

SUPREME COURT OF NIGERIA

FRIDAY 21ST FEBRUARY, 2014. SC. 250/2004

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA- ENEH,
B. RHODES-VIVOUR, K. B. AKA'AH, J. I. OKORO, JJSC**

1. ALHAJI MUSTAPHA

BUKAR MULIMA

2. ALHAJI MOHAMMED

BUKAR MULIMA

..... APPELLANTS

(For themselves and as
representatives of the Estate of the
deceased Bukar Mulima

AND

1. HAJJIA AISHATU USMAN

(The representative of the Estate of
the Deceased Original 1st Respondent
Ya Hajjia Gambo Goniram)

2. ALHAJI DUNOMA USMAN

..... RESPONDENTS

(The representative of the Estate of
the Deceased Original

2nd Respondent Hajjia Bana)

3. ATTORNEY - GENERAL OF

BORNO STATE

4. COMMISSIONER FOR LAND

& SURVEY, BORNO STATE

LAND LAW - Title - Proof - Admission - By their averment that 1st &
2nd respondents were divested of title - And compensation paid which
is not proved - Appellants have admitted title of the respondents
(H1)

LAND LAW - Title - Admission of - Where defendants in their plead-
ings admit that plaintiffs were original owner - Onus is on the former
to prove that the latter were divested of title (H2)

LAND USE ACT - Acquisition - Proof - LUA s. 28(6) - Revocation of
right of occupancy shall be signified by an authorized officer - And
notice given to the holder - But 3rd & 4th respondents failed to prove

acquisition (H3)

LAND USE ACT - Certificate of occupancy - Dead person - Status - Such a person ceases to have any legal personality from the moment of death - Hence the issuance of C of O to the dead man is unlawful (H4)

REGISTRATION OF INSTRUMENTS - Fraud - Title - Certificate of occupancy - Status - It is merely a prima facie evidence of a title it covers - And mere registration does not validate fraudulent instrument of title - Which is patently invalid (H5)

LAND LAW - Evidence - Contradiction - In view of admission of the original title of 1st & 2nd respondents - And inability to show that the title has been divested - Contradiction here is of no moment (H6)

COURTS - Issues - Misdirection - Proof - Appellant must not only show misdirection - But must also show that the same prejudicially affected his case - Or potentially has that effect on his case (H7)

ACTIONS - Cause of action - Definition - It means a combination of facts - Giving rise to right to file claim in court - And it includes every material fact which has to be proved - To entitle plaintiff to succeed (H8)

ACTIONS - Statute barred - Determination - To consider whether enforcement of legal right is statute barred - Court should confine itself to averments in the writ of summons and statement of claim (H9)

FRAUD - Actions - Statute of limitation - Does not apply in cases of concealed fraud - So long as the party defrauded remains ignorant of the fraud - Without any fault of his (H10)

LAND LAW - Title - Revocation - Notice - 1st & 2nd respondent ought to have been notified - Thus making them aware that their right had been tampered with - And a cause of action would have arisen (H11)

FACTS

Before the High Court of Borno State, plaintiffs/1st & 2nd respondents commenced this action against defendants/appellants and 3rd and 4th respondents. 1st and 2nd respondents' claims are inter alia for a declaration that they are entitled to the right and interest in and over the land situate at Bolori in Maiduguri Metropolitan area of Borno State. At the trial, 1st & 2nd respondents testified on their own behalf and called two witnesses. To prove their ownership and possession of the land, 1st & 2nd respondents traced traditional root to their great grand father who first settled on the land. Appellants and 3rd & 4th Respondents denied the claim of 1st & 2nd respondents. They contended that the North Eastern State had granted a temporary Certificate of Occupancy (C of O) over the land in issue to Messrs. Borini Prono.

After the expiration of the temporary C of O, one Galadima Mai Kyari (deceased) applied to the Old North Eastern State for a C of O over the land. Approval was therefore given to G. Mai Kyari. After the death of G. Mai Kyari, his heirs sold the land to appellants' father. From the evidence adduced before the court, judgment was entered in favour of 1st & 2nd respondents as per their claims. Dissatisfied, 2nd appellant appealed to the Court of Appeal Jos Division. The court dismissed the appeal and affirmed the judgment of the trial court. Aggrieved further, 2nd appellant lodged appeal in Supreme Court.

ISSUES FOR DETERMINATION

1. Whether or not the Court below ought to have affirmed the grant of the declaratory reliefs sought by the 1st and 2nd Respondents on the footing that their claims were admitted by the Appellants having adduce any reliable evidence in support of the claims.

2. Whether or not the court below misdirected itself as to the nature of the case of the parties before it and thereby occasioned a miscarriage of justice to the Appellants having regard to the fact that even though none of the parties pleaded facts relating to revocation/acquisition, the court below made it their central issue for determination.

3. Whether or not the claims of the 1st and 2nd Respondents were statute-barred.

HELD (Unanimously dismissing the appeal per **OKORO**

JSC)

LAND LAW - Title - Proof

B 1. It is my view that coupled with the pleading by the 1st & 2nd Respondents that they are the owners of the land in dispute and the averment by the Appellants that the 1st & 2nd Respondents were divested of the title and compensation paid which has not been proved, I am satisfied to agree with the decision of the court below that the Appellants had admitted the title of the 1st and 2nd Respondents.

C Having said that, let me state clearly that in a claim for declaration of title to land, as in this case, the Plaintiff must succeed on the strength of his own case and not on the weakness of the defence itself. This has been the general principle of law on this issue. What this means is that whenever a court is called upon to make such a declaration as to the title of a claimant to a piece of land, It is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence and not by mere admission in the pleadings of the defendant that he is so entitled. (p. 3907 B)

LAND LAW - Title - Admission of

F 2. The above principle notwithstanding, where there are facts and factors in the defendant's case which support the plaintiff's case, the plaintiff is entitled to rely on same.

G It is trite that where the defendants in their pleadings, as in the instant case admit that the plaintiff was the original owner, the onus of proof is on the defendants to prove that the plaintiffs were divested of the title. This, the Appellants failed to prove. As can be gleaned from the facts of this case, the Appellants did not lead evidence in proof of their defence at all. (p. 3907 G)

LAND USE ACT - Acquisition - Proof

H 3. The 3rd and 4th Respondents were unable to prove acquisition by government of the land in dispute. They also failed to

prove any payment of compensation to the 1st and 2nd Respondents. By Section 28 (6) of the Land Use Act any revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder, All these steps are lacking in the instant case. (p. 3908 B) B

LAND USE ACT - Certificate of occupancy - Dead person - Status
4. Even the certificate of occupancy issued in respect of this land is questionable. The reason is that the DW2 testified that Exhibit D, the Certificate of Occupancy was granted on the 27th September, 1979 by the then Commissioner for Works and Housing to Galadima Mai Kyari who had died before October, 1972. In other words, the certificate was issued to a dead man. It is trite that, apart from the rights of administrators, executors or the personal representatives of a deceased person, a dead person ceases to have any legal personality from the moment of death and as such the issuance of the certificate of occupancy to the said Galadima Mai Kyari seven years after his death, was, to say the least, unlawful. Generally, a dead person is no longer in the eyes of the law a person but that he is a person who has ceased to have any legal personality from the date of his death and as such, can neither sue nor be sued personally or in a representative capacity. The legal personality of a human being is extinguished by his death. He can neither acquire, own or dispose of property any more except through his legal representatives. (p. 3908 D) C
D
E
F

REGISTRATION OF INSTRUMENTS - Fraud - Title
5. I need to add that the existence of a certificate of occupancy is merely a prima facie evidence of title to land it covers and no more nor does mere registration validate a spurious or fraudulent instrument of title or a transfer or grant which in law is patently invalid or ineffective. This is indeed the raw truth which the appellants, as a bitter pill, must swallow. (p. 3909 H) G
H

Evidence - Contradiction

6. On the issue of contradiction in the evidence of the 1st and 2nd Respondents, I do agree with the lower court that the said contradiction is so infinitesimal to change the decision reached in this case. Also, in view of the clear admissions by the Appellants of the original title of the 1st and 2nd Respondents and their inability to show that they were divested of this title, the said contradiction is of no consequence, I so hold. In sum, this issue is resolved against the Appellants and in favour of the 1st and 2nd Respondents. (p. 3910 B)

COURTS - Issues - Misdirection - Proof

7. From the above position of this court, a misdirection occurs when the judge misconceives the issues submitted for determination whether of facts or of law, or summarizes the evidence inadequately or incorrectly. It follows that an appellant who alleges a misdirection on the part of the trial court must not only show such misdirection to the appellate court but must also show and convince the court either that such misdirection in fact prejudicially affects his case or that such misdirection potentially has that effect on his case. (p. 3911 D)

ACTIONS - Statute barred - Determination

8. It follows closely that in considering whether an action to enforce a legal right is statute - barred, the court should confine itself to the averments in the writ of summons and the statement of claim which allege the factual situation that gave rise to the cause of action. (p. 3914 E)

Action - Limitation

9. I think it is only reasonable and just that a party can only sue when he becomes aware that his right has been tampered with. For, as long as he is unaware that someone has dealt with his property inconsistent with his ownership, he cannot sue as you cannot shave a man's hair in his absence. However, this court has held that under the limitation law, the right to land is extinguished, in the absence of fraud, after discon-

tinuance of possession for the period enacted in the law, although the owner so discontinuing possession was unaware that adverse possession had been taken. (p. 3916 G)

FRAUD - Actions - Statute of limitation

10. In Ajibona V. Kolawole (supra), this court made an exception to the ruling that knowledge on the part of the plaintiff is not a condition precedent. That exception is where there is a fraudulent concealment of the right of action. What this means is that statute of limitation does not apply in cases of concealed fraud so long as the party defrauded remains ignorant of the fraud, without any fault of his. (p. 3917 G)

LAND LAW - Title - Revocation - Notice

11. In the instant case, by Section 28(6) of the Land Use Act, the 3rd and 4th Respondents who appear to say that the right of the 1st & 2nd Respondents over the land in dispute were extinguished since they were paid compensation had the duty to notify them that government had revoked their right and had acquired same before granting the right to Galadima Mai Kyari. By such notice, the 1st & 2nd Respondents would have become aware that their right to the land had been tampered with and a cause of action would have arisen. But in this case, there is no evidence that notice of revocation was given. There is no evidence that there was any acquisition of the land. And worse still the purported Certificate of Occupancy was issued to a dead person. The 1st & 2nd Respondents only became aware that something adverse had happened to their title to the land when policemen arrived to harass their tenants on the land in 1990 for which they promptly investigated and filed a matter in court. (p. 3918 B)

NOTABLE POINTS OF INTEREST

OKORO JSC

1. Cause of action – Definition of

Now, cause of action has been defined by courts to mean a combination of facts and circumstances giving rise to the right to file a claim in

court for a remedy. It includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the plaintiff to succeed. (p. 3914 A)

2. “Fraudulent concealment” – Meaning of

- B In trying to understand the meaning of the words “*fraudulent concealment*” I widen my horizon to a situation where a party is entitled to a notice of the happening of an event but such notice was not given to him though the failure to give the notice was not fraudulent but merely an oversight. Will this not amount to concealment of information though not fraudulent? I am prepared to say that where there is a concealment of a right of action whether fraudulently done or by mere oversight, the party whose right of action is so concealed should not by any stretch of the imagination be made to suffer for it. (p. 3918 A)

REPRESENTATION

Kehinde Ogunwunmiju Esq. with Sunday Onubi Esq and Olaride Adekunle (Mrs.) for the Appellants.

- E M. Umaru Esq. for 1st and 2nd Respondents.
Bulus Adamu Esq. Assistant Director of Civil Litigation, Ministry of Justice, Borno State for 3rd and 4th Respondents.

CASES REFERRED TO

- F Mogaji v. Cadbury (1985) 2 NWLR (pt. 7) 393
Obawole v. Williams (1996) 1 NWLR (pt. 477) 146
Onu v. Ogu (1996) 5 NWLR (pt. 451) 652
Okedare v. Adebara (1994) 6 NWLR (pt. 349) 157
G Titiloye v. Olupo (1991) 7 NWLR (pt. 205) 519
Orient Bank (Nig) Plc. v. Bilante Int’l Ltd (1997) 8 NWLR (pt. 515)
Ifeta v. SPDC (Nig) Ltd. (2006) 8 NWLR (pt. 983) 585
Akintola v. Balogun (2001) 1 NWLR (pt. 642) 532
Akinola v. Oluwo (1962) 1 SCNLR 352
H Obawale v. Coker (1994) 5 NWLR (pt. 345) 416
Onisaodu v. Elewuju (2006) All FWLR (pt. 328) 676
Okotie v. Olughor (1995) 4 NWLR (pt. 392) 655
Omokhafe v. Esekhome (1993) NWLR (pt. 309) 58
Lababedi v. Lagos Metal Ind. Nig. Ltd. (1973) 8 NSCC 1

Udeze v. Chidebe (1990) 1 NWLR (pt. 125) 141

STATUTE REFERRED TO

Land Use Act, s. 28(6)

LEAD JUDGMENT BY OKORO JSC

By a Writ of Summons issued on the 7th day of April, 1992, the Plaintiffs, who are now the 1st and 2nd Respondents in this appeal together with their sister as the 3rd Plaintiff but now deceased, instituted an action against (1) Zannah Mustapha (The Legal Representative of the Estate of one Galadima Mai Kyari), (2) Alhaji Bukar Mulima, (3) Attorney General of Borno State (The 3rd Respondent herein) and the Commissioner for Land and Survey (The 4th Respondent herein) at the High Court of Borno State claiming as follows:-

1. A declaration that the Plaintiffs are entitled to the right and interest in and over the land situate at Bolori in Maiduguri Metropolitan area of Borno State which land is bounded by Flour Mill Road and Yerima Road (also referred to as Wire Road) and by an adjoining land belonging to one Bukar Kyari Kolo which land is shaded blue and forms part of the area of land verged red in the site location plan filed along with and forming part of this statement of claim, having acquired customary law title and possession from their predecessors in title and in an undisturbed long possession and their right cannot be defeated merely by subsequent issue of a Certificate of Occupancy NE/375.

2. A declaration that the Plaintiffs have an equitable interest in the land having acquired customary law title and possession from their predecessors in title in an undisturbed long possession and their right cannot be defeated merely by subsequent issue of a Certificate of Occupancy NE/375.

3. A declaration that the issue of a Certificate of Occupancy No. NE/375 to one Galadima Mai Kyari covering the land held by the Plaintiffs is wrongful and unconstitutional, null and void.

4. An order directing the cancellation of the said Certificate of Occupancy NE/375 and the subsequent assignment to the 2nd Defendant.

5. An injunction to restrain the Defendants by themselves, their

servants, workmen or agents from pulling down the building on the land in question and from entering, remaining, or disturbing the Plaintiffs' possession of the land.

Further or other reliefs.

Pleadings were filed and exchanged and the matter went to trial. The Plaintiffs who are now 1st and 2nd Respondents testified on their own behalf and called two witnesses. The gist of their case is that the original owner of the land, the subject matter of this action was one Lawal Bello the great grandfather of the Plaintiffs who first cleared and used the land many years ago. After his demise, one of his sons, Lawan Fatumi Bolorima inherited the said farm land. After cultivating the land for years, Bolorima made a gift of it with the crops on it to his son Alhaji Goni Fatumi who is the father of the Plaintiffs (1st & 2nd Respondents). The Plaintiffs inherited this land from their father about 50 years ago. They farmed on the land for many years.

During the construction of the Railway Terminus in Maiduguri, a European Engineer approached the Plaintiffs' family and asked for and obtained permission to build two separate houses on parts of the land for use of the Engineer for the duration of the construction of the Railway terminus. The European gave undertaking to give to the Plaintiffs ownership of the two buildings after the completion of the terminus construction. After the European left, the Plaintiffs took possession of their land and the two buildings on it, let out to tenants and collected rents accordingly.

Sometimes in September, 1990, police came and demanded that the Plaintiffs' tenants should pay rent to the 1st set of Respondents who are now Appellants. The Plaintiffs engaged a counsel to write to the police on the issue. In June, 1991, the 2nd Appellant personally, with his agents entered that land and exercised acts of ownership.

On 13/6/91, the original 1st & 2nd Respondents filed a suit at the High Court of Maiduguri against the 2nd Appellant herein. When the 2nd Appellant filed a counter affidavit in the suit he disclosed that Certificate of Occupancy was issued in September, 1979 to one Galadima Mai Kyari. With this revelation, the original Plaintiffs withdrew the said suit and filed another one joining all parties interested in the matter. The said suit has given birth to this appeal. The reliefs are as set out above.

The Appellants did not lead evidence to defend this suit. However, when it was the turn of the 3rd and 4th Respondent to open their defence, the 2nd Appellant who had been consistently absent from court, appeared and testified for the 3rd and 4th Respondents. The 2nd Appellant was even cross examined by his counsel.

Basically, the Defendants, now Appellants and 3rd and 4th Respondents denied the claim of the Plaintiffs and gave evidence to the effect that the North Eastern State had granted a Temporary Certificate of Occupancy over the land in issue to Messrs. Borini Prono. After the expiration of the aforementioned Temporary Certificate of Occupancy, one Galadima Mai Kyari applied to the Old North Eastern State for a Certificate of Occupancy over the said plot upon which the European Company had erected two residential houses. Approval was given to Galadima Mai Kyari with effect from 18/10/72. This was affirmed with the issue of Certificate of Occupancy No. NE/375 in his favour. After the death of Mai Kyari, his heirs sold the land to the Appellants' father.

Based on the evidence before the trial court, judgment was entered on 12/2/97 in favour of the Plaintiffs in terms of all the reliefs sought by them. The 2nd Defendant was not satisfied with the judgment. He appealed against it to the Court of Appeal Jos Division. The lower court dismissed the appeal and affirmed the judgment of the learned trial judge. The 2nd Defendant was still not satisfied with the decision of the Court of Appeal and has appealed to this Court with a Notice of Appeal filed on 19/7/04. The said notice was amended and filed on 6/10/09. There are in all eight grounds of appeal contained in the amended notice of appeal. It is worth noting that the 2nd Appellant died while this appeal was still pending before this court and was substituted by his sons, The 1st Respondent too died and was also substituted by her daughter.

From the eight grounds of appeal filed by the Appellants, three issues have been distilled for the determination of this appeal. The three issues are as follows:-

1. Whether or not the Court below ought to have affirmed the grant of the declaratory reliefs sought by the 1st and 2nd Respondents on the footing that their claims were admitted by the Appellants having adduce any reliable evidence in support of the claims.

2. Whether or not the court below misdirected itself as to the

nature of the case of the parties before it and thereby occasioned a miscarriage of justice to the Appellants having regard to the fact that even though none of the parties pleaded facts relating to revocation/acquisition, the court below made it their central issue for determination.

B 3. Whether or not the claims of the 1st and 2nd Respondents were statute-barred.

In their joint brief of Argument, the 1st and 2nd Respondents have adopted the three issues formulated by the Appellants though couched differently thus:

C 1. Whether or not the court below ought to have affirmed the grant of the declaratory reliefs sought by the 1st & 2nd Respondents on the footing that their claims were admitted by the Appellants.

D 2. Whether the Court below misdirected itself as to the nature of the case of the parties.

3. Whether the 1st and 2nd Respondents' claims were statute barred.

E The 3rd and 4th Respondents have also formulated three issues for determination of this appeal. They are also in tandem with those of the Appellants. The issues are:

1. Whether or not Suit No. M/68/92 filed by the 1st and 2nd Respondents was statute barred.

F 2. Whether or not the court below ought to have affirmed the grant of the declaratory reliefs sought by the 1st and 2nd Respondents on the footing that their claims were admitted by the Appellants and the 3rd & 4th Respondents having regard to the failure of the 1st & 2nd Respondents to adduce any reliable evidence in support of their claims.

G 3. Whether or not the court below misdirected itself as to the nature of the case of the parties before it and thereby occasioned a miscarriage of justice to the Appellants and the 3rd & 4th Respondents having regard to the fact that even though none of the parties pleaded facts relating to revocation/acquisition, the court below made it the central issue for determination.

H Although the 3rd & 4th Respondents have re-numbered the issues, I intend to treat them in the manner as numbered by the Appellants. I now proceed to resolve issue one.

In his argument on issue one, the learned counsel for the Appellants based his submission on a tripod to wit:

1. That a claim for declaration cannot be granted based on admission(s).

2. That the Appellants, 3rd and 4th Respondents never admitted the 1st and 2nd Respondents' title to the land in dispute, and

3. That even if the Appellants, 3rd and 4th Respondents admitted the title of the 1st & 2nd Respondents, the claim of the 1st & 2nd Respondents ought to have been dismissed due to unsatisfactory, unreliable, self destructive and contradictory evidence the 1st and 2nd Respondents gave in support of their case.

Arguing on the first leg, the Appellants submitted that in arriving at its decision that the 'admissions' of the Appellants and the 3rd and 4th Respondents were enough to grant the declarations sought by the 1st and 2nd Respondents, the court below relied on the case of *Mogaji v. Cadbury* (1985) 2 NWLR (pt. 7) 393 but that there is nowhere in the said decision that a proposition to the effect that an admission absolved a claimant of the need to adduce evidence in support of his claim for declaratory reliefs. Rather that this court held that in a claim for declaration of title to land, the Plaintiff must succeed on the strength of his own case and not on the weakness of the defence. Learned Counsel for the Appellants contended further that where a claimant prays for declaratory reliefs, such reliefs cannot be granted based on the mere admission of the Defendants and that the claimant is still expected to lead reliable, cogent and admissible evidence in support of his claim. He relied on these cases: *Obawole V. Williams* (1996) 1 NWLR (pt. 477) 146 at 170, *Onu V. Ogu* (1996) 5 NWLR (pt. 451) 652 at 670, *V. Eweka* 1 SC 63, *Okedare V. Adebara* (1994) 6 NWLR (pt. 349) 157 amongst others.

On the second leg, the Learned Counsel for the Appellants submitted that the Appellants, 3rd and 4th Respondents never admitted the 1st and 2nd Respondent's title to the land in dispute. Referring to paragraphs 14 & 15 of the 3rd & 4th Respondents' Statement of Defence and paragraph 11 of the Appellants' Statement of Defence, Learned Counsel submitted that a defendant can only admit a fact pleaded by the Plaintiff, relying on the case of *ACB Ltd V. Obmiami Brick & Stone Ltd* (1992) 3 NWLR (pt. 229) 377. It is their contention that the 1st & 2nd Respondents never averred that their land was acquired or that they were not paid compensation. That as there was nothing in the statement of claim suggesting that the 1st and 2nd Re-

spondents' land was unlawfully acquired, the paragraphs referred above could not amount to an admission.

Learned Counsel further submitted that the decision of the Court below to the effect that an admission existed in the pleadings was not based on a holistic appraisal of the pleadings. That the court
 B ought to consider the entire pleadings and not to rely on a single paragraph, relying on the case of Titiloye V. Olupo (1991) 7 NWLR (pt. 205) 519. He further argued that an admission must be definite, unambiguous and unequivocal and not as in this case. He places
 C reliance on the cases of Orient Bank (Nig) Plc. V. Bilante International Ltd (1997) 8 NWLR (pt 515) 37, Campitel Wol SPA V. Dexson Ltd 7 NWLR (pt 459).

Finally, on this aspect, learned counsel submitted that since the Appellants and the 3rd and 4th Respondents did not lead evidence
 D to prove the paragraphs said to be admissions, they are deemed abandoned and the court cannot act on it. He cited the cases of Ifeta v. SPDC (Nig) Ltd. (2006) 8 NWLR (pt. 983) 585 and Akintola v. Balogun (2001) 1 NWLR (pt. 642) 532.

The last leg of this issue is that the 1st and 2nd Respondents' evidence at the trial was unsatisfactory, unreliable, self destructive and contradictory. It was Counsel's contention that the 1st and 2nd Respondents failed to trace their root of title to Lawan Bello as pleaded in paragraph three of their Statement of Claim. Also the PW4, Alhaji
 F Zanna Bukar, the village head of Bolori testified on behalf of the 1st and 2nd Respondents that it was his father by name Lawan Fatori who gave the land in dispute to the 1st and 2nd Respondents' father against the pleading that the great grandfather of the 1st and 2nd Respondents deforested the land. According to learned counsel, this contradiction
 G was material enough for the claim to have been dismissed. He then urged this court to resolve this issue in favour of the Appellants.

In response, the learned counsel for the 1st and 2nd Respondents submitted that the principle of law that a Plaintiff must in a claim for declaration of title rely on the strength of his case and not
 H on the weakness of the defence now admits a number of recognized exceptions. That the said principle has no place where there are facts and factors in the Defendant's case which supports the Plaintiffs case. He further submitted that where the Defendants in their pleadings admit that the Plaintiff was the original owner of the land in dispute,

the onus is on the Defendants to prove the absolute grant to them, citing the case of *Akinola V. Oluwo* (1962) 1 SCNLR 352.

Learned Counsel argued further that once it is proved that the original ownership of property is in the party, as in this case, the burden of proving that that party has been divested of the ownership rests on the other party, relying on the case of *Lamidi Lawal Obawale & Anor V. Olusoji Coker* (1994) 5 NWLR (pt 345) 416 at 429. B

Learned Counsel contended that the Appellants and the 3rd and 4th Respondents having admitted in their statements of defence that compensation was paid to the 1st and 2nd Respondents, they failed to lead evidence to prove same. He also submitted that they failed to prove acquisition of the land as envisaged in Section 28 (6) of the Land Use Act. Also submitted is that the testimony of DW2 supports the testimony of the Plaintiffs' witnesses and clearly strengthens the case of the Plaintiffs against the interest of the Defendants/ Appellants. In support he refers to the case of *Chief Falede Onisaodu & Anor. V. Chief Asunmo Elewuju & Anor* (2006) ALL FWLR (pt. 328) 676 at 685. C

In his further submission, he argued that since Galadima Mai Kyari died before October, 1972 according to DW2, the issuance of the Certificate of Occupancy to him in 1979 was illegal because, according to him, a dead person ceased to have any legal personality from the moment of his death. He places reliance on the case of *Eghologbin Okotie & Ors V. Ambrose Olughor & Ors* (1995) 4 NWLR (pt. 392) 655 at 667. Counsel further submitted that the grant of the Right of Occupancy cannot in law be valid in the first place and a fortiori, the legal representatives of the deceased had nothing to transfer to the Appellants' father. E

Learned Counsel for the 1st and 2nd Respondents stressed that the existence of a Certificate of Occupancy is merely a prima-facie evidence of title to land it covers and no more nor does mere registration validate spurious or fraudulent instrument of title or a transfer or grant which is patently invalid or ineffective, citing the case of *Lababedi &.Anor. V. Lagos Metal Industries Nig. Ltd & Anor* (1973) 8 NSCC 1. F

On the averment by the 3rd & 4th Respondents that a temporary certificate of occupancy was issued to Messrs. Borini Prono, learned counsel submitted that the Appellants and 3rd & 4th Respondents failed G

to adduce any evidence at the trial on the issue. He urged this court to regard same as abandoned.

The 3rd and 4th Respondents are Respondents in this Appeal but their arguments are in support of the appeal as if they are Appellants. They have not filed any notice of appeal and I wonder why
B they should prosecute an appeal they never filed notice of appeal. I shall return to this matter anon.

The most convenient point to start resolving this issue is to refer to the aspect of the judgment of the lower court which this issue
C is attacking. In the said judgment the relevant portions which can be found at pages 167 to 168 of the record of appeal, the court below held as follows:-

*"I am able to state that in the case in hand the other parties i.e. the Appellant and 3rd and 4th Respondents did admit implicitly the
D title of the 1st and 2nd Respondents, See paragraphs 4 & 5 of the Statement of Defence of the 3rd & 4th Respondents and paragraph 11 of that of the Appellant... It has also been held by the court that in
E relying on traditional history in proof of his root of title to land, a plaintiff on a claim for declaration to land must include averment and evidence on how his ancestors came to own the land in the first instance, how it descended over the years till it came to him... I am of the view that the Plaintiffs satisfied this requirement in their statement of claim.*

*It must be stated however, that the requirements to lead evidence set out in the principles enumerated above do not apply where
F the title of the Plaintiff is admitted by the defence. See Mogaji V. Cadbury Supra...*

*Also they as defendants assigned by their pleadings, original
G ownership of the land in dispute to the plaintiffs, hence, their averment of payment of compensation to 1st plaintiff. Thus there is no further issue as to evidence to prove ownership of the same land...*

Also, on p. 169 of the record, the lower court also stated as follows;

*"The 3rd and 4th Respondents who claim that the land is vested
H in the Government which had acquired it, averred in their pleadings and led evidence to prove that the 1st Plaintiff was paid compensation. It must be deduced that the said Respondents have in doing this, admitted that the Plaintiffs own the land in dispute. For other-*

wise, why talk of paying them compensation. Clear inference can be drawn from the foregoing that the land in dispute is admitted by the two Respondents to be vested in the party to whom they alleged compensation was paid... Apart from the foregoing, the 1st and 2nd Respondents and their two witnesses testified in proof of their averments in their statement of claim. The contradictions referred to by the Appellants do not appear so material in the face of his admission' B

I have quoted *in extenso* from the judgment of the lower court in order to bring to the fore the aspect of the judgment complained of and for ease of reference. Let me first answer the question as to whether the Appellants and the 3rd and 4th Respondents admitted that the 1st and 2nd Respondents were the original owners of the land in dispute. Without much ado, I think the answer is in the affirmative. As was rightly held by the court below, there is copious averment by both the Appellants and the 3rd and 4th Respondents in their statement of defence and even in evidence called by them to show that they unequivocally admitted that the 1st and 2nd Respondents or their predecessors in title were the original owners of the land in dispute. I am aware, as was held by this court in *Titiloye V. Olupo* (1991) 7 NWLR (pt. 205) 519 that to be able to decide whether there was an admission in the pleading of the defendant which could entitle the plaintiff to judgment of the court, one must look at the Defendant's pleadings as a whole and not just consider each paragraph in isolation. I shall now go to specifics. C

In paragraph 11 of the Appellants' statement of claim on page 13 of the record of appeal, they averred as follows: D

"The 2nd defendants denies paragraph 16 of the Statement of Claim and counter avers that the Plaintiffs were paid compensation over their acquired land by the government and 2nd defendant shall rely on the extract from the land file of Ministry of Lands and Survey, Borno State evidencing assessment, compensation and payment at Maiduguri Metropolitan Council for all the affected persons and subsequent payment to the owners" E

What I can deduce from the above averment by the Appellants in their statement of defence are as follows:- F

1. That this land originally belonged to the 1st and 2nd Respondents,
2. That government had acquired this land. G

3. That compensation was paid to 1st and 2nd Respondents and

4. That the Appellants shall lead evidence to prove these facts.

Sadly, the appellants neither gave evidence on their behalf nor call any witness to prove those averments,

The 3rd and 4th Respondents also averred in their Statement of Defence in paragraphs 14 and 15 as follows:-

“14. The defendants deny the averment in paragraph 16 of the Statement of claim and aver that when the 4th defendant demarcated the Bolori Layout, farmers whose land happened to fall within the layout were paid compensation but the 4th defendant later discovered that the 1st plaintiff and one Bukar Kyari Kolobe were not paid compensation in respect of their farms.

15. The defendants further aver that the total compensation for improvements on the two farms was N1,015.60 (one thousand, fifteen naira, sixty kobo) and same had been paid to them sometime in October, 1980”

The deductions I made in respect of the Appellants’ averment are also applicable to that of the 3rd and 4th Respondents. Sadly too, the 3rd & 4th Respondents did not lead evidence to show how and when the land was acquired and the alleged payment of compensation to the 1st and 2nd Respondents. This is in the face of clear and unambiguous averments by the 1st and 2nd Respondents that their great grand father, one Lawan Bello was the original owner of the land and that he was *“the first to clear and use the farm land many years ago”* (see paras 2 - 6 of the Statement of Claim). They also averred that the land devolved on their grandfather, father and finally on them for which they have farmed on it for *“about 50 years ago.”*

Quite apart from these averments, the 3rd and 4th Respondents led evidence to prove that the 1st and 2nd respondents were the original owners of the land in dispute. On page 26, lines 36 - 34 of the record of appeal, the DW2 testified as follows:-

“I know one of the Plaintiffs by name Ya Hajjia Goniram through a piece of paper or form filled by the Ward Head and Village Head complaining about the piece of land already granted to late Galadima Mai Kyari. They said they have a title over the piece of land. We did look into their complaint wherein an officer was detailed to go and inspect the title in question and to report his findings

as to whether or not compensation was paid to the original owner. The report was that no compensation was paid." (italics mine for emphasis)

It has to be noted that even when compensation was paid to Maiduguri Metropolitan Council, there is no iota of evidence to show that the said compensation was subsequently paid to the 1st and 2nd Respondents as the said Council was never called to give evidence.

It is my view that coupled with the pleading by the 1st & 2nd Respondents that they are the owners of the land in dispute and the averment by the Appellants that the 1st & 2nd Respondents were divested of the title and compensation paid which has not been proved, I am satisfied to agree with the decision of the court below that the Appellants had admitted the title of the 1st and 2nd Respondents.

Having said that, let me state clearly that in a claim for declaration of title to land, as in this case, the Plaintiff must succeed on the strength of his own case and not on the weakness of the defence itself. This has been the general principle of law on this issue. What this means is that whenever a court is called upon to make such a declaration as to the title of a claimant to a piece of land, It is incumbent on the party claiming to be entitled to the declaration to satisfy the court by evidence and not by mere admission in the pleadings of the defendant that he is so entitled. See *Mogaji V. Cadbury Nig. Ltd* (1985) 2 NWLR (pt. 7) 393, *Obawole V. Williams* (1996) 1 NWLR (pt. 477) 146 at 170, *Bello V. Eweka* (1981) 1 SC 63, *Onu V. Agu* (1996) 5 NWLR (pt. 451) 652 at 670, *Titiloye & Ors V. Chief J. O. Olupo* (1991) 7 NWLR (pt. 205) 519.

The above principle notwithstanding, where there are facts and factors in the defendant's case which support the plaintiff's case, the plaintiff is entitled to rely on same. That was the view of this court in *Chief Falade Onisaodu & Anor. V. Chief Osunmo Elewaju & Anor* (2006) ALL FWLR (pt. 328) 676 at 184-685 paras H - A. In the instant case, the Appellants and the 3rd & 4th Respondents have admitted in their pleadings and in the evidence of DW2 called by the 3rd & 4th respondents that the 1st & 2nd Respondents are the original owners of the land in dispute. ***It is trite that where the defendants in their pleadings, as in the instant case***

admit that the plaintiff was the original owner, the onus of proof is on the defendants to prove that the plaintiffs were divested of the title. This the Appellants failed to prove. See *Akinola V. Oluwo* 1 352, *Lamidi Lawal Obawole & Anor. V. Olusoji Coker* (1994) 5 NWLR (pt. 345) 416.

- B As can be gleaned from the facts of this case, the Appellants did not lead evidence in proof of their defence at all. The 3rd and 4th Respondents were unable to prove acquisition by government of the land in dispute. They also failed to prove any payment of compensation to the 1st and 2nd Respondents.**
- C By Section 28 (6) of the Land Use Act any revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder, All these steps are**
- D lacking in the instant case. Even the certificate of occupancy issued in respect of this land is questionable. The reason is that the DW2 testified that Exhibit D, the Certificate of Occupancy was granted on the 27th September, 1979 by the then Commissioner for Works and Housing to Galadima Mai**
- E Kyari who had died before October, 1972. In other words, the certificate was issued to a dead man. It is trite that, apart from the rights of administrators, executors or the personal representatives of a deceased person, a dead person ceases to have any legal personality from the moment of death and as such**
- F the issuance of the certificate of occupancy to the said Galadima Mai Kyari seven years after his death, was, to say the least, unlawful. Generally, a dead person is no longer in the eyes of the law a person but that he is a person who has**
- G ceased to have any legal personality from the date of his death and as such, can neither sue nor be sued personally or in a representative capacity. The legal personality of a human being is extinguished by his death. He can neither acquire, own or dispose of property any more except through his legal representatives.** See *Omokhafe V. Esekhomo* (1993) NWLR (pt. 309) 58, *Eghologbin Okotie & 3 Ors V. Ambrose Olughor & 6 Ors - In Re: Otuedon* (1995) 4 NWLR (pt. 392) 655 at 667.

In their reply brief, the learned counsel for the Appellants submitted that the late Galadima Mai Kyari, having applied for the Cer-

tificate of Occupancy in 1970 and an approval made in 1971, his subsequent demise in 1972 did not affect the authenticity of the certificate subsequently issued in 1979. I do not think so. The certificate ought to have been issued to his representatives on a proper application, but that is not the case here. The said certificate took effect in 1979 when it was issued and not 1970 when an application was made. A dead man cannot acquire or sell land. Only his successors-in-title can. It is wrong for the appellants to believe that once he produces what they claim to be an instrument of grant, they automatically become entitled to a declaration that the property which the document purports to grant is their own. The position was explained by this court in *Romaine V. Romaine* (1992) 4 NWLR (pt 238) 650 at 662 para E per Nnaemeka-Agu, JSC, thus:

"I may pause here to observe that one of the recognized ways of proving title to land is by production of a valid instrument of grant. See Idundun V. Okumagba (1976) 9-10 SC 227; Piaro V. Tenalo (1976) 12 SC 31 at 37, Nwadike V. Ibekwe (1987) 4 NWLR (pt. 67) 718. But it does not mean that once a claimant produces what he claims to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the court to inquire into some or all of the questions including:

- i. Whether the document is genuine and valid;*
- ii. Whether it has been duly executed, stamped*
- ii. Whether the grantor had the authority and capacity to make the grant.*
- iv. Whether the grantor had in fact what he purported to grant and*
- iv. Whether it has the effect claimed by the holder of the instrument."*

I cannot agree more.

Having held that the said certificate was illegal, it follows that the legal representatives of the deceased had nothing to transfer to the Appellants.

I need to add that the existence of a certificate of occupancy is merely a prima facie evidence of title to land it covers and no more nor does mere registration validate a spuri-

ous or fraudulent instrument of title or a transfer or grant which in law is patently invalid or ineffective. This is indeed the raw truth which the appellants, as a bitter pill, must swallow. See Lababedi & Anor. V. Lagos Metal Industries Nig. Ltd. & Anor. (1973) 8 NSCC 1.

B On the issue of contradiction in the evidence of the 1st and 2nd Respondents, I do agree with the lower court that the said contradiction is so infinitesimal to change the decision reached in this case. Also, in view of the clear admissions by the Appellants of the original title of the 1st and 2nd Respondents and their inability to show that they were divested of this title, the said contradiction is of no consequence, I so hold. In sum, this issue is resolved against the Appellants and in favour of the 1st and 2nd Respondents.

D The next issue for determination is whether the court below misdirected itself. According to learned counsel for the Appellants, the issue of revocation/acquisition which the court below found most relevant and important was not an issue raised by the parties in their pleadings. He contended that the court below erred by finding that ***E*** there was an issue of revocation or acquisition to be determined between the parties because from the totality of the three sets of pleadings, none of the parties averred to any fact relating to wrongful revocation, rightful revocation, wrongful acquisition or rightful acquisition. He submitted that the court below gravely misdirected itself by ***F*** misplacing the issues before it and dealing with an issue not before it. That due to the misdirection of the court below on the issue of revocation/acquisition, the onus of proof or legal burden was wrongly placed on the Appellants and 3rd & 4th Respondents to prove a valid ***G*** revocation/acquisition. Learned Counsel submitted that this occasioned a gross miscarriage of justice. On what constitutes misdirection and its effects, learned counsel cited and relied on the following cases: Udeze v. Chidebe (1990) 1 NWLR (pt. 125) 141 at 161, Secretary Iwo Local Government V. Adigun (1992) 6 NWLR (pt. 250) 723 at 747, ***H*** Abbey V. Alex (1991) 6 NWLR (pt. 198) 459 at 476, Atuanya V. Atuanya (1994) 1 NWLR (pt. 322} 572 at 579 amongst others. He then urged this court to resolve this issue in favour of the Appellants.

In his response, the learned counsel for the 1st and 2nd Respondents referred to paragraph 11 of the Appellants' Statement of de-

fence and paragraphs 14 and 15 of the 3rd and 4th Respondents' Statement of defence and submitted that the Appellants did not speak the truth since issue of revocation/acquisition were duly pleaded by them. He urged the court to hold that there was no misdirection at all.

In Chidiac V. Laguda (1964) NMLR 123 at 125, this court stated clearly situations which can amount to misdirection. It was held that:

"A misdirection therefore occurs when the issue of fact in the case for the Plaintiff or defence or the law applicable to the issues raised are not fairly submitted for the consideration of the jury. Where however the judge sits without a jury misdirects himself if he misconceives the issues or summarizes the evidence inadequately or incorrectly or makes a mistake of law but provided there is some evidence to justify a finding it cannot properly be described as a misdirection."

From the above position of this court, a misdirection occurs when the judge misconceives the issues submitted for determination whether of facts or of law, or summarizes the evidence inadequately or incorrectly. It follows that an appellant who alleges a misdirection on the part of the trial court must not only show such misdirection to the appellate court but must also show and convince the court either that such misdirection in fact prejudicially affects his case or that such misdirection potentially has that effect on his case. See Sosanya V. Onadeko & Ors (2005) 8 NWLR (pt 926) 185, Nwosu V. Imo State Environmental Sanitation Authority & Ors (1990) 2 NWLR (pt. 135) 688.

In the instant case, the learned counsel for the Appellants had argued that issue of acquisition/revocation was never pleaded by any of the parties but that the lower court made reference to them, Straight-away, I wish to state that this is not correct, I shall show it forthwith. In paragraph 11 of the Appellant's Statement of defence, they had averred as follows:-

"The 2nd defendant denies paragraph 16 of the statement of claim and controverts that the plaintiffs were paid compensation over their acquired land by the government and the 2nd defendant shall rely on the extract from land file of Ministry of Lands and Survey, Borno State evidencing assessment, compensation and payment at Maiduguri Metropolitan Council for all the affected persons and sub-

sequent payment to the owners' (*italics mine for emphasis*).

Clearly, the Appellants in that paragraph pleaded and referred to "acquired land by the government" contrary to the submission of their counsel that issue of acquisition was never pleaded. And this was in response to paragraph 16 of the 1st & 2nd Respondents'

B Statement of Claim which states:

"The plaintiffs aver that they had no previous knowledge of the issue of certificate of occupancy No. NE/375 by the Government of Borno State neither were the Plaintiffs ever notified of any action by the Government of Borno State or anyone of any action taken affecting their rights and interest over the land in question either before or after the issue of the certificate of occupancy"

C Also, the 3rd & 4th Respondents refer to issue of demarcation and payment of compensation to owners of the land in dispute. (See D paras 14 & 15 of their Statement of defence copied on pages 29-30 of this judgment). No matter how one reads the two paragraphs, issue of revocation/acquisition did arise. I say so because Government cannot just enter land to demarcate and pay compensation to the owners without first revoking their interest in the land and subsequently acquiring the land.

E For me, when the court below held that the Appellant and the 3rd and 4th Respondents failed to prove acquisition of the land or the revocation of the right of the 1st & 2nd Respondents, it was on firma terra. There is no case of misdirection at all. It has to be remembered F that the Appellants and the 3rd & 4th Respondents have variously pleaded that compensation was allegedly paid to the 1st & 2nd Respondents; whereas the 1st & 2nd Respondents contend that their right over the land was not revoked by government. They also contend G that they were never paid any compensation at all. In sum, I hold the view that the lower court never misdirected itself in this case. This issue as it stands, does not avail the appellants at all.

H The Appellants have also, in the 3rd issue asked this court to determine whether the claims of the 1st and 2nd Respondents were statute barred. It is their contention that in the first place, the trial court lacked the jurisdiction to entertain this action as it was statute barred as at the time same was instituted having regard to the provisions of Section 15 (2) of the Limitation Act. Learned Counsel for the Appellants submitted that a period of limitation begins to run from

the date on which the cause of action occurred, referring to Aremo II V. Adekanye (2004) 13 NWLR (pt 891) 572, Eboigbe V. NNPC (1994) 5 NWLR (pt 347) 649. It is his view that the 1st and 2nd Respondents' right of action occurred at the very latest, on the 12th day of December, 1979 when the certificate of occupancy was issued in favour of Galadima Kyari (the Appellants' predecessor-in-title) and that their right of action expired on the 12th day of December, 1991 whereas this suit was instituted in 1992. He urged this court to hold that the action was statute barred.

In his argument, the learned counsel for the 1st and 2nd Respondents submitted that the period of limitation is determined by looking at the writ of summons and the statement of claim only to ascertain the date the wrong in question which gave rise to the cause of action was committed and comparing such date with the date on which the writ of summons was filed. According to him, it can be seen from the statement of claim that the Plaintiffs' cause of action arose in 1990 when the original appellant interfered with their right of ownership over the disputed land. He relies on the case of Woherem V. Emereuwa (2004) ALL FWLR (pt 221) 1570 at 1581 paras G - H. That from the statement of claim and the evidence adduced by the 1st & 2nd Respondents, it can be seen that the 1st & 2nd Respondents became aware in 1990 that Certificate of Occupancy No. NE/375 had been issued to one Galadima Mai Kyari in 1979 and that time began to run from that date. He also relies on the case of UBN Plc V. Umeoduagu (2004) ALL FWLR (pt. 221) 1552 at 1564. He then urged this court to hold that this action was not statute barred.

In a brief rejoinder, the Appellants in their reply brief submitted that for the purpose of applying the Limitation Act, in the determination of when time begins to run, especially with regards to recovery of land cases, time starts to run from when the adverse grant is made and not when the Plaintiff becomes aware of the adverse grant; relying on the cases of Ajibona V. Kolawole (1996) 10 NWLR (pt. 476) 22 at 36 paras b - c, Akibu V. Azeez (2003) 5 NWLR (pt. 814) 643 at 669 and Elabanjo V. Dawodu (2006) 15 NWLR (pt. H 1001) 76.

Section 15 (2) (a) of the Limitation Act provides that:

"No action by a person to recover land -

(a) Shall, be brought after the expiration of twelve years from

the date on which the right of action occurred to the person bringing it or if it first occurred to some person whom he claims, to that person."

Now, cause of action has been defined by courts to mean a combination of facts and circumstances giving rise to the right to file a claim in court for a remedy. It includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the plaintiff to succeed. See *R. N. Udoh Trading Co. Ltd V. Abere* (2001) 11 NWLR (pt. 723) 114, *Egbe V. Adefarasin* (No. 2) (1987) 1 NWLR (pt 47) 1, *Savannah Bank of Nigeria Ltd V. Pan Atlantic Shipping & Transport Agencies Ltd* (1987) 1 NWLR (pt. 49) 212, *Lawani Adesokan & 3 Ors V. Prince Michael Oyetunji Okeyoyin Adegorulu & 3 Ors* (1997) 3 (pt 493).

This court, in *7Up Bottling Company Ltd & Ors V. Abiola and Co. Ltd* (2001) 13 (pt. 730) 469 at 495 held that:

"The law is sufficiently settled that in determining whether the Plaintiffs action discloses any cause of action or the nature thereof, the court will necessarily restrict itself to the Plaintiffs statement of claim without recourse to the defendant's statement of defence vide - Shell B. P. Lid & Ors & Ors V. Onasanya (1976) NSCC 334 at 336; (1976) 6 SC. 89, See Also Aladegbemi V. Fasamnade (1988) 3 NWLR (pt. 81) 129."

It follows closely that in considering whether an action to enforce a legal right is statute - barred, the court should confine itself to the averments in the writ of summons and the statement of claim which allege the factual situation that gave rise to the cause of action. See *Omorayo V. Nigerian Railway Corporation* (1992) 7 NWLR (pt. 254) 471, *Egbe. Adefarasin* (supra), *Union Bank of Nigeria Plc V. Romanus Umeoduagu* (2004) 13 NWLR (pt. 890) 352.

Now, paragraphs 10,11,12,13,14,15,16 and 17 of the 1st & 2nd Respondents' Statement of Claim aver as follows:-

"10. The plaintiffs had no interference with their ownership and possession of the land until sometimes in September 1990 when the Police of the Ibrahim Taiwo Police Station threatened the plaintiffs' tenant that they will be evicted by force unless they pay their rent to the 2nd and not to the plaintiff and when the Police insisted on this even after the plaintiffs heard that the land belong to them, the

plaintiffs employed the services of a firm of legal practitioners who wrote the police on the plaintiffs behalf on 26th September, 1990 on the matter and the police acknowledge the letter on 2nd October, 1990.

11. The 2nd defendant sometimes in June, 1991 by himself and his agents and servants forcibly came into the land and premises harassing the tenants and blocking the entrance to the land with a Tipper and preventing the plaintiffs tenants from entering and coming into the premises. The 2nd defendant thereafter commence digging the ground and threatened to demolish the buildings on the land and to alter the structure of the land claiming that he had bought the land. B C

12. The plaintiffs on 13th June, 1991 did file a writ of summons at the high Court, Maiduguri, against the 2nd defendant claiming among other things, an injunction restraining the 2nd defendant from interfering with the plaintiffs ownership and damages for Trespass. D

13. During the proceedings in the action filed by the plaintiffs against the 2nd defendant as stated in paragraph 12 above, suit No. M/85/91 the 2nd defendant swore to a counter-affidavit on 3^d September, 1991 in which he made some allegations and exhibited some documents which he sought to rely upon as conferring title of the land on him. E

14. The plaintiffs' counsel as a result of the allegations in the counter affidavit of the 2nd defendant, conducted a search at the Land Registry of the Ministry of Land and Survey, Maiduguri Borno State and discovered that and discovered that a Certificate of Occupancy Number NE/375 dated 27th September, 1979 was in fact issued to one Galadima Mai Kyari in respect of the land which is the subject matter. F G

15. The plaintiff as a result of the information received by them of the issue of Certificate of Occupancy No. NE/375 over their land to one Galadima Mai Kyari withdrew suit No. M/85/91 from the court and commenced the present action joining all parties interested in the matter. H

16. The plaintiffs aver that they had no previous knowledge of the issue of Certificate of Occupancy NE/375 by the Government of Borno State neither were the plaintiffs ever notified of any action by the Government of Borno State or any one of any action taken af-

fecting their rights and interest over the land in question either before or after the issue of the Certificate of Occupancy.

17. *The plaintiffs aver that Galadima Mai Kyari who is now deceased, however during his lifetime interfered with the ownership and did not disturb the possession of the land by the plaintiffs”.*

B I have already stated in this judgment that cause of action normally arises as soon as the combination of facts giving right to complain accrued or happened. From the combination of facts given by the 1st and 2nd Respondents in their Statement of claim which I have reproduced above, it is clear that the 1st & 2nd Respondents (Plaintiffs) became aware in 1990 that certificate of occupancy No. NE/375 had been issued to one Galadima Mai Kyari in respect of the land in 1979. Learned Counsel for the 1st and 2nd Respondents urged this court to hold that the cause of action arose in 1990 when the 1st and D 2nd respondents became aware of the issuance of Certificate of Occupancy No. NE/375 to Galadima Mai Kyari. The learned counsel for the 1st & 2nd Respondents had relied on the case of UBN Plc V. Umeoduagu (2004) ALL FWLR (pt. 221) 1552 at 1564 where this court held that:-

E *“From the combination of facts given by the Respondent it is abundantly clear that he came to know about the whereabouts of the missing money when he conducted a search which took him to the Central Bank. It was then that he discovered that the money had been kept in the Central Bank in the Appellant’s name. The discovery has established a prima facie default by the Appellant. It was only then that the cause of action was arisen and the Respondent could institute a claim for recovery of the amount.”* (Underline mine for emphasis)

G ***I think it is only reasonable and just that a party can only sue when he becomes aware that his right has been tampered with. For, as long as he is unaware that someone has dealt with his property inconsistent with his ownership, he cannot sue as you cannot shave a man’s hair in his absence. However, this court has held that under the limitation law, the right to land is extinguished, in the absence of fraud, after discontinuance of possession for the period enacted in the law, although the owner so discontinuing possession was unaware that adverse possession had been taken.*** In *Ajibona V. Kolawole*,

(1996) 10 NWLR (pt. 476) 22 at 36 paras B - F, this court, per Ogwuegbu, JSC, held as follows:-

“On a cumulative reading of the entire provisions of the Limitation Law and in particular, Section 16, 17, 19 and 21 thereof, knowledge on the part of the Plaintiff is not a condition precedent. The knowledge of the Plaintiff is immaterial... Apart from fraudulent concealment of right of action which in itself furnishes a cause of action, knowledge cannot be said to be relevant... The Limitation Law and all laws of this description ought to receive beneficial consideration. They should be construed literally but not in such a way as to read into them words not intended by the law makers as the majority of the court below portrayed. All Limitation Laws have for their object the rearing up of claims that are stale. To contend that the defendant must prove Plaintiff’s knowledge of adverse possession for time to start to run or the defendant’s presence on the land is to import a strange condition into the limitation law” (underlined portion mine for emphasis). See also Akibu V. Azeez (2003) 5 NWLR (pt. 814) 643 at 669 and Elabanjo V. Dawodu (2006) 15 NWLR (pt. 1001) 76 at 142 paras B – F.

From the decision of this court, starting from Ajibona’s in 1996, Akibu’s in 2003 and Elabanjo’s in 2006, knowledge of the Plaintiff that his right or title to land has been tampered with is immaterial in determining when cause of action arose. That would ordinarily mean that the lack of knowledge of the 1st & 2nd Respondents in the instant case that Certificate of Occupancy No. NE/375 was issued in 1979 to Galadima Mai Kyari until 1990 would not avail them in determining when cause of action arose which will also determine whether this suit was statute barred or not.

In Ajibona V. Kolawole (supra), this court made an exception to the ruling that knowledge on the part of the plaintiff is not a condition precedent. That exception is where there is a fraudulent concealment of the right of action. What this means is that statute of limitation does not apply in cases of concealed fraud so long as the party defrauded remains ignorant of the fraud, without any fault of his. See Arowolo V. Labiyi (2002) 4 NWLR (pt. 757) 356 UBA Ltd V. BTL Ltd. (2006) 19 NWLR (pt. 1013) 67 at 112 & 126.

In trying to understand the meaning of the words “fraudulent

concealment' I widen my horizon to a situation where a party is entitled to a notice of the happening of an event but such notice was not given to him though the failure to give the notice was not fraudulent but merely an oversight. Will this not amount to concealment of information though not fraudulent? I am prepared to say that where there is a concealment of a right of action whether fraudulently done or by mere oversight, the party whose right of action is so concealed should not by any stretch of the imagination be made to suffer for it.

In the instant case, by Section 28(6) of the Land Use Act, the 3rd and 4th Respondents who appear to say that the right of the 1st & 2nd Respondents over the land in dispute were extinguished since they were paid compensation had the duty to notify them that government had revoked their right and had acquired same before granting the right to Galadima Mai Kyari. By such notice, the 1st & 2nd Respondents would have become aware that their right to the land had been tampered with and a cause of action would have arisen. But in this case, there is no evidence that notice of revocation was given. There is no evidence that there was any acquisition of the land. And worse still the purported Certificate of Occupancy was issued to a dead person. The 1st & 2nd Respondents only became aware that something adverse had happened to their title to the land when policemen arrived to harass their tenants on the land in 1990 for which they promptly investigated and filed a matter in court.

While the matter was pending, the Appellants filed papers to show that certificate of occupancy was in a respondents' notice and as such they had no unbridled freedom of raising issues for determination which have no relevance to the grounds of appeal. Not being Appellants, they have no locus to urge as they have done and argued in favour of the appeal. See *Oje V. Babalola* (1991) 4 NWLR (pt. 85) 267 at 280 para A - B, *Nzekwu V. Nzekwu* (1989) 2 NWLR (pt. 104) 373 at 430 paras C - D.

On the whole, it is my view that this issue, again does not avail the Appellants.

In sum, I hold that this appeal lacks merit and is hereby dismissed by me. I uphold the judgment of the lower court in this case. I award costs of N100,000.00 in favour of the 1st & 2nd Respondents only to be paid by the Appellants.

MOHAMMED JSC

I have had the privilege before today of reading the judgment of my learned brother Okoro JSC, which has just been delivered. The facts of the case are fully set out as well as the issues raised in the appeal which were so extensively discussed and resolved. For the detailed reasons given in the lead judgment, I also see no merit at all in the appeal which deserves nothing other than outright dismissal. B

However, let me put in place what I see in the complaint of the Appellants in their issue number 2 dealing with the alleged misdirection on the part of the lower Court resulting in the alleged miscarriage of justice to the Appellants. This issue is - C

“ISSUE TWO

Whether or not the Court below misdirected itself as to the nature of the case of the parties before it and thereby occasioned a miscarriage of justice to the Appellants having regard to the fact that even though none of the parties pleaded facts relating to revocation/acquisitions the Court below made it the central issue for determination.” D

The first port of call in the resolution of this issue is to examine the allegation of the Appellants that in spite of the fact that none of the parties in this case pleaded facts relating to revocation/acquisition, the Court below made it a central issue for determination in the appeal before it. It is indeed not true as asserted by the Appellants that facts relating to revocation/acquisition, were not pleaded by any of the parties at the trial court. The 1st and 2nd Respondents as Plaintiffs at trial Court had pleaded in paragraph 16 of their statement of claim the following facts - E F

“16. The Plaintiffs aver that they had no previous knowledge of the issue of certificate of occupancy No. NE375 by the Government of Borno State neither were the Plaintiffs ever notified of any action by the Government of Borno State or anyone of any action taken affecting their rights and interest over the land in question either before or after the issue of the Certificate of Occupancy.” G H

The Appellants as 1st and 2nd Defendants on the other hand reacted to the above paragraph of the statement of Claim in paragraph 11 of the statement of defence of the 2nd Defendant where it was averred –

‘11. The 2nd Defendant denied paragraph 16 of the statement of claim and controverts that the Plaintiffs were paid compensation over their acquired land by the Government and the 2nd Defendant shall rely on the extract from the land file of the Ministry of Lands and Survey, Borno State evidencing assessment compensation and payment at Maiduguri Metropolitan Council for all the affected persons and subsequent payment to the owners.’

Similarly, the 3rd and 4th Respondents who were the 3rd and 4th Defendants at the trial Court also reacted to paragraph 16 of the Plaintiffs statement of claim in paragraphs 14 and 15 of their joint statement of defence where it was stated by them -

“14. The Defendants deny the averment in paragraph 16 of the Statement of Claim and aver that when the 4th Defendant demarcated the Bolori Layout, farmers whose land happened to fall within the layout were paid compensation but the 4th Defendant later discovered that the 1st Plaintiff and one Bukar Kyari Kolobe were not paid compensation in respect of their farms.

15. The Defendants further aver that the total compensation for improvements on the two farms was N1,015.06 (One Thousand and Fifteen Naira, sixty kobo only) October, 1980.

It is quite plain from the contents of paragraph 16 of the Plaintiffs/1st and 2nd Respondents’ statement of claim and the reaction of the 2nd Defendant’s paragraph 11 of the statement of defence in addition to the reaction of the 3rd and 4th Respondents/Defendants to the same paragraph 16 of the statement of claim in paragraphs 14 and 15 of their joint statement of defence, the issue of revocation of the Plaintiffs right over the land acquired by the Government and the alleged assessment and payment of compensation to the Plaintiffs, was adequately pleaded to support the issue of revocation acquisition considered and resolved by the Court below in its judgment now on appeal, it is therefore absolutely false as claimed by the Appellants in paragraph 5.06 of their Appellants brief of argument that the issue of revocation/acquisition was never pleaded by any of the parties to support the Appellants’ complaint in this issue of the alleged misdirection and miscarriage of justice against the judgment of the Court below.

The question of whether the alleged misdirection was prejudi-

cial to the Appellants, the test is whether on fair consideration of the proceedings as a whole, it can be held that in all probability, the alleged misdirection turned the scale against the Appellants. See *Jepper v. The Queen* (1952) A.C. 480 at 492 cited and applied by this Court in *Babaji Yaro v. The State* (1972) All Nigeria Law Reports 126 at 130. B

In the present case therefore where there was no misdirection at all on the part of the Court below on the face of the record of appeal showing clearly that facts in support of the issue relating to revocation/compensation have been pleaded by the parties, the question of any miscarriage of justice resulting from the conduct of the Court below, does not arise at all. This is because the phrase “miscarriage of justice” simply means a failure of justice. What constitutes miscarriage of justice varies from case to case depending on the facts and circumstances. See Chief J. A. Ojo substituted by Bola Akinbiyi D *Ojo and Asani Gundirnu v. Saula Ogisanyiri Anibire & Ors* (2004) 10 NWLR (Pt. 882) 571 at 583. The facts and circumstances of the present case do not support the presence of any misdirection not to talk of the existence of any miscarriage of justice against the Appellants as alleged in the present issue which I hereby resolved against the Appellants. E

On the whole, for the reasons I have given above and the fuller reasons advanced by my learned brother Okoro JSC in support of the lead judgment with which I entirely agree, I too hereby make an order dismissing this appeal and abide by the other orders in the lead judgment including the order on costs. F

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment of my learned brother Okoro, JSC. I agree with his lordship that this appeal should be dismissed with costs of N100,000. In view of the importance of limitation that is a jurisdictional issue I shall add a few words of my own. H

The appellants were the defendants in the trial court. It is their contention that the claim of the 1st and 2nd respondents (plaintiffs in the trial court) is statute barred or caught by the limitation law, and so the trial court lacked jurisdiction to hear the suit. Is the respondent's

action statute barred or caught by the limitation law?

When an action is caught by the limitation law such an action is said to be statute barred. The plaintiff has a cause of action, but one that cannot be enforced.

The issue of limitation is jurisdictional and so once raised it must be resolved quickly.

It is not mandatory that the issue of limitation is pleaded, but it is desirable that it is pleaded so that the adverse party is not taken by surprise. The issue of limitation if not raised in the pleadings can be raised by the respondents in an interlocutory application.

The limitation law protects a defendant from the injustice of having to face a stale claim. For example if a claim is brought a long time after the events in question there is a strong likelihood that evidence which was available earlier may have been lost, and the memories of witnesses may have faded.

A party would not be allowed to take advantage of the limitation law where there is clear evidence of disability, mistake, fraud and in certain cases involving personal injury, death.

A cause of action would be said to be statute barred if proceedings are unable to be brought because the period set down by the limitation law has elapsed.

To find out if the action is statute barred, the Writ of Summons and Statement of claim must be carefully examined to see when the wrong which gave rise to the cause of action was committed. Once this is determined, the next step would be to find out when the Writ of Summons was filed. The period from when the cause of action accrued to when the Writ of Summons was filed must be within the time stipulated by the limitation law. For example actions for recovery of land must be filed within 12 years after the cause of action accrued. If in an action for recovery of land the cause of action accrued in 1990 and the Writ of Summons was filed in 2005 the action is statute barred. No proceeding can be brought since period of 12 years laid down by the limitation law has run out. See *Olagunju & anor. V. PHCN* 2011 4 SC (pt. I) p. 152 *Egbe v. Adefarasin* 1987 1 NWLR pt.47 p.1.

The applicable Law is section 15 (2) (a) of the Limitation Act. It states that:

“No action by a person to recover land-

(a) Shall, be brought after the expiration of twelve years from the date on which the right of action occurred to the person bringing it or if it first occurred to some person whom he claims, to that person.”

Before deciding if an action is statute barred the Statement of claim without recourse to any other document/process, to satisfy himself when the-cause of action accrued. See Egbe v. Adefarasin (supra).

In UBA ltd v. BTL Ltd 2006 19 NWLR pt.1013 p.67, a case over which I presided as a High Court judge 1 did say that when there is concealment, fraud the limitation law does not apply, in this case it was not until 1990 that the 1st and 2nd respondents became aware that Certificate of Occupancy for the land which they claim is theirs was given to Galadima Maikyari in 1979. This fact was concealed as he was dead. The 1st and 2nd respondent’s cause of action accrued in 1990, the Writ of Summons was filed in 1992. The action is not statute barred.

For this, and the detailed reasoning in the leading judgment, I dismiss the appeal with costs of N100,000 in favour of the 1st and 2nd respondents.

AKA’AHS JSC

The main issue in this appeal is whether the production of a Certificate of Occupancy over the disputed land extinguishes the customary right of occupancy which the respondents held over the land. The High Court as well as the court below made concurrent findings that the customary right which the 1st and 2nd respondents held overrode the statutory right of occupancy issued to the appellants’ predecessor in-title.

This court explained the nature of right created under the Land Use Act, 1978 when it held in Ogunleye v. Oni (1990) 2 NWLR (Part 135) 745 at 771-772 that-

“A holder or occupier of land, whether developed or undeveloped in any area not in an urban area, that is in a rural area, under a recognized customary tenure before the commencement of the Land Use Act in March 1978 would continue to have the land vested in him and enjoy such rights and privileges on the Land subject to the

Decree as if the customary right of occupancy had been granted to him by the Local Government of that area”.

In the leading judgment, Belgore JSC (as he then was) pointedly stated at page 772 thus:

“It could therefore be seen that the Land Use Act is not a magic wand it is being portrayed to be or a destructive monster that at once swallowed all rights on land and that the Governor or local government with mere issuance of a piece of paper could divest families of their homes and agricultural land overnight with a rich holder of certificate of occupancy driving them out with bulldozers and cranes. The law as it is that in areas not declared urban by a state government everybody remains where he has always been as if the new Act has vested in him a customary right of occupancy”.

In *Goni Kyari vs Alhaji Ciroma Alkali & Ors* (2000) 11 NWLR D briefly stated as follows:-

The 1st appellant/defendant is not entitled to use the farmland in dispute; damages and injunction against the appellant.

The case of the 1st respondent is that sometime in 1978 he applied for and was granted a piece of land for farming purposes by the Konduga Local Government Council of Borno State. On 4th October, 1979 the Council issued him with a Certificate of Customary Right of Occupancy covering the land in dispute. The said certificate was tendered as Exhibit A’ in the proceedings. Subsequently, in 1980 he applied for and was granted a statutory right of occupancy in respect of the same piece of land by the Borno State Governor. On 7th April, 1981, the Governor issued him with Certificate of Statutory Right of Occupancy tendered as Exhibit ‘B’. He further claimed that he has since been in possession of the land for farming purposes until 1984 when the appellant went to him and asserted that the land in question belonged to him.

On the other hand, the appellant counter-claimed that the land in dispute purportedly granted to the 1st respondent, belonged to him and his family, the descendants of one Bulama Sheriff Bukar, their ancestor, from time immemorial. He asserted that they are the owners under customary law who had been in possession of same from time beyond human memory. He further said that the interest of his family over the land was neither revoked nor was any compensation paid in respect thereof to the family. It was therefore his case

that the land was unlawfully and illegally granted to the 1st respondent and that Exhibits 'A' and 'B' were therefore null and void and of no effect in that same were obtained through active concealment of the material fact. He therefore claimed interest in the land and cancellation of the Certificates of Occupancy for being wrongfully and illegally issued. B

On their part the 2nd and 3rd respondents who were joined on the application of the appellant contended in their statement of defence that the 1st respondent was properly issued with the Certificates of Occupancy in respect of the land. They also denied the appellants counter-claim and prayed that same be dismissed by the trial court. C

The trial court dismissed the 1st respondent's claim, but granted the appellant's counter - claim. On appeal to the Court of Appeal, the appeal was allowed and judgment entered in favour of the 1st Respondent and the counter-claim of the appellant was dismissed. The appellant then appealed to the Supreme Court which allowed the appeal and restored the judgment of the trial High Court, In the judgment by Iguh JSC which was concurred in by the other Justices he said at page 443:- E

"I repeat that the mere issuance of the Certificate of Occupancy, Exhibits 'A' and 'B' does not and cannot confer title in respect of the land in dispute on the 1st respondent where no such title either existed or was available to be transferred to anyone. It is my view that Exhibits 'A' and 'B' were both issued at the time the customary title of the appellant and members of his family over the piece of land in dispute was subsisting and vesting properly in them and had not been revoked. Both Certificates of Occupancy were rooted on no foundation whatsoever and they are in my view, totally ineffective and void ab initio. It is also clear to me that having regard to the findings of the learned trial judge which are in no way perverse and were not faulted by the court below the appellant proved a better title to the land in dispute than the 1st respondent". F

As stated by Uwaifo JSC in *Dantsoho vs Mohammed* (2003) 6 H NWLR (Part 817) 457 at 493 - 494:

"So where a right of occupancy is involved, either in the nature of a statutory or customary right of occupancy upon the issuance of a right of occupancy or through a deemed right of occu-

pancy by operation of sections 34(2) and 36(4) of the Act, a later grant of a right of occupancy under section 5(1) cannot ipso facto, by operation of section 5 (2), extinguish the earlier right already vested. It will be necessary first to revoke that earlier right of occupancy for overriding public interest or for any of the other reasons as specified under section 28: see *Olohunde vs Adeyoju (2000) 10 NWLR (Part 676) 562 at 59 7*".

Before the respondents' title is extinguished by compulsory acquisition by Government, there must be

(1) Notice of revocation of the existing customary title followed by

(2) Payment of compensation. See: Sections 28(1), (6) and (7) and 29 Land Use Act. The Sections provide:-

"28(1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public purpose

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the nonce.

29(1) If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 of this Act or in paragraph (a) or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements".

Learned counsel for the 3rd and 4th respondents argued that the grant of the certificate of occupancy to Galadima Mai Kyari (the predecessor - in - title to the appellants in 1979 was done in their official capacity and sought cover under Section 2(a) Public Officers Protection Act, Laws of the Federation of Nigeria 1990, applicable to Borno State to submit that the action was statute barred. He further submitted that the 1st and 2nd respondents cannot maintain the action filed in 1992 since a temporary certificate of occupancy was issued to Messrs. Borini Prono in 1972 and after the expiration of the temporary certificate of occupancy they granted the statutory certificate of occupancy to Galadima Mai Kyari in 1979, and this is well over 12 years from the date the cause of action accrued.

The issue was settled in the case of *Salako vs L.E. D. B. & Another* (1953) 20 NLR 169 where the Supreme Court per de Comarmond SPJ was of the view that section 2 of the Public Officers Protection Ordinances does not apply in cases of recovery of land. The action can become statute barred only if it is caught up by section 15(2)(a) of the Limitation Act which stipulates that: B

'15(2) No action by a person to recover land-

(a) shall be brought after the expiration of twelve years from the date on which the right of action occurred to the person bringing it or if it first occurred to some person whom he claims, to that person'' C

As there was no revocation of the customary right held by the 1st and 2nd respondents and since no compensation was paid to them, the grant of a statutory right of occupancy over the disputed land to the 1st and 2nd appellants cannot extinguish the customary right held by 1st and 2nd respondents. Any purported action taken by the 3rd and 4th respondents such as granting a certificate of occupancy to the 1st and 2nd appellants is null and void as no valid title could be transferred to them without the revocation of the customary title followed by payment of compensation. E

For this and the more detailed reasons contained in the judgment of my learned brother, Okoro JSC, I too dismiss the appeal with N100,000.00 (One Hundred Thousand Naira) costs awarded to the 1st and 2nd respondents against the appellants. F

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