

SUPREME COURT OF NIGERIA
FRIDAY 22ND FEBRUARY, 2013. SC. 137/2003
CORAM:- I. T. MUHAMMAD, J. A. FABIYI,
M. U. PETER-ODILI, O. ARIWOOLA,
K. B. AKA'AH, JJSC

ADIELE IHUNWO APPELLANTS
AND
JOHNSON IHUNWO & ORS RESPONDENTS

LAND LAW - Pledge - Courts - Findings - C.A. was right by holding that - Trial Judge specifically found that - The transactions in exhibit B is a pledge (H1)

LAND LAW - Pledge - Proof - Onus is on plaintiff to prove the existence of type of pledge - To which he owes title of the land he claims (H2)

APPEALS - Hearing - Appeals are by way of rehearing - And appellate court should reconsider materials before trial court - And may overrule where the decision is wrong (H3)

LAND LAW - Arbitration - Binding effect of - Since appellant participated in the arbitration - He is bound by the award as contained in exhibit G (H4)

FACTS

Plaintiff/appellant was put into possession of the disputed land by virtue of pledge made between appellant and respondents' family (who desperately needed some money to offset some bills). Disagreement subsequently arose between the parties as regards the redemption of the land. Hence, appellant instituted this action appellant at the High Court of Rivers State claiming inter alia, declaration of title, damages for trespass and order for perpetual injunction against respondents. Appellant tendered exhibit B as the document evidencing the transaction.

Both parties agreed that the transaction was a pledge. However, they disagreed with the nature of the pledge. Whereas appel-

lant claimed that by virtue of Ikwerre customs and tradition, the transaction was an irredeemable pledge. Respondents insisted that the pledge could be redeemed at anytime. At the end of hearing, the court found that appellant was unable to establish his claim for title and that respondents still retain the right to repossess the land. Appellant's claim was dismissed with cost. Not satisfied, appellant filed appeal at the Court of Appeal Port Harcourt. The court dismissed the appeal. Hence, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Was the Court of Appeal right when it held that the learned trial Judge made a specific finding to the effect that the transaction contained in Exhibit "B" is a pledge? 2. Was the Court of Appeal right when it came to the conclusion that the transaction evidenced by Exhibit "B" was not an irredeemable pledge under Ikwerre custom?

3. Was the Court of Appeal right when it held that although the learned trial Judge had failed to consider the issue of customary arbitration as evidenced in Exhibit G, the said arbitration award was binding on the Appellant?

4. Was the Court of Appeal right when it failed to resolve issue No. 2 duly formulated in the Appeal by the Appellant, if not, was the Appellant not entitled to Judgment?

HELD (Unanimously dismissing the appeal per

ARIWOOLA JSC)

LAND LAW - Pledge - Courts - Findings

1. In the Judgment of the Court below per Akpiroroh, JCA on this point the Court held as follows:

"It is my view that the interpretation given to Exhibit B by the learned trial Judge that the transaction contained in it is a pledge cannot be faulted and as such the submission of learned senior Counsel for the Appellant that the learned trial Judge did not make specific findings as to the nature and effect of Exhibit B is clearly misplaced because he carefully and dispassionately considered the nature and its effect. Although inelegantly drafted but in its face are words like "give" and not

“sale” which clearly indicates that the transaction was for borrowing money with intention to repay and not an irredeemable pledge or a conditional sale. Besides, the Appellant did not plead conditional sale in his Statement of Claim.”

From the aforesaid, it is clear that the Court below was right in the above holding that the trial Judge made specific findings to the effect that the transaction contained in Exhibit B is a pledge. This issue is accordingly resolved against the Appellant.

There is no doubt, the Appellant had hinged his claim for declaration of title on Exhibit B which the trial Court had interpreted to establish a pledge but certainly not an irredeemable pledge. Otherwise, the document will not provide for someone else who may provide the E20 in refund, to again hold the land for the family. This led the trial Judge to come to the conclusion that the Appellant failed to establish his claim for a declaration of title to the land in dispute via Exhibit B. There is therefore nothing perverse in the way the trial Judge evaluated the evidence adduced by the Appellant upon which the Court below arrived at the conclusion that the transaction evidenced by Exhibit B was not an irredeemable pledge under the Ikwerre custom. The Court below was right to have so held. In otherwords, there is no perversity and no miscarriage of justice has been occasioned. This issue is resolved against the appellant. (pp. 414 C/418 B)

LAND LAW - Pledge - Proof

2. It is noteworthy that the trial Court had earlier observed and rightly too, that “the onus is clearly on the plaintiff, this being a land case involving a declaration of title to land, to prove the existence of the type of pledge to which he owes the title of the land he claims. In discharging the onus, the plaintiff must rely on the strength of his case.” (p. 417 B)

APPEALS - Hearing

3. It has been held and it is trite law that “appeals to appellate courts are by way of rehearing. In hearing an appeal, the appellate court should reconsider the materials before the trial

Court and should not hesitate to overrule his decision even on facts where, after giving due regards to the advantage which the trial Court has of seeing the witness, it is clear the decision is wrong. (p. 419 C)

B *LAND LAW - Arbitration - Binding effect of*

4. There is no doubt, there was an arbitration on the dispute over the land in dispute between the Appellant and the Respondents. The Appellant was not only involved but attended the arbitration. Exhibit G emanated from the arbitration and was before the trial Court.

Upon consideration of Exhibit G on Appeal, the Court below held as follows:-

D *“The legal basis of all arbitrations is voluntary agreement. If there is a distinct agreement to appoint an umpire to determine the difference between the parties and other conditions are present there is an arbitration. Thus, voluntary submission of both parties of their cases or points of difference between them for arbitration is basic to a binding arbitration.”*

E *From the above, I have no hesitation in coming to the conclusion that the Court below properly considered Exhibit G which was before the Court. The Court below was therefore right to have held that the Appellant was bound by the award of the arbitration as contained in Exhibit G. This issue is resolved against the Appellant.* (p. 419 D)

REPRESENTATION

E.C. Ukala, SAN with M.S. Agwu Esq., for the Appellant

G O.C.J. Okocha, SAN, A. Kalu SAN with E. Ani Esq., A. K. Kamenebahi (Ms), for the Respondents

NOTABLE POINTS OF INTEREST

ARIWOOLA JSC

H **1. Land law – Meaning of pledge**

One may then ask, what does it mean to pledge? This means “a formal promise or undertaking”. The act of providing something as security for a debt or obligation. A pledge is something more than a

mere lien and something less than a mortgage.”

The pledge is said to be as old as recorded history and is still in use. In this transaction the debtor borrows money by physically transferring to a secured party the possession of the property to be used as security, and the property will be returned if the debt is repaid. A pledgee is one with whom a pledge is deposited while a pledgor is one who gives a pledge. (p. 413 H)

AKA’AHS JSC

2. Court must give effect to the intention of a contract

The meaning to be placed on a contract is that which is the plain, clear and obvious result of the terms used in the agreement. When constructing document in dispute between the parties, the proper course is to discover the intention or contemplation of the parties and not to import into the contract ideas not potent on the face of the document. Where there is a contract regulating any arrangement between the parties, the main duty of the court is to interpret the contract to give effect to the wishes of the parties as expressed in the contract document. In the construction of documents, the question is not what the parties to the document may have intended to do by entering into that document, but what is the meaning of the words used in the document. However, where the meaning of words used is not clear, the court will fall back on the intention behind the words. Above all, it is not the function of a court of law to make agreements for parties or to change their agreement as made. (p. 431 B)

CASES REFERRED TO

- Okhwarobo v. Aigbe (2002) 9 NWLR (pt. 771) 29
- Oladele v. Anibi (1998) 75 SCNJ 24
- Adeleke v. Asani (2002) 8 NWLR (pt. 768) 26
- Princen v. State (2002) 18 NWLR (pt. 798) 49
- Okhwarobo v. Aigbe (2002) 13 SCMR 105
- Kodilinye V. Mbanefo Odu (1935) 2 WACA 336
- Okpala V. Ibeme (1989) NWLR (pt. 102) 208
- Atuanyua V. Onyejekwe (1975) 3 SC 115
- Ohiaeri V. Akabeze (1992) 2 NWLR (pt. 221) 1
- Agu V. Ikewibe (1991) 3 NWLR (pt. 180) 408
- Nwosu V. Nwosu (1996) 2 NWLR (pt. 428) 64

Titiloye V. Olupo (1991) 7 NWLR (pt. 205) 519
 Melifonwu v. Egbuji (1982) 9 SC 145
 Taiwo v. Dosunmu (1965) 1 All NLR 399
 Bayol V. Ahemba (1999) 10 NWLR (pt. 623) 381

B BOOK REFERRED TO

Black's Law Dictionary 9th Ed. p. 1272

LEAD JUDGMENT BY ARIWOOLA JSC

C This is an Appeal against the unanimous decision of the Court of Appeal; Port Harcourt Division (herein after called Court below) delivered on 11th day of December, 2002.

Before the trial Court, the Appellant as Plaintiff had commenced an action by Writ of Summons against the Respondents as Defendants for themselves and as representatives of the Rumuwele family of Remuokwurushe. By the endorsement on the said Writ of Summons, the Appellant had claimed as follows:

E “1(i) A declaration that under the Ikwerre native law and custom, the Plaintiff is entitled absolutely to the land known and called “RUGBURUASASAH LAND” situate at the area commonly referred to as Mile 12 along the Port Harcourt-Aba Road, Port Harcourt.

(ii) A declaration that the Plaintiff is the holder of the statutory right of occupancy over the said land.

F 2. The sum of N3, 000,000.00 (Three Million Naira) being damages for trespass committed by the Defendants on the said land.

G 3. An order of perpetual Injunction restraining the Defendants by themselves or their servants, agents, privies and associates from continuing to trespass on the said land or in any manner whatsoever asserting any claim or rights over the said land or disturbing in any manner or form the Plaintiff's full or partial exercise of his rights or powers of ownership and or possession over the said land.”

H Pleadings were filed and duly exchanged by the parties and the case went to trial. Parties called their respective witnesses in support of their case. The gist of the case is as follows:

Sometimes in 1951, the Rumuwele family upon a transaction between the Appellant and the family, the Appellant was put into possession of the land in dispute in exchange for the E20 (Twenty pounds) desperately needed by the family. According to the Appel-

lant, the document evidencing the transaction was received in evidence and marked Exhibit B. The parties agreed that the transaction was a pledge. The only point of disagreement between the parties was in relation to the nature of the pledge. While the Appellant claimed that under the Ikwerre custom and tradition, the same was an irredeemable pledge, the Respondents having failed to redeem within the customarily recognised redeemable period of three (3) years, the Respondent denied that the pledge was irredeemable. The Respondents insisted that the pledge could be redeemed at anytime. Indeed, the Respondents stood on the principle of “once a pledge, always a pledge”. In other words, the theory of an irredeemable pledge was out rightly debunked and the plank of the defence therefore rested on the fact that at all time material, the relationship between the parties over the land in dispute was nothing beyond pledgor and pledgee.

At the end of the trial, the trial Judge found that the Appellant failed to establish his claim for a declaration of title. Indeed, that the Respondents’ family had not divested its interest in the land in dispute and consequently has a right to possession of the land. The court dismissed the Appellant’s claim with costs. That led to the Appeal to the Court below which found the Appeal lacking in merit, dismissed same and affirmed the decision of the trial Court. The appellant further appealed to this Court by his Notice of Appeal filed on 7th March, 2003 containing five (5) Grounds of Appeal.

Pursuant to the rules of this Court, parties filed and exchanged Briefs of Argument. In the Appellant’s Brief of Argument, the following issues were formulated for determination by this Court. Issues for Determination:

1. Was the Court of Appeal right when it held that the learned trial Judge made a specific finding to the effect that the transaction contained in Exhibit “B” is a pledge? (Ground 1).

2. Was the Court of Appeal right when it came to the conclusion that the transaction evidenced by Exhibit “B” was not an irredeemable pledge under Ikwerre custom? (Grounds 2 and 5).

3. Was the Court of Appeal right when it held that although the learned trial Judge had failed to consider the issue of customary arbitration as evidenced in Exhibit G, the said arbitration award was binding on the Appellant? (Ground 3).

4. Was the Court of Appeal right when it failed to resolve issue No. 2 duly formulated in the Appeal by the Appellant, if not, was the Appellant not entitled to Judgment? (Ground 4).

In their Brief of Argument filed on 15th December, 2006 but deemed filed and served on 16th May, 2007, the Respondents adopted the four issues distilled by the Appellant in his Brief of Argument for determination, and based their argument on those issues. The Appellant in his Brief of Argument argued the said issues serially.

C Issues No. 1 -

The Appellant gave the background to the complaint which gave rise to this issue as contained in Appellant's additional Ground A at the Court below and yet another Ground 4 as argued on page 199 of the printed record of appeal. It was argued at the Court below that the learned trial Judge failed to make a specific finding as to the nature of Exhibit "B" and concluded there that the failure led to a wrong conclusion. It was contended that the attention of the Court of Appeal was drawn to the conclusion of the trial Judge at page 161 of the record wherein the learned trial Judge said;

E *"That being the case, even assuming that the land in dispute here is pledged land, which is not the case."*

And on page 163 of the record, lines 16 and 17, wherein the trial Judge on the question of conditional sale of the land in dispute states as follows:

F *"I therefore cannot accept that there was a conditional sale of the land to the Plaintiff."*

Learned Counsel to the Appellant contended that from the above, it is clear that the learned trial Judge was of the view that the transaction in Exhibit "B" was neither a pledge nor a conditional sale. And that the learned trial Judge did not proceed to determine the kind of transaction that Exhibit B represented. It was contended that in the entire judgment there was nowhere the learned trial Judge held positively or even by inference that Exhibit 'B' was a pledge.

H Learned Appellant's Counsel felt that the Court below ignored the conclusion of the trial Judge that the transaction in Exhibit 'B' neither represents a pledge nor a conditional sale, but held at page 277 as follows:

"that the interpretation given to Exhibit "B" by the learned trial

Judge that the transaction contained in it is a pledge cannot be faulted."

Learned Counsel submitted that, that conclusion of the Court below in that regard is not borne out of the record, it is faulty and perverse. He stated further that the Court below proceeded on a false premise when it held that it was the finding of the learned trial Judge that the transaction in Exhibits "B" was a pledge, leading to a wrong conclusion by the Court below which, he further submitted occasioned a miscarriage of justice. He urged the Court to set aside the findings of the Court of Appeal in this regard and resolve the issue in favour of the Appellant.

On this Issue No. 1, the Respondents referred to the judgment of the trial Court, in particular, on pages 151 - 160 of the record, and contended that trial Judge upon making a finding that the type of pledge pleaded by the Appellant had not been proved turned his attention to the second issue raised which he considered germane namely;

"Whether it is the custom of the Ikwerre that a pledged land which falls into litigation must be defended by the pledgor and if not defended by such pledgor, a pledgee who singularly defends the land become the absolute owner thereof"

On the above, reference was made to the holding of the trial Judge in lines 19-31 of page 160 of the record from which it held as follows:-

"That being the case, even assuming that the land in dispute here is pledged land, which is not the case, the defendants cannot lose their title over it, because they failed to defend it as there cannot be a duty to defend a land that does not belong to them as I earlier stated."

Learned Respondents' Counsel contended that the Appellant's argument on the reasoning of the trial Judge on this issue, in particular, as above, was misguided. He submitted that reference to "the land in dispute" as quoted was to the land referred to in Exhibit D in the Customary Court but not the land, the subject of this appeal. He contended that as shown on the records, the trial Judge emphatically rejected the account of the Appellant indicating either an irredeemable pledge or conditional sale. But that the Judge accepted that there was a transaction between the parties involving the exchange

of money for a temporary possession of the land in dispute. The learned Respondents' Counsel submitted that both the trial Court and the Court below knew that the transaction between the parties was nothing more than a pledge. He urged the Court not to disturb the concurrent findings of the two Courts as the allegation of perversity cannot be sustained by the printed records. He relied on *Okhuarobo V. Aigbe* (2002) 9 NWLR (pt. 771) 29. He urged the Court to resolve the issue against the Appellant but in favour of the Respondents.

C On this issue No. 1, "whether the Court of Appeal was right when it held that the learned trial Judge made a specific finding to the effect that the transaction contained in Exhibit B is a pledge", it is apposite to state what the trial Judge found and said in his judgment on this point. To begin the consideration of the case after having referred to the evidence adduced by both parties and submissions of their Counsel, the trial Judge opined thus:

E *"A consideration of this case largely depends on the question of pledge of land under the native law and custom of Ikwerre. I do not think however that this means that the Court should go into a consideration of the various forms of pledge available under Ikwerre native law and custom. To go into such a consideration... will be to indulge in an academic exercise. A Court case is about real problems between parties. It does provide a forum for academic discussions no matter how attractive or titillating such discussions might be."*

F The learned trial Judge went further to state the task the Court was faced with in the instant case as follows:

G *"In this case, all the Court needs concern itself with is a consideration of the particular type of pledge which the Plaintiff contends is in operation in relation to the land in dispute in this case, not a general consideration of types of pledges available in Ikwerre land. Indeed, one type of pledge has been ruled out of dispute in this case as both parties recognize that type of pledge. That is the type of pledge redeemable at any time."*

H After having considered the evidence adduced and the applicable law and case laws on this point, the trial Judge held as follows:

"In this case the plaintiff pleaded the fact that the type of pledge applicable in this case has a feature in it which gives a pledgor a concessional period of three years to redeem the pledge. The evi-

dence led presents facts as different as the number of people stating them. The end result is that the facts led in evidence do not support the fact asserted in the pleadings. I hold therefore that, the form of pledge pleaded in paragraph 12(iii) of the Statement of Claim has not been proved to exist by the evidence led. Consequently, I do not accept that the form of pledge described in the pleading aforesaid^B has been established as existing among the Ikwerre people, particularly of the Rumukwurushe stock.”

There is no doubt that the Appellant predicated his case on Exhibit ‘B’ which was described as the agreement between the Appellant and the Respondent’s family. After reproducing the said Exhibit B and examined same, the trial Judge came to the following conclusion:

“The Agreement Exhibit B discloses the following:

1. It is between Solomon Opara and Adiele Ihunwo.^D
2. It acknowledges receipt of E20 in exchange for a promise (sic) of land which was given to Solomon Opara by Josiah Okampa and Ogo Ihunwo.
3. The land is given to Adiele Ihunwo in place of his E20.
4. The fee is to be returned to Adiele Ihunwo between January to March of an unspecified year.
5. If the money is not returned between January and March, Adiele Ihunwo is to find someone who will bring the ‘8020 and who will hold the land.
6. The person who will hold the land should be introduced to Solomon, Josiah Okampa, Ogo Ihunwo and others.”^F

From the above from Exhibit B, the trial Judge held as follows:

“My understanding of the agreement is that the family gave a piece of land to the Plaintiff in exchange of E20 which E20 pounds G was to be refunded to the Plaintiff by a given time though not particularly stated. If the family cannot give the Plaintiff the E20 within the time given, then the Plaintiff was to look for someone who can hold the land and get his money from such a man, provided he introduces the man who will now hold the land to (sic) the family.”^H

One may then ask, what does it mean to pledge? This means “a formal promise or undertaking”. The act of providing something as security for a debt or obligation. A pledge is something more than a mere lien and something less than a mortgage.”

The pledge is said to be as old as recorded history and is still in use. In this transaction the debtor borrows money by physically transferring to a secured party the possession of the property to be used as security, and the property will be returned if the debt is repaid. See Black's Law Dictionary Ninth Edition page 1272. A pledgee is one with whom a pledge is deposited while a pledgor is one who gives a pledge.

From the findings of the trial Court and the conclusion arrived thereat, it is clear that the trial Judge found that the transaction between the Appellant and the Respondents evidenced by Exhibit B is a pledge though not irredeemable.

In the Judgment of the Court below per Akpiroroh, JCA on this point the Court held as follows:

"It is my view that the interpretation given to Exhibit B by the learned trial Judge that the transaction contained in it is a pledge cannot be faulted and as such the submission of learned senior Counsel for the Appellant that the learned trial Judge did not make specific findings as to the nature and effect of Exhibit B is clearly misplaced because he carefully and dispassionately considered the nature and its effect. Although inelegantly drafted but in its face are words like "give" and not "sale" which clearly indicates that the transaction was for borrowing money with intention to repay and not an irredeemable pledge or a conditional sale. Besides, the Appellant did not plead conditional sale in his Statement of Claim."

From the aforesaid, it is clear that the Court below was right in the above holding that the trial Judge made specific findings to the effect that the transaction contained in Exhibit B is a pledge. This issue is accordingly resolved against the Appellant.

Issue No. 2

This is, whether the Court of Appeal was right when it came to the conclusion that the transaction evidenced by Exhibit B was not an irredeemable pledge under the Ikwerre custom. In arguing this issue, the learned Senior Counsel to the Appellant conceded that the conclusion of the Court of Appeal to the effect that the transaction in Exhibit B is not an irredeemable pledge appeared to constitute a concurrent finding of fact against the background of the finding of

the learned trial Judge to the effect that the Plaintiff/Appellant could not establish that the transaction in Exhibit B was an irredeemable pledge or that such a pledge indeed existed under the Ikwerre custom.

Learned Senior Counsel however, notwithstanding submitted that this Court is entitled to set aside such a finding where there is substantial error which is apparent on the record, where the findings are not supported by sufficient evidence or where the findings are shown to be perverse. This Court will also interfere with concurrent finding of fact where there is some miscarriage of justice or a violation of any principle of law. He relied on the following cases: Oladele V. Anibi (1998) 75 SCNJ 24 at 29 Adeleke V. Asani (2002) 8 NWLR (Pt.768) 26 at 43, Princent V. State (2002) 18 NWLR (Pt.798) 49 at 76.

Learned senior Counsel referred to the complaint of the Appellant at the Court below that the finding of the learned trial Judge on the question of the nature of the transaction in issue, whether it was an irredeemable pledge or not, was perverse. He contended that the trial Judge was in error in his perception of the evidence of PW.1. He referred to the amendment to the record on the testimony of PW1 on the custom of Ikwerre on this issue and the perception of the trial Judge. He submitted that the evidence as perceived by the learned trial Judge did not reflect the evidence of PW1, which he contended confirmed the case as pleaded by the Plaintiff in paragraph 12 (iii) that a concessionary period of 3 years could be allowed to the pledgor after he has failed to redeem the land within the specified period. It was submitted that the finding of the learned trial Judge that was based on an incorrect record of evidence was perverse. That his conclusion was not supported by evidence and this led to a grave miscarriage of justice.

Learned senior Counsel contended that notwithstanding the clearly articulated point in the Appellant's Brief of Argument before the Court below, they just glossed over it. He contended further that the Court below merely held that the Appellant did not show that the findings of the learned trial Judge were perverse and led to a miscarriage of justice. He urged the Court to hold that the approach and conclusion of the Court of Appeal was erroneous.

The Appellant referred to the pleadings, in particular, para-

graph 12 (iii) of the Statement of Claim and the evidence of PW1, PW3 and PW5. He contended that while the evidence of PW3 portrayed the necessity of a maximum period of 3 years as the period of grace before which the vested right of ownership in the pledge would concretize into an absolute title, the learned trial Judge perceived the evidence of PW3 as portraying a mere option. He said that this led the trial Judge into the conclusion that the evidence of PW3 was at variance with the pleadings. Learned Senior Counsel submitted that this finding of the learned trial Judge was equally perverse. He urged the Court to hold that the findings of the learned trial Judge in respect of the evidence of PW1, PW3 and PW5 was perverse and cannot be sustained. He urged the Court to set aside the said conclusion of the Court below.

Learned Senior Counsel submitted that the Court below not having had the opportunity of observing the witnesses testify, was not in an appropriate position to ascribe credibility to any of the witnesses and was accordingly not in a position to reach a conclusion on the issue of the custom of Ikwerre people in respect of the irredeemable type of pledge as pleaded by the Appellant. He urged the Court to remit the case to another Judge of the High Court of Rivers State to hear and determine the matter. He urged the court to resolve the issue in favour of the Appellant.

On this issue, the Appellant has urged the Court to set aside the concurrent findings of fact by the two Courts below because, as he put it, they were perverse. In *Moses Okhuarobo & Ors. V. Chief Aigbe* (2002) 13 SCMR 105 at 133, this Court, per Ayoola, JSC, opined that-

"It is not only when there is no evidence to support a decision that the decision can be held perverse. Absence of proper evaluation of evidence and failure to draw appropriate inference from them can also amount to perversity where the inference is so clear that no reasonable tribunal would fail to draw them or where the inference drawn by the trial Judge does not follow from the evidence or the conclusions that should reasonably follow from the finding of fact he made."

From the above, can it then be said that the finding of the Courts below that the transaction between the parties was not an irredeemable pledge is perverse? For instance, at page 275 of the

record, the Court of Appeal noted as follows;

“The only life and vital issue that calls for consideration in this Appeal is whether the transaction between the Appellant and the Respondents as evidenced by Exhibit B was an irredeemable pledge or a conditional sale of the land in dispute by the Respondents to the Appellant.” B

The Court then interpreted Exhibit B and came to the conclusion that it did not represent an irredeemable pledge and did not transfer the land in dispute via a conditional sale.

It is noteworthy that the trial Court had earlier observed and rightly too, that “the onus is clearly on the plaintiff, this being a land case involving a declaration of title to land, to prove the existence of the type of pledge to which he owes the title of the land he claims. In discharging the onus, the plaintiff must rely on the strength of his case.” See Kodilinye V. D Mbanefo Odu (1935) 2 WACA 336; Okpala V. Ibeme (1989) NWLR (pt.102) 208; Atuanya V. Onyejekwe (1975) 3 SC 115.

It is interesting to note that the Appellant had argued that the trial judge had not carried out proper evaluation of the evidence adduced by the Appellant through his witnesses, to the effect that Exhibit B which created the pledge between the parties made it an irredeemable pledge upon the Respondents’ failure to pay back the E20 after the expiration of the time created by it. The month of March, 1952 was contended to be the time limit after which the land would become Appellant’s own absolutely. At this stage, it is necessary to know how the terms of the transactions were couched in Exhibit B. With reference to the time the Respondents were expected to pay back the E20 to the Appellant, the 3rd paragraph of Exhibit B, states, inter-alia, as follows: F

“This money E20 should be returned from January to March, if failed to bring this money E20 at the mentioned time from January to March, let Adiele find one who will bring this E20 and hold this land. When given out the land to the man, let him bring the man in the presence of Solomon, Josiah Okpampa Ogo Ihunwo and other.” G H

I had stated earlier the way the trial Judge understood the above transaction. When the trial Judge married the agreement with the oral testimony of the Appellant’s witnesses on the type of pledge the parties believed they were entering, the Court came to the fol-

lowing conclusion:

“Quite obviously, there is no intention to sell the land to the Plaintiff even conditionally. The family had no intention to divest itself of ownership of the land. I therefore cannot accept that there was a conditional sale of the land to the Plaintiff”

B There is no doubt, the Appellant had hinged his claim for declaration of title on Exhibit B which the trial Court had interpreted to establish a pledge but certainly not an irredeemable pledge. Otherwise, the document will not provide for someone else who may provide the E20 in refund, to again
C hold the land for the family. This led the trial Judge to come to the conclusion that the Appellant failed to establish his claim for a declaration of title to the land in dispute via Exhibit B. There is therefore nothing perverse in the way the trial Judge
D evaluated the evidence adduced by the Appellant upon which the Court below arrived at the conclusion that the transaction evidenced by Exhibit B was not an irredeemable pledge under the Ikwerre custom. The Court below was right to have so held. In otherwords, there is no perversity and no miscarriage
E of justice has been occasioned. This issue is resolved against the appellant.

Issue No.3 -

F The Appellant referred to page 278 of the record and contended that the Court below held that although the customary arbitration evidenced in Exhibit G was not considered or ruled upon by the trial Judge that the same was binding on the Appellant as all the conditions of a customary arbitration were duly satisfied. However,
G learned Appellant Senior Counsel argued that the case of the appellant was that he was not satisfied with the manner in which the arbitration was conducted and that he consequently rejected the result. He submitted that in the face of the evidence, the Court below was in error when it held that all the conditions necessary for a customary arbitration award to become binding were satisfied.

H Learned Appellant's Senior Counsel contended that one prominent condition necessary for a customary arbitration award to become binding is that the person putting forward the award must establish that the decision or award was accepted by the parties to the arbitration. He relied on *Ohiaeri V. Akabeze* (1992) 2 NWLR (Pt.

221) 1 at 24, Agu V. Ikewibe (1991) 3 NWLR (pt. 180) 408; Nwosu V. Nwosu (1996) 2 NWLR (pt. 428) 64 at 75.

Learned Senior Counsel contended that there was no evidence before the trial Court to show that the Appellant accepted the arbitration award. To the contrary, he said, the evidence before the Court was that the Appellant rejected the award and refused to accept it. B He submitted that the Court below had no basis whatsoever to have come to the conclusion that all conditions for a binding award had been established in respect of Exhibit G and that same was binding on the Appellant. He urged the Court to resolve the issue in favour C of the Appellant.

It has been held and it is trite law that “appeals to appellate courts are by way of rehearing. In hearing an appeal, the appellate court should reconsider the materials before the trial Court and should not hesitate to overrule his decision even on facts where, after giving due regards to the advantage which the trial Court has of seeing the witness, it is clear the decision is wrong. See; Okhwarobo & Ors V. Aigbe (supra).

There is no doubt, there was an arbitration on the dispute over the land in dispute between the Appellant and the Respondents. The Appellant was not only involved but attended the arbitration. Exhibit G emanated from the arbitration and was before the trial Court.

Upon consideration of Exhibit G on Appeal, the Court below held as follows:-

“The legal basis of all arbitrations is voluntary agreement. If there is a distinct agreement to appoint an umpire to determine the difference between the parties and other conditions are present there is an arbitration. Thus, voluntary submission of both parties of their cases or points of difference between them for arbitration is basic to a binding arbitration.”

From the above, I have no hesitation in coming to the conclusion that the Court below properly considered Exhibit G which was before the Court. The Court below was therefore right to have held that the Appellant was bound by the award of the arbitration as contained in Exhibit G. This issue is resolved against the Appellant.

Was the Court of Appeal right when it failed to resolve Issue No.2 duly formulated in the Appeal by the Appellant if not, was the Appellant not entitled to judgment?

The Appellant referred to his Issue No.2 which he formulated in his Brief of Argument before the Court below as follows:

B *“Whether the Plaintiff was not entitled to judgment in respect of the pledged land, learned trial Judge having found that the custom of Rumukwurushe (the custom applicable to the case) is that the pledgor has duty to defend the pledged land when the same falls into litigation, failing which the pledged land vests in the pledgee who defends the same.”*

D The Appellant contended that this issue no. 2 was exhaustively argued in his Appellant’s Brief of Argument before the Court below which issue was distilled from Ground 5 of the Grounds of Appeal which itself was founded on the decision of the trial Court on that particular custom. Indeed, on this issue the trial Court had opined as follows:

E *“From the evidence of the Plaintiff’s witnesses buttressed by the evidence of DW1 under cross-examination, it is clear and I hold that there is an Ikwerre custom applicable to Rumukwurushe which requires that a pledgor of land must defend the pledged land where the land falls into litigation and if the pledgor does not do so, the pledged land vests in the pledgee who defends the land.”*

F Learned Senior Counsel to the Appellant contended that the above decision of the trial Judge upheld the case of the Plaintiff as he pleaded in paragraph 13 of the Statement of Claim, a holding that was sufficient to have sustained the Plaintiff’s claim to title over the pledged land without more. He however further contended that the G Court below failed to resolve this issue. He submitted that the failure to resolve the issue made the Court below fall in error and that has led to a miscarriage of justice. He relied on, Titiloye V. Olupo (1991) 7 NWLR (pt 205) 519 at 535, Ifeanyi Chukwu (OSONDU) Ltd. V. Soleh Boney Ltd. (2000) 5 NWLR (pt 656) 322 at 352, Bayol V. H Ahemba (1999) 10 NWLR (pt 623) 381 at 393.

Learned Senior Counsel further contended that in such a situation this Court will usually exercise an option between remitting the case to the Court below for a rehearing or where appropriate, dealing with the case itself in order to resolve the issue especially where it

does not involve matters bothering on credibility of witnesses or where the issue is one of law. He cited *Global Trans Oceanico S.A. V. Free Enterprises (Nig.) Limited* (2001) 5 NWLR (pt 706) 426 at 442. He submitted that this is an appropriate case for this Court to deal with issue no 2 as formulated at the Court of Appeal and resolve same.

Learned Senior Counsel submitted further that from the documentary evidence contained in Exhibit D, it is clear that the land in litigation in the Exhibit was part of the land subject-matter of the pledge. He urged the Court to hold that applying the custom as found by the learned trial Judge to the pledge in this case, the Respondents' family had a duty to join as a defendant in suit No. 190/63 - Exhibit D to defend part of the pledged land which was under litigation and that having failed to do so, whatever title, if any, left in them in respect of the entire pledged land vested absolutely in the Appellant. He urged that judgment be entered in favour of the Appellant.

On the records, it is clear that after stating the issues for determination distilled by both parties from the Grounds of Appeal filed by the Appellant, the Court below stated as follows on pages 273 - 274 of the record:

"The issues formulated by senior Counsel for the Respondents to my mind are sufficient to dispose of this Appeal. I will take issues 1 and 2 formulated by Mr. Ukala, Senior Advocate of Nigeria together. On these issues, he submitted that there was no dispute as to whether the transaction which put the Appellant in possession of the land in dispute was a pledge and that what was in dispute was the nature and the effect of the pledge as to whether it was redeemable at any time or within the time stipulated in the agreement, Exhibit B or within the concessionary period, and as such the learned trial Judge was in error when he held that it was not a pledge... The substance of the submission of senior Counsel on issue two was that the learned trial Judge having found that under the relevant and applicable customs, a person who defends litigation over a pledged land becomes the owner of the land, he ought to have found in favour of the Appellant as there was preponderance of evidence that when the pledged land fell into litigation, the Respondents' family refused to join and same was defended by the Appellant alone. Reliance was placed on the evidence of DW1 - Magnus Ogor Ihunwo in Exhibit D, pages 6 - 7."

After stating the submission of both Counsel on the two issues taken together for determination of the Appeal, the Court below in its consideration of the said issues stated as follows on pages 275 - 276 of the record:

“The only life and vital issue that calls for consideration in this Appeal is whether the transaction between the Appellant and the Respondents as evidenced by Exhibit B was an irredeemable pledge or a conditional sale of the land in dispute by the Respondents to the Appellant. It was the contention of learned Senior Counsel for the Appellant that the transaction in Exhibits B was a pledge of the land by the Respondents to the Appellant for a limited period beyond which they could no longer exercise their entitlement to redeem it or alternatively, it was a conditional sale of the pledged land to the Appellant, while learned Senior Counsel for the Respondents contended that it was a pledge by the Respondents to the Appellant which was redeemable.”

After the Court below had considered all the four issues and submissions of the Counsel to both parties, the Court below came to the following conclusion on page 279 of the record:

“The Appellant’s claim was founded on his allegation that the land in dispute was irrecoverably pledged to him or conditionally sold to him which allegation was not proved. After reviewing the evidence of the parties led in support of their pleadings, the trial Judge came to the conclusion that the Respondents had no intention to divest themselves of the land in dispute to the Appellant and as such he was unable to hold that Exhibit B was an irredeemable pledge.

The Appellant has not shown that the findings of the learned trial Judge as they related to the issues of title and possession were perverse and neither did he show that the said findings led to a miscarriage of justice.”

My Lords, from the way the learned trial Judge evaluated the oral and documentary evidence adduced by the parties and the way the Court below handled the issues, I fail to see where the Court below has fallen in error by its failure to specifically mention Exhibit D. The Appellant was adjudged to have failed to establish that the pledge he entered into with the Respondents was an irredeemable pledge or a conditional sale. His claim to declaration that he is entitled absolutely to the land known and called RUGBURU ASASAH

LAND situate at the area commonly referred to as Mile 12 along Port Harcourt-Aba Road, Port Harcourt was therefore properly dismissed by the trial Judge, whose decision was rightly affirmed by the Court below.

In the circumstance, having resolved all the four issues formulated by the Appellant for determination against him, this Appeal is devoid of any merit. It is accordingly dismissed. Even though costs follow events, I shall make no order on costs.

MUHAMMAD JSC

My learned brother, Ariwoola, JSC, afforded me the opportunity to read in advance the Judgment just delivered. I entirely agree with my lord that the Appeal lacks merit. I hereby dismiss the Appeal. I abide by consequential orders made in the lead Judgment.

FABIYI JSC

I have had a preview of the Judgment just delivered by my learned brother - Ariwoola, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the Appeal is devoid of merit and should be dismissed.

The crux of the matter is the adequate interpretation that should be made in respect of Exhibit B, the 'agreement' signed by the parties herein. No doubt, Exhibit B was drafted by a layman; from its tone. In borrowing the sum of E20 by the Respondent's family from the Appellant in 1951, the parties made the 'agreement' as in Exhibit B. The word employed by the Respondents in parting with the land in dispute to the Appellant is give and not sell. The trial Court found that the transaction was a pledge simpliciter, not an irredeemable pledge or a conditional sale. The Court of Appeal also found that the transaction was a pledge. From a careful consideration of Exhibit B, one can see a pledge deducible from it. The Respondents had no intention to permanently part with the land in dispute, no doubt.

The transaction between the parties, as found by the two Courts below, is a pledge which is redeemable at any time. The established principle of law is - 'once a pledge always a pledge.' See: *Melifonwu v. Egbuji* (1982) 9 SC 145; *Taiwo v. Dosunmu* (1965) 1 All NLR 399;

Adegboyega v. Igbinosun (1969) 1 All NLR 1 and Eberuhe & Ors. V. Ukparka & Ors. (1996) 7 NWLR (Pt. 460) 254.

The two lower Courts made concurrent findings of fact in respect of the determinant issue which have not been shown to be perverse. They are logical and have not been shown to run against the current of evidence adduced. This court cannot interfere with such findings of fact. See: *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1; *Echi & Ors. V. Nnamani & Ors.* (2000) 5 SC 62 at 70.

For the above reason and of course, the detailed ones carefully advanced in the lead Judgment which I hereby adopt I too, feel that the Appeal is devoid of merit and should be dismissed. I hereby order accordingly and endorse all the consequential orders made by my learned brother, that relating to costs inclusive.

D

PETER-ODILI JSC (CFR)

I agree with the decision and reasoning of the Judgment just delivered by my learned brother, Olukayode Ariwoola, JSC. I shall make some comments to underscore my support.

This is an Appeal against the Judgment of the Court of Appeal, Port Harcourt Division, Coram: Akpiroroh, Ogebe and Ikongbeh JJCA delivered on the 11th day of December, 2002.

FACTS BRIEFLY STATED

The Appellant as Plaintiff commenced against the Defendants (now Respondents) a declaration that he is entitled under Ikwerre Native Law and custom to the land known as RUGBURU ASASAH. He also claimed for damages and injunction. The Plaintiff's claim was predicated upon a transaction entered into in 1951 between the Plaintiff and the Rumuwele family (Defendants family) wherein the Plaintiff was put in possession of the land in dispute in exchange for the sum of E20 (Twenty Pounds) with a document evidencing the transaction tendered and admitted in evidence as Exhibit B. The parties agreed that the transaction was pledge only disagreeing on the nature of the said pledge. While the Plaintiff claimed that under the Ikwerre custom and tradition, the same was an irredeemable pledge, the Defendants having failed to redeem within the customary recognized redeemable period of 3 years. The Defendant's version is that the pledge was redeemable at any time. The learned trial Judge,

Daniel Kalio J (as he then was) held that the transaction was not a pledge or a conditional sale.

On Appeal to the Court of Appeal, that Court held that the pledge is not an irredeemable pledge and in effect agreed with the trial Court. Aggrieved, the Plaintiff/Appellant has appealed to this Court. B

On the 3rd December, 2012 date of hearing, the Appellant through Counsel on his behalf adopted the Appellant's Brief of Argument settled by E. C. Ukala, SAN, filed on 19/12/03 and deemed filed on 23/11/05. In the brief were formulated. viz: C

1. Was the Court of Appeal right when it held that the learned trial Judge made a specific finding to the effect that the transaction contained in exhibit "B" is a pledge (From Ground 1 of Grounds of Appeal)?

2. Was the Court of Appeal right when it came to the conclusion that the transaction evidenced by Exhibit "B" was not an irredeemable pledge under the Ikwerre Custom (Grounds 2 and 5 of Grounds of Appeal) D

3. Was the Court of Appeal right when it held that although the learned trial Judge had failed to consider the issue of customary arbitration as evidenced in Exhibit G, the said arbitration award was binding on the Appellant (Ground 3 of Grounds of appeal.) E

4. Was the Court of Appeal right when it failed to resolve issue No. 2 duly formulated in the Appeal by the Appellant if not, was the Appellant not entitled to Judgment. (Ground 4, appellant's Grounds of appeal) F

Mr. O. C. J. Okocha SAN, learned Counsel for the Respondents adopted their Brief of Argument settled by Awa U. Kalu SAN, filed on 15/12/06 and deemed filed on 16/5/07. He also adopted for arguments the issues as framed by the Appellant. G

I shall restrict my comments to Issues 1 and 2 which shall be taken together. The questions raised therein being whether the Court of Appeal was right when it held that the learned trial Judge made a specific finding to the effect that the transaction contained in Exhibit B is a pledge and was not an irredeemable pledge under Ikwerre custom. H

Mr. Ukala SAN held the view that the learned Judge had held that the transaction in Exhibit B was neither a pledge nor a condi-

tional sale and had not gone on to determine what kind of transaction Exhibit B represented. That the conclusion of the Court of Appeal “that the interpretation given to Exhibit “B” by the learned trial Judge that the transaction contained in it is a pledge cannot be faulted” was not borne out of the record and was faulty and perverse. Learned
 B Counsel for the Appellant urged this Court to set aside that finding of the Court Appeal since it proceeded from wrong premises. He said this is a proper instance for the intervention of this court since the error was substantial. He relied on the cases of *Oladere v. Anibi* (1998) 7 SCNJ 24 at 29; *Adeleke v. Asani* (2002) 8 NWLR (Pt. 768)
 C 26 at 43; *Princent v. State* (2002) 18 NWLR (pt. 798) 49 at 76.

That the evidence as perceived by the learned trial Judge did not reflect the evidence of PW1 which confirmed the case as pleaded by the Plaintiff in paragraph 12(iii) about the concessionary period of
 D 3 years could be allowed to the pledgor after he had failed to redeem the land within the specified period.

Mr. Ukala stated on that the decision of the trial Court was perverse when the Court took into account matters which it ought not to have been taken into account and did not carry out a proper
 E evaluation of evidence. He cited *Irolo v. Uka* (2002) 4 NWLR (Pt. 786) 195 at 238; *Okhwarobo v. Aigbe* (2002) 9 NWLR (pt.771) 29 at 85.

That the finding of the trial Court in respect of the evidence of
 F PW1, PW3 and PW5 was clearly perverse and cannot be sustained since there was no conflict cognizable with the pleadings. He cited *Adenuga v. Lagos Town Council* 13 WACA 125 at 126; *Mogaji v. Cadbury Nig. Ltd* (1985) 7 SC 59 at 132 to 133; *Olowu v. Miller Brothers Ltd* 3 NLR 110 at 118.

G That the trial Court and the Court of Appeal should have adopted the approach which calls for the total examination of the circumstance including oral evidence in determining the correct interpretation to be placed on Exhibit B. He cited *Eholor v. Osayande* (1992) 6 NWLR (Pt.249) 524 at 548; *Jack v. Whyte* (2001) 6 NWLR
 H (Pt. 709) 266 at 277 & 284; *Shettimari v. Nwaokoye* (1991) 9 NWLR (Pt.213) 60 at 69.

Mr. Okocha SAN in responding stated that from the findings and decisions of the trial Court and the Court of Appeal, the transaction between the parties was nothing more than a pledge. That this

Court should not disturb those concurrent findings of the two Courts since an allegation of perverseness cannot be sustained by the printed record. He cited Okhuarobo v. Aigbe (2002) 9 NWLR (Pt. 771) 29.

That the onus placed on the Plaintiff/Appellant to establish the case he put up was not discharged since he had to rely on the strength of his case which was not there. He cited Kalio v. Woluchem (1985) 1 NWLR (Pt. 4) 610 at 623. The main thrust of this matter is hinged on Exhibit B, the agreement at the root of the dispute between the parties particularly the nature of the transaction which then determines the decision the Court should reach. I would want to quote for clarification and it is thus:

“Agreement 23/7/51

In Agreement is here made between Solomon Opara and Adiele Ihunwo. That I Solomon Okpara have received from Adiele Ihunwo the sum of (E20) Twenty pounds, and have promised to give him a land which is at Mile 12 twelve from Port Harcourt to Aba Road, this land was given to Solomon by Josiah Akampa, Ogo Ihunwo and others in other to give to Adiele in place of his money (E20).

This money (E20) should be returned from January to March, if failed to bring this money (E20) at the mentioned time from January to March, let Adiele find one who will bring this (E20) and hold this land when giving out the land to the man, let him bring the man in the presence of Solomon, Josiah Okampa, Ogo Ihunwo and others.

Adiele’s Witness- Johnson Ihunwo.

*Solomon’s Witness- Michael, Okampa,
Josiah Okampa, Ogo Ihunwo.”*

In its judgment, the trial judge, Daniel-Kalio J (as he then was) at the Court of first instance held among other things thus:

“My understanding of the agreement is that the family gave a piece of land to the Plaintiff in exchange of (E20) which (E20) was to be refunded to the Plaintiff by a given time (though not particularly stated). If the family cannot give the Plaintiff the (E20) within the time given, then the Plaintiff was to look for someone who can hold the land and get his money from such a man, provided he introduces the man who will now hold the land (sic) to the family.

Quite obviously, there is no intention to sell the land to the Plaintiff even conditionally. The family had no intention to divest it-

self of ownership of the land. I therefore cannot accept that there was a conditional sale of the land to the plaintiff.”

The finding and conclusion above show that the trial Court was not persuaded into calling the transaction an irredeemable pledge or conditional sale or a transaction which had translated into an out-right sale. The clear implication of the summation of the learned trial judge of the transaction being a pledge that remains so and not change by any period of time or any possible intervening factor. That is, in other words, the transaction was a pledge, no more no less and that being so could be redeemed anytime. Period.

The Court of Appeal reached the same conclusion when it held per Akpiroroh, JCA as follows:

“It is my view that the interpretation given to Exhibit B by the learned trial Judge that the transaction contained in it is a pledge cannot be faulted and as such the submission of learned Senior Counsel for the Appellant that the learned trial Judge did not make specific findings as to the nature and effects of Exhibit B is clearly misplaced because he carefully and dispassionately considered the nature and its effect. Although inelegantly drafted but in its face are words like “give” and not “sale” which clearly indicate that the transaction was for borrowing money with intention to repay and not an irredeemable pledge or a conditional sale.”

That interpretation comes from a proper reading of the document, though inelegantly drafted with a lot of grammatical errors, the clear intention and purport within the transaction was not hidden and that shouts loud and clearly within the document itself that a pledge is what the parties entered into and nothing else. It serves no useful purpose as the appellant has sought to introduce parol evidence since the real intentions of the parties are not shielded from view. Since that intention comes out clearly then it must be given effect to. See *Olowu v. Miller Brothers Ltd.* 3 NLR 110 at 118; *Amokwandoh v. UAC Ltd. & Anor* 1 WACA 182.

Indeed the concurrent findings of the two Courts below have left no room for the encroachment by this Court since there is nothing perverse, no miscarriage of justice or a finding that has come from outside the record or not in keeping with the evidence before Court and I adopt those findings as mine. See *Okhwarobo v. Aigbe* (2002) 9 NWLR (Pt. 771) 29.

From the above and the fuller reasons in the lead Judgment, I too dismiss this Appeal and affirm the Judgment of the Court of Appeal which in turn had affirmed the decision of the trial High Court.

I abide by the consequential orders in the lead Judgment.

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AKA'AHS JSC

I had the privilege of reading in draft the Judgment of my learned brother, Ariwoola JSC. I entirely agree with the Judgment and all that I wish to add is only for emphasis.

C

The facts in this case are straight forward. In 1951, the Rumuwele family pledged their land to the Appellant for E20 and the transaction was evidenced by an agreement which was received in evidence as Exhibit "B". Exhibit "B" reads:-

"Agreement 23/7/51

D

In Agreement is here made between Solomon Opara and Adiele Ihunwo.

That I Solomon Okpara have received from Adiele Ihunwo the sum of E20 twenty pounds, and have promised to give him a land which is at Mile 12 twelve from Port Harcourt to Aba Road, this land was given to Solomon by Josiah Akampa, Ogo Ihunwo and others in other (sic) to give to Adiele in place of his E20.

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This money E20 should be returned from January to March, if failed to bring this money at the mentioned time from January to March, let Adiele find one who will bring this E20 and hold this land when giving out the land to the man, let him bring the man in the presence of Solomon, Josiah Okampa, Ogo Ihunwo and others.

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Adiele's witness Johnson Ihunwo, Solomon's witness, Michael Okampa, Josiah Okampa, Ogo Ihunwo. "(Underlining mine for emphasis)"

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At page 162 of the records the learned trial Judge interpreted Exhibit "B" and held that the agreement, Exhibit "B" discloses the following:-

1. It is between Solomon Opara and Adiele Ihunwo
2. It acknowledges receipt of E20 in exchange for a promise of land which was given to Solomon Opara by Josiah Okampa and Ogo Ihunwa
3. The land is given to Adiele Ihunwo in place of his E20

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4. The E20 is to returned to Adiele Ihunwo between January to March of an unspecified year

5. If the money is not returned between January and March, Adiele Ihunwo is to find someone who will bring the E20 and who will hold the land

B 6. The person who will hold the land should be introduced to Solomon, Josiah Okampa, Ogo Ihunwo and others”

The learned trial Judge made an important finding at page 163 when he said:-

C *“Quite obviously, there is no intention to sell the land to the Plaintiff even conditionally. The family had no intention to divest itself of ownership of the land. I therefore cannot accept that there was a conditional sale of the land to the Plaintiff.”*

Based on this finding the learned trial Judge concluded that D the Plaintiff did not establish his claim for a declaration of title and also dismissed the claim for trespass. At the Court of Appeal, learned Senior Counsel for the Appellant argued that in interpreting a document such as Exhibit “B” it will be appropriate not only to remember that equity looks at the intent and not the form but also to bear in E mind that the intention of the parties is gathered from the terms of the agreement as well as from all the circumstances of the transaction which includes the consideration of parol evidence in cases where the real intention of parties is in doubt, and submitted that from Exhibit “B” it could be deduced that if the refund was not made within F the period specified in the agreement, Adiele was to give the land to any person who was prepared to refund his money to him. In his argument before this Court, learned Counsel referred to what the learned trial Judge said on page 163 of the records regarding conditional sale of the land and submitted that the learned trial Judge was G of the view that the transaction in “Exhibit B” was neither a pledge nor a conditional sale and that the Court of Appeal ignored the conclusion of the learned trial Judge when it held that the transaction was a pledge and this interpretation as made by the trial Judge could H not be faulted.

The lower Court was right to find that the trial Judge had concluded that the transaction was a pledge. The trial Judge did not need to pronounce the magic word “pledge” before the lower Court could reach that conclusion. From the interpretation which the trial

Judge gave to Exhibit "B" it was clear he was talking about a pledge and the redemption of that pledge when he mentioned in items 2, 5 and 6 that the land was pledged for E20 and if the pledgor failed to pay back the money, the pledgee was at liberty to give the land to anybody who could return his money provided the pledgee informed members of the pledgor's family the person who was taking over the land from him. It became obvious that the pledgor's family had intention of redeeming the pledged land from anybody who had possession of the land. B

The meaning to be placed on a contract is that which is the plain, clear and obvious result of the terms used in the agreement. See *Aouad V. Kessarawani* (1956) NSCC 33. When constructing document in dispute between the parties, the proper course is to discover the intention or contemplation of the parties and not to import into the contract ideas not potent on the face of the document. See: *Amadi V. Thomas Aplion Co. Limited* (1972) 7 NSCC 262. Where there is a contract regulating any arrangement between the parties, the main duty of the court is to interpret the contract to give effect to the wishes of the parties as expressed in the contract document. See: *Oduye V. Nigeria Airways Limited* (1987) 2 NWLR (pt.55) 126. In the construction of documents, the question is not what the parties to the document may have intended to do by entering into that document, but what is the meaning of the words used in the document. See: *Amizu V. Dr. Nzeribe* (1989) 4 NWLR (pt.118) 755. However, where the meaning of words used is not clear, the court will fall back on the intention behind the words. Above all, it is not the function of a court of law to make agreements for parties or to change their agreement as made. See: *African Reinsurance Corporation V. Fantaye* (1986) 1 NWLR (pt.14) 113. E F G

In this Appeal, it is the Appellant who is trying to introduce ambiguity into Exhibit "B" to justify his claim that under *Ikwerre* customary law, if a pledge is not redeemed within 3 years, the pledged land cannot be redeemed. Exhibit "B" being an ordinary agreement was construed by the learned trial Judge according to the ordinary and natural meaning of the words and sentences contained therein. In view of the fact that the transaction was a customary pledge of the land, it was perpetually redeemable, hence one of the conditions spelt out in the agreement was that if the money was not returned to H

Adiele, he could look for a person that could give him the money but in doing so he should inform the family members of the pledgor to enable them redeem the land whenever they were ready.

B The learned trial Judge was quite clear that the transaction was a pledge. The lower Court agreed with this finding. It is a concurrent finding on facts which is not perverse and should not be disturbed. Accordingly, to the Appeal is totally bereft of merit. It is accordingly dismissed. I endorse the order made in the leading Judgment that no cost is awarded. Appeal dismissed.

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