



THE CONTROVERSY WITHIN: CONFLICTING JUDGMENTS OF THE SUPREME COURT OF NIGERIA ON ADMISSIBILITY OF UNREGISTERED REGISTERABLE INSTRUMENT

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ABSTRACT: This article examined the state of the Nigeria law concerning the effect of non-registration of a registrable instrument affecting land, as required by the Registration of Land Instrument Law of the components states within the Nigerian Federation. Through the lens of the Supreme Court's approach to the interpretation of the respective land instrument registration law of the state, the paper revealed that the courts looked beyond the Registration of Land Instrument Law itself to arrive at the just and equitable decisions. The paper revealed that there are two contradictory judgements from Supreme Courts, in one, the Supreme Court overruled its previous decisions on constitutional ground arguing that since the 1979 and the 1999 Constitutions the power of the component states from legislating on matters relating to the Evidence Act and the admissibility of evidence in any proceedings before the court had been expunged. In the second case, however, the Supreme Court restored the previous position of the law, without any reference to the first case that was decided by the full court of the apex court. Also in the latter case, the Supreme Court failed to examine the constitutional effects of the 1979 and the 1999 Constitutions of the Federal Republic of Nigeria on the admissibility of such unregistered registrable instrument. The paper built upon these works of writers like Shannon, Kaminker, and Lee to explore on the adequacies and otherwise of the court's decision and to provide a roadmap that would form the compass to navigate the precedential problems engendered by the two contradictory decisions of the Nigerian apex court. The paper goes on to analyze the decisions and revealed that despite the contradictory judgments of the court, the interest of justice had not been obliterated. The paper concluded that the apex court should be more forthcoming to set aside its previous decision when the interest of justice so demand, Nigeria being a federation practising the presidential system with characteristical constitutional supremacy rather than the Westminster model with parliamentary supremacy.

KEYWORDS: Controversy, Conflicting, Judgments, Nigeria, Admissibility, Unregistered, Registerable, Instrument.

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1.0 INTRODUCTION

This paper examines the contradictory judgments of the Nigerian Supreme Court in respect of the legal effects of unregistered registrable instruments affecting land. This is with special regards to the Land Instrument Registration Laws enacted by the component states within the federation of Nigeria. The Land Instrument Registration Law itself is one of the received laws of England incorporated into the Nigerian legal system. This paper examines the previous authorities on the matter and the important cases from the Nigeria Supreme Court. In one of the cases, the full panel of the Supreme Court had overruled the past authorities of the court. However, the most recent case contradicted the first case without expressly overruling the first one. Hence the problem of contradiction with the attendant legal complication as per which of the precedent to follow by the lower court. This paper examined the approaches of the apex court on the legal and equitable effect of non-registration of a registrable instrument affecting land concerning the establishment of title to land, and second on the purchaser who is using such unregistered instrument to establish the existence of transaction, payment and possession of the land.

The paper analyzed the previous decisions of the court, its nascent decisions, how the lower court could navigate the problem of which of the precedents it should follow from the contradictory decisions of the Supreme Court, how the courts could create effective stumbling blocks on the move by fraudulent vendors to deny their agreement, examines the important principle of *stare decisis*, the circumstance where the Supreme Court could overrule its previous decisions, and the views of eminent jurists against the background of the standard practice in England. The focus here is the jurisprudential explanation of the fact that the courts oscillate between the positional standpoints of the positivist legal theory and the natural law school theory. Eventually, despite the contradictory judgments of the Supreme Court of Nigeria bothering on the explanation of what the 'law is' and what the law 'ought to be', the courts were able to navigate the legal quagmire without obliterating the interest of justice.

2.0 Discussions on legal issues

In the case of *Moses Benjamin v Adokiye Kalio*²; the appellant commenced the action in the River States of Nigeria, claiming declaration of title to a parcel of land known as Awoka farmland in the Abuloma Town in Port Harcourt. The appellant claimed to be in exclusive possession of some land by inheritance from their ancestors as the founder of Abuloma Town.

The respondent did not dispute the root of title as stated by the appellant but claimed that the title to the disputed land had been vested in them since 1979, having been sold to them by the appellant's family who since then had ceased to exercise any ownership rights on the disputed parcel of land. Consequently, the respondent absolute rights on the disputed parcel of land. The respondent tendered in evidence the survey plan and the deed of conveyance evidencing the transaction which the trial court admitted as exhibit 'L' upon the finding that it was properly pleaded.

Moreover, it was part of the case of the respondent that they and the appellant have gone before and subjected themselves to the Customary Arbitration before the Abuloma Council of Chiefs, who decided that the appellant family had sold the disputed land to the respondent, whilst at the same time, the Council of Arbitrators pleaded with the respondent to allow the second appellant to remain on the portion he had encroached into and to which he had built a house thereon. It is worthy of note that the continual trespass and encroachment was the issue decided by the Council of Arbitrators and the decision of the council was accepted by the Appellant/Plaintiff. The first witness stated in evidence that the

²(2018) 15 NWLR, pt 164, pp.40-59.

decision of the Council was accepted by the Plaintiff, now Appellant. The defendant's witness, who was a member of the appellant's family as secretary and the chairman also confirmed the acceptance of the Council's decision by both parties and the family gave further testimony in court confirming the authenticity of sale to the respondent via two transactions.

The trial court dismissed the claim of the appellant and gave judgment for the respondent. Dissatisfied with the judgment, the appellant appealed to the Court of Appeal. The Court of Appeal also affirmed the judgment of the trial court. Aggrieved by the findings of the trial court and the Court of Appeal, the appellant finally appealed to the Supreme Court.

The most important issue before the Supreme Court is whether the respondent had proved its case at the trial Court and the Court of Appeal that further affirmed the decision of the Trial Court based on the sub-issue whether Exhibit 'L' the unregistered deed of conveyance, been a registrable land instrument, but allegedly unregistered under the provisions of the River State Land Instrument (Preparation and Registration) Law, cap. 74, 1999, was admissible in evidence. According to Eko JSC, who delivered the lead judgment of the Apex court, it was that issue that propelled the convocation of the full court to hear and determine this appeal from the concurrent findings of the trial court and the Court of Appeal³.

Meanwhile, before we address the decision of the Nigeria apex court in this regard there are two strands on the judgments of the Supreme Courts on this issue, one bothered on the legal effect of the unregistered registrable instrument and the other touches on the equitable effect of the document.

The first set of cases that touches on the legal effect of an unregistered registrable instrument are *Ojugbele v Olasoji*⁴, *Akintola v Solano*⁵, *Shittu v Fashade*⁶, *Akinduro v Alaya*⁷, where the apex court decided that an unregistered document or instrument is not admissible to prove title and that where it was wrongly admitted in evidence to prove same, it should be expunged from the evidence together with all the findings of the lower courts found on it. In line with the above, the Supreme Court in the case of *Ogbinn v Niger Construction Ltd*⁸. Also held that a registrable land instrument not registered per the law requiring registration of registrable land instrument is rendered inadmissible in evidence, and if erroneously admitted in evidence, it shall be liable to be expunged.

Oputa JSC, sitting in the Supreme Court cited with approval the earlier decisions of the Supreme Court in the case of *Ojugbele v Olasoji*⁹, in the case of *Akintola and Anor v Solano*¹⁰ that:

It is trite law that by S. 16 of the Land Instruments Registration Law (of Oyo State) a registrable instrument which is not registered cannot be pleaded. The action may precede registration, but pleadings cannot precede registration of the instruments.

³ *Benjamin v. Kalio, Supra*

⁴ *Ojugbele v. Olasoji* (1982) 4.sc. p. 31.

⁵ *Akintola v. Solano*

⁶ *Shittu v. Fasawe*⁶2006) ALL FWLR pt 946 p. 671 at p. 690 – 691.

⁷ *Akinduro v. Alaya* (2007) 15 NWLR (pt 1057) at p. 312-330.

⁸ *Ogbinn v Niger Construction Ltd*(2006) SC 271/2001.

⁹ (1982) 4SC. at p.31.

¹⁰ (1986) 4SC. at p.141.

In contrast, the Supreme Court also decided on the position at equity relating to an unregistered registrable instrument in the cases of *Edokpolo & Co. Ltd v Ohenhen*¹¹ and *Anyabunsi v Ugwunze*¹² in supportive of the doctrine of *stares decisis* and stated that it is well settled that unregistered instrument is certainly admissible to prove payment of money and coupled with possession might give a right to an equitable interest enforceable by specific performance.

In dealing with the factual situations of this case, Eko Jsc delivering the lead judgment viewed the case from legal and equitable points of view, and decided not to restrict it to the issue of the unregistered document alone. To properly deal with this case, the apex court pays attention to other grounds for proper adjudication of the disputes which it considered as:

- i. The condition under which the Supreme Court would set aside the concurrent findings of the lower court and the trial court.
- ii. Whether it is an immutable rule that proof of transaction shall be evidenced by receipts.
- iii. Whether the defence put forth by the defendant was compact, consistent, and undiscredited that the appellants sold the disputed land to him.
- iv. then whether a party who willingly submitted to customary arbitration could resile out of it and the effect of that voluntary submission and
- v. Whether evidence admissible under the Evidence Act could be rendered inadmissible by the law enacted by the State House of Assembly given the present constitutional dispensation.

2.1 The Conditions under which the Supreme Court would Set Aside the Concurrent Judgments of both the Lower Court and the Trial Court

In *Kalio's case*, Eko JSC elicits certain conditions under which the Supreme Court would set aside the concurrent findings of both the Court of Appeal and the trial court, to wit¹³:

- i. Where the appellants had shown that the concurrent findings of fact made by the trial court and the lower court are perverse and unreasonable.
- ii. That a miscarriage of justice had been occasioned by the concurrent findings.
- iii. That there was a serious violation of substantive law or procedural law that propelled the perversity.
- iv. That the findings do not flow from the evidence adduced by the parties.

The Supreme Court observed that the appellant failed to show that the concurrent findings of the lower court and the trial court are perverse. To demonstrate the perversity, the defendant ought to show that both courts have shown their deliberate and obstinate desire to deviate from acceptable standard or practice. The defendant, in this case, failed to show this.

Also, the Supreme Court per Eko JSC, therefore, observed that¹⁴:

- i. The appellant had made so much fuss about the identity of the disputed land.
- ii. They claimed that exhibit 'L' i.e. the deed of conveyance refers to Abuloma 'L' land, which was clearly distinct from Awoka land'.

¹¹(1994) 7 NWLR (pt 358) at p.511.

¹²(1995) 6.NWLR (pt 401) p. 255.

¹³Benjamin v. Kalio, Supra.

¹⁴Benjamin v. Kalio, Supra.

- iii. But the court adroitly discovered that both parties respectively called the land Awoka or Abuloma land, but the truth of the matter being that the land is referred to as Awoka Farmland and situate in Abuloma. Hence, the fact remains that the calling of the land as either Awoka land or Abuloma land does not change the geographical location of the land as revealed in its survey coordinates.
- iv. That the appellants employing the distinction in names as a mere hair-splitting gimmick to enable the appellants to get away with a skillfully crafted mischief.

To this extent, therefore, viewing from the background as revealed in the factual situations of this case, the Supreme Court per Eko JSC stated thus¹⁵;

The appellant have not shown that the concurrent findings of fact made by the trial court and the lower court are perverse and unreasonable. Neither have they shown that any miscarriage of justice had been occasioned by the concurrent findings. The attitude of this court to concurrent findings of fact by the lower courts is well settled. This court will only interfere with such concurrent findings when the appellant show special circumstances by establishing either that there was a miscarriage of justice or serious violations of some principle of substantive law or procedure, or that the findings are perverse or the finding does not flow from the evidence adduced by the parties¹⁶.

2.2 Whether the Defendant's Defence is Compact, Precise and Undiscredited

In this respect, the question that agitated the mind of the Supreme Court relates to the compactness, preciseness of the defendant's defence as to whether the defence put forth by the defendant unequivocally shown that the appellant sold the land in dispute to the defendant. The Supreme Court discovered affirmatively and evinced that the defence in this respect remained undiscredited that the appellant sold the land to the defendant.

2.3 Issues on Receipt alone as Sufficient prove of Transaction and Effect of Submission to Customary Arbitration

Efforts by the appellant to persuade the apex court by contending that the respondent never produced a receipt to show evidence of payment and purchase was rebutted by the court. In this respect and in supportive of that, the appellants fastidiously relied on the rule in *Fasoro v. Beyioku*¹⁷. The Supreme Court per Eko JSC was unimpressed by the appellant's attempt to confuse the court, rather than to convince the court by correct, compact and precise undiscredited evidence. The syllogistic decisions of the Supreme Court on this position could be stated thus;

¹⁵ Supra at p. 54

¹⁶ See, Enang v. Adu (1981) 11-12 SC. P. 25 at p. 42; Lokoyi v. Olojo (1983) 8 SC. Pt 61 at p. 73. Ojomu v. Ajao (1983) 9SC. Pt 22 at p. 53.

¹⁷ (1988) 2 NWLR (pt 76) at pp. 263 esp at 273 pg. E-F.

- i. That it is not an immutable rule that proof of transaction shall only be by production of receipts as evidence of payment.
- ii. The trial court and the lower court had sufficiently established that the appellant sold the parcel of land and transferred their interest thereto to the respondent.
- iii. That the rule in *Fasoro v Beyioku*¹⁸ is to the effect that where a party pleads his root of the title based on sale or conveyance, he must prove either the sale or conveyance.
- iv. That the rule in *Fasoro v Beyioku*¹⁹ is not an authority for the proposition that production of a receipt for the purchase price is the only means by which the transaction, sale or conveyance could be established.
- v. On whether the parties' submission to customary Arbitration has the effect of estoppel. The Supreme Court held that since both the appellant and the respondent had voluntarily submitted to the customary arbitration of the Abuloma Council of Chiefs for the arbitration of their dispute and more so since the verdict was acceptable to them, it is no longer open to any of them to resile the verdict pronounced by the arbitration. According to Eko JSC²⁰;

*The appellant is now estopped from resiling out of the decision of the Abuloma Council of Chiefs which they voluntarily submitted their disputes with the respondent to and agreed to accept the verdict of. Apart from this specie of estoppel operating as estoppel per rem judicata, it also operates as estoppel by conduct by virtue of S. 150 of the Evidence Act 1990 (now section 169 Evidence Act 2011)*²¹.

2.4 Whether Evidence Admissible under the Federal Act could be rendered inadmissible by the State enactments.

The starting point for answering the above question before the Supreme Court is whether the unregistered registrable instrument is admissible or not admissible to prove title to land. In this regard, Eko JSC restated the fact that it is against the background of this poser, that the full court of the Supreme Court had to be constituted to consider this matter. His Lordship delivering the judgment of the Supreme Court considered the following legal issues;

- i. The position of the Evidence Law vis-à-vis the constitutional development in Nigeria from 1963.
- ii. The position of the Evidence Act vis-à-vis the 1979 Constitution to date.

According to the court, under the 1963 Constitution, evidence was not under the exclusive legislative list. Under that constitutional arrangement, both the federal legislative and the regional or state legislatures re-enacted the 1945 Evidence Ordinance as Evidence Act and Evidence Law respectively. However, in 1979, the situation completely changes, as the Evidence Act was brought wholly into the Exclusive Legislative list as item 23. It remains so that only the Federal Government has legislative competence to legislate on the Evidence Act to the exclusion of all other states within the Federation.

¹⁸ Supra

¹⁹ Supra

²⁰ Supra at p. 54 of the judgment.

²¹ Sec Oparaji v. Ohann (1999) a NWLR (pt 618) at p. 290.

Item 23 of the exclusive legislative list in part 1, in the second schedule of the 1999 Constitution of the Federal Republic of Nigeria by virtue of its sections 4(3) and 5 (as amended) states unequivocally that:

(3) The power of the National Assembly to make laws for the peace order and good government of the Federation with respect to any matter included in the exclusive legislative list shall save as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of the states.

(5) If any law enacted by the House of Assembly of a state is inconsistent with any law validity made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.

Meanwhile, the appellants had contended before the Supreme Court that the conveyance which the respondents relied on to prove their case was an unregistered registrable instrument and void by S. 20 of the Land Instruments (Preparation and Registration) Law, cap 74, Laws of Rivers State, 1999 which 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.

Meanwhile, under the Evidence Act, the basic test for the admissibility of any evidence in courts is its relevance. Once the evidence is relevant to the fact in issue, it is admissible. Also, it is trite law that constitutionally where the Federal Government is the only institution with legislative competence to legislate on any matter being on the exclusive legislative list, then any enactment from any other component states or unit on the same matter is null and void to the extent of its inconsistencies and of no effect. The underlying principle is that the constitution is the source from which all other law emanates. The underneath principle is that of the Supremacy of the law. Hence, the constitution is said to be the *fons et origo*; which implies that it is the source from which all other laws derive their existence. It is the life of any other law akin to the source of a river. Thus, any such law deviating from its life source would cease to exist. To this extent, therefore, it is submitted that S. 20 of the Land Instruments (Preparation and Registration) Law, Cap. 74, Laws of Rivers State 1999 which rendered void any unregistered registrable instrument is in variance or at odd with S. 4(3) and 5 of the 1999 Constitution which is *in pari materia* with S 4(3) and 5 of the 1979 Constitution of the Federal Republic of Nigeria and is therefore void to the extent of its inconsistencies. It is therefore against this background that the Supreme Court unanimously held that;

- i. The intent of section 4(3) and 5 of the 1999 Constitution is that the State Houses of Assembly are precluded and prohibited from enacting any laws on the Evidence Law.
- ii. Admissibility of evidence in the proceedings before the law courts in Nigeria is within the purview of the Evidence Act, which is an enactment of the National Assembly and solely within its legislative competence.
- iii. S. 20 of the Registration Instrument Law Cap 74, Laws of River State had purportedly enacted a piece of legislation on Evidence.

- iv. The legislative intent or purport of the above law emanating from the River State House of Assembly is categorical that any land instrument which is not mandatorily registrable shall not be pleaded or given in any evidence in any court in Nigeria on a matter affecting land.
- vi. S.20 of the River State Law, Cap 74 which rendered a piece of evidence which is relevant, pleadable and admissible under the Evidence Act inadmissible is an act of legislative trespass into the exclusive list on the matter within the exclusive legislative terrain and competence of the National Assembly. Consequently, it is null and void to the extent of its inconsistency with the Evidence Act of the National Assembly, the constitutional provisions of item 23 in the exclusive legislative list and S. 4(3) (5) of the 1979 and the 1999 Constitutions of the Federal Republic of Nigeria respectively.
- vii. That accordingly, S. 20 of the said River State law cannot render Exhibit 'L' referred to as unregistered registrable instrument irrelevant, unpleadable and inadmissible in any court in Nigeria.

Eko JSC summed it up in the following dictum.

--- the argument of the appellant, that S.20 of the Land Instruments (Preparation and Registration) Law, Cap 74 of the Laws of Rivers State, has rendered exhibit L, a Land instrument unpleadable and inadmissible in the proceedings at the trial court and goes to nought. It does not fly in view of the current and prevailing states of the constitutional law. Admissibility of Exhibit 'L', is governed by Evidence Act, not the Rivers State Land Instrument (Preparatory and Registrative) Law, cap 74 a piece of evidence pleadable and admissible by dint of the Evidence Act cannot be rendered unpleadable and inadmissible in evidence by a law enacted by a state House of Assembly under the prevailing constitutional dispensation.

In the case of *Benjamin v Kalio*²², under consideration, Eko JSC, invoking the equitable jurisdiction of the court stated admirably that:

*Even if S. 20 of the River State Law, cap 74 were applicable in the circumstances of this case, I will still rule in favour of the position adopted by the respondents that an unregistered registrable land instrument is admissible in evidence to prove, not only the payment and receipt of the purchase price but also the equitable interest of the purchaser in the subject land. That has been the entrenched position in jurisprudence, until evidence was lifted into the exclusive legislative list in the second schedule to the constitution*²³.

²² Supra, see also *Savage v. Sarrough* (1937) 13. NLR p. 41. *Ogunbambi v. Abowab* (1951) 13.WACA. P.22. *Fakoya v. St. Paul's church Shagamu* (1966). All NLR.P. p71. *Oni v. Arimoro* (1973) 3. SC. P. 163. *Bucknor-Maclean v. Inlaks* (1980) 8-11. SC p.1. *Okoyer. Dumez (Nig) Ltd.* (1988)1 NWLR (pt4) p. 783.

²³ (2019) LPECR- 47384 (SC) 132/2013

2.5 The Contradictory Judgment of the Supreme Court in *Jubrilah Abdullahi v Christiana Adetutu*.

It is therefore against the background of the above epoch-making decision of the full court of the Supreme Court of Nigeria, which overruled the age-long decisions of the court that unregistered registrable instrument is inadmissible in evidence, void and of no effect that this paper considered the recent decision of the Apex Court in the case of *Jubrilah Abdullahi and Ors v Christiana Adetutu*²⁴ which decision let loose raging controversies in the academic which centres on the followings.

- i. That this decision of the Supreme Court had sweepingly overruled the decision of the court in *Benjamin v Kalio*²⁵.
- ii. That the decision handed down by the Supreme Court had overruled by implication the decision in *Benjamin v Kailo*²⁶.
- iii. That the judgment of the Supreme Court has not overruled the decision of the Supreme Court in *Benjamin v Kalio*²⁷ and that since the Supreme Court has not expressly overruled its former decision in *Benjamin v Kalio*²⁸ nor made reference to it at all in its latter judgment, the decision of the court in *Benjamin v Kalio* remains the law.
- iv. That the decision in *Benjamin v Kalio*²⁹ cannot stand given the 'Leges Priores rule' that latter laws abrogates former laws before it. This rule is inherent in the maxim *Leges Posteriores Priores Contrarias Abrogant*.
- v. That the decision in *Benjamin v Kalio*³⁰ and that of *Jubrilah Abdullahi v Christiana Adetutu*³¹ are distinguishable and therefore the latter could not be said to overrule the former.

It is therefore against the background of the above controversies that we considered in detail the factual situations of the latter decision of the Supreme Court in the case of *Jubrilah Abdullahi v Christiana Adetutu*³². We submitted in this paper that the factual situations of the two cases and the decision of the Apex court in both are distinguishable.

The scenario of the case of *Jubrilah Abdullahi v Christiana Adetutu*³³ is as follows. In that case, Alhaji Jubrilah Abdullahi commenced a suit on January 29, 1993, in suit No. ID/216/93 as the Plaintiff in the High court of Lagos against the defendants Mrs Christiana Adetutu and AlhajiTijaniSanni. The plaintiff first, seeks relieves against the defendants is for a declaration that he is the person entitled to a statutory right of occupancy in respect of land situate, lying and being at Onipetesi, Idi-Mango, Agege, Lagos State, which land is more particularly described and delineated on Survey Plan No. AB/LA/86/311, prepared by I.A. Babalola, a licensed surveyor on the 23rd day of September 1986; second, special and general damages for trespass being committed by the defendants who recently have been harassing and disturbing the possession, occupation and control of the vast area of land by the plaintiff, and third, perpetual injunction restraining the defendants, their servants, agents and privies from continuing with their acts of molestation and harassment of the plaintiff, his servants, agents, and or privies of the land in dispute.

²⁴ Supra

²⁵ Supra

²⁶ Supra

²⁷ Supra

²⁸ Supra

²⁹ Supra

³⁰ Supra

³¹ supra

³² Supra

³³ Supra

In proving his root of title, the plaintiff claimed that one BisiriyuAdetokunbo, had only 37acreas of the land and that the entirety of this land devolved on him by *Idi Igi* method of distribution, out of which he sold 3 portions of the land to other persons. From the onset, the plaintiff is therefore claiming a declaration of title as owner by inheritance. While the plaintiff's case in suit No ID/216/93 was *Lis Pendens*, the defendants commenced another suit No IS/855/93 against RasheedAdetokunbo and James Ojo, who are the fourth and fifth appellants at the Supreme Court. The relieves sought by the defendant are; a declaration that she is entitled to the statutory Right of Occupancy in respect of the land situate, lying and being at Onipetesi, Agege, Lagos, which is delineated on plan no CS 5/71 dated 2nd March 1971; annexed to the Deed of conveyance granted to her by AdetokunboBisiriyu, dated the 28th day of September 1971 and registered as of 55/55/1369. She further claimed special and general damages for trespass to the land committed by the defendants and for damages to and destructions of her plantation, cash crops, buildings, pieces of machinery, generator, wall-fence and iron gates on the land; and a perpetual injunction restraining the defendants, their servants, agents or privies from any further act of trespass on the said land. She claimed that the same vendor, Bisiriyu Adetokunbo who became the owner of the land in dispute sequel to distribution via the *Ori Ojori* system sold 4,908 acres to her. Facts revealed that the plaintiff in suit no ID/216/1993 relied on the following evidence:

- i. An unregistered 1969 Deed of conveyance.
- ii. A survey plan purportedly drawn in 1969 but signed and dated in 1986. The Survey Plan No. Ab/LA/86/311 and prepared by I.A. Babalola, a licensed Surveyor on the 23rd day of September 1986.
- iii. A purchase receipts issued before the conveyance that the vendor issued to the plaintiffs were tendered to prove their title.
- iv. Receipts which the vendor issued to none-parties, who purchased vendors car and lorry to prove the vendor's signature.

Meanwhile, the defendant relied on the following documents.

- i. A conveyance dated the 28th day of September 1971 and registered as No.55/55/1369 at the Lagos State Lands Registry.
- ii. Attached to the above conveyances, a Survey Plan No. CD/52/71 dated the 2nd day of March 1975 describing the land measuring 4.908 in dimension.
- iii. Pieces of evidence showing she was led in physical possession and occupation by the vendor and was instantiated accordingly by the establishment of a Poultry Farm comprising a Feed-mill, generator house, security house and plucking house etc. In support of the fact that these were so, she produced valuation documents in evidence. The documents established that the property was valued in 1977 and 1988. She averred that the appellant forcibly entered the land and destroyed all the properties on January 26, 1993.
- iv. PW 4 i.e. plaintiff witness No.4, testified that the defendant carried on poultry business on the farm between 1979 -1982.
- v. Evidence of payment of tenement rates on that property, via exhibits 9, 9A, 9D.
- vi. Evidence of payment of Electricity Bills dated back to 1979.
- vii. Documentary evidence showing insurance policy on the poultry farm.
- viii. The document evidencing the Building plan approval on the land.
- ix. Evidence of a threat of a lawsuit for the tort of Nuisance caused by the defendant's poultry farm by O.A. Omolodun Esquire among others.

Eventually, the two suits were consolidated. The trial court gave judgment for the defendant and held that the documents evinced by the plaintiff were unreliable and as the receipt was prepared in contemplation of lawsuit. The court also decided that the conveyance and the evidence adduced thereto were unreliable and could not be produced to prove title to land as an unregistered registerable instrument. Further, the court also flawed the survey plan that was purportedly claimed to be drawn in 1971 but signed in 1986.

The Plaintiffs appealed to the Court of Appeal changing his nomenclature to Plaintiff/Appellant and the appeal was allowed in part only on the quantum of damages while upholding the other judgments in favour of the defendant. Sequel to the judgment of the Court of Appeal, the plaintiff/Appellant finally appealed to the Supreme Court. At the Supreme Court, both the Plaintiff/Appellant and the Defendants/Respondents respectively promulgated seven issues for determination. But to accentuate the real issues in contention, ChimaCentusNwezeJsc, delivering the lead judgment of the Supreme Court reformulates the issues into three, considering the factual situations of this case. The formulated issues are to wit;

- i. Whether the refusal to visit the *locus in quo* by the trial court was fatal to the case.
- ii. Whether the lower court erred in law when it agreed with the trial court that the appellant documents, especially exhibit D8, was inadmissible.
- iii. Whether the lower court did not cause a substantial miscarriage of justice when it failed to consider issues canvassed by the appellant especially among others, the one related to the issue of fair hearing.
- iv. Whether the trial court failed to discharge its duties to ascribe value to the evidence put forth by the defendant.

On the issue of the trial courts non-visitation to the *locus in quo*, counsel for the appellants contended that on the land matter, there might be a pressing need for the trial court to visit the *locus in quo* to have a firsthand perception of the person in possession, since land is immovable property³⁴. In contrast, counsel for the defendants/respondents canvassed the argument that who was in physical possession at the time of the trial was irrelevant, more so when the Defendants/Respondents had complained about trespass which explained her seeking for injunctive relief from the court. It was further argued that the respondents had proved her case with credible evidence sufficient enough to evince that the property belongs to her as against the plaintiffs/Appellants incredible, weightless and contradictory evidence to prove their title.

The Supreme Court agreed with the concurrent findings of both the trial court and the lower court that; first, if there are two-person on land, ascertaining their claims on the land, the law is that be who owns a better title is in actual possession of the land; second, that the mere fact that the respondents adduced at the trial court overwhelming evidence, there were very cogent reasons to hold that the trial court none visitation to visit the *locus in quo* did not occasion a miscarriage of justice against the appellant; and third, the defendants/appellants have failed woefully to perforate the effervescence of the courts' concurrence findings to show that the decisions of the courts are perverse.

According to ChimaCentusNwezeJSC.;

*As it is well known, a decision is said to be perverse
when (a) it runs counter to the evidence, or (b) where it*

³⁴Umar v. Bayero University (1988) All.NLR p. 301.

ought not to have taken into account or short its eyes to the obvious; or (c) when it has occasioned a miscarriage of justice. The appellants failed to demonstrate the said concurrent findings³⁵ fall into any of these categories, and even, a visit to the locus in quo is not mandatory³⁶.

Glaringly, the approach of the court was to look at the factual situation of the case and distilled the legal issues as the premises, before dabbling to the real issue of the unregistered registrable instrument.

Meanwhile, the crux of the matter was whether the lower court erred when it agreed with the trial court that the Plaintiffs/Appellants' document of title precisely exhibit D8 was inadmissible. On this issue, learned counsel for the Plaintiffs/Appellants argued by impugning the view of the lower court that non-registration of exhibit D8 rendered it inadmissible under S.15 of the Land Instruments Registration Law of Lagos State by submitting that³⁷;

- i. That by their pleadings, documents and oral testimony at the trial court with additional cogent and compelling evidence that they purchased the land, combined with other documents that were tendered coupled with the fact that the appellants were led in effective possession by the original owner, Alhaji Jubrillah Abdullahi the first appellant at the Court of Appeal (now deceased) and continued acts of possession, it was apparent that the plaintiffs/appellant are the right owners
- ii. That the effect of the Plaintiffs/Appellant's instrument of title, coupled with physical possession had created an equitable interest in favour of the Plaintiffs/Appellant.
- iii. That the original first owner joined issue that he acquired his title in the land in dispute, by inheritance via *idig*³⁸ method of distribution in 1969 from one Bisiriyu Adetokunbo.
- iv. That the defendant/respondent on her part claimed to have purchased the land in 1971 from the same grantor Bisiriyu Adetokunbo.
- v. That by the above, equity of priority was in favour of the plaintiffs/appellants.
- vi. That since the land devolved to the Plaintiff/Appellant in 1969 whilst the defendant/respondent claimed to purchase the land from the grantor in 1971, at that time the grantor had got nothing to sell and the maxim *Nemo dat quod non-habet* applies.

The learned counsel or the defendant/Respondent canvassed the argument before the trial court that:

- i. The Defendant/Respondent purchased the land from Bisiriyu Adetokunbo in 1971 and tendered a conveyance in that regard.
- ii. That the conveyance was also registered as an instrument with registration number 55/55/1369 at the Lagos State Land Registry.
- iii. Survey Plan No. CD/52/71 was also tendered in evidence.
- iv. Evincing documentary evidence relating to occupation, the poultry farm building, valuation reports, building plan approval and electricity bills.
- v. That sequel to the purchase from the original grantor, the grantor led her into possession and remained in possession and permanent occupation of the land.

³⁵ Incar Ltd. v. Adegboye (1985) 2 NWLR .pt 8. P. 453. Atolagbe v. Shorun (1985) 4 SC. (pt.1) pp.250, 282.

³⁶ Iwuno 2 Ors. V. Dielia & Ors

³⁷ Plaintiff/Appellant counsel cited the following cases – Zaccala v. Edosa and Annor. (2018) 6 NWLR (pt 1616) pp 528-549. Nsiegebe v. Mgbemena (2007) 10 NWLR (pt 1042) pp. 268-294.

³⁸ Distribution to each of the wives such as what is given to each of the wives belongs to her and her children.

- vi. That her farm was forcefully intruded, entered and destroyed by the plaintiffs /appellants who destroyed the same on January 25, 1996.
- vii. That several issues were formulated by both parties one of which was who has the title to the land.
- viii. In its resolution of the issue, the trial court considered the purported deed of assignment tender as Exhibit D8 by the plaintiff/Appellant.
- ix. That the trial court first considered the question whether the plan attached to the conveyance was irregular and whether such irregularity affected the conveyance itself.
- x. That the trial court answered the question in the affirmative that how could a survey plan drawn in 1969, bore 23rd day of September 1986.
- xi. That on the issue of the receipts tendered by the plaintiff/appellant the trial court held that both were prepared in anticipation of lawsuits and therefore inadmissible.
- xii. Then the trial court turned to the issue of non-registration of the conveyance pursuant to the Land Instrument Registration Law of Lagos State and whether the said conveyance could be admissible to prove equitable interest in land.
- xiii. That the trial court held that:
 - a. The testimony given at the trial was unreliable for proving the authenticity of the conveyance.
 - b. That the conveyance was rendered inadmissible under the provisions of the land Instrument Registration Laws of Lagos State being an unregistered registrable instrument.

The Supreme Court upheld the judgment of the trial court as well as that of the lower court. ChimaCentusNweze, articulating the position of the Supreme Court stated thus:

The arguments under this issue are almost ubiquitous in land matters. I must note right away, that the admissibility or otherwise of an unregistered registrable instrument depends on the purpose of which it is being sought to be admitted An unregistered registrable instrument sought to be tendered for the purpose of proving or establishing title to land or interest in land, would be inadmissible under S.15 of the Land Instrument Registration Law. Such documents are derided as amorphous documents is not receivable evidence for the purpose of establishing any right, title or interest in the land being unregistered if it is, however, tendered to show that there was a transaction between the lessor and the lessees, it will be admissible as a purchase receipt. It will also be admissible If is in meant to establish a fact which one of or both parties have pleaded. Under these two conditions, such a document does not qualify as an instrument defined in the Land Instrument Registration Law.

From the judgment of the Supreme Court, the following positions of law court are distilled.

- i. That generally, the admissibility of an unregistered registrable instrument depends on the purpose for which it is sought to be used.
- ii. That if it is tendered to prove or establish title to land or interest in land, it would be inadmissible under the state land instrument registration law, in such circumstance it is derided as an amorphous document.
- iii. The effect of the above is that, by statute, it is inadmissible in evidence to establish title or interest in land.
- iv. However, there is the exception that where such document is tendered to show evidence of a transaction between a vendor and a purchaser, the lessor and the lessee, it is admissible upon showing evidence of payment and fact of possession.
- v. The second exception to the rule of inadmissibility is that it is also admissible to show or establish facts which one or both parties have pleaded.

The next issue considered by the court was whether the interest conveyed by the Plaintiff/Appellant's conveyance was void. The Supreme Court considered the fact that the trial court found as a matter of fact that the plan attached was dated 1986, the conveyance was dated 1969, that the dates on the two documents were un-identical and those discrepancies rendered the conveyance ineffective³⁹. The Supreme Court concluded that the conveyance could not convey any interest to the plaintiff/appellant more so as the document was rendered inadmissible being an unregistered registrable instrument.

2.6 Existence of Gulf Apparent in the Contradictory Judgments

With the decisions handed down by the Supreme Court in the case of *Jubrillal Abdullahi v Christiana Adetutu*⁴⁰; the vexing question is, how are we to be guided on the position of law as per the legal effect of an unregistered registrable instrument given the landmark decision of the Supreme Court in the case of *Benjamin v Kalio*⁴¹ where the Supreme Court posited that because of the present position of law, that is the Constitution of the Federal Republic of Nigeria from 1979 to date, an unregistered registrable instrument could be tendered in evidence since the Evidence Act is now under the exclusive legislative list. With this constitutional arrangement, it implies that no State law could prevent or exorcised the acceptance of such unregistered registrable instrument from being accepted by the court in evidence. Unfortunately, the Supreme Court in the case of *Jubrilla Abdullahi v Christiana Adetutu*⁴² did not make any reference to its previous judgment in *Benjamin v Kalio*⁴³. Consequently, the Supreme Court in the *Jubrilla Abdullahi's* case did not appraise the constitutional effect of that decision on the State Land Instrument Registration Law. The reason for this being that counsels in *Jubrilla Abdullahi's*⁴⁴ case did not make any reference to the court's earlier decision in *Benjamin v. Kalio*⁴⁵. Since it is the law that parties are restricted to their pleadings or bound to operate within the confines of their pleadings, the Supreme Court did not advert its mind to its important landmark decision in the case of *Benjamin v. Kalio*⁴⁶.

³⁹ Pages 494 – 495 of the record

⁴⁰ Supra

⁴¹ Supra

⁴² Supra

⁴³ Supra

⁴⁴ Supra

⁴⁵ Supra

⁴⁶ Supra

Meanwhile, the decision of the Supreme Court in *Jubrilah Abdullahi v Christiana Adetutu*⁴⁷ had taken us back to the old law that an unregistered registrable instrument is not acceptable in evidence to prove title to land and such amorphous document cannot confer any interest in land. It should be noted that this decision, however, retains the second league of the law that such a document could confer an equitable interest in land where the lessee or purchaser could prove first, evidence of the transaction, second, payment of money and third, the fact of having possession of the land. There is also the qualification that the person in possession at law must be the party with cogent, precise and better documents of title.

However, the cardinal issue in the *Jubrilah Abdullahi's*⁴⁸ case centred on the flaw documentation. The plaintiff/Appellant failed to prove the authenticity of their unregistered deed of conveyance, coupled with the fact that the Survey Plan was claimed to be purportedly drawn in 1969 but signed and dated 1986. The court also, observed that the receipts were made in anticipation of a lawsuit. The fact remains that no reference was made to the case of *Benjamin v. Kalio*⁴⁹ by the Supreme Court Jubrilah Abdullahi's case and no appraisal of the change to our law brought about by the 1979 and 1999 Constitutions of the Federal Republic of Nigeria which brought issues relating to Evidence Act within the exclusive legislative competence of the federal government.

2.7 The Raging Debate on Precedential Issue.

In the absence of express overruling of the case of *Benjamin v. Kalio*⁵⁰ by the Supreme Court in *Jubrilah Abdullahi v. Christiana Adetutu*⁵¹, the raging debate has been which of these authorities represents the law. Furthermore, what should be the attitude of the lower courts given the present position of law? Are they bound to follow the decision of the apex court in *Jubrilah Abdullahi's*⁵² case which is latest in time or the decision of the full court of the apex court in *Benjamin v. Kalio*⁵³ because of its constitutional implication and the fact that the apex court is yet to expressly overrule that case?

On what the lower courts could do in case of contradictory judgments of the apex court or when two judgments of Supreme Court ostensibly look contradictory, the Court of Appeal in the case of *Opene v National Judicial Council* states⁵⁴ that:

*When a court is faced with two conflicting decisions of the Supreme Court on an issue, it is bound to follow the latest. This is so because the Supreme Court has an inherent power to overrule itself. It is trite that when this court is faced with two conflicting decisions of the Supreme Court on an issue, it is bound to follow the latest. This is so because the supreme court as an inherent power to overrule itself. If the latest decision is in conflict with the earlier one, it follows that the latest decision has overruled the earlier one*⁵⁵.

⁴⁷ Supra

⁴⁸ Supra

⁴⁹ Supra

⁵⁰ Supra

⁵¹ Supra

⁵² Supra

⁵³ Supra

⁵⁴ (2011) LPER-CA/A/324/07

⁵⁵ Supra

Nevertheless, it should be stressed that the fact that the lower court must follow the latest in time judgment of the Supreme Court in case of conflictual decisions with a former one is not a rigid rule and should therefore not be conceived in any absolutist categorical sense. The lower courts are only bound to follow such earlier decisions if it is in all fours with the factual situations of the latter decisions of the apex court. The court in the case of *Adegoke Motors v. Adesanya*⁵⁶ stated the law thus:

'For the issue to arise, whether two cases decided by the same court are in conflict with each other, the facts of the two cases alleged to be in conflict must not be totally different from one another, else, the decisions are inconsistent. Finally, I think the option open to a lower court in cases of genuine conflict between two (higher court) cases which are on all fours is to follow the latter decision.

With the above views, it implies that a lower court might decide to follow a former decision or judgment of the Supreme Court and prefers it over the latest in time under the following conditions:

- i. When the two decisions are distinguishable
- ii. When the factual situations in the former case which prompted the former decision conflicted with the factual scenario of the latter which informed the contradiction.
- iii. The lower courts must be able to distinguish the factual situations of the former decisions of the court in comparison with the latter one
- iv. Upon all, the trial court and the lower court must be aware of the latter decision of the apex court.

Convincingly, the above requirements are in tandem with the civilized standard. In the United States of America, the Supreme Court reserved the right to overrule its precedents. Despite the well-entrenched concept of *vertical stare decisis* in the United States of America, some writers have suggested that lower courts should have the right to deviate from the Supreme Court's precedent for the following reasons:

- i. Disagreement with a prior decision
- ii. The belief that a case was wrongly decided
- iii. The feeling that a case was wrongly decided and would be decided differently in the present dispensation
- iv. For reason independent of any decision that the prior holding is likely to be overruled.

Meanwhile, in the American jurisprudence, problems always arise where two or more precedents are conflictual. Contrary to the general rule that in case of irreconcilable conflictual precedents the more recent case should be followed by the lower court, the Supreme Court in the United States of America stated in the case of *Rodriguez de Quijas v. Shearson American Express Inc*⁵⁷ that:

If a precedent of this court has direct application in a case, but yet, it appears to rest on reasons rejected in

⁵⁶ (1990) LCN/2418(EC)

⁵⁷ 490 U.S. 477(1989)

some other line of decisions, the court of appeal should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decision.

We forcefully argued in this paper that lower courts should follow the Supreme Court's precedent that would be in furtherance of the course of justice, more importantly, those that are yet to be expressly overruled. This should be so but subject to the rider that the lower court should be able to distinguish the factual scenario of the case under consideration with the latter decision of the Supreme Court and give the cogent reason why the former decision not expressly overruled should apply.

It is submitted with due respect that the Supreme Court had not expressly or impliedly overruled the case of *Benjamin v. Kalio*⁵⁸ in *Jubrilah Abdullahi v. Christiana Adetutu*⁵⁹. The two cases are distinguishable in many respects:

- i. The two cases are distinguishable in that the premise for rejecting the unregistered deed of conveyance in *Abdullahi v. Adetutu* was its wants of authenticity, credibility and genuineness. Such a scheme never arose in *Benjamin v. Kalio* in that the Gobo family sold the land in contention to the Defendant/ Respondent. Hence, wants of the authenticity of the unregistered deed of conveyance, irregular dating of survey plan and the making of receipt in anticipation of a lawsuit which informed the decision of the Apex Court in *Jubrilah Abdullahi v. Christiana Adetutu* were not in contention in *Benjamin v. Kalio*.
- ii. In *Abdullahi v. Adetutu*, neither of the parties pleaded the constitutional implication of S.15 of the Land Instrument Registration Law of Rivers State and the Supreme Court on its own volition did not advert itself to the same fact brought about by the new statutory regime accentuated by the 1979 and the 1999 Constitution of the Federal Republic of Nigeria.

Most importantly, it should be noted that the plaintiff/Appellants in *Abdullahi v. Adetutu*, failed to advert the mind of the Supreme Court to the constitutional effect of *Benjamin v. Kalio's* case ostensibly because they are holders of an unregistered registrable instrument but emphasized that miscarriage of justice had been done to them in that the lower courts failed to consider the issues properly canvassed by them. This especially relates to the issue of a fair hearing. However, the Supreme Court stated the fact that the Plaintiff/Appellants in *Abdullahi v. Adetutu's*⁶⁰ case failed to distil issues specifically from the grounds of the notice of appeal and yet the lower court proceeded to determine the appeal based on the issues presented by the appellant despite this act of bad draftsmanship. The Supreme Court stated that despite the general principle that issues formulated in a brief of argument must be distilled from the specific ground solicited in the notice of appeal, failure of which the issues ought to be at large; the lower court still overindulged the appellant. On this issue, the Supreme Court per Cletus CentusNweze stated that⁶¹:

From all indications, the appellant had nothing useful to advocate in favour of the appeal. Accordingly, they are advised to leave the fair hearing constitutional provision alone because it is not available to them just for the asking. What is more, a reference to page 24 of the

⁵⁸ Supra

⁵⁹ Supra

⁶⁰ Supra

⁶¹ Supra

*record would disclose that the appellant was just being
disingenuous under their issue five.*

It is submitted that *Benjamin v. Kalio*⁶² was not infected with such empty disingenuous act of poor draftsmanship.

- iii. In *Benjamin v. Kalio*, there was agreement that the Gobo family sold the land to Adokie Kalio. Some members of the family witnessed in support of the defendant. It was also a truism that some members of the family later rose to deny the transaction. However, in *Jubrilla Abdullahi v Christiana Adetutu*⁶³, both the plaintiff/appellant and the defendant/respondent traced their root of title to the same vendor. Thought the plaintiff bought directly from the vendor who claimed he derived his title by inheritance via *idigi* system of distribution. Thus, it was the first plaintiff/appellant and those who claimed to purchase from him that constitutes the other plaintiffs/appellants.
- iv. Besides, to determine the distinction between the two cases, we have to determine further whether what forms the ratio decidendi of the two cases are similar and this is dependent on the issues that were raised in the two cases. In *Benjamin v Kalio*⁶⁴, the central issue was that evidence is now under the exclusive legislative list. Based on this, it was argued that only the national assembly has legislative competence to legislate on it. It was argued in consequent that any state enactment regarding the admissibility of evidence is now *ultra vires* sequel to the departure of the 1979 and 1989 Constitutions respectively from what obtains under the 1963 Republican Constitution of Nigeria. In *Abdullahi v Adetutu*⁶⁵, several issues were raised by both parties which the Supreme Court compressed to three; first, whether the refusal of the trial judge to visit the *locus in quo* was fatal to the case; second, whether the lower court did not cause a substantial miscarriage of justice when it failed to consider properly issues canvassed by the appellants and third, that the trial court failed to discharge its duties by ascribing value to the evidence. The Supreme Court pointed out that none of the six issues formulated by the appellant amended brief has head distilled from the grounds of appeal, which was against the principle that issues formulated in a brief of argument must be distilled from specific grounds of notice of appeal. The Supreme Court stated that those issues ought to be at large and disregarded but yet the plaintiff/appellant was over-indulged by the trial court. With this, it is certain that issue of the constitutionality of the state law vis-à-vis the federal law was not in contention in *Abdullahi Adetutu's case*⁶⁶.
- v. Another issue in contention in *Benjamin v Kailo*⁶⁷ which was nonexistent in *Abdullahi v. Adetutu's* was the fact that the parties in *Benjamin v. Kailo* voluntarily submitted to the Abuloma Council of Arbitrators and that both parties have accepted the decision of that council and were estopped from resiling out of its decision.

From the above, it is apparent that the two cases are distinguishable. Meanwhile, for a proper appraisal of the recurring issue relating to the legal effect of an unregistered registrable instrument, following questions were considered and attended to:

⁶² Supra

⁶³ Supra

⁶⁴ Supra

⁶⁵ Supra

⁶⁶ Supra

⁶⁷ Supra

- i. Who must register his documents between the vendor and the purchaser under the present legal regime and does the fact that a vendor or any of the parties' getting his document registered makes the document and the title acquired thereto unimpeachable?
- ii. If the unregistered registrable instrument or deed of conveyance is tendered in evidence who may use it as evidence to prove the existence of transaction, purchase and possession and how would the court determine the evidence of who is in possession?
- iii. What are the intentions of the legislature to compel registration of a deed of conveyance before it could be an instrument to prove title or transfer of an interest in land?
- iv. If two purchasers derived their titles from the same vendor but the first purchaser in time failed to get his document registered, and the second purchaser who though knew about the fact that someone had purchased the land, purchased same land and got his document registered the question is; would the second purchaser be adjudged as the one that has the better title?
- v. What has been the attitude of the Nigerian court and would the court determine the case solely upon the non-registration of a registrable instrument?
- vi. With the present constitutional scheme, what route should the court thread without abridging the provision of the constitution, yet discountenance the evidence?
- vii. Can the court invoke the common law principles and its equitable jurisdiction to protect the purchaser?
- viii. Can the court create stumbling blocks on the road of a dubious and fraudulent seller of the land in a stay of execution pending appeal and the final decision of the apex court?
- ix. Can the court distinguish different concepts relating to interests in land to arrive at just and equitable decisions?
- x. In land transactions, what is the standard practice?

3.0 Contradictions in one Aspect of the Court's Decision

A close analysis of the judgments of the supreme courts in *Benjamin v. Kalio*⁶⁸ and *Jubrilah Abdullahi v. Christianah Adetutu*⁶⁹ revealed that there are two aspects of these judgments. One aspect involves contradictory judgment and the other one remains. The first being that an unregistered registrable instrument is void and could not be tendered in evidence to prove or establish a title to land or interest in land. The legal effect being that by its non-registration it could not be admissible in evidence. The second one which remained unaffected by both judgments in the two cases being that in equity, such unregistered document or instrument is admissible to prove payment of money coupled with possession. The Supreme Courts in both cases agreed that such an unregistered instrument gives the right to equitable interest enforceable by specific performance. Under these positions, we submitted with due istration by the purchaser is secondary.

Registered Instrument might not Constitute a Monument of Title

It should be noted that the fact that an instrument is registered does not confer on it a superior monument of title. Thus, where the title of the original owner or grantor is nonexistent or rather defective, it cannot serve as a monument of title. Though registration of the instrument accorded validity lacking in such document when unregistered but at the same time, the fact of registration cannot cure the defect inherent in the document itself. In essence, registration by itself does not cure the registered instrument

⁶⁸ Supra

⁶⁹ Supra

of any defect. It does not confer on it any validity which the instrument *ab initio* would not otherwise have had⁷⁰.

3.1 Who might tender the Unregistered Reistrable Instrument as Evidence?

The second ambit unaffected by the judgment of the Supreme Court and affirmed by former authorities is the fact that such unregistered registrable instrument is admissible to prove payment, coupled with possession. Also, it might give the right to an equitable interest enforceable by the relief of specific performance⁷¹. The question is, between the seller or vendor and the purchaser, who can enjoy this benefit? The answer is affirmatively the purchaser. The vendor or seller in the suit ought to be excluded. This gives credence to our submission that it is always and only the vendor that is compellable in all absolutist sense to have his title registered and the only person that could be affected by the void effect of non-registration of registrable instruments. In this case, there are certain conditions precedent to being able to enforce equitable interest by way of specific performance:

- i. The seller or vendor must have poised to resile out of a contract of sale between him and the purchaser
- ii. The purchaser must prove evidence of payment of money
- iii. The payment must be coupled with the fact of possession.

Meanwhile, on the third requirement, how would the court determine the person in possession, most especially where one of the parties had forcefully taken possession. Ostensibly, this is a very serious requirement in such a situation. This scenario presented itself in the case of *Jubrilla Abdullahi v. Christianah Adetutu*⁷² where the plaintiff/appellant has forcefully entered the defendant/respondent's properties, destroyed his poultry farm, the generator house and other physical structures on the land. In the situation, the vendor persuaded the trial court to visit the *locus in quo* to determine who was in actual possession. Adroitly, the trial judge felt unimpressed by such argument in the face of cogent, convincing and unassailable overwhelming pieces of evidence presented by the defendant/respondent which included a coherent registered deed of conveyance, a survey plan with precise accuracy in terms of date of drawing and signature, an approved building plan, a valuation report, evidence of payment of electricity bills and tenement rates. These sets of evidence could not be extinguished by plaintiffs/appellants contradictory unregistered deeds, Survey plan with almost twenty years between the time of drawing and signing. Confronted with the above scenario, the trial judge refused to be lured into the plaintiff's/appellant's tricks to visit the *locus in quo*. On this position, the Supreme Court pontificated as follows:

By virtue of the overwhelming evidence which the respondent adduced at the trial court, the non-visit to the locus in quo was not fatal. This is because, there was no doubt cast in the mind of the court by the evidence adducedthe law that if there are two persons on the land, each asserting that the land is his and each doing something in the assertion of the right of possession, and one of them is in actual possession and the other is not if the question is; which of the two is in actual

⁷⁰ Tobi N. (1997) cases and Materials on Nigerian Land Law. Mabrechi Books, Lagos Nigeria.

⁷¹ Ibid

⁷² Supra

possession? The answer is that the person who has the title is in the possession and the other is a trespasser.

Arguably, the Supreme Court affirmed the concurrent findings of the trial court and the Court of Appeal that physical possession might sometimes be deceptive and the court must be cautious in order not to be persuaded by mischievous seller or vendor and be drawn into the deceptive well duceit of the clandestine vendor. Thus, the adage seeing is believing might not work in every circumstance and sometimes one could substitute the ears for the eyes.

3.2 Intention of the Legislature for Compelling Registration of a Registered Deed of Conveyance

There are clear intentions of the legislature for enacting the provisions compelling registration of an instrument of title. The intentions or purposes of the registration of title could be itemized thus:

- i. To provide for a public record of all transactions relating to land.
- ii. To ensure that all transactions are carried on and evidenced by written agreement
- iii. To keep intending purchasers fully informed of the existence of a previous transaction
- iv. To give a proper and sufficient description for other transferees of land such as grantees, lessees, mortgagees, an insurance company, etc. to be cautious of their risk portfolios. In essence, the existence of registration serves as a constructive notice to the whole world.
- v. Helps the court to determine the priority between successive purchasers or assignees of land.
- vi. It gives information on the history of the titles and provides a formidable insight about every dealing on the land.

Once registered, the effect or legal consequences of such registration are as follows:

- i. Rendered unregistered registrable instrument void vis-a- vis a registered deed.
- ii. Rendered such unregistered instruments inadmissible in evidence in any court proceedings
- iii. Such instruments lose priority as against the registered one provided the holder's act of ownership is conscientious.

However, all these requirements had been blown away by the decision of the Supreme Court in *Benjamin v. Kailo*⁷³ but restored in *Abdullahi v. Adetutu*⁷⁴. Hence, the uncertainty as to the legal effects of the nonregistered registrable instrument.

Arguably, from the intentions of the legislature which constitutes the rationale for promulgation or enactment of the Land Instrument Registration Law, it is clear that the law is meant to prevent the fraudulent scheme of vendors or grantors of land to protect the interest of the purchasers and other transferees of land. These are the basic reasons. These represent the justification theory. The court can also use the justification theory to ensure that:

- i. The first owner of land registered their original interest in land to be able to seek the assistance of courts to protect their radical or absolute interest in land.
- ii. The legal interest of the transferees or purchasers of land or their legal interest upon purchase of the absolute interest is secured

⁷³ Supra

⁷⁴ Supra

- iii. The vendors are prevented from creating multiple encumbrances on land.

Meanwhile, the fraud theory represents the corollary of the justification theory. The fraud theory reveals itself in the two maxims of equity that: first, he who comes before equity must come with clean hands. This brought equity closer to the law of God that 'you cannot continue in sin and expect the grace of God to multiply'. Consequently, it does not lie in the mouth of a vendor who failed to register his original instrument to allege that the purchaser cannot use his unregistered registrable instrument in support of his possession right which he derives through the vendor himself. The land instrument registration act is enacted to protect the purchasers of land. In practice, the vendor ought to register his title, failure of which he cannot expect the subsequent purchaser whose interest is derivable and dependent on his title to register his title for him. In the purchase agreement, it is always part of the express covenants that the vendor would do everything to legally vest the property unto the purchaser. This covenant involves the surrender of all documents of title to vest the property in the purchaser. The contrary is inconceivable and illegitimate. Thus, it is legit the second maxim of equity in this regard that equity will not allow a statute to be used as an instrument to perpetuate or promote fraud.

The case of *Coker v. Ogunye*⁷⁵ is instructive on the above point of law. In that case, two documents on sales of land were tendered in evidence before the court. Each of the documents contained four clauses. The first dealt with the description of the parties i.e. the seller and the buyer respectively together with the description of the particulars of the land. The second, dealt with the receipt clause, acknowledging the payment of the purchase price to the seller. The third states the purchaser's responsibility to do the land survey and the fourth contains the vendor's covenant to execute the conveyance whenever called upon. Whilst one of the documents was drawn by a legal practitioner, the other was prepared by a letter writer. Both were duly stamped but neither was registered under the Land Registration Ordinance. It was based on their non-registration that objections were raised against the admission of both documents as evidence.

The court held that the two documents were not such that required to be registered under the statute. Annes, A.J, admirably stated the law thus⁷⁶:

And the principle to be followed in deciding whether any document is an instrument within the meaning of the ordinance so as to require registration is (if my collection of the gist of the judgment of the privy council is correct – and I think it is) that only those which actually are the very means by which a right or title or interest in land is conferred, transferred, limited, charged or extinguished in favour of another party are within the ambit of the evidence and have to be registered. If on the other hand, the right or title or interest is not conferred etc. by the document but was conferred etc independently of the document by some act of the parties or by some other means and could exist without the document, so that the document becomes only an appendage, so to speak, to

⁷⁵ (1939)15 NLR. P. 57

⁷⁶ *Coker v. Ogunye*, Supra.

that other act or those other means, such a document is not within the ambit of the ordinance.

The original deed of transfer, a power of attorney under which any instrument may be executed qualifies as an instrument. This is more evident from the terms of Section 2 of the Land Instrument Registration Act, 1924 that defines instrument to mean:

A document affecting land in Nigeria, where one party called the grantor, confers, transfers, charges or extinguishes in favour of another party called the grantee, any right to, or interest in land in Nigeria and includes a certificate of purchase and a power of attorney under which any other instrument may be executed, but does not include a Will⁷⁷.

To further buttress the fraud theory is the inclusion of a certificate of purchase. The question is what is a certificate of purchase? When an owner of the land or landed property needs money in form of a loan or advance, a person could pay the purchase price of the property and in consequent received a certificate of purchase as security for the advance of money. Invariably, a person who pays the amount receives a certificate of purchase relating to the land. The certificate holder who pays the money has no ownership right for access to the land or landed property. Meanwhile, he only holds the certificate as security for the advance of money. It is pertinent to note that the owner of the property who receives the advance of the money has up to four years from the date of the sale of the certificate to redeem his property. If the owner of the property failed to redeem his property within the stipulated years, then a tax deed would be issued giving appropriate notification to the owner, upon which the owner's right is extinguished upon default. The mortgage company or the legal owner that gave the advance of money has the right to put the property for sale upon default within the time stipulated. The owner of the property could still redeem the property by paying the amount of the certificate of purchase, a penalty of 3%, plus any other attachment to the lien and interest on the principal amount under the enabling statutes or other applicable regulations within the scheme.⁷⁸

Essentially, to qualify as an instrument, a document must be a means by which an interest in land passes from one person to another. The question is concerning the adjectival clause, 'a means by which an interest in law passes from one person to another'. It is submitted that interest in land means ownership right. Thus, a document that passes instant legal title in land i.e. a means by which interest in land passes. Such a document must be registered by the provision of the Land Instrument Registration Act. This is in contrast with when a contract for the sale of land is executed; in which situation equitable interest or title passes to the buyer, subject to the fulfilment of certain condition precedent. When the conditions for the sale are met, then legal title passes to the purchaser.

Consequently, a purchase receipt is not a registrable instrument. Also, under the Western Region of Nigeria Land Instrument Registration Law, an agreement for the sale or lease of land is not a registrable instrument.⁷⁹ Consequently, under the second maxim that equity will not allow a statute to be used to perpetuate a fraud, a vendor or seller of the land who has sold his interest to the purchaser should not be heard to be saying that the buyer failed to register his title. This is an attempt by such fraudulently

⁷⁷ See the similar provisions of S.2 of the Registration of Instrument Law, Cap 58, Laws of Northern Nigeria (1963).

⁷⁸ [http:// www.the-law-dictionary.com](http://www.the-law-dictionary.com).retrieved on the 27th day of May, 2020.

⁷⁹ See Coker v Ogunye (1938) 15 NLR p.57; Elegbede v Savage (1951) 20. NLR. P. 9.

inclined vendor to invoke the assistance of the court to perpetuate fraud which the court must preempt. This is the exact position that the court took in *Benjamin v. Kalio* where Eko JSC. Stated that⁸⁰:

*Even if S.20 of the Rivers State Law, Cap74 were applicable in the circumstances of this case, I will still rule in favour of the position adopted by the respondent, that an unregistered registrable land instrument is admissible in evidence to prove, not only the payment and receipt of the purchase price but also the equitable interest of the purchaser in the subject land. That has been the entrenched position in our jurisprudence until evidence was lifted into the exclusive legislative list in the second schedule to the constitution.*⁸¹

3.3 Is mere Registration under the Land Instrument Registration Law a Monument of Title

At common law, it was established in the case of *Zarf v. Diamond*⁸² that first registration of instrument evidencing an interest in land could not be found in an unregistered pre-existing legal interest of the owner which forms the knot of the subsequent instrument sought to be registered and second, registration of land instrument could not impeach an already pre-existing interest in land. In that case, the appellant applied for the first registration of his document as the owner of a particular land within the colony of Lagos under S.8 of the Registration of Title Ordinance No.13 of 1935. Evidence revealed that though the application was premised on unregistered conveyance to him of the fee simple, yet he is asking that his title be registered as the first owner free from encumbrance. Thus, the conveyance which formed the root of title and which formed the foundation and appellant's root of title had not been registered. The respondent on his part also opposed the registration free from encumbrances on the ground that there was in existence a valid lease on the premises. The court held that the conveyance which formed the basis of the appellant's title not having been registered under the Land Instrument Registration Law; it was within the power of the Registrar of Title on that ground to refuse registration.

The above precedents fortified the principle that the vendor selling land must have his title registered first and also that a registered conveyance cannot extinguish preexisting right or interest in land. Thus, the principle is that where the owner of land made successive assignments of it to two or more buyers at the same time, the first in time had priority in line with the principle that *qui priores tempore, portior ex jure*. However, where the second assignee been a bonafide purchaser without notice of the first encumbrance got his title registered first, and took possession of same, then the first assignee had his title defeated but with the right of tracing his money to the fraudulent assignor. Conversely, if the subsequent assignee who gets his land registered knew of the prior assignment of the land, then his registered conveyance cannot impeach the prior interest. This implies that mere registration of an instrument is not a monument of title per se.

4.0 The Attitude of the Court in Furtherance of the Course of Justice

A clear analysis of the cases of *Benjamin v. Kalio*⁸³ and *Jubrilah Abdullahi v. Christianah Adetutu*⁸⁴ revealed that the courts did not confine it to the legal effects of unregistered registrable instruments per

⁸⁰ Supra at p. 52 pg. 3

⁸¹ The 1979 and 1989 Constitution of the Federal Republic of Nigeria refers.

⁸² (1936) 13 NRL.P.14.

⁸³ Supra

se, but instead examined the fact and distilled all the issues the parties have presented for adjudication. In *Benjamin v. Kailo*⁸⁵, the concurrent judgments of the trial court and Court of Appeal up to the Supreme Court revealed that the courts carefully did a proper analysis of the facts. The courts found that the vendor employed the trick of hair-splitting by luring the courts into believing that the transaction was about a non-existing different land. But the court was quick to discover that the same land bore the names of the family land as well as the name of the village or town where the land situates. The court also considered that the principle of *res judicata* fully applies. This was because both parties submitted themselves to the arbitral jurisdiction of the Abuloma Chieftaincy Council and agreed with the decisions handed down by the panel of arbitration. Hence, the courts were quick at the finding that the vendor's family could not resile out of the decisions handed down by the council.

In the case of *Jubrilah Abdullahi v. Christianah Adetutu*⁸⁶, the courts also found out from the facts that the plaintiff/appellant presented flawed documentations. The receipt was found to be prepared in anticipation of litigation, the survey plan date of preparation and date of signature spans over many years which the court found to be unreliable to establish authenticity. Moreover, the court found that the six issues formulated by the plaintiff/appellants were not distilled from the grounds of the notice of appeal. This Supreme Court stated was an act of bad drafting skill, which the trial court yet used as the basis of determining the appeal in furtherance of justice. Though the Supreme Court observed the toleration of this inelegance to be an act of overindulging the appellant, the apex court rightly observed that as a matter of general principle such issues formulated in a brief of argument but not distilled from the specific grounds of appeal ought to be at large and discountenanced accordingly. But the Supreme Court also in furtherance of justice yet determines the appeal. The plaintiff/appellant also raised the issue of fair hearing which the court discarded as an act of raising a defence in the most inappropriate case to reinforce an extremely bad case. Looking further beyond the validity or invalidity of the instruments, the court also looked at the issue of non-visitation to the *locus in quo* by the trial court. This the plaintiffs/appellants considered a neglect by the trial court that disabled the court from knowing that they were in active possession of the land. But in discarding this view, the Supreme Court agreed with the concurrent findings of the trial court and the Court of Appeal that a visit to the *locus in quo* might not be necessary where the disputed area is clear, since a trial court is to reach its decision, not on the impression from the *locus in quo* but upon its impression from the evidence before the court. Thus, it is apparent that in considering the validity or invalidity of an unregistered registrable instrument, the attitudes of the court has been to look beyond the instrument itself.

4. 1 The Decision in Benjamin v. Kalo Seems Unassailable

The decision of the Supreme Court in *Benjamin v. Kalo*⁸⁷ seems unassailable as a result of the constitutional issue raised in that case. Unfortunately, the constitutional issue was not raised in *Jubrilah Abdullahi v. Christianah Adetutu*⁸⁸. Also, the Supreme Court in the latter case did not overrule its decision in the former case. The position taken by the Supreme Court per Eko JSC, whilst delivering the judgment of the court cannot be impugned. Meanwhile, the judgments of the court in both cases were opposed to each other. In *Benjamin v. Kalo*, the Supreme Court took the view that the Rivers State Land Instrument Registration Law could not stand since the 1979 and 1999 Constitutions of the Federal Republic of Nigeria have placed issues on the Law of Evidence and admissibility of evidence in the proceedings before any

⁸⁴ Supra

⁸⁵ Supra

⁸⁶ Supra

⁸⁷ Supra

⁸⁸ Supra

court in Nigeria away or beyond the legislative competence of any State House of Assembly. Thus, it is trite law that any state enactment which contradicts the provision of the Constitution would be an act of legislative trespass and in consequent null and void.

Consequently, the court declares that this constitutional regime had nullified the former position of the law that an unregistered registrable instrument is simply derided as amorphous and inadmissible in evidence. The Supreme Court, in this case, gave judgment for the buyer in this respect Adokie Kalio. The Court even went further to state that even if the document is void and incapable of vesting interest in land, yet in equity, the document remained valid and admissible to prove the existence of transaction, payment and the fact that the purchaser is in possession of the land. Interestingly, the court in *Jubrilah Abdullahi v. Christianah Adetutu*⁸⁹ reverted to the old position by stating that an unregistered registrable instrument is void. But yet the court without expressly overruling *Benjamin v. Kalio*⁹⁰ also gave judgment for the purchaser. The apex court decides that the purchaser could use the unregistered document to prove evidence of the existence of transaction, payment and the fact of being in possession. Consequently, it is clear that though the Supreme Court took a different position on the admissibility of the unregistered registrable instrument but yet both decisions advanced the interest of justice.

However, it is submitted in this paper that on authorities, it does not lie in the mouth of a vendor who sold his land, failed to register his title to seek the assistance of the court to invalidate the unregistered instrument of a purchaser. The vendor being the absolute owner of the land and the possessor of the original title with a vested interest as the original grantor is compellable in law to register its title. The sale agreement to the purchaser would only be an appendage to the vendor's original document. Where the vendor failed to register his instrument, holding other vitiating factors constant, the purchaser's document must remain unimpeachable.

Meanwhile, the court without abridging the provisions of the 1979 and 1999 Constitutions could invoke the rule of practice in any proceeding in a court concerning the admissibility of evidence. This is the principle that it is one thing to admit a document in evidence but the value to be attached to it is a different matter. In line with the constitutional provisions, such unregistered registrable instrument or document could be admitted in evidence yet zero value might be attached to it since mere registration would not confer a monument of title. Conversely, the document could be admissible without value attached to it more so, the courts as shown looked beyond the unregistered registrable instrument itself in furtherance of the course of justices.

Aside, even without the constitutional arrangement taking away the power of the state house of assemblies from legislating on matters relating to the Law of Evidence and admissibility of evidence, the court could invoke its equitable jurisdiction. This the court can do through the application of the rule in *Walsh v. Lonsdale*⁹¹. The rule states that where an agreement fails to comply with the statutory requirements as to form, the agreement remains binding in conscience. This obviously will entitle the buyer or a purchaser of land who failed to register his instrument to seek from the court the equitable relief of specific performance.

5.0 The Capability of Appellate Courts to Create Stumbling Blocks on the Route of Recalcitrant Vendors

⁸⁹ Supra

⁹⁰ Supra

⁹¹ Supra

The key by which the courts could create stumbling blocks on the route of a dubious vendor or party lies in unravelling the truth. Thus, on appeal in the case of *Benjamin v. Kalio*⁹², the court failed to be persuaded by the confusing strategy the plaintiff/appellant tried to introduce into the case to disregard the concurrent findings of the courts. The court stated that:

The supreme court will only interfere with the concurrent finding of the High Court and Court of Appeal when the appellant shows special circumstances by establishing either that there was a miscarriage of justice or a serious violation of some principles of substantial law or procedure or that the findings are perverse or that the findings do not flow from the evidence adduced by the parties.

These are alternatives that the appellant could explore. None of such could be found in *Benjamin v. Kalio*⁹³. Hence, the Supreme Court declared that the concurrent findings of the trial court and the Court of Appeal on facts and law were justified. What was true about *Benjamin v. Kalio*'s⁹⁴ in terms of the hurdles the plaintiffs/appellants must surmount is equally true about the case of *Jubrilah Abdullahi v. Christianah Adetutu*⁹⁵; mutatis mutandis. Thus, save the point of disparity in the judgments of the Supreme Court on the legal effect of the unregistered registrable instrument the Supreme Court in the latter case also stated that:⁹⁶

The trial court entertained no doubts about the veracity of the respondent's case. A stance which received the concurrent affirmation of the lower court. Worse still, the appellant failed woefully to perforate the effervescence of the said concurrence by any allusion to their perversity, that is, their persistence in error; different from what is reasonable or required against the weight of evidence. Simply put, they failed to show where the trial court took into account matters which he ought not to have taken into account or where he shut his eyes to the obvious. That is they were unable to show that the concurrent findings were perverse findings of facts which are merely speculative and were not based on the evidence before the courts.

Interestingly, the hurdles to be surmounted by the appellants are not cumulative. They were couched in alternatives. They are effective alternatives indeed and surprisingly in both cases, the appellant could not impugn the effervescence of the concurrent findings.

5.1 Distinguishing Between Different Concepts or Interest in Land Holdings to Arrive at Just and Equitable Decisions

⁹² Supra

⁹³ supra

⁹⁴ Supra

⁹⁵ Supra

⁹⁶ Per pages 21, 176 – 177 of the same Record of Appeal.

It is here submitted in this paper that to arrive at a just and equitable decision, the court could distill the many interests that exist in landholdings to determine who assign his right, what rights he transferred, whether he transferred all his rights in which case the *Nemo dat quod non-habet* maxim would be applicable; whether he transferred part of his rights in which case his interest lies in reversionary interest at the expiration of the periodicity of the grants, or whether his act is only suspensory of his ownership rights etc. From the above, one could discover that the word title creates or could create bundles of rights. Interest in land can include the followings:

- i. Ownership right
- ii. Possessory right
- iii. Exclusive possession
- iv. Right of use
- v. Acquisition
- vi. Conveyance
- vii. Easement
- viii. Hypothecation
- ix. Partition etc.

Identifying these interests would enable the court to know which interests are extinguished and in whom lies the whole, part or residuary interests. The interests listed above are within the domain of knowledge of practitioners save for hypothecation that needs a little explanation for the obvious. Hypothecation is the practice where a debtor uses his property as collateral security. It is a condition precedent for granting a loan in Secured Credit Transactions. Under this arrangement, a third party can also serve as guarantor for the creditor by using his property as security to ensure payment by the borrower. Upon default, the creditor can apply for the seizure of the property to recoup the loan. The purpose of hypothecation is to mitigate the creditor's debt risk. Hypothecation occurs when the creditor himself used the collateral under hypothecation to secure a loan at the financial market to mitigate his credit risk.

6.0 A Test Case on Appeal to the Nigerian Supreme Court.

The provoking question is, which of these contradictory decisions should form a precedent which the trial court or Court of Appeal should follow? With due respect, since the Supreme Court is yet to expressly overrule its decision in *Benjamin v. kalio*⁹⁷ and more so, since the constitutional implications of the 1979 and 1999 Constitution of the Federal Republic of Nigeria vis-a-vis the States Land Instrument Registration Law were not in contention in *Jubrilah Abdullali's case*⁹⁸, the decision in *Benjamin v. kalio*⁹⁹ is more preferable. It is therefore against this background that we are going to look at the case decided by the Nigeria Court of Appeal, in the Akure Division of Ondo State. This is the case of *Adekunle Taiwo v. Chief Felix Ogunwale*¹⁰⁰, which we shall here be referred to as the case of *Taiwo v. Ogunwale*¹⁰¹. The appellant, in this case, was the defendant at the Osun State High Court, Ede Judicial Division. The Plaintiff/Respondent claimed before the trial court, via a statement of claim the declaration of title as a person entitled to the statutory right of occupancy in respect of all that piece or parcel of land situate and being at Woru village, Gaa Fulani, Hallelujah Area, Dada Estate, in the Egbedore Local Government area of

⁹⁷ Supra

⁹⁸ Supra

⁹⁹ Supra

¹⁰⁰ *AdekunleTaiwo v. Chief Felix Ogunwale, Appeal No CA/AR/55/2017 suit NI-HED/3/2015. High Court of Osun state, Nigeria*

¹⁰¹ Supra

Osun State and also perpetual injunction restraining the Defendant/Appellant, his servants, agents and privies from committing any further act of trespass and from erecting any structure thereon.

The Defendant/Appellant in his statement of Defence and counterclaim also sought a restraining order against the Plaintiff/Respondent, his agents, privies and servants from entering upon the business complex of the Defendant situate and being on the same land known as Woru Osefiri Family Land, Woru Village, Halleluyah Area, Dada Estate in Egbedore Local Government Area of Osogbo.

The Plaintiff /Respondent's case was that he acquired the vast parcel of land including the land in dispute from different families at Halleluyah Area. He claimed further that he has been selling portions of the land to individuals and organizations and that the Defendant/Appellant was not one of those he sold his land to. The Plaintiff/Respondent claimed that the Defendant/Appellant encroached upon his land and despite the warning through a letter written by his solicitor, the Defendant/Appellant had continued his act of trespass unabated. The Plaintiff/Respondent testified and called no other witness but tender documents to prove his case.

The Defendant/Appellant claimed that the Plaintiff/Respondent sold 32 plots of land to her mother Mrs Grace AdunolaTaiwo through his solicitor, acting as the Defendant/Appellant lawful attorney. The Defendant/Appellant also claimed that her mother made an outright gift of 16 plots of the land to him. The Defendant/Appellant tendered the following evidence in support of his case:¹⁰²

- i. A power of attorney between the Plaintiff/Respondent and his lawful attorney, dated the 15th day of September 2016.
- ii. A deed of gift between the Defendant/Appellant and her mother date 12th day of March 2008 evidencing the gift of 16 plots.
- iii. The building approvals of the construction of fence and a business complex in 2013.
- iv. Evidence that the Defendant/Appellant's mother took possession after the agreement of sale and pursuant to the sale, the document executed in favour of some Fulani on the land.
- v. An exhibit of a pending suit before the same trial judge where the Plaintiff/Respondent used the same power of attorney to institute an action.

The trial judge entered judgment in favour of the Plaintiff/Respondent and held that the power of attorney relied upon by the Defendant/Appellant is an unregistered registrable instrument and was void under Section 17 of the Land Instrument Registration Law, Cap 64, Laws of Osun state. The Defendant/Appellant appealed against the judgment of the trial court to the Court of Appeal.

At the Court of Appeal, Counsel for the Defendant/Appellant contended that:

- i. That even if the power of Attorney failed to satisfy the requirement of the Land Instrument Registration law, the trial court ought to look at the purpose for which it was pleaded as an exhibit.
- ii. That the power of Attorney was pleaded to show the agency relationship between the Plaintiff/Respondent and his lawful attorney, Barrister S.O Omowumi and accordingly tendered to prove the Plaintiff/Appellant equitable interest in the land coupled with possession translated to legal interest.

¹⁰² Supra

- iii. That having established this principal/agency relationship, the respondent has to register the power of attorney.
- iv. That since it was the duty of the Plaintiff/Respondent to register the Power of Attorney, rather than that of the Defendant/Appellant, the Plaintiff/Respondent cannot profit out of his unlawful act in the transaction by contending that the transaction was unenforceable and hence cannot use the court to perpetuate this wrongful act.
- v. That the Plaintiff/Respondent used the same power of attorney to institute an action still pending before the same trial judge and therefore could not be made to run away from the effect of his action.
- vi. That the court should set aside the judgment of the trial court declaring the power of Attorney worthless, inchoate, void as the effectual expunging of same has no basis.

In contrast, the Plaintiff/Respondent argued that;¹⁰³

- i. The power of Attorney and the consequent land sale agreement to the Defendant/Appellant are worthless and under Sections 2(C) 3, 16 and 17 of the Lands Instruments Registration Law Cap 64, Laws of Osun State void for not being registered and therefore worthless documents upon which nothing could be built.
- ii. That the certified true copy of the said power of attorney ought to be produced from the office of the Registrar of Deeds in evidence, as a public document to satisfy the requirement of law.
- iii. That the respondent did not sell his land to the Defendant/Appellant nor his mother.
- iv. That though the Plaintiff/Respondent did not enter a disclaimer in respect of the power of Attorney, the principle of "*caveat emptor*" applies in that the party ought to exercise caution by thoroughly investigating the property he intended to buy.
- v. That the Exhibit P5/D5 is worthless, inchoate and void and that the Court of Appeal should uphold the judgment of the trial judge which rightly expunged the power of Attorney.

Danjuma, JCA, with whom the other Justices of the Court of Appeal Concurred held that the Appeal brought by the Defendant/Appellant was meritorious and referring to the power of Attorney which the trial judge held to be worthless and inchoate, his Lordship stated that:¹⁰⁴

- i. The Appellant's mother, Mrs Grace AdunolaTaiwo relied on the said power of Attorney to purchase the Land.
- ii. That the said power of Attorney conferred upon one Mr OladepoOmowumi via the Plaintiff / Respondent the power to sell, collect money and give receipt pass with the portion of the said property.
- iii. That paragraph 3(1) of the said power of Attorney stated that 'That I shall ratify and confirm whatever the Attorney shall lawfully do or cause to be done concerning the property by virtue of this deed.
- iv. That the power of Attorney was duly executed and attested by a Chief Magistrate in Osogbo. And it is the basis upon which the transaction was founded
- v. That the said power of Attorney is therefore relevant to the Plaintiff/Appellant's case.

¹⁰³ supra

¹⁰⁴ Supra.

Concerning the relevancy and the admissibility of the said power of Attorney, his Lordship relying on the authority of the Supreme Court in *Benjamin v. Kalio* stated that:¹⁰⁵

It is the basis upon which the transaction of the land in dispute was founded and therefore relevant to the appellant's case and admissible under the Evidence Act. The law is now settled that a document that is pleaded and admissible under the Evidence Act cannot be rendered unpleaded and inadmissible by state law. This is because Evidence is now item 23 in the exclusive legislative list. The second schedule to the Constitution of the Federal Republic of Nigeria 1999 as amended, Consequently, unregistered land documents are admissible even as proof of title.

The Court of Appeal went beyond the said unregistered registrable instrument i.e. the said power of attorney, to examine the veracity of the Defendant/Appellant's root of title, the applicability or otherwise of the maxim ' *non-est factum*', and the establishment of the principle of principal and agency relationship. Danjuma J.C.A. stated concerning the Defendant/Appellant's root of title that:¹⁰⁶

The appellant on his part testified in chief and tendered various exhibits, among the exhibits are exhibit D1, the sale of land agreement dated 13th November 2006 between his mother (Mrs. Grace A. Taiwo) and the alleged respondent's lawful attorney Mr Samuel Oladepo Omowumi. Exhibit D2 i.e. the power of Attorney to many lands dated 15th September 2006, executed by the respondent in favour of the alleged attorney, a deed of grant dated 12th March 2008 in which Mrs Grace A. Taiwo, the appellant's mother granted him portion of the land in dispute.

Interestingly, the Court of Appeal after establishing the above root of title from facts considered the learned counsel's to the plaintiff/respondent's argument to the effect that the respondent denied handing over the said power of attorney to the said Mr Samuel Oladepo Omowumi and did not take any step to consummate same. Against the above contention, in an intelligible twist, purge and good riddance to this non-grandiose illogical argument, Danjuma J.C.A. stated thus:

With due respect to the learned counsel to the respondent, the argument is without substance. The power of Attorney was duly executed by the respondent by appending his signature and that of the donee as well as authenticated by a chief magistrate. The respondent failed to show that the power of attorney was repudiated before the sale of the land in dispute or that it was caught by any vitiating elements such as duress, undue

¹⁰⁵ Supra.

¹⁰⁶ Adekunle Taiwo v Chief Felix Ogunwale, (Supra)

influence, and mistake or that it is against a statutory provision that rendered it unenforceable.

Besides, though the Court of Appeal did not specifically mention that the principle of estoppel by conduct is applicable; however, such innuendo could be drawn from the last preposition of the pronouncement of the court per Danjuma JCA, that:¹⁰⁷

It is trite law that any person of full age, capacity and understanding who signs a document, being not illiterate is deemed or presumed to understand what he appended his signature upon. Whatever that document says and undertake is binding upon him and plea of non-est factum will not avail him. Similarly, Ogundare JCA (as he then was) stated, it is common knowledge that person's signature, written names or mark on a document, not under seal, signifies an authentication of that document that such person holds himself out as bound, or responsible for the content of such a document.

In the concluding part of the judgment, the plaintiff/respondent found to the assistance of justice a defendant/appellant that could outsmart and match him to his game when the court discovered in the defendant/appellant documents that the plaintiff/respondents lied in that the power of attorney he denied was the same that he used through the same Donee of power in another suit pending before the same trial judge. According to Danjuma J.C.A;¹⁰⁸

Furthermore, in exhibit D12, D12A – E which includes writ of summons, statement of claim and witnesses statement on Oath in Suit No: HED/06/2011 dated and filed on the 27th May 2013 the respondent in this appeal was the plaintiff suing by his lawful Attorney Mr Samuel Oladepo Omowumi, the done of the power of attorney Exhibit D2, in his Witness statement on Oath Exhibit 12B paragraph 9 thereof clearly referred to the power of Attorney, Exhibit D2, was executed in his favour by the Respondent. Moreover, both sales of land agreement in Exhibit D1 and the power of Attorney in Exhibit D2 were prepared by the same Solicitor and witnessed by the clerk to the Solicitor. I cannot, therefore, find how the Respondent would not be bound and responsible for the subsequent transactions or actions carried out by the lawful Attorney under such instrument. The Respondent is therefore bound and liable in the sale of land between his lawful Attorney and Mrs Grace A. Taiwo that was evidenced by a sale agreement dated 13th November 2006 and marked by the trial Court as Exhibit D1 which

¹⁰⁷ Supra.

¹⁰⁸ Supra

subsequently gave rise to Deed of Grant executed in favour of the Appellant in Exhibit D3 and license agreement executed in exhibit D4. Consequently, the Respondent has divested himself of the land in dispute which is situated at Ago Fulani, off Dada Estate, Osogbo and I so hold.

With due respect to the appellate justices, having found that the power of attorney was real and genuine, and upon which the deed of agreement between the Donee of the power of Attorney and Mrs Grace A. Taiwo was prepared, which prompted the consequent Deed of Gift, the court should have gone further to declare that the second strand of the judgment in *Benjamin v. Kailo* and *Abdullahi v. Adetutu*¹⁰⁹ applies. This is to the effect that with the proof of transaction, sale and act of possession, the plaintiff/respondent had an equitable interest in the property transferred to him. Meanwhile, it is trite law that since the power of attorney emanates from the plaintiff/respondent it implies that the principle of agency strictly applied. This is to the effect that he who does an act through another does it himself. This is expressed in the maxim '*Qui facit per alium, facit per se*'.

Arguably also, it does not lie in the mouth of the plaintiff/respondent to seek the assistance of the court to declare nugatory, a power of attorney that he signed and executed before a chief magistrate. A person cannot blow cold and hot at the same time. God forbid that the court would assist a party with a fraudulent adventure to annul his document and use such document to defeat a transaction he set in motion to put the other party to a state of depravity of his lawfully acquired title. The canon of expression is; *nullum commodum capere potest de injuria sua propria*, meaning no one should be allowed to gain advantage from his wrong. A party ought not to be allowed to approbate and reprobate.

The doctrine of *stare decisis* should never be allowed by the courts to be used to promote fraud. Landowners in Nigeria have fashioned ways to fraudulently used the courts to promote their fraud scheme. There are two ways deplore to do that; firstly, by dividing their family into two or more under the guise that they are not one when they have completely sold their mass area of land. One family would now take the other one to court. The one taken to court would not show appearance leading the court to deliver a default judgment that would be used to threaten those who had already bought their land, forcing them to effect second round of payment. This fraudulent scheming would be perfected by non-registration of their instruments as original owners and the claim that the purchasers have failed to register their registrable instruments. In essence, the Land Instrument Registration Law has been used oftentimes as a subterfuge to declare their former transaction and their document illegal. These are fraudulent schemes the court should not involve itself in. This is craftily down, using the existence of precedents to that effect as a fortress. Interestingly, the courts in Nigeria, especially, in the two cases under review have succeeded in aborting this fraudulent move in that despite the contradictory judgments, the interest of justice had been promoted. We submitted with due respect that the provisions of the 1979 and 1999 Constitution of the Federal Republic of Nigeria that removed issues relating to Evidence Act and admissibility of evidence to the exclusive legislative list is a legislative response to abort the fraudulent move by desperate vendors using the doctrine of judicial precedents as a subterfuge to perpetuate their fraudulent move.

It is submitted that, fundamentally, the doctrine of judicial precedent otherwise known as the doctrine of *stare decisis* has been used to promote the integrity of the court and certainty of law in the country of its origin i.e. England, Generally, the fundamental principle has two ambits, first is that the decision of the

¹⁰⁹ Supra.

House of Lords on a question of law is conclusive, and second, that same decision binds the House in subsequent cases. Some of the rationales for this doctrine are;

- i. That there would not be consistency in the House of Lord's decision if the law continues to change at the whims and caprices of the judge.
- ii. There would never be certainty in law if the House of Lords had the power to review its own decisions.
- iii. That the House of Lord should not have the power to review its own decisions to enhance its integrity.
- iv. That it is within the exclusive preserve of the legislature or parliament to make laws and therefore, the House of Lords should not be saddled with legislative function.

It should be noted that even in England, this attempt at maintaining this orthodoxy has engendered serious debate if not cross-fire statements among eminent Lords, to wit, Lord Wright;¹¹⁰ who opined that the House of Lords should have the same power of reviewing its own decisions like the Supreme Courts of the United States of America, Lord Evershed who in a public lecture in 1950, expressed the view that 'at present, the principle of *stare decisis* has no rigid application in the House of Lords.¹¹¹ Also, Lord Denning in the case of *Ostine v Australian Mutual Provident Society*, in a dissenting judgment remarked that:¹¹²

What authority is to be given in these circumstances to the decision of this House in 1947? Is it to be followed step by step regardless of consequences? I think not. The doctrine of precedent does not compel your Lordship to follow the wrong path until you fall off the edge of the Cliff. As soon as you find that you are going in the wrong direction, you must at least be permitted to strike off in the right direction, even if you are not allowed to retrace your steps.

The question is; are there any justifications for the Court of Appeal to follow either of the two contradictory judgments of the Nigerian Supreme Court, in this respect the judgments of the court in *Benjamin v Kalio*¹¹³ and *Jubrilah Abdullahi v Christiana Adetutu*?¹¹⁴ It should be noted that Gerald Dworkin wrote that the attempt at departure from precedents in the United Kingdom was provided with impetus at the country's Court of Appeal. He noted some recognized exceptions to the rule that the court is bound by its precedent as:

- i. The court is entitled and bound to decide which of its two conflicting decisions of its own it will follow.
- ii. Where the earlier Court of Appeal's decision was delivered *per in curiam*, extending its *per in curiam* principle to ignorance of previously binding case law as well as statute law.

¹¹⁰ Lord Wright remarks in (1960) 18, *Modern Law Review* p.23

¹¹¹ The Court of Appeal in England, University of London, Atblone Press (1950), p.21

¹¹² (1960) AC. P.459.

¹¹³ Supra

¹¹⁴ supra

Meanwhile, Lord chancellor Gerald Gardiner¹¹⁵ though maintained the obvious that the effect of the principle of *stare decisis* in the House of Lords is very uncertain, but admitted that exceptions to the principle are being introduced slowly and in his chronicle, he highlighted the possible exceptions to include.

- i. Where the *ratio decidendi* of the previous case is obscure.
- ii. If the precedents are conflictual with a fundamental principle of law.
- iii. If there are conflictual decisions of the House of Lords.
- iv. Where the previous decision was given *per in curiam* out of ignorance of a previous binding decision or in ignorance of statutory provisions or
- v. If the House of Lord's decision had been reversed by statute in which case, the general reasoning behind the decision need not be regarded as binding.

It is here submitted with due respect that, taking the above as persuasive, the Supreme Court of Nigeria has every reason on points II through to V to review its decision in *Abdullahi v. Adetutu*¹¹⁶. First, that where there is a right there is a remedy and the fact that nobody should be allowed to profit from his wrong are fundamental principles which ought to ginger the court to refuse the Plaintiff/Respondent request to seek the assistance of the court to annul its Power of Attorney to defeat the ownership and possessory right of the defendant/appellant as one can see in *Taiwo v Chief Ogunwale*¹¹⁷. Second. There exist two conflictual decisions of the Supreme Court as exemplified in *Benjamin v Kalio*¹¹⁸ and *Abdullahi v Adetutu*¹¹⁹. Presumably, the decision of the court in *Abdullahi v Adetutu*¹²⁰ was handed down in ignorance of the decision of the full court in *Benjamin v Kalio*¹²¹ and the statutory provisions of the 1979 and the 1999 Constitutions of the Federal Republic of Nigeria respectively which removed the legislative competence of the component states of the federation to legislate on the law of evidence and the admissibility of evidence in the proceedings before the courts in Nigeria. Though, it is improper to state that the judgment in *Abdullahi v Adetutu*¹²² was delivered *per in curiam* since the judgment only affects the first league that unregistered registrable instrument is void under the Lagos State Law Instrument Registration Law, more so since the court also invoked its equitable jurisdiction to protect the transaction and the possessory right of the purchaser. However, the fact remains that it would be right that the Supreme Court would hopefully put the law in the right course in *Taiwo v Ogunwale*, now on appeal by considering the constitutional implication of the states Land Instrument Registration Law.

Meanwhile, Lee¹²³ gave us a very powerful exposition of the ability of the English court to balance the requirement of certainty with that of pragmatism in an ever-changing world. From the onset, the above exceptions merely explicate different approaches among the justices. Lee used the statement of professor Burrows, referring to rigidly adherence to precedent solely as an abdication of judge's responsibilities. Burrows felt that it is derogatory or abdication of responsibility for the court to decline to develop the common law on the ground that the job is better reserved to the parliament. The fact that the

¹¹⁵ Langbein, J.H (1968), 'Modern Jurisdiction in House of Lords the Passing of London Tramways', *Cornell Law Review*, vol. 53, Issue 5. Pp 807-813

¹¹⁶ Supra

¹¹⁷ Supra

¹¹⁸ Supra

¹¹⁹ Supra

¹²⁰ Supra

¹²¹ Supra

¹²² Supra

¹²³ Lee, J. (2015), 'Fides et Ratio: Precedent in the Early Jurisprudence of the United Kingdom Supreme Court' *European Journal of Current Legal Issues*. Vol.21, No. 1.

opposite view that the court should not dabble into the legislative arena predominates the conservative thought while adhering to orthodoxy and the contrary liberal view recognizing the fact that to depart from previous decision been an integral accomplice of the doctrine of precedent is demonstratively paradoxical implies that there should be a practice direction to reconcile these two polar extremes on the treatment of precedents. In essence, the tension between the power of the House of Lords to depart from its previous decisions which are an integral part of the doctrine of precedents; and the language of precedential reasoning, demonstrative in the desire to avoid the exercise of the power to depart from precedent, according to Lee, become the major motivation for the emergence of the practice statement. The practice statement is the recognition of the thesis that; arguing for the value of certainty does not imply that rules never change. The practice statement which forms additional to the English court judicial arsenal was announced by Lord Gardener, Lord Chancellor on the 26th day of July 1966. This practice statement on proper analysis could be bifurcated into three strands of:¹²⁴

- i. The indispensable foundational basis of the doctrine of precedent.
- ii. Departure from strict adherence to precedent on the ground of injustice and
- iii. The danger of retrospective disturbance of private contractual relations.

The first strand of LordGardiner's practice statement is to the effect that;¹²⁵

Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides some damsel of certainty upon which individual can rely for the conduct of their affairs, as well as a basis for orderly development of legal rules.

This first strand represents the view of positivist legal theorists. The second strand consists in the recognition of the proposition that;¹²⁶

Their Lordships nevertheless recognizes that too rigid adherence to precedent may lead to injustice in a particular case and unduly restrict the proper development of the law. They propose therefore to modify their present practice, and, while treating former decisions of this House as normally binding, to depart from a previous decision, when it appears right to do so.

The second stand is a recognition of the danger inherent in strict adherence to 'what the law is'. It is an idea recognizing what is right i.e. 'what the law ought to be'. This is recognition of some aspect of Natural law theory without any allusion to the metaphysical argument.¹²⁷

Finally, the third strand pontificates the danger of adherence to precedent most especially in the realms of Private Property Law, Private Commercial Law or Law of Contract, Fiscal Arrangement and the Criminal Law where varying standards are applicable. For illustration purpose, strict adherence to

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Ibid

precedent might have serious implication for retrospectively affecting private commercial arrangements, private property choices of contracting parties as well as independent commercial arrangements between corporate bodies per se on the first hand and between individuals and the corporate bodies on the other hand. It is therefore against this background that the Nigerian Supreme Court needs to exercise caution and disengage from its precedential adherence to the positivist standpoint of preserving the sacredness of its precedents. Interestingly, the House of Lord's itself departed from its rigid adherence to precedent in cases like *Scruttons Ltd v Midland Silicones Ltd*¹²⁸ where the House of Lord refused to allow vicarious liability as an exception to the privity of contract rule by ignoring its precedent in the case of *Elder, Dempster Co. Ltd v Paterson, Zochonis & Co Ltd*¹²⁹; *Horton v Sadler*¹³⁰, where the House of Lords departed from *Walkey v Precision Forgings Ltd*¹³¹. Also in the case of *Jones v Kaney*¹³² it held that expert witnesses do not have general immunity from suit under the tort of negligence in respect of their conduct relating to a trial contrary to the general proposition of law laid down in the case of *Stanton v Callaghan*¹³³. Also, now as the House of Lords metamorphosed to the Supreme Court precisely the English Court of England and Wales Supreme Court, the case of *FHR European Ventures LLP and Ors v Cedar Capital Partners LCC*¹³⁴ is another interesting case that marked a clear departure from precedents where the Supreme Court held while unanimously dismissing the appeal, confirmed that where an opportunity is exploited by a trustee, a constructive trust could be found in favour of the principal in proprietary remedy.

With due respect, if the House of Lords, now English and Wales Supreme Court could overrule their previous decision, there is no reason why the Supreme Court of Nigeria could not overrule its previous decisions which were not in all fours with the requirement of justice. It is further submitted that the Supreme Court of Nigeria could not afford to sustain bad precedents. The existence of the Law Reform Commission in the legal system of countries like England and Australia is a great catalyst for activating quick legislative intervention to amend bad laws. In Nigeria, such a mechanism for activating timeous legislative response is not in existence.

Also, the jurisprudence of the English Court is premised on the principle of supremacy of parliament which is in tandem with the principle of the Westminster model or cabinet system of Government. This explains the reluctance of the English Court to depart from the orthodoxy of strict adherence to precedents; which as we observed is no more regarded as absolute tradition. In Nigeria, since the country made a clear historic departure from the Westminster or the cabinet system of Government model adopted in the First Republic to the presidential system with the Federal System of the American model, our court ought to make a clear departure from the principle of supremacy of parliament to that of the supremacy of the constitution. It is, therefore, in this regard that the Supreme Court of Nigeria ought to depart from the jurisprudential standpoint of the positivist school of strict adherence to precedents. Hopefully, the case of *Taiwo v Chief Ogunwale*¹³⁵ would go to the Supreme Court of Nigeria. While awaiting the verdict of the court, it is apt to state that despite the contradictory judgments of the Supreme Court in *Benjamin v Kalio*¹³⁶ and *Abdullahi v Adetutu*¹³⁷, the interest of justice

¹²⁸ (1962) 2 WLR. p.186. ;(1962) 1 ALL ER, p.1.

¹²⁹ (1922) 12 Ll.L Rep 69.

¹³⁰ (2006) UKHL p.27.

¹³¹ (1979) 1WLR p.606; (1979) 2 ALL ER. P. 548.

¹³² (2011) UKSC. P. 13.

¹³³ (1999) EWCA Civ 1176; 1 TCLR p. 50.

¹³⁴ (2014) UKSC p.45

¹³⁵ Supra

¹³⁶ Supra

¹³⁷ Supra

remained preserved. Nevertheless, the decision of the Supreme Court in *Benjamin v Kalio* is preferable. The decision quietened the state law declaring unregistered registrable instrument null and void.

7.0 Conclusion

This paper examined, discussed and analysed the contradictory judgments of the Supreme Court of Nigeria concerning unregistered registrable instruments. The paper made an insightful revelation that despite the contradictory judgment there is no obliteration of the course of justice based on the fact that the Apex Court adroitly called in equity. Meanwhile, the paper concluded that given the provisions of the 1979 and the 1999 Constitutions of the Federal Republic of Nigeria which was in a clear departure from the arrangement that obtained under the 1963 Constitution; issues relating to the law of Evidence and admissibility of evidence were removed from the legislative competence of the state's House of Assemblies. The implication of this is that all the Land Instruments Registration Law of the component States within the Federation of Nigeria was quietened. Henceforth, all Unregistered Registrable Instrument could now be used to proof interest in Land before the Courts in Nigeria.

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