

SUPREME COURT OF NIGERIA
FRIDAY 24TH FEBRUARY, 2017. SC. 99/2007
**CORAM:- O. RHODES-VIVOUR, K. M. O. KEKERE-
EKUN, A. A. AUGIE, E. EKO, P. A. GALINJE, JJSC**

NAPOLEON S. ORIANZI APPELLANT
AND
1. THE ATTORNEY-GENERAL,
RIVERS STATE
2. RIVERS STATE HOUSING AND RESPONDENTS
PROPERTY DEVELOPMENT
AUTHORITY
3. GRACE DIMA
4. SAMUEL DIMA (BY SUBSTITUTION)

APPEALS - Preliminary objection - Determination of - Objection must be heard first before resolution of issues in appeal - As appeal heard on defective process - Will result in a void decision (H1)

LAND USE ACT - Sale - Right of occupancy - Transfer of - Under L.U.A. s. 34(2) - When the disputed property was sold to appellant - Right of occupancy of original owner passed along with the property to appellant (H2)

APPEALS - Fresh issue - Determination of - Appellate Court is only concerned with matters that are properly placed before it - As it has no jurisdiction over matter that was not raised at trial Court (H3)

LAND USE ACT - Right of Occupancy - Validity of - Kyari v. Ganaran - Where there is subsisting right of occupancy - It is good against any other right - As grant of another right over same land is invalid (H4)

LAND USE ACT - Customary Right of Occupancy - Condition

for use - Whether the right is granted or occupied - The same must be used in accordance with customary law - Either by individual or family (H5)

LAND USE ACT - Units of ownership - L.U.A. s. 5 & 6 - The units are as follows inter alia - Formal statutory right of occupancy granted under s. 5 - And deemed statutory right of occupancy under s. 34 (H6)

LAND USE ACT - Right of occupancy - Revocation of - Proof - Onus of - Establishing facts of revocation is squarely on respondents - As he who asserts has the onus to prove what he asserts - If he is to succeed (H7)

LAND USE ACT - Revocation - Public purpose - Osho v. Foreign Finance Corp. - Where revocation was done on ground of public purpose - But land was later discovered to be in use for other purpose - The revocation is vitiated and unlawful (H8)

LAND USE ACT - Revocation - Public purpose - Conditions - To revoke right of occupancy for public purpose - Terms of revocation as provided under L.U.A. ss. 28 and 44 must be strictly complied with (H9)

FACTS

Plaintiff/appellant instituted this suit at the High Court of Rivers State, Port Harcourt, claiming entitlement to statutory right of occupancy in respect of the disputed property i.e. No. 46 Obagi Street Phase 1 GRA Port Harcourt, that the appointment of Sanomi Commission of Inquiry and the recommendation of the said commission in respect of the disputed property is irregular, null and void, and of no effect and that the purported sale of the said property by 2nd defendant/2nd respondent is unconstitutional, null and void and of no effect.

Respondents filed their various statements of defence. Is-

sues having been joined, the case proceeded to trial. At the end of the trial and address, and in a reserved and considered judgment, the learned trial Judge Ndu J., granted all the reliefs which appellant asked for, except for the claim for general damages for trespass which was reduced to N300.00. Dissatisfied, respondents appealed to the Court of Appeal Port Harcourt Division. The appeal was heard and in a unanimous decision, the Court set aside the decision of the trial Court and the claim of appellant at the trial Court was dismissed. Aggrieved, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the appellant did prove that he is entitled to the declaration of title over the disputed property and there is no feature that deprived him of his right of occupancy over the said property.

HELD (Unanimously allowing the appeal per GALINJE JSC)

APPEALS - Preliminary objection - Determination of

1. Where a preliminary objection is issued against any aspect of an appeal, it must be heard and resolved first before the resolution of the issues for determination of the appeal. The reason for this is obvious. An appeal heard on a defective process will result in a void decision. (p. 178 E)

Sale - Right of occupancy - Transfer of

2. Now it is to be noted that the disputed property is an abandoned developed property. Under what tenure was the original owner holding the right over the said abandoned property? Did the Rivers State Government take over the property without taking over the corresponding right that the original owner had? Lands in the southern part of this country were governed by the Customary Law of the people as opposed to the Land Tenure Law of the

north, before the advent of the Land Use Act 1978. I am therefore of the firm view that when the Rivers State Government sold the disputed property to the appellant, the right of occupancy of the original owner passed along with the property to him. To that extent he was deemed to have received along with the property the right which enured to the original owner who abandoned the property and same was deemed granted to the Appellant under Section 34(2) of the Land Use Act which provides thus;-

“Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act.” (p. 185 G)

APPEALS - Fresh issue - Determination of

3. These are matters of evidence. The lower Court was wrong when it set up a case for the Respondents. The law is trite that an appellate Court is only concerned with matters that are properly placed before it. It has no jurisdiction over a matter that was not raised and adjudicated upon at the trial Court. (p. 186 H)

Right of Occupancy - Validity of

4. In the instant case the Rivers State Government outrightly sold the disputed property to the Appellant and the agreement in respect of the transaction was registered in the Land Registry. Clearly the transaction did not envisage a temporary holding of the disputed property. In that case of Kyari V. Ganaran (supra) Belgore JSC (as he then was) at page 400 paragraph E-F held:-

“Where there is a subsisting right of occupancy, it is good against any other right. The grant of another right of occupancy over the same piece of Land will therefore

be merely illusory and invalid. The Appellant's right of occupancy subsists up to now as it has not been revoked and the wrongful grant to the 1st respondent has no effect whatsoever on its authenticity."

I completely endorse the views expressed herein by my Lord Belgore, JSC (as he then was). The Appellant's claim was not based on non-payment of compensation or lack of notice which the lower Court over-flogged. His case is that he was entitled to statutory right of occupancy over the disputed property which I think he successfully established.

Clearly the right of occupancy available to the Appellant over the disputed property was not automatically extinguished by Section 5(2) of the Land Use Act by the purported sale and subsequent grant of a statutory right of occupancy over the same property to the 3rd and 4th Respondents. To allow such an injustice, is to allow those in authority to benefit from their wrong actions. Rivers State Government cannot determine a contract in which it is a party and then take certain benefit arising therefrom leaving the party aggrieved without any remedy. (pp. 187 C/192 G)

Customary Right of Occupancy - Condition for use

5. Sections 5 and 6 of the Land Use Act empowers the Governor and the Local Government to grant statutory and customary right of occupancy respectively. Section 8 of the same Act provides that the statutory right of occupancy granted under Section 5 (1)(a) shall be for a definite time and may be granted subject to the terms of any contract which may be made by the Governor and the holder not being inconsistent with the provisions of the Act. There is however, no such requirement for a customary right of occupancy. Section 10 of the Act provides for certain condition and provisions in the certificate of occupancy upon grant of a statutory right of oc-

cupancy as evidence of such grant to the holder of the right of occupancy. Sections 34 and 36 of the Act provide for deemed right of occupancy by recognizing the existence of right of ownership before the coming into force of the Land Use Act, 1978. It follows therefore that a customary right of occupancy whether granted or already being used or occupied, must be used in accordance with customary law, either by individual or family. (p. 189 C)

C
LAND USE ACT - *Units of ownership - L.U.A. s. 5 & 6*

6. Thus, under Section 5 and 6 of the Land Use Act, the following units of ownership exist as follows:-

D
1. Formal statutory right of occupancy granted under Section 5 of the Act.

2. Formal customary right of occupancy granted under Section 6 of the Act.

E
3. Deemed statutory right of occupancy granted under Section 34.

4. Deemed customary right of occupancy granted under Section 35 of the Act.

F
All these units of rights are recognized under Section 36 of the Act. From the foregoing, customary right of occupancy predates the Land Use Act and it is not a subject of a grant. (p. 189 G)

G
LAND USE ACT - *Right of occupancy - Revocation of*
7. The law is settled that he who asserts has the onus to prove what he asserts if he is to succeed. In the instant case the onus of adducing evidence to establish the facts of revocation is under the Evidence Act squarely on the Respondent. The 1st and 2nd Respondents filed their statement of defence and abandoned them as they did not testify before the trial Court. (p. 190 F)

LAND USE ACT - *Revocation - Public purpose*

8. The Rivers State Government that sold the disputed land to the Appellant, turned round to acquire the land which it said was for public purpose. However, within six months it sold the property to a private individual. Clearly from this transaction, it was clear that the acquisition of the property was not for the purpose which it was indicated. The Sanomi panel was just a script meant to raise dust, and clearly that dust blurred the vision of the lower Court. In Osho V. Foreign Finance Corp. (supra) this Court, held that when public purpose is stated to be the ground for revocation of a right of occupancy, if the land is later discovered to be in use for other purposes, the revocation of the right of occupancy is vitiated and the order becomes unlawful.

This is exactly what happened in this case. The sole purpose for the acquisition of the abandoned property was to sell same to Dr. Dima, who was hurriedly issued with a certificate of occupancy after the sale. (p. 191 A)

LAND USE ACT - *Revocation - Public purpose - Conditions*

9. The situation here concerns an abandoned property which the Government sold to the Appellant and the agreement thereof, Exhibit P3, is registered in the Land Registry. By admitting that the right of the Appellant is extinguished is clearly an admission that there was a right available to the Appellant. Two rights of occupancy cannot subsist in respect of the same property or else there will be anarchy. There is no evidence before the trial Court that the Appellant's right was lawfully revoked. To revoke a right of occupancy for public purpose, the letter and spirit of the law must be adhered to. The terms of revocation, as provided under Section 28 and 44 of the Land Use Act, must be strictly complied with and strict construction of the provision made. (p. 191 G)

REPRESENTATION

- R. A. Anyawata, Esq. with Ijeoma Utchay (Mrs.), Josephine Nwadawa (Miss), Chikadibia Igweh, Esq., Collins Anyawata, Esq., Chidinma Anyawata (Mrs.), O. Anyawata, Esq. and Millicent Stan, for the Appellant
- B Mr. A. O. Omotoso with O. C. Eze and M. E. Igwurube for the 1st Respondent
- Wilcox Abereton, Esq. for the 2nd Respondent
- Mr. J.T.O. Ugbodome for the 3rd and 4th Respondents

C

CASES REFERRED TO

- Saraki v. Kotoye (1992) 279 NWLR (pt. 264) 156
- Morakinyo v. Adesonyero (1995) 7 NWLR (pt. 409) 602
- Adelaja v. Fanoki (1990) 2 NWLR (pt. 131) 137
- D Egbe v. Alhaji (1990) 1 NWLR (pt. 128) 546
- Nigerian Engineering Works Ltd v. Denap Ltd. (2002) FWLR (pt. 89) 1062
- Osho v. Foreign Finance Corp. (1991) 4 NWLR (pt. 184) 157
- E Dabo v. Abdullahi (2005) All FWLR (pt. 255) 1039
- Ogunleye v. Oni (1990) 2 NWLR (pt. 135) 745
- Awojugbagbe Light Ind. Ltd v. Chinukwe (1995) 4 NWLR (pt. 390) 379
- Int'l Textile Ind. (Nig) Ltd. v. Aderemi (1999) 8 NWLR (pt. 614) 268
- F Obikoya & Sons Ltd. v. Governor of Lagos State (1987) 1 NWLR (pt. 50) 385
- Adesanoye v. Adewole (2000) 9 NWLR (pt. 671) 145
- G Olohunde v. Adeyoju (2000) 79 LRCN 2297
- Bello v. Diocesan Synod of Lagos (1973) 3 SC 131
- Olukoya v. Ashiru (2006) All FWLR (pt. 322) 1479

STATUTES REFERRED TO

- H Land Use Act 1978, ss. 5(1), 6, 28, 34(2), 35, 44
- Evidence Act 2011, s. 133 (1)(2)

LEAD JUDGMENT BY GALINJE JSC

The Appellant in this appeal was the plaintiff at the Rivers State High Court, sitting in Port Harcourt. His claims as endorsed at paragraph 18 of his statement of claim filed on the 9th of May, 1989 are as follows:-

“Wherefore the plaintiff claims from the Defendants a Declaration that:-

a) The plaintiff is the person entitled to the statutory Right of Occupancy of the Land known as Plot 46, Diobu GRA Phase 1, Port Harcourt otherwise known as and called No.46, Obagi Street Phase 1, GRA, Port Harcourt.

(b) The appointment of the Sanomi Commission of Inquiry and the recommendation of the said commission in respect of the aforesaid property as published in the Commission of the Government of Rivers State on the Report of the Commission of Inquiry into Allocation of Plots and sale of Abandoned Houses In Port Harcourt during the period 1st October, 1979 to 31st December 1983 under the chairmanship of Mr. Dickens Sanomi by the Rivers State Government is irregular, null and void, and of no effect.

(c) The purported sale of the said property by the 2nd Defendant is unconstitutional, null and void and of no effect.

2. N10,000.00 general damages for trespass.

3. Perpetual injunction restraining the Defendants, their agents or servants from further trespass to the plaintiffs said property”.

The 2nd Respondent/Defendant filed a 7 paragraphs statement of defence on the 23rd January, 1991. The 1st Respondent/Defendant filed an 8 paragraph statement of defence which he later amended. The 7 paragraph amended statement of defence was filed on the 21st July, 1993. For the 3rd and 4th Respondents who were the 3rd and 4th Defendants at the trial Court, a 19 paragraph statement of defence was filed. Issues having been joined, the case proceeded to trial. At the end of the trial and address, and in a reserved and considered judgment delivered on the 24th March, 1997 Ndu J granted all the reliefs which the Appellant asked for, except for the claim for general damages for trespass which was

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reduced to N300.00.

The Respondents herein were dissatisfied with the Judgment of the trial Court. Being aggrieved they appealed to the Court of Appeal, Port Harcourt Division. The appeal was heard and in a unanimous decision of the justices that sat on the appeal, delivered on the 5th day of April, 2001, the decision of the trial Court was set aside and the claim of the Appellant at the trial Court was dismissed with cost assessed at N5,000.00. The Appeal herein is against the decision of the lower Court. The Appellant's notice of appeal, at pages 254 to 260 of the record contains 8 Grounds of Appeal.

Parties filed and exchanged briefs of argument. Chief C.A.B Akpananta, learned senior counsel for the Appellant submitted six issues for determination of this appeal as follows:-

D *"(i) Whether the Appellant had a Right of Occupancy over the disputed property and was at all material times in possession of the said property.*

E *(ii) Whether the Appellant's Right of Occupancy was validly revoked according to law or as required by the Land Use Act, 1978.*

F *(iii) Whether the Appellant's Right of Occupancy over the property in dispute was automatically extinguished under Section 5(2) of the Land Use Act by the purported grant of a statutory right of occupancy over the same property to the 3rd and 4th Respondents' predecessor - in- title.*

G *(iv) Whether the purported sale agreement with the 3rd and 4th Respondents' predecessor-in-title and the purported statutory certificate of occupancy issued to him over the said property in dispute were valid in law.*

(v) Whether it is the requirement of the law that in order to save an earlier grant of a right of occupancy, the later right of occupancy must be expressly set aside.

H *(vi) Whether the respondents were trespassers and accordingly liable to pay damages to the appellant.*

Mr. Ayodeji Omotoso, learned counsel for the 1st Respondent, who also settled the 1st Respondent's brief of argument issued

a preliminary objection in the following words:-

“Notice is hereby given that the 1st Respondent shall by way of objection, urge on the Court to discountenance Grounds 1 and 4 of the Appellant’s Grounds of Appeal and issue No. ii purportedly distilled from the 2 Grounds of Appeal. Learned counsel argued the preliminary objection and thereafter formulated five issues for determination of this appeal. I shall consider the learned counsel’s argument in his preliminary objection anon. The issues submitted on behalf of the 1st Respondent are hereunder reproduced for consideration as follows:-

1. Whether the lower Court was justified in deciding that the Appellant had no prior interest in the property granted or deemed to have been granted under the Land Use Act.

2. Considering the state of pleadings and the evidence adduced at the trial, whether the lower Court was justified in holding that *“whatever interest the Appellant had in the property was cancelled by the Rivers State Government Notice No. 3 of 1986”* and automatically extinguished by the grant of a statutory right of occupancy over the property to the 3rd and 4th Respondents’ predecessor-in-title under Section 5(1) of the Land Use Act.

3. Having regard to the state of pleadings and the evidence adduced, whether it was proper for the lower Court to have upheld the validity of the sale agreement and the certificate of occupancy granted to the 3rd and 4th Respondents’ predecessor-in-title.

4. Whether the lower Court was also justified in holding that to save an earlier grant of a right of occupancy, the later right of occupancy ought to be expressly set aside.

5. Whether, going by the entire circumstances of the case, the lower Court was justified in holding that the Respondent (now Appellant) was clearly not in possession of the property in dispute, and therefore that he is not entitled to damages for trespass, as the Appellant (Respondent) cannot be adjudged trespassers on the property in dispute in view of Exhibit D4 (certificate of Occupancy) granted to Dr. Dima (3rd and 4th Respondents predecessor-in-title) over the property.

For the 2nd Respondent, Wilcox Abereton, Esq. of counsel

who settled the 2nd Respondent's brief of argument formulated five issues as well, for determination of this appeal.

These issues read as follows.-

1. Whether the Appellant made out a case of invalid cancellation/revocation of his right of occupancy over the property.

2. Whether the learned justices of the Court below were not right in holding that Exhibit P3 (Land Agreement) was not a document which could confer a legal title on the appellant ranking above Exhibit D4 (the certificate of occupancy) granted by the Governor to the predecessor of 3rd and 4th Respondents.

3. Whether the Court below was wrong to hold that the statutory right of occupancy vide Exhibit D4 granted by the Governor to the predecessor in title of 3rd and 4th Respondents automatically extinguished any other title the Appellant might have over the property.

4. Considering all the circumstances of this case, was the Court below wrong in holding that to save the earlier right of occupancy of the Appellant over the property, he (Appellant) must expressly seek to set aside the later statutory right of occupancy granted to the predecessor-in-title of the 3rd and 4th Respondents.

5. Was the Appellant in possession of the property in dispute at all material times to this suit to enable him succeed in his claim for damages for trespass.

Mr. J.T.O. Ugboduma, learned counsel for the 3rd and 4th Respondents who also prepared their brief of argument distilled four issues for determination of this appeal. These issues are as follows:-

"1. Whether the interest the Appellant had in the property was a right of occupancy granted or deemed granted under the Land Use Act which conferred on the Appellant a legal title over the property.

2. Whether the Appellant's interest in the property was cancelled by the Rivers State Government Notice No. 3 of 1986.³ . Whether the lower Court was justified in upholding the validity of the Sales Agreement (Exhibit 9) and the statutory right of occupancy (Exhibit D4) granted in favour of the 3rd and 4th Respond-

ents predecessor-in-title and in holding that whatever interest Appellant had in the property was automatically extinguished under Section 5(2) of the Land Use Act upon the grant of the said statutory right of occupancy.

4. Whether the lower Court was justified when it held that the Appellant was not in possession of the property at the material time and therefore not entitled to damages for trespass against the 3rd and 4th Respondents who cannot be adjudged trespassers in view of the statutory right of occupancy granted to Dr. Dima (deceased) over the property.

Before I go into the arguments of counsel for the respective parties, I wish to set out albeit in brief, the facts of this case.

Sometimes in 1981, the Rivers State Government offered to sell the disputed property, an abandoned property to the Appellant, who accepted the offer and paid a deposit of N10,000.00 towards its total value. An agreement evidencing the sale was subsequently entered into between the Appellant and the Secretary to the Government of Rivers State and the Appellant was put in possession after the agreement aforesaid was registered in the Land Registry.

When the military took over the government in 1983, the Appellant was put in detention and his properties including the disputed property were confiscated.

After his release, he was made to appear before Justice Uwaifo Special Panel on Recovery of Public Properties in Lagos.

The Panel recommended that all his properties including the disputed property be returned to him. This recommendation was approved by the Armed Forces Ruling Council, which was the highest ruling body in the country at the time. Later, the Rivers State Government appointed Sanomi Commission to look into the allocation of plots and abandoned properties between 1st October, 1979 and 31st December, 1982. This commission recommended to the Rivers State Government that the disputed property be retained as Government Quarters. The Rivers State Government accepted the recommendation and published in its gazette that the Appellant's right over the said property had been revoked. The

property was retained as government quarter for six months and was subsequently sold to Dr. Charles Dima of blessed memory in spite of Appellant's protest through (Exhibit 8) to the 2nd Respondent against the sale.

B Learned counsel for the 2nd Respondent issued a preliminary objection and argued same at pages 12 - 16 of his brief of argument. Learned counsel for the appellant also issued a preliminary objection in his reply brief to the 2nd respondent's brief of argument. These preliminary objections were however withdrawn
C before the hearing of the appeal. They were accordingly struck out. The only preliminary objection left for consideration is the one issued by the learned counsel for the 1st Respondent. Even at the risk of repetition, I wish to set out the objection here for clarity sake. This is how it reads:-

D *"Notice is hereby given that the 1st Respondent shall by way of objection urge on the Court to discountenance Grounds 1 and 4 of the Appellants' grounds of appeal and issue No. 11 purportedly distilled from the two (2) Grounds of Appeal".*

E ***Where a preliminary objection is issued against any aspect of an appeal, it must be heard and resolved first before the resolution of the issues for determination of the appeal. The reason for this is obvious. An appeal heard on a defective process will result in a void decision.***
F

In his argument in support of the objection, learned counsel for the 1st Respondent submitted that the 1st ground of appeal does not arise from the decision of the lower Court as the lower
G Court never made any pronouncement to the effect that the Appellant had a right of occupancy that was revoked. Learned counsel contends that any ground of appeal which does not arise from the decision against which the appeal lies is incompetent. In aid the authority in Saraki V. Kotoye (1992) 279 NWLR (Pt.264) 156 was
H cited and relied upon.

In a further argument learned counsel submitted that the second issue for determination of this appeal which is formulated on behalf of the appellant partly from the 4th Ground of Appeal, is at

variance with the said 4th ground of appeal. On this basis, learned counsel on the authority of *Morakinyo V. Adesonyero* (1995) 7 NWLR (Pt. 409) 602 and *Adelaja v Fanoki* (1990) 2 NWLR (Pt. 131) 137 urged this Court to discountenance with the said issue and the argument in support thereof. Still in argument learned counsel submitted that since the Appellant has abandoned Ground 4, he has accepted the finding of the lower Court that says the Appellant's interest in the property was cancelled by the Rivers State Government vide legal notice No. 3 of 1986, as such he has no valid interest upon which his claims will be resolved. The issue of whether the Appellant's interest was cancelled by the Rivers State Government legal notice No. 3 of 1986, is not a matter to be resolved through preliminary objection as it is one of the core issues to be determined in the main appeal. The law is settled beyond any doubt that grounds of appeal must arise and be related to the decision against which appeal lies, and should constitute a challenge to the ratio of the decision. Any ground of appeal that is formulated outside the decision appealed against is incompetent and ought to be discountenanced. See *Saraki V. Kotoye* (Supra); *Egbe V Alhaji* (1990) 1 NWLR (Pt. 128) 546 at 590. The objection herein is directed at the 1st and 4th grounds of appeal. I reproduced these grounds hereunder as follows without their particulars-

"1. The Court of Appeal erred in law in holding that the revocation of the Appellant's right of occupancy was valid."

4. The Court of Appeal erred in law in holding that the Appellant's interest in the property was cancelled by the Rivers State Government Notice No. 3 of 1986."

At page 245 of the printed record of this appeal, the lower Court in its judgment said:-

"Secondly, upon the grant of a statutory right of occupancy (Exhibit D4) to the Appellant's predecessor-in-title over the property in dispute, whatever interest the respondent had in the property is automatically extinguished."

Still on the same page, the lower Court held:-

"Thirdly, the Respondent's interest in the property was can-

celled by the Rivers State Government Notice No. 3 of 1986.”

B Clearly the two grounds of appeal, subject matter of the 1st Respondent’s objection do relate to the lower Court’s decision highlighted above. Whatever the difference in the language used is a matter of semantics. I failed to see how the two grounds of appeal do not relate to the decision of the lower Court. The objection lacks merit and it is accordingly overruled.

C Now, for the main appeal, I have read through the judgment against which this appeal lies and argument canvassed by parties’ respective counsel and I am of the firm view that the only issue calling for the determination of this appeal is whether the appellant did prove that he is entitled to the declaration of title over the disputed property and there is no feature that deprived him of his right of occupancy over the said property. In his argument, learned D counsel for the Appellant submitted that the evidence before the trial Court clearly shows that the Appellant had an uninterrupted right of occupancy over the disputed land, since the purported revocation was not carried out in accordance with the law. According E to the learned counsel the right of occupancy acquired by the Appellant remained valid and subsisting at all material time and the burden is on the Respondents to prove that the right available to him has been legally revoked. In aid, learned counsel cited the authorities in Nigerian Engineering Works Ltd V. Denap Ltd. (2002) F FWLR (Pt.89) 1062 at 1093; Osho v Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157 at 189. Finally, learned counsel urged this Court to hold that the Respondents failed to discharge the burden placed on them.

G For the 1st Respondent it is argued that the sale to the Appellant of the disputed property and the subsequent agreement between him and the Secretary to the Rivers State Government heavily relied upon by the Appellant does not constitute an interest that could confer a right of occupancy on the Appellant under the H Land Use Act. According to the learned counsel for the 1st Respondent, the Appellant’s interest which was created in 1983, not having been granted by the Governor does not confer legal right on the Appellant under the Land Use Act, same not having been

evidenced by a certificate of occupancy. In a further argument, learned counsel submitted that the issue of whether or not the Appellant had a prior legal right before the revocation does not lie in the mouth of the parties, but is rather a matter of law deducible from the proven facts in the record before the Court. Finally, learned counsel urged this Court to hold that the lower Court is right in all its pronouncements. B

For the 2nd Respondent, it is argued that the appellant neither established a right of occupancy over the disputed property that is known to the Land Use Act nor did he make out a valid case against the cancellation/revocation of his purported interest or right in the property. In a further argument learned counsel submitted that the Appellant had no statutory right of occupancy capable of being revoked under Section 28(6) and 44 of the Land Use Act, as (Exhibit P3) is not a document recognized by it. In aid learned counsel cited *Dabo V. Abdullahi* (2005) ALL FWLR (Pt. 255) 1039. Finally, learned counsel urged this Court to resolve the 2nd issue formulated by the Appellant and the 2nd Respondent's issue against the Appellant. D E

For the 3rd and 4th Respondents it was argued that in *Ogunleye V. Oni* (1990) 2 NWLR (pt.135) 745 the defendants deemed grant under Section 34(2) of the Land Use Act was preferred to the plaintiff's later certificate of occupancy issued on 27th June, 1983 where as in this appeal, the respondent has no prior interest in the property granted or deemed to be granted under the Land Use Act. Learned counsel tried to distinguish the present case with the case of *Registered Trustees of Apostolic Church V Oluwolein* (1990) 6 NWLR (Pt.158) 514 and ended up citing *Kari V. Ganaram* and contended that the agreement to sell the property in dispute to the Appellant as evidenced by Exhibit P3 was not granted under the Land Use Act and therefore does not confer a legal title on the Appellant. F G

In a further argument, learned counsel submitted that Exhibit P3 is a mere agreement as no Interest passes until the governor's consent is sought and had. In aid learned counsel cited *Awojugbagbe Light Industries Ltd V. Chinukwe* (1995) 4 NWLR H

(Pt. 390) 379 at 438; International Textile Industries (Nig) Ltd V. Aderemi (1999) 8 NWLR (Pt.614) 268 at 313 paragraph E-H. In conclusion, learned counsel submitted that for there to be a right of occupancy granted under the Land Use Act such right must actually be granted under the Land Use Act or deemed to be granted under the Land Use Act by the Governor. In aid learned counsel cited Obikoya & Sons Ltd V. Governor of Lagos State & Anor (1987) 1 NWLR (Pt.50) 385 at 410 Paragraphs A-B.

I have set out the Appellant's claim at the trial Court elsewhere in this judgment. Even at the risk of repetition, I wish to reproduce the first claim as follows:-

"A Declaration that:-

(a) The plaintiff is the person entitled to the statutory right of occupancy of the Land at Plot 46, Diobu, GRA, Phase 1, Port Harcourt, otherwise known as and called No. 46, Obagi Street GRA, Phase 1 Port Harcourt."

Clearly, the Appellant set out a claim for declaration of title to the disputed property. The law is settled that the burden of proof in a claim for declaration of title to land lies on the plaintiff, who generally must rely on the strength of his own case and not on the weakness of the defendant's case. See Kodilinye V. Odu (1935) 2 WACA 336, Udegbe V. Nwokafor (1963) 1 SCNLR 184, Woluchem V. Gudi (1981) SC 291, Piaro V. Tenalo (1976) 12 SC 31. In this case, the Appellant who was the plaintiff at the trial Court had the burden to prove that he is entitled to the declaration which he sought at that Court and he was required to discharge this burden of proof on preponderance of evidence.

It is also the law that a claim for declaration of title to land may be proved by any of the five ways stated and restated in numerous decisions of this Court. See Piaro v Chief W. Tenalo (supra); Idundun V. Okumagba (1976) 1 NMLR 200; Makanjuola V. Balogun (1989) NWLR (Pt. 108) 192; Otukoya V. Ashiru (2006) ALL FWLR (Pt. 322) 1479. These five methods of proving title or ownership to land are:-

1. By traditional evidence;
2. by production of document of title which must be duly

authenticated;

3. by the exercise of numerous and positive acts of ownership over a sufficient length of time to warrant the inference that the person is the true owner of the land;

4. by acts of long possession and enjoyment of the land, and

5. by proof of possession of connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

In *Olukoya v Ashiru* (supra) this Court gave the third method of proving ownership of land as follows:-

“By acts of selling, leasing, renting out all or part of the land or farming on it or on a portion thereof.

In the instant case, the Appellant gave evidence at the trial Court and produced in evidence, a letter of offer of the property for sale, receipt for N10,000.00 being the initial deposit paid towards the total value of the property and a copy of the agreement between him and the Secretary to the Government of Rivers State which were admitted and marked Exhibit P1, P2 and P3 respectively. Exhibit P3 was registered in the Land Registry and the Appellant was put in possession or assumed possession over the property. These pieces of evidence were never challenged in anyway by the Respondents. The 3rd Respondent testified at the trial Court as DW1. Her evidence is that her late husband Dr. Charles Dima bought the disputed house from the Rivers State Housing and Property Development Authority, the 2nd Respondent and was subsequently issued with a certificate of occupancy which was admitted as Exhibits D4. In addition one Rhoda Osanebi a staff of the 2nd Respondent testified as DW2. In her evidence she stated that she could identify the signature of Mrs. R Zidougba on any document. She identified a document which she said emanated from her office and the signature on the said document was that of Zidougba. Mr. Pepple applied to tender it. Chief Asuk had no objection. Thereafter the Court admitted a letter of 27th August 1987 in evidence and marked it Exhibit D5. The identity of Zidougba was not disclosed and the 1st and 2nd Respondents did not call

any witness and they also did not testify before the trial Court even though each of them filed a statement of defence. At paragraph 2 of the 1st Respondent's amended statement of defence, paragraphs 1, 3, 5 and 12 of the statement of claim were admitted. The admitted paragraphs of the statement of claim are hereunder reproduced as follows:-

"(1) The plaintiff is a contractor and resides at No.8, Road 1, Presidential Housing State, Phase 1, Port Harcourt, within the jurisdiction of the Honourable Court.

(3) Sometimes in 1981 the plaintiff applied to the committee on government properties to purchase one of the abandoned properties being sold to the indigenes of Rivers State and by a letter No RSL/9764/14 of 18th May, 1982 the Government of Rivers State offered to the plaintiff to purchase the property known as and called No. 46 Obagi Street, GRA, Phase 1. The plaintiff accepted the offer and paid a deposit of N10,000 00 towards the total value of the property when so determined. The said letter of offer will be founded upon at the trial.

(5) On 5th April, 1983, the Secretary to the Rivers State Government on behalf of the Government of Rivers State entered into a sales agreement in respect of the said property with the plaintiff which agreement was registered as No. 39 at page 39 in volume 96 of the Lands Registry, Port Harcourt.

(12) By Legal Notice No. 3 of 1986 published as a supplement to the official gazette Rivers State of Nigeria No. 9 volume 18 of 27th March, 1985, titled "Revocation of Rights and Certificates of Occupancy Order 1986", the Rivers State Government published the list of properties whose rights and certificates of occupancy were revoked as well as the list of properties to be retained as Government Quarters.

The plaintiff's said properties appeared in the latter category. The said legal notice will be founded upon at the trial."

The 1st Respondent partially admitted the 2nd paragraph of the statement of claim to the extent that he is the legal officer of the Rivers State Government and he is sued as representing the said Government only.

The facts contained in paragraphs 1, 3, 5 and 12 having been expressly admitted by the 1st Respondent are deemed established. Where an averment in a statement of claim is not denied in a statement of defence, same is deemed admitted. That which is admitted needs no proof. See *Adesanoye V. Adewole* (2000) 9 NWLR (Pt. 671) at 145 paragraph A. With the admission of the averments and production of documents, Exhibits P1, P2 and P3, the learned trial Judge was convinced that the Appellant had proved its case, when he held:-

"It is hereby declared that the plaintiff is the person entitled to the statutory right of occupancy of the land known as Plot 46, Diobu GRA Phase 1, Port Harcourt...."

By the evidence before the trial Court, I am of the view that the Appellant had on the authority of *Idundun V. Okumagba* (supra) acquired ownership of the disputed property and was entitled to a statutory right of occupancy. However, the Court of Appeal from which this appeal emanated saw the case differently. The Court of Appeal is of the view that the agreement to buy the land when the Land Use Act had been promulgated does not fall under the Act and therefore did not donate to the Appellant any interest on the land which will in turn give the Appellant a right of occupancy. It is also the view of the Court of Appeal that even if the Appellant had any interest on the disputed property same was cancelled by the Rivers State Government Notice No.3 of 1986. It was on these premises that the Court of Appeal reversed the decision of the trial Court and by virtue of Section 5(1) of the Land Use Act, the subsequent sale and issuance of certificate of occupancy to Dr. Dima was declared valid.

Now it is to be noted that the disputed property is an abandoned developed property. Under what tenure was the original owner holding the right over the said abandoned property? Did the Rivers State Government take over the property without taking over the corresponding right that the original owner had? Lands in the southern part of this country were governed by the Customary Law of the people as opposed to the Land Tenure

Law of the north, before the advent of the Land Use Act 1978. I am therefore of the firm view that when the Rivers State Government sold the disputed property to the appellant, the right of occupancy of the original owner passed along with the property to him. To that extent he was deemed to have received along with the property the right which enured to the original owner who abandoned the property and same was deemed granted to the Appellant under Section 34(2) of the Land Use Act which provides thus:-

“Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act.”

The 1st and 2nd Respondents did not testify at the trial Court even though they filed statements of defence, which they effectively abandoned. Yet the lower Court in its judgment made the following findings at page 245 of the printed record of this appeal as follows:-

“1. The agreement to sell the property in dispute to the respondent as evidenced by Exhibit P3 was not granted under the Land Use Act and does not confer legal title on the respondent compared with the statutory right of occupancy granted to the Appellants’ predecessor-in-title.

2. At the time of the grant (Exhibit D4) to the Appellant’s predecessor-in-title the legal interest over the property was in the Rivers State Government and not the respondent who was never granted a statutory right of occupancy over the property.

3. Upon the grant of a statutory right of occupancy (Exhibit D4) to the Appellant’s predecessor-in-title over the property in dispute whatever interest the respondents had in the property is automatically extinguished.”

These are matters of evidence. The lower Court was wrong when it set up a case for the Respondents. The law is trite that an appellate Court is only concerned

with matters that are properly placed before it. It has no jurisdiction over a matter that was not raised and adjudicated upon at the trial Court. The case of Kyari V. Ganaran (1997) 2 NWLR (Pt. 488) 380 is distinguishable from this particular case. In that case Abba Ganaran applied to the Ministry of Land and Survey, Borno State for a grant of a temporary right of occupancy over a piece of land along Maiduguri-Bama Road to be used for car wash. What was given to him was a temporary licence which was subject to revocation by the Government at will.

In the instant case the Rivers State Government outrightly sold the disputed property to the Appellant and the agreement in respect of the transaction was registered in the Land Registry. Clearly the transaction did not envisage a temporary holding of the disputed property. In that case of Kyari V. Ganaran (supra) Belgore JSC (as he then was) at page 400 paragraph E-F held:-

“Where there is a subsisting right of occupancy, it is good against any other right. The grant of another right of occupancy over the same piece of Land will therefore be merely illusory and invalid. The Appellant’s right of occupancy subsists up to now as it has not been revoked and the wrongful grant to the 1st respondent has no effect whatsoever on its authenticity.”

I completely endorse the views expressed herein by my Lord Belgore, JSC (as he then was). The Appellant’s claim was not based on non-payment of compensation or lack of notice which the lower Court over-flogged. His case is that he was entitled to statutory right of occupancy over the disputed property which I think he successfully established.

On whether the Appellant’s right was validly revoked, learned counsel for the Appellant submitted that the 1st and 2nd Respondents did not comply with the provisions of Section 28(1) and 44 of the Land Use Act in their purported revocation of the Appellants right of occupancy. Learned counsel urged this Court to set aside

the purported revocation on the authority of *Nigerian Engineering Works Ltd V. Denap Ltd* (2002) FWLR (Pt 89) 1062 at 1085 paragraphs F-G; *Osho v Foreign Finance Corporation* (1991) 4 NWLR (Pt.184) 157 at 189 paragraph B-C. Finally learned counsel submitted that the burden was on the Respondents to prove that the revocation of the Appellant's right of occupancy was valid and since they failed to do so, the purported revocation is invalid, null and void.

Learned counsel for the 1st Respondent argued forcefully that the lower Court was justified in holding that whatever interest the Appellant had in the property was cancelled by the Rivers State Government Notice No. 3 of 1986 and was automatically extinguished by the grant of the right of occupancy (Exhibit D4) over the property to the 3rd and 4th Respondent's predecessor-in-title. Learned counsel further argued that the Appellant is not a holder of a right of occupancy over the disputed land as he failed to adduce facts at the trial to show the quantum of interest he had which entitled him to his claim. According to the learned counsel, the nature of interest established by the Appellant does not amount to a right of occupancy, since it was not created before the Land Use Act or under Section 5(1) of the Act. This being so, learned counsel contended that the Appellant was not a holder of right of occupancy and the revocation of his interest did not require strict compliance with Sections 28 and 44 of the Land Use Act. In a further argument, learned counsel submitted that the failure of the Appellant to challenge the revocation is a pointer to the fact that his interest did not measure up to the right of occupancy, as such he cannot be heard in address regarding the improper revocation of his right of occupancy. In aid learned counsel cited *Olagunju V. Adesoye & Anor* (2009) NWLR (Pt.1146) 225 at 255 paragraphs G-H. Finally, learned counsel urged this Court to hold that the lower Court was justified in holding that whatever interest the Appellant had was properly revoked.

For the 2nd Respondent it is argued that Exhibit P3 is a mere inchoate agreement entered into between the Appellant and officials of the Rivers State Government which does not possess

any weight and might under the Land Use Act capable of overriding Exhibit D4, a certificate of occupancy issued by the Governor. According to the learned counsel, agreement could be entered by parties, but it is the certificate of occupancy that confers title to land.

Learned counsel for the 3rd and 4th Respondents in his argument submitted that the Appellant did not have a right of occupancy granted to him under the Land Use Act by the Rivers State Government and so the issue of whether his right was validly revoked does not arise at all. Learned counsel urged the Court to dismiss the appeal.

Sections 5 and 6 of the Land Use Act empowers the Governor and the Local Government to grant statutory and customary right of occupancy respectively. Section 8 of the same Act provides that the statutory right of occupancy granted under Section 5 (1)(a) shall be for a definite time and may be granted subject to the terms of any contract which may be made by the Governor and the holder not being inconsistent with the provisions of the Act. There is however, no such requirement for a customary right of occupancy. Section 10 of the Act provides for certain condition and provisions in the certificate of occupancy upon grant of a statutory right of occupancy as evidence of such grant to the holder of the right of occupancy. Sections 34 and 36 of the Act provide for deemed right of occupancy by recognizing the existence of right of ownership before the coming into force of the Land Use Act, 1978. It follows therefore that a customary right of occupancy whether granted or already being used or occupied, must be used in accordance with customary law, either by individual or family.

Thus, under Section 5 and 6 of the Land Use Act, the following units of ownership exist as follows:-

- 1. Formal statutory right of occupancy granted under Section 5 of the Act.***
- 2. Formal customary right of occupancy granted un-***

der Section 6 of the Act.

3. Deemed statutory right of occupancy granted under Section 34.

4. Deemed customary right of occupancy granted under Section 35 of the Act.

B **All these units of rights are recognized under Section 36 of the Act. From the foregoing, customary right of occupancy predates the Land Use Act and it is not a subject of a grant.**

C I have stated elsewhere in this judgment that the disputed land was deemed granted to the Appellants since the rights of those who abandoned the property are deemed transferred to him. Subsequent sale to Dr. Dima was invalid ab initio, in absence of proper termination of the agreement between the Rivers State Government and the Appellant. In *Olohunde & Anor V. Adeyoju* (2000) 79 LRCN 2297 at 2328 paras D - E, this Court had this to say:-

E *“A certificate of statutory or customary right of occupancy issued under the Land Use Act, 1978; cannot be said to be conclusive evidence of any right, interest or valid title to land in favour of the grantee. It is at best, only a prima facie evidence of such right, interest or title without more and may in appropriate cases be effectively challenged and rendered invalid, null and void.”*

F See *Kyari v Alkali & 3 Ors* (2001) 5 SCNJ 421. The 1st and 2nd Respondents admitted that whatever interest the Appellant had over the disputed land was cancelled. ***The law is settled that he who asserts has the onus to prove what he asserts if he is to succeed. In the instant case the onus of adducing evidence to establish the facts of revocation is under the Evidence Act squarely on the Respondent. The 1st and 2nd Respondents filed their statement of defence and abandoned them as they did not testify before the trial Court.***

H In *Osho V. Foreign Fin. Corp. (Supra)* at page 201, paragraphs G - H, *Belgore JSC* (as he then was) said -

“A party relying on any fact must not only plead that fact but must also proffer evidence in proof thereof. Nowhere in the written record is there evidence of revocation of the right of occupancy of

the respondent...”

The Rivers State Government that sold the disputed land to the Appellant, turned round to acquire the land which it said was for public purpose. However, within six months it sold the property to a private individual. Clearly from this transaction, it was clear that the acquisition of the property was not for the purpose which it was indicated. The Sanomi panel was just a script meant to raise dust, and clearly that dust blurred the vision of the lower Court. In Osho V. Foreign Finance Corp. (supra) this Court, held that when public purpose is stated to be the ground for revocation of a right of occupancy, if the land is later discovered to be in use for other purposes, the revocation of the right of occupancy is vitiated and the order becomes unlawful.

This is exactly what happened in this case. The sole purpose for the acquisition of the abandoned property was to sell same to Dr. Dima, who was hurriedly issued with a certificate of occupancy after the sale.

Now the question is whether the Appellant’s right of occupancy over the property in dispute was automatically extinguished under Section 5 (2) of the Land Use Act by the purported grant of Exhibit D4 to the 3rd and 4th Respondents. By Section 1 of the Land Use Act all land comprised in the territory of each State in the Federation are vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians. By Section 28 of the Act, it shall be lawful for the Governor to revoke any right of occupancy for over-riding public interest. This right of revocation however must be exercised in accordance with the provision of the Act.

The situation here concerns an abandoned property which the Government sold to the Appellant and the agreement thereof, Exhibit P3, is registered in the Land Registry. By admitting that the right of the Appellant is extinguished is clearly an admission that there was a right available to the Appellant. Two rights of occupancy can-

not subsist in respect of the same property or else there will be anarchy. There is no evidence before the trial Court that the Appellant's right was lawfully revoked. To revoke a right of occupancy for public purpose, the letter and spirit of the law must be adhered to. The terms of revocation, as provided under Section 28 and 44 of the Land Use Act, must be strictly complied with and strict construction of the provision made. See Bello V. Diocesan Synod of Lagos (1973) 3 SC 131. I therefore fully endorse the view of my Lord Belgore JSC (as he then was) in Kyari v Ganaram (Supra), and the view expressed by Ogundare, JSC in Nigerian Engineering Works Ltd V. Denap Ltd (Supra). In Olukoya V. Ashiru (2006) ALL FWLR (Pt.322) 1479 at 1514 Paras. E - H, this Court held that an equitable owner in possession cannot be overridden by a subsequent grantee of a legal estate. This is what my brother Ogbuagu, JSC, who read the lead judgment said:-

"As rightly submitted in the Respondent's brief at page 8, the Jalingo Local Government having lawfully granted the land in dispute to the respondent, in 1981, it was left with nothing to grant to the Appellant subsequently in 1983 during the subsistence of the grant to the respondent... so that, if there is proof that money was paid for the land coupled with an entry into possession it is sufficient, to defeat the title of a subsequent purchaser of the legal estate, if and provided that the possession, is continuously maintained... Thus, if even it is coupled with possession, it cannot be overridden by a legal estate." See Ogbu & 4 Ors v Ani & 4 Ors (1994) 78 SCNJ (Pt. II) 363; Sore Mekun V. Shodipo (1959) LLR 30; Orsanmi V. Idowu (1959) 4 FSC 40; Oshodi V. Balogun & Ors (1936) 4 WACA 1.

Clearly the right of occupancy available to the Appellant over the disputed property was not automatically extinguished by Section 5(2) of the Land Use Act by the purported sale and subsequent grant of a statutory right of occupancy over the same property to the 3rd and 4th Respondents. To allow such an injustice, is to allow those in authority to benefit from their wrong actions. Rivers

State Government cannot determine a contract in which it is a party and then take certain benefit arising therefrom leaving the party aggrieved without any remedy.

On the whole I am of the firm view that the lower Court was wrong in reversing the judgment of the trial Court. For the reasons I have alluded to in this judgment, the sole issue formulated by me is resolved in favour of the Appellant. The appeal therefore shall be and it is hereby allowed. B

The judgment of the lower Court is hereby set aside. In its place, the judgment of the trial Court is hereby restored along with all the consequential orders made therein. C

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment of my learned brother, Galinje JSC. I too would allow the appeal against the judgment of the Court of Appeal and restore the judgment of the trial Court. D

After reading the leading judgment and the concurring judgments I find it difficult to add a few words of mine as if I do I would be repeating what has been so well spelt out in these judgments. E

Appeal allowed. Judgment and orders of trial Court restored.

KEKERE-EKUN JSC

This appeal is against the judgment of the Court of Appeal, Port Harcourt Division delivered on 5th April 2001 setting aside the judgment of the High Court of Rivers State, Port Harcourt Division delivered on 24/3/1997. F

The appellant, as plaintiff at the trial Court sought the following reliefs against the respondents as per paragraph 20 of his statement of claim at pages 11 - 12 of the record.

a. The plaintiff is the person entitled to the Statutory Right of occupancy of the land known as plot 46, Diobu G.R.A. Phase 1, Port Harcourt, otherwise known as and called No. 46, Obagi Street, Phase 1, G.R.A. Port Harcourt. H

b. The appointment of the Sanomi commission of Inquiry and the recommendation of the said Commission in respect of the aforesaid property as published in the “Commission of the Government of Rivers State on the Report of the Commission of Inquiry into Allocation of plot and Sale of Abandoned Houses in Port Harcourt during the period 1st October, 1979 to 31st December, 1983 under the Chairmanship of Mr. Dickens Sanomi by the Rivers State Government, is irregular null and void and of no effect.

c. The purported sale of the said property by the 2nd defendants to the 1st defendant is unconstitutional, null and void, and of no effect.

2. N10,000.00 general damages for trespass.

3. Perpetual injunction restraining the defendants their agents or servants from further trespass to the plaintiff’s said property.

In stating the facts leading to this appeal, I adopt the summary of the evidence of the appellant as PW1 at the trial Court as contained in the judgment of the trial Court at pages 91 - 92 of the record:

“The plaintiff testified as PW1. In his testimony he said sometime in 1981 he applied to the Committee on Government Properties to buy one of the abandoned houses. The Committee offered him the property in dispute that is No. 46 Obagi Street, G.R.A. Phase 1 Port Harcourt. He accepted the offer and paid a deposit of N10,000.00 towards the total value. He was given a receipt for the payment he made, and he was given possession of the property thereof. On 5th April 1983 the Secretary of the Government on behalf of the Rivers State Government executed an agreement with him for the sale of the property. When he went to the property, he found that Major Agbogun was living in it. He then wrote to the Brigade Commander of the Major’s unit informing him of his rights in the property. The Brigade Commander wrote to the Major asking him to Pay rents to him (plaintiff).

The army seized power from the civilians on 31/12/83, and by then he was a Civil Commissioner in Rivers State just for one month, all the Civil Commissioners were arrested and detained

including him. He was charged with enriching himself with three properties, which included the property in dispute. He appeared before Justice Uwaifo's Panel in Lagos. The Panel went into the matters and recommended that all his plots be given back to him. That decision was approved by the Armed Forces Ruling Council. B

He was released from detention on 29/9/85 and thereafter he regained possession of the property in dispute. Later, the Rivers State Government set up the Sanomi Panel to look into allocations of plots in Rivers State from 1/10/79 to 31/12/83. He was invited and he appeared before the Panel. At the conclusion of that exercise the government issued a white paper on it and the property was affected. His said property was shown in the schedule for properties to be retained as Government Quarters. Later he noticed that the property was going to be sold to Dr. Dima, and in reaction he immediately protested to the 2nd defendant against the sale. In spite of the protest they went ahead and sold the property." C D

At the trial, the appellant testified on his own behalf. One witness (the 3rd respondent in this appeal) testified on behalf of the 3rd and 4th respondents. The 1st and 2nd respondents did not testify although a document was tendered and admitted in evidence through DW2, a member of staff of the 2nd respondent. E

At the conclusion of the trial, the learned trial Judge entered judgment in favour of the plaintiff (now appellant) as follows: F

"1. It is hereby declared that the plaintiff is the person entitled to the Statutory right of occupancy of the land known as Plot 46, Diobu G.R.A. Phase 1 Port Harcourt, otherwise known as and called No.48 Obagi Street, G.R.A. Phase 1, Port Harcourt. G

2. It is hereby declared that the recommendation by the Sanomi Commission of Inquiry in respect of the property in dispute in the Conclusions of the Government of Rivers State on the Report of the Commission of Inquiry into Allocation of plots and Sale of Abandoned Houses in Port Harcourt, 1983 under the Chairmanship of Mr. Dickens Sanomi by the Rivers State Government is irregular, null and void and of no effect. H

3. It is hereby declared that the purported sale of the said

property by the 2nd defendant to Dr. Charles Dima (deceased) is unconstitutional, null and void and of no effect.

4. The defendants shall pay to the plaintiff the sum of N300.00 general damages for trespass.

B *5. The defendants by themselves, their servants or agents are restrained by perpetual order of injunction from further trespass of the said property.*

6. The plaintiff is entitled to costs against the defendants, which I fix at N250.00".

C The 3rd and 4th respondents herein were dissatisfied with the judgment and appealed to the lower Court. In a considered judgment delivered on 5th April, 2001 the Court allowed the appeal and set aside the judgment of the trial Court. The appellant is dissatisfied with this judgment and has further appealed to this D Court.

I must state here that I have had the benefit of reading in draft the judgment of my learned brother, PAUL ADAMU GALINJE, JSC just delivered. I agree entirely with the reasoning E and conclusion that there is merit in the appeal and that it should be allowed.

I proffer the comments below in support and for emphasis. I agree with the formulation of a single issue for the determination of this appeal.

F The first issue to consider is the nature of the appellant's interest in the disputed property vis-à-vis Exhibit P3 (sales agree-
ment between the appellant and the Rivers State Government) prior
to the interest granted to the 3rd and 4th respondents' predecessor
G vide Exhibit D4. While the appellant contends that Exhibit P3 conferred a right of occupancy, it is contended on behalf of the respondents that Exhibit P3 did not confer legal title on the appellant because it was created in 1983 after the commencement of the Land Use Act and is not backed by a certificate of occupancy. It is
H contended that Exhibit P3 confers neither a legal right nor a deemed right in respect of the property in favour of the appellant.

The undisputed facts in this matter are that the Rivers State Government offered the property in dispute to the appellant for

purchase vide a letter dated 18/5/82. In accordance with the terms of the agreement, he paid the N10,000 deposit and was put in possession. It is also not in dispute that he entered into a sales agreement (Exhibit P3) with the said Government, which was duly registered at the Lands Registry in Port Harcourt.

The sales Agreement having been duly registered and the appellant put into possession, it is safe to say that he had an existing right of occupancy over the property in dispute. B

By virtue of Section 1 of the Land Use Act 1978, all land in the State is vested in the Governor of the State who shall hold it in trust and administer it for the use and common benefit of all Nigerians. C

Section 5 (1) of the Act gives the Governor power to grant inter alia, statutory rights of occupancy to any person for all purposes while Sub-section (2) provides that upon the grant of a statutory right of occupancy pursuant to Sub-section (1), all existing rights to the use and occupation of the land, which is the subject of the statutory right of occupancy, shall be extinguished. Section 28 of the Act provides that a Governor shall have the right to revoke a right of occupancy for overriding public interest, which may include the requirement of the land by the Government of the State or by a Local Government in the State for public purposes within the State (Section 28 (2) (b)). Section 29 makes provision for compensation payable on the revocation of a right of occupancy by the Governor for overriding public interest. D
E
F

In considering the effect of the above provisions of the Land Use Act, this Court in *Nigerian Engineering Works Ltd. V. Denap* (2001) 18 NWLR (pt.746) 726 @ 758 A - C per Belgore, JSC held: G

“Any holder of a right of occupancy, whether evidenced or yet to be evidenced by a certificate of occupancy, holds that right as long as it is not revoked. Revocation in this instance is that one done in accordance with the law, for nobody will lose his right of occupancy by revocation without his being notified first in writing and the subsequent revocation must also be notified to him in writing. Any other method may be a mere notice of intent it will never

be notice of revocation. It will be a nullity. The Governor may revoke a right of occupancy for overriding public interest (S.28 (1) Land Use Act). The “overriding public interest” is clearly spelt out in Subsections 2 & 3 of Section 28 of the Land Use Act. As for notice required to the holder of right of occupancy that his right of occupancy will be revoked or is revoked, it clearly explained in Section 44 of the Act.”

The appellant’s right of occupancy in respect of the property in dispute was purportedly revoked as shown in an official Gazette published on 27th March 1986 (Exhibit P7) for public purpose to wit: for use as Government Quarters. As rightly observed by the learned trial Judge, for the purported revocation to be valid, prior notice must be given to the holder of the right of occupancy, as required by Section 28 (6) and 44 of the Land Use Act, The holder is also entitled to compensation by virtue of Section 29 of the Act.

In an action for declaration of title to land, the onus is on the claimant to establish his case on the balance of probabilities.

It is also settled law that he must succeed on the strength of his case and not on the weakness of the defence.

Section 133 (1) & (2) of the Evidence Act, 2011 provides:

“133. (1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

(2) If the party referred to in Subsection (1) of this Section adduces evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established the burden lies on the party against whom judgment would be given if no more evidence were adduced and so on successively, until all the issues in the pleadings have been dealt with.”

Thus notwithstanding the fact that the plaintiff must succeed on the strength of his own case, once he has adduced sufficient prima facie evidence to entitle him to the relief sought, the onus shifts to the defendant.

The appellant herein having pleaded and testified that the purported revocation of his right of occupancy was not in accordance with the law, the onus was on the respondents, particularly the 1st respondent to prove otherwise.

The 1st respondent had a duty to lead evidence in support of paragraph 4 (e) of its Amended Statement of Defence to prove, not only that the appellant's right of occupancy was revoked in accordance with the law, but also to show that the property was indeed acquired for public purpose. B

The undisputed evidence before the Court was that the property was sold to the 3rd and 4th respondents' predecessor in title barely six months after the purported acquisition. In other words the purported acquisition of the property for overriding public interest was a sham. The 1st respondent not having complied with the relevant Sections of the Land Use Act, the revocation of the appellant's right of occupancy over the property in dispute is illegal, null and void. C D

As the appellant's right of occupancy was not validly revoked, it follows that it was subsisting at the time the 3rd and 4th respondents' predecessor in title (Dr. Dima) entered into a subsequent sales agreement with the Rivers State Government in respect of which he was issued a certificate of occupancy. A certificate of occupancy is only prima facie evidence of title or possession. It is not conclusive proof of title to the land to which it relates. See: Otukpo V. John (2012) 7 NWLR (pt.1299) 357 @ 377; Registered Trustees Mission V. Oloweri (1990) 6 NWLR (pt.158) 514; Adole V. Gwar (2008) 11 NWLR (Pt.1099) 562 @ 590 B ??? C and 618 C E; Ogunleye V. Oni (1990) 2 NWLR (Pt.135) 745. E F G

In the instant case the certificate of occupancy issued to Dr. Dima was invalid and conferred no title on him. See: Nigerian Engineering Works Ltd V. Denap Ltd. (supra). In Adole V. Gwar (supra) @ 618 E – F, His Lordship, Aderemi, JSC opined thus:

“The power of the Governor to grant statutory right of occupancy or customary right of occupancy by the appropriate body must not be exercised whimsically such as to deprive someone who had lawful right or title to a piece of land prior to the promul- H

gation of the Land Use Act.”

In the instant case, even though the interest of the appellant was acquired after the promulgation of the Land Use Act, the admonition in the excerpt of the judgment quoted above is still relevant. The Governor is not at liberty to act on his own whims and caprices. Any revocation of a right of occupancy must be shown to have been done within the confines of the law.

For these and the more detailed reasons advanced in the lead judgment, I find this appeal to be meritorious. It is accordingly allowed. The judgment of the lower Court is set aside and the judgment of the trial Court is affirmed.

I abide by the order on costs as contained in the lead judgment.

D

AUGIE JSC

I have had a preview of the lead Judgment just delivered by my learned brother - Galinje, JSC, and I share his views completely.

I would have been content to add nothing to what he said, but I feel strongly about the situation, and I will say my own bit.

The Appellant applied to purchase an abandoned property in Port-Harcourt. By a letter dated 18/5/82, he was offered one.

F He accepted and made payment of N10,000 to the Government.

On 5/4/83, the Secretary to the Rivers State Government [SSG], on behalf of the State Government executed a Sales Agreement, which was duly registered in the Lands Registry, Port Harcourt.

By a Legal Notice No. 3 of 1986, the Rivers State Government [RVSG] published a Revocation order, and revoked his right to the property so as to retain it as Government Quarters. He protested to the 2nd Respondent, but despite the Legal Notice that indicated that the property was taken over as Government Quarters, the 2nd Respondent entered into an Agreement six months after the said Revocation Order to sell it to one Dr. Dima, who is

now deceased, but the 3rd and 4th Respondents herein are his successors in title.

In finding for the Appellant, the learned trial judge, Ndu, J. (as he then was) held that the procedure adopted in purporting to revoke his interest in the said property is irregular, and that the subsequent sale to Dr. Dima, is “wrongful, invalid and of no effect. B

The Respondents appealed, and in setting aside the decision of the trial Court, the Court below concluded as follows -

*In the first place, the Agreement to sell the property in dispute to the Respondent [Appellant] as evidenced by Exhibit 3 was not granted under the Land Use Act and does not confer a legal title on [him] compared with the statutory right of occupancy granted to Appellants predecessor-in-title [late Dr. Dima]. Secondly, upon the grant of a statutory right of occupancy (Exhibit D4) to [their] predecessor-in-title - - whatever interest the Respondent [Appellant] had in the property is automatically extinguished. D
Thirdly, the Respondent [Appellant]s interest in the property was cancelled by RVSG Notice No. 3 of 1986. Surprisingly [he] never challenged the cancellation. Fourthly, at the time of the grant (Exhibit D4) to the Appellants’ predecessor-in-title, the legal interest over the property was in the RVSG and not the Respondent [Appellant], who was never granted a statutory right of occupancy, over the property. I am, therefore, in full agreement with the submission of learned counsel for the Appellants that on the grant of F
(Exhibit D4) to [their] predecessor-in-title, whatever interest the Respondent [Appellant herein] had on the property (if any) were extinguished.*

The Appellant appealed, and he is urging this Court to set G aside the Judgment of the Court below, on the following grounds -

- He had a right of occupancy over the property in dispute.
- The plea of revocation by the Respondents involved an acknowledgment of the said right of occupancy prior to the purported act of revocation. H
- The burden on the Respondents to plead and prove valid revocation of his said right of occupancy was not discharged by the Respondents.

- There was no evidence that any revocation notice was served on him in the manner stipulated in Sections 28(6) and 44 of the Land Use Act.

- His right of occupancy over the said property is still subsisting and valid.

B The 1st Respondent argued inter alia that the Appellant, not being a holder of a deemed grant and not one actually granted a right of occupancy by the Governor in 1983, is not entitled to the grant of a statutory right of occupancy sought by him merely on C the basis of the Sales Agreement [Exhibit P3] made with the SSG of RVSG.

The Appellant asked in his Reply Brief to 1st Respondent's Brief-

D What is the legal status of the Sale Agreement (Exhibit P3), and was the Court below right in holding that (he) had no prior or existing interest at the time of the purported cancellation or revocation by the said Government Notice No.2 of 1986.

E He submitted that Exhibit P3 dated 5/4/1983 and duly registered as No 39 at page 39 in Vol.96 of the Land Registry, Port Harcourt, is a land instrument, and referred to the definition of "instrument in Section 37 (Interpretation) of Rivers State Land Instruments (Preparation and Registration) Law of the Laws of Rivers State, 1999, which said Law by its Section 36 revoked the F Registration Ordinance (No. 12 of 1915 or Cap. 87 of Laws of Nigeria 1923); and that the said definition is of universal application in nearly all, if not all the States of Nigeria, and he cited in support the case of Akinduro V. Alaya (2007) 15 NWLR (pt.1057) G 312 at 330 SC.

Furthermore, "when a purchaser of land, who has paid and taken possession of the land, by virtue of a registerable instrument, which has NOT been registered, he has thereby acquired an equitable interest which is as good as a legal estate" - Nsiegbe & Anor. H V. Mgbemena & Anor. (2007) All FWLR (Pt.372) 1769.

He argued that if this is the position regarding a registerable instrument that has NOT been registered, a fortiori, an instrument that was duly registered, as in this case, and in the circumstances,

the 1st Respondent, who is the Chief Legal Officer of the RVSG, “cannot in all fairness and in the interest of justice, just merely wish away the said Sale Agreement nor be heard to say with all seriousness that he had no prior right in the property in dispute.

He is right; the 1st Respondent is the Attorney-General of the RVSG, and he should know better. But I will spell it out for him. B

The Statutes define a registerable instrument as a document affecting land, whereby one party [the grantor], confers, transfers, limits, charges or extinguishes in favour of another party, [grantee], any right of title to or interest in land and includes a certificate of purchase and a power of attorney under which any instrument may be executed, but does not include a will. Once a document purports to transfer and/or confer interest in land or howsoever described, it becomes an instrument that must be registered See Niger Construction Ltd. V. Ogbimi (2001) 18 NWLR (Pt. 744) 83; Ikonne V. Nwachukwu (1991) 2 NWLR (Pt. 172) 214. Where the document does not confer title to land, it need not be registered. D

It is settled that priority, as regards registerable instruments, is determined not by the date the instrument is made but by the date of registration. In Amankra v. Zankley (1963) 1 All NLR 304; (1963) NSCC (Vol. 3) 243, the same vendor gave conveyances of the disputed land to both parties. The Plaintiff claimed the land was conveyed to him on 29/8/1957 by deed, which was delivered for registration on 16/9/1957. The Defendant claimed that the vendor conveyed the land to him by a deed dated 16/5/1957, duly registered on 17/3/1960. The Plaintiff contended that the Defendant had lost priority, while the Defendant argued that since the vendor conveyed the legal estate to him in May 1957, he had divested himself of the legal estate and the purported conveyance of the legal estate to the Plaintiff in August 1957 was of no effect. On appeal, this Court per Bairamian, JSC, explained as follows- E

“Although the ... Act does not relate to registration of title, but of instruments, it is Plainly intended to give some measure of security and some protection against fraud. When two persons claim the transfer of a legal estate he who did not register his con- F G H

veyance cannot plead it or give it in evidence; if they both registered their deeds, each takes effect as against the other from the date of registration; which means that the one executed earlier loses its priority if it was registered later. What counts is the date and hour of registration. The argument for the Defendant, if correct, would open the door to fraud."

The priority of interests under the Land Instrument Registration Statutes is based on the times the relevant Deeds were registered, therefore, where the equities are equal, the first in time prevails - See *Olumide V. Ajayi* (1997) 8 NWLR (Pt 517) 433.

In *Tewogbade V. Obadina* (1994) 4 NWLR (Pt. 338) 326 SC, this Court per Iguh, JSC, hit the nail right on the head, as follows -

Where two contesting parties trace their title in respect of the same piece of land to the same grantor, the applicable principle of law has always been that the latter in time of the two parties to obtain the grant cannot maintain an action against the party who first obtained a valid grant of the land from such a common grantor. The reason is obvious as a grantor having successfully divested himself of his title in respect of the disputed piece or parcel of land by the first grant would have nothing left to convey to a subsequent purchaser under the elementary principle of nemo dat quod non habet as no one may convey what no longer belongs to him.

In *Akingbade V. Elemesho* (1964) NSCC (Vol.3) 96, the same plot of land was conveyed by two different vendors to two different purchasers, and one bought his plot two months after the other registered his own conveyance, Ademola, CJF, stated as follows-

The Respondent testifies that he went to the land registry to make a search and was told there was no previous conveyance covering the area. This is a strange story; for to say nothing of the earlier conveyances, the Appellant's conveyance had been handed in for registration only two months before It is not possible for the Court to believe the Respondent bought without notice of the Appellants prior equity; he is either untruthful or he deliberately shut his eyes or was guilty of gross negligence in finding out the facts,

and this is enough to fix him with notice.

It is settled that a purchaser, who neglects to make a thorough search of the Register is fixed with notice of rights contained in the instruments registered under the various Land Instruments Registration Laws in Nigeria; only a bona fide purchaser of a legal estate for value without notice takes priority over someone, who had acquired a prior equitable interest over the same property - see *Edokpolo & Co. Ltd. V. Ohenhen* (1994) 7 NWLR (Pt.358) 511. B

In *Edokpolo & Co. Ltd. V. Ohenhen* (supra), the action arose C after 1st Respondent commenced building operations on the land.

The Appellant alleged that it brought the matter to the notice of the deceased father of the 2nd Respondent, who denied that he granted the 1st Respondent a lease for fifty years. The decision of the trial Court was reversed by the Court below. This Court held- D

The legal practitioner acting for the Appellant in connection with the alleged sale of land in dispute (PW7) made a search in the Land Registry and found that the 1st Respondent had registered Exhibit 9. E

The evidence led by the Appellant was that when the registration of Exhibit 9 was brought to the notice of the deceased he denied it. The sale of the parcel of land, which the deceased had already leased to Total Nigeria Ltd., to the Appellant took place before the sale of the land in dispute to the Appellant after it had been leased to the 1st Respondent. That should have made the Appellant to be cautious and not rely heavily or entirely on the alleged denial by the deceased that he had earlier leased the land in dispute to the 1st Respondent before the purported outright sale of the same land to the Appellant. Further, the legal implication of the discovery of Exhibit 9 in the Land Registry by the Solicitor acting for the Appellant was that the Appellant was not a bona fide Purchaser for value of the land in dispute without notice as there was evidence that the solicitor reported his findings to the Appellant. My conclusion is that the Court below was right in giving legal effect to Exhibit 9 in the circumstances of this case. F G H

In this case, the Respondents are not contesting the fact that

the said Exhibit P3 was registered in the land Registry, Port-Harcourt, which means that the Appellant had a prior right in the property.

The Appellant also tendered Exhibit P4, a letter written by the Brigade Commander, 2nd Amphibious Brigade, Port Harcourt, to one Major Agbogun, who was occupying the property, asking the Officer to pay rent to him, as the owner, if he is to live there, which shows that the Appellant took possession of the property.

The Appellant said that after he was released from detention on 27/9/85, he regained possession of the property. Later, RVSG set up the Sanomi Panel to look into the allocations of plots from 1/10/79 to 31/12/83. At the end, a White Paper was produced, wherein his property was shown in the schedule for properties to be retained as Government Quarters. He later got to know that the property was to be sold to the late Dr. Dima, and he immediately protested to the 2nd Respondent, but the sale still went through.

In 1987, he saw that the late Dr. Dima was doing renovation work on the property, and he again wrote informing him that the property belongs to him. Late Dr. Dima did not give up the house. Under cross-examination, the 3rd Respondent stated as follows-

My husband did not conduct any further search before he purchased it because the property was listed in the Government White Paper as a property, whose interest has been revoked.

My learned brother, Galinje, JSC, dealt with all the issues vis-à-vis relevant provisions of the Land use Act, and I adopt his reasoning.

One thing that sticks out like a sore thumb is the fact that the property said to have been revoked for overriding public interest, to wit - use as Government Quarters was sold six months later; the Legal Notice is dated 27/3/1986, and the 3rd Respondent said her husband was offered the property to buy in September 1986. *“The revocation of a right of occupancy for public purpose or in the public interest does not include the revocation of the right of a grantee for the purpose of vesting it in another”* - See Ibrahim V Mohammed (2003) 6 NWLR (Pt.817) 615 at 644 per Kalgo, JSC.

The RVSG's action in this case, smacks of extreme bad faith, and will not be allowed to stand. Any legal backing available to it, is besmirched by its action in revoking the Appellant's right in the property for overriding public interest as Government Quarters, only to sell the property six months later to a private individual. Is that enough time to comply with the conditions under the Act? I think not. This Court held in Ibrahim V. Mohammed (supra) -

It is not the intendment or the intention of the [Land Use] Act that the Governor shall use his powers to grant the land arbitrarily without regard to the existing ownership or holdings granted before the operation of the Act. Furthermore the Act itself provides some checks and balances, which must be observed before making any grant, the conditions under which such grants can be revoked and what follows after such revocation. It provides under S. 28 that the Governor can only revoke a right of occupancy for "overriding public interest", which has been defined both in respect of statutory and customary rights of occupancy. If such powers of revocation are to be exercised, the holder of the right of occupancy must be notified in advance. The revocation of a right of occupancy for public purpose or in the public interest does not include the revocation of the right of a grantee for the purpose of vesting it in another. Therefore, since revocation of the grant involves the deprivation of the proprietary right and obligations of a grantee, all the terms and conditions laid down by the Act must be strictly adhered to and complied with. And so for a revocation of a right of occupancy to be valid, it must be made strictly in compliance with Section 28 of the Land Use Act. Also even where the revocation is valid, the grantee is fully entitled to compensation under S. 29 (1) of the Act. The above are the necessary safeguards, which must be observed in the revocation of a right of occupancy under the Act.

In this case, the Appellant said he was not given any notice, not to mention notice in advance that the property is up for revocation and that he had not been paid compensation after it was revoked. There is nothing from the Respondents to suggest to the contrary and it must be accepted that the state of affairs, is as he

portrayed.

The RVSG went to all that trouble to set up a panel of inquiry, accepted the recommendation in the White Paper that properties be retained as Government Quarters, and issued the Legal Notice No. 3 of 1986, which published list of properties to be retained as Government Quarters, including the Appellant's property, only to turn around six months later to sell the said property to Dr. Dima.

To justify its action is to succumb to the whims and caprices of a Government that comes into power, revokes the rights of its citizens in property, using relevant provisions of the Land Use Act, only to reallocate the properties thereafter to some other citizens.

The Appellant has a right; he was deprived of enjoying same; and there must be a remedy - see *Bello V A-G Oyo State* (1986) 5 NWLR (Pt.45) 828, where Oputa, JSC, aptly observed as follows

"Holt, CJ in the now famous case of Ashby V. White (1703) postulated the principle that "if a plaintiff has a right he must of necessity have the means to vindicate it and a remedy, if he is injured in the enjoyment or exercise of it and indeed, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal". The Maxim "Ubi jus, Ubi remediun" is simply the Latin rendition of the above principle. The maxim is so fundamental to the administration of justice that where there is no remedy provided by common law or Statute, the Courts have been urged to create one. The Courts cannot therefore be deterred by the novelty of an action.

In other words, the law is an equal dispenser of justice, and leaves none without a remedy for his right. Wherever there is a wrong, there must be a remedy to redress that wrong. Justice, it is said, must not only be done but must be seen to be done. In this case, to dismiss this appeal, as the Respondents urged this Court to do, would amount to letting the RVSG benefit from its wrong actions.

I feel for the 3rd Respondent, as the trial Court said, she is the one most affected in this "unfortunate and ill-fated transac-

tion". But this is a Court of law, not sentiments or morality of emotion - Att-Gen., Lagos State V. Eko Hotels (2006) NWLR (pt. 1011) 378. In other words, sentiments have no place in judicial deliberations -Kalu V. FRN. (2016) LPELR-40108 (SC). See also Suleiman V. C.O.P. (2008) 8 NWLR (Pt. 1089) 298, where Tobi, JSC, observed -

The Court cannot exercise its whims indiscriminately. Similarly there is no room for the Court to express its sentiments. It is a hard matter of law; facts and circumstances which the Court considers without being emotional, sensitive or sentimental.

In the circumstances of this case, I agree with my learned brother that the Court below was wrong in reversing the judgment of the trial Court, which candidly, is a well-written and sound Judgment.

Thus, I also allow the Appeal. I also set aside the Judgment of the Court below and restore the Orders made by the trial Court.

EKO JSC

At the trial High Court of Rivers State, the Appellant herein was the plaintiff. His claims endorsed on the Writ of Summons are:

"WHEREOF the Plaintiff claims from the Defendants a declaration that:-

(a) The Plaintiff is the person entitled to the statutory Right of Occupancy of the land known as Plot 46, Diobu G.R.A, Phase 1, Port Harcourt, otherwise known as and called No. 46, Obagi Street, Phase 1, G.R.A, Port Harcourt.

(b) The appointment of the Sanomi Commission of Inquiry and the recommendation of the said commission in respect of the aforesaid property as published in the "Commission of the Government of Rivers State on the Report of the Commission of Inquiry into Allocation of plot and Sale of Abandoned Houses in Port Harcourt during the period 1st October 1979 to 31st December 1983 under the Chairmanship of Mr. Dickon Sanomi" by the Rivers State Government, is irregular null and void, and of no ef-

fect,

(c) *The purported sale of the said property by the 2nd Defendants to the 3rd Defendant is unconstitutional, null and void, and of no effect.*

- B 2. *N10,000.00 general damages for trespass.*
 3. *Perpetual injunction restraining the Defendants, Their agents or servants from further trespass to the plaintiff's said property”.*

C The parties joined issues at the trial Court. At the end of the trial, the trial Court (coram: Ichie N. Ndu, J.) entered judgment for the Plaintiff/Appellant. All the reliefs sought by the Plaintiff (the Appellant herein) were granted in favour of the Plaintiff/Appellant.

D The 3rd and 4th Respondents herein, as the defendants at the trial, were aggrieved. They appealed to the Court of Appeal, sitting at Port Harcourt (hereinafter referred to as “*the Court below*”).

The 1st and 2nd Respondents (as 1st and 2nd Defendants at the trial) did not appeal.

- E The crux of the judgment of the trial Court is -
 i . That the Rivers State Government policy of one-man, one plot, which was the basis for the purported revocation of the title of the Plaintiff (Appellant) had no legal basis or support. See pages 99 - 100 of the Records:

- F *ii. That the purported revocation of the Plaintiffs title was not for any overriding public purpose, which is the sine qua non for revocation under Sections 28(6) and 44 of the Land Use Act; and that the acquisition of the disputed property from the Plaintiff*
 G *for use as Government Quarters was a mere smokescreen as the Government turned round only “6 months later to offer it for sale to another individual”. See pages 101 and 102 of the Records; and*

- H *iii. That the purported revocation was not preceded by actual notice delivered to the Plaintiff and that for such a revocation to be valid in law, it must be preceded by a notice of it given to the holder as it is provided under Sections 28(6) and 44 of the [Land Use] Act. It found as a fact, at page 101 of the Records that noth-*

ing like the statutory notice happened until (the Plaintiff) saw the publications in Exhibits p6 and p7, which showed that the Government had revoked his right in the property and it was to be retained as Government Quarters.

I notice from the three (3) issues formulated for the determination of the appeal at the Court below (which are found at pages 178 and 179 of the Records) that the appellant at the Court below either did not attack the ratio decidendi of the decision of the trial Court, or they avoided them. The 3 issues formulated for the determination of the appeal at the Court below by the 3rd and 4th Respondents herein (as the Appellants at the Court below) are

“1. Whether from the state of the pleadings and the evidence led in this suit the learned trial Judge was justified in law in declaring the Plaintiff/Respondent as the person entitled to the statutory Right of Occupancy over the land in dispute because the recommendation of the Sanomi Commission of inquiry as it affected the property in dispute was null and void and also because the sale of the property in dispute to Dr. Charles Dima (deceased) by the 2nd Defendant was also null and void? [Said to arise from Additional Grounds 5 and 6, and Original Ground 3.

2. Whether the learned trial Judge was also justified in law in declaring the plaintiff/Respondent as the person entitled to the Statutory Right of Occupancy over the land in dispute and subsisting whereas Dr. Charles Dima (deceased) had a valid and subsisting Right of occupancy (certificate of occupancy) granted under S.5(1) of the Land Use Act over the same property? [Said to arise from the original Ground 2].

3. Whether the learned trial Judge was justified in law in awarding damages for trespass and an order for perpetual injunction against the said Dr. Charles Dima (deceased) over the land in dispute? [said to arise from the original Ground 4 and Additional Ground 7].

The findings of fact, or the ratio decidendi at pages 99 - 103 of the Records, which in my opinion formed the crux of the judgment are largely directed at the acts of the Rivers State Government, represented in the suit by the Attorney-General (the

1st Defendant/1st Respondent), who in his wisdom has found no basis to contest the decision of the trial Court. The Rivers State Government, represented by the Attorney- General, has not appealed or challenged the decision of the trial Court. The effect of the Learned Attorney-Generals decision not to appeal the determinations or specific findings of fact against the Rivers State Government, particularly against the direct and specific actions of the Rivers State Government which gave rise to the cause of action in this matter, is that those specific determinations and findings of fact against it are acceptable to it and are conclusive and binding on it. See *ODIASE v. AGHO* (1972) 1 ALL NLR (pt.1) 170 at 176; *FOREIGN FINANCE v. L.S.D.P.C.* (1991) 1 NSCC 520; *ALAKIJA v. ABDULAI* (1996) 6 NWLR (pt.552) 1 at 24.

Following on the heels of this principle is another related or derivative principle to the effect that a finding or decision of a trial Court, whether on an issue of fact or law, that is not challenged on appeal to the Court of Appeal, such decision or finding, rightly or wrongly, stands and must not be disturbed. See *NWABUEZE v. OKOYE* (1999) 4 NWLR (pt.91) 664; *OSHODI v. EYIFUEM* (2000) 13 NWLR (pt.684) 332; *TIMITIMI v. AMABEBE* (1953) 14 WACA 374 at 377.

Between the Appellant (as the Plaintiff at the trial) and the Rivers State Government, represented by the 1st Respondent being the Attorney-General and the 1st defendant at the trial, the following facts, from the pleadings and evidence at the trial, are not in dispute; the 1st Defendant having expressly admitted them in paragraph 2 in the Amended Statement of Defence; that is -

i. That in 1981 the Plaintiff/Appellant applied to the Rivers State Committee on Government properties to purchase the disputed property.

ii. The Rivers State Government by a letter No. RSL/9764/14 of 18th May, 1982 offered the disputed property to the Plaintiff/Appellant for his purchase of the same. See Exhibit P1.

iii. The Plaintiff/Appellant accepted the offer and paid the required deposit of N10,000.00. See Exhibit p2.

iv. The Plaintiff/Appellant and the Rivers State Government

executed the sales agreement, Exhibit P3, in respect of the disputed property. The agreement was registered as No. 39 at page 39 in Volume 96 of the Rivers State Land Registry.

v. The Plaintiff/Appellant took over possession of the property and exercised rights of ownership. He leased it out and collected rents therefrom, See Exhibit p4. B

vi. The Plaintiff/Appellant appeared before the Uwaifo Panel to defend his ownership of the disputed property, among others. The Uwaifo panel report acknowledging his ownership of the disputed property, in its report made its recommendation that it be C given back to him, which recommendation the Armed Forces Ruling Council (the highest legislative Executive authority of the Federation then) accepted. This is contained in Exhibit P5. The plaintiff has since been in possession of the disputed property.

vii. In 1985, the Plaintiff/Appellant was made to appear before Sanomi Commission convoked to look into allocation of plots. The Report of the Sanomi Commission is Exhibit P6, The Sanomi Commission recommended that the disputed property be used as one of the Government Quarters. D E

viii. The Rivers State Government later in 1986 issued Legal Notice No. 3 of 1986 published in its Gazette RSN No. 9 Volume 18 of 27th March, 1986 titled: Revocation of Rights and Certificates of Occupancy Order, 1986, wherein the disputed property was listed as one of the affected properties. The disputed property was stated therein to be retained as government Quarters. See Exhibit P7. F

Let me pause here and ask: At what point in time did the Rivers State Government take steps to comply with the mandatory provisions of Sections 28(1), (2) (6) and (7), and 44 of the Land Use Act to effectuate the proper revocation of the title of the Plaintiff/Appellant in the disputed property? The 1st Respondent (as the 1st Defendant) neither pleaded nor proved the facts establishing the prerequisites for proper revocation of the Plaintiff/Appellant's title under Sections 28 and 44 of the Land Use Act. The relevant provisions of Sections 28 and 44 of the Land Use Act are herein below reproduced, that is – G H

“28.(1) It shall be lawful for the Governor to revoke a right of Occupancy for overriding public interest.

(2) Overriding public interest in the case of a Statutory Right of Occupancy means

(a) -

B *(b) the requirement of the land by the Government of the State or by a Local Government in the State, or the requirement of the land by the Government of the Federation for public purposes.*

(c) -

C *(4) The Governor shall revoke a right of Occupancy in the event of the issue of a notice by or on behalf of the President if such Notice declares such land to be required by the Government for public purposes.*

(5) -

D *(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.*

E *44. Any notice required by this Act to be served on any person shall be effectively served on him -*

(a) by delivering it to the person on whom it is to be served;

or

(b) by leaving it at the usual or last known place of abode of that person; or

F

(c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

G *(d) in the case of an incorporated company or body, by delivering it to the Secretary or Clerk of the Company or body at its registered or principal office or sending it in a prepaid Registered letters addressed to the Secretary or Clerk of the Company or body at that office; or*

H *(e) If it is not practicable after reasonable inquiry to ascertain the name and address of a holder or occupier of land on whom it should be served, by addressing it to by the description of “holder” or “occupier” of the premises (naming them) to which it relates, and by delivering it to same person on the premises or, if there is*

no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises”.

The issuance of the mandatory or statutory notices under Sections 28 and 44 of the Land Use Act being conditions precedent for proper revocation of a Right of Occupancy in or over a landed property, and the revocation of the said Right of Occupancy are matters of fact, which must be proved by the party asserting the revocation of a Right of Occupancy. The 1st Respondent herein, as the 1st Defendant at the trial, in his Amended Statement of Defence, acknowledged that the Plaintiff/Appellant had a Right of Occupancy over the disputed property which was revoked. This fact is pleaded in paragraph 6 of his Amended Statement of Defence, copied at pages 46 - 49 of the Records, thus -

6. Paragraph 15 of the Statement of Claim is denied and in furtherance (sic) the 1st Defendant shall contend at the trial that, the Plaintiffs Right of Occupancy having been revoked by the Military Governor, it was up to the Plaintiff to make claims for compensation.

No where in the Amended Statement of Defence did the 1st Defendant/Respondent aver the purpose or justification for the asserted revocation of the Plaintiff/Appellant's Right of Occupancy. All that the learned Attorney-General asserted in his Amended Statement of Defence is the bare or bald statement, without particulars, that the Plaintiff's Right of Occupancy had been revoked. The Learned Attorney-General, as the 1st Defendant at the trial, also did not bother to call evidence to establish any or all the facts in controversy between him and the Plaintiff. He abandoned his pleadings, having not called evidence on the issues in controversy. He did not prove the alleged revocation of the plaintiffs Right of Occupancy, or that the revocation was done in compliance with the law. Only a revocation done in accordance with the due process of the law can deprive a title holder his Right of Occupancy.

I had pointed out earlier that the Learned Attorney-General did not state, in his Amended Statement of Defence, the purpose the Plaintiff's Right of Occupancy was revoked for. Even where the Right of Occupancy is stated to be revoked for public purpose,

this Court had, in *C.S.S. BOOKSHOPS LTD. v. R.T.M.C.R.S.* (2006) 11 NWLR (pt.992) 530, insisted that there is the need to spell out the public purpose in the notice of revocation. It is imperative that the reason for revoking any person's Right of Occupancy must be stated in the Notice. See *ADUKWU v. COMMISSIONER FOR WORKS, LANDS & TRANSPORT, ENUGU STATE* {1997} 2 NWLR (pt.489) 588; *NIGERIA ENGINEERING WORKS LTD. v. DENAP LTD.* (1997) 10 NWLR (pt. 525) 481.

Revocation of the Right of Occupancy or title to landed property is not just a mere executive or administrative act that can be done in secret or in any surreptitious manner and later conveyed in official Government gazette. The title holder is not only entitled to the notice of the proposed revocation with the public purpose for the revocation clearly spelt out therein, he is also entitled to be heard on the proposed revocation of his title. My firm view, on this, is that reading Sections 28 and 44 of the Land Use Act together with Section 36(1) of the Constitution, the Governor when it behoves him to revoke any Right of Occupancy in or over any landed property has a duty to act quasi-judicially and in transparent manner. Even if no label of judicially or quasi-judicially may be placed on the Governor to so act, his duty to act fairly cannot be denied since he has a duty to give notice of the intended revocation wherein he must spell out the public purpose of the intended revocation to the title holder. See *HART v. MILITARY GOVERNOR, RIVERS STATE & ORS.* (1976) 11 SC (Reprint) 109.

The evidence of the plaintiff, testifying unscathed as the PW.1, shows clearly that he only got to know of the revocation of his title upon his reading Exhibit P7, the Rivers State Government Gazette No. RSN 9 Volume 18 of 27th March, 1986. He had no prior notice of the revocation. This, again, contravened Section 28(6) of the Land Use Act that makes it mandatory that -

"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".

Since there is no evidence that the revocation was signified under the hand of a public officer and the notice thereof had been

given to the Plaintiff/Appellant in accordance with Section 28(6) of the Land Use Act, it is not certain if, actually, it was done by the Governor, who is the appropriate person to revoke a Right of Occupancy by virtue of Section 28(1) of the Land Use Act.

It is not enough for the Government of Rivers State to flaunt the purported revocation of the Plaintiff/Appellants Right of Occupancy, they must go further to show that the revocation followed the due process of law, and that it was done by the person authorized by law. The authorities of Rivers State ought to have done more by showing that the revocation of Plaintiff's Right of Occupancy followed the due process of law; particularly that the plaintiff/Appellants Right of Occupancy was one guaranteed by the 1979 Constitution, as amended, which in Section 42(1) thereof provided that no interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in a manner and for the purposes prescribed by Law, that, among other things -

“(a) requires the prompt payment of compensation thereof; and

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

The Constitutional or statutory guarantee or protection of the Plaintiff/Appellant's Right of Occupancy required much more than the opaque and the less than genuine and honest manner the Rivers State Government went about the purported revocation of his Right of Occupancy. The revocation held, in its judgment at pages 99 - 102 of the Records, by the trial Court to be wrongful and unconstitutional, was not shown to follow the due process of law. The revocation was apparently, as found by the trial Court, done in order to subsequently vest in the 3rd and 4th Respondents, as defendants at the trial, the Right of Occupancy over the same. As rightly held by the trial Court the purported revocation, even if it followed the due process of law, was not done for any

overriding public purpose. This fact is also a factor that will vitiate the purported revocation.

I had earlier, in the judgment, stated that the specific determinations and or findings of fact by the trial Court, at pages 99 -103 of the Records, were made against the 1st Defendant/
 B Respondent who neither appealed nor challenged those specific determinations or findings of fact. The 3rd and 4th defendants derived their title to the disputed property from the 1st defendant/
 C Respondent. On the basis of *nemo dat quod non habet* any defect in the title of the 1st Defendant/Respondent, as the grantor, will
 D consequentially and ultimately affect the title derived by the 3rd and 4th Respondents. The Court below had failed to consider the fundamental impact of the failure of the 1st defendant/Respondent to challenge or appeal the adverse decisions or findings of fact
 against him, as contained in the judgment of the trial Court at pages 99 - 103 of the Records. In my considered view, the Appellant, as the Plaintiff, had made out a case of invalid cancellation or revocation of his Right of Occupancy over the disputed prop-
 E erty.

The law is settled that for as long as the previous or earlier title or Right of Occupancy in or over a piece of land subsists, no other rival or competing title or Right of Occupancy can simulta-
 F neously exist in or over the same piece of land. As Belgore, JSC (as he then was) stated in *KYARI v. GANARAN* (1997) 2 NWLR (pt.488) 380 at 400, the subsequent grant of that other “*Right of Occupancy over the same piece of land will therefore be merely illusory and invalid*” At the time the Right of Occupancy, evidenced
 G by the Certificate of Occupancy (Exhibit D4) was issued to the predecessor-in-title of the 3rd and 4th Respondents, the Right of Occupancy of the Plaintiff/Appellant was subsisting in the land since it had not been revoked or cancelled as required by law. Only the valid and effective revocation of the Plaintiff/Appellant’s
 H Right of Occupancy would ensure that the subsequent Right of Occupancy, evidenced by Exhibit D4, was valid in law. Accordingly, whoever relies on the fact of the revocation of the Plaintiff/Appellant’s Right of Occupancy must not only plead that fact of

the revocation but must also lead evidence thereof to establish that the purported revocation of the Right of occupancy of the Plaintiff/Appellant was valid in law and existent in fact. See OSHO v. FOREIGN FINANCE CORPORATION (1991) 4 NWLR (pt.184) 157.

The Court below slipped into error when it held, in its judgment at page 245 of the Records that -

“i. the Plaintiff/Appellant had no Right of Occupancy protected by law;

ii. that upon the grant in favour of the predecessor-in-title of the 3rd and 4th Respondents the Right of Occupancy evidence by C Exhibit D4 whatever interest the Plaintiff/Appellant had in the disputed property was automatically extinguished;

iii. that the Rivers State Government Legal Notice No. 3 of 1986, Exhibit P7 had revoked the Plaintiff/Appellant’s title;

iv. that at the time the Certificate of Occupancy, Exhibit D4, D was issued in favour of the predecessor-in-title of the 3rd and 4th Respondents, title in or over the disputed property had reverted to the Government of Rivers State; and

v. that at the time, in 1989, the plaintiff/Appellant brought E this action the predecessor-in-title of the 3rd and 4th Respondents was already in possession”.

This de facto possession of the 3rd and 4th Respondents, alluded to by the Court below, does not compete with nor ousts the de jure possession Right of Occupancy of the plaintiff/Appellant. F

The Court below fell into this error because it did not seriously consider whether the purported revocation followed the due process of law and also whether it was proved by those who asserted it. If it had, it would have found on the principle nemo dat quod non habet that on the failure of the purported revocation the Government of Rivers State could not vest in the predecessor-in-title of the 3rd and 4th Respondents the interest in the disputed property that it did not, itself, have. G

I allow the appeal on the foregoing reasoning and the other H reasons contained in the judgment just delivered by my learned brother, PAUL ADAMU GALINJE, JSC, which I had the advantage of reading in draft. All the consequential orders made in the

said judgment are hereby adopted by me. For avoidance of any doubt, the decision of the Court below in the appeal No, CA/PH/77/97 delivered on 5th April, 2001 is hereby set aside and in its place I hereby affirm and restore the judgment of the trial Court delivered on 24th March, 1997 in the suit No. PHC/56/89.

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