**MALLAM JIMOH ATANDA**

**V.**

**COMMISSIONER FOR LANDS AND HOUSING, KWARA STATE AND ANOTHER**

IN THE SUPREME COURT OF NIGERIA

THE 5TH DAY OF MAY, 2017

SC.156/2006

**LEX (2017) - SC.156/2006**

**OTHER CITATIONS**

3PLR/2017/198 (SC)

(2017) LPELR-42346(SC)

**BEFORE THEIR LORDSHIPS**

OLABODE RHODES-VIVOUR, J.S.C

CLARA BATA OGUNBIYI, J.S.C

CHIMA CENTUS NWEZE, J.S.C

AMIRU SANUSI, J.S.C

PAUL ADAMU GALINJE, J.S.C

**BETWEEN**

MALLAM JIMOH ATANDA - Appellant(s)

AND

1. THE HON. COMMISSIONER FOR LANDS AND HOUSING, KWARA STATE

2. THE HON ATTORNEY-GENERAL AND COMMISSIONER FOR JUSTICE, KWARA STATE - Respondent(s)

**ORIGINATING COURT**

1. COURT OF APPEAL, ILORIN DIVISION (Judgment of the Court delivered on 2nd day of March, 2006).

2. HIGH COURT OF KWARA STATE

**REPRESENTATION/LAWYERS**

ADEOLA OMOTUNDE with B.D. POPOOLA - For Appellant

AND

KAMALDEEN AJIBADE (ATTORNEY GENERAL KWARA STATE) with F.D. LAWAL, S.G. Kwara State; H.A. GEGELE, D.C.L; M.A. ONIYE, C.S.C; ISSA ZAKARI, S.S.C; and PRISCILLA EJEH - For Respondent

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

CUSTOMARY LAW - CUSTOMARY SALE OF LAND - Requirements for a valid sale of land under Native law and custom.

CUSTOMARY LAW - CUSTOMARY SALE OF LAND - Requirements for a valid sale of land under Native law and custom.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - ISSUE(S) FOR DETERMINATION:- Effect of an issue for determination based on an incompetent ground of appeal.

APPEAL - GROUND(S) OF APPEAL:- Whether a ground of appeal must be related to the ratio decidendi of the judgment appealed against.

APPEAL:- CONSISTENCY IN PRESENTATION OF A CASE:- Whether a party can maintain on appeal, a case different from that which was presented at the lower Court.

JUDGMENT AND ORDER - CASE LAW - RATIO DECIDENDI/OBITER DICTUM:- Distinction between ratio decidendi and obiter dictum – Legal effect(s)

EVIDENCE - ADMISSIBILITY OF UNREGISTERED REGISTRABLE INSTRUMENT:- Position of the law as regards the admissibility of an unregistered registrable instrument

PLEADINGS:- Rule that parties are bound by their pleadings – Duty of court thereto

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant took a Writ of summons at the trial Court against the respondents seeking the under listed reliefs: a declaration that he is the lawful owner of a parcel of land situate lying and being at Offa garage area, Ilorin the said land measures 699 ft by 303ft (35 plots) to the exclusion of the defendants or any other person(s); special damages of N50,000.00 (Fifty thousand naira) being the cost of crops planted on the disputed land by him and N50,000 being the cost of the economic trees which he planted on the disputed land which were uprooted by the respondents as at when the disputed land was taken over by the respondents; and general damages of N100,000 (One Hundred Thousand Naira).

Pleadings filed and exchanged and hearing commenced in earnest. At the conclusion of the proceedings, the trial Court entered judgment in favour of the appellant for declaration of title to the land as claimed. The trial Court however refused to make any award of special damages for want of proof, but it awarded N20,000 general damages in favour of the plaintiff/appellant.

Dissatisfied with the decision of the trial Court, the Respondents appealed to the Court below which said appeal was allowed and the judgment of the trial Court was set aside. Piqued by the decision of the Court below, the appellant appealed to the Supreme Court.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, upturning the decision of the trial court that refused to make any award of special damages for want of proof, but awarded N20,000 general damages in favour of the appellant. Dissatisfied, the Appellant appealed to the Supreme Court.

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

*BY APPELLANT:*

1. Considering the state of pleadings, he painstaking and meticulous manner, the trial Court came to its decision whether the respondents proved that they have a better title in form of the acquisition or inheritance than the appellant to warrant setting aside of the judgment of the trial Court by the lower Court (Grounds 1, 2, 3, 4, 5, 6, 8, 9 and 10).

2. Whether the lower Court was not wrong in adopting a strict technical approach in the determination of the appeal and thereby visiting the sins of the counsel on the appellant (Ground No.7).

*BY RESPONDENTS:*

Considering the pleadings and evidence placed before the trial Court, whether the lower Court was right in the decision that the learned trial judge was not justified in granting the appellant's claim to (sic) declaration for title to the land in dispute.

**MAIN JUDGMENT**

**AMIRU SANUSI, J.S.C.** (DELIVERING THE LEADING JUDGMENT):

This appeal stems from the judgment of the Court of Appeal, Ilorin division ("the Court below or lower Court" for short) delivered on the 2nd day of March, 2006 which upturned the judgment of the High Court of Justice, Kwara State (the trial Court) delivered on 7th May 2004.

The appellant herein as plaintiff, took a Writ of summons at the trial Court against the defendants, now respondents seeking the under listed reliefs:-

(a) A declaration that the plaintiff is the lawful owner of a parcel of land situate lying and being at Offa garage area, Ilorin the said land measures 699 ft by 303ft (35 plots) to the exclusion of the defendants or any other person(s)

(b) A special damages of N50,000.00 (Fifty thousand naira) being the cost of crops planted on the disputed land by the plaintiff and N50,000 being the cost of the economic trees which the plaintiff planted on the disputed land and same were uprooted by the defendants as at when the disputed land was taken over by the defendants.

(c) A general damages of N100,000 (One Hundred Thousand Naira).

After pleadings were ordered, parties filed and exchanged their pleadings at the trial Court before hearing commenced in earnest. The plaintiff now appellant filed an 11 paragraph statement of claim and upon being served with same, the defendants now respondents, jointly filed a 13 paragraph statement of defence. To prove his case at the trial Court, the plaintiff/appellant gave evidence and called four other witnesses while the defendants/respondents called one witness who was an officer of the Ministry of Land and Housing Ilorin to testify on their behalf. The plaintiff/appellant tendered one exhibit which was admitted and marked Exh. A. On their part, the defendants (respondents) tendered Exhibits D1, D2 and D3 during the proceedings, all in denial of the plaintiffs claim.

The case of the plaintiff/appellant as per his pleadings and the evidence he led is that he bought the land in dispute vide a sale agreement dated 10th August, 1975 which said Sale Agreement when tendered at the trial Court was admitted, albeit not without vehement opposition from the defendants/respondents, and marked as Exhibit A. The defendants/respondents seriously opposed its admission but without success. The fulcrum of the defendants'/respondents' objection was that the said exhibit being a registrable instrument relied on in proof of transfer of title, was not registered as required by law and was therefore inadmissible. On their part, the respondents claimed that the land in dispute had already been acquired by Kwara State Government for public purpose i.e an industrial layout, and compensation was duly paid on same to the customary owners of the said land for a long time ago. At the conclusion of the proceedings, the trial Court entered judgment in favour of the present appellant for declaration of title to the land as claimed. The trial Court however refused to make any award of special damages for want of proof but it awarded N20,000 general damages in favour of the plaintiff/appellant.

Dissatisfied with the decision of the trial Court, the defendants appealed to the Court below which said appeal was allowed and the judgment of the trial Court was set aside. Piqued by the decision of the Court below, the present appellant has now appealed to this Court vide a notice of appeal dated 30th March, 2006 containing ten grounds of appeal.

In compliance with the rules and practice applicable in this Court, parties filed and exchanged briefs of argument. The appellant's Brief of Argument filed on 28th May, 2007 was settled by one Adeola Omotunde Esq. who had also filed Appellant's Reply Brief on 13/1/2009 which was deemed filed on 25/3/2009. The respondents upon being served with the Appellant's brief of argument also filed their joint amended Respondents' Brief of Argument on 26/1/2007 though deemed filed on 13/2/2017.

In the Appellant's Brief of Argument, two issues were proposed for the determination of his appeal, namely:-

1. Considering the state of pleadings, he painstaking and meticulous manner, the trial Court came to its decision whether the respondents proved that they have a better title in form of the acquisition or inheritance than the appellant to warrant setting aside of the judgment of the trial Court by the lower Court (Grounds 1, 2, 3, 4, 5, 6, 8, 9 and 10).

2. Whether the lower Court was not wrong in adopting a strict technical approach in the determination of the appeal and thereby visiting the sins of the counsel on the appellant (Ground No.7).

As regards the respondents, they formulated lone issue for determination of the appeal which simply reads thus:-

"Considering the pleadings and evidence placed before the trial Court, whether the lower Court was right in the decision that the learned trial judge was not justified in granting the appellant's claim to (sic) declaration for title to the land in dispute."

It is to be noted that Preliminary objection was raised in the respondents' brief of argument who had earlier filed Notice of Preliminary Objection: The said objection was predicated on the competence of Ground of Appeal No.7 in the Notice and Ground of Appeal filed by the appellant. The challenge on that ground was particularly on a portion of the judgment of the Court below where Hon. Justice Ikongbeh JCA (of Blessed memory) who prepared the leading judgment now being appealed against, made the following observation from pages 126 to 127 of the Record which was regarded as misdirection of law forming the seventh ground of appeal. The remarks made by the learned justice of the Court of Appeal read thus:-

"I must confess that this appeal gave me anxious moment. It is with much sadness that I had to hand the respondent the bitter pill to swallow". This is a case that he ought not to have lost had his lawyers put more work in the Court below than they did. They were a little too complacent. Had they taken more time to study their client's case more carefully in all its ramifications and tried to plug all the holes through which the case could, considering the adversarial nature of our legal system, have legitimately slipped away the detriment of their client the story would have been different now. Had they taken the trouble to plead all the sources from which their client could have acquired title to the land in dispute, which the evidence they had at their disposal supported, the hapless respondent would have been smiling today. However, much as I sympathise with him for this avoidable loss, there is little I can do. I have to apply the law as it is, not as I think it ought to be, even if as it happened in this case, it is rough on me."

It is the contention of the learned counsel for the respondents herein, that the above remarks or observation by the Court below, per Ikongbeh JCA, was mere obiter dictum and did not amount to a ratio decidendi of the judgment of the Court below He referred to and cited the cases of Madu v. Neboh (2001) 7 WLR (pt.52) 2268; Clement v Iwuanyanwu (1989) 20 NSCC (pt. 2) 234; Oduah II vs Akabeze (1970-71) ECSCR 185; Ebitah v Obiki (1992) 5 NLCR (Pt. 243) 599; Adesokan v Adetunji (1994) 5 NWLR (Pt. 346) 540 at 577.

Learned respondents' counsel submitted that the remarks made by Ikogbeh JCA supra, did not form part of the reasons for the decision of the Court below. He further argued that it is only the ratio decidendi of a case and not obiter dictum that can form the basis of an appeal. See Nwankwo v. All Ecumenical Development Co-operative Society (2007) All FWLR (Pt. 360) 1462. He added that, it is not anything a judge says that should constitute subject of a ground of appeal, especially when what was stated by the judge did not go to the root of the matter as decided by the Court. See Larmie v. Data Processing Maintenance and Services Limited (2006) All FWLR (Pt. 296) 77 at 94; Consortium (3632 Lot 4 Nigeria v. NEPA (1992) 7 SCNJ 7 (Pt.1) 1; Saude v. Abdullahi (1989) 3 NWLR (Pt.116) 387; Ede v Omeke (1992) 5 NWLR (Pt. 242) 428 at 435; Xtoudous Services Nigeria Limited Anor v. Taisei [WA] Ltd (2006) 15 NWLR (Pt.1003) 533. The learned respondents' counsel finally urged this Court to strike out Ground No. 7 for being incompetent because the said ground of appeal (i.e. Ground No.7) was based on obiter dictum and NOT on ratio decidendi of the decision now being appealed against.

Responding to the above submissions of the learned respondents' counsel, the learned counsel for the appellant argued that the remarks of the lower Court on which he hinged his ground of appeal no. 7 was not obiter dictum. He went further to state that all the cases cited by the respondents' counsel mentioned supra, are either not relevant or they do not support his submission on the preliminary objection. Learned appellant's counsel stated that although he conceded that appeal is normally against a ratio and not against an obiter, an appeal on obiter, according to him, can still be allowed where the obiter is so clearly linked with the ratio as to be deemed to have radically influenced the latter as in this instant case. He cited the case of Saude v. Abdullahi (supra). He then urged this Court to hold that even if Ground no. 7 is an obiter, it is so clearly linked with the ratio that it has influenced it, hence it is no longer an obiter but a ratio. The learned appellant's counsel did not however go further to demonstrate how the observation of the lower Court quoted above which formed the basis of his Ground 7, is closely linked with the ratio decidendi of the lower Court's decision as could be termed to transform into a ratio on which the decision of the lower Court was based. For that failure so to do, I am not prepared to accept such submission or share his sentiment on that. I therefore refuse to accept the suggestion that the remark of the lower Court justice was on ratio decidendi of his decision.

A close perusal of the observation of the learned Justice of the Court of Appeal quoted above is no doubt an obiter dictum. An obiter dictum is defined in Black Law Dictionary, 8th Edition, at page 1102 to mean "something said in passing: A judicial comment made while delivering judicial opinion but one that is necessary to the decision in the case and therefore not precedential". The decision of the lower Court was not linked with the remarks of the learned justice of the Court below at all. That is to say, it is not ratio decidendi of the decision which is the subject matter of this appeal. On the other hand, "ratio decidendi" is the reason on which the Court based its judgment or it is the principle of the decision, unlike obiter dictum. The latter simply entails comments or passing remarks by a judge or Court or its observation(s) which is certainly not meant to be the principle or the basis upon which the decision of the Court was based or hinged on. It is simply an observation or mere passing remarks or comment. Such remarks, comment or observation(s) is no doubt not meant to play any part in the decision the Court arrived at in its judgment.

The law is clear, trite and indeed well settled, that a ground of appeal and issue or issues distilled from it must always attack the ratio decidendi and NOT an obiter dictum in the judgment, otherwise such ground of appeal will be impotent and rendered incompetent and liable to be struck out. See Kayode Babatunde v. The State (2003) All FWLR (Pt. 662) 1731; Adeleke v. Ecu-Line NV (2006) All FWLR (Pt. 321) 1213; or (2006) 12 NWLR (Pt. 993) 33; Dairo v. UBN Plc (2007) All FWLR (Pt. 392) 1846 or (2007) 16 NWLR (Pt. 1059) 113.

As I posited above, the learned appellant's counsel had even conceded in his Brief of argument, that the said ground was based on obiter dictum. He failed to show in what manner same was linked with the ratio decidendi of the judgment. It is therefore my judgment that the remark on which Ground 7 was based, mere obiter dictum and not on the ratio decidendi of the decision. The said Ground of appeal is therefore incompetent and is accordingly struck out.

As a corollary, issue no. 2 in the appellants brief of argument, having been hinged on or tied to Ground no. 7 which as I said above, the said ground is adjudged incompetent and was therefore struck out than such issue is no longer tenable and has to be discountenanced. The law is beyond any peradventure, that any issue for determination raised from or formulated on an incompetent ground of appeal goes to no issue. Such issue is worthless and must be struck out since it can not stand on any legal pedestal for any attack on a judgment. See Emmanuel Bakee v. Friday Beker [2013] All FWLR (Pt. 684) 96. All arguments raised or proffered on such issue become of no moment and must also be discountenanced. See Nsirim v. Nsirim (1990) 3 NWLR (Pt. 138) 285 at 295. Faboro v Beyioku (1998) 2 NWLR (Pt. 76) 263. Agbaka v. Amadi (1998) 11 NWLR (Pt. 572)16. The resultant effect of all that I have stated above on the respondents' preliminary objection, is that the objection is well taken and is therefore hereby sustained. Ground 7 in the appellant's Notice of appeal is incompetent and struck out. Similarly, the second issue raised in the appellant's Brief of argument having been raised or predicated on an incompetent ground of appeal, is also struck out and all the arguments proffered thereon are of in no moment and are accordingly discountenanced. The preliminary objection based on Ground No. 7 succeeds and accordingly sustained.

The second issue raised by the appellant, having been struck out, he is now left with only one issue for determination which is only the surviving issue in the appellant's brief of argument. The sole issue raised by the respondents in their Amended Respondents' Brief of Argument are similar in context with the appellant's only surviving issue i.e No.1 though differently worded. I will treat this appeal based on the respondents' sole issue for determination.

In arguing Issue No.1 which is the only surviving issue raised by the appellant in this appeal, the learned counsel for the appellant submitted that the respondents did not prove better title to the disputed land than him. On Exhibit A which the respondents argued was inadmissible for want of registration, the learned appellant's counsel submitted that the respondents' counsel failed to appeal against its admissibility by the trial Court when it was tendered during the trial and also there was no complaint from the respondents on how it was treated in the trial Court's judgment or even at the lower Court.

Learned appellant's counsel insisted that Exhibit A is NOT a registrable instrument because the purpose for which it was tendered in evidence by the plaintiff/appellant was simply to support and establish the fact pleaded in his Paragraph 8 of his Statement of Claim that the land in dispute was sold to the appellant by virtue of native law and custom. He argued that the payment for the purchase price, coupled with the delivery of possession to the appellant had created a valid sale under the native law and custom. He cited and relied on case of Oforlete v. State (2000) 12 NWLR (Pt. 681) 415-436.

In a further submission, the learned appellant's counsel argued that the sale of the disputed land was conducted under native law and custom which means that Exhibit A which was merely superfluously made or executed can not be an instrument as defined under the Land Registration Law. See Agwumadu v. Onwumere [1994] 1 SCNJ 106 at 117/118. He further argued that the respondents merely raised the issue of admissibility of Exhibit A without appealing against same and that does not mean it was properly raised and considered, particularly when there was no ground of appeal before the lower Court complaining about that point. He contended that where an issue before a trial Court and that issue was not raised in any ground of appeal, than that issue can not be taken by the appellate Court. He stated that the lower Court can not make pronouncement on the issue or make findings on an issue which the parties did not appeal against as it did in this instant case since the substantial part of its decision was basically centred on Exhibit A. He contended that the non-registration of Exhibit A cannot defeat the equitable interest of the appellant, adding that an unregistered registrable instrument is admissible to prove equitable interest or the payment of purchase price of land. See the case of Tewogbade v. Obadina (1994) 1 NWLR (Pt. 335) 356; Okoye v. Dumez Nig. Ltd (1985) 1 NWLR (Pt. 4) 783.

Then on the claim of inheritance and acquisition by the respondents from the defunct Northern Nigerian Government as claimed by DW1, the latter according to the appellant's counsel contradicted himself when he said they acquired the land for public purpose to be used as industrial layout and had even paid compensation for same to the owners of the land. This portrayed contradiction, in that in one breeze the respondents claimed they inherited the land from Northern Nigerian Government in 1977 while in another breeze they claimed that they acquired the land from the owners and even paid compensation to Madam Ayoka Hakure Qrts and Ibrahim Galadima of Galadima Qtrs.

It was again submitted on behalf of the appellant that the issue of acquisition was never pleaded by the respondents in their Statement of Defence but was merely introduced by DW1 during his testimony. He argued that facts not pleaded go to no issue and any evidence led on it is of no use and he urged us to discountenance such evidence. He finally argued that the respondents failed to establish title to the land. They can not therefore rely on the weakness (if any) of the case of the plaintiff/appellant.

He urged this Court to allow his appeal.

In arguing their sole issue for determination which as I said above is similar to the only surviving issue raised by the appellant, the learned counsel for the respondents submitted that the appellant hinged his case solely on Exhibit A as established in the testimonies of PWs 1, 2 and 3 and 4 and also posited that the appellant traced his root of title to Exhibit A through which he had shown that the land in dispute was sold to the appellant under native law and custom. He stated that the appellant was wrong to have stated that the transaction for the purchase of the land in dispute was under native law and custom when Exhibit A on which he relied on and based his claim of ownership to the said land was not prepared under native law and custom but under the English Law Procedure of Deed of conveyance as introduced or used in Exhibit A.

It is noteworthy, that the appellant herein, as plaintiff, at the trial Court, asserted that he purchased the land in dispute from a man called Omoyiola Iyanda Olomioobe vide a Sale Agreement document which he tendered at the trial Court and was admitted in evidence and marked as Exhibit A despite objection by the learned respondents' counsel. Throughout the proceedings, it is clearly shown that the plaintiff/appellant predicated his case on the said Exhibit A which was the only document he pleaded as the root of his title. For instance in Paragraph 8 of the Statement of Claim, the plaintiff now appellant pleaded thus:-

Paragraph 8 of statement of claim:-

"The plaintiff say that upon the death of Bello Gambari, the disputed land by custom and tradition developed on Mallam Omoyiola Iyanda of Olomioobe compound Ita Kure, Ilorin who was a direct descendant of Bello Gambari who exercised acts of ownership on the disputed land until sometimes 1976 (sic) when by an agreement dated 10th August, 1976 the said Mallam Omoyiola lyanda sold the disputed land to the plaintiff. The said agreement is hereby pleaded and will be found upon at the trial of this suit."

The appellant led evidence through the witnesses he called to support what was pleaded above to the effect that he acquired the land in dispute through Exhibit A. Even in his ipsi dixit, he stated under cross examination as follows:-

"Apart from Exhibit A, I don't have any other document and have those who will witness to that document Exhibit A" PWs2, 3, 4 and 5 each testified that he was a signatory to the agreement (Exhibit A)."

To my mind, in the light of these unchallenged pieces of evidence called or adduced by the plaintiff, it will be inconceivable for the appellant to later claim that the land in dispute was sold to him under or by virtue of Native Law and Custom.

The question to ask even is, did the plaintiff/appellant establish or prove a valid purchase of the disputed land under Native Law and Custom.? It is trite law that for a sale of land under native or customary law to be valid, the following requirements must be met. These requirements are:-

(1) There must be payment of money or agreed consideration.

(2) The transaction must be witnessed by witnesses.

(3) The actual handing over of the land must be done in the Presence of the same witnesses.

See Adedeii v Oloso [2007] SCNJ 411; Folarin v. Durojaye (1988) 1 NWLR (Pt 70) 351; Cole v Folami (1956) 1 FSC 66 at 69.

In fact in Adedeji v. Oloso (supra), this Court at page 416 had this to say Per Oguntade JSC:

"The trial Court was clearly wrong in granting to 2nd defendant a reprieve for the consequences at law attending upon his failure to plead and testily as to the name of persons who witnesses the sale transaction and the handing over of the land. Even if such witnesses were dead and could not be called as witnesses, the obligation to plead their names and testify concerning them was not removed. It was the particularity with which their names and description were pleaded and given in evidence, that would assist the Court in determining whether the evidence was credible. It seems to me that in the circumstances, the inevitable conclusion to be arrived at is that the 2nd defendant failed to prove that the land was sold to his father under customary law."

It would appear to me, that even though the appellant claimed that the purchase of the land he made was done under the customary or native law, the procedure of the purchase he made fell short of the requirement under customary law which as of necessity must be fulfilled or complied with. To my understanding, by introducing the agreement i.e Exhibit A, which is a sort of deed of conveyance, the transaction was meant to be governed or made under English Law rather than under native law and custom. The form and style adopted in drafting Exhibit A is clearly meant to be a deed of conveyance akin to English law. Again, the appellant's failure to trace the root of his possession under customary law in his pleading knocks the bottom of the fact that he acquired the land in dispute under native law and custom. He also failed to plead the name of witnesses that handed over the possession of the land after the customary acquisition of same.

This brings me to Exhibit A on which this appeal virtually revolves. As I remarked supra, the appellant tendered Exhibit A as his sole root of title to the land in dispute. The trial Court admitted such document at the proceedings despite vehement opposition to its admissibility by the respondents because being a registrable instrument, it was however not so registered. There is no gainsaying, that Exhibit A is more or less a deed of conveyance in all its ramification, since it was tendered by the plaintiff for the sole purpose of vesting title of land in dispute upon the plaintiff/appellant. The plaintiff/appellant however argued that Exhibit A did not require any registration. The question is, is Exhibit A an instrument that the law requires to be registered before it can be admissible in evidence? Section 2 of Land Registration Law of Kwara State, defines an "instrument" to mean as follows:-

A document affecting land in Kwara State whereby one party (hereinafter called the "Grantor") confers transfers, limits charges or extinguish in favour of another party hereinafter called "Grantee”) any right title to an interest in land in Kwara State and includes a Certificate of Purchase and Power of Attorney under which any instrument may be executed but does not include a "Will."

Under Section 15 of the Land Instrument Registration Law of Kwara State, an unregistered document affecting land must not be pleaded and is not admissible. Even in a situation where it was pleaded, the trial Court is duty bound to strike out the paragraph(s) where it was pleaded and also where it was mistakenly admitted in evidence, the trial Court must expunge it since it has no any value evidentially. See Ossai v. Nwajede (1975) 4 SC 2007.

In the instant case, there is no doubt that considering the purpose Exhibit A was tendered and relied upon, it satisfies the meaning of an instrument, contrary to the view held by the appellant's learned counsel. Therefore in order to have any evidential value, it ought to have been registered by the appellant. Failing to be so registered under the relevant law, it is automatically rendered inadmissible for the purpose it was meant by the plaintiff/appellant as stated above.

It is trite and in fact well established and settled law, that instrument that are registrable but were not so registered, are still admissible in evidence IF ONLY it was meant to serve the purpose of evidencing payment of purchase price or fees but certainly not for the purpose of creating or establishing title to a land. A registrable instrument which has not been registered is also admissible ONLY to establish or prove equitable interest or to prove payment of purchase of money. See Savage v. Sorrough (1937) 13 NLR 141; Ogunbanibi v. Abowab (1951) 13 WACA 22; Okoye v. Dume Nig Ltd & Ors (1985) NWLR (Pt. 4).

However, non registration of a registrable instrument renders such instrument inadmissible as evidence in a litigation, as in this instant case, where such instrument i.e [Exhibit A] is relied upon as evidence of acquisition of title. See Abdallah Jammai v. Said & Fetuga 11 NLR 86; Elkali & Anor v. Fawaz 6 WACA, 272; Coker v Ogunye (1939) 15 NLR 57; Ogunbammi v. Abowab (supra); Amankra v. Zankley 364.

It is noted by me that the appellant was piqued by the lower Court's revolve to delve into the admissibility of Exhibit A even though there was no appeal by the respondent on the admission of the said exhibit by the trial Court before the lower Court at interlocutory stage and no ground of appeal was raised on that. However, by mere looking at ground No. 2, it was couched in such a way that the appellant tendered and relied on Exhibit A as the sole root for his claim for declaration of title to the land in dispute. To my mind, the lower Court was entitled to refer to the document and determine its admissibility and to also determine its evidential value. As I said earlier, the said exhibit i.e Exhibit A is a registrable instrument which was not registered as required by law as rightly found by the Court below. It is therefore not admissible evidence to prove title to the land in dispute as claimed by the plaintiff/appellant. Rather, it can only be of evidential value, if and only if it was aimed at proving payment of money for purchase of land but is certainly not admissible to prove claim of title to land as done by the appellant, as rightly held by the lower Court.

Now, since the appellant's claim of title to the land in dispute was solely predicated on the unregistered exhibit and not on nothing else, the plaintiff/appellant can not be said to have proved his claim for title before the trial Court as rightly found by the Court below. From the evidence led by the parties at the trial Court, one can say that the Court below is correct in upturning or reversing the decision of the trial Court in giving title to the disputed land to the plaintiff/appellant. The lower Court's decision is therefore flawless and unassailable. The sole issue for determination is therefore resolved in favour of the respondents against the appellant herein.

On the whole, the resultant effect of all that I have posited above, is that this appeal is devoid of any merit. It therefore deserve to be dismissed and is hereby so dismissed. The judgment of the Court below is hereby affirmed. Appeal is dismissed. I make no order on costs.

**OLABODE RHODES-VIVOUR, J.S.C.:**

I have had the advantage of a preview of the leading judgment just read by my learned brother, Sanusi JSC. I agree with it fully.

Appeal dismissed.

**CLARA BATA OGUNBIYI, J.S.C.:**

I have had the privilege of reading in draft, the lead judgment of my learned brother Sanusi, JSC. I agree that the appeal lacks merit and should be dismissed.

This appeal originates from the judgment of the Court of Appeal, Ilorin Judicial Division delivered on 2nd March, 2006 whereby the lower Court allowed the appeal of the respondents and set aside the judgment of the trial High Court.

The appellant herein was the Plaintiff at the Court of first instance, while the respondents were the defendants, in a claim for declaration of title to land and damages for trespass.

In his judgment on the suit, the learned trial judge ruled in favour of the appellant for declaration of title to land as claimed and awarded N20,000.00 (Twenty Thousand Naira) general damages.

The respondents appealed against the judgment to the lower Court and same was allowed unanimously. The appellant is now dissatisfied with the decision of the Court of Appeal and hence the appeal now before us.

The only surviving issue for determination is similar by both parties and if raises thus:-

Considering the pleadings and evidence placed before the trial Court, whether the lower Court was right in the decision that the learned trial judge was not justified in granting the appellant’s claim to declaration for title to the land in dispute.

It is submitted on behalf of the appellant that, having established his root of title, the burden cast upon the respondent is substantial and it is difficult, if not impossible, for the respondents to be declared as the owners of the land in dispute. Counsel submits also that the lower Court has been in misapprehension as to the onus of proof and a misdirection of costing the onus on the appellant instead of the respondents. The consequential effect, counsel re-iterates is a miscarriage of justice. The learned counsel cites in support the case of Onobruchere V. Esegine (1986) 1 NWLR (Pt.19) page 799 at 807 also the case of Bello Isiba & Ors V. J. T Honson & Anor (1967) 1 All NLR page 8.

It is submitted strongly on behalf of the appellant again that, as plaintiff before the High Court, he did creditably and convincingly proved his ownership of the land by several acts of ownership and possession of the land in dispute. Copious reference was made to Paragraphs 2, 3, 4, 5, 6, 8 read together with Paragraph 9 of the statement of claim at pages 28 and 29 of the record. Also and in support is the evidence by PW4 at page 56 of the record which learned counsel argues was further supported by PW5 in his evidence at page 57 of the record.

Counsel, in summary, argues that the lower Court wrongly placed premium on the supremacy of the conveyance in determining this case.

In submitting on behalf of the respondents, it was argued that the Court below was right when it unanimously set aside the judgment of the trial Court on the premise that, having regard to the pleadings and evidence before the learned trial judge, the award of a declaration of title to land ought not to have been made in favour of the appellant.

The case of the appellant as made out in the trial Court was that he purchased the land in dispute by virtue of Exhibit ‘A’. It is on record as borne out on the pleading that the appellant specifically pleaded Exhibit ‘A’, as his root of title.

With reference made to Paragraph 8 of the statement of claim, at page 29 of the record, this is what the appellant said:-

"The plaintiff says that upon the death of Bello Gambari, the disputed land by custom and tradition devolved on Mallam Onoyiola Iyanda of Olomooba Compound Itakure, Ilorin who was a direct descendant of Bello Gambari who exercised acts of ownership on the disputed land until sometime 1976 when by an agreement dated 10th August, 1976 the said Mallam Omoyiola Iyanda sold the disputed land to the plaintiff. The said agreement is hereby pleaded and will be found upon at the trial of this suit." (Emphasis provided).

The law is trite and well established that parties are bound by their pleadings. One cannot go outside his/her pleadings but must be confined there within. No Court can also make a case for a party. See Emegokwue V. Okadigbo (1973) 4 SC 113; and Williams V. Williams (1974) 10 SC 237.

As rightly submitted by the learned respondents’ counsel, the appellant and his witnesses were unanimous that he (the appellant), acquired the land in dispute through ‘Exhibit A’ and nothing more.

The appellant himself testified in that respect, as PW1 whereby under Examination in Chief at page 52 of the record, had this to say:-

"I bought the land from a man called Omoyiola Iyanda Olomooba of Itakure, Ilorin. It is about 35 plots of land. I have agreement paper that I bought this land."

Also under Cross Examination at page 54 of the record, the appellant said:-

"Apart from Exhibit 'A' , I don't have any other document and I have those who will witness to that document Exhibit 'A''."(Emphasis is provided).

To corroborate the appellant’s evidence as PW1, are also the testimonies of PW2, PW3, PW4 and PW5 at pages 55, 56 and 57 of the record respectively, wherein the appellant and his witnesses were in one accord and consistent in tracing his roof of title to Exhibit ‘A’ and nothing else.

In other words, and as rightly submitted on behalf of the respondent, the "latter-day claim” by the appellant that the land in dispute was sold to him under, and by virtue of Native Law and Custom, cannot hold water. The said claim has no foundation. This was as rightly stated by the Court below at page 128 of the record of appeal.

The Principle of law is very well established and succinct that a party will not be permitted to set up on appeal, a case different from that which he canvassed at the Court of trial. See Dagaci Dere V. Dagaci Ebwa (2006) 7 NWLR (Pt 979) Pages 382 at 420-421; Ukpong V. Commissioner for Finance (2006) 19 NWLR (Pt.1013) page 187 at 221. The claim by appellant that the land was sold to him under Native Law and Custom is not sustainable in the circumstance.

My learned brother Sanusi JSC, has dealt comprehensively with the lone issue raised. With the few words of mine therefore and also adopting the lead judgment as nine, I hereby dismiss this appeal as lacking in merit in terms of the lead judgment. I further adopt the order made as to costs.

**CHIMA CENTUS NWEZE, J.S.C.:** I had the advantage of reading the draft of the leading judgment which My Lord, Sanusi, JSC, just delivered now. I agree with His Lordship that the appeal being unmeritorious ought to be dismissed.

My Lords, speaking for myself, I am greatly depressed that in 2017, counsel who practise regularly in our superior Courts in Nigeria could betray their misconception of such prerequisites as the requirements for sale under Customary Law: an issue which this Court has elaborately dealt with in numerous cases. Ogunbambi v. Abowaba 13 WACA 222, 225; Cole v Folami [1956] SCNLR 180; Akingbade v. Elemosho (1964) 1 All NLR 154; Erinosho v Owokoniran (1965) NMLR 429; Ajadi v. Olarenwaju (1969) LPELR - 25566 (SC) 10 -11; Odufuye v. Fatoke (1977) 4 SC. 11; Folarin v. Durojaiye (1988) 1 NWLR (Pt. 70) 351; Igbokwe v. Nlenchi (1996) 2 NWLR (Pt. 429) 185; Odusoga and Anor v. Ricketts (1997) LPELR-2256 (SC) 16; D-G; Adedeji v. Oloso and Anor (2007) LPELR-86 (SC) 22; A-E and so on.

Be that as it may, I now take the liberty to re-state these prerequisites for a sale of land under Customary Law. These are that: in addition to the payment of the agreed consideration; the transaction must have been concluded in the presence of persons who also witnessed the actual handing over of the land sold. Cole v Folami (supra); Akingbade v. Elemosho (supra); Erinosho v. Owokoniran (supra); Ajadi v Olarenwaju (supra). There is the requirement that the names of such witnesses and the facts of their having witnessed the sale transaction and the handing over of the land to the purchaser must be pleaded and evidence adduced thereon. Folarin v. Durojaiye [1988] 1 NWLR (Pt. 70) 357; Igbokwe v. Nlemchi [1996] 2 NWLR (Pt. 429) 185; Ogunbambi v. Abowaba (supra); Odusoga and Anor v Ricketts (supra).

Regrettably, although the appellant failed to plead and prove these requirements the trial Court found in his favour. Happily, the lower Court intervened to correct this anomalous decision. I endorse its decision setting aside the unsupportable conclusion of the trial Court. Accordingly, I find that this appeal must be, and is hereby dismissed for lacking in merit. Appeal dismissed.

**PAUL ADAMU GALINJE, J.S.C.:** I have had the privilege of reading in draft, the judgment just delivered by my Learned brother, Amiru Sanusi JSC and I agree with the reasoning contained therein and the conclusion arrived thereat. The facts of this case are elaborately set out in the lead judgment there is therefore no need to set them out here. From the evidence available in this case, the Appellant's claims at the trial Court are predicated on Exhibit A, which is the agreement evidencing the transaction between the Appellant and the vendor, who sold the land to him. By Section 2 of the Land Registration Law, Cap. 83, Laws of Kwara State 1994, Exhibit A is inadmissible as it is one of the documents that ought to have been registered, but was not registered as required by Section 15 of the Law. Exhibit A was wrongly admitted in evidence and the Court of Appeal was right when it discountenanced the said exhibit. In absence of Exhibit A, the Appellant's claims have no legs upon which they can stand.

The appeal is clearly unmeritorious and same is dismissed by me as well. The judgment of the lower Court is hereby affirmed.