

MAJOR MURITALA GBADAMOSI (RTD); RASAKI GBADAMOSI;  
MUFUTAU GBADAMOSI; WAIDI GBADAMOSI (for themselves and on behalf  
of Gbadamosi Bamidele Eletu Family) v. H.R.H. OBA TIJANI ADETUNJI  
AKINLOYE; CHIEF MURITALA SAKA ODOFIN; ALHAJI CHIEF YEKINI OLA  
5 BAKARE (for themselves and on behalf of Ojomu Chieftaincy Family)

SUPREME COURT OF NIGERIA

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SC.146/2005  
FRIDAY 12<sup>TH</sup> JULY, 2013

(ONNOGHEN; RHODES-VIVOUR; ARIWOOLA; OGUNBIYI; AKAHS, JJ.SC)

15 *PROPERTY – Effect of Alienation – A party that has divested itself on its title to landed property it cannot exercise further rights over the property.*

*PROPERTY – Nemo Dat Quod Non Habet – A party without subsisting interest in land has no power to alienate the land.*

20 *PROPERTY - Damages for Trespass – A person claiming damages for trespass to land has the burden of proving the alleged trespass.*

*CIVIL PROCEDURE – Pleadings are Binding – Parties and the court are bound by the pleadings.*

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*CIVIL PROCEDURE – Settlement of Issues – A court is duty bound to ascertain and determine the material facts admitted or disputed and settle them in the form of issues.*

30 **Facts:**

Sometime in 1995, the respondents (representatives of the Ojomu Chieftaincy family) instituted an action against the appellants at the Lagos State High Court for trespass to land. The respondents' had sold a portion of land situate at Osapa  
35 Village within the Lekki Peninsula measuring 254.558 hectares to the appellants' father. The transaction was consummated *vide* a Deed of Conveyance dated 23<sup>rd</sup> August 1977. However the Lagos State Government compulsorily acquired a vast area of land within the Lekki Peninsula which also comprised the land sold to the appellants.

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The respondents challenged the compulsory acquisition of the land further to which an agreement was reached between the respondents and the Lagos State Government whereby the respondents' right of occupancy was revoked and a portion of the land was excised and vested in the respondents who thereby became  
45 the holders of a right of occupancy in and over the entire portions of land excised

from Government acquisition.

5 The respondents sued the appellants contending that since the appellants were neither a party in the suit between them (respondents) and the Lagos State Government nor a party to the subsequent agreement, the appellants had no proprietary interest in the land and committed trespass on the said land.

10 The appellants counter-claimed and averred that the land which was sold to their father was exempted from the Notice of Revocation and that by virtue of an excision order from Lagos State made sometime in 1994, the title over the land reverted to the appellants.

The trial court entered judgment against the appellants. The judgment was affirmed by the Court of Appeal Lagos Division.

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Dissatisfied, the appellants further appealed to the Supreme Court.

***Held (Unanimously allowing the appeal):***

20 [1] ***Property – Effect of Alienation – A party that has divested itself on its title to landed property it cannot exercise further rights over the property.***

25 It is quite ironic that the respondents who divested themselves of their title to the Osapa Village land since 1977 would be submitting that the Lagos State Government had no power, right or interest to transfer or alienate any portion of the land already declared by the Court in Suit No. ID/1883/89 as belonging to the respondents.

30 The respondents cannot eat their cake and have it. See: *Coker v. Sanyaolu* (1983) 14 NSCC 119 at 129 - 130; *Okoli v. Ojiako* (1997) 1 NWLR (Pt 479) 48 at 52. The judgment in Suit No. ID/1883/89 could not vest title on a party that had alienated that title. The reversion of the title must rest with the appellants. (P. 12 lines 10 - 19)

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**PER ONNOGHEN, JSC:**

40 The question is simply whether the respondents who had sold their title to the portion of land in dispute to the appellants which title was compulsorily acquired by the Lagos State Government from the appellants, and which acquisition has been declared by a court of law to be null and void legally speaking be entitled to a repossession of the title already sold to appellants from the third party; Lagos State Government; without the authority and/or consent of the new owner of that title? The lower courts held that the respondents are entitled to the title. However, common

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5 sense says that you cannot eat your cake and still have it back!! That is the simple answer to a very simple case as revealed by the record of appeal. Without making magic or abracadabra, can you eat your cake and still have it back? Fortunately, this is a court of law which has absolutely nothing to do with magic or abracadabra neither does the court allow itself to be used as an engine for the perpetration of fraud, in whatever guise.

10 In the case of *Ilona v. Idakwo* (2003) 11 NWLR (Pt. 830) 53 at 89 and 91 - 92, this court held, inter alia, as follows:-

15 *“Where there is a subsisting right of occupancy, it is good against any other rights. The grant of another right of occupancy over the same piece of land will therefore be invalid.....*

20 *Where a party has fully divested himself of all interest in land, no right vests in him to deal with the same property by way of further alienation anymore. It is a matter of nemo dat quod non habet: i.e he cannot give that which he no longer has.”*

(P. 19 lines 16 - 40)

[2] ***Property – Nemo Dat Quod Non Habet– A party without subsisting interest in land has no power to alienate the land.***

25 The renunciation by the respondents of some portions of the acquired land in favour of the Lagos State Government could not affect the interest of the appellants since the respondents could not compromise the Osapa Village land in their settlement agreement with the Lagos State Government because they could not surrender what did not belong to them. Any negotiation embarked upon between the respondents and the Lagos State Government which led to the excision of some portions of the acquired land would be vested in the party whose interest was subsisting. And following the terms of agreement reached between the appellants and the Lagos State Government on 20<sup>th</sup> May, 1996 which became the judgment of the Court in Suit No. M/779/93 (Exhibit C3.).

35 (P. 11 lines 42 - 45; P. 12 lines 1 - 6)

[3] ***Property - Damages for Trespass – A person claiming damages for trespass to land has the burden of proving the alleged trespass.***

40 As no evidence was taken in the High Court, the alleged trespass leading to the award of ₦500,000.00 (Five Hundred Thousand Naira) damages against the appellants was not proved and the Court of Appeal was in error to affirm the award. (P. 15 lines 43 - 45)

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[4] ***Civil Procedure – Pleadings are Binding – Parties and the court are bound by the pleadings.***

PER RHODES-VIVOUR, JSC:

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It has been said on several occasions that if pleadings are to be of any use parties must be held bound by them, and facts are pleaded and not law. It is the duty of the court to decide issues based on the pleadings. See *Oseni v. Dawodu* (1994) 4 NWLR (Pt.339) 390, *Okoya v. Santilli* (1994) 4 NWLR (Pt.338) p.256, *Akinfolarin v. Akinola* (1994) 3NWLR (Pt. 335) p. 659. (P. 20 lines 22 - 26)

[5] ***Civil Procedure – Settlement of Issues – A court is duty bound to ascertain and determine the material facts admitted or disputed and settle them in the form of issues.***

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The established legal procedure where issues have been settled by the parties were set out by Bello JSC (as he then was) in *Obijury v. Ozims* (1985) 16 NSCC (Pt 1) 430 at 436 - 437 where he said:

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*“it is commenced on the application of one of the parties or by the Judge suo motu who thereupon will proceed to ascertain and determine the material questions in controversy between the parties or may direct the parties to prepare such issues. Thereafter the questions will be reduced into writing and the Judge will settle them in the form of issues stating questions of law on admitted facts or questions of disputed facts or questions of one kind or partly another”*  
(P. 14 lines 26 - 36)

30 ***Obiter:***

[6] ***Property – Equitable Interest – Upon payment of the purchase price, a purchaser of land acquires an equitable interest subject only to the interest of a purchaser for value without prior notice of the existing equitable interest.***

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PER RHODES-VIVOUR, JSC:

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The well laid down position of the law is that where a purchaser of land has paid the price for the land to the vendor, he immediately acquires an equitable interest in the land and this, is as good as a legal estate. The equitable interest so acquired can only be destroyed by a purchaser for value who had no notice of the existing equity. (P. 20 lines 41 - 45)

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**AKAAHS, JSC (Delivering the lead Judgment):** The issue in this appeal is whether the respondents who had earlier sold a portion of land vide a registered conveyance to the appellants can turn round to claim ownership of the same portion simply because the appellants had stood by and allowed the respondents to challenge the Lagos State Government who had revoked all rights of occupancy in and over a vast area of land in Lekki Peninsula in the Eti - Osa Local Government Area of Lagos State.

The background facts leading to this appeal are as follows:

In 1977 the respondents' family sold a portion of the Ojomu Chieftaincy family land measuring 254.558 hectares to the appellants' father, late Gbadamosi Bandele Eletu. The land is situate and known as Osapa Village in Eti - Osa Local Government Area of Lagos State. The transaction done through a Deed of Conveyance dated 23<sup>rd</sup> August, 1977 was duly registered as No. 36 page 36 Volume 1648 at the Lands Registry, Lagos. By the Lagos State Government Notices Nos. 10 and 14 published in the Lagos State Official Gazette of February 19<sup>th</sup> and 26<sup>th</sup>, 1987 respectively, the Lagos State Government compulsorily acquired a vast area of land spanning several kilometres consisting of many villages and settlements. The acquired land included the appellants' Osapa Village. The respondents brought an action in Suit No. ID/1883/89 (*Alhaji Fatai Ajetunmobi & Ors v. The Attorney-General of Lagos State*) to challenge the compulsory acquisition.

Judgment in the suit was delivered on the 18<sup>th</sup> day of October, 1991 in which the court granted the following reliefs in favour of the Ojomu Chieftaincy Family:

- (a) A declaration that the plaintiffs are the persons entitled to a customary right of occupancy to all that piece or parcel of land shown in the plan attached to the statement of claim herein.
- (b) A declaration that the customary right of occupancy vested in the plaintiffs in and over the land mentioned in the claim hereof has not been validly or effectively revoked by the Military Governor of Lagos State.
- (c) An injunction restraining all officers and servants of the Lagos State Government from committing acts of trespass on the said land or unlawfully making use of the same except with the consent of the plaintiffs.

After the said judgment the respondents entered an agreement with the Lagos State Government wherein portions of Ojomu Chieftaincy family land were granted to the Government of Lagos State whilst the Governor revoked the respondents' right of occupancy over other portions of the aforesaid family land and thereafter excised areas from such portions vesting the same in the respondents. Following

this agreement, the Ojomu Chieftaincy Family became the holders of a right of occupancy in and over the entire portions of land excised from the Government acquisition.

5 The respondents then claimed that the present appellants who were neither a party in Suit No. ID/1883/89 nor a party to the agreement entered into between them (respondents) and the Lagos State Government claimed proprietary rights over portions of Ojomu Family Land and committed several acts of trespass on the said land and this led the respondents to institute action against the appellants  
10 in Suit No. LD/2642/95.

The appellants counter - claimed and averred that the land which was sold to their father was exempted from the Notice of Revocation and by virtue of the excision as contained in Lagos State Official Gazette No. 24 Volume 27 dated 23<sup>rd</sup> June  
15 1994, the title over the affected portion of land at Osapa Village if any reverted to them (defendants). The respondents as plaintiffs filed a reply to the counter - claim alleging that all interests in the land granted to the defendants by the Deed of Conveyance dated 23<sup>rd</sup> August, 1977 abated when the Governor of Lagos State revoked all rights of occupancy in and over the vast area of land in Lekki Peninsula  
20 in 1981 and that since the revocation was not challenged by the defendants, it remained valid against them.

The learned trial Judge entered judgment against the defendants on issues settled where documents were admitted by consent of the parties without giving oral  
25 evidence. The judgment was affirmed by the Court of Appeal Lagos Division (herein referred to as the court below). It is against this judgment that the appellants have further appealed to this Court in their Notice of Appeal dated 14<sup>th</sup> June, 2004 containing eight grounds of appeal. In the amended appellants' brief filed on 18/12/2012 which was deemed filed by order of court made in chambers on 20<sup>th</sup>  
30 March 2013 the appellants formulated the following six issues for determination:-

1. Whether the Court of Appeal was right when it held that because the appellants did not institute a separate action to challenge the revocation of their title the appellants' title is extinct (Ground 4).  
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2. Whether the learned Justices of the Court of Appeal were right when they resolved appellants' issue 1 against the appellants without considering the appellants' arguments on the issue (Grounds 1, 2 and 8).  
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3. Whether the learned Justices of the Court of Appeal were right when they held that the judgment in Suit No. ID/1883/89 and the settlement agreement between the respondents and the Lagos State Government had extinguished the appellants' title in favour of the respondents (Ground 3).  
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4. Whether the Justices of the Court of Appeal were not in error when they held that the appellants cannot benefit from Suit No. ID/1883/89 (Ground 5).
- 5 5. Whether the Court of Appeal was right when it held that the High Court rightly granted to the respondents a relief not claimed (Ground 6)
- 10 6. Whether the Court of Appeal was right in affirming the award of N500,000.00 damages for trespass when there is (sic) no evidence of trespass before the High Court (Ground 7).

15 The respondents also filed an amended brief on 28<sup>th</sup> March, 2013. They replied seriatim to the issues postulated and argued by the appellants without formulating their own issues.

20 On issue 1 which is pivotal to this appeal, learned counsel for the appellants submitted that the Court of Appeal was in error to hold that the appellants' title became extinct since the appellants did not institute an action to challenge the revocation of their title by the Government. He referred to Suit No. M/779/93 – *Major Murtala Gbadamosi Eletu (Rtd) v. A. G. Lagos State & Ors* to challenge the Government's revocation of the title to the land which ended in a term of settlement and was made the judgment of the Court as contained on pages 116 - 118 of the Records. He therefore submitted that the Court of Appeal's holding that the title of the appellants is extinct on the ground that they did not challenge the revocation is most perverse.

30 Learned counsel for the respondents maintained that the Court of Appeal was right in affirming the judgment of the Lagos State Government (sic) revocation of 1981.

35 He argued that a methodical look at exhibit C3 shows that the suit the appellants filed to challenge the revocation was commenced in 1993, two years after the revocation had been declared null and void in Suit No. ID/1883/89 instituted by the respondents wherein the Court affirmed the right and interest of the respondents over the whole land. He maintained that the judgment of the Court in Suit No. ID/1883/89 stands and has not been overturned and submitted that title over the whole land resided in the respondents since there is no appeal against it and it is deemed accepted by the party against whom the decision was entered and is therefore binding. He placed reliance on *Iyoho v. Effiong* (2007) 11 NWLR (Pt 1044) 31 SC and *Adeyemi - Bero v. Omotosho* (2008) 15 NWLR (Pt 1111) 576. He said that what transpired in exhibit C3 is tantamount to a review of the decision in Suit No. ID/1883/89 which divested the powers of the Lagos State Government with respect to the portions of land vested in the respondents. Relying on the principle of '*nemo dat quod non habet*' which was applied in *Ilona v. Idakwo* (2003) 11 NWLR (Pt 830) 53.

Learned counsel submitted that the Lagos State Government had no power, right or interest to transfer or alienate or enter any form of arrangement on any portion of land already declared by the Court in Suit No. ID/1883/89 as belonging to the respondents to anyone, the appellants inclusive.

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The appellants filed a reply brief in which it was submitted that the decision in *Ilona v. Idakwo* (supra) supports the appellants' case and proceeded to argue that the respondents misunderstood the arguments of the appellants when they cited *Adeyemi - Bero v. Omotosho* and *Iyoho v. Effiong* supra which are irrelevant to this case.

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The crux of the respondents case at the High Court is that the judgment in Suit No. ID/1883/89 extinguished the title of the appellants to the land. This is evident in paragraphs 4, 5, 6, 7, 8 and 9 of the plaintiffs' pleadings in Suit No. LD/2642/95 wherein they averred as follows:

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“4. Sometime in 1981, the Governor of Lagos State revoked all rights of occupancy in and over a vast area of land in Lekki Peninsula which included the aforementioned Ojomu Family Land.

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5. The plaintiffs herein brought an action against the Lagos State Government in respect of the said revocation.

6. By a judgment delivered in Suit No. ID/1883/89 (*Alhaji Fatayi Ajetunmobi & Ors v. The Attorney-General of Lagos State*) the Court granted the following reliefs in favour of the Ojomu Chieftaincy Family:

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(i) A declaration that the plaintiffs are the persons entitled to a customary right of occupancy to all that piece or parcel of land shown in the plan to the statement of claim herein.

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(ii) A declaration that the customary right of occupancy vested in the plaintiffs in and over the land mentioned in claim (i) hereof has not been validly or effectively revoked by the Military Governor of Lagos State.

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(iii) An injunction restraining all officers and servants of the Lagos State Government from committing acts of trespass on the said land or unlawfully making use of the same except with the consent of the plaintiffs.

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7. After the said judgment the plaintiffs entered into an agreement with the Lagos State Government were under portions of Ojomu

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5 *Chieftaincy Family Land were conceded, yielded or granted to the Government of Lagos State whilst the Governor revoked the plaintiffs' rights of occupancy over other portions of the aforesaid Family Land and thereafter excised areas from such portions vesting the same in the plaintiffs.*

10 8. *Following the agreement/mentioned in paragraph 7 hereof the Ojomu Chieftaincy Family became the holders of a right of occupancy in and over the entire portions of land excised from Government acquisitions as herein before mentioned and other portions of Ojomu Family Land not acquired by the Government.*

15 9. *The defendants who were neither a party in Suit No. ID/1883/89 nor a party to the agreement entered into between the plaintiffs and the Lagos State Government now wrongfully claim propriety rights over portions of Ojomu Family Land and have committed several acts of trespass on the said land".*

20 In their Amended Statement of Defence and Counter - Claim in Suit No. LD/2642/95, the defendants/appellants pleaded as follows in paragraphs 2A, 7, 11 and 19:-

25 **" 2A. Further to paragraph 2 above, the defendants aver that in 1977 the plaintiffs Family, that is Ojomu Chieftaincy Family of Ajiran through their accredited representatives among whom was the 2<sup>nd</sup> plaintiff outrightly sold and conveyed a portion of the Ojomu Family Land described in paragraph 2 of the Statement of Claim and measuring 254.558 hectares and situated at Osapa Village in Eti - Osa Local Government Area of Lagos State to the defendants' father late Gbadamosi Bandele Eletu as evidenced by the Deed of Conveyance dated 23<sup>rd</sup> day of August 1977 and registered as No. 36 at page 36 in Volume 1648 of the Lands Registry in Lagos. The said Deed of Conveyance with the plan attached is hereby pleaded and will be relied upon at the trial.**

35 **The defendants also plead and will rely at the trial on the composite plan No. SOL/1093/LA/OBD dated 17/3/97 prepared by A. O. Solesi, a licensed surveyor.**

40 7. **The defendants aver that customary right of occupancy in respect of all that piece or parcel of farmland at Osapa Village, Eti - Osa Local Government Area, Lagos as shown on Plan No. MD/77/90 dated 25/4/77 and made by M. O. Diya, licensed Surveyor referred to and attached to Deed of Conveyance dated 23/8/77 and made between CHIEF NUSA ADEBANJO**

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***OJOMU and eight (8) others including the 2<sup>nd</sup> plaintiff all representing OJOMU CHIEFTAINCY FAMILY and GBADAMOSI BANDELE ELETU is vested in the defendants by devolution of inheritance under the said Conveyance.***

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***11. Further to paragraph 10 above, the defendants aver that several years after the judgment in Suit No. 1/302/55 which was delivered on 12<sup>th</sup> December 1960, the plaintiffs' family in 1977 through their accredited representatives including the 2<sup>nd</sup> plaintiff in this suit, by way of outright sale for a consideration conveyed to the late GBADAMOSI BANDELE ELETU which land now vests in the defendants.***

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***19. Further to paragraph 18 above, the defendants aver that their land falls under the exception to the Notice of Revocation mentioned in paragraph 16.2 above being a village already established before the Notice of Revocation or***

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***ALTERNATIVELY***

***By virtue of the excision as contained in Lagos State Official Gazette No. 24 Volume 27 dated 23<sup>rd</sup> June, 1994 the title over the affected portion of land at Osapa Village, if any, reverted to the defendants"***

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In the reply which was filed to the Statement of Defence and Defence to Counter - Claim the plaintiffs pleaded in paragraphs 1 and 2 thereof ...

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***"1. With regard to paragraphs 3 and 7 of the Statement of Defence, the plaintiffs aver that all interest in the land granted to the defendants by the Deed of Conveyance dated 23<sup>rd</sup> August, 1977 abated when the Governor of Lagos State revoked all rights of occupancy in and over the vast area of land in Lekki Peninsula in 1981.***

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***2. The plaintiffs in response to paragraph 5 of the Statement of Defence aver that since the revocation was not challenged by the defendants, it remains valid against them".***

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It is not entirely true to say that the appellants could not claim any benefit that accrued to the respondents by virtue of the judgment in Suit No. ID/1883/89. At the time the respondents instituted that action against the Lagos State Government challenging the acquisition of the land, title to that portion of the land covered by exhibit C1 (the registered Deed of Conveyance) had already passed to Gbadamosi Bandele Eletu, the late father of the appellants. The interest which the respondents

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sought to protect in Suit No. ID/1883/89 included that of the appellants since the appellants derived their root of title from them and they sued for the whole of the Ojomu Chieftaincy Family Land. See: *Banire v. Balogun* (1986) 4 NWLR (Pt 38) 746 at 753.

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When the court declared that “the customary right of occupancy vested in the plaintiffs in and over the land mentioned in claim (i) hereof has not been validly or effectively revoked by the Military Governor of Lagos State”, the interest of the parties returned to status quo before the purported acquisition.

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The respondents never disclosed to the Lagos State Government that they had divested themselves of their interest in the Osapa Village land and since the whole land was initially owned by the Ojomu Chieftaincy Family, it was logical that the Lagos State Government would return the land improperly acquired to the owners once the compulsory acquisition was rendered null and void by the Court.

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The respondents have not been consistent in their claim to the land. In one breath they claim it was the acquisition by the Lagos State Government which was not challenged that extinguished the appellants’ right to the land while in another breath they are asserting that it was the declaration made by the Court in Suit No. ID/1883/89 in their favour that extinguished the appellants’ interest in the land.

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It is not true as learned counsel for the respondents has submitted that the appellants sat by and failed to challenge the acquisition of the land by the Lagos State Government. It is of no consequence whatsoever that the appellants did not institute their action to challenge the acquisition the same time that the respondents took out their Writ in Suit No. ID/1883/89 or that the appellants did not join in that suit even if they were aware of it; neither does it lie in the respondents’ mouth to say that the appellants belatedly filed their action after judgment in Suit No. ID/1883/89 was delivered. It was for the Lagos State Government that had carried out the acquisition to challenge the late commencement of Suit No. M/779/93 by the appellants. The argument of learned counsel for the respondents that Suit No. M/779/93 (ExhibitC3) instituted by the appellants was a review of Suit No. ID/1883/89 and the reliance placed on *Iyoho v. Effiong* and *Adeyemi - Bero v. Omotosho* (supra) holds no water whatsoever. The appellants were never a party to Suit No. ID/1883/89 and notwithstanding the fact that suit No. ID/1883/89 was in respect of the whole of Ojomu Chieftaincy Family Land, the appellants had a right to institute Suit No. M/779/93 to challenge the Lagos State Government over its acquisition of Osapa Village covering an area of 254.558 hectares the title to which the appellants acquired by purchase from the respondents.

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The renunciation by the respondents of some portions of the acquired land in favour of the Lagos State Government could not affect the interest of the appellants since the respondents could not compromise the Osapa Village land in their settlement agreement with the Lagos State Government because they could not

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surrender what did not belong to them. Any negotiation embarked upon between the respondents and the Lagos State Government which led to the excision of some portions of the acquired land would be vested in the party whose interest was subsisting. And following the terms of agreement reached between the appellants and the Lagos State Government on 20<sup>th</sup> May, 1996 which became the judgment of the Court in Suit No. M/779/93 (Exhibit C3.).

The Excision Notice of June 23, 1994 should vest the 10 hectares (approximately 24.17 acres) reclaimed land in Osapa Village in the appellants. See: *Dantsoho v. Mohammed* (2003) 6 NWLR (Pt 817) 457. It is quite ironic that the respondents who divested themselves of their title to the Osapa Village land since 1977 would be submitting that the Lagos State Government had no power, right or interest to transfer or alienate any portion of the land already declared by the court in Suit No. ID/1883/89 as belonging to the respondents.

The respondents cannot eat their cake and have it. See: *Coker v. Sanyaolu* (1983) 14 NSCC 119 at 129 - 130; *Okoli v. Ojiako* (1997) 1 NWLR (Pt 479) 48 at 52. The judgment in Suit No. ID/1883/89 could not vest title on a party that had alienated that title. The reversion of the title must rest with the appellants.

It is necessary to take a critical look at the judgment of the trial court which was affirmed by the Court of Appeal. As stated earlier, the judgment in Suit No. LD/2642/95 was entered against the defendants (the present appellants) on issues settled where documents were admitted by consent and no evidence was given by any of the parties. Despite the pleadings in paragraphs 2A, 7 and 11 of the Amended Statement of Defence and Counter-Claim which were not denied in the reply filed by the plaintiffs (now respondents), the learned trial Judge still went ahead to hold as follows:

**“...there is no material evidence to link the purchasers in exhibit C1 with the defendants in this suit. In like manner there is no material evidence to link the present plaintiffs with the vendors in exhibit C1 that is the conveyance between Chief Amusa Adebambo Ojomu and eight others and Gbadamosi Bandele Eletu. By not giving any material evidence or link between the purchaser in exhibit C1 and the defendants in this suit, the defendants have no right or interest in any portion of land within the piece or parcel of land under and by virtue of the Deed of Conveyance dated 23<sup>rd</sup> of August, 1977 and registered as No. 36 at page 36 in Volume 1648 of the Land Registry at Lagos”**

The learned trial Judge proceeded to hold that –

**“...the plaintiffs by reason of excision are entitled to the statutory right of occupancy in respect of the whole land contained in Exhibit A5 and are entitled to hold the said land to the exclusion**

**of the defendants”.**

The defendants who were dissatisfied with the decision appealed against it to the Court of Appeal complaining in Grounds 1 and 4 of the Notice of Appeal that -

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- “1. *The learned trial Judge erred in law by repeatedly using in the judgment the phrase “there is no evidence” without first deciding whether the issues or questions for determination settled by parties’ counsel are issues or questions of law on admitted facts or issues or questions partly of the one kind and partly of another.*

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**PARTICULARS OF ERROR**

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- (a) *Neither party gave evidence but relied on the issues/questions for determination settled by their counsel.*

- (b) *It is trite law that it is the plaintiffs who have the burden to prove their case*

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- (c) *It was not open to the learned trial judge and indeed of any court to speculate upon matters which there was no evidence led as evident in this case.*

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- (d) *Parties agreed on the issues on points of law alone.*

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4. *The learned trial Judge misdirected himself on the facts when he found that there is no evidence that the plaintiffs in Suit No. LD/2642/95 were the same people who conveyed land to GBADAMOSI BANDELE ELETU as evident by conveyance dated 23<sup>rd</sup> day of August, 1977 and Registered as No. 36 at page 36 in volume 1648 of the Lands Registry, Lagos.*

**PARTICULARS OF MISDIRECTION**

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- (a) *The land conveyed in 1977 to Gbadamosi Bandele Eletu, the father of the defendants/appellants herein was conveyed by the vendors as the Chiefs and principal representatives of the Ojomu Chieftaincy Family of Ajiran.*

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- (b) *Suit No. LD12642195 was instituted by the plaintiffs/respondents for themselves and as Representatives of the same Ojomu Chieftaincy Family of Ajiran*

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- (c) *The 2<sup>nd</sup> plaintiff/respondent (Chief Muritula Saka Odofin) was the 3<sup>rd</sup> Vendor as shown in Exhibit C1.*

(d) *It was not an issue before the Honourable Court as to whether the respondents are the same people who sold the said land to Gbadamosi Bandele Eletu in 1977.*

5 (e) *The parties had agreed on the issues settled and particularly by paragraph 1 of the Reply to Statement of Defence and Counter-Claim that the plaintiffs/respondents' family admitted paragraph 3(a) of the defendants/appellants' Amended Statement of Defence. Rather the plaintiffs/respondents pleaded that the*  
10 *interest of the appellants in the land had dated (sic)"*

The issues which were distilled from these grounds were:-

15 1. *Whether issues having been settled by counsel, the learned trial Judge adopted the right legal approach in dealing with those issues before reaching his conclusion.*

20 2. *Whether the learned trial Judge was right in holding that the defendants have no right or interest in the land in dispute for the various reasons given in the judgment".*

The lower court glossed over issue 1 and dismissed the appeal on the ground that the appellants did not challenge the Notice of Revocation published by the Lagos State Government in 1981.

25 The established legal procedure where issues have been settled by the parties were set out by Bello JSC (as he then was) in *Obijuru v. Ozims* (1985) 16 NSCC (Pt 1) 430 at 436 - 437 where he said:-

30 ***"it is commenced on the application of one of the parties or by the Judge suo motu who thereupon will proceed to ascertain and determine the material questions in controversy between the parties or may direct the parties to prepare such issues. Thereafter the questions will be reduced into writing and the Judge will settle them***  
35 ***in the form of issues stating questions of law on admitted facts or questions of disputed facts or questions of one kind or partly another"***

40 Since there was no dispute as to the facts the parties agreed not to call oral evidence but tender documents. One of the facts admitted was the sale of Osapa Village to Gbadamosi Bandele Eletu.

45 The High Court instead of identifying admitted and disputed facts as required where parties have settled issues, ignored the conventional practice and went ahead to hold that there was no evidence to show that the appellants were the heirs of the late Gbadamosi Bandele Eletu the purchaser in exhibit C1. In doing

this the court ignored the admission by the respondents in their Reply to the Statement of Defence and Defence to Counter - Claim and arrived at a wrong decision. Also the High Court totally overlooked and ignored Exhibit C3 which clearly showed that the appellants challenged the revocation of their title by filing  
5 two suits which culminated in the settlement contained in Exhibit C3 dated 20<sup>th</sup> May, 1996. If the court below had adverted its mind to these grave errors, the judgment would have been otherwise. All the above errors in the judgment of the High Court were brought to the attention of the court below but it still went ahead to affirm the decision of the learned trial Judge.

10

The respondents' claim before the High Court was that the appellants were not competent to derive benefits from either the court order made in Suit No. ID/1883/89 or the settlement agreement entered in that suit because the appellants were not parties to both the suit and the settlement agreement made therein. Since the  
15 revocation had been set aside after the respondents had parted with their ownership of Osapa Village which was listed in the excision Notice of 23<sup>rd</sup> June, 1994, the respondents could not claim any legal right to Osapa Village merely because the High Court had declared in Suit No. ID/1883/89 that the plaintiffs/respondents were entitled to the statutory right of occupancy in respect of the whole land  
20 contained in Exhibit A5. The High Court erroneously held that excision of land contained in the official gazette No. 24 of Volume 27 of the 23<sup>rd</sup> June 1994 did not include "Land at Osapa Village". Osapa is mentioned in paragraph 3(b)(ii) in the Lagos State of Nigeria Official Gazette No. 24 Vol. 27 of 23<sup>rd</sup>, June, 1994 wherein it is stated that:

25

*"The Lagos State Government hereby confirms and undertakes that the proposed revocation of the plaintiffs' Right of Occupancy in and over the afore-mentioned land will not include:*

30

(a) .....

(b) *the areas specifically excised by the Lagos State Government from the operation of previous Notices of Revocation affecting the land which is the subject of these Terms of Settlement, viz*  
35 *(Customary Right of Occupancy)*

(ii) *Osapa 18.05 Ha"*

The settlement agreement reached between the appellants and the Lagos State  
40 Government reduced the entitlement of the appellants from 18.05 Hectares to 10 Hectares.

As no evidence was taken in the High Court, the alleged trespass leading to the  
45 award of ₦500,000.00 (Five Hundred Thousand Naira) damages against the appellants was not proved and the Court of Appeal was in error to affirm the award.

I find that there is merit in the appeal and it is hereby allowed. The judgment of the Lagos High Court in Suit No. LD/2642/95 delivered on 11<sup>th</sup> October, 2000 which was affirmed by the Court of Appeal in CA/L/64/2001 on 12<sup>th</sup> May, 2004 are hereby set aside. The appellants are entitled to the statutory right of occupancy over 10  
5 Hectares (which is approximately 24.17 acres) of the reclaimed land in Osapa Village which has been excised and assigned to them, a sketch plan of which was attached and marked 'SCHEDULE 1' to the terms of settlement dated 20<sup>th</sup> May, 1996 and made the judgment of the Court in Suit No. M/779/93. I award the following costs to the appellants against the respondents:

10

(i) N100,000.00 in this Court

(ii) N50,000.00 in the Court of Appeal

15

(iii) N50,000.00 in the High Court. This brings the total costs awarded against the respondents to N200,000.00

**ONNOGHEN, JSC:** This is an appeal against the judgment of the Court of Appeal, holden at Lagos in appeal No. CA/L/64M/2001 delivered on the 12<sup>th</sup> day of May,  
20 2004 in which the court dismissed the appeal of the appellants against the judgment of the Lagos State High Court in suit No. LD/2624/1995 delivered on the 11<sup>th</sup> day of October, 2000 in which the court entered judgment for the plaintiffs, now respondents in this court, to the effect that the plaintiffs are "entitled to the statutory right of occupancy in respect of the whole land contained in exhibit A5 and are entitled to  
25 hold the said land to the exclusion of the defendants", who are appellants before the lower court and this court.

The trial court also granted an injunction "restraining the defendants whether by themselves, their servants or agents from committing any further acts of trespass  
30 on the plaintiffs' land" and awarded "the sum of N500,000.00 damages to the plaintiffs for trespass while dismissing the counter-claim of the defendants/appellants on the ground that same 'was not established by any material evidence.'"

The facts of the case have been stated in the lead judgment of my learned brother  
35 AKAHHS, JSC but I have to restate some of them herein to highlight the point being made.

It is not in dispute that sometime in 1977 the family of the respondents sold, by a Deed of Conveyance dated 23<sup>rd</sup> August, 1977 a portion of their Ojomu land measuring  
40 254.558 hectares to the father of the appellants, late Gbadamosi Bamidele Eletu, which land is situate and known as Osapa Village in Eti-Osa Local Government Area of Lagos State. The conveyance was registered as No. 36 at page 36, volume 1648 at the Lands Registry, Lagos. The appellants are the children of the said purchaser who inherited the land.

45

The original purchaser and appellants took effective possession of the land and enjoyed undisturbed possession prior to the suit leading to the appeal.

5 Sometime in 1987, the Lagos State Government, by official Gazette of February 19 and 26, 1987 respectively compulsorily acquired a vast area of land covering several kilometres including the appellants' Osapa Village resulting in the institution of several actions by the appellants and the respondents against the Lagos State Government including suit No. M/779/95: Major *Muritala Gbadamosi Eletu (RTD) & Ors v. A-G Lagos State & Ors* by the appellants which resulted in a terms of settlement entered as the judgment of the court recognising the title of appellants to Osapa Village.

10 There was also suit No. LD/3954/93: *Major Muritala Gbadamosi Eletu (RTD) & Ors v. Harris Dredging Ltd & Anr.*

15 Meanwhile, the respondents had, on their part and prior to the two suits so instituted by the appellants, instituted suit No. ID/1883/89: *Alhaji Fatayi Ajetunmobi v. A-G Lagos State* in which they challenged the compulsory acquisition of their family land which incidentally included the portion earlier sold to the father of appellants i.e Osapa Village and won. The Lagos High Court set aside the compulsory acquisition and declared same null and void resulting in a settlement Agreement between the parties in which the respondents herein renounced their title to some portions of the acquired land excluding Osapa village land in favour of the state government.

20 Following the agreement, the government by a notice published in the official gazette excised and released from acquisition some portions of the land earlier acquired including Osapa village land, which land constitutes the subject matter of the action leading to the instant appeal.

25 It is the case of the respondents at the trial court that appellants were not competent to derive benefits from either the court order made in suit No. ID/1883/89 or the settlement Agreement entered in the suit on the ground that appellants were not parties to the suit and settlement agreement made as a result. It is also their case that the compulsory acquisition earlier set aside by the court remains invalid as against the respondents but subsisting against appellants!! The above submission was accepted by the trial court and affirmed by the lower court.

30 It is also not in dispute that counsel for both parties submitted questions for determination and tendered documents by consent at the trial court thereby leading no evidence at the trial. As stated earlier in this judgment, the counter claim of appellants in respect of their Osapa village land was dismissed by the lower courts for want of evidence while the claims of the respondents were granted in full.

35 40 45 Learned senior counsel for appellants, OLU DARAMOLA, SAN in the amended

appellants brief deemed filed and served on 20/3/13 submitted the following issues for the determination of the appeal:

- 5           “1.       *Whether the Court of Appeal was right when it held that because the appellants did not institute a separate action to challenge the revocation of their title, the appellants’ title is extinct. (Ground 4).*
- 10           2.       *Whether the learned Justices of the Court of Appeal were right when they resolved the appellants’ issue 1 against the appellants without considering the appellants’ argument on the said issue. (Grounds 1, 2 and 8),*
- 15           3.       *Whether the learned Justices of the Court of Appeal were right when they held that the judgment in suit No. ID/1883/89 and the settlement Agreement between the respondents and the Lagos State Government had extinguished the appellants’ title in favour of the respondents (Ground 3).*
- 20           4.       *Whether the Justices of the Court of Appeal were not in error when they held that the Appellants cannot benefit from suit No. ID/1883/89 (Ground 5).*
- 25           5.       *Whether the Court of Appeal was right when it held that the High Court rightly granted to the Respondents a relief not claimed (Ground 6).*
- 30           6.       *Whether the Court of Appeal was right in affirming the award of ₦500, 000.00 damages for trespass when there is no evidence of trespass before the High Court (Ground 7).”*

The above issues were adopted and argued by the respondents in the amended respondents’ brief settled by DR WALE OLAWOYIN and filed on 28/3/13.

35 I have to state that in dismissing the counter claim of the appellants, the trial court held/found at pages 14 – 15 of the record of appeal, inter alia as follows:

40           “It is clear that part of the land earlier acquired from the plaintiffs had been returned to them without reference to any interest of the defendants or any other third party.

45           The position of excision between the plaintiffs and Lagos State Government had been confirmed by exhibit A4 which was the memorandum of Agreement between the Government of Lagos State and the Ojumu Chieftaincy family. I hold on balance of probabilities that the plaintiffs by reason of excision are entitled to the statutory right of occupancy in respect

of the whole land....”

From the graphic details of the facts of this case it is very clear and I hold the firm view that the main issue calling for determination in this case; by which I mean  
5 both at trial and on appeal; is whether the respondents haven't divested themselves of their title to the piece or parcel of land known and described in the Deed of conveyance therein called Osapa village land since 1977 can get the said piece or parcel of land back from any person other than the purchaser of same or his representative. Secondly, can the Lagos State Government whose title to the land  
10 vide compulsory acquisition has been declared null and void give valid title to the very land to the respondents by way of settlement agreement?

It is settled law that you cannot give what you do not have, otherwise known as the doctrine of “*Nemo dat quod non habet*”.

15

The question is simply whether the respondents who had sold their title to the portion of land in dispute to the appellants which title was compulsorily acquired by the Lagos State Government from the appellants, and which acquisition has been declared by a court of law to be null and void legally speaking be entitled to  
20 a repossession of the title already sold to appellants from the third party; Lagos State Government; without the authority and/or consent of the new owner of that title? The lower courts held that the respondents are entitled to the title. However, common sense says that you cannot eat your cake and still have it back!! That is the simple answer to a very simple case as revealed by the record of appeal.  
25 Without making magic or abracadabra, can you eat your cake and still have it back? Fortunately, this is a court of law which has absolutely nothing to do with magic or abracadabra neither does the court allow itself to be used as an engine for the perpetration of fraud, in whatever guise.

30 In the case of *Ilona v. Idakwo* (2003) 11 NWLR (Pt. 830) 53 at 89 and 91 - 92, this court held, inter alia, as follows:-

35 *“Where there is a subsisting right of occupancy, it is good against any other rights. The grant of another right of occupancy over the same piece of land will therefore be invalid.....”*

40 *“Where a party has fully divested himself of all interest in land, no right vests in him to deal with the same property by way of further alienation anymore. It is a matter of nemo dat quod non habet: i.e he cannot give that which he no longer has.”*

45 It is very unfortunate that the respondents claimed title to the whole of their family land compulsorily acquired by the Lagos State Government including the portion earlier sold to the father of the appellants and in which they were in effective possession. The claim so made without disclosing the truth and excluding the

said portion so sold is clearly made in bad faith and smacks of insincerity. To put it mildly, it is very unconcionable and consequently against the principles of equity and good conscience. It is worst when the respondents, after obtaining judgment and entering into a settlement Agreement which expressly excludes the land of appellants to still insist and hold unto that land when they know that they had much earlier divested themselves of the title to the said portion.

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother, AKAHHS, JSC that I too find merit in the appeal and allow same.

I abide by the consequential orders made in the said lead judgment including the order as to costs.

Appeal allowed.

**RHODES-VIVOUR, JSC:** I read in draft the leading judgment prepared by my learned brother, Aka'ahs, JSC and I am in full agreement with his lordships reasoning and conclusions. I shall not state the facts as this has been so well done in the leading judgment and the quantum of concurring judgments by my learned brothers.

It has been said on several occasions that if pleadings are to be of any use parties must be held bound by them, and facts are pleaded and not law. It is the duty of the court to decide issues based on the pleadings. See *Oseni v. Dawodu* (1994) 4 NWLR (Pt.339) 390, *Okoya v. Santilli* (1994) 4 NWLR (Pt.338) p.256, *Akinfolarin v. Akinola* (1994) 3NWLR (Pt. 335)p. 659.

All that a party is required to do is to plead facts which would enable the court to conclude that he has an equitable estate or interest. He does not need to plead that he has an equitable estate or interest.

The appellants pleaded sufficient facts not denied, to show beyond doubt that they are the heirs of Late Gbadamosi Bamidele Eletu who purchased 254.558 hectares of the land situate and known as Osapa village in Eti-Osa Local Government Area of Lagos State from the family of the respondents sometime in 1977. These facts show that the appellants have an equitable interest in the land by operation of Law. Both courts below fell into unpardonable error not being able to see that on the state of the pleadings the appellants have an equitable interest on the land by operation of law.

The well laid down position of the law is that where a purchaser of land has paid the price for the land to the vendor, he immediately acquires an equitable interest in the land and this, is as good as a legal estate. The equitable interest so acquired can only be destroyed by a purchaser for value who had no notice of the existing equity.

My lords, there is no doubt that the appellants purchased the land in question from the respondents.

5 A fact nowhere denied by the respondents. The equitable interest acquired by the appellants on the 254.558 hectares of land at Osapa Village in Eti-Osa Local Government Area of Lagos State remains intact.

10 The appellants are the true owners of the land in question, and there is nothing known to law to disturb their title to the land.

For this and the more detailed reasoning in the leading judgment, there is indeed merit in this appeal. The decisions of the two courts below are wrong.

15 The appeal is allowed.

**ARIWOOLA, JSC:** My learned brother Aka'ahs, JSC obliged me with the draft of the lead judgment just delivered. I agree entirely with the reasoning therein and the conclusion arrived thereat.

20 The appellants are entitled to judgment. The appeal is meritorious and should be allowed. Appeal is allowed.

I abide by the consequential orders including that on cost in favour of the appellants but against the respondents.

25 **OGUNBIYI, JSC:** I had the privilege of reading in draft the lead judgment just read by my learned brother Aka'ahs, JSC. I agree that the appeal has merit and should be allowed.

30 The facts of the case are very intriguing and well spelt out in the lead judgment. It is however interesting that the Ojomu chieftaincy family having sold their land in dispute to the appellants in 1977 should subsequently turn around to claim the some land as against the defendants/appellants. See *Coker v. Sanyaolu* (1983) 14 NSCC 119 at 129 to 130; *Okoli v. Ojiakor* (1997) 1 NWLR (Pt 479) 48 at 52.

35 It is not, for instance in dispute at the trial High Court that the defendants/appellants acquired their title from the plaintiffs/respondents as per exhibit 'C'.

40 The lower court in affirming the judgment of the High Court in ID/1883/89 nevertheless vested title to the disputed property in the respondents. By implication therefore, the High Court had by its judgment estopped the appellants from contesting the respondents' title. As rightly submitted by the learned appellants' counsel, the decision in ID/1883/89 which set aside the revocation notice by Lagos State Government is a declaratory judgment. In otherwords, it merely declared, that the  
45 revocation Notice by the State Government is invalid; hence it affirmed the appellants'

title as it operates in their favour against the whole world.

5 It was therefore erroneous for the Court of Appeal to have fallen into the same trap as the trial court in affirming that the judgment in ID/1889/83 did confer the appellants' undivested title on the respondents.

10 With the few words of mine and more particularly on the comprehensive reasoning and conclusion arrived thereat by my learned brother Aka'ahs, JSC in his lead judgment, I also find merit in this appeal and allow some in terms of the lead judgment inclusive of costs.

**Cases cited in the judgment**

- Adeyemi - Bero v. Omotosho* (2008) 15 NWLR (Pt 1111) 576  
*Akinfolarin v. Akinola* (1994) 3NWLR (Pt. 335) 659  
15 *Banire v. Balogun* (1986) 4 NWLR (Pt 38) 746  
*Coker v. Sanyaolu* (1983) 14 NSCC 119  
*Dantsoho v. Mohammed* (2003) 6 NWLR (Pt 817) 457  
*Ilona v. Idakwo* (2003) 11 NWLR (Pt 830) 53  
*Iyoho v. Effiong* (2007) 11 NWLR (Pt 1044) 31 SC  
20 *Obijuru v. Ozims* (1985) 16 NSCC (Pt 1) 430  
*Okoli v. Ojiakor* (1997) 1 NWLR (Pt 479) 48  
*Okoya v. Santilli* (1990) 2 NWLR (Pt.131) 172  
*Oseni v. Dawodu* (1994) 4 NWLR (Pt.339) 390

25 **History:**

**HIGH COURT**

High Court of Abuja (FCT)

30 **COURT OF APPEAL**

Court of Appeal (Lagos Division)

**SUPREME COURT OF NIGERIA**

- Samuel Nakanu Onnoghen, JSC (*Presided*)  
35 Bode Rhodes-Vivour, JSC  
Olukayode Ariwoola, JSC  
Clara Bata Ogunbiyi, JSC  
Kumai Bayang Aka'ahs, JSC (*Read the lead judgment*)

40 **Counsel:**

Olu Daramola SAN, and Ahmed Raji SAN with; Ademola Koko, Ola Faro, Adesola Adedipe, Ademola Abimbola, Sunday Onubi and Abolanle Alawoye for appellants.  
Dr. Adewale Olawoyin for the respondents.

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