

**SUPREME COURT OF NIGERIA**  
25TH MAY, 2012. SC. 211/2004  
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-COOMAS-**  
**SIE, J. A. FABIYI, B. RHODES-VIVOUR,**  
**M. U. PETER-ODILI, JJSC**

MR. KOLAWOLE ORONTI ..... APPELLANT  
AND  
ALHAJI S. A. ONIGBANJO ..... RESPONDENT

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LAND LAW - Actions - Lis pendens - Application - Bua v. Dauda - It must be shown inter alia - That suit on the disputed property - Was pending at the time of sale (H1)

LAND LAW - Disputed land - Lis pendens - Application - Outcome of pending suit is irrelevant - Since a purchaser who buys property in litigation - Does so at his own risk (H2)

LAND LAW - Courts - Title - Grant - Appellant cannot be granted title - Without a proper hearing and determination of the suit - By the court (H3)

**FACTS**

Plaintiff/respondent instituted this action against defendant/appellant at the High Court of Lagos State, Ikeja Division, claiming inter alia, a declaration of title over a piece of land situate at Anthony Village, Lagos. Appellant on the other side contended that respondent purchased the land during a pending litigation over the land in suit no: LD/326/71. Appellant stated that the litigation was instituted by respondent's predecessor-in-title against some persons including appellant. Pursuant to his contention, appellant raised preliminary objection at the court on the ground that respondent cannot be allowed to maintain the action based on the doctrine of lis pendens.

Respondent replied to the objection arguing that for the doctrine of lis pendens to apply, there must be a successful termination of the action during which pendency the land in dispute was alienated. The court dismissed the objection holding that the doctrine is not applicable by virtue of the fact that suit no: LD/326/71 was struck

out. Being dissatisfied, appellant filed appeal at the Court of Appeal, Lagos Division. The court dismissed the appeal and affirmed the holding of the trial court. Aggrieved again, appellant appealed to Supreme Court.

### **ISSUE FOR DETERMINATION**

Whether in the overall circumstance of the facts of this case, the doctrine of *lis pendens* ensures to the benefit of the appellant so as to make the alienation to the respondent *pendente lite* a nullity.

**HELD** (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

*Actions - Lis pendens - Application*

**1. The long and short of what is asked of this court in this appeal is the applicability or not of the Latin maxim *lis pendens* to the facts and perhaps to the circumstances of this case. In dealing with the question therefore it must be borne in mind that it is not all cases that the doctrine is applied. This court had in *Alhaji Usman Bua v Bashiru Dauda* (2003) 13 NWLR (Pt. 838) 657 per Uwaifo JSC reiterated the conditions on which the doctrine of *lis pendens* would apply. It was stated thus:**

***“That it must be shown,***

***(a) That at the time of the sale of the property the suit regarding the dispute about the said property was already pending.***

***(b) That the action or *lis* was in respect of real property; it never applies to personal property.***

***(c) That the object of the action was to recover or assert title to a specific real property; that is to say, an action in a subject matter adverse to the owner in respect of some substantive right which is proprietary in nature:***

***(d) That the other party had been served with the originating process in the pending action:***

**It must be stated that the four conditions above must co-exist before the doctrine of *lis pendens* would apply. Another way of saying it is that the absence of any of those con-**

**ditions would render inapplicable the doctrine. It is that simple.** (p. 1834 B)

*LAND LAW - Disputed land - Lis pendens - Application*

**2. It was in the application of the principles enunciated in the two cases above, that the Court of Appeal per Chukwuma-Eneh JCA (as he then was) had no difficulty in agreeing with the finding and conclusion of the trial court in dismissing the appeal thus affirming the earlier decision of the trial court in refusing to cut abruptly the case of the respondent as Plaintiff. Of similar mind therefore I do not hesitate either in applying the postulated principles in *Barclays Bank of Nigeria v Ashiru & Ors* to say that the interpretation of the doctrine of *lis pendens vis-a-vis* this appeal to bring to a short life-span the suit of the respondent at the trial court stems in my humble view to a misconception since the court according to the doctrine of the appellant would be superimposing into the free will of a party who might want to still make a purchase or a transaction in spite of a pending suit and take a chance upon whatever would be the outcome. Since the person who clearly with eyes open enters into a purchase of land which is encumbered does so at his own risk and he would take the gain if his predecessor-in-title wins or count his losses in the event that the predecessor-in-title loses. Either way it is the choice of the party embarking on a risky transaction and it is not for the Courts to baby sit such a litigant and tell him what he should or should not do with the options open to him and which way the result is thrown up is that litigant's right and no one else's. Stated differently a litigant is entitled to his right to gamble with his options and bear the consequences and it is not the concern of the other party or the court for that matter since if the predecessor-in-title has nothing upon which what he had sold to the purchaser or adventurous litigant that is their business. Also for full measure the possible outcome of the pending suit does not come into the consideration of whether or not the doctrine would apply.** (p. 1836 C)

*Courts - Title - Grant*

- 3. In fact it is what the appellant has set out to achieve by this posturing on lis pendens and his understanding of its application that has the capacity to over-reach and with its prejudicial consequences which would enable the appellant steal a march over his opponent without the due conclusion stemming from a hearing and determination of the suit before court. Because granting the appellant what he seeks would be giving through the backdoor, a title over land and divested the other without firing a short and before the proper decision of the court from full consideration of the materials available.**
- (p. 1837 B)

### **REPRESENTATION**

- D Olukayode Enitan with W. Ajiboyede, for the Appellant  
M. J. Onigbanjo with O. Otokurin, for the Respondents

### **CASES REFERRED TO**

- Bamgboye v. Olusoga (1996) 3 NWLR (Pt. 444) 520
- E Ebueku v. Anola (1988) 1 NSCC 592
- Bua v. Dauda (2003) 13 NWLR (Pt. 838) 657
- Osajie v. Oyeyinka (1987) 3 NWLR (Pt. 59) 144
- Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227
- F Nsirim v Nsirim (1995) 9 NWLR (Pt. 418) 144
- Yusuf v Dada (1990) 4 NWLR (Pt. 146) 657
- Mohammed v. Olawunmi (1993) 4 NWLR (Pt. 287) 254
- Ajuwon v Akanni (1993) NWLR (Pt. 316) 182
- Ogunsola v. NICON (1991) 4 NWLR (Pt.188) 762
- G Olatunji v. MILAD Oyo State (1995) 5 NWLR (Pt. 397) 585
- Network Security Ltd v. Dahiru (2008) All FWLR (Pt. 419) 475
- Barclays Bank Ltd v. Ashiru (1978) Vol. II NSCC 351
- Bellamy v. Sabine (1857) LJ (N.S) Equity Reports 797
- E.F.P. Co. Ltd. v. NDIC (2007) 9 NWLR (Pt. 1039) 216
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### **BOOK REFERRED TO**

Black's Law Dictionary 9<sup>th</sup> Ed p. 1015

**LEAD JUDGMENT BY PETER-ODILI JSC**

This is an appeal from the Judgment of the Court of Appeal, Lagos Division delivered on the 8th day of June, 2004 dismissing the appeal from the Ruling of his Lordship Hon. Justice Adebayo Manuwa of the High Court of Lagos State, Ikeja Division delivered on the 9th day of October, 1998, wherein the Honourable trial Court dismissed the application of the Defendant now Appellant seeking inter alia, an order of court dismissing the Plaintiffs action on the ground that the disposition of or sale of the portion of land, the subject matter of this appeal pending the determination of suit No. LD/326/71 to the plaintiff on the 8th day of October, 1974 is null and void by virtue of the principles under the doctrine of *lis pendens*.

The Defendant, now Appellant dissatisfied with the said judgment filed 2 grounds of Appeal which are all grounds of law. The facts briefly stated for the back ground information are as follows - The land in dispute forms part of a larger portion of land situate at Opeifa crescent, Anthony Village, Lagos. The plaintiff/Respondent commenced this suit against the Defendant/Appellant claiming the following:-

(i) A declaration that the plaintiff is the person entitled to the right of occupancy over a piece of land situate lying and being at Opeifa crescent, Anthony Village, Lagos state, more particularly described and delineated in the plan attached to the certificate of occupancy No. 7/7/1991/M of 28/9/91 registered as No. 7 at page 7 in volume 199/M of the Lagos State of Nigeria Land Registry, Ikeja, Lagos.

(ii) Damages in the sum of N100,000.00 (One Hundred Thousand Naira Only) for trespass committed on the said land by the Defendant, his servants, agents and privies.

(iii) Perpetual injunction restraining the Defendant, his servants, agents or privies from committing further acts of trespass on the said land.

By the Statement of Claim filed by the plaintiff in support of the claim, the Plaintiff/Respondent averred in paragraphs 3, 4, and 5 and I quote:

*“Para 3: The piece of land is at Opeifa crescent, Anthony village, Lagos state and edged red in Plan No. AOAT/LA/98/1989 of 16/6/89 prepared by A. Apatira, a licensed surveyor, originally be-*

*longed to one Edward Akintola Campbell (now deceased) by virtue of a Deed of conveyance dated 20/1/71 and registered as No. 2 at page 2 in volume 1243 of the Lands registry, Lagos between the Late Edward Akintola Campbell and heads of the Alashe Chieftaincy Family of Ojuwoye.*

B *Para 4: The Plaintiff avers that he was introduced to the late Edward Akintola Campbell by his estate agent, one Alhaji M. A. Calfos (also deceased).*

C *Para 5: The late Edward Akintola Campbell during his life time sold the land in dispute to the plaintiff for a sum of N10, 000.00 (Ten Thousand naira Only) and issued the Plaintiff with a receipt dated 8/10/74". See page 3 of the printed records"*

D The Defendant/Appellant, thus became aware that the Plaintiff/Respondent purchased the land in dispute during the pendency of an earlier suit, suit No. LD/326/71 instituted by one Edward A. Campbell (the plaintiff's predecessor in title) against S. A Opeifa and 6 Ors including the Defendant/appellant herein and claiming several declaratory reliefs against all defendants in respect of a larger portion of land, of which the land in dispute formed a part. It is not in dispute E that the Plaintiff/respondent bought the portion of land in dispute during the pendency of suit No. LD/326/71. It is also not in dispute the said suit instituted by the plaintiff/respondent's predecessor in title was struck out after the sale.

F Pursuant to the above stated facts, the defendant/appellant filed an application for summons for further direction at the Lower court praying the court inter alia for an order setting down and disposing of the point of law raised in paragraph 18 of the statement of defence, concerning the issue of the plaintiff's title as pleaded in G paragraphs 3, 4, 5 and 10 of the statement of claim in that the Plaintiff's title (as pleaded) is null and void and an order dismissing the action in its entirety or striking out same on the ground that the land in dispute was purchased by the Plaintiff/respondent pendent lite. See H page 85 - 89 of the printed record. The plaintiff/respondent filed a counter affidavit to the defendant/appellant's summons for further direction admitting quite overtly that the land in dispute was purchased during the pendency of suit No. LD/326/71 but denying knowledge of the pending proceedings in the said suit and further argued that for the doctrine of lis pendens to apply there must be a success-

ful termination of the action during whose pendency the land in dispute was alienated.

On the 28th day of February, 2012 of hearing, learned counsel for the Appellant, Mr. Olukayode Enitan adopted their Brief filed on 2/11/2010 in which was formed a sole issue viz:-

Whether in the overall circumstance of the facts of this case, the doctrine of *lis pendens* ensures to the benefit of the appellant so as to make the alienation to the respondent *pendente lite* a nullity. B

Learned counsel for the Respondent, M. J. Onigbanjo Esq. adopted the Brief filed on 10/12/2010 and in it was framed differently but substantially the same as appellant a sole issue, which is as follows:- C

Whether this is an appropriate case for the application of the doctrine of *lis pendens*.

It really does not matter which issue is utilized as they are each the same side of a coin. Arguing the issue learned counsel for the Appellant, Mr. Enitan went into the definition of the expression *lis pendens*. He said that the doctrine was intended to protect the judicial control of an appropriate *res* in litigation between contesting parties from being perniciously taken away by one party disposing of the *res*. That the doctrine operates to prevent the effective transfer of any property in dispute during the pendency of that dispute and it is irrelevant whether the purchaser has notice - actual or constructive. That the principle of *nemo dat quod non habet* will apply to defeat any sale or transfer of such property during the currency of litigation or the pendency of the action. The resultant effect being that the purchaser of real property, the subject matter of litigation during the pendency of such litigation, no effective transfer of any real property in dispute can be made during that pendency. He cited *Fredrick Oluyole Bamgboye v. Abeke Olusoga* (1996) 3 NWLR (Pt.444) 520; *Ebueku v. Anola* (1988) 1 NSCC 592; (1988) 2 NWLR (pt.75) 128; *Alhaji Usman Bua v. Bashiru Dauda* (2003) 13 NWLR (Pt.838) 657. That for the principle of *lis pendens* to apply all the conditions as stated in *Alhaji Usman Bua v. Bashiru Dauda* (2003) 13 NWLR H (Pt.838) 657 will apply. D  
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For the appellant was also contended that any form of alienation of the *res* in litigation pending the determination of the action is an affront on the court's integrity, the right to re-litigate the matter

notwithstanding. That such an alienation as in the instant case is inherently prejudicial to the interest of the other party. That the successful termination of a previous suit is a pre-condition for the applicability of the doctrine of *lis pendens* or that an applicant must show that he or his predecessor-in-title succeeded in a previous suit to claim the benefit of the doctrine of *lis pendens*. Mr. Enitan of counsel said the judgment of the Court below does not reflect the correct application of the true definition and scope of the doctrine of *lis pendens*. Also that the application of the principles of *stare decisis* or judicial precedent does not involve an exercise of judicial discretion at all and the Court below was wrong to depart from the supreme court judgment in *Osajie v. Oyeyinka* (1987) 3 NWLR (pt.59) 144. He cited *Amaechi v INEC* (2008) 5 NWLR (Pt.1080) 227; *Osakwe v Federal College of Education, Asaba* (2010) 10 NWLR (pt. 1201) 1 at 14 - 35; *Yusuf v Dada* (1990) 4 NWLR (Pt.146) 657; *Mohammed v. Olawunmi* (1993) 4 NWLR (Pt.287) 254.

He further contended for the Appellant that the doctrine of *lis pendens* is not founded on the equitable doctrine of notice (actual or constructive) but upon the fact that the law does not allow to litigating parties or give to them, during the pendency of the litigation involving any property, rights in such property which is in dispute. That evidence showed that suit No. LD/226/71 was not struck out until 1985 and it had been pending from 1971 to the 27th of May 1985 when it was struck out. That by the 8th October 1974, the date the Respondent purportedly purchased the land in dispute, the suit was still pending and so the respondent bought nothing and the purported sale null and void. That the reverse would have been the case if the sale of the property to the respondent was done after the suit was struck out. He cited *Ogundiani v Araba* (1978) 6 & 8 Sc 55 at 80; *Olori Motors & Company Ltd v Union Bank of Nigeria Plc* (2006) 6 MJSC 37; *Ikeanyi v ACB Ltd* (1991) 7 NWLR (Pt.205) 626. He stated on that the Defendant/Respondent's predecessor failed, refused or neglected to prove that he had a better title to the land in dispute than the plaintiff/appellant who was sued as a Defendant in Suit NO: LD/326/71 and this failure did not place a burden of proof of successful termination on the appellant. That the doctrine of *lis pendens* is applicable in this instant case and so the alienation to the respondent during the pendency of the previous suit is a nullity and

this court should set aside that alienation. That the alienation to the Respondent during the pendency of the previous suit over reached the appellant and therefore prejudicial to the appellant's interest.

Responding on behalf of the Respondent, Mr. Onigbanjo of counsel said in determining this appeal, this court should take a historical excursion into the fontis origo of the doctrine of *lis pendens*, in order to properly grasp and appreciate the purport, intendment and meaning of the doctrine. He cited *Bellamy v. Sabine* (1857) 26 L. J. (N. S.) Equity Reports 797 at 803; *Barclays Bank of Nigeria Ltd v Ashiru & Ors* (1978) NSCC Vol. II, 35 at 384; *Ogundiani v Araba & Anor* (1978) NSCC Vol. II, 334 at 347. He said the doctrine of *lis pendens* was never intended to operate to nullify the sale of property that is subject of litigation, the third party purchaser, like the respondent in this appeal who acquires the property that is subject of litigation during the pendency of a suit only risks the outcome of the suit and if his predecessor-in-title loses he too loses. He referred to *Ogunsola v NICON* (1991) 4 NWLR (Pt.188) 762 at 771; *Bua v Dauda* (1999) 12 NWLR (pt.629) 59. Mr. Onigbanjo said that for the doctrine of *lis pendens* to apply there must be a successful termination of the action during whose pendency the land in dispute was alienated. That in the case at hand the lack of determination of the pending suit No. LD/326/71 successfully made the doctrine inapplicable. He cited *Bellamy v. Sabine* (supra); *Olatunji v Military Governor of Oyo State* (1995) 5 NWLR (Pt.397) 585 at 604; *Allied Bank (Nig.) Plc v Bravo (West Africa) Ltd* (1995) 3 NWLR (Pt.710) 728; *Network Security Ltd v Dahiru* (2008) All FWLR (Pt.419) 475 at 478 - 479.

For the Respondent was contended that the doctrine of *lis pendens* was not evolved to present alienation pendent lite simpliciter, but to prevent parties from fraudulently seeking to over reach the decision of Courts granting title to the opposing side, on the ground that they had divested the title before the decision of the court was reached, that the bottom line is that pending a litigation, a Defendant cannot by alienation affect the right of the plaintiff to the property in dispute. He referred to *Ajuwon v. Akanni* (1993) NWLR (Pt.316) 182. Learned counsel for the respondent said to grant the appellant's application would be tantamount to permitting the appellant use the law as an instrument of fraud because appellant simply seeks

to bar respondent from challenging his claim to ownership of the land in dispute without having had any previous or prior judgment of court declaring him as the owner. That in view of the circumstance above if the appellant's appeal succeeds he would have ingeniously been declared as the owner of the land in dispute without having  
 B had to prove his ownership in any of the five established ways recognized judicially.

***The long and short of what is asked of this court in this appeal is the applicability or not of the Latin maxim lis pendens to the facts and perhaps to the circumstances of this case. In dealing with the question therefore it must be borne in mind that it is not all cases that the doctrine is applied. This court had in Alhaji Usman Bua v Bashiru Dauda (2003) 13 NWLR (Pt. 838) 657 per Uwaifo JSC reiterated the conditions on which the doctrine of lis pendens would apply. It was stated thus:***  
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***"That it must be shown,***

***(a) That at the time of the sale of the property the suit regarding the dispute about the said property was already***  
 E ***pending. See Bellamy v. Sabine (1857) 26 L. J. (N. S.) Equity Reports 797 at 803;***

***(b) That the action or lis was in respect of real property; it never applies to personal property. See WIGRAM v. BUCKLEY***  
 F ***(1894) 3 Ch. 483 at 492 - 493;***

***(c) That the object of the action was to recover or assert title to a specific real property; that is to say, an action in a subject matter adverse to the owner in respect of some substantive right which is proprietary in nature: see CALGARRY AND EDMONTON HAND CO V. DOBINSON (1974) 1 All ER 484 at 489; and***  
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***(d) That the other party had been served with the originating process in the pending action: see DRESSER UK LTD v. FALCONGALT FREIGHT MANAGEMENT LTD (1992) All ER 450 at 523."***  
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***It must be stated that the four conditions above must co-exist before the doctrine of lis pendens would apply. Another way of saying it is that the absence of any of those conditions would render inapplicable the doctrine. It is that sim-***

**ple.** I refer to *Nsirim v Nsirim* (1995) 9 NWLR (Pt. 418) 144; *Enekwe v. International Merchant Bank of Nigeria Limited* (2006) 19 NWLR (Pt. 1013) 147.

Conceptualizing the *lis pendens* theory within the prevailing circumstances, it is to be recalled as earlier in the rehash of the facts that at the High Court after the completion of pleadings but before trial commenced the appellant as defendant filed an application asking that trial court to dismiss the plaintiff's/respondent's claim for declaration of title on the ground that he defendant/appellant was the one entitled to the Certificate of Occupancy to the land in dispute. That basis for the preliminary objection being that the defendant had acquired the land in dispute during the pendency of an action for title of the same land between the respondent's vendor and the appellant and other persons. The High Court in a considered Ruling delivered on 9/10/98 dismissed the appellant's preliminary objection as without merit and this grieved the appellant who sought relief from the Court below. The Court of Appeal on its part dismissed the appeal on the ground that the doctrine of *lis pendens* did not apply to the case in hand on the ground that respondent could not be prevented from bringing the action because the suit during whose pendency respondent bought the land in dispute had not been successfully terminated and so the alienation of the property while, the said suit was pending did not over-reach or prejudice appellant's right in any way especially so since the said suit could not be said to have been fully or completely terminated as it was only struck out for want of prosecution.

Explaining the purport of this doctrine this court has in *Barclays Bank of Nigeria Ltd v. Ashiru & Ors.* (1978) NSCC Vol. II page 351 at 283 stated:

*"the doctrine of lis pendens prevents the effective transfer of rights in any property which is the subject matter of an action pending in court during the pendency in court of the action. In its application against any purchaser of such property the doctrine is not founded on the equitable doctrine of notice - actual for constructive - but upon the fact that the law does not allow to litigating parties or give to them, during the currency of litigation involving any property rights in such property (i.e. the property in dispute) so as to prejudice any of the litigating parties."*

In *Ogunsola v. NICON* (1991) 4 NWLR (Pt.188) 762 at 771 this Court had held as follows:

*"If a purchaser chooses to purchase a property, subject to litigation, from one of the litigants - during the currency of the litigation, he does so, in my opinion at his own risk and if it turns out that the person from whom he bought has no title or was adjudged at the end of the pending action not to be the owner, he takes as he finds it. Where the defendant alienates during the pendency of a suit, the result of judgment if the plaintiff succeeds will over-reach such alienation, See Wigram v Buckley (1894) 3 CH. 483 at 497."*

**It was in the application of the principles enunciated in the two cases above, that the Court of Appeal per Chukwuma-Eneh JCA (as he then was) had no difficulty in agreeing with the finding and conclusion of the trial court in dismissing the appeal thus affirming the earlier decision of the trial court in refusing to cut abruptly the case of the respondent as Plaintiff. Of similar mind therefore I do not hesitate either in applying the postulated principles in *Barclays Bank of Nigeria v Ashiru & Ors* (supra) and *Ogunsola v NICON* (supra) to say that the interpretation of the doctrine of *lis pendens vis-a-vis* this appeal to bring to a short life-span the suit of the respondent at the trial court stems in my humble view to a misconception since the court according to the doctrine of the appellant would be superimposing into the free will of a party who might want to still make a purchase or a transaction in spite of a pending suit and take a chance upon whatever would be the outcome. Since the person who clearly with eyes open enters into a purchase of land which is encumbered does so at his own risk and he would take the gain if his predecessor-in-title wins or count his losses in the event that the predecessor-in-title losses. Either way it is the choice of the party embarking on a risky transaction and it is not for the Courts to baby sit such a litigant and tell him what he should or should not do with the options open to him and which way the result is thrown up is that litigant's right and no one else's. Stated differently a litigant is entitled to his right to gamble with his options and bear the consequences and it is not the concern of the other party or the court for that matter since if the predecessor-in-title**

***has nothing upon which what he had sold to the purchaser or adventurous litigant that is their business. Also for full measure the possible outcome of the pending suit does not come into the consideration of whether or not the doctrine would apply.***

***In fact it is what the appellant has set out to achieve by this posturing on lis pendens and his understanding of its application that has the capacity to over-reach and with its prejudicial consequences which would enable the appellant steal a march over his opponent without the due conclusion stemming from a hearing and determination of the suit before court. Because granting the appellant what he seeks would be giving through the backdoor, a title over land and divested the other without firing a shot and before the proper decision of the court from full consideration of the materials available.*** See *Ajuwon v Akanni* (1993) NWLR (Pt.316) 182.

In the final analysis therefore, seeing nothing on which to hinge a departure from the well considered decision of the trial Court, affirmed by the Court of Appeal, I too swim along and hold that this appeal lacks merit in the extreme and is dismissed. I affirm the decision of the Court of Appeal in its confirmation of the earlier Ruling of the trial High Court and the orders therefrom. I award N50,000.00 costs to the Respondent to be paid by the Appellant.

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### **MOHAMMED JSC**

The judgment just delivered by my learned brother Peter-Odili JSC was read by me in draft before today. I entirely agree that there is no merit at all in this appeal which deserves to be dismissed. This is because the main issue arising for determination in the appeal is whether or not the principle or the doctrine of lis pendens could operate to defeat the title acquired by the Respondent to the land in dispute. The law is trite that the principle or doctrine applies in respect of title to property and thus when title to property in dispute is the subject matter of litigation, all intending sales must abate pending the outcome of the litigation. See *E.F.P. Co. Ltd. v. N.D.I.C.* (2007) 9 N.W.L.R. (Pt. 1039) 216.

In the present case, there is clear evidence that the pending

case was struck-out and not successfully terminated on the merit. The principle therefore does not apply to the present appeal which must accordingly suffer dismissal. The appeal is dismissed and I abide by the order on costs in the lead judgment.

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***MUNTAKA-COOMASSIE JSC***

I was privileged to read in draft the lead judgment rendered by my learned brother Mary Peter- Odili JSC. For the reasons adduced by my lord in dismissing the appeal, I too, dismiss same there is clear concurrence of the decisions of the two lower courts which are not perverse. I endorse the order as to costs.

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***FABIYI JSC***

I have had a preview of the judgment just delivered by my learned brother - Peter-Odili, J.S.C. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

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The facts of this matter as extant in the record of appeal are clear and not far-fetched. At the trial High court, the respondent who was the plaintiff initiated his writ of summons against the appellant who was the defendant thereat. He claimed declaration of title to a piece of land at Anthony village, Lagos; N100,000:00 (One Hundred Thousand Naira) damages for trespass and an order of perpetual injunction to restrain the defendant. After the exchange of pleadings, the defendant filed a preliminary objection. He maintained that the late E. A. Campbell sold the land in dispute to the plaintiff

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during the pendency of Suit No. LD/326/71 wherein he was one of the defendants and so the plaintiff should not be permitted to maintain the action based on the doctrine of lis pendens. The suit banked upon by the defendant was merely struck out and not concluded on its merit. The High Court dismissed the preliminary objection. The defendant felt aggrieved and appealed to the Court of Appeal. The appeal was heard and after a careful appraisal of same, it was dismissed. The defendant has decided to further appeal to this court. The core issue for determination as couched by the appellant reads as follows:-

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*“Whether in the overall circumstance of the facts of this case, the doctrine of lis pendens enures to the benefit of the appellant so as to make the alienation to the respondent pendente lite a nullity.”*

On behalf of the respondent, the sole issue distilled for the due determination of the appeal reads as follows:-

*“Whether this is an appropriate case for the application of the doctrine of lis pendens.”*

Lis pendens has been simply defined as a pending lawsuit. Jurisdiction, power, or control which courts acquire over property in litigation pending action and until final determination. A notice recorded in the chain of title to real property required or permitted to warn all persons that certain property is the subject matter of litigation and that any interest acquired during the pendency of the suit is subject to its outcome. (Black’s Law Dictionary Ninth Edition Page 1015).

It is now trite that if a purchaser chooses to purchase a property subject of litigation from one of the litigants during the currency of the litigation, he does so at his own risk. If it turns out that the person from whom he bought has no title or was adjudged at the end of the pending action not to be the owner, he takes as he finds it. See: Ogunsola v. Nikon (1991) 4 NWLR (Pt.188) 762 at 771; Bua v. Dauda (1999) 12 NWLR (Pt. 629) 59.

It is basic that before the doctrine of lis pendens can apply there must be a successful termination of the matter during which pendency the sale was effected. This can be inferred from the decision of this court in Barclays Bank Ltd. v. Ashiru & Ors. (1978) NSCC Vol. 11 351; Ogundiani v. Araba & Anor. (1975) NSCC Vol. 11 334. Suit No.LD/326/71 was eventually struck out at the end. As it was not successfully terminated, there was no judgment or decision which the sale pendente lite sought to overreach. Equally, the doctrine of lis pendens evolved in order to prevent parties in a pending suit from alienating the subject matter so as to prejudice the opposite party. In this matter the doctrine does not enure to the benefit of the appellant as no prejudice was suffered by him. The respondent who bought property during the pendency of the sale was voidable depending on the outcome of the litigation. It was not void ab initio as contended on behalf of the appellant. The fact that the suit was merely struck out clinched all negative arguments advanced on behalf of the

appellant. The court below was on a firm stand in affirming the overruling of the appellant's preliminary objection by the trial court.

For the above reasons and the fuller ones set out in the lead judgment, I too hereby affirm the decision of the Court of Appeal. I come to the conclusion that the appeal lacks merit and it is hereby dismissed. I abide by all consequential orders in the lead judgment; that relating to costs inclusive.

### ***RHODES-VIVOUR JSC***

The respondent (as plaintiff) filed on action in the Lagos High Court against the appellant (as defendant). His claim as endorsed on the Writ of Summons was for:

(1) A declaration that the plaintiff is the person entitled to the right of occupancy over a piece of land situate lying and being at Opeifa crescent, Anthony Village, Lagos state, more particularly described and delineated in the plan attached to the certificate of occupancy No. 7/7/1991 AM of 28/9/91 registered as No. 7 at page 1 in volume 1991 AM of the Lagos state of Nigeria Land Registry, Ikeja, Lagos.

(2) N100,000.00 (One Hundred Thousand Naira Only) damages for trespass committed on the said land by the Defendant, his servants, agents and privies.

(3) Perpetual injunction restraining the Defendant, his servants, agents or privies from committing further acts of trespass on the said land.

Pleadings were filed and exchanged, Thereafter the defendant filed a Preliminary objection, According to the defendant, the late E. A. Campbell sold the land in dispute to the plaintiff during the pendency of suit No. LD/326/71 (in which he the defendant was one of the defendants) and so the plaintiff should not be allowed/permitted to maintain this action in view of the doctrine of Lis pendens. The High Court dismissed the preliminary objection. The Court of Appeal agreed with the High Court. The simple issue for consideration is:

Whether the doctrine of Lis pendens enures in favour of the defendant so as to defeat the plaintiff's claim.

I shall have course in this judgment to refer to the following

Latin expressions which are accepted and applicable in our laws and practice. It is therefore appropriate that I explain them.

1. Lis pendens means pending suit or action.
2. Pendente lite means while the suit is pending
3. Nemo dat quod non habet means nobody gives what he does not have. B
4. Status quo ante bellum means the state of affairs existing before the case was filed.

The doctrine of Lis pendens was explained in *Bellamy v. Sabine* 1857 LJ (N.S) Equity Reports p. 797 and applied in our courts when the need arises. To mention a few cases, See *Barclays Bank of Nig Ltd v. Ashiru & ors* 1978 Vol. II NSCC p.351, *Ogunsola v. NICON* 1991 4 NWLR pt.188 p.762. C

It is explained thus, when a suit is pending in court where for example ownership of land is in issue, the Parties are required to maintain the status quo ante bellum. If a party to the suit alienates/sells the land pendente lite the doctrine of lis pendens operates to prevent the effective transfer of rights in the land to a third party. If the defendant alienates/sells the land pendent lite, and eventually the plaintiff wins the case, the result of the judgment will overreach such alienation. Any purchaser of property during the pendency of a suit wherein ownership of the property is in issue must await the outcome of the suit, for the doctrine of Lis pendens to apply the suit which alienation of the land as made pendente lite must be concluded on the merits. Furthermore it is immaterial if the third party purchaser had notice, actual or constructive before he brought the property, and the doctrine applies only to real property. E  
F

My lords notwithstanding the fact that the plaintiff/respondent bought the land pendente lite he is not caught by the doctrine of lis pendens because suit No. LD/326/71 was never concluded. It was struck out. G

For this and the more detailed reasons given by my learned brother, Odili, JSC I would dismiss this appeal with costs of N50,000.00 to the respondent. H