SALIMAN ATANDA & ORS.
V.
MALAAM SAKA IFELAGBA
COURT OF APPEAL
(ILORIN DIVISION)
CA/IL/3/2002

MURITALA AREMU OKUNOLA, J.C.A.
(Presided and Read the Leading Judgment)
WALTER SAMUEL NKANU ONNOGHEN, J.C.A.
JAFARU MIKA'ILU, J.C.A.

TUESDAY, 10TH DECEMBER, 2002

COURT - Evaluation of evidence and ascription of probative value thereto by trial court - Attitude of appellate court thereto.
COURT - Trial court - Finding of fact thereby - When not perverse.
EVIDENCE - Documentary evidence - Document tendered in evidence - How evaluated by court - Whether court can be limited in determining the validity of the document from contents thereof.
EVIDENCE - Evaluation of evidence and ascription of probative value thereto by trial court - Attitude of appellate court thereto.
EVIDENCE - Proof- Title to land - Document of title - Where relied upon by party in proof of title - Enquiries court should make.
LAND LAW - Title to land - Document of title - Where relied upon by party in proof of title - Enquiries court should make.
LAND LAW - Trespass to land - Action therefor - What plaintiff must prove to succeed.
PRACTICE AND PROCEDURE - Documentary evidence -Document tendered in evidence - How evaluated by court -Whether court can be limited in determining the validity of the document from contents thereof.
PRACTICE AND PROCEDURE - Evaluation of evidence and ascription of probative value thereto by trial court - Attitude of appellate court thereto.
PRACTICE AND PROCEDURE - Finding of fact by trial court -When not perverse.
PRACTICE AND PROCEDURE - Trespass to land - Action therefor - What plaintiff must prove to succeed?

Issue:

Whether the trial court acted properly in resolving the genuineness of the alleged transfer of the land in dispute by comparing the signatures on the document of transfer with the signatures of the parties on other documents tendered in evidence by the parties.

Facts:

The respondent sued the appellants at the High Court of Kwara State. He sought for a declaration of his entitlement to a statutory right of occupancy over a plot of land; an order setting aside the purported transfer of the land by the 1st appellant to the 2nd appellant; damages for trespass to the plot of land; and an order of perpetual injunction against the appellants.

At the trial, the respondent testified and tendered exhibit 1 which is the sale agreement with which he purchased the land in dispute. He also called a witness who testified on his behalf.

The kernel of the respondent's case was that he is an illiterate and did not execute exhibit 1 or any document of transferred of his plot of land in favour of the 1st appellant who allegedly subsequently transfer the land to the 2nd appellant.

The appellants also testified at the trial of the suit and they also called two witnesses and tendered two exhibits namely "D1" and "D2" in evidence.

In the course of its judgment, the trial court compared the signatures on exhibit 1 and exhibit Dl and held that all the signatures on exhibit 1 for the respondent as transferee had character bearing great semblance with the signatures signed for the 1st appellant and one other person who were witnesses for the respondent. The trial court also compared the signatures in exhibits 1 and D1, and held that the signature signed thereon against the name of the respondent as transfer or was similar to the signature signed for the 1st appellant as witness in exhibit 1.

Consequently, the trial court held that the respondent did not sign exhibit D1 by which the respondent was alleged to have transferred his plot of land to the 1st appellant. The trial court also found that the respondent was in possession of the plot of land in dispute and held that the appellants were liable for trespass on the land. Consequently, the trial court granted all the reliefs sought by the respondent.

The appellants were dissatisfied with the judgment of the trial court and they appealed to the Court of Appeal.

Held (Unanimously dismissing the appeal):

1. On Enquiries court should make where a party relies on a document in proof of title to land -The fact that a claimant for declaration of title to land produces what he claims to be an instrument of grant of title does not automatically entitle him to a declaration that the property which the instrument purports to grant is his own. Rather, production and reliance upon such an instrument inevitably carries with it the need for the court to enquire into some or all of a number of questions which include:

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

   In the instant case, the trial court acted properly when it compared the signatures on exhibits "1" and "D1" as part of the evidence tendered before it with a view to making its finding as to whether or not the respondent executed the document transferring his land as alleged by the appellant. [Romaine v. Romaine (1992) 4 NWLR (PL238) 650; Kyari v. Alkali (2001) 11 NWLR (PL724) 412 referred to.] (P. 285, paras. C-F)
2. On Evaluation of documentary evidence -When a document is duly pleaded, tendered and admitted in evidence, that document becomes the best evidence of its contents and therefore speaks for itself. It is the contents of the whole document that is in evidence. That being the case the court cannot disregard it. In the instant case, the court cannot disregard the contents of exhibits 1 and Dl including the signatures of the parties thereto when attempting to do justice to the parties. (P. 288, paras. C-F)
3. On Attitude of appellate court to evaluation of evidence by trial court –
   Evaluation of evidence and ascription of probative value to such evidence is the primary responsibility of a trial court which saw, heard and watched the demeanour of the witnesses. (P. 288, para.
4. On When finding of fact by trial court is not perverse –
   A finding of fact by a trial court which is based on evidence adduced in line with the pleadings before the court is not perverse. (P. 286, Para. A)
5. On What plaintiff must prove to succeed in a claim for trespass to land –
   A plaintiff can succeed in an action for trespass only if he is in possession of the land at the time of the trespass complained of or he is deemed to have been in possession at

such time. In the instant case, the appellants failed to prove title to the land in dispute and it was proved that the respondent was in possession of the land in dispute. In the circumstance, the respondent was entitled to the award of damages for trespass to land made in his favour by the trial court.
(Balogun v. Akanji (1992) 2 NWLR (Pt. 225) 591 at 603;
Shittu v. Egbeyemi (1996) 6 NWLR (Pt. 457) 650; Umesie v. Onuaguluchi (1995) 9 NWLR (Pt. 421) 515 referred to.] (P. 287, paras. C-F)

Nigerian Cases Referred to in the Judgment:

Akpunonu v. Bekaert (1995) 5 NWLR (Pt.393) 42
Balogun v. Akanji (1992) 2 NWLR (Pt. 225) 591
Brawal Shipping (Nig.) Ltd. v. Onwadike Co. Ltd. (2000) 1] NWLR (Pt. 678) 387
Dunminiya v. C.O.P. (1961) NNLR 70
Iheanacho v. Ejiogu (1995) 4 NWLR (Pt. 389) 324
Kyari v. Alkali (2001) 11 NWLR (Pt. 724) 412
Nnorodim v. Ezeani (1995) 2 NWLR (Pt. 378) 448
Oyebanji v. Okunola (1968) NMLR 221
Romaine v. Romaine (1992) 4 NWLR (Pt. 238) 650
Shittu v. Egbeyemi (1996) 6 NWLR (Pt.457) 650
Umesie v. Onuaguluchi (1995) 9 NWLR (Pt.421) 515

Nigerian Statute Referred to in the Judgment:

Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990, Ss. 61(1) and (2), 108(1) and (2)

Nigerian Rules of Court Referred to in the Judgment:

High Court of Kwara State (Civil Procedure) Rules, O.25 r. 5(1)

Appeal:

This was an appeal against the judgment of the High Court of Kwara Stale, Ilorin given in favour of the respondent. The Court of Appeal, in a unanimous decision, dismissed the appeal.

History of the Case:

Court of Appeal:
Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Ilorin
Names of Justices that sat on the appeal: Muritala Aremu Okunola, J.C.A. (Presided and Read the leading, Judgment); Walter Samuel Nkanu Onnoghen, J.C.A.; Ja'afaru Muka'ilu. J.C.A.
Appeal No.: CA/IL/3/2002
Date of Judgment: Tuesday, 10th December, 2002
Names of Counsel: Yusuf Ali, SAN (with him R O Balogun, Esq.) -for the Appellants
O.J. Adeseko, Esq. -for the Respondent
High Court:
Name of the High Court: High Court of Kwara State Ilorin
Name of the Judge: Gbadeyan, J.
Counsel:
Yusuf Ali, SAN (with him, R. O. Balogun, Esq.) - for the Appellants
O. J. Adeseko, Esq. -for the Respondent

OKUNOLA, J.C.A. (Delivering the Leading Judgment): This is an appeal against the judgment of the High Court of Kwara State sitting at Ilorin delivered by Gbadeyan, J. By the

endorsement contained on the writ of summons and reiterated in paragraph 10 of c the statement of claim both of which were filed on 18th September, 1997, the respondent (as plaintiff) claimed against the appellants (as defendants) thus:

"10. WHEREOF the plaintiff claims both jointly and severally as follows:-

1. To set aside the purported sale or transfer of the piece or parcel of land, situate, lying and being at Off Taiwo Road, behind Primary School Oja-lya Area, Ilorin, Kwara State measuring 50 ft x 50 ft by the 1st defendant to the second defendant.
2. A declaration that the plaintiff is the only person entitled to the grant of statutory right of occupancy over the piece or parcel of land behind ECWA Primary School of Oja-iya, Ilorin, Kwara State which is within the jurisdiction of this Honourable Court.
3. Ten Thousand Naira (N 10,000.00) only as damages for trespass committed by the defendants for unlawful entrance on the said land.
4. A perpetual injunction restraining the defendants their agents, servant's privies and/or anybody whatsoever therefor, from entering the said or from further acts of trespass on the said land."

The defendants joined issues with the plaintiff vide their joint statement of defence which could be found at pages 6-8 of the record.

At the High Court the trial commenced. The plaintiff/respondent testified as PW1 and tendered exhibit 1 which is the sales agreement with which he purchased the land in issue. One Yemi Adebayo testified as PW2. She also tendered exhibit 2. The testimonies of the PW1 and PW2 are at pages 18-21 and 21-22 of the record respectively. The appellants testified in support of their defence and also called two other witnesses. The DW1 was one Alfa Saadu baba Pupa whose testimony is at pages 22-23 of the record. The 1st appellant testified as DW2 and his testimony is at pages 23-25 of the record. The DW3 was one Amoda Adisa also known as Amoda Kalubi and his testimony spanned pages 26-28 of the record. The 2nd appellant was the last witness for the defendants. He testified as DW4 and his testimony is at pages 28-30 of the record. Exhibits Dl and D2 were tendered by the defendants/appellants through the 1st and 2nd appellants respectively. Learned counsel to the parties filed and exchanged written addresses which were later adopted. The defendants' written address is contained at pages 38-44 while that of the plaintiff is at pages 45-48 of the record. The learned trial Judge delivered a considered judgment in which he granted all the reliefs sought by the respondent. The judgment is at pages 49-53 of the record.

Dissatisfied with this judgment, the appellants herein filed their notice of appeal containing nine grounds of appeal. From the nine grounds of appeal the appellants formulated the following four issues for determination in this appeal, viz:

1. Whether the trial court had the vires to raise the issue of fraud suo motu and to proceed to compare signatures on documents when the issue of fraud and that of signature were not made issues on the pleadings filed and exchanged by the parties and when there was no sufficient material before the court for a proper resolution of these issues.
2. Whether the trial court was entitled to set up a new case for the parties and to proceed to decide the case based on the new case so formulated and to base its judgment on unpleaded facts and on speculations.
3. Whether the trial court was right to have awarded damages for trespass against the appellants in the circumstances of this case and whether the trial court was not in error

and did not abdicate its judicial responsibility by failing to consider the totality and effect of the evidence lawful adduced before it especially by the appellants.

4. Whether on the totality of the evidence adduced before the trial court, it was right to have granted all the reliefs sought by the respondent.

The respondent also formulated two issues which but for style in drafting are similar to the four issues formulated supra by the appellants. These are;-

1. Whether the findings of trial court is perverse and same should be reversed and or whether the trial court in resolving the genuineness of the land from the 1st appellant to the 2nd appellant is in position to have a thorough look at exhibits and evidence placed before him and make findings of facts on these exhibits vis-a-vis the oral evidence before him. Grounds 1, 2, 3, 4, 5, 6, 8 & 9.
2. Whether the respondent has proved exclusive possession against the appellant to have entitled him for the award of damages of N5, 000.00 - Ground 7.

Both learned counsel lo the parties filed their respective briefs of argument on behalf of their clients. On 29/10/02 when this appeal came up for hearing, both learned counsel to the parties adopted these briefs and went further to address us viva voce to highlight some points. Learned counsel to the appellants, Mr. Yusuf Ali, SAN leading R. O. Balogun, Esq. adopted and relied on the appellants' brief filed herein on 9/4/01 and urged the court to allow the appeal .By way of reply, learned counsel to the respondent Mr. O .J Adeseko adopted and relied on the respondent's brief filed herein on 25/1/02. But deemed filed by the order of this honourable court made on 16/4/02. Learned counsel to the respondent urged the court to dismiss the appeal. by way of further reply, the learned SAN for the appellants said he had nothing to add.

I have considered the submissions made by both learned counsel to the parties both orally and in their briefs of argument vis-a-vis the records and the prevailing law. It is clear that their arguments boil down to one principal issue raised in issues 1 & 2 of the appellants and 1 of the respondent respectively. These issues were s in summarized Issue 1 of the respondent as principal issue thus:

"Whether the findings of trial court is perverse and same should be reversed and or whether the trial court in resolving the genuineness of the transfer of the land from the 1st appellant to the 2nd appellant is in position to have a thorough look at exhibits and evidence placed before him and make findings of facts on these exhibits *vis-a-vis* the oral evidence before him."

On this principal issue, learned counsel to the appellants on pages 3 & 4 of the appellants' brief referred to paragraph 11 of the appellants' statement of defence which reads thus:

"11. The defendants aver that when the purchase price was paid, the defendant on behalf of the plaintiff gave a receipt for the payment to the 2nd defendant and thereafter the plaintiff executed a sale agreement in the presence of witnesses to confirm the transfer of the land."

Learned counsel to the appellants submitted that despite the very serious averment in the above quoted paragraph of the statement of defence, the respondent as plaintiff did not consider it necessary to file a reply to react to the averment. Quite curiously and despite the state of pleadings the trial court, all the same, proceeded at page 51 of the record to hold that:-

"The plaintiff claiming that he could barely write his own name denies signing exhibit 1. One therefore wonders whether it is sheer coincidence that, the signatures of the transferee (Mallam Saka Iyanda Ifelagba) and his witnesses Salimonu Atanda and Amoda Adisa have character bearing great semblance. When

compared with exhibit Dl the new sale agreement at page 2, the signature of Mallam Saka lyanda Ifelagba appears to be like that on exhibit 1 with the said Salimonu. Atanda and Alhaji Amoda Adisa now thumb-printing as his witnesses. At page 3 the signature of the solicitor purchaser is constant as that of the transferee and the interpreter as well as the solicitor who prepared and read the content from English to Yoruba even though the DW4 himself admitted on oath that he was not present when the document was executed. The illiterate *jurat* on it is, therefore, false and the whole document is suspect."

Learned SAN submitted that the purport and essence of the holding of the learned trial Judge quoted above boils down to issue of fraud. The fact of comparison of signatures and the description of the whole document as suspect lends credence to this line of thought. Learned counsel to the appellants therefore most humbly submitted that it is now the corpus of our jurisprudence that issue of fraud in a civil action must be specifically pleaded with particulars and proved beyond reasonable doubt. Learned counsel on this submission relied on the provisions of Order 25 rule 5.1 of the Kwara State High Court (Civil procedure) Rules which is the applicable rule of court. For the submission that this grievous allegation must be specifically pleaded he relied on *Iheneacho v. Ejiogu* (1995) 4 NWLR (Pt.389) 324 at 335; *Akpunonu v. Bekaerte* (1995) 5 NWLR (Pt. 393) 42, (2000) 12 WRN 162 at 168. He submitted further that since civil proceedings are circumscribed and n predicated on facts pleaded by parties, the trial court was in gross error to have raised the issue of forgery or non-genuineness of the exhibit in question when same was not an issue on the pleadings of the parties. Learned counsel for this submission, cited the case of *Shittu* v. *Egbeyemi* (1996) 6 NWLR (Pt. 457) 650, (1996) 7 MAC 1 at 76. He further submitted that *the trial court cannot in law compare signatures on documents when same was not made an issue and the pleadings filed and exchanged by the parties and especially when the provisions of section 108(1) and (2) of the Evidence Act,* Cap. 112, Laws of the Federation, 1990 have been flagrantly violated, The position is further compounded because the trial court also did not observe the provisions of section 61(1) and (2) of the same Evidence Act, learned SAN argued. He submitted also that what the trial court did in this case by comparing signatures on documents within the confines of his chambers and in the absence of the parties and without any practical evidence or demonstration in open court amounts to conduct of investigation by the trial court. On this learned SAN contended that it is well settled in our law that a court has no duty nay right to conduct investigation on documents tendered in open court especially when attention of witnesses are not called to those portions of the documents now forming the subject matter of the investigation. See *Duriminiya v. C.O.P.* (1961) NNLR 70.

He submitted finally on this issue that the procedure adopted by the learned trial Judge greatly occasioned a miscarriage of justice on the appellants as it ultimately culminated in the award of all the reliefs sought by the respondent. He prayed the court to so hold. He finally urged the court to resolve this issue in the appellants' favour.

On this principal issue, learned counsel to the respondent by way of reply submitted at pages 4-9 of the respondent's brief that the issue before the trial court is as to whether the respondent participated in the resale of his land to the 2nd appellant through the 1st appellant and in resolving the issue, the court is bound and is in position to review both oral and documentary evidence before him which included exhibits J and DJ which were among the documents relied upon by the parties. In this regard, learned counsel to the respondent submitted that when a document is pleaded in order that it may be used in evidence to substantiate facts relied upon by the pleader, the contents thereof are facts and are pleaded as such. Learned counsel cited *Brawal (Nig.) Ltd. v. Onwadike Lid. & Ann* (2000) J1 NWLR (Pt. 678) 387, (2000) 2 SCNLR 1379 at 1397. He further submitted that since exhibits 1 & Dl are properly tendered before the court, the court cannot disregard the contents therein which

include the signatures of the parties in arriving at the justice of the case. He submitted that the documents, both the two exhibits inclusive have to be read as a whole. According to learned counsel, the evaluation of evidence and ascribing of probative value to such evidence is the primary function of a trial court which saw, heard and assessed witnesses -*Nnorodim v. Ezeani* (1995) 2 NWLR (Pt. 378) 448, 5 SCNLR 513. Learned counsel therefore submitted that the trial court is performing its judicial responsibility and or has not abdicated his judicial responsibility when he compared exhibits 1 and Dl as this is part of his duty in giving or ascribing probative value to the two documents (pages 5J-52 of the record). He therefore submitted that the trial court did not raise the issue of fraud nor did he say that either of the parties has committed fraud in his findings and in arriving at a decision. Learned counsel referred to paragraph 9 of the plaintiff's statement of claim which says:

> "The plaintiff pleads that he had never consented to the sale or transfer of the land to the 2nd defendant or anybody at all."

The defendants by their paragraphs 2-13 joined issues with plaintiff, hence the court in resolving whether the plaintiff consented to the sale or not is bound to compare exhibits 1 & Dl and other evidence before the court and did not make any finding as to the issue of fraud. Learned counsel further submitted that mere production of valid documents of title evidencing the title is not enough as it is merely a *prima facie* evidence of title to the land it covers and no more.

I have considered the submission of both learned counsel to the parties on this principal issue *vis a-vis* the records and the prevailing law. The only issue lor resolution now boils down to whether the trial court in resolving the genuineness of the transfer of the land from the 1st appellant to the 2nd appellant is in position to have a thorough look at exhibits and evidence placed before him and make findings of facts on these exhibits *vis-a-vis* the oral exhibits before him. This poser had come for consideration and resolution by the apex court in the case of *Romainc v. Ronmine (*1992) 4 NWLR (Pt. 238) 650 1 per Nnaemeka-Agu, JSC thus:

> "But it does not mean that once claimant produces what he claims to be an instrument of grant he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather production and reliance upon such an instrument inevitably carried with it the *need for the court lo enquire in to some or all of a number of questions,* including: (italics is mine)

i. Whether the document is genuine and valid,

ii. Whether the grantee had the capacity and authority to make the grant.

iii Whether it has been duly executed, stamped and

iv Whether the grantor had in fact what he purported to grant and

v. Whether it had the effect claimed by the holders of the instrument"

Per Anthony . Iguh, JSC in *Kyari v. Alkali* (2001) 11 NWLR (Pt. 724) 412, (2001) 6 NSCQR Vol. 11 819 at 846.

From the foregoing authority the trial court in my view did not raise the genuineness of exhibit Dl *suo motu* as he has a right to make finding of facts on exhibit Dl on his own volition as to its genuineness, proper and due execution, whether stamped and whether the 1st appellant has the right and capacity to make the grant vide exhibit Dl, so also whether the 1st appellant had in fact what he purported to grant to the 2nd appellant and lastly whether the 2nd appellant had in effect what he claimed as the holder of exhibit DL More importantly when the

2nd appellant as a lawyer of 12 years standing did not deem it fit 10 collect the original of title documents from the respondent nor carry out the inquiry as to the genuineness of the land but only relies on his agent who did not show him the power of attorney. Though he said he asked for the original document in his evidence, but these material facts were never pleaded by the two appellants. It is based on this that the trial court had to make the findings contained at pages 51,52 and 53. It is f0r these reasons that I hold that the finding of facts on this issue is not perverse. It is also apparent that the trial court based his finding on pleadings vis-a-vis the evidence before the court. This is because it was in evidence of DW4, the 2nd appellant that he saw the original of exhibit 2, written to the 1st appellant by the respondent counsel in 1997 when the 1st appellant called at his office in 1997 with the letter (see page 27 of the record). This piece of evidence accords with paragraph 8 of the respondent's statement of claim. The plaintiff in his evidence said (see page 20 of the record) that he never executed any sale of land agreement in favour of anybody. He further said the 1 st defendant could have issued receipt for S. A. Yusuf but I did not know anything about the transfer. This evidence is in consonance with paragraph 9 of the statement of claim. Under cross-examination of the 2nd appellant PW4, he said he left exhibit Dl with the 2nd appellant who promised to bring it after execution and that he went to the 1st defendant to collect exhibit Dl and that the 1st defendant told him that it was signed by the respondent himself (see page 30 of the record). In my view it is based on the above evidence that the trial Judge made the following findings (see page 32 of the record):

> "I believe the second defendant's evidence that he as a lawyer only prepared exhibit Dl and left it with the first defendant who was to return it to him after it must have been duly executed. My conclusion is that the solicitor would not know who signed what ..."

All these go to confirm that the trial court did not speculate in his findings but only based his findings on the pleaded facts and evidence before him. What is more (see page 20 of the record) under cross-examination of the respondent by the appellants' counsel, the respondent maintained and said,

> "I can only write my name. I did not sign any document for S. A. Yusuf and I did not collect any money from him."

While DW2, the 2nd appellant on his own said at page 24 in examination-in-chief that he signed as a witness through his son in the agreement with Gidado Olowoopon. It is in making a finding on the above fact that the trial court conclude that the plaintiff and the 1st defendant are illiterate and that the 2nd defendant as a lawyer ought to have authenticated the agreement before a magistrate who would have cleared the doubt.

On the totality of the evidence in support of the pleadings and exhibits 1 & Dl before the learned trial Judge I hold that the learned trial Judge was perfectly in order when he compared the signatures exhibits 1 & Dl as part of the evidence tendered before him with view to making the findings of facts he made and I so hold. This principal issue is resolved in favour of the respondent.

On the subsidiary issue relating to damages 1 have considered the arguments of both learned counsel to the parties on this issue, *vis-a-vis* the records and the prevailing law. To resolve this issue there is need to have a recourse to the pleadings and evidence before the lower court. Paragraph 2 of the statement of claim of the respondent shows that he had been in quiet possession since he bought the land (see pages 3 & 18 of the record). *The law is that a plaintiff in an action for trespass to land in order to succeed must he one who was in possession of the land at the time of the trespass complained of or who is deemed to have been in possession at such time* see *Oyebanji v. Okunola & Anor.* (1968) NMLR page 221. In

the instant case, it is apparent that at the trial court the *title of the respondent was never put into issue on whether the 1st defendant had validly transferred the land to the 2nd defendant. One of the claims of the respondent at the trial court is claim for N10.000 as damages for trespass committed by the appellants.* Thus, since the trespass is an infraction of possession and it is evidently clear at the trial that the plaintiff is in possession hence he is entitled to damages of N5,000 awarded against the defendant. See *Balogun v. Akanji* (1992) 2 NWLR (Pt.225) at 591; *Sliinit* v. *Egbeyemi (*1996) 6 NWLR (Pt. 457) 650, (1996) 7 MAC 1 at 6; *Umesie* v. *Onuaguluchi* (1995) 9NWLR (Pt. 421) 515, (1995) 12 SCNJ. In the light of the foregoing authorities 1 hold that the respondent is entitled to the award of N5,000 as found by the trial court.

In sum I hold that the appeal lacks merit and should be dismissed for the following reasons:

1. The respondent discharged the burden placed on him as required by law to entitle him to his claims.
2. The learned trial Judge took into consideration all the facts, issues and/or the established facts before him into consideration in the evaluation of the evidence hence he came to a right conclusion.
3. The respondent established that he is in exclusive possession, hence he is entitled to damages.
4. The trivial Judge based his judgment on the plead facts *vis-a-vis* the evidence before him.

Appeal is dismissed. No order is made as to costs.

ONNOGHEN, J.C.A.: 1 have had the opportunity of reading in advance the lead judgment of my learned brother Okunola J.C.A, just delivered. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

It is trite law that the High Court is both a court of law and equity. The facts of this case bring to the fore the problems of the trial court when evaluating evidence with particular reference to exhibits that are relevant and had been duly pleaded and tendered by the parties to the proceedings. Is the role of the trial court limited to the specific purpose for which a document is tendered or pleaded irrespective of the fact that when taken as a whole the document may not support the purpose for which it was pleaded or tendered? Jn such a situation is the learned trial Judge being a Judge of law and equity to close his eyes to the injustice that may result from his refusal to consider the totality of the document since it has been pleaded, tendered and admitted in evidence? It is the appellants' contention that the trial Judge must so close his eyes while the respondent and the trial Judge contend the contrary. The relevant documents in this appeal are exhibits 1 and Dl. It is my view that when a document is duly pleaded, tendered and admitted in evidence, [that document becomes the best evidence of its contents and therefore speaks for itself. It is the contents of the whole document that is in evidence. That being the case the lower court cannot disregard the - contents of exhibits 1 and DJ including the signatures of the parties , thereto when attempting to do justice to the parties.

It is trite law that evaluation of evidence and ascription of probative value lo such evidence is the primary responsibility of a trial court which saw. heard and watch the demeanor of the witnesses. it has been held by the Supreme Court *inter alia,* that:

"… it does not mean that once claimant produces what he claims to be an instrument of grant he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own. Rather production and reliance upon such an instrument inevitably carried with it the need for the court to enquire into some or all of a number of questions including:

(i) Whether the document is genuine and valid,
(ii) Whether the grantee had the capacity and authority to make the grant,
(iii) Whether it has been duly executed, stamped and,
(iv) Whether the grantor has in fact what he purported to grant and
(v) Whether it had the effect claimed by the holders of the instrument." See Kyari v. Alkali (2001) 6 NSCQR (Vol. 11) 819 at 846 per Iguh, J.S.C.

I have carefully gone through the record of proceedings particularly the judgment of the lower court and 1 am certain that the learned trial Judge never raised the issue of fraud neither did he mention the word in his judgment. That being the case the argument as to the issue of fraud n not having been specifically pleaded and particulars given as required by the rules etc does not arise and therefore misconceived.

I have to observe that lawyers are gentlemen whose conduct must of necessity be seen to be above board. The transaction giving rise to the case on appeal involves a purported sale and purchase of an p immovable property by a lawyer from a person who purports to act on behalf of the real owner who, of course, denies knowledge of the transaction.

It is true that under the circumstance the lawyer will feel bad when he eventually realizes that he has been taken advantage of but the fact that his integrity may be questioned if he insists on his rights should operate as a check to make him consider other alternatives.
In conclusion 1 too dismiss the appeal and abide by the consequential orders made in the said lead judgment of Okunola JCA including the order as to cost.

Appeal dismissed.

MIKA'ILU, J.C.A.: I agree with the judgment of Hon. Justice Okunola, JCA. The learned counsel for the appellant has introduced the issue of fraud whereas the decision of the trial court was not on fraud. In deciding to act on exhibit I the trial court had to look at it on its face and compare it with any other exhibit tendered in evidence. The appeal is dismissed.

Appeal dismissed.