**MR. JOSHUA BENARD FUMUDOH**

**V**

**MR. EMEKA IKE AND OTHERS**

COURT OF APPEAL (LAGOS DIVISION)

28TH DAY OF APRIL 2017

CA/L/561M/12

**LEX (2017) - CA/L/561M/12**

OTHER CITATIONS

2PLR/2017/135 (CA)

**BEFORE THEIR LORDSHIP**

M. LAWAL GARBA JCA (Presided and Read the Lead Judgment)

JOSEPH SHAGBAOR IKYEGH JCA

UGOCHUKWU ANTHONY OGAKWU JCA

**BETWEEN**

MR. JOSHUA BENARD FUMUDOH – Appellant

AND

1. MR. EMEKA IKE

2. THE LAGOS STATE GOVERNMENT

3. THE ATTORNEY-GENERAL OF LAGOS STATE

4. LAGOS STATE REGISTRAR OF TITLES – Respondents

**ORIGINATING COURT**

HIGH COURT OF LAGOS STATE

**REPRESENTATION/LAWYERS**

A. EKUNDAYO with A. OSANYALUSI and A. SANYA - For the Appellant

S. HANJA - For the 1st Respondent

2nd - 4th Respondents not represented.

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

REAL ESTATE AND PROPERTY LAW – LAND:- Action for RECOVERY OF LAND – Statutorily prescribed time within which to commence – Section 16(2)(a), Limitation Law considered

REAL ESTATE AND PROPERTY LAW – LAND:- Title to land - Proof of - Unregistered registrable instrument – Question of admissibility therefor - When admissible - Where erroneously admitted - Attitude of appellate court thereto - Section 15 Land Instrument Registration Law of Lagos State, Cap. L58 considered

**PRACTICE AND PROCEDURE ISSUES**

ACTION - COMPETENCE OF - Objection to on grounds of being statute barred - Nature of - When may be raised - Rationale for.

ACTION - LIMITATION OF ACTION - Statute barred - Whether action is - Determination of - Proper approach of court to – When time begins to run for purposes of – Effect.

ACTION:- Competence of action - Objection to on grounds of being statute barred – Nature of - When may be raised - Rationale for.

ACTION - LIMITATION OF ACTION - TIME LIMITED FOR AN ACTION:– Failure to commence suit within statutorily prescribed time – Legal Consequences of.

APPEAL - EVALUATION OF EVIDENCE:- Primary duty of trial court - Proper approach thereto.- Attitude of appellate court to findings of fact by the trial court.

APPEAL:- Fresh issue on appeal - Leave of court to raise - Propriety of obtaining

APPEAL -ISSUES FOR DETERMINATION:- Reformulation of – Power of Court of Appeal in respect thereof.

EVIDENCE - EVALUATION OF EVIDENCE BY TRIAL COURT:- Attitude of appellate court to findings of fact by the trial court.

EVIDENCE - EVALUATION OF EVIDENCE:- Primary duty of trial court in that regard - Proper approach in respect thereof.

EVIDENCE - PROBATIVE VALUE OF:- Determination of – Factors to consider.

JURISDICTION:- Fundamental nature of - Lack of - Effect - Propriety of raising at any stage of proceedings.

INTERPRETATION OF STATUTE:- Land Instrument Registration Law of Lagos State, Cap. L58, section 15 – Proper construction of

INTERPRETATION OF STATUTE:- Limitation Law of Lagos State, section 16(2)(a) - Land - Recovery of - Action for - Statutorily prescribed time within which to commence.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant claimed in the High Court of Lagos State that he bought the land situate at 3B, Risi Laguda Close, off Metropolitan College Road, Ire Akari Estate, Isolo, Lagos State from the previous owner and in addition, paid the original owners.

He further claimed that he allowed 1st respondent’s father to stay on the land and guard it against trespassers, but the 1st respondent’s father subsequently started laying claim to a plot of the land. The appellant therefore commenced the action claiming declaration of ownership of the land. The 1st respondent counterclaimed that the piece of land was acquired by his father as compensation he rendered to his predecessor-in-title for taking care of the land.

The trial court dismissed appellant’s claims and granted the counterclaim and aggrieved, the appellant appealed to the Court of Appeal contending that the trial court erred in relying on unregistered registrable instruments to grant 1st respondent’s counterclaim.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment, dismissing the claims of the Appellant to a piece of land situate at 313, Risi Laguda Close, off Metropolitan College Road, Ire Akari Estate, Isolo, Lagos State and granted the 1st respondent’s counter-claim in respect of same land. Dissatisfied, the Appellant appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

i. Whether the learned trial judge was right in law by admitting exhibits D25 and D26 - a deed of grant and purchase receipt, respectively and also rely on the said exhibits to ground the title of the 1st respondent knowing full well that the documents are registrable instruments which were not registered contrary to section 15 of the Land Instrument Registration Law, Cap. L58, Laws of Lagos State, 2003. (Distilled from grounds 1 and 3 of the notice of appeal).

ii. Whether the tenancy agreement - exhibit C8 did not prove beyond the balance of probabilities that theappellant is the owner of the land in issue and the 1st respondent’s late father was his tenant. (Distilled from ground 4 of the notice of appeal).

iii. Whether the learned trial judge was right to conclude that the mere fact that the appellant did not tender his purchase receipt leads to the deduction that no such receipt exists. (Distilled from ground 5 of the notice of appeal).

iv. Whether the trial judge properly evaluated all the evidence led in proof of the respective titles of both the appellant and the 1st respondent in arriving at a decision to grant the claims of the 1st respondent as to declaration of ownership and possession of the land in issue. (Distilled from ground 6 of the notice of appeal).

v. Whether the counter-claim of the 1st respondent was not statute barred and robbed the trial court of jurisdiction. (Distilled from ground 2 of the notice of appeal).”

*BY THE 1ST RESPONDENT:*

“2.01 Whether the court below was right to have dismissed the appellant’s case and whether the trial court was right to have upheld the counter-claim of the 1st respondent?

2.02 If the answer to the above poser is in the affirmative, then, has the appellant any interest whatsoever in the piece of land lying, situate and known as No. 3B, Risi Laguda Close, off Metropolitan College, College Road, Ire Akari Estate, Isolo, Lagos containing an are of approximately 927.757 square metres and whether the 1st respondent successfully proved his title ship to the said land by virtue of exhibits D25 and D26?”

*AS ADOPTED BY COURT*

[The Court adopted issues I, IV and V formulated by the Appellant].

**MAIN JUDGMENT**

GARBA JCA (DELIVERING THE LEAD JUDGMENT):

In a judgment delivered on 5 May 2011, in the appellant’s suit No. ID/13/2015, the High Court of Lagos State had dismissed his claim of ownership and title to the piece of land lying at 313, Risi Laguda Close, off Metropolitan College Road, Ire Akari Estate, Isolo, Lagos State and granted the 1st respondent’s counter-claim in respect of a piece of land measuring 927.757 square metres at the same address.

The case of the appellant was that he bought the piece of land he claimed from one Michael Akah-Obi Oloto sometime in 1975 and also paid the original owners, the Okota Family in 1982 and allowed the 1st respondent’s father; one Nicholas Ike to stay on it to guard against trespassers. Later, he and the 1st respondent’s father entered into an agreement in 1991 and he (appellant) erected a wall around the land he bought and put a gate to it.

That the 1st respondent’s father did not challenge his ownership of the land until in September 2004 when he started laying claim to a plot in the land by pulling down the wall built by him and started demarcating the said plot.

By his counter claim, the 1st respondent’s case was that the piece of land counter-claimed was acquired by his father by a grant dated 6 March 1974 as a compensation for the services he rendered to his predecessor-in-title in taking care of the land and warding off trespassers.

Because the appellant was aggrieved by the decision of the High Court, he brought this appeal by the notice of appeal dated 28 July 2011 on six (6) grounds.

In the appellant’s brief filed on 3 December 2014, five (5) issues are said to arise for the court’s decision in the appeal as follows: -

i. Whether the learned trial judge was right in law by admitting exhibits D25 and D26 - a deed of grant and purchase receipt, respectively and also rely on the said exhibits to ground the title of the 1st respondent knowing full well that the documents are registrable instruments which were not registered contrary to section 15 of the Land Instrument Registration Law, Cap. L58, Laws of Lagos State, 2003. (Distilled from grounds 1 and 3 of the notice of appeal).

ii. Whether the tenancy agreement - exhibit C8 did not prove beyond the balance of probabilities that theappellant is the owner of the land in issue and the 1st respondent’s late father was his tenant. (Distilled from ground 4 of the notice of appeal).

iii. Whether the learned trial judge was right to conclude that the mere fact that the appellant did not tender his purchase receipt leads to the deduction that no such receipt exists. (Distilled from ground 5 of the notice of appeal).

iv. Whether the trial judge properly evaluated all the evidence led in proof of the respective titles of both the appellant and the 1st respondent in arriving at a decision to grant the claims of the 1st respondent as to declaration of ownership and possession of the land in issue. (Distilled from ground 6 of the notice of appeal).

v. Whether the counter-claim of the 1st respondent was not statute barred and robbed the trial court of jurisdiction. (Distilled from ground 2 of the notice of appeal).”

The following issues were set out in the 1st respondent’s unpaginated brief filed on 14May 2015 deemed on 15May 2016:-

“2.01 Whether the court below was right to have dismissed the appellant’s case and whether the trial court was right to have upheld the counter-claim of the 1st respondent?

2.02 If the answer to the above poser is in the affirmative, then, has the appellant any interest whatsoever in the piece of land lying, situate and known as No. 3B, Risi Laguda Close, off Metropolitan College, College Road, Ire Akari Estate, Isolo, Lagos containing an are of approximately 927.757 square metres and whether the 1st respondent successfully proved his title ship to the said land by virtue of exhibits D25 and D26?”

Although, the 2 - 4th respondents were duly served with all the relevant processes of the appeal, there is no record that they filed a brief or any other process in the appeal. They were also represented at the hearing of the appeal, the notice of which was duly served on the office of the 3rd respondent.

From the terms of the grounds of appeal and the issues raised by the appellant, the real grievances against the judgement of the High Court would appear to be represented. Issues II and III are subsumed in issue IV and would effectively be considered and determined under that issue.

I would therefore consider and determine the appeal on the basis of the issues I, IV and V of the appellant in exercise of the court’s power to either modify or reject some or even all the issues formulated in the parties’ briefs in the determination of an appeal in order to decide the material issues that would lead to a proper determination of the appeal. See Opara v. D. S. Nigeria Ltd (1995) 4 NWLR (Pt. 390) 440; Uko v. Mbaba (2001) 4 NWLR (70) 460; Sha v. Kwan (2000) FWLR (Pt. 11) 1798, (2000) 8 NWLR (Pt. 670) 685 at 700; Chabasaya v. Anwasi (2010) All FWLR (Pt. 528) 839, (2010) 10 NWLR (Pt. 1201) 163 at 181.

Because issue V challenges the competence of the 1st respondent’s counter-claim and so the jurisdiction of the High Court to adjudicate over it on ground of being statute barred, I intend to consider and determine it first.

Appellant’s submissions:

It was submitted for the appellant that the evidence before the High Court was that 1st respondent’s father had signed a tenancy agreement with the appellant, which was witnessed by him (1st respondent) and admitted in evidence as exhibit C1 in 1991. That since 1991, the 1st respondent did not take any step to challenge the agreement and claim ownership of the land in question until 2006, when he made the claim in his counter-claim in the appellant’s case by the provisions of section 16(2) of the Limitation Law of Lagos State Cap. L67, the counterclaim is statute barred for being filed outside the twelve (12) years stipulated therein. The provisions were set out and the case of Adeosun v. Jibesin (2001) 14 WRN 106 was referred to on the law that a legal right is not in perpetuity and that it cannot be exercised where the time limited by statute for the commencement of action, has expired. It is submitted that since the 1st respondent’s counter-claim was filed after the expiration of the twelve (12) years limited by the law, it is statute barred and the High Court lacked the jurisdiction to entertain it. The court is urged to so hold and resolve the issue in appellant’s favour.

1st respondent’s submissions:

Even though learned counsel for the 1st respondent argued his own issues, he still argued the appellant’s issues III and IV together and issue V separately in the brief. On issue V, it was submitted that the issue and ground 2 from which it was formulated are incompetent because they were not raised before the High Court and so required the leave of court which was not obtained. The issue is said to be fresh and raised before the court for the first time without leave and liable to be struck out for being incompetent, on the authority of Peterside v. F. M. B. Nigeria Ltd (1993) 2 NWLR (Pt. 78) 72; Onwuanumkpe v. Onwuanumkpe (1993) 8 NWLR (Pt. 300) 186, was cited for the submission that the parties are bound by the records of the court and Orji v. Zaria Industries Ltd (1992) 1 NWLR (Pt. 261) 724 on the argument that the appellant’s brief is irredeemably bad because the argument (sic) therein are (sic) not based on any issues of semblance (sic):

It was argued that the 1st respondent has been in peaceful possession of his land until the year 2004 when the appellant challenged his title by the action before the High Court in which the 1st respondent counter claimed in line with the settled position of the law. That the appellant slumbered for 31 solid years before initiating the action at the High Court and it could be concluded according to counsel, that the appellant admits the title of the 1st respondent to the land in dispute. The court is urged to resolve the issue against the appellant.

The law on the application of the provisions of a limitation law is now firmly settled and it is to the effect that where a statute or law prescribes a period of time within which an action shall be brought, initiated or commenced for the enforcement of any cognizable legal right, then such action must be taken or commenced within that period of time stipulated by the law. An action commenced or initiated after the expiration of the specified period of time would, for the purpose of the law, be statute barred or barred by the statute for being taken or commenced outside and so contrary to the statutory provisions limiting the time for the commencement of such an action. Where an action is statute barred because it was commenced outside or after the expiration of the time prescribed and limited by the relevant law or statute for its commencement, it becomes incompetent and thereby goes to affect the competence or jurisdiction of a court of law to entertain it. Ogoja Local Govememnt v. Offoboche (1996) 7 NWLR (Pt. 458) 48; Amadi v. Military dministrator, Imo State (2000) 4 NWLR (Pt. 652) 328; Fayimolu v. Unilorin (2007) 2NWLR (Pt. 1017) 74; Hassan v. Aliyu (2000) 17 NWLR (Pt. 1223) 547. Other principles of law established in respect of the application of a limitation law includes:-

(a) In order to determine whether an action is statutebarred, the court would simply look at and compare the time on which the cause of action was said to have accrued and the date on which the initiating process to commence the action was filed in court as disclosed in the statement of claim and writ of summons.

(b) That time begins to run from the time the cause of action, which consists of the fact or combination of facts which if proved, would entitle a party to a legal and judicial remedy against another party, accrues to him,

(c) That the effect of the application of a limitation statute to an action is that the right of enforcing a cause of action by the use of the instrumentality of the judicial process is lost by the operation of the law after the expiration of the limited time for the commencement of the action. See generally, Egbe v. Adefarasin (1987) 1 SCNJ 1, (1987) 1 NWLR (Pt. 47) 1; Adimora v. Ajufo (1988) 6 SCNJ 18; Ekeogu v. Aliri (1991) 3 NWLR (Pt. 179) 258; Sanda v. Kukawa Local Government (1991) 2 NWLR (Pt. 174) 79; Aremo 11 v. Adekanye (2004) 7 SC (Pt. 1l) 28; Elabanjo v. Dawodu (2006) All FWLR (Pt. 328) 604; Hassan v. Aliyu (2010) All FWLR (Pt. 539) 1007, (2010) 10 NWLR (Pt. 1223) 547.

I should start a consideration of the issue with the objection by the respondent that the issue and ground of appeal were not raised before the High Court and so a fresh issue that requires leave of court to be properly and competently raised in this court.

All that needs be said is, as stated earlier, an objection that an action is statute barred by virtue of the provisions of a limitation law, goes to the jurisdiction of a court to entertain the action.

Being an issue of jurisdiction, the law is know1n that it can be raised by any of the parties at any stage of the proceedings of a case, from the trial through to the final court of the land without the need for leave of court to do so. The genuine issue of jurisdiction of a court to entertain or adjudicate over an action or matter brought before it, can be raised even orally at all stages of the proceedings of a case without hindrance, either by the parties or the court, suo motu. It is therefore never too early or too late in the course of the judicial proceedings for the issue of jurisdiction of a trial or any other court to adjudicate over a case or matter before it, to be raised. The reason d’etre of this position of the law has been stated and re-stated by the apex court and this court in a legion of cases, among which is Forestry Research Institute of Nigeria v. Gold (2007) All FWLR (Pt. 380) 1444, (2007) 11 NWLR (Pt. 1044) 1 at 18 -19, where the apex court said: -

“Jurisdiction of court is very fundamental, and lack of jurisdiction robs a court of the competence to hear and decide the matter. In other words, once a court has no jurisdiction to adjudicate on a matter, its adjudication of the matter will be declared a nullity by an appellate court.

The issue of jurisdiction of court can be raised at any stage of legal proceedings, be it at the Court of Appeal or at the Supreme Court”

The apex court in the case of Nasir v. Civil Service Commission, Kano State (2010) All FWLR (Pt. 515) 195, (2010) 6 NWLR (Pt. 1190) 253 at 270, had emphatically held that: -

“... the statute of limitation is a matter of jurisdiction which can be raised at any stage of litigation, and I will add here, even in the Supreme Court.”

In these premises, the objection by the respondent’s counsel to the issue of the application of the Limitation Law of Lagos State to the respondent’s counter-claim raised by the appellant in this appeal for the first time, is not supported by the law on principles of practice and procedure for raising an issue which goes to question or challenge the jurisdiction of a trial court to entertain an action before it. The objection fails for want of support by the law and is accordingly overruled.

The ground of the objection is that the 1st respondent who was a witness to the tenancy in exhibit C which his father signed in respect of the land in dispute in 1991 as a tenant, did not take any action to challenge the ownership of the appellant or claim that the land belonged to him/his father, until 2005 when he made the claim in the counter-claim. He relied on the provisions of section 16(2)(a) of the Limitation Law of Lagos State which limited the time for claim in respect of land to twelve (12) years and argued that the counter-claim is statute barred.

The 1st respondent’s counterclaim on ownership of the land at No. 3B of the address in issue is that his father bought the land since 1974 and had been in possession as owner and not as a tenant of the appellant up to the time the suit was filed in 2006. The appellant in paragraphs 7, 8, 9, 10, 12 and 13 of the amended statement of claim, shows that the 1st respondent was in physical possession of the land he claimed and so there is no dispute that at the time the appellant instituted the action for title/ownership and recovery of possession from the 1st respondent, etc., the 1st respondent was and has been in possession.

Section 16(2)(a) of the Limitation Law relied on by the appellant for the objection provides that:-

“(2) The following provisions shall apply to an action by a person to recover land-

(a) Subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person.”

Clearly, these provisions deal with and provide for actions by a person to recover land or for recovery of land which is in possession of another person. The provisions are meant to apply to actions by a person who is out of possession of a piece of land which is in possession of another person and he seeks to recover the land and its possession.

Such a person has to institute or commence his action for the recovery of the land within the period of twelve (12) years stipulated in the above provisions otherwise, “no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it”.

The 1st respondent’s counter-claim is not one for recovery of or to recover the land in dispute, but for declaration of ownership, since he is and has been in possession before and at the time the suit was instituted by the appellant. It is the appellant who seeks by his action, the recovery of or to recover the land in dispute from the 1st respondent who is in possession thereof. In the circumstances, the provisions of the Limitation Law above do not apply to the 1st respondent’s counter-claim since it does not seek to recover the land in dispute.

The issue is wanting in merit and it is resolved against the appellant. The next issue is Issue 1.

“(1) Whether the learned trial judge was right in law by admitting exhibits D25 and D26 - a deed of grant and purchase receipt respectively and also rely on the said exhibits to ground the title of the 1st respondent knowing fully well that the documents are registrable instruments which were not registered contrary to section 15 of the Land Instrument Registration Law Cap. L58, Laws of Lagos State 2003. (Distilled from grounds l and 3 of the notice of appeal)”

Appellant’s submissions:

The submissions are that the High Court wrongly admitted the deed of grant dated 6 March 1974, as exhibit D25 and the purchase receipt dated 1 April 1974, as exhibit D26 in evidence because they are registrable instruments under section 15 of the Land Instruments Registration Law Cap. L58, Laws of Lagos State, 2003 (hereafter to be called Cap. L58) which were not registered and so inadmissible in evidence. Page 442 of Vol. II of the record of appeal where the High Court held that:

“I won’t belabour the point; all that is needed for you is to stamp it. I will receive it for identification, in the interim you stamp it and will formally be accepted in evidence.”

was referred to and it was contended that the High Court had used the exhibits for proof of title for the 1st respondent contrary to the law. It is the case of the appellant that the exhibits are inadmissible and even if admitted, should not have been relied on by the High Court for the decision to grant the counterclaim of the 1st respondent. Sections 2 and 15 of Cap. L58 were set out and page 607 of the Vol. II of the record of appeal, where the High Court made declaration of title in favour of the 1st respondent based on exhibit D26, was referred to. Relying on Akinduro v. Alaya (2007) All FWLR (Pt. 381) 1653 and Ogbiuni v. Niger Construction Ltd (2006) All FWLR (Pt. 317) 390 at 400, the court is urged to expunge exhibits D25 and 26 from the evidence since they are inadmissible by law and resolve the issue in favour of the appellant.”

1st respondent’s submissions:

The 1st respondent’s arguments/submissions are to the effect that title to or ownership of a piece of land can be proved by documents of title which should show that:-

(a) That the document is genuine and valid;

(b) That the document has been duly executed, stamped and registered;

(c) That the grantor had the authority and capacity to make the grant;

(d) That the grantor had in fact, what he purported to grant and;

(e) That the document had the effect claimed by the holder.

The case of Oyeneyin v. Akinkugbe (2010) All FWLR (Pt. 517) 597, (2010) 4 NWLR (Pt. 1148) 265 was cited in support of the submission and it was further argued that even if exhibits D25 and D26 were registrable instruments, the non-registration does not defeat the title of the 1st respondent as they are admissible to prove equitable interest and payment of purchase price or rent, on the authority of Okoye v. Dumex Nigeria Ltd (1985) 1 NWLR (Pt. 4) 783. That exhibit D26 coupled with possession of the land in dispute, by the 1st respondent raises equitable interest in the land in dispute which is sufficient to defeat the title of a subsequent purchaser of legal estate; Odunola v. I. C. C. (1978) 4 SC 59; MAJ v. Shaff (1965) NWLR 87 (sic); Solomon v. Mogaji (1982) 11 SC 1 and Baiginla v. Sijumola (1984) 1 SCNLR 410 were referred to and in further argument, it was said that non-registration of a registrable instrument affects only legal or statutory title and not an equitable one because the former may be imperfect, but the latter would be available. The case of Monkom v. Odili (2010) All FWLR (Pt. 536) 542, (2010) 2 NWLR (Pt. 11179) 419 was relied on for the contention and it is said that the appellant does not have any interest in the property in dispute, legal or otherwise.

The subject of the issue as shown earlier, are the exhibits D25 and D26 which are a deed of grant dated 6 March 1974 and purchase receipt dated 1 April 1974, respectively which were tendered by the 1st respondent at the trial before the High Court. There is no dispute that the two exhibits are documents affecting, or in respect of the land counter-claimed by the 1st respondent which is in dispute between the parties. Section 2 of Cap. L58 defines “instrument” as follows: -

“Instrument means a document affecting land in the Lagos State, whereby one party (hereinafter called the grantor) confers, transfers, limit, charges or extinguishes in favour of another party (hereinafter called the grantee) any right or title to, or interest in land in the Lagos State, and includes a certificate of purchase and a power of attorney under which any instrument may be executed, but does not include a Will.”

Then section 15 of the Law provides that:-

“No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered.”

By the definition in section 2, exhibits D25 and D26 are undoubtedly, instruments affecting the land in dispute, whereby the grantor/s confer/s or transfer/s right, title or interest therein, to the person named therein. These exhibits are documents which are instruments covered by the definition in the above provision of section 2 of Cap. L58 and so are registerable instruments for the purpose of claim and proof of title to land in Lagos State. See Ikonne v. Wachukwu (1991) 2 NWLR (Pt. 172) 214; Etajata v. Ologbo (2007) All FWLR (Pt. 386) 584, (2007) 16 NWLR (Pt. 106) 554; Gbinize v. Odili (2011) 4 NWLR (Pt. 1236) 103. For the purpose of such proof, no instrument shall be pleaded or given in evidence in any court as affecting any land in Lagos State, unless the same shall have been registered as provided for in section 15 above. This is the position of the law stated by the apex court in the case of Akinduro v. Alaya (supra), where Aderemi JSC said:-

“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 (1951) 13 WACA 22; Olowoake v. Salawu (2000) 11 NWLR (Pt. 677) 127 and Adesanya v. Aderounmu (2000) FWLR (Pt. 15) 2492, (2000) 6 SC (Pt. 11) 18. And if such a document is pleaded, a trial judge upon an application made to it must strikeout paragraphs of pleadings where such unregistered document is pleaded. See Ossai v. Nwajide & Anor. (1995) 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.”

See also Warigbelegha v. Owerre (2012) 3 NWLR (Pt. 1288) 573 at 530, where this court, in line with the above position of the law, stated that “an unregistered purchase receipt in respect of land is inadmissible in evidence.”

In addition, see Ogbiuni v. Niger Construction Ltd; Odubote v. Okafor (2012) 11 NWLR (Pt. 1312) 419. Although, an unregistered registrable instrument is not admissible in evidence as or in proof of title to land, it is admissible in evidence as and in proof of payment of purchase price for a piece of land by a party and when coupled with possession of the land in question by the party, is capable and creates an equitable interest in such land which can translate into a legal interest or estate. The position was stated by the Supreme Court in the case of Agboola v. U.B.A. Plc. (2011) All FWLR (Pt. 574) 74, (2011) 11 NWLR (Pt. 1258) 375 at 415, per Adekeye JSC, as follows:-

“...a purchaser of land who has paid and taken possession of the land by virtue of a registrable instrument which has not been registered has thereby acquired an equitable interest which is as good as legal estate.”

Following the above position, this court, in the case of Chukwu v. Amadi (2012) 4 NWLR (Pt. 1289) 136 at 166 has held that:-

“... as purchasers of the land in dispute who have paid and taken possession of the land by virtue of exhibits E, F, G and H, registrable but unregistered instruments, can rely on same as evidence of purchase to establish the equitable interest they acquired by virtue of the purchase.”

See also Ero v. Tinubu (2012) 8 NWLR (Pt. 1301) 104; Odubote v. Okafor (2012) 11 NWLR (Pt. 1312) 419; Warigbelegha v. Owerre.

In the premises of the law therefore, since an unregistered registrable instrument is not admissible in evidence in proof of title to land, where it was erroneously admitted by a trial court, the appellate court has a duty to expunge it from the evidence of such proof. Adesanya v. Aderonmu (2000) FWLR (Pt. 15) 2492, (2000) 9 NWLR (Pt. 672) 370; Akinduro v. Alaya; Chukwu v. Amadi; West African Cotton Ltd v. Yankara (2008) All FWLR (Pt. 402) 1192, (2008) NWLR (Pt. 1077) 323; Savannah Bank Plc. v. Ibrahim (2000) FWLR (Pt. 25) 1626, (2000) 6 NWLR (Pt. 585); Gbinle v. Odili.

From the position of the law, the admissibility of an unregistered registrable instrument, therefore, depends on the purpose for which it is tendered and to be used in a case. If it is tendered to prove or establish ownership or title to land, it will be inadmissible in evidence. If however, it is tendered to show or establish that there was a transaction in respect of the land in question and that purchase price was indeed paid by the purchaser for the land, then, it will be admissible. See Onwumelu v. Duru (1997) 10 NWLR (Pt. 525) 377; Okoye v. Dumez Nigeria Ltd (1985) 1 NWLR (Pt. 2004) 783; Abu v. Kuyanbara (2002) 4 NWLR (Pt. 758) 599; Isitor v. Fakorede (2008) 1 NWLR (Pt. 1069) 602; Etajata v. Ologbo.

The question that arises in this appeal is for what purpose were exhibits B25 and D26 tendered by the 1st respondent before the High Court? Exhibit D25; the deed of grant dated 6 March 1974 was tendered along with other documents named by the 1st respondent in his statement on oath which he adopted as his evidence at the trial on 18 June 2009. It was admitted without objection at page 442 of the record of appeal. In the 1st amended statement of defence and counterclaim dated 22 August 2007 and filed on 12 March 2008, the 1st respondent in paragraphs 13 and 14 said the land in dispute was given to his father by virtue of a deed of gift dated 6 March 1974 by late, Mr. M. A. Ololo Ogwu which was ratified by a purchase receipt of 1 April 1974.

He then testified to that effect in paragraph 11 of his statement on oath. Exhibit D26 was admitted in evidence at the proceedings of 14 October 2009 and at page 478 of the record of appeal after it was identified by Chijiuzor Ike Ololo Ogwu, the witness called by the 1st respondent. Before it was admitted in evidence, this was what happened in court;

“The court: Counsel, I was under the impression that this document was already in evidence but they said it is ID1, which means it has not been formally received in evidence, am I correct?

Mr. Ekundayo: Maybe that is the case ...

Mr. Omirhobo: The receipt?

Mr. Ekundayo: -Yes

Mr. Ekundayo: My Lord, I think the court received it, I think I objected on the ground of the issue of stamping and the court received it; that it is just an evidence of payment or something like that.

The court: Okay, then the document should have been stamped.

Mr. Omorhobo:Yes, my lord, we would apply formally for it today to take it to Federal Inland Revenue for stamping.

The court: Well, there would be problem, because how do we get the document in, I would have expected it to have been done before today? What is the stamp that is payable on this kind of document?

Mr. Omirhobo:It’s a company now, it’s going to be on Federal Inland Revenue ...

Mr. Ekundayo:My lord, it can equally be re-admitted if it is just on issue of evidence of receipt of payment.

The court: Okay, so we would formally as exhibit what?

Mr. Ekundayo:That means it’s just an evidence of payment, it’s allowed in law, if it is an evidence of title it is not allowed? I don’t know whether I should pass it for proper identification before I continue?

The court: No, it’s going to be received in evidence now. Okay, so the receipt from Akaix West Africa Limited dated 1/4/1974 issued to Nicolas Ike for the sum of Hundred Naira formerly marked ID1 is received in evidence as Exhibit D26.”

Earlier on, at page 448 of the record of appeal, the 1st respondent under cross-examination, had said he relied on the two (2) exhibits as documents of his title. The cross-examination was as follows: -

“Mr. Ekundayo:You said the land in issue, first was by deed of grant to your father and secondly you tendered a receipt; which one are you relying on now as your title document in this matter?

Witness: Sometime in 1974 –

Mr. Ekundayo:which do you rely on, deed of grant or receipt?

Witness: I have to rely on both.”

Apparently, therefore, from the case put forward by the 1st respondent in the counter-claim, in both pleadings and evidence in-chief and under cross-examination, the purpose of tendering the exhibits D25 and D26 is to prove title or ownership to the land in dispute and not merely as proof of payment of purchase price in respect of exhibit D26.

It would appear therefore, that because the exhibits are unregistered registrable instruments that are/were tendered for the purpose of proving the ownership or title of the land in dispute, they are, by the position of the law, inadmissible in evidence.

How did the High Court treat the exhibits in court’s judgement in respect of the 1st respondent’s counter-claim which it granted him?

This was how the High Court dealt with the exhibits in its judgement: -

“The defendant on the other side of the scale, has produced a deed of grant made on 6 March 1974 between Michael Akaheobi Ololo Ogwu to his deceased father (exhibit D25) and a purchase receipt from the company dated 1 April 1994 (exhibit 027). He also produced a survey plan dated 13 August 1982 drawn by Surveyor Ososami (exhibit D9) obtained from the office of the Surveyor-General.

As pointed out by the learned counsel to the claimant, the documents of the defendant are neither stamped nor registered. The effect of the documents of the defendant are thus equitable, for the law, as held in the case of Dauda v. Bamidele (2000) 9 NWLR (Pt. 671) page 199, is that a purchaser of land by virtue of a registrable instrument which has not been registered, acquires equitable interest. This interest the court held is as good as the legal estate and can only be defeated by a purchaser for value without notice of the prior equity.”

Having held the defendant’s title is an equitable one, the same have also held is as good as a legal estate and can only be defeated by a purchaser for value without notice of the defendant’s equity.

The claimant has not been shown to be a subsequent purchaser of the legal estate for the evidence of the surveyors, whose evidence remained unshaken under cross-examination, the land that was sold to the claimant lies outside that sold to and occupied by the defendant.

I accordingly hold that the deed of grant and the receipt relied upon by the defendant validly conveyed the land in issue to the defendant.

The absence of stamping of the document is merely for revenue purposes, I hold. In consequence, I direct the defendant to stamp these documents as required by law, forthwith.

With regard to the defendant’s counterclaim, l refused the 4th prayer. I also see no reason to revoke the certificate of occupancy of the claimant, since it is clear from the evidence of the surveyors, and in particular, the evidence of the Assistant Surveyor General of Lagos State, that the land of the claimant does not fall or is near to that owned by the defendant.”

Again, it is apparent that the High Court had used the exhibits D25 and D26 not as evidence in proof of title or ownership of the land in dispute, but as evidence of the fact that there was indeed a transaction between the 1st respondent’s father and the predecessor-in-title, through who the appellant also claims title to the land, to show that a purchase price was paid and a gift was made, thereby creating an equitable interest since they are coupled with admitted possession by the 1st respondent’s father since the grant and the sale.

To that extent, the law as demonstrated earlier allows the admission of the exhibits D25 and D26 and so the High Court was right to have admitted them in evidence and used them to make findings on the equitable interest of the 1st respondent’s father in the land in dispute. The issue is accordingly resolved in the affirmative and against the appellant.

Issue IV:

“Whether the trial judge properly evaluated all the evidence led in proof of the respective titles of both the appellant and the 1st respondent in arriving at a decision to grant the claims of the 1st respondent as to declaration of ownership and possession of the land in issue. (Distilled from ground 6 of the notice of appeal)”

Appellant’s submission

After reference to the documentary evidence tendered by the parties and admitted by the High Court at the trial, it was argued that a proper evaluation of exhibit D25; deed of grant, along with exhibits C3, C4, C5 and C6 would show that it was a recent document prepared in anticipation of the suit and could not have been made on the date it bears on the High Court stamp. It was submitted that the exhibits failed the test for documents of title stated in Romanine v. Romaine (1992) 4 NWLR (Pt. 238) 650 and in the alternative that they do not confer title to the land in dispute on the 1st respondent as they do not contain any specific description of any land. It is also the case of the appellant that the certificate of occupancy (C of O) exhibit C2, the tenancy agreement; exhibit C1, the sublease agreement; exhibit C7 and lease agreement; exhibit 8, tendered by the appellant all passed the test as documents of title particularly, exhibit C2 which the 2 - 4th respondents’ witness confirmed was regularly issued. Pages 526 -539 of the record of appeal and Madu v. Madu (2012) 13 NWLR (Pt. 784) (sic) 231 were cited and it was contended that the presumptions in favour of the documents were not rebutted and so they remained credible for the High Court to have acted upon. Arguments on the identity of the land dispute were made and Adedeji v. Oloso (2007) All FWLR (Pt. 356) 610, (2007) 5 NWLR (Pt. 1026) 123 and Ogbu v. Wokoma (2005) All FWLR (Pt. 277) 815, (2005) 14 NWLR (Pt. 944) 118 were referred to on the arguments. The High Court was said not to have evaluated all the evidence placed before it by the parties, but treated only the documentary evidence severally without relating them to the oral evidence. The court is urged to resolve the issue in appellant’s favour.

1st respondent’s submissions:

It was submitted that the High Court rightly dismissed the appellant’s case on ground of failure to discharge the burden of proof and the law that he had to succeed on the strength of his own case and not on the weakness of the defendant’s case. Nwokidu v. Okanu (2010) All FWLR (Pt. 522) 1633, (2070) 1 SC 25 and Ekundayo v. Baruwa (1965) 2 NLR 211 were cited and it was argued that evaluation of evidence involves finding of facts based on credibility of witnesses and evaluation of evidence.

Further that an appellate court does not interfere with the trial court’s evaluation of evidence except it was shown to be improperly done and that the appellant has failed to show why this court should interfere with the evaluation by the High Court. Nwajiofor v. Okonu (1986) 4 NWLR (Pt. 1936) 505 and Amadi v. NNPC (2000) FWLR (Pt. 9) 1527), (2000) 10 NWLR (Pt. 674) 76, were referred to and the court is urged to resolve the issue against the appellant.

The law is very well known now that a trial court, in its unique and advantage position of the physical appearance of witnesses who testify before it and through whom documentary and other physical evidence is tendered, has the primary duty to consider, assess or evaluate the evidence adduced by the parties in support of their respective cases on the issues of dispute between them.

Evaluation of evidence is properly done by placing the evidence adduced by each party on either side of the imaginary scale of justice and weighing it to find out which side is heavier, not by the number of witnesses or documents tendered, but the quality of the probative worth or value based on credibility of the evidence. Mogaii v. Odofin (1978) 4 SC 91; Baba v. N. C. A. T. C (1991) 5 NWLR (Pt. 192) 388; Awoyoolu v. Aro (2006) All FWLR (Pt. 308) 1319; Okoye v. Obiaso (2010) All FWLR (Pt. 526) 489, (2010) 8 NWLR (Pt. 1195) 145.

Factors that are considered in the determination of weight or probative value of a piece of evidence in the evaluation by a trial court include: -

(a) Admissibility of the piece of evidence;

(b) Relevance of the evidence to issues in dispute;

(c) Credibility of the evidence;

(d) Probability and cogency of the evidence;

(e) Conclusiveness on the issue/s it seeks to prove.”

See Mogaji v. Odofin; Onwuka v. Ediala (1989) 1 NWLR (Pt. 1996) 182; Osigwe v. UniPetrol (2005) All FWLR (Pt. 267) 1526.

Because the primary duty and function to evaluate evidence is that of a trial court, in an appeal against such evaluation by that court, the duty of an appellate court is a limited one since it does not try the case and does not experience the subtle and often influencing nuances of seeing and hearing witnesses give direct accounts of facts upon which findings are based by the trial court.

The function of an appellate court in respect of a complaint on evaluation of evidence by a trial court is to peruse the record of appeal containing the evidence placed before that court by the parties and the assessment or evaluation of that evidence in the decision by it in order to find out whether or not it has properly carried out its primary duty in line with recognized and established principles of law on the evaluation of evidence. Where the trial court had properly and fully evaluated all the material evidence placed before it by the parties and thereby properly appraised the facts, drew necessary inferences and made correct findings based thereon, an appellate has no authority and business to interfere with the evaluation merely on the ground that it would have reached a different decision or conclusion on some or even all the facts of the case. What is important is that once there is evidence before a trial court from which its findings can reasonably be supported, it would have properly carried out its primary duty of evaluation of evidence and its decision ought not to be disturbed by an appellate court. See Ojokolobo v. Alamu (1998) 9 NWLR (Pt. 565) 226; State v. Ajie (2000) FWLR (Pt. 16) 2831, (2000) 7 SC (Pt. 1) 24; Onifade v. Olayiwola (1990) 7 NWLR (Pt. 161) 130; Ugo v. Ibekwu (1989) 1 NWLR (Pt. 1999) 566; Layinka v. Makinde (2002) FWLR (Pt. 109) 1557, (2002) 10 NWLR (Pt. 77) 358; Fagbenro v. Arobadi (2006) All FWLR (Pt. 3101) 1575, (2006) 7 NWLR (Pt. 9788) 174. However, where an appellate court finds from the evaluation by a trial court that it has committed substantive errors and failed to make proper findings or draw correct inferences from proved or admitted facts or has wrongly assessed the probative value of undisputed evidence, it has the duty to intervene and interfere with the findings and set aside the improper or wrong decision of a trial court. Fashanu v. Adekoya (1974) 6 SC 83 at 91; lvienaghor v. Bazuaye (1999) 19 NWLR (Pt. 620) 552; Adebayo v. Ighodalo (1996) 5 NWLR (Pt. 450) 507; Gatari v. Abu (2005) All FWLR (Pt. 278) 1186; Kaydee Ventures Ltd v. The Hon. Minister of Fed. Capital Territory (2010) All FWLR (Pt. 519) 1079, (2010) 7 NWLR (Pt. 1192) 171.

Under this issue, the pith of the complaint by the appellant is that the High Court did not properly evaluate all the evidence adduced and placed before it by the parties. Specifically, counsel for the appellant had said that the High Court did not relate the exhibits C1, C2, C7 and C8 to the appellant’s oral evidence which support his case and Exhibits D25 and D26 to exhibits C3 - C6. In the judgement appealed against, the High Court had stated, inter alia, on the evidence adduced by the appellant in support of his case, that:

“An examination of exhibit C2, the certificate of occupancy shows that the document presented to the Governor before his assent was given, is purchase receipt dated 7 March 1977. In his statement of claim and statement of oath, the claimant stated that he bought the land in dispute in 1975. He pleaded the receipt and also the lease agreement.

He tendered as exhibit C8, the lease agreement between himself and his said vendor made on 13 November 1981 for a term of ninety-seven (97) years commencing 1 July 1975.

The claimant, under cross-examination was challenged as to the existence of the receipt and his non-production of same. Under cross-examination, Mr. Emmanuel Oluyinka Akande, the Assistant Director of Lands, agreed with the counsel to the defendant/counter-claimant that the documents accepted by the ministry for processing of certificates of occupancy are purchase receipts. They do not, he said, accept lease agreements. He also agreed that they had known of the lease agreement between the claimant and his vendor, in which the vendor had a reversionary interest, they would not have issued the certificate of occupancy. The plan of the land lease to the claimant, as contained in the agreement (exhibit C8), I note is drawn by surveyor Ogunbiyi, and is the same contained in the certificate of occupancy, exhibit C2.

From the failure of the claimant to produce the purchase receipt relied upon by him in obtaining the certificate of occupancy or execute its absence, my deduction is that there is no such purchase receipt.”

Section 149(d) of the Evidence Act, as urged on the court by the defendant’s counsel, empowers the court to resolve the non-production of this document against the claimant and I so do.

The factual situation is thus that the claimant has produced a deed of sublease dated 13 November 1981 between Mr. Ololo and himself covering 1653. 627 square metres for a period of 97 years from 1 July 1975 (exhibit C8). He has also produced an undated deed of sublease (exhibit C7) between the Okota Family and himself for a period of 99 years, albeit with no commencement date.

Also produced by him is a certificate of occupancy No. 24/24/2003W registered as No. 24 at page 24 in Volume 2003W at the Lagos State Land Registry for a term of 99 years (exhibit C2).

“The law also is as cited by counsels, the existence of a certificate of occupancy, while prima facie evidence of title is rebuttable. See Ogbuahon v. Registered Trustees of Christ’s Chosen Church of God (2002) 1 NWLR (Pt. 749) page 675. It was also held in the case of Buremoh v. Akande (2000) 15 NWLR (Pt. 690) page 260 that the mere production of a certificate of occupancy does not by itself, entitle the party to a declaration of a statutory right of occupancy.

The question thus is which of the titles of the parties takes priority over the other.

In deciding the priority of titles, as urged on me by the claimant’s counsel, I shall rely on documentary evidence. It was held in the case cited by him of Osunbor v. Oshiomole (2009) AFWLR (Pt. 463) page 1363 as follows: -

“From the documents of title produced the title of the defendant, which was given on 8 March 1974 and 7 April 1974 vide the deed of grant and purchase receipt respectively take precedence, I hold over that of the claimant given on 13 March 1981, albeit to take effect from 1 July 1975.

Thus, assuming the land claimed by both parties is the same, at the time exhibit C8 was executed between the claimant and his vendor, the vendor had no title to dispose of, under the principle of nemo dat quod non habet.

In arriving at this finding, I have made no finding on whether the rightful owner of the land is Ololo Akaix. This is in spite of the fact that from the receipts produced by the defendant of the various sales of land made, and the admission of CW2 that his vendor is Akaix WIA Ltd, together with the survey plan produced of Akaix WIA Ltd., Akaix WIA Ltd appears to me to be the owner of the land. I however have preferred to consider the dates of alienation of the properties and have taken into consideration the fact that while the claimant’s title is solely from Ololo, that of the defendant is from Ololo as well as by Akaix WIA Ltd. Even though CW2, Mr Andrew Kentebbe alleges that Mr Ololo did not execute a deed of grant to the defendant, he has, I hold, not proved this statement. I prefer the evidence of DW2, Chijiuzo Ike OloloOgwu, the son of the vendor to all the parties, who testified of the relationship between the defendant and his family and the transaction the defendant had with his father and the company.

More importantly, is the fact that both the defendant’s Surveyor and the Assistant Surveyor-General of Lagos State have testified in this court, juxtaposing the survey plan in the claimant’s certificate of occupancy with the defendant’s survey plan as well as that of their vendor, that the land sold to the claimant does not fall on that claimed by the defendant and that they are indeed far apart.

Thus, even though the claimant has relied on a tenancy agreement entered into between him and Nicholas Ike dated 1 November 1991 (exhibit C 1) and which the claimant has disclaimed on the grounds of duress and intimidation of them by the claimant, who he said is an SSS officer, execution of this document does not, without more, confer ownership of the properly on the claimant.

Indeed, the defendant in rebuttal, has produced exhibit D3, a letter written to his father by the claimant, dated 16 February 1983 asking him to allow the bearer, Stephen Funsho ‘to make use of your premises meanwhile ...’

I accordingly hold from the foregoing, that the claimant is not entitled to the statutory right of occupancy in and over the land situate and being at No. 3B, Risi Laguda Close, off Metropolitan College Road, the Ire Akari Estate Isolo, Lagos State.”

Even a cursory look at the above portion of the judgment by the High Court would easily show that the evidence adduced by the appellant was properly evaluated but not accepted by that court as sufficient and conclusive proof of the claim he made in respect of the land in dispute. It is clear that from the inference drawn from the admitted facts on the certificate of occupancy and survey plans put in evidence by the appellant that the land he claimed as being part of the land granted to him by his predecessor-in-title, is not the same as the land counter-claimed by the 1st respondent’s father. Because the High Court did not accept the evidence adduced by the appellant which was properly placed on one side of the imaginary scale of justice, as sufficient proof of his claim, does not automatically translate into improper evaluation of the evidence by that court. It was because of the finding based on the appellant’s evidence that the land in respect of which the certificate of occupancy was granted to him is different from that counterclaimed by the 1st respondent’s father that it refused to revoke the certificate of occupancy by holding that: -

“With regard to the defendants counterclaim, I refuse the 4th prayer. I also see no reason to revoke the certificate of occupancy of the claimant, since it is clear from the evidence of the surveyors, and in particular the evidence of the Assistant Surveyor-General of Lagos State, that the land of the claimant does not fall or is near to that owned by the defendant.”

The High Court has properly and fully evaluated both the documentary as well as the oral evidence given by the appellant in support of his claim, which was a foundation for the documentary evidence and on which was to be hanged for evaluation. There is no reason or justification demonstrated by the appellant for this court to interfere with the evaluation of the evidence by the High Court.

I find no merit in the issue and resolve it against the appellant. In the final result, the resolution of all the issues considered in the appeal against the appellant leaves the appeal without merit. Consequently, the appeal fails and is dismissed.

There shall be costs assessed at N100,000.00 (one hundred thousand naira) in favour of the 1st respondent to be paid by the appellant for the prosecution of the appeal.

**IKYEGH JCA:**

I am in agreement with the thorough judgment prepared by my learned brother, Mohammed Lawal Garba, JCA (Hon. PJ), which I had the honour of reading in advance.

**OGAKWU JCA:**

My learned brother, Mohammed Lawal Garba JCA made available to me the draft of the lead judgment which has just been delivered. In his characteristic and trademark sapience, he has fastidiously resolved the crucial issues thrust up for determination in this appeal. I agree with his reasoning and conclusion that the appeal is devoid of merit.

The accidence of the admissibility of an unregistered registrable instrument has been admirably considered in the said judgment, eloquently making it clear that where the document is tendered to prove or establish ownership or title to land, it will be inadmissible in evidence. Where, however, the document is tendered to show or establish that there was a transaction in respect of the land and that purchase price was paid by the purchaser then such an unregistered registrable instrument will be admissible in evidence. See Okoye v. Dumez Nigeria Ltd (1985) LPELR (2506) 1 at 14 (SC); Onwumelu v. Duru (1997) 10 NWLR (Pt. 525) 377 and Isitor v. Fakorede (2008) 1 NWLR (Pt. 1069) 602.

For the reasons contained in the lead judgment which I adopt as mine, I avow my concurrence that this appeal is only deserving of the dismissal. I therefore equally join in dismissing the appeal for being devoid of merit. I endorse the order as to costs. Appeal dismissed.