**EMMANUEL ATUME**

**v.**

**RAYMOND PWANOGOSHIN BAKODO**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 10TH DAY OF JANUARY, 2020

CA/YL/85/2017

**LEX (2020) – CA/YL/85/2015**

**OTHER CITATIONS**

3PLR/2020/15 (CA)

(2020) LPELR-49162(CA)

**BEFORE THEIR LORDSHIPS**

CHIDI NWAOMA UWA, JCA

JAMES SHEHU ABIRIYI, JCA

ABDULLAHI MAHMUD BAYERO, JCA-end!

**BETWEEN**

EMMANUEL ATUME - Appellant(s)

AND

RAYMOND PWANOGOSHIN BAKODO - Respondent(s)-end!

**ORIGINATING COURT**

Adamawa State High Court delivered on 17th October, 2019 by Nathan Musa J.-end!

**REPRESENTATION**

M.P. Atsev, Esq. H - For Appellant

AND

Chris Ezewenlu, Esq. - For Respondent-end!

**ISSUES FROM THE CAUSE(S) OF ACTION**

REAL ESTATE AND PROPERTY LAW - LAND – PROOF OF TITLE TO LAND:- Claims for declaration of title to land – Duty of claimant to succeed on the strength of own case and not on weakness of the defence – Proof of title by way of documents – Onus on claimant – When will be deemed satisfied

REAL ESTATE AND PROPERTY LAW - LAND – PROOF OF TITLE TO LAND - REVOCATION OF RIGHT OF OCCUPANCY:- Proof of title based on document - What constitutes a valid revocation of a valid Certificate of Occupancy under the Land Use Act - What must be proved to establish revocation – Onus to proof revocation – On whom lies - Duty on agency withdrawing existing Certificate of Occupancy - Effect of failure to serve notice of revocation of an existing right of occupancy - Section 28 (6) and 28(7) of the Land Use Act in review

REAL ESTATE AND PROPERTY LAW - LAND – PROOF OF TITLE - REVOCATION OF RIGHT OF OCCUPANCY:- Revocation notice – Purpose of - What a valid notice of revocation must contain – Competent authority to issue same – How determined-end!

**PRACTICE AND PROCEDURE ISSUES**

COURT - RULES OF COURT/STATUTORY PROVISION:- Repeal and re-enactment of Rules of Court - Implication for ongoing cases – Effect of non-compliance with rules of Court – Whether fatal or mere irregularity

EVIDENCE - BURDEN OF PROOF/ONUS OF PROOF:- Onus on a claimant - Whether a plaintiff can rely on the weakness in the case of a defendant to prove his own case in an action for declaration of title – Proper treatment of

INTERPRETATION OF STATUTE:- Section 28 (6) and 28(7) of the Land Use Act in review-end!

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

By an amended statement of claim, the Respondent/Plaintiff sought for reliefs before the lower Court including - “A declaration that by virtue of the Certificate of Occupancy No. GS/13993 dated 12th December, 2006, the Plaintiff is entitled to right of use and occupation of all that parcel of land lying, being and situate at Namtari District, Yola South Local Government Area of Adamawa State.”

To prove his case, the Respondent/Plaintiff gave evidence as PW1 and called one more witness, tendered Exhibit A (Grant of Right of Occupancy), Exhibit B (Certificate of Occupancy) and Exhibit C (A Receipt). The Appellant/Defendant called two witnesses (DW1 and DW2), tendered Exhibit D (A purchase receipt), E (Sales Agreement), F (Grant of Right of occupancy), G (Document from the Ministry of Land showing the return of the land to Alhaji Saidu Sale), H (Grant of Right of Occupancy) and J (A site plan).-end!

DECISION(S) APPEALED AGAINST

The lower Court entered judgment for the Respondent/Plaintiff on ground that, inter alia, “the failure of [Defendant/Appellant] to tender a letter of revocation of the C of O tendered by the Plaintiff/Respondent or call an official of the revocation body to testify, is fatal to this claim of Defendant .-end!

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1) Whether the learned Trial Court Judge was right when he held that the Plaintiff has proved all his claims before the Court on the preponderance of evidence. (Grounds 1, 2, 7 and 9).

2) Whether the learned Trial Court Judge was right when he granted reliefs not sought. (Ground 3):

3) Whether the learned Trial judge was right when he held that:

“It is trite that he who alleges must prove therefore the burden is on the Defendant to led cogent evidence to that effect. As rightly submitted by counsel to the Plaintiff the failure of Defendant to tender a letter of revocation of the C of O Exhibit B or call an official of the revocation body to testify is fatal to this claim of Defendant." (Ground 4).

4) Whether the learned Trial Court Judge was right when he held that Exhibit G tendered by the Defendant was a worthless sheet of paper (Ground 5).

5) Whether the learned Trial Court Judge was right when he held that the issue of proper identification of land was not in issue (Ground 6).

6) Whether the learned Trial Court Judge was right when he held as follows:

“I quite agree with the submission of Yakubu that evidence of Defendant and DW II including Exhibit E sales agreement between the Defendant and Babale all goes to non - issue on ground that they are hearsay." (Ground 8).

7) Whether the learned Trial Court Judge was right when he entered Judgment for the Plaintiff on proceedings conducted under extant rules. (Ground 10).-end!

*BY RESPONDENTS*

1) Whether the Respondent had by preponderance of evidence established his claims as to be entitled to judgment and if not, whether the Appellant had proved his counter claim to be entitled to judgment (Grounds 1, 2, 4, 7, 8, and 9)

2) Whether the trial Court judge had powers to make consequential orders while delivering judgment (Ground 5)

3) Whether the Appellant had by credible evidence proved his averments relating to the alleged revocation of the title of the Respondent as pleaded in paragraphs 13, 7 and 12 in compliance with the extant provisions of the Land Use Act. (Ground 7)-end!

*AS ADOPTED BY COURT*

This Appeal will be determined on issues 1, 2 and 7 for determination formulated by the Appellant. This is because while issue one formulated by the Appellant covers issues 3, 4, 5 and 6, the issues formulated by the Respondent are similar to issues 1, 2 and 4 formulated by the Appellant. -end!

DECSION OF SUPREME COURT

1. Issue one is therefore resolved in favour of the Respondent and against the Appellant.

2. Issue 2 is therefore resolved in favour of the Respondent and against the Appellant.

3. Issue 7 is therefore resolved in favour of the Respondent and against the Appellant.-end!

**MAIN JUDGMENT**

ABDULLAHI MAHMUD BAYERO, J.C.A. (Delivering the Leading Judgment):

This Appeal germinated from the judgment of the Adamawa State High Court delivered on 17th October, 2019 by Nathan Musa J. By an amended statement of claim, the Respondent/Plaintiff sought for the following reliefs before the lower Court:

1) A declaration that by virtue of the Certificate of Occupancy No. GS/13993 dated 12th December, 2006, the Plaintiff is entitled to right of use and occupation of all that parcel of land lying, being and situate at Namtari District, Yola South Local Government Area of Adamawa State.

2) N500,000 (Five Hundred Thousand Naira) only, general damages against the Defendant for trespass.

3) An Order of perpetual injunction restraining the Defendant, his servants, agents and/or privies from further fomenting acts of trespass on the said parcel of land in any manner whatsoever.

To prove his case, the Respondent/Plaintiff gave evidence as PW1 and called one more witness, tendered Exhibit A (Grant of Right of Occupancy), Exhibit B (Certificate of Occupancy) and Exhibit C (A Receipt). The Appellant/Defendant called two witnesses (DW1 and DW2), tendered Exhibit D (A purchase receipt), E (Sales Agreement), F (Grant of Right of occupancy), G (Document from the Ministry of Land showing the return of the land to Alhaji Saidu Sale), H (Grant of Right of Occupancy) and J (A site plan). The lower Court entered judgment for the Respondent/Plaintiff.

Dissatisfied, the Appellant filed a Notice of Appeal with leave granted on 23rd March, 2017. The Notice was amended and filed on 5th February, 2018. The Record of Appeal was compiled and transmitted to this Court on the 18th of January, 2019. It was deemed on 3rd April, 2019. The Appellant Brief was filed on 3rd May, 2019. The Respondent’s Brief was filed on 31st May, 2019. The Appellant’s Reply Brief was filed on 13th June, 2019. In the Appellant’s Brief, seven (7) issues are distilled for determination thus:

1) Whether the learned Trial Court Judge was right when he held that the Plaintiff has proved all his claims before the Court on the preponderance of evidence. (Grounds 1, 2, 7 and 9).

2) Whether the learned Trial Court Judge was right when he granted reliefs not sought. (Ground 3):

3) Whether the learned Trial judge was right when he held that:

“It is trite that he who alleges must prove therefore the burden is on the Defendant to led cogent evidence to that effect. As rightly submitted by counsel to the Plaintiff the failure of Defendant to tender a letter of revocation of the C of O Exhibit B or call an official of the revocation body to testify is fatal to this claim of Defendant." (Ground 4).

4) Whether the learned Trial Court Judge was right when he held that Exhibit G tendered by the Defendant was a worthless sheet of paper (Ground 5).

5) Whether the learned Trial Court Judge was right when he held that the issue of proper identification of land was not in issue (Ground 6).

6) Whether the learned Trial Court Judge was right when he held as follows:

“I quite agree with the submission of Yakubu that evidence of Defendant and DW II including Exhibit E sales agreement between the Defendant and Babale all goes to non - issue on ground that they are hearsay." (Ground 8).

7) Whether the learned Trial Court Judge was right when he entered Judgment for the Plaintiff on proceedings conducted under extant rules. (Ground 10).

In arguing issue one, learned Counsel to the Appellant submitted that the Plaintiff’s claim is for declaration of title to the land in dispute and that a party seeking declaration of title to land can prove same through any of the five ways of proving title to land. He referred to the case of Tundaolu v. Registered Trustees of O.I.M.C.S.C. Nig. And Overseas (2011) All FWLR (Pt. 597) 750 at 765 Paras.E-H.

That the Respondent/Plaintiff chose to establish his title by the production of documents of title in respect of which he tendered Exhibits A and B which are grant of Right of Occupancy and Certificate of Occupancy respectively in consideration of which the trial Court relied on the said Exhibits and held that the Plaintiff had proved his claim on the preponderance of evidence and entered Judgment in his favour.

That the trial Court did not advert its mind to the binding decision of this Honourable Court in the case of Mr. Sunday Nwanko v. Mohammed Diyyab Jubril (2012) All FWLR (Pt. 646) 483 at 511 Paras. C-D Ratio 6 where this Court held:

“The dangling of a statutory Certificate of Occupancy or a Local Government Certificate of Occupancy per se as a document of title over a disputed piece of land is not enough without proving the root of title of the person or authority through whom a person claims."

He also referred to Rachael Yewande Adeshina v. Bag. Elec. Co. Ltd. & Anor. (2007) All FWLR (Pt. 369) 1279 at 1315 Paras. A - B where it was held that:

“Where a Certificate of Occupancy is granted over land while there was a subsisting grant or deemed grant of right over the same land, the subsequent Certificate of Occupancy is invalid, null and void by reason of the existence of the subsisting grant."

It is submitted that in the instant case, the trial Court relied on Exhibits A and B in holding that the Plaintiff had proved title to the land, in spite of the evidence before the trial Court to the effect that the Ministry of Land and Survey which issued Exhibits A and B to the Plaintiff, issued null and void grant of Right of Occupancy and Certificate of Occupancy in view of the traditional title or deemed grant of Alhaji Saidu Saleh Babale from whom the Defendant acquired title to the land subject matter of this Appeal and by virtue of Exhibit G. That DWI and DWII on pages 140 - 147 of the Trial Court’s printed record gave vivid evidence on the traditional history of the Defendant/Appellant’s title, traceable to one Aliyu’s father who founded the land in dispute and successive persons who acquired title to the land in dispute.

That he equally tendered Exhibit D which is the purchase receipt from Alh. Saidu Saleh Babale, Exhibit E which is an agreement between him and the said Alh. Saidu Saleh Babale; and that to crown it all, the Defendant/Appellant tendered Exhibit G which is a document emanating from the same Ministry of Land and Survey Yola. That Exhibit G emphatically stated that the land which it unlawfully acquired had been returned to the traditional title holder and it was addressed to Alh. Saidu Sale the person from whom the Defendant/counter claimant/Appellant purchased the land subject matter of this Appeal.

That Adamawa State Ministry of Land and Survey that issued Exhibits A and B, had nullified Exhibits A and B when it also issued Exhibit F.

That PW II, Mohammed Lawal Gidado who is a staff of the Ministry of Land and Survey Yola Adamawa State called by the Plaintiff and who gave his designation as Asst. Chief Estate Officer (Lands) testified under cross - examination on page 137 lines 19 - 25 as follows:

“I know Aminu Abdulmajid. He is Secretary land Allocation Committee of our Ministry. I am aware when the said Aminu wrote to one of the traditional title holders returning his land to him that was acquired by Government. I can identify the letter from Aminu by his name and signature."

That Exhibit G is the letter referred to above which was tendered and admitted without objection. He referred to Alhaji Abatcha Mohammed Kolo v. Alhaji Mohammed Lawan (2011) ALL FWLR Pt. 597 725 at 737-738 Paras H-D Ratios 1 & 5.

That the Plaintiff/Respondent did not file any reply to the Defendant/Appellant’s further amended statement of defence and defence to the Defendant’s counter claim. That on the authority of Bankole v. Adeyeye (2014) ALL FWLR (Pt. 571) 1570 at 1583 Paras E-F Ratio 5, the Respondent has admitted the counter claim of the Appellant. He urged the Court to resolve issue one in favour of the Appellant. On issue two, it is submitted that what the lower Court granted as reliefs were not sought for because the Plaintiff/Respondent did not identify the land in respect of which he sought declaration of title as he could not even identify the land he claims during the visit to the locus in quo. That the import is that he had no knowledge of the land not to talk of its demarcations. He referred to page 160 lines 21 - 27 where the Trial Court held as follows:

“The Defendant in his submission agreed to the fact that Defendant during the visit to the locus inquo couldn’t identify the land in dispute, this brings the issue of failure to prove the identity of the land. This I don’t agree. I wholly agree with Yakubu that the issue of proper identification of the land is not an issue. Since the size and area of the land is clearly stated on the C of O Exhibit B, this is always ascertain issue."

That the reference to the Defendant by the Court in its pronouncement above was a slip. The Court was obviously referring to the Plaintiff as can be deduced therein. That the Plaintiff/Respondent did not know the land he claimed to warrant the grant of the reliefs sought as consequential orders. He urged the Court to resolve issue two in favour of the Appellant.

On issue three, it is submitted that the trial Court failed to make recourse or give evidential value to Exhibits G and H admitted by the Court without any objection when it held on page 159 lines 24 - 27 and page 160 line 1 of the trial Court’s printed record as follows:

“It is trite that he who alleges must prove therefore the burden is on the Defendant to lead cogent evidence to that effect. As rightly submitted by Counsel to Plaintiff the failure of Defendant to tender a letter of revocation of the C of O Exhibit B or call an official of the revocation body to testify is fatal to this claim."

According to counsel, the above holding of the Trial Court was, with due respect, legally erroneous because the allocation and issuance of Exhibits A and B were altogether null and void. This is in view of the non-revocation or proper acquisition of the land subject matter of this suit from the traditional title holder, who had a deemed grant which upon complains necessitated the return of the land by the Ministry to him. He referred to the evidence of PWI on page 130 lines 5 - 6 and cited the case of Rachael Yewande Adeshina v. Bag. Elec. Co. Ltd. Anor. (Supra) where it was held that:

“Where a Certificate of Occupancy is granted over land while there was a subsisting grant or deemed grant of right over the same land, the subsequent Certificate of Occupancy is invalid, null and void by reason of the existence of the subsisting grant.”

He urged us to resolve issue three in favour of the Appellant.

On issue four, Counsel adopted his submissions under issue three and added that Exhibit G was tendered without objection and urged us to hold that the trial Court was, with due respect in error to hold that Exhibit G was a worthless sheet of paper. That the facts averred in the Defendant’s further amended statement of defence making reference to Exhibit G were not denied. He urged the Court to resolve issue four in favour of the Appellant.

On issue five, Counsel submitted that this Court and the Apex Court, have held in a plethora of cases that for a party to succeed in an action for declaration of title, he must prove the identity of the land in issue. He referred to the case of Chief Rowland Tukuru & Ors. v. Chief Nathans Sabi (2013) SCNJ 212 at 232 Ratios 141 & 15 where the Supreme Court held:-

“In order to succeed in a claim for trespass and injunction, the identity of the land and its boundaries must be established. In order to succeed in an action for trespass, the Plaintiff must be in exclusive occupation of the land. The law is that the Plaintiff cannot be granted a declaration of title if he fails to prove the identity of the land with certainty and precision."

According to Counsel, even from the pleadings, it is evident that the identity of the land was in issue; and he referred to paragraphs 4, 5 6 and 7 of the Plaintiff’s further amended statement of claim on pages 34 and 35 of the trial Court’s printed record, and paragraphs 5, 6, 7 and 8 of the Defendant’s further amended statement of defence and counter claim on pages 78 - 79 of the trial Court’s printed record. Counsel referred to Page 160 of the Record and submitted that the Plaintiff/Respondent could not identify the land he is claiming even at the locus. That the tendering of the Certificate of Occupancy by the Respondent without tendering the site plan cannot amount to proper identification of the land. He urged us to resolve the fifth issue in favour of the Appellant.

On issue six, it is submitted that the evidence of DW1 and DW2 referred to the land the subject matter of this suit, given on the traditional history of how they acquired the land. Counsel referred to the case of Okwaraononi & Ors. v. Mbadugha & Ors. (2014) ALL FWLR (Pt. 728) 914 at 936 and submitted that evidence given on traditional history of land is an exception to the hearsay rule. He urged the Court to hold that the lower Court was in error when it held that the evidence of DW1 and DW2 amounted to hearsay and resolve the sixth issue in favour of the Appellant.

As regards issue seven, it is submitted that although the suit was commenced per the Plaintiff's writ of summons dated 5/8/2010 as shown on page 3 of the trial Court's printed record which was under the then Adamawa State High Court (Civil Procedure) Rules, 1987, the present Adamawa State High Court (Civil Procedure) Rules, 2013 came into effect on the 1st day of July, 2013 and in consequence of paragraph 1 (3) of the said 2013 Rules, the Adamawa State High Court (Civil Procedure) Rules, 1987 ceased to have effect. That Order 2(1)(a), (b), (c) and (2), (a), (b), (c) and (d) of the Adamawa State High Court (Civil Procedure) Rules, 2013 specified what should accompany a Plaintiff’s originating processes which include:

a. The list of witnesses.

b. Written statement on oath of the witnesses.

c. Copies of every document to be relied on among others.

He referred to the case of Shell Petroleum Development Company Nigeria v. Chief Jonas Oruwari & Ors. (2014) All FWLR (Pt. 733) 1996 at 2007 Ratio 7 where this Court held that:

“Court Rules as opposed to substantive law operates retrospectively. Any documents pending before the Court which were made under repealed Rules of Court, must be amended to conform with the new Rules."

That although the Plaintiff’s originating processes were filed in 2010 before the coming into effect of the new Rules herein mentioned, PW2 testified on the 10/6/2014 (Page 136 of the printed record) without compliance with the provision of Section 2(1) (a) - (c) (2) (a- c) of the Adamawa State High Court (Civil Procedure) Rules 2013.

That the proceedings in this suit was conducted under the extant Rules of the trial Court. He urged us to strike out the Suit and allow the Appeal.

In his response, learned Counsel to the Respondents submitted three issues for determination. Thus:

1) Whether the Respondent had by preponderance of evidence established his claims as to be entitled to judgment and if not, whether the Appellant had proved his counter claim to be entitled to judgment (Grounds 1, 2, 4, 7, 8, and 9)

2) Whether the trial Court judge had powers to make consequential orders while delivering judgment (Ground 5)

3) Whether the Appellant had by credible evidence proved his averments relating to the alleged revocation of the title of the Respondent as pleaded in paragraphs 13, 7 and 12 in compliance with the extant provisions of the Land Use Act. (Ground 7)

On issue one, Counsel submitted that the Respondent in his evidence testified that he applied and was allocated land by Adamawa State Government and was issued with a Certificate of Occupancy (Exhibit B). While PW2 a staff of the Ministry of lands testified that the title of the Respondent as in Exhibit B was not revoked. That since the identity of the disputed land was ascertained by the attached survey plan in Exhibit B, a visit to the locus is unnecessary; relying on the case of Emiri v. Imieyeh (1999) 4 SCNJ 1 at page 4, Counsel referred to pages 159 to 160 of the printed record and submitted that the Appellant did not prove the revocation of the title of the Respondent by the production of the letter of the revocation as provided for by Section 28 (6) of the Land Use Act.

According to Counsel, Exhibit G is vague and ambiguous document that the Appellant argued revoked the title acquired by the Respondent in Exhibit B. He cited the case of Kandix HD v. Attorney General C.R.S. (2012) ALL FWLR (Part 624) Page 163 at 167 Ratio 3. That there cannot be a valid revocation of right of occupancy without the holder being served with notice relying on Lateju v. Fabayo (2012) (Part 651) ALL FWLR 1575 at 1577 Ratio 3. That none of the witnesses of the Appellant gave valid evidence relating to traditional history. He urged this Court to resolve issue one in favour of the Respondent.

On issue two, it is submitted that the consequential orders made by the trial judge were necessary because Exhibit B, the Certificate of Occupancy contains the beacons numbers that demarcated the Respondent’s land. That the evidence led shows that the beacons were removed by unknown persons. Counsel however conceded that the trial judge was wrong when he ordered for the demolition of the structures developed by the Appellant on the land. According to him, whatever is affixed to the land becomes part of it. He therefore urged this Court to quash that part of the consequential order for the demolition as it does not flow from the judgment. He referred to Strabag Const. (Nig) Ltd v. Ibitokem (Supra).

On issue three, it is submitted that the Appellant did not tender any letter of revocation issued to the Respondent by the relevant authority as envisaged under Section 28(6) of the Land Use Act. He adopted his arguments on issue one and the case law authorities cited thereto. On the issue of conducting the trial by the lower Court under the 1987 High Court Civil Procedure Rules of Adamawa State, it is submitted that Order 3 Rules (2) and (3) of the Adamawa State High Court Civil Procedure Rules 2013 provides that non-compliance with the Rules shall be treated as a mere irregularity and does not render the proceedings null and void.

He urged us to dismiss the Appeal and affirm the judgment of the lower Court with substantial cost.

In the Appellant’s reply Brief, the Appellant only re-argued his Appeal.

RESOLUTION OF THE APPEAL

This Appeal will be determined on issues 1, 2 and 7 for determination formulated by the Appellant. This is because while issue one formulated by the Appellant covers issues 3, 4, 5 and 6, the issues formulated by the Respondent are similar to issues 1, 2 and 4 formulated by the Appellant.

On issue one, it was the case of the Appellant that the Respondent/Plaintiff chose to establish his title to the disputed land by tendering the grant of Right of Occupancy and the Certificate of Occupancy (Exhibits A and B respectively). That the lower Court did not advert its mind to the fact that there was an existing grant which is the traditional title to the disputed land of Alhaji Saidu Saleh Babale from whom the Appellant/Defendant acquired title to the disputed land. That the Appellant tendered Exhibits D and E (the purchase receipt and sales agreement). That Exhibit G issued by the Ministry of Land Yola shows that the land which was unlawfully acquired was returned to Saidu Saleh. On the side of the Respondent, it was argued that the Respondent’s case was anchored on a grant vide a Certificate of Occupancy (Exhibit B) issued by Adamawa State Government over the disputed land. That the Appellant was not able to prove that the Respondent’s title has been revoked. That Exhibit G relied upon by the Appellant as the letter of revocation does not comply with Section 28(6) of the Land Use Act for failure to specifically refer to the disputed land or any land at all.

It is trite that in land matters, whoever claims declaration of title to land must succeed on the strength of his case and not on the weakness of the defence. See Ogundepo v. Olumesan (2012) ALL FWLR (Part 609) 1136.

Among the ways for proof of title to land is by production of documentary evidence. Exhibits A and B are the documents of title tendered by the Respondent/Plaintiff. Exhibit A is the letter of grant while Exhibit B is the Certificate of Occupancy tendered through PW 1 (Pages 128 - 129 of the printed record). The evidence at Page 128 of the printed Record shows that the Appellant encroached upon the Respondent’s plot of land, and when he met the Appellant, the Appellant told him that his plot of land was revoked and as a result of the revocation, the Appellant bought the land from someone.

The evidence led as shown at Pages 140 - 147 of the printed record shows that the Appellant bought the disputed land from one Alhaji Saidu Babale at the cost of N100,000. Exhibit E is the Sales Agreement between the Appellant and Alhaji Babale while Exhibits F & G are the letter of grant and another document issued to the Appellant by Adamawa State Ministry of Lands. During cross examination, the Appellant admitted that there is no where in Exhibit B (the C of O issued to the Respondent) that it was revoked.

From the evidence on record, it is clear that while the Respondent’s claim to the land in dispute before the lower Court is based on production of title documents Exhibits A and B respectively, the Appellant’s case is based on sale of the disputed land to him by one Alhaji Babale Saidu based on an alleged revocation of the Respondent's Certificate of Occupancy (Exhibit B) by Adamawa State Government. Exhibit G is the alleged revocation letter. As rightly stated by the lower Court in its judgment at Page 160 of the printed record, the Appellant who alleges such revocation of Exhibit G must prove same.

For clarity purposes Exhibit G reads:-

“ADAMAWA STATE GOVERNMENT OFFICE OF THE HONOURABLE COMMISSIONER MINISTRY OF LAND & SURVEY, YOLA, NIGERIA

Tel: 075-624435 627195

Our Ref: GS/MLS/LAN/1365/1/22

Date: 25/05/07

Alh. Saidu Sale,

No. 54 Yelwa Street,

Jimeta, Yola.

Sir,

RE: COMPLAINT OVER LANDS TAKEN BY THE GOVERNMENT AND ALLOCATED TO INDIVIDUAL

I am directed to refer to your letter dated 5th June, 2001 in connection with the above mentioned subject matter and to inform you that the Honourable Commissioner has approved the carving out of an area of about 16 hectares acquired from you out of the 26 hectares.

2) By this letter you are therefore advised to apply formally in respect of the area carved out for you and complete Land Form 1, and pay all the necessary fees; and then proceed to obtain title of ownership.

3) Your cooperation is highly appreciated, please.

Signed

Aminu Abdulmajid

For: Honourable Commissioner.”

As I stated earlier in this judgment, Exhibit G reproduced above is the letter the Appellant alleged revoked the C of O given to the Respondent by Adamawa State Government. It is important at this stage to note that Section 28 (6) of the Land Use Act provides:-

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

Section 28 (7) of the same Act provides that:-

“The title of the holder of the right of occupancy shall be extinguished on receipt by him of a notice given under sub Section 6."

Exhibit G as reproduced above is vague and does not in anyway refer to Exhibit B talk less of revoking same. In other words, Exhibit G did not give any notice to the Respondent revoking his Certificate of Occupancy (Exhibit B). In the case of Kandix HD v. Attorney General & Commissioner for Justice C.R.S. (Supra) this Court Held that:-

"The purpose of giving notice of revocation of a right of occupancy is to duly inform the holder thereof, the steps being taken to extinguish his right of occupancy. In the absence of a proper notice of revocation of right of occupancy, the purported revocation of that right of occupancy by the Governor or officer duly authorized by the Governor is ineffectual."

The lower Court was therefore on a sound footing when it held in its judgment at Pages 159 - 160 of the printed record that:-

"...As rightly submitted by Counsel to plaintiff, the failure of the defendant to tender a letter of revocation of the C of O (Exhibit B) or call an official of the revocation body to testify is fatal to this claim of the defendant. It has been held in plethora of cases that a C of O remains valid until is revoked through due process. Any irregular method adopted renders it null and void."

Issue one is therefore resolved in favour of the Respondent and against the Appellant.

On issue 2, it is important to note that the consequential orders made by the trial judge were necessary because Exhibit B (the Certificate of Occupancy) contains the beacons with the numbers that demarcated the Respondent’s land. The evidence led at Page 130 of the Printed Record shows that the beacons were removed by unknown persons. Issue 2 is therefore resolved in favour of the Respondent and against the Appellant.

As to issue 7, that the lower Court conducted the trial under the 1987 Adamawa State High Court Civil Procedure Rules, while the 2013 Rules came into effect before the trial was concluded, it is important to note that Order 3 Rules (2) and (3) of the 2013 Rules provides that non-compliance with the Rules shall be treated as a mere irregularity and does not render the proceedings null and void. Issue 7 is therefore resolved in favour of the Respondent and against the Appellant.

Having resolved the issues against the Appellant and in favour of the Respondent, this Appeal is unmeritorious and is accordingly dismissed. The judgment of the lower Court delivered on 16th October, 2016 is hereby affirmed. Parties to bear their respective costs.

**CHIDI NWAOMA UWA, J.C.A.:**

I read a draft copy of the judgment delivered by my learned brother, ABDULLAHI MAHMUD BAYERO, JCA.

My learned brother had comprehensively resolved the issues that arose in this appeal, I align myself with the resolution and agree with the decision that the appeal is unmeritorious. I also dismiss it for the same reasons given in the leading judgment.

**JAMES SHEHU ABIRIYI, J.C.A.:**

I agree.-end!