and other findings on the merit of the case, the judgment remains intact. He again referred to *UBA Plc. v. Okeke* (supra).

The submission of learned counsel in this respect can well be put on its mettle. It is trite that where there is a vital finding upon which a judgment is predicated, as herein, and is not appealed against, such a finding remains intact. (p. 108 H)

Jurisdiction - Fundamental right - Enforcement of

2. Let me state it right away that it is now glaring that a trial Court will only have jurisdiction to proceed to enforce a fundamental right of an applicant guaranteed under Chapter IV of the Constitution if the main relief discloses a breach of the fundamental right of the applicant. (p. 110 E)

Right of occupancy - Revocation of - Propriety

3. In this appeal, it is clear that the principal issues involved are:

- (1) declaration of title to land and
- (2) compensation for un-exhausted development on the land.

It is not for the Court at this stage to decide on the merit, the propriety or otherwise of the revocation of the appellant’s right of occupancy. It is enough to show that the respondents could legally revoke the grant made to the appellant. In tandem with the provisions of Section 28 (1) (2) (b), (6) and (7) of the Land Use Act, Cap 202 Laws of the Federation of Nigeria, 1990 the respondents showed that the then Military Governor of Sokoto State revoked the appel-

lant's right of occupancy for overriding public interest of expanding Kara Market Sokoto. Same was duly communicated to him. Section 29 of the Land Use Act provides for process of making due compensation.

B There is no doubt that the action of the respondents is permitted by the Land Use Act which is inter vires the Constitution. Nothing lawful could be held as illegal or unconstitutional. I agree with the court below that the revocation of the appellant's statutory right of occupancy, being legal, could not constitute encroachment on his fundamental right. (p. 112 B/H)

ACTIONS - Nature - Determination of

D 4. It is the law that the appellant's claim should determine the nature of the suit and afortiori its competence. See: Adeyemi v. Opeyori (1966) 10 SC 31. The claim of the appellant as disclosed in his suit and the affidavit in support did not relate to one breaching his fundamental right. It is for claim for declaration of title to his statutory right of occupancy or for compensation for un-exhausted development on the land which should not be brought under the Fundamental Rights (Enforcement Procedure) Rules. I agree that for this reason, E the appellant's suit is incompetent as the main claims have nothing to do with breach or threatened breach of right to fair hearing. (p. 113 A)

COURTS - Issues - Raising suo motu - Propriety

F 5. It is the law that a Court should not raise a point suo motu, no matter how clear it may appear to be, and proceed to resolve same without inviting the parties or their counsel to address the Court on G the point. This is to avoid a breach of parties' right to fair hearing. (p. 113 E)

JURISDICTION - Issue of - When to raise

H 6. It has been stated by this Court in Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508 at 528 per Obaseki, JSC that the issue of jurisdiction being a fundamental issue, can be raised at any stage of the proceedings in the Court of first instance or in the appellate Court. This issue can be raised by any of the parties or by the Court itself suo motu. (p. 113 H)

Jurisdiction - Raising suo motu - Propriety

7. Where there are sufficient facts ex facie on the record establishing want of competence or jurisdiction in the Court, it is the duty of a judge or justice to raise the issue suo motu if the parties fail to draw the Court's attention to it. (p. 114 B) B

NOTABLE POINT OF INTEREST

NGWUTA JSC

1. Categories of fundamental rights under the Chapter IV of the Constitution C

The Fundamental Rights under Chapter IV of the Constitution can, for the purpose of their observance and enforcement, be categorized into two groups. The first category consisting of mainly rights to fair hearing and personal liberty under sections 35 and 36 must be observed whenever the occasion for their observance arises. They are enforced by appeal in the proceeding in which the breach occurs. D

The second category of rights consists of those enforceable under the special jurisdiction of a High Court in s.46 of the Constitution. E

Chapter IV of the Constitution does not invest any citizen with a right not to have his property acquired by the relevant authority. It does not belong to either of the above categories of fundamental rights under Chapter IV of the Constitution. F

A person whose property is compulsorily acquired by the relevant authority in breach of the law and/or procedure for same has a right of action in the High Court in its general or distinct from its special jurisdiction conferred in s.46 of the Constitution. (p. 121 B) G

REPRESENTATION

A. Adeniji with A. Amehson for Appellant
T. E. Ochidi for 1st and 2nd Respondents
3rd Respondent, not represented by counsel

H

CASES REFERRED TO

Okogie & ors. v. The A-G Lagos State (1981) 2 NCLR 218

Adewole & 6 Ors. v. Alhaji Lateef Jakande (Governor of Lagos state) & ors. (1981) 1 NCLR 262

Shugaba Abdurahman Darman v. Federal Ministry of Internal Affairs (1981) 2 NCLR 459

Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt.117) 517

B Sea Trucks Nigeria Ltd v. Pyne (1999) 6 NWLR (Pt. 607) 514

Falobi v. Falobi (1976) All NLR 30

Bello v. Attorney-General of Oyo State (1986) 5 NWLR (Pt.45) 828

Kano State Urban Development Board v. Fanz Ltd. (1956) 5 NWLR (Pt. 39) 74

C Surakatu v. Nigerian Development Housing Society (1981) 4 SC 26

Trucks Ltd v. Anigboro (2001) FWLR (pt. 360) 1415

The Govt. of Kogi State v. Yakubu (2001) All FWLR (Pt. 43) 359

WAEC v. Adeyanju (2008) All FWLR (Pt. 428) 206

D UBA Plc. v. Okeke (2004) 7 NWLR (Pt. 872) 393

Kraus Thomson Org. Ltd. v. UNICAL (2004) 9 NWLR (Pt. 879) 63

Okonkwo v. INEC (2004) 1 NWLR (Pt. 554) 242

STATUTES & RULES REFERRED TO

E Constitution of Federal Republic of Nigeria 1979 Chapter IV, ss. 33, 40 and 42

Land use Act Cap 202 LFN 1990, ss. 28(1), (2), (6), (7) and 29

Fundamental Rights (Enforcement Procedure) Rules Cap 62 1979, O. 1 r. 2

F African Charter on Human and Peoples Right (Ratification and Enforcement) Act 1968, Article 14

Supreme Court Rules, 1999, O. 6 r. 8(6)A

LEAD JUDGMENT BY FABIYI JSC

G This is an appeal against the judgment of the Court of Appeal, Kaduna Division (“the court below” for short) delivered on the 30th day of October, 2000. Therein, the judgment of the High Court of Justice of Sokoto State (“the trial court” for short) delivered on the **H** 13th day of May, 1996 was set aside. The appellant decided to appeal to this court.

It is apt to state the facts of this matter briefly. In December 1994, the appellant by a motion ex parte applied to the trial court for leave to enforce his fundamental rights which he felt was breached

by the respondents when his movable and immovable properties situate at Kofar Kade, Kara Market in Sokoto metropolis were compulsorily acquired by the then Military Governor of Sokoto State. On 9th December, 1994, the trial court granted leave to the appellant to enforce his fundamental rights consequent upon which he filed a motion on notice praying the court for the following reliefs:- B

1. A declaration that the purported acquisition of both immovable and movable properties of the applicant situate at Kofar Kade, Kara Market, Sokoto by the respondents is illegal, unconstitutional, null and void and gross contravention of Section 40 of the 1979 Constitution. C

2. A declaration that the purported revocation of the applicant's right to the landed property situate at Kofar Kade, Kara Market Sokoto by the then Military Governor of Sokoto State constitutes a violation of his fundamental right to fair hearing as provided in Section 33 of the 1979 Constitution. D

3. A perpetual injunction restraining the respondents, their servants, agents, privies and assigns from interfering with the aforesaid rights of the applicant.

4. An interlocutory injunction restraining the respondents, their servants, agent, privies and assigns from further interfering with the said rights of the applicant pending the determination of the suit. E

5. An order compelling the respondents, their servants, agents, privies and assigns to withdraw from the applicant (sic). F

6. An order awarding the sum of N25,000,000:00 to the applicant for the violation of his aforesaid rights being special, general, aggravated and exemplary damages against the respondents jointly and severally.

7. And for such further or other orders as this Honourable Court may deem fit to make in the circumstance. G

The learned trial judge heard the application. In effect, he granted all the reliefs as prayed by the appellant on 13th May, 1996. The respondents felt dissatisfied and appealed to the court below. Thereat, on the date fixed for hearing, the appellants' counsel (now respondents) was absent from court. The court specifically invited the respondent (now appellant) to address it on whether or not the action, as constituted, can properly be brought under the Fundamental Rights (Enforcement Procedure) Rules. Same was complied H

with and the court below thereafter set aside the decision of the trial court on the ground that the action which in essence was a claim in respect of title to land and compulsory acquisition was improperly commenced under the stated Rules. Against the decision of the Court below, the appellant has appealed to this court.

B In this court, briefs of argument were duly filed and exchanged. The appellant, through his counsel, formulated two issues for determination. They read as follows:-

C *“(1) Whether the court below was right in dismissing the appellant’s action at the trial court on the ground that he could not challenge the act of compulsory acquisition of his landed property by Sokoto State Government via the Fundamental Rights Enforcement Procedure Rules.*

D *“(2) Whether the court below was right in not only raising the issue of the competence of the action at the trial Court suo motu and basing its decision thereon without hearing argument from all the parties to the case, particularly when the respondents (appellants in the court below) had withdrawn Ground 5 of their appeal challenging the competence of the action.”*

E On behalf of the 1st and 2nd respondents, two issues distilled for determination of the appeal read as follows:-

ISSUE NO ONE

F Whether the Court below was correct when it struck out the claims of the appellant against the respondents on the ground that appellant’s main relief is in respect of declaration of title to land and therefore improperly commenced under the Fundamental Rights (Enforcement Procedure) Rules 1979.

ISSUE NO TWO

G Whether the appellant was prejudiced when the court below suo motu raised the issue of want of jurisdiction and heard argument of appellant’s counsel on the said issue before reaching a decision in respect of same.”

H The learned counsel for the 3rd respondent in the brief of argument indicated that the 3rd respondent would argue the appeal on the basis of narrow issues formulated by the appellant.

On 24th October, 2011 when the appeal was heard, the 3rd respondent was not represented by counsel and the appeal was deemed as argued by the 3rd respondent based on the brief of argu-

ment dated 26th May, 2010 and filed on 28th May, 2010 vide Order 6 Rule 8(6) of the Supreme Court Rules, 1999 which provides that -

“When an appeal is called and no party or any legal practitioner appearing for him appears to present oral argument, but briefs have been filed by all the parties concerned in the appeal, the appeal will be treated as having been argued and will be considered as such.” B

Arguing issue 1, it was submitted on behalf of the appellant that by virtue of the combined effect of chapter IV of the 1979 constitution, particularly Sections 40 and 42 thereof, once the issue relates to the legality or otherwise of the compulsory acquisition of landed property by the Government action can be taken via the Fundamental Rights (Enforcement Procedure) Rules. The cases of Okogie & ors. v. The Attorney-General, Lagos State (1981) 2 NCLR 218; Adewole & 6 Ors. v. Alhaji Lateef Jakande (Governor of Lagos state) & ors. (1981) 1 NCLR 262 were cited. C

Learned counsel felt that the mere fact that the appellant had claimed other incidental reliefs does not prohibit his maintaining the action by recourse to the Fundamental Right Enforcement procedure Rules. He cited Shugaba Abdurahman Darman v. Federal Ministry of Internal Affairs (1981) 2 NCLR 459. D

Learned counsel submitted that cases of Tukur v. Government of Gongola state (1989) 4 NWLR (Pt.117) 517 and Sea Trucks Nigeria Limited v. Pyne (1999) 6 NWLR (Pt. 607) 514 at 541 referred to by the Court below are quite distinguishable. E

Learned counsel submitted that compensation for compulsory acquisition of property by the Government cannot be said to be a right not known to the Constitution. He felt that even if a wrong procedure had been adopted in commencing the action, such ought not to defeat the claim. He cited Falobi v. Falobi (1976) All NLR 30; Bello v. Attorney-General of Oyo State (1986) 5 NWLR (Pt.45) 828; Kano State Urban Development Board v. Fanz Ltd. (1956) 5 NWLR (Pt. 39) 74 at 86; and Surakatu v. Nigerian Development Housing Society (1981) 4 SC 26 at 35-37. F

Arguing issue 1, learned counsel for the 1st and 2nd respondents observed that the main reliefs of the appellant seek to reverse the revocation of the right of occupancy in respect of the appellant's landed property situate at Kofar Kade, Kara Market Sokoto covered by Certificate of Occupancy No SS 2667 which was effected by the G

then Military Government of Sokoto State. He submitted that the trial Court will only have jurisdiction to enforce fundamental right of an applicant guaranteed under Chapter IV of the 1979 Constitution if the main relief discloses a breach of the fundamental right of the applicant. He cited *Sea Trucks Ltd v. Anigboro* (2001) FWLR (pt B 360) 1415 at 1436; *The Government of Kogi State v. Yakubu* (2001) All FWLR (Pt. 43) 359 at 366; *W.A.E.C. v. Adeyanju* (2008) All FWLR (Pt. 428) 206 at 225.

Learned counsel emphasized that compulsory acquisition of a persons' property, if effected in a manner and for purposes prescribed by a law that inter alia requires payment of compensation thereof cannot amount to an infringement of a right guaranteed under Section 40 (1) of the 1979 Constitution. He felt that Section 28(1), (2), (6) and (7) of the Land use Act made ample provisions for procedure for revocation of statutory rights of occupancy while section 29 makes provisions for payment of compensation in respect of un-exhausted improvements.

Learned counsel submitted that the court below was right in striking out the appellant's suit for want of jurisdiction. He urged that the issue should be resolved in favour of the respondents.

On behalf of the 3rd respondent, it was observed by learned counsel that the Court below did not decide that the appellant could not ventilate a violation of his right to own property under Section 40 of the 1979 Constitution vide Fundamental Rights (Enforcement Procedure) Rules Cap 62. The Court found that the suit is incompetent in the sense that the appellant sought to reverse the decision of the Sokoto State Government which revoked his statutory right of occupancy to a parcel of land in Sokoto State.

Learned counsel maintained that the substance of the pronouncement was not attacked and as such, the unchallenged finding of the lower Court is deemed correct and valid and therefore binding on the appellant. He cited the case of *UBA Plc. v. Okeke* (2004) 7 NWLR (Pt. 872) 393 at 410. There is merit in the submission which was forcefully made by the learned counsel.

Any argument to the contrary to the effect that the Court misinterpreted the constitution; particularly Chapter IV, is without basis.

Learned counsel further submitted that the Court below found that the acquisition of the respondent's right for the

purpose of Sokoto Local Government expanding a cattle market under the Land Use Act, Cap 202 which permits of compensation and right of access to Court does not tantamount to infringement of respondent's Fundamental Right guaranteed under Section 40 of the Constitution". Learned counsel submits that as the appellant did not challenge the conclusion and other findings on the merit of the case, the judgment remains intact. He again referred to UBA Plc. v. Okeke (supra). B

The submission of learned counsel in this respect can well be put on its mettle. It is trite that where there is a vital finding upon which a judgment is predicated, as herein, and is not appealed against, such a finding remains intact. The above cited case is apt. So also are the cases of Kraus Thomson Org. Ltd. v. UNICAL (2004) 9 NWLR (Pt. 879) 63 1 at 642; Okonkwo v. INEC (2004) 1 NWLR (Pt. 554) 242 at 256; Okonkwo v. Okonkwo (2004) 5 NWLR (pt.565) 83 at 97 as cited by the learned counsel for the 3rd respondent relevant on this point. C

Learned counsel summarized the two issues settled by the lower Court as being-

(1) whether the revocation of the appellant's right of occupancy to the land in question was legal and valid in that the respondents fulfilled conditions precedent and E

(2) whether the action was commenced by due process. Learned counsel further observed that the court below made it clear that the principal issues involved in the appellant's case are (1) declaration of title to land and (2) compensation for un-exhausted development on the land. He submitted that enforcement of fundamental right or securing the enforcement thereof did not form the basis of the action, and that at best; it is merely an accessory claim which will not activate the competence of the Court. He cited the cases of University of Ilorin v. Oluwadare (2006) 14 NWLR (Pt.1000) 75; Tukur v. Governor of Taraba State (1997) 6 NWLR (Pt.510) 549 at 574-575. F

Learned counsel submitted further that Section 40 of the Constitution is not a bar against revocation of title or acquisition of landed property provided the conditions precedent are met. He felt that the findings of the Court below, having not been challenged, are to the effect that the respondents fulfilled all conditions for valid revocation G H

of title or acquisition of the landed property. Learned counsel opined that it is not the case of the appellant that the respondents have no right to revoke his title or acquire his property for overriding public interest but that in doing so, the respondents did not meet the conditions precedent. He felt that the determination of the issues thrown
 B up by the appellants claim cannot be said to be an issue concerning enforcement of fundamental right or securing the enforcement thereof.

Learned counsel felt that in the circumstance, the finding of
 C the Court below that the action brought by the appellant for declaration of title and payment of compensation under the Fundamental Rights (Enforcement Procedure) Rules is incompetent and cannot be faulted.

Learned counsel finally submitted that where an action is shown
 D not to have been commenced by due process, the court lacks jurisdiction to entertain it and the proper order to make is the one striking it out. He cited the case of Abdulhamid v. Akar (2006) NWLR (Pt. 996) 127 at 40; 146. Learned counsel urged that the issue be resolved against the appellant.

E ***Let me state it right away that it is now glaring that a trial Court will only have jurisdiction to proceed to enforce a fundamental right of an applicant guaranteed under Chapter IV of the Constitution if the main relief discloses a breach of the fundamental right of the applicant.*** In *Sea Trucks Ltd. v. Anigboro* (supra) at page 1024, Karibi-Whyte, JSC pronounced as
 F follows:-

G *“The correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought, the grounds for such relief and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, there is here a redress through the Fundamental Rights (Enforcement Procedure) Rules 1979.*

H *However, where the alleged breach of right is ancillary or incidental to the main grievance or complaint, it is incompetent to proceed under the rules. This is because the right, if any, violated, is not synonymous with the substantive claim which is the subject matter of the action. Enforcement of the right, per se, cannot resolve the substantive claim which is in any case different.”*

In *University of Ilorin v. Oluwadare* (supra) at page 770-771, this court per Mohammed JSC stated as follows:-

“These reliefs sought by the respondent as applicant before the trial Federal High Court centered principally on his expulsion from the University and the urge for his readmission. The law in relation to the claim for the enforcement of fundamental rights is trite. It is to the effect that the enforcement of fundamental rights or securing the enforcement thereof must form the basis of the appellant’s claim as presented to the court and not merely as an accessory claim. B

In other words, where the main or principal claim is not enforcement or securing the enforcement of fundamental rights, the jurisdiction of the Court cannot be properly exercised, because it will then be incompetent.” C

Again, in *Gafar v. The Govt. of Kwara State and 2 Ors.* (Supra) at page 1436, this Court also pronounced per Mohammed, D JSC as follows: -

“I have earlier in this judgment reproduced the 10 reliefs sought by the appellant in his application brought under Section 42(1) of the 1979 Constitution and Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979. It is the law as decided by the Court in a long line of cases on the subject that when an application is brought under the rule, a condition precedent to the exercise of the Court’s jurisdiction is that the enforcement of fundamental rights or the securing of the enforcement thereof should be the main claim and an accessory claim. That where the main or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the Court cannot be properly exercised and it will be incompetent.” E F

This Court maintained the same position in the cases of the Governor of Kogi State v. Yakubu (2001) FWLR (Pt. 43) 359 at 18 at 366; WAEC v. Adeyanju (2005) All FWLR (Pt. 428) 206 at 225 and Tukur v. Govt. of Gongola State (supra). G

The cases of Shugaba Abdurahman Darman v. Federal Ministry of Internal Affairs & Ors (1981) 2 NCLR 459 and Okogie & Ors. H v. The Attorney-General Lagos State (1981) 2 NCLR 281 fall into a different kettle of fish. In the case of Shugaba Abdurahman Darman, he was about to be bundled out of the country as an ‘alien’. He cried foul and approached the Court with speed to protect his right of fair

hearing in protection of his liberty under the appropriate Rules for the enforcement of his right. His principal claim was for an order to protect his liberty and to prevent him from being deported as an 'alien'. The case of Okogie & Ors. v. The Attorney-General, Lagos State is a challenge to a proposal by Government of Lagos State to
 B abolish ownership of schools by private persons.

In this appeal, it is clear that the principal issues involved are:

- (1) declaration of title to land and***
- (2) compensation for un-exhausted development on the***
 C ***land.***

It is not for the Court at this stage to decide on the merit, the propriety or otherwise of the revocation of the appellant's right of occupancy. It is enough to show that the respondents
 D ***could legally revoke the grant made to the appellant. In tandem with the provisions of Section 28 (1) (2) (b), (6) and (7) of the Land Use Act, Cap 202 Laws of the Federation of Nigeria, 1990 the respondents showed that the then Military Governor of Sokoto State revoked the appellant's right of occu-***
 E ***pancy for overriding public interest of expanding Kara Market Sokoto. Same was duly communicated to him. Section 29 of the Land Use Act provides for process of making due compensation.***

F Section 40 (1) of the Constitution of the Federal Republic of Nigeria 1979, which is applicable, provides as follows:-

"40 (1) No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any
 G ***part of Nigeria except in the manner and for the purposes prescribed by a law that; among other things-***

(a) requires the prompt payment of compensation therefore ;
 and

(b) gives to any person claiming such compensation a right of
 H ***access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria."***

There is no doubt that the action of the respondents is permitted by the Land Use Act which is inter vires the Consti-

tution. Nothing lawful could be held as illegal or unconstitutional. I agree with the court below that the revocation of the appellant's statutory right of occupancy, being legal, could not constitute encroachment on his fundamental right.

It is the law that the appellant's claim should determine the nature of the suit and afortiori its competence. See: Adeyemi v. Opeyori (1966) 10 SC 31. The claim of the appellant as disclosed in his suit and the affidavit in support did not relate to one breaching his fundamental right. It is for claim for declaration of title to his statutory right of occupancy or for compensation for un-exhausted development on the land which should not be brought under the Fundamental Rights (Enforcement Procedure) Rules. I agree that for this reason, the appellant's suit is incompetent as the main claims have nothing to do with breach or threatened breach of right to fair hearing. See: Sea Trucks Nig. Ltd. v. Ayo Ryne (supra); Tukur v. Govt. of Kwara State (supra) and Egbuonu v. Borno Radio & Television Corporation (1997) 12 NWLR (Pt. 531) 29 at 40 - 41.

At this point, I should say it, that I resolve issue 1 against the appellant and in favour of the respondents.

In respect of issue 2, the appellant has an axe to grind with the fact that the Court below raised the issue of competence suo motu without allowing all the parties to address it on the point.

It is the law that a Court should not raise a point suo motu, no matter how clear it may appear to be, and proceed to resolve same without inviting the parties or their counsel to address the Court on the point. This is to avoid a breach of parties' right to fair hearing. See: Katto Central Bank of Nigeria (2001) FWLR (Pt. 52) 188 at 208; Araka v. Ejeagwu (2001) FWLR (Pt. 36) 830 at 848.

It is true that the Court below raised the point of compensation suo motu but the appellant's counsel who was to be adversely affected by a decision on the point was heard by the Court below. He should not hold brief for the respondents in this Court. After all they have not complained before this Court that they were not heard. The issue of fair hearing is personal to the party concerned and requires no prompting by an extraneous body.

It has been stated by this Court in Oloba v. Akereja

(1988) 3 NWLR (Pt. 84) 508 at 528 per Obaseki, JSC that the issue of jurisdiction being a fundamental issue, can be raised at any stage of the proceedings in the Court of first instance or in the appellate Court. This issue can be raised by any of the parties or by the Court itself suo motu.

B **Where there are sufficient facts ex facie on the record establishing want of competence or jurisdiction in the Court, it is the duty of a judge or justice to raise the issue suo motu if the parties fail to draw the Court's attention to it.** The above position was also taken in the cases of Oloriegbe v. Omotosho (1993) C 1 SCNJ 30; Nuhu v. Ogele (2003) 18 NWLR (Pt. 552) 251 at 279. Clearly, the appellant's counsel had no vires to complain on behalf of the respondents. Since the respondents in whose favour the decision was made did not complain, the appellant lacked locus to complain D on their behalf.

The issue, with due diffidence to appellant's counsel, was raked up to no avail. It ought not to be so before this Court, in particular. The issue is resolved against the appellant.

E For the above reasons, I find that the appeal lacks merit and should be dismissed. I order accordingly and hereby affirm the judgment of the Court below delivered on 30th October, 2000 wherein the appellant's suit was struck out for want of competence.

F Appeal dismissed. I make no order as to costs in the prevailing circumstance.

ONNOGHEN JSC

G This appeal is against the judgment of the Court of Appeal Holden at Kaduna in appeal NO.CA/K/33/97 delivered on the 30th day of October, 2000 in which the Court allowed the appeal against the decision of the High Court of Justice of Sokoto State in suit NO.SS/M.333/96 and struck out the suit for being incompetent.

H The action was instituted by way of Enforcement of Fundamental Rights procedure in which appellant prayed the Court for the following reliefs:-

1. A declaration that the purported acquisition of both immovable and movable properties of the applicant situate at Kofar Kade, Kara Market, Sokoto by the respondents is illegal, unconstitu-

tional, null and void and gross contravention of Section 40 of the 1979 Constitution.

2. A declaration that the purported revocation of the applicant's right to the landed property situate at Kofar Kade, Kara Market Sokoto by the then Military Governor of Sokoto State constitutes a violation of his fundamental right to fair hearing as provided in Section 33 of the 1979 Constitution. B

3. A perpetual injunction restraining the respondents, their servants, agents, privies and assigns from interfering with the aforesaid rights of the applicant. C

4. An interlocutory injunction restraining the respondents, their servants, agent, privies and assigns from further interfering with the said rights of the applicant pending the determination of the suit.

5. An order compelling the respondents, their servants, agents, privies and assigns to withdraw from the applicant (sic). D

6. An order awarding the sum of N25,000,000:00 to the applicant for the violation of his aforesaid rights being special, general, aggravated and exemplary damages against the respondents jointly and severally.

The grounds on which the above reliefs are claimed are as follows:- E

“(a) The compulsory acquisition of the movable and immovable properties of the applicant by the respondents is contrary to the provision of section 40 of the 1979 Constitution. F

PARTICULARS

(i) No law was promulgated compulsorily acquiring the properties of the applicant, for any purpose.

(ii) There is no payment of compensation for the properties compulsorily acquired and no intention to make any payment so far. G

(iii) No right of access granted to the applicant by the respondents to a Court of Law or tribunal or body for determination of his interest in the properties and the amount of compensation thereof.

(b) The purported compulsory acquisition of the properties of the applicant by the respondents is contrary to Article 14 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act, 1968. H

(c) The purported revocation of the applicant's right in the landed properties by the Military Governor of Sokoto State is con-

trary to section 33 of the 1979 Constitution in that no hearing was given to the applicant before the revocation. ”

As stated earlier in this judgment, the trial Court granted all the reliefs. Upon appeal, the primary issue became whether the action as constituted above can properly be brought under the Fundamental Rights (Enforcement) Rules which the lower Court resolved in the negative and consequently allowed the appeal and set aside the judgment of the trial Court.

Two issues call for determination in the instant appeal, though differently couched by the contending parties. The issues are as follows:-

(a) Whether the lower Court was right when it struck out the claims of the appellant against the respondents on the ground that appellant’s main relief is in respect of declaration of title to the land and therefore improperly commenced under the Fundamental Rights, (Enforcement Procedure) Rules, 1979, and

(b) Whether appellant was in any way prejudiced by the lower Court raising the issue of lack of jurisdiction suo motu but heard argument from appellant’s counsel alone thereon before reaching its decision.

In respect of issue (a), I had earlier in this judgment reproduced the reliefs claimed by appellant at the trial Court and the grounds on which the claims are founded. The issue as to whether enforcement of fundamental rights is the appropriate method of seeking reliefs in cases such as the instant one has been settled in a long line of cases by this Court. Consequently, it is now settled that when an application is brought under the Fundamental Rights (Enforcement Procedure) Rules, a condition precedent to the exercise of the jurisdiction of the courts is that the enforcement of fundamental rights or the securing of the enforcement of same must be the main claim as well as the ancillary claim; that where the main claim or principal claim is not the enforcement or securing the enforcement of a fundamental right, the jurisdiction of the courts cannot be properly exercised and the action will be incompetent.

Section 40 of the 1979 Constitution allegedly contravened by the respondents in respect of the acquisition of appellant’s properties, provides as follows:-

40(1) “No movable property or interest in an immovable prop-

erty shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things-

(a) requires the prompt payment of compensation therefore and, B

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria.” C

The above provision is very clear and unambiguous. It gives a right of action to an aggrieved party whose property is compulsorily acquired without compliance with the said provisions, to wit, failure to pay prompt compensation etc. Where, however the acquisition complies with the provisions no cause of action accrues to the aggrieved party, as such an action would be legal in the eyes of the law. Section 28(1) of the Land Use Act makes it “lawful for the Governor to revoke a right of occupancy for, overriding public interest” while section 29(1) of the said Act provides for payment of compensation to the holder of the revoked right of occupancy. E

The revocation is done by giving notice thereof to the holder of the right of occupancy after which the “title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice” - see section 28 (1) of the Land Use Act. F

From the reliefs claimed and the grounds on which they are claimed it is clear that the principal claim of appellant is not enforcement of fundamental rights. Evidence on record from both parties shows that the property was duly acquired compulsorily - see exhibits ‘B’ and ‘C’ of the appellant at pages 14 and 15 of the record, exhibits A, A1, B, C, D, E, E1 and G of the respondents at pages 22 to 36 of the record. The exhibits also showed clearly that appellant was offered compensation for the acquisition which he refused to sign for and collect. H

Appellant’s reliefs and grounds are directed at challenging the acquisition of the properties without allegedly complying with the requisite law(s). The action asserts the title of appellant to the properties in the main. It therefore falls outside the purview of the Funda-

mental Rights (Enforcement Procedure) Rules.

As regards issue (b), it is not disputed that the issue of want of jurisdiction in the trial Court was raised suo motu by the lower Court and that when it was so raised learned counsel for the present respondents was not in Court. However, learned counsel for the present
B appellant was present and was invited by the Court to address it on the issue which opportunity he utilized. It is clear that the decision of the lower Court on the matter as it turned out would have been very prejudicial to the appellant if he were not to have been heard on the
C issue.

It is not the law that a Court cannot raise an issue suo motu but that when it does, it must allow counsel for the parties to address it on same before proceeding to base its decision on the resolution of that issue. The principle is based on the rules of fair hearing. In the instant
D case the party to be adversely affected by the decision of the lower Court on the issue was in Court and was given the opportunity to address the Court on the matter which he utilized. He has now turned round to argue that the failure of counsel for the respondents to address the Court on the issue is fatal to the judgment when the
E respondents have not complained about the proceeding. I hold the considered view that the complaint of appellant on the issue is very much misconceived.

It is for the above reasons and the more detailed ones contained in the lead judgment of my learned brother FABIYI, JSC that
F I agree that this appeal is without merit and ought to be dismissed. I accordingly dismiss same with costs as ordered in the lead judgment.
Appeal dismissed.

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GALADIMA JSC

I have had the opportunity of reading the lead judgment just delivered by my learned brother FABIYI, JSC. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed without costs.
H

NGWUTA JSC

Appellant had some properties situate at Kofar Kade Kara

Market in the city of Sokoto. The then Military Governor of Sokoto State compulsorily acquired the properties for a public purpose - the expansion of the cattle market. In protest against the compulsory acquisition of his property by the Government of Sokoto State, the appellant approached the High Court, Sokoto State for leave to enforce his fundamental rights allegedly breached in the compulsory acquisition of his properties. B

Pursuant to the leave granted by the High Court, the appellant filed a motion on notice praying the Court for:

"1. A declaration that the purported acquisition of both immovable and movable properties of the applicant situate at Kofar Kade Kara Market, Sokoto, by the respondents is illegal, unconstitutional, null and void and gross contravention of section 40 of the 1979 Constitution. C

2. A declaration that the purported revocation of the applicant's right to the landed property situate at Kofar Kade, Kara Market, Sokoto by the then Military Governor of Sokoto State, constitutes a violation of his fundamental right to fair hearing as provided in section 33 of the 1979 Constitution. D

3. A perpetual injunction restraining the Respondents, their servants, agents, privies and assigns from interfering with the aforesaid rights of the applicant. E

4. An interlocutory injunction restraining the respondents, their servants, agents, privies and assigns from further interfering with the said rights of the applicant pending the determination of the suit. F

5. An order compelling the respondents, their servants, agents, privies and assigns to withdraw from the applicant(sic). G

6. An order awarding the sum of N25,000,000.00 to the applicant for the violation of his aforesaid rights being special, general aggravated and exemplary damages against the respondents jointly and severally. G

7. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances." H

The learned trial judge granted all the reliefs claimed by the applicant. The respondents were aggrieved and appealed to the Court below. On the date fixed for hearing the appeal, learned Counsel for the appellants was absent and in his absence the Court below asked learned Counsel for the respondents (now appellant) to address it on

the propriety vel non of the suit as constituted being brought under the Fundamental Rights (Enforcement Procedure) Rules.

Having heard from learned Counsel for the appellants (now Respondents) the Court below set aside the decision of the trial Court on the ground that the suit could not be properly brought under the
B Fundamental Rights (Enforcement Procedure) Rules. Appellant, being dissatisfied, appealed to this Court.

In compliance with the rules, learned Counsel for the parties filed and exchanged briefs of argument.

C On behalf of the appellant, the following two issues were framed for determination:

*“1. Whether the Court below was right in dismissing the appellant’s action at the trial Court on the ground that he could not challenge the act of compulsory acquisition of his land property by Sokoto
D State Government via the Fundamental Rights (Enforcement Procedure) Rules.*

*2. Whether the Court below was right in not only raising the issue of the competence of the action at the trial Court suo motu and basing its decision thereon without hearing argument from all the
E parties to the case, particularly when the respondents (appellants in the Court below) had withdrawn Ground 5 of their appeal challenging the competence of the action.”*

The two issues presented on behalf of the 1st and 2nd respondents are as follows:

F “ISSUE NO. ONE:

Whether the Court below was correct when it struck out the claims of the appellant against the respondents on the ground that the appellant’s main relief is in respect of declaration of title to land and therefore improperly commenced under the Fundamental Rights (Enforcement Procedure) Rules 1979.
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ISSUE NO. TWO:

Whether the appellant was prejudiced when the Court below suo motu raised the issue of want of jurisdiction and heard argument of
H appellant’s counsel on the issue before reaching a decision in respect of same.”

Learned Counsel for the 3rd Respondent adopted the two issues raised by the appellant.

At the hearing of the appeal on 24th October, 2011, learned

Counsel for the 3rd Respondent was absent and since all the briefs had been filed the Court invoked Ord. 6 r.8(6) of the Supreme Court Rules, 1989 as amended and treated the appeal as having been argued as per the briefs. In his lucid lead judgment, my learned brother, Fabiyi, JSC had set out the argument of learned Counsel for the parties and resolved the issues raised in the appeal. I will add a few comments by way of contribution to the lead judgment. B

The Fundamental Rights under Chapter IV of the Constitution can, for the purpose of their observance and enforcement, be categorized into two groups. The first category consisting of mainly rights to fair hearing and personal liberty under sections 35 and 36 must be observed whenever the occasion for their observance arises. They are enforced by appeal in the proceeding in which the breach occurs. C

The second category of rights consists of those enforceable under the special jurisdiction of a High Court in s.46 of the Constitution. See *Nemi v. The State* (1994) 10 SCNJ 1; *Kalu v. The State* (1999) 12 SCNJ 1 at 30-40; *Okoro v. The State* (1999) 12 SCNJ 84 at 95. D

Chapter IV of the Constitution does not invest any citizen with a right not to have his property acquired by the relevant authority. It does not belong to either of the above categories of fundamental rights under Chapter IV of the Constitution. E

A person whose property is compulsorily acquired by the relevant authority in breach of the law and/or procedure for same has a right of action in the High Court in its general or distinct from its special jurisdiction conferred in s.46 of the Constitution. F

Appellant's second issue is cosmetic ploy to win the sympathy of the Court. It left an essential part of the complaint unsaid that is that the only party who was not heard on the issue was the respondent. The appellant, who was to satisfy the Court on the merit if his case was heard. It is the Respondents in the Court below who had a right to complain of not being heard, but they do not complain. The appellant cannot cry more than the bereaved. If I may ask - would the appellant have considered the issue relevant if he had won the appeal? I do not think so, rather he would have vehemently opposed it if he had won and the respondents raised the same issue in their appeal. G H

It is for the above and the fuller reasons advanced in the lead judgment of my leaned brother, Fabiyi JSC which I had the privilege of reading in draft that I also dismiss the appeal for want of merit. I adopt the consequential order in the lead judgment.

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