

PASTOR J. AKINLOLU AKINDURO

v

ALHAJI IDRIS ALAYA

SUPREME COURT OF NIGERIA

SC. 296/2002

ALOYSIUS IYORGYER KATSINA-ALU. J.S.C. (*Presided*)

NIKITABI. J.S.C.

FRANCIS FEDODE TABAI. J.S.C.

IBRAHIM TANKO MUHAMMAD. J.S.C.

PIUS OLAYIWOLA ADEREMI, J.S.C. (*Read the Leading Judgment*)

FRIDAY, 22ND JUNE, 2007 *ACTION - Claim presented in a case - Bindingness of on court.*

APPEAL - Documentary evidence - Where inadmissible document wrongly admitted at trial - Power of appellate court to expunge - Rationale therefore.

APPEAL - Grounds of appeal and issue formulated there from- Need to arise from judgment appealed against - Effect where they do

APPEAL - Issues for determination - Issue of admissibility of document relied upon as root of title at trial - Whether can be raised on appeal.

CONSTITUTIONAL LAW - Fair hearing - Connotation of- Duty on court to accord to parties - Extent of.

COURT - Fair hearing - Connotation of- Duty on court to accord to parties - Extent of

DOCUMENT - Documentary evidence - Document inadmissible for one purpose - Whether admissible for another purpose.

DOCUMENT - Documentary evidence - Where inadmissible document wrongly admitted at trial - Power of appellate court to expunge - Rationale therefor.

EVIDENCE - Admissibility - Documentary evidence - Document inadmissible for one purpose - Whether admissible for another purpose.

EVIDENCE - Documentary evidence - Document inadmissible for one purpose - Whether admissible for another purpose.

EVIDENCE - Documentary evidence - Where inadmissible document wrongly

admitted - Power of appellate court to expunge -Rationale therefor.

EVIDENCE - Proof - Declaration of title - Party seeking declaration of title - Duty thereon to rely on strength of 0117? case and not on weakness of defendant's case - Exception thereto.

EVIDENCE - Proof- Instrument affecting land - Where not registered - Effect - Section 75, Land Instruments Registration Law.

EV1DENCE - Proof - Instrument affecting land - Where not registered

- Whetheradntissible in evidence - Where admitted in evidence

- Whether has evidential value.

EVIDENCE - Proof- Title to land - Document of title - Where relied upon b\ part\ in proof of title - Enquiries court should make.

EVIDENCE - Proof- Title to land - Proof of by documentary evidence

- What must be shown.

R HEARING - Right to fair hearing - Connotation of - Duty on court to accord parties - Extent of.

JUDGMENT AND ORDER - Declaration of title – Order of injunction in land matters - When court may grant -When will not.

JUDGMENT AND ORDER - Reliefs - Relief not sought – Duty on court not to grant.

LAND LAW- Declaration of title - Order of injunction in land matters - When court may grant - When will not.

LAND LAW - Declaration of title - Party seeking - Duty thereon to rely on strength of own case and not on weakness of defendant's case - Exception thereto.

LAND LAW - Instrument affecting land - Meaning of - Land Instruments Registration Law, Cap. 58, Laws of Northern Region as applicable in Kwara State.

LAND LAW - Instruments affecting land - Where not registered -Effect - Whether admissible in evidence - Where admitted in evidence - Whether has evidential value.

LAND LAW - Title to land - Proof- Document of title - Where relied upon by party

in proof of title - Enquiries court should make.

LAND LAW - Title to land - Proof of by documentary evidence -What must be shown.

LAND REGISTRATION - Instrument affecting land - Where not registered - Effect - Section 75, Land Instruments Registration Law.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal and issues formulated therefrom - Need to arise from judgment appealed against - Effect where the\ do not.

PRACTICE AND PROCEDURE - Appeal - Issues for determination - Issue of admissibility of document relied upon as root of title at trial - Whether can be raised on appeal.

PRACTICE AND PROCEDURE - Claim presented is a case bindingness of an court

PRACTICE AND PROCEDURE - Pleadings - Instruments affecting land - Where not registered - whether can be pleaded - Power of court to strike out paragraphs of pleadings where pleaded.

PRACTICE AND PROCEDURE - Reliefs - Relief not sought - Duty on court not to grant.

Issues:

1. Whether there was a valid sale of a plot of land by the respondent to the appellant without exhibit "1" being admitted in evidence.
2. Whether the Court of Appeal in its majority judgment was right to hold that the new point of objection on appeal raised for the first time in the Court of Appeal could be so validly taken and argued on appeal without the leave of the Court of Appeal being first sought and obtained.
3. Whether the Court of Appeal in its majority judgment was right in holding that the claim for declaration of title by the appellant failed, after they had earlier in the same judgment held that the respondent was duly bound to hand over a plot of land at Tanke. Ilorin to the appellant because the respondent had received payment for the plot.

Facts:

The appellant bought a plot of land in Tanke Ilorin measuring of it by 100ft from the respondent. According to the appellant, the respondent prepared the agreement of sale and site plan and signed them. The appellant obtained

approval to build from the Town Planning Authority, Ilorin. He was issued with a Permit to develop land or to construct a building. The appellant thereafter commenced construction on the land in 1983. The building had reached window level when the respondent's agent arrested and beat PW1 who was Supervising the building. The builder on the site was also arrested. m As a result of the above, the appellant sued the respondent at the High Court claiming a declaration of title, perpetual injunction and N40,000.00 as damages.

Pleadings were duly filed and exchanged between the parties.

At the trial, the appellant as PW1 tendered the agreement and site plan. Although the respondent recognised his signature on the agreement, he objected to its admissibility. But after listening to the submissions of counsel for and against the admissibility of the documents, the trial court in its ruling admitted both the agreement and site plan and marked them as exhibits " 1" and "2" respectively Exhibit 1 was never registered.

At the conclusion of evidence and after taking the formal addresses of counsel, the trial court, in its judgment, allowed the appellant's claims in part and dismissed it in part.

The respondent, being dissatisfied with the judgment, appealed to the Court of Appeal. The Court of Appeal, in its judgment, allowed the appeal, dismissed the claim for declaration of title thus setting aside the judgment of the trial court. The Court of Appeal however added a *proviso* that the appellant should not be evicted from the land until his equitable interest was satisfied. The appellant was aggrieved at the judgment and appealed to the Supreme Court. The respondent also cross-appealed against the portion of the majority judgment which granted equitable relief to the appellant.

The Supreme Court, in determining the appeal, construed the provision of section 15 of the Land Instruments Registration Law, Cap. 58, Laws of Northern Nigeria applicable in Kwara State which slate as follows:

"1 5 No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered in the proper oil ice as specified in section 3."

Held (*Unanimously dismissing the appeal and allowing the cross-appeal*):

1. *On How to prove title to land b\ documentary evidence-*

Production of document of title is indeed one of the five ways of establishing title to land. The document so tendered in evidence must, of course, be duly authenticated in the sense that its due execution must be proved unless it is produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract. [*Johnson v. Lawson* (1971) 1 ALLNLR 56 referred to.] (P. 329, paras. B-D)

2. *On Relevant considerations where document relied upon in proof of title to land -*

Production and reliance on document of title as an instrument of grant inevitably carries with it the need for the court to inquire into some or all of a number of questions, including:-

- (a) whether the document is genuine and valid;
- (b) whether it has been duly executed, stamped and registered;
- (c) whether the grantor had the authority and capacity to make the grant;
- (d) whether in fact the grantor had what he purported to grant; and
- (e) whether it has the effect claimed *by* the holder of the instrument.

In other words, mere production of even a valid document of title of grant does not necessarily carry with it automatic relief of grant of declaration relating to such grant without taking into consideration the factors adumbrated above. In the instant case, exhibit 1, the deed of agreement executed by the parties, was not registered and was therefor inadmissible. [*Romanic v. Romine* (1992) 4 NWLR (Pi. 238) 650 referred to.] (P. 329, paras. D-G)

3. *On Admissibility of unregistered registrable land instrument -*

By virtue, of section 15 of the Land Instruments Registration Law, an unregistered document affecting land must not be pleaded and is not admissible in evidence. If such a document is pleaded a trial court, upon an application made to it, must strike out paragraphs of pleadings where such unregistered document is pleaded. Even where the unregistered document is mistakenly admitted in evidence, part of the evidence relating to the unregistered document should be expunged for reason

of lacking evidential value. Land Instruments Registration Law has substantially universal contents in all the States in Nigeria. In the instant case, exhibit 1, an unregistered document as evidence of sale of land by the respondent to the appellant was, *ab initio* inadmissible in evidence for contravening the provision of section 15 of the Land Instruments Registration Law, Cap. 58, Laws of Northern Nigeria.

[*Ogimbainbi v. Abowaba* 13 WACA 222; *Olowoake v. Salawu* (2000) 11 NWLR (Pt.677) 127; *Adesanya v. Aderonmu* (2000) 9 NWLR (Pt.672) 370; *Ossai v. Nwajide* (1975) 4 SC 207 referred to.] (Pp. 330-331, paras. E-B)

4. *On Meaning of instrument under the Land Instruments Registration Law -*
Under section 2 of the Land Instruments Registration Law, the word "instrument" is defined to mean a document affecting land in the State whereby one party usually called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any right or title to or interest in the state. (P. 330, paras. G-H)

5. *On Duty on plaintiff claiming declaration of title to land to rely on strength of own case and not on weakness of defendant's case -*

A plaintiff who claims a declaration of title to land has a compelling duty to establish his case by credible evidence to the satisfaction of the court; the weakness of the case of the defendant will not avail him unless it is seen that there are averments in the statement of defence or even the testimonies of the defendant and/or his witnesses which support the case of the plaintiff.

[*Akinolu v. Oluwo* (1962) 1 SCNLR 352; *Bella v. Eweka* (1981) 1 SC 101 referred to.] (P. 330, Paras. D-E)

6. *On Grant of declaration of title and order of injunction in land matters -*
At the end of a successful prosecution of a land matter and where there is a claim for an order of injunction, a court which has granted a prayer for declaration of title will readily grant an order of injunction to prevent multiplicity of suits or to prevent irreparable damage, or injury or irremediable mischief. In the instant case, having rightly held that the appellant failed to prove that he was entitled to declaration of title to the land through his

freely chosen method of establishing title to land among the five methods known to law it was therefore not proper to order an injunction against the respondent/ and his agents. [Dada r. Ogunremi (1967) NMLR 181 referred to.] (P paras. C-E)

7. *On Whether document inadmissible for one purpose admissible for another purpose –*

A document inadmissible for a purpose may be admissible for another purpose. In the instant case, exhibit 1 which was inadmissible as proof of title would have been admissible in proof of an appropriate equitable relief.

[*Onocne v. Iketn* (1989) 4 NWLR (Pt. 116) 458 referred to.] {P. 339, paras. D-E i

8. *On whether court will grant a relief not sought* -The court does not make a practice of granting a relief not sought. In the instant case, there was no claim for equitable relief by the appellant. Therefore the Court of Appeal went beyond the case formulated before it by prompting the respondent to enforce his right by specific performance when such was not prayed for. (Pp. 33J-332, paras. G-A)

9. *On Bindingness of claim presented in a case on the court-*

A court is bound by the claim presented in a case. (P. 339, para. C)

10. *On C 'annotation affair hearing -*

The duty of the court is to create the environment for fair hearing and it is the decision of a party to take advantage of the environment created. A party cannot blame (be court if he fails to take advantage of the environment created by the court. (P. 337, paras E-F)

11. *On Power of appellate court to expunge inadmissible document wrongly admitted in evidence -*

Where an inadmissible document is admitted by the trial court, it can be expunged by an appellate court This is because a document which is inadmissible under the Evidence Act cannot be allowed to stay in the record. (P. 338, paras. C-D)

12. *On Treatment of issues and grounds of appeal not derived from judgment appealed against -*

Any issues emanating from grounds of appeal which do not flow from

the judgment appealed against or do not have any bearing on the judgment appealed against will be struck out along with the grounds of appeal. (P. 326, paras. C-D)

Nigerian Cases Referred to in the Judgment:

Adesanya v. Aderonmu (2000) 9 NWLR (Pt. 672) 370

Akinohi v. Olnwo (1962) 1 SCNLR 352

Rellov. EurAY/(1981) 1 SC. 101

Dada v. Ogiinremi (1967) NMLR 181

Johnson v. Lawanson (1971) 1 ALL NLR 56

Ogunbambi v. Abowab 13 WACA 222

Okoye v. Dume: (Nig.) Ltd. (1985) 1 NWLR (Pt.4) 7'83

Olowoake v. Salawu (2000) 11 NWLR (Pt.677) 127

Ono/ue v. Ikem (1989) 4 NWLR (Pt.1 16) 458

Ossai v. Nwajidc (1975) 4 SC. 207

Romaine v. Romaine (1992) 4 NWLR (Pt.238) 650

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria. 1999. S. 243(b) Land Instrument Registration Law. Cap. 58. Laws of Northern Nigeria. 1963 applicable in Kwara State Ss. 2 and 15

Appeal and Cross-appeal:

These were an appeal and a cross-appeal against the majority decision of the Court of Appeal which allowed the appellant's appeal 5part. The Supreme Court, in a unanimous decision, dismissed the appeal and allowed the cross-appeal.

Editor's Note:

The decision of the Court of Appeal herein affirmed by the supreme Court is reported in (1998) 4 NWLR (Pt.545) 311.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Aloysius Iyorgycr Katsina-Alu. J.S.C.

(Presided): Niki Tobi, J.S.C.; Francis Fedode Tabai. J.S.C.; Ibrahim Tanko

Muhammad, J.S.C.;

Pius Olayiwola Aderemi, J.S.C. (*Read the Leading Judgment*)

Akinduro vs Alaya

Appeal No.: SC. 296/2002

Date of Judgment: Friday, 22nd June. 2007

Names of Counsel: Dr. Oluwole Aje - (with him, Mr. Ayodeji Aje) -for the Appellant

Mr. K. K. Eleja (with him, Messrs. M. 1. Hanafi; S. A. Oke and M. T. Adekinleku) - for the Respondent

Court of Appeal:

Division of the Conn of Appeal from which the appeal was brought: Court of Appeal. Kaduna

Names of Justices that sat on the appeal: Umaru Abdullahi. J.C.A. (Presided): James Ogenyi Ogebe J.C.A. (Dissented): Alinuke Omobonike Ige. J.C.A. (Read the Leading Judgment):

Appeal No.: CA/K/181/96

Date of Judgment: Tuesday. 24th February. 1998

Names of Counsel: Yusuf Olaolu Ali, SAN (with him, Sikiru I. Solagberu, Kehinde Kola Eleja) - for the Appellant Dr. O. Aje -for the Respondent

High Court:

Name of the High Court: High Court of Kwara State,]

Name of the Judge: Ajayi, J.

Date of Judgment: Wednesday, 30th June, 1993

Counsel:

Dr. Oluwole Aje - (with him, Mr. Ayodeji Aje) -for the Appellant

Mr. K. K. Eleja (with him, Messrs. M. I. Hanafi; S. A. Oke and M. T. Adekinleku) - for the Respondent

ADEREMI, J.S.C. (Delivering the Leading Judgment): This appeal is against the majority decision of the Court of Appeal Kaduna Division (Coram Umaru Abdullahi, Presiding Justice) (as he then was) and A.O. Ige JCA (of blessed memory) who wrote the leading judgment delivered on the 24th February 1998 allowing the appeal against the judgment of the High Court of Kwara State. Ilorin Division. The minority judgment dismissing the appeal against the same judgment of the said High Court was written by Ogebe, JCA Before the trial court, the present

appellant who as the plaintiff at that court had by paragraph 28 of his statement of claim dated 17th June 1991 claimed against the respondent/cross-appellant who was, the defendant in that court the following reliefs:-

"(1) A declaration that the land at Tanke. Ilorin sold to the plaintiff by the defendant is at all times his property.

(2) An order of perpetual injunction restraining the defendant from preventing the plaintiff or any of his agents and workmen from enjoying quiet possession of the premises.

(3) The sum of N40,000.00 (forty thousand naira) being special and general damages for loss sustained by the plaintiff, as a result of the defendant's obstruction of plaintiff on his land/"

Pleadings filed and exchanged between the parties are the statement of claim dated 17th June 1991 and statement of defence dated 18th February 1992. Both sides called evidence in proof of the averments and sequel to taking the formal addresses of their counsel, the learned Judge, in a reserved judgment delivered on (the 30th of June , allowed the claims of the plaintiff in part and dismissed it in part; he held in his judgment, *inter alia*: -

"From the evidence adduced, I have no hesitation in holding that the land at Tanke Area, Ilorin was sold to the plaintiff as per exhibits 1 and 2, belongs to the plaintiff- Pastor Akinduro and it was at all times his property. Because I have held as above, I hereby grant the order of perpetual injunction against the defendant who is restrained by himself, agents and workmen (*sic*) from enjoying quiet possession of the premises.

the evidence before me that the defendant caused the suspension of the building project of the plaintiff by causing the plaintiff's men to be harassed from the building site and also suing the plaintiff to be taken to the Area Court which restrained the plaintiff from further development of the building. The plaintiff who was dissatisfied did not appeal against the decision of the Area Court until a fresh action was instituted in this court in 1991... In the light of this, can the plaintiff claim the sum of N40,000.00 as special and general damages against the defendant after failing to minimise his own loss? I am of the firm view that this court should not allow his claim of N40,000.00 which has arisen as a result

of his own failure to act timeously ...

The claim of N40,000.00 as special and general damages > is hereby refused and it is accordingly dismissed." [Being dissatisfied with the said judgment, the defendant (Alhaji Idris Alaya) before that court and who is the present respondent/cross-appellant aggrieved by the portion of the judgment to the Court of Appeal (Kaduna Division) which granted an order of perpetual injunction against him, cross-appealed to this court. As I have said, by the majority decision of that court and the court below, the appeal was allowed and a pronouncement was-made that the claim for declaration of title failed thus setting aside the judgment of the court of trial with a proviso that the plaintiff/respondent before the court below, now appellant before us. should not be ejected until his equitable interest was satisfied. In the majority judgment, it. held *inter alia*:-

"That notwithstanding, the appellant is duty bound to handover a plot of land to the respondent at Tanke, Ilorin because he received payment for the plot. By the act of payment of money to the appellant coupled with later actions respondent has taken on the land, respondent has a right to an equitable interest which is enforceable by specific performance. It is my candid view that exhibit 1 has not passed title to the respondent but has given rise to an equitable interest which is enforceable against the appellant. In order to be able to enforce his right to this equitable interest, the appellant should not do any act to prejudice the interest of the respondent until he has fulfilled his own part of the bargain by putting the respondent rightfully on a plot of land at Tanke.

The claim for declaration of title has failed hence Issue 2 is also resolved in favour of the appellant with a proviso that he should not eject the respondent from the land until his equitable interest is satisfied."

It is against the majority judgment that the appellant before the court below has filed an appeal via notice of appeal dated 30th April 1 998 incorporating thereto three grounds of appeal. Suffice it to say that this appeal is against that portion of the judgment that dismissed his claim for title. In the minority judgment handed down by Ogebe, 1C A which judgment favoured the respondent (Pastor.I. A. Akinduro) before that court. the earned justice, in reaching his decision, held

inter alia:-

"The first issue formulated by the appellant does not arise from any matter canvassed before the lower court. The question of the inadmissibility of exhibit 1. the sale agreement for non-registration under the Land Use Registration Law of Kwara State was never raised in the lower court. The document was attacked that it was not stamped and did not come from proper custody. It follows therefore that the issue of non-registration under the Land Use Registration Law is being raised for the first time in this court and the appellant requires leave of this court to raise ...

I am firmly of the view that the appellant's first issue is therefore incompetent and I hereby strike it out." i Issue 2 formulated before the court below which reads:-

"Whether from the totality of the case, the respondent who was claiming a declaration of title succeeded in proving same in accordance with any of the five methods of proving title to land under the law." he learned justice of the court below reasoned thus:-

"Both sides are agreed that the appellant sold a piece of land to the appellant (*sic*) through a 3rd party who measured out the plots to numerous buyers, exhibit 1 is a sale agreement which the parties signed. The respondent was shown the plot in dispute which he started developing before the appellant told him to leave it for another plot because he was given the wrong plot which he did not intend to sell. What is the effect of exhibit 1?" I In finding an answer to this question concerning exhibit 1. the learned justice referred to the *dictum* of Bello JSC (as he then was) in *Okovc \v. Diime-Nit>. Lid. (1985) I NWLR (Pt.4) 783* and held:-
"Following this decision of the Supreme Court, I am of the view that the appellant cannot eat his cake and have it. By exhibit 1 he has created an equitable interest in the land in favour of the respondent which he cannot now avoid. It is as good as a legal estate which the court must protect. Accordingly, I dismiss the appeal and affirm the decision of the lower court."

The respondent also cross-appealed against the portion of the majority judgment which granted equitable relief to the appellant. The notice of cross-appeal dated 10th July 2000 carries two grounds of cross-appeal.

When this appeal came before us for argument on the 27th of March. 2007. Dr.

Oluwole Aje learned counsel for the appellant referred to and adopted his client's brief of argument deemed to have been properly filed on 11th December, 2003 and the reply/cross-respondent's brief deemed properly filed on 29/11/2003 and urged that the appeal be allowed.

Mr. Eleja learned counsel for the respondent/cross-appellant also referred to and adopted his client's brief filed on 23/7/03 and urged that the appeal be dismissed while the cross-appeal be allowed.

He drew the attention of the court to paragraph 3 of his client's brief and urged that the notice of preliminary objection therein contained be upheld.

I feel called upon to attend to the notice of preliminary objection contained on page 3 of the cross-appellant's brief. I have carefully examined additional grounds 1 and 4; it is true that both grounds relate to Exhibit *I* - the receipt of money which the appellant paid to the cross-appellant as the purchase price of the land while the particulars appurtenant to ground 1 are mainly factual in nature the particulars appurtenant to ground 4 are mainly of procedural law and case law. I think each can complement the other, in the interest of justice, I am of the view that the two can stand. As to grounds 3 and 5, I agree with the cross-appellants that Issue No. 3 does not flow from the judgment of the court below - it does not have any bearing on the judgment of the court below. Accordingly, I strike grounds Nos. 3 and 5 out; any issues emanating from them are hereby struck out. For the avoidance of doubt, it is only Issue No.3 that is caught by the preliminary objection considered above. I accordingly strike it out.

The appellant/cross-respondent in his brief of argument therefore raised three valid issues for consideration by this court, they are. as contained in his brief, as follows:-

- "(1) whether there was a valid sale of a plot of land by the respondent to the appellant without exhibit 1 being admitted in evidence.
- (2) whether the learned justices of the Court of Appeal in their majority judgment were right to hold that the new point of objection on appeal raised for the first time in the Court of Appeal could be so validly taken and argued on appeal without the leave of the Court of Appeal being first sought and obtained as requested
- (3) Whether (he learned justices of the Court of Appeal in their majority

judgment were right in holding that the claim for declaration of title by the appellant failed, after they had earlier in the same judgment held that the respondent was duty bound to hand over a plot of land at Tanke Ilorin to the appellant because the respondent had received payment for the plot."

The cross-appellant for his part identified three issues as set out in his brief of argument: they are in the following terms:-

- "(I) Whether the court below was not right in its view of Exhibit 1. having regard to the failure to register the said document, the purpose for which the document was tendered and the claim of the appellant before the trial court and whether the admissibility of exhibit J was a new issue raised before the court below without the leave of court.
- (2) whether the court below failed to consider and resolve any of the issues properly raised before it by any of the parties in the appeal.
- (3) whether the court below was right in granting to the appellant a relief he did not claim at the trial, to wit, that the respondent should not eject the appellant from the disputed land having held rightly that the appellant was not entitled to declaration of title in his favour."

I have read the arguments for and against the contention of the parties in their respective briefs as to whether there was a proper sale of land by the cross-appellant to the appellant. There is no doubt that the whole of the appeal rests entirely on Exhibit 1 or put in another way. Whether valid title to land passed from the cross-appellant to the appellant. In determining this crucial issue, a resort) pleadings of the parties is most necessary in order to discern the .case of each party. Put in another way. to ascertain the exact claim of a plaintiff in a land suit, we must have recourse to the writ of Summons and the claim as endorsed in the statement of claim. The salient paragraphs of the statement of claim are 4.5.6.7 and 8 and they are as follows:-

Para 4

"The plaintiff is seized in good title and is the beneficial owner of all that plot of land situated and lying at Tanke Alangua village. Ilorin."

Para 5

"The plaintiff purchased his right and title to the land from the

defendant sometime in 1977. The plaintiff pleads the deed of agreement dated 10th of June 1977 and the site plan of the said land."

Para 6

"Subsequently, the plaintiff applied for and obtained permit to build on the said plot of land measuring 100 feet by 50 feet "

Para 7

"The plaintiff commenced construction on the said land sometime in 1984 which has now reached lintel level"

Para 8

"The defendant has been obstruction (*sic*) the plaintiff agents and workmen and other people on the site."

The paragraphs of the statement of defence that are germane to the meaningful consideration of this appeal are 3, 4, 5, 6 and 7 which are in the following terms:-

Para 3

"In answer to paragraph 4 of the statement of claim the defendant avers that one Mr. Raphael Ogunleye (Baba Sabo) approached him and negotiated for a piece or parcel of land, amongst the defendant's parcels of land situate, lying and being along NNPC pipeline at Tanke Village. Ilorin."

Para 4

"In answer to paragraph 5 of the statement of claim the said Mr. Raphael Ogunleye alias Baba Sabo. brought a prepared agreement from the signature of the defendant as well as his witnesses."

Para 5 "In further reply to paragraph 4 of the statement of claim the defendant did not at any time take the plaintiff nor his agent to any particular spot out of the defendant's parcels of land situate and lying at Tanke Village for survey."

Para 6

"In reply to paragraph 6 of the statement of claim the defendant did not at any time allocate the land in dispute on which the plaintiff is now constructing a building."

Para 7

"When the defendant discovered that someone whom he did not know his name was erecting a building on the land in dispute, he lodged a report to the "Nigerian Police "A" Division. Ilorin. whereby the workmen on the said land were invited to the Police Station by the Police'

From the salient paragraphs of the pleadings by both sides which I have reproduced above, it is clear that the plaintiff/appellant is basing his ownership of land on documents of title. To be specific. he pleaded a Deed of Agreement dated 10th June 1977 as the Document of title of course with the site plan. Having identified the 5th fundamental point calling for resolution in this appeal and after . revisit to the issues formulated by the two parties, it is my view that issues Nos. 1 and. 3 in the appellant's brief of argument can be Conveniently taken together with Issue No. 1 on the cross-appellant's brief and I shall so do.

Production of document of title is indeed one of the five ways of establishing title to land. The document so tendered in evidence must, of course, be duly authenticated in the sense that due execution must be proved unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract. See *Johnson & Ors v. Lawanson & Ors* (1971) 1 ALL NLR 56 and section 130 of the Evidence Act. The guiding principles on proof of title by document of title are well adumbrated by this court in *Romanic v. Romaine* (1992) 4 NWLR (Pt.238) 650 at 662 to the effect that production and reliance as an instrument of grant of title inevitably carries with it the need for the court to inquire into some or all of a number of questions including: -"

- (1) whether the document is genuine and valid.
- (2) whether it has been duly executed, stamped and registered.
- (3) whether the grantor had the authority and capacity to make the grant.
- (4) whether in fact the grantor had in fact what he purported to grant: and
- (5) whether it has the effect claimed by the holder of the instrument."

In other words, mere production of even a valid document of title of grant does not necessarily carry with it automatic relief for grant of declaration relating to such grant without taking into; consideration the factors adumbrated above. Now, what is the evidence led? P/W1 before the court of trial who incidentally is the present appellant, in his testimony said *inter alia*:-

"I know the defendant. I know him when he sued me concerning land matter which he sold to me. The land is at Tanke Area. It is off the University Road along oil pipeline. The land was sold to me in 1977 June. The land was 50 by 100 feet. There is an evidence of" sale of the land to me as I was given an agreement and site plan.

Objection was taken to the admissibility of the documents, after listening to the submissions of counsel for and against admissibility of the said documents, the trial Judge in his ruling on the spot, admitted both the agreement and site plan and marked them as exhibits 1 and 2 respectively. The cross-appellant who was the defendant in the case before the trial court flatly denied selling any land to the appellant but was able to recognize his signature on a document touching on land which was tendered as exhibit I. It is common ground that though exhibit 1 touches on land it was never registered. What is its effect'? Before I answer that question, let me quickly slate the position of the law as regards a plaintiff who claims title to land. It is trite law that a plaintiff who claims declaration of title to land has a compelling duty to establish his case by credible evidence to the satisfaction of the court; the weakness of the case of the defendant will not avail him unless it is seen that there are averments in the statement of defence or even the testimonies of the defendant and/or his witnesses which support the case of the plaintiff. See *Akinola v. Olmro & Anor.* (1962) 1 SCNLR 352, (1962) 1 All NLR 224 and *Bello v. Eweka* (1981) I SC. 101. Now, to the question I posed regarding exhibit 1. an unregistered document that is exhibit 1, as evidence of sale of land by the defendant/cross-appellant to the plaintiff/ appellant is, *ab initio* inadmissible in evidence for contravening the provisions of section 15 of the Land Registration Law. Cap 58 Laws of Northern Nigeria 1963 applicable to Kwara State, it

provides:-

"No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered in the proper office as specified in section 3."

Land Instruments Registration Law has substantially universal contents in all the States in Nigeria. Under section 2 of the Law the word "INSTRUMENT" is defined to mean a document affecting land in the state whereby one party usually called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any right or title to or interest in the land. Going by section 15 aforesaid, an unregistered document affecting land must not be pleaded and neither is it admissible in evidence. See *Ogunbambi v. Abowab* 13 WACA 222; *Olowoake v. Salwu* (2000) TNWLR (Pt.677) 127 and *Adesanya v. Aderonmu* (2000) 6 SC. pt. II) 18; (2000) 9 NWLR (Pt. 672) 370. And if such a document is pleaded a trial Judge upon an application made to it, must strike out paragraphs of pleadings where such unregistered document is pleaded. See *Ossai v. Nwajide & Anor* (1975)4 SC. 207. Even where the unregistered document was mistakenly admitted in evidence; part of the evidence relating to that unregistered document should be expunged for reason of lacking evidential value. Based on the foregoing authorities, I agree with the court below that the plaintiff/ -has woefully failed to prove his title to the land; consequently relief/ No.1 of his claim must fail. Issue No.1 of his claim must fail. Issue/ No.1 on the appellant's brief is therefore resolved against him whilcy I resolve Issue No. 1 on the cross-appellant's brief, which is materially similar to issue No.1 raised by the appellant, in his favour.

After holding that title to land was not established, the learned Justice delivering the leading majority judgment said:-

"That notwithstanding, the appellant is duty bound to hand over a plot of land to the respondent at Tanke Ilorin because he received payment for the plot. By the act of payment of money to the appellant coupled with the later actions respondent has taken on the land, the respondent has a right to an equitable interest which is enforceable by specific performance. It is my candid view that exhibit 1 has not passed title to the

respondent but has given rise to equitable interest which is enforceable against the appellant. In order to be able to enforce his right to this equitable interest the appellant should not act to prejudice the interest of the respondent until he has fulfilled his own part of the bargain by pulling the respondent rightfully on a plot of land at Tanke."

Let me say quickly that exhibit 1 - the document touching on land was never pleaded as a receipt II was put up as the source of the plaintiff/appellant's title. Even if Exhibit 1 were to be regarded as a receipt evidencing payment of money; there is no claim for equitable reliefs by the plaintiff. The court does not make a practice of granting a relief not sought. There is no leg of the claims for any equitable reliefs; the lower court therefore went beyond the case formulated before it by prompting the respondent to enforce this right by specific performance when such was not prayed for. Having held and rightly in my view, that the claim for declaration failed any

Pronouncement by the court below that the appellant in that coq was duty bound to hand over a plot to the respondent in that cc now the appellant has no support in law. Therefore, Issue No.; the appellant's brief is resolved against him.

The court below having rightly held that the plaintiff/appellant failed to prove that he was entitled to declaration of title to the 1 through his freely chosen method of establishing title to land among the five methods known to law - presentation of document of title to land - the lower court, per its majority judgment, was in error to have granted an order of perpetual injunction in favour of the plaintiff/ appellant. It must always be remembered that a court, at the end of a successful prosecution of a land matter and where there is a claim for an order of injunction: a court which has granted a prayer for declaration of title, will readily grant an order of injunction to prevent multiplicity of suits or to prevent irreparable damage, or injury or irremediable mischief. In this case, as I have pointed out, the court below has rightly refused to grant the relief for declaration of title. It is therefore not proper to order an injunction against the defendant/ cross-appellant and his agents. It is even more worrisome when it is realised that "Order of Perpetual Injunction" was what was granted .against the cross-appellant. This court in the case of *Chief Dada, The Lojaoke v. Chief Shittu Ogunremi & Anor* (1967) NMLR 181 said that it is improper to grant a perpetual injunction at the

instance of a limited owner when the owner of the absolute interest is not a party to the case. Here, the appellant is not even a limited owner of the land, his claim for declaration of title has failed woefully. There is even no legal basis for the award of the claim of N40,000.00 as special and general damages to the appellant who has failed to prove his title to land and had he proved his title, there was no scintilla of evidence to enable the trial court award special damages. I do realise that the court below refused the claim for N40,000.00. Proof of title to land is *sine qua non* to the success of the case; and issue of admissibility of exhibit 1 was raised at the trial and could still rightly be raised at the court below. For what I have been saying, Issue No.2 on the appellant's brief is answered in the affirmative and I answer Issue No. 2 in the cross-appellant's brief in the negative.

In conclusion, the appeal against the majority judgment to the extent to which it attacks the order of perpetual injunction in favour of the appellant is meritorious. That portion of the judgment is hereby set aside and in its place is an order dismissing the claim entirely as the Declaims for declaration of title to land and damages were dismissed.

the appeal also succeeds against the pronouncement of the court below granting equitable reliefs to the appellant when same were not claimed. *A fortiori*, the cross-appeal succeeds to the extent to which it challenges the grant of equitable reliefs not sought by the plaintiff/appellant. For the avoidance of doubt, the majority judgment Dismissing the claims for declaration of title to land and damages is upheld. Also for the avoidance of doubt, the minority judgment is hereby set aside and in its place is that part of the majority judgment which I have upheld in this judgment. For the avoidance of doubt, the claim of the plaintiff before the trial court is hereby dismissed in its entirety. There shall be no order as to costs.

KATSINA-ALU, J.S.C.: I have had the advantage of reading in 'draft the judgment delivered by my learned brother, Aderemi, JSC. I entirely agree with it and, have nothing useful to add.

TOBI, J.S.C.: The dispute in this appeal has to do with land in Tanke. Ilorin. The appellant as plaintiff claims to be the owner of the land. He bought a plot measuring 50ft by 100 ft out of the land. According to the appellant, the respondent prepared the agreement [of sale and Site Plan and signed them. The

appellant obtained [approval to build from the Town Planning Authority. Ilorin. He was issued with a permit to develop land or to construct a building.

Appellant thereafter commenced construction on the land. That was I in 1983. The building had reached window level when the respondent's agent arrested and beat PWI who was supervising the building. The builder on the site was also arrested.

Appellant filed the action. He asked for N40,000.00 damages. The teamed trial Judge gave him judgment. The respondent's appeal So the Court of Appeal succeeded. Dissatisfied, the appellant has come to this court. Briefs were filed and exchanged. The appellant formulated four issues for determination. The respondent formulated three issues for determination. The respondent has filed a preliminary objection on Grounds 3.4 and 5.1 do not intend to take the objection. My learned brother has adequately dealt with it.

The only issue I will take in this appeal is Exhibit 1 learned counsel for the appellant has taken strongly in his bill Counsel submitted that it was not available to the Court of Appeal to decide on exhibit 1 in the way it did as there was no objection the High Court beyond the one that the exhibit did not comply the Stamp Duty Law. As nothing was said about non-compliance with the Land Tenure Law or the Registration of Titles Law, the issue taken by the Court of Appeal, counsel contended, amounted to a new or fresh issue. He argued that learned counsel for the respondent, having withdrawn his objection to the admissibility of exhibit 1 in the High Court, the respondent should be held to be bound by the act of his counsel. It was therefore an error in law and unfair to the appellant for the Court of Appeal to have allowed the respondent raise what he called new issue before that court in flagrant violation of Order 6 rule 3(a) of the Court of Appeal Rules and section 243(b) of the Constitution of the Federal Republic of Nigeria, 1999.

Learned counsel expected notice to be served on the appellant in respect of the objection raised on exhibit 1. In the absence of any notice, the action of the Court of Appeal in allowing fresh issue to be raised denied the appellant fair hearing which has occasioned a miscarriage of justice.

Learned counsel for the respondent called the attention of the court to paragraphs 4 and 5 of the statement of claim and paragraphs 2, 3, 4 and 5 of the

statement of defence and submitted that the parties joined issues on exhibit 1 in the High Court. He contended that as exhibit 1 is a document that touches land and purported to transfer title to the appellant, it must meet a legal precondition before it can be admitted in any judicial proceeding. Where the precondition was not met, it was inadmissible in a judicial proceeding, counsel argued.

What is the genesis of exhibit 1? Counsel for the respondent has provided the genesis of the exhibit. It is in paragraphs 4 and 5 of the statement of claim. They aver:

"4. The plaintiff is seized in good title and is the beneficial owner of all that plot of land situated and lying at Tanke Atangua village Ilorin.

5. The plaintiff purchased his right and title to the land from the defendant sometimes in 1977. The plaintiff pleads the deed of agreement dated 10th of June 1977, and the sue plan of the said land.

The respondent joined issues with the appellant in paragraphs 2,3,4 and 5 of the statement of defence. The aver:-

"2. The defendant denies paragraphs 1, 4, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 23A. 24, 25, 26 and 27 of the statement of claim and puts the plaintiff to the strictest proof thereof.

3. In answer to paragraph 4 of the statement of claim the defendant avers that one Mr. Raphael Ogunleye (Baba Sabo) - approached him and negotiated for a piece or parcel of land amongst the defendant's parcel of land situate, lying and being along NNPC Pipe line at Tanke village, Ilorin.

4. In answer to paragraph 5 of the statement of claim the said Mr. Raphael Ogunleye *alias* Baba Sabo brought a prepared agreement for the signature of the defendant as well as his witnesses.

5. In further reply to paragraph 5 of the statement of claim the defendant did not at any time take the plaintiff nor his agent to any particular spot out of the defendant's parcel of land situate and lying at Tanke village for survey."

Exhibit 1 is the Deed of Agreement. The learned trial Judge made use of it. He said at page 51 of the record:-

"By an agreement dated 6th June. 1977 and signed by the defendant

which is Exhibit I a piece of land was transferred to the plaintiff. The defendant in his case never denied signing exhibit 1. The next issue then is whether or not the defendant ever sold the particular piece of land in dispute to the plaintiff. It is *on* record as per Exhibit 1 that a piece of land was sold to the plaintiff. From the evidence of the defendant, and Exhibit DI which is also an approved building plan for Tanke Village, which is a very large area this court is of the view that the Town Planning Authority could not have issued two approved building plans for two different people and for the same piece of land. Tanke village is a very large Area and I believe that the approved building plan issued to Pastor Akinduro. the plaintiff in this case is for piece of land purchased by him as shown through exhibit 1. I also firmly believe

that the piece of land on which he started his building is that one which was sold to him. I am reinforced further through the evidence of DW2 - 3 that the defendant must have changed his mind as testified by these witnesses who said that the defendant also stopped them at the foundation level and gave them an alternative piece of land. From the evidence adduced, I have no hesitation in holding that the land, at Tanke Area Ilorin was sold to the plaintiff as per exhibits 1-2, belongs to the plaintiff - Pastor Akinduro and it was at all time his property."

Dissatisfied with the decision of the learned trial Judge on the exhibit.

Issue No. 1 formulated by the respondent, as appellant, in the Court of Appeal was on the exhibit:-

"Whether the learned trial Judge was right to have admitted exhibit 1 in evidence and relied on same to hold that there was a valid sale of the disputed land to the respondent when the said exhibit 1 was not registered as required by law and was therefore inadmissible in law."

The respondent, as appellant, argued in great detail at pages 60 to 68 of the record the above issue, which resulted in the following conclusion of the Court of Appeal at pages 106 and 107 of the record:-

"There is no doubt that *exhibit* 1 is a piece of evidence to know that money passed from the respondent to the appellant as cost of a plot of land at Tanke. In her judgment as at p.52 of the records the learned trial Judge held that the

land at Tanke Ilorin was sold to the plaintiff as per *exhibits 7-2* and it was therefore the property of the plaintiff/respondent at all times... Is the agreement *exhibit 1* evidence of sale of land which can pass title to the respondent? ... In this case *exhibit 1* admits of the above description in that it purports to transfer ownership of the land in dispute to the respondent by the appellant. It is therefore a document for the purpose of land transaction and seeks to confer or transfer title of land on the respondent as grantee to confer or transfer title of land on the respondent as grantee by the appellant as grantor. *A fortiori* it must be a registrable instrument. Is *exhibit 1* registered? The answer is an obvious No.—

Where it is not registered as in this case *exhibit 1* ought not to be pleaded or given in evidence in any court as it affects any land... I therefore hold that *exhibit 1* was wrongly pleaded and wrongly admitted in evidence by the learned trial Judge as a document conferring title on the respondent."

Learned counsel for the appellant submitted that the appellant was denied fair hearing on the ground that the Court of Appeal allowed the respondent to raise a fresh issue without giving an Opportunity to the appellant "to prepare himself with the evidence If necessary to present his case fittingly to the Court of Appeal." I do not think appellant is correct in saying that he had no opportunity to Respond to the issue. Paragraph 5.09 of the brief of the respondent in fee Court of Appeal the appellant in this court, at page 81 of the Record reads :-

"It is submitted that even *if exhibit 7* is expunged, there is still enough documentary evidence to sustain the finding of a valid sale of land to the plaintiff."

The appellant as respondent had the whole world at his feet to respond to the 1st issue in the appellant's brief in the Court of Appeal. He did nothing. He only made a statement of concession which did not in any way help him. And he now complains of fair hearing. Why? I have said it in the past and I will say it again that the duty of the court is to create the environment for fair hearing and it is the decision of a party to take advantage of the environment created. A party cannot blame the court if he fails to take advantage of the environment created by the court. I see such a situation in this matter. The appellant should not blame the

Court of Appeal. He has himself to blame.

Let me also take the issue of leave raised by the appellant in his brief. To learned counsel, the new point of objection in the Court of Appeal needed the leave of that court. He cited Order 6 rule 3 of the Court of Appeal Rules and section 243(b) of the 1999 Constitution. with respect. I do not see the application of the rule of court and the Constitution here. Unfortunately, learned counsel did not tell the court in specific terms the relevance of either the rules or the constitutional provision. I think Ige. JCA. correctly made the point when she said at page 105 of the record:-

"It is my view that the fact that the appellant has produced a new ground of objection to the admissibility of *exhibit 1* does not make it a new issue which did not arise in the court below. The point in my view could validly be taken and argued on appeal without The appellant had sufficiently addressed the issue both in his grounds of appeal and the issues formulated in the court. The respondent had sufficient notice to react to the issue in his reply brief. This he did not do effectively. I am now left to consider the argument adduced by the appellant with regard to the admissibility of *exhibit1*."

It is elementary law that where an inadmissible document *is* admitted by the trial Judge, it can be expunged by an appellate court, without ado or qualms. This is because a document which is inadmissible under the Evidence Act cannot be allowed to stay in the record. I think that is what the Court of Appeal did by carefully going into the law on the admissibility of *exhibit I*. I could not have done better.

I think this appeal lacks merit. My learned brother, Aderemi, JSC, said all in a more comprehensive language. I too dismiss the appeal. I abide by my learned brother's orders as to costs

TABAI, J.S.C.: I had a preview of the leading judgment prepared by my learned brother, Aderemi. JSC and I am also inclined to the same conclusion that the appeal be dismissed and the cross-appeal allowed.

This case underscores the very importance of an originating process in a case. The appellant has lost this case because of the way reliefs are claimed. In

paragraph 28 of the statement of claim, the appellant claimed for:-

- (i) A declaration that the land at Tanke Ilorin sold to the plaintiff, by the defendant is at all times his property,
- (ii) A perpetual injunction restraining the defendant from preventing the plaintiff or any of his agents and workmen from enjoying quiet possession of the premises.
- (iii) Special and general damages in the sum of N40,000.00 for loss sustained by the plaintiff as a result of the defendant's obstruction of the plaintiff on his land.

The evidence at the trial clearly established that the appellant paid for one of the respondent's over 80 plots at Tanke Village Ilorin and exhibit I evidenced that transaction. The defendant/respondent admitted that fact both in his pleadings and evidence. The only controversy therefore was whether it was the particular plot in dispute that was sold to the appellant.

Title, strictly speaking, ought not to be in issue. But having regard to the claim for title in relief (i) the entire evidence including the admissibility or otherwise of Exhibit 1 had to be considered against the background of that claim. The lower court, understandably- appreciated that fact of the appellant's payment for a plot and the respondent's acceptance of that payment for a plot when it went on to grant the equitable relief not claimed.

On the whole, while one sympathizes with the appellant, the court is bound by the claim presented in a case. It is settled law that a document inadmissible for a purpose may be admissible for another purpose. See *Onoche v. Ikem* (1989) 4 NWLR (PU 16) 458 at 466.1 Exhibit 1 which is inadmissible in proof of title would have been f admissible in proof of an appropriate equitable relief claimed.

In the face of the reliefs claimed, I also dismiss the appeal and allow the cross-appeal. I make no order as to costs

MUHAMMAD, J.S.C.: My Learned brother. Aderemi, JSC afforded me the opportunity to read in draft form the judgment just delivered. My learned brother has dealt with all the issues raised in the appeal satisfactorily. I am contented with his reasoning in upholding the majority judgment of Abdullahi, JCA (as he then was) and Ige. JCA (of blessed memory) and in setting aside the minority

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decision of Ogebe, JCA. Consequent upon that I do Dismiss the claim of the plaintiff before the trial court. I make no order as to costs.