

**ADMISSIBILITY OF UNREGISTERED
REGISTRABLE INSTRUMENT TO PROVE
OWNERSHIP IN LAND: *BENJAMIN V KALIO* (2018) 15
NWLR (PT 1641) 38 AND *ABDULLAHI V ADETUTU*
(2020) NWLR (PT1711) 338 (SC), AS CASE STUDY**

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Abstract

Proof of ownership in land constitutes an important aspect of property law practice in Nigeria. Amongst the various ways of proving interest or title to land is the presentation of instruments of title. Admissibility of title document and indeed other pieces of evidence is regulated by law. This article appraised the admissibility of unregistered registrable instrument in proof of interest in land, be it interest or ownership in land vis-à-vis the decisions of the Supreme Court in *Benjamin v Kalio* and *Abdullahi v Adetutu*. It was observed that the court in *Abdullahi's* case did not take a holistic approach in reaching its decision that an unregistered registrable instrument is not admissible to prove interest in land, but only admissible to evidence transaction of both parties, as well as evidence purchase receipt. The Supreme Court in

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Benjamin's case meticulously observed the Rivers State Land Instruments (Preparation and Registration) Law, which is similar to land instruments law of various States in Nigeria, its previous decisions on the subject matter, the Evidence Act 2011 and the Constitution of Federal Republic of Nigeria, 1999 (As Amended) in reaching her decision. In analyzing both decisions, the writers opined that irrespective of the contrary decision of the Supreme Court on admissibility of unregistered registrable instrument with *Abdullahi v Adetutu* being the later in time, *Benjamin v Kalio* represent the correct position of the law. In concluding this article, the writers expressed optimism that the Supreme Court will have no difficulty in affirming *Benjamin v Kalio* as the correct position of the law where it is faced with both decisions for consideration.

Keywords: Admissibility, Instrument, Interest, *Stare Decisis*, Inconsistency.

1. Introduction

The concept of land generally encompasses not only the surface or topmost part of the earth but includes all appurtenances attached with the land, which include: trees, water, pond, building etc. In fact, section 18 of the Interpretation Act² defines immovable property (land) to include "any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals."³ Thus, the meaning of land in Nigeria includes what is attached to the land but excludes

² (2004) Cap I 7 Laws of the Federation of Nigeria

³ Section 18(1).

minerals. In view of the foregoing, the common principle of *quid quid plantatur solo solo cedit* which literally translates to what is permanently affixed to the land belongs to the land is applicable in Nigeria. Consequently, whoever owns the land owns whatever is permanently affixed to it. See *Jimmy King (Nig) Ltd v UBA Plc*⁴

In laying claim to ownership of land, it is a trite principle of law that whoever asserts such claim must prove same as expressly and unequivocally provided in section 131, Evidence Act 2011. Thus, whoever lays claim to any piece or parcel of land have a responsibility or burden to prove same. Proof in law is a process by which the existence or nonexistence of facts is established to the satisfaction of the court. See *DIIL Int'l Nig Ltd v Eze-Uzoamaka*,⁵ *Salau v State*⁶. In Nigeria, there are five ways of proving title to land as espoused in *Idundun v Okumagba*.⁷ These are:

- i. By traditional evidence
- ii. By production of document of title duly authenticated
- iii. By acts of ownership extending over a sufficient length of time that warrants inference of ownership
- iv. By acts of long possession and enjoyment of the land

⁴ (2020) 16 NWLR (Pt 1751) 377 at 400-401 paras F-A.

⁵ (2020) 16 NWLR (Pt 1751) 445 at 493, paras F-G

⁶ (2019) 16 NWLR (Pt 1699) 399

⁷ (1976) 9-10 SC 277 at 246

- v. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. So the court held in *Maneke v Maneke*.⁸

It is imperative to stress that a party must not employ all five ways of proving title to land. Thus, according to the court in *Holloway v Jimoh*,⁹ a party asserting ownership or title to land is at liberty to employ one or more of the five ways of proving title to land.

Where a party is depending on the second mode, that is, production of document of title, the various land instrument registration laws of the States in Nigeria require that the document or instrument be duly registered. The importance of registering such instrument is underscored by the fact that it does not only ensure that interest in land is well protected but, exposes whether a piece of land is encumbered during search as well as govern priority in the event of subsequent competing interest over the same piece or parcel of land.

Pursuant to Section 37, Land Instruments (Preparation and Registration) Law of Rivers State, Cap 74, Laws of Rivers State 1999, instrument is seen as:

a document affecting land in Rivers State
whereby one party (hereinafter called the

⁸ (2020) 13 NWLR (Pt 1741) 311 at 330-331, paras G-B.

⁹ (2020) 2 (NWLR (Pt1707) 27 at 77 para B-D.

grantor) confers, transfers, limits, charges or extinguishes in favour of another party (hereinafter called the grantee) or purporting to do so, any right or title to, or interest in land in Rivers State, and a certificate of purchase and a power of attorney under which any instrument may be executed, but not a will.

For some reasons unconnected with high cost of registration, negligence, ignorance, and bureaucratic bottleneck, many holders of interest in land in Nigeria do not bother to register their instrument at the land registry; thus, resorting to unregistered registrable instrument in prove of interest.

Unfortunately, many States in Nigeria have rendered unregistered registrable instrument inadmissible to prove interest in land. Section 20 of Land Instruments (Preparation and Registration) Law of Rivers State provide thus:

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

Provided that a memorandum given in respect of an equitable mortgage affecting land in Rivers State executed before the 1st day of July 1944, and not registered under this Law, may be pleaded and shall not be inadmissible in evidence by reason of not being so registered.

The above provision is in *pari materia* with the land instrument registration law of the various States in Nigeria. In giving flesh to pieces of legislations such as the above legislation by way of judicial interpretation, the Supreme Court in *Ogbimi v Niger Construction Limited*¹⁰ held that a registrable land instrument not registered is rendered inadmissible in evidence and if erroneously admitted in evidence shall be liable to be expunged therefrom. The apex court per Oputa JSC in an earlier decision in *Akintola & Anor v Solano*¹¹ held to the following effect: “It is trite law that by virtue of s. 16 of Land Instrument Registration Law of Oyo State, a registrable instrument which is not registered cannot be pleaded.”¹²

It is imperative to stress that admissibility under Nigeria jurisprudence is principally governed by the Evidence Act 2011. Admissibility in law is the state of being allowed to be entered as evidence in prove or disprove of a fact in issue. In *Torti v Ukpabi*,¹³ the court held that for a piece of evidence to be admissible, it has to be relevant. Although, evidence may not be admitted even though such evidence is relevant, where for instance a secondary evidence is sought to be tendered in a proceeding, proper foundation has to be laid. To lay proper foundation is to provide compelling legally permissible explanation as to why such evidence should be allowed by the

¹⁰ (2006) All FWLR (Pt 317) 390 at 400, para F

¹¹ (1986) 2 NWLR (Pt 24) 589

¹² (1986) 2 NWLR (Pt 24) 598. See also *Edokpolo & Co Ltd v Ohenhen* (1994) 7 NWLR (Pt 358) 511.

¹³ 1984) 1 SCNLR 214

court; otherwise such evidence though relevant and admissible will be rendered inadmissible in court for failure to comply with the conditions for the admissibility of secondary evidence.¹⁴ For instance, where photocopy of a private document is sought to be tendered in evidence, the law requires explanations as to the whereabouts of the original copy. Similarly, where a secondary copy of public document is to be tendered, the law requires that such public document be certified in a manner prescribed by law¹⁵.

Albeit, irrespective of the fact that relevance is the primary basis for admissibility, the courts have consistently held purpose to be the basis of admissibility of unregistered registrable instrument. In 2018 however, the Supreme Court fully empanelled upturned this long age principle of admissibility of unregistered registrable instrument in *Benjamin v. Kalio*.¹⁶ Surprisingly, the next year (2019), the Supreme Court also departed from her decision in *Kalio*'s case in *Abdullahi v Adetutu*.¹⁷ This article is therefore an attempt to adequately appraise the decisions of the Supreme Court in both cases with a view to uncovering which of the two decisions represent the correct position of the law.

For the purpose of clarity of thought and precision, this research is carried out in 3 sections, section one is the introduction, section two looks at the decisions in *Benjamin v*

¹⁴ Sections 87, 89, Evidence Act, 2011

¹⁵ Section 104 of the Evidence Act 2011.

¹⁶ (2018) 15 NWLR (Pt. 1641) 38

¹⁷ (2020) NWLR (Pt. 1711) 338; (2019) LPELR-47384 (SC)

Kalio and Abdullahi v Adetutu while section three appraises both decision as well as house the conclusion of this work.

2. Benjamin v Kalio and Abdullahi v Adetutu

2.1 Benjamin v Kalio

The fact of this case is that the appellants instituted an action against the respondents at the High Court of Rivers State claiming declaration of title to a parcel of land known as Awoka land or Awoka farmland situate in Abuloma town, Port Harcourt, Rivers State. The respondents filed a counter-claim against the appellant and claimed that title in the land vested in them since 1979 when the disputed parcel of land was sold to them by the appellants' family. The deed of conveyance evidencing the transaction was tendered and was admitted as exhibit "L" by the trial court upon finding that it was properly pleaded and was admissible. At the conclusion of trial, the trial court in its judgment dismissed the appellants' claim but granted the respondents' counter-claim. The appellants were aggrieved and they appealed to the Court of Appeal. The Court of Appeal affirmed the judgment of the trial court but reduced the quantum of general damages awarded to the respondents for trespass. It awarded the sum of ₦750,000.00 instead of the sum of ₦1,500,000.00 awarded by the trial court. The appellants were dissatisfied with the decision of the Court of Appeal and they appealed to the Supreme Court. At the Supreme Court, the appellants contended that exhibit "L", a registrable land instrument not registered in accordance with the provisions of sections 20 and 37 of the Land Instruments (Preparation and Registration)

Law, Cap 74, Laws of Rivers State, 1999 ought not to have been pleaded and to have been admitted in evidence or relied upon by the trial court and the Court of Appeal.

At the Supreme Court, a sub-issue arose from issue 1, that is, whether exhibit L, a registrable land instrument not registered in accordance with the provisions of the Rivers State Land Instruments (Preparation and Registration) Law, Cap. 74, 1999, was admissible in evidence. The provision of the said law has already been reproduced above but for ease of reference and emphasis, it provides thus,

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

Provided that a memorandum given in respect of an equitable mortgage affecting land in Rivers State executed before the 1st day of July 1944, and not registered under this Law, may be pleaded and shall not be inadmissible in evidence by reason of not being so registered.¹⁸

The appellants, relied on sections 20 and 37 of the said Law, amongst other authorities including *Shittu v Fashawe*,¹⁹ *Ogbimi v Niger Construction Limited*²⁰, *Akinduro v Alaya*,²¹

¹⁸ S. 20, Rivers State Land Instrument (Preparation and Registration) Law, Cap 74, 1999

¹⁹ (2005) All FWLR (Pt. 278) 1017

²⁰ (2006) All FWLR (Pt. 317) 390 at page 412, parasF-A

²¹ (2007) All FWLR (Pt. 381) 1653

that exhibit L, a registrable land instrument, not registered, was wrongly admitted in evidence and therefore should be expunged from the evidence together with all the findings of the lower courts based on the said exhibit. The appellants insisted that exhibit L was not registered as required by the Law and ought not to have been pleaded and admitted in evidence or relied upon by the lower courts in reaching its decision.

The Supreme Court fully empanelled (7 JSCs) and presided over by Ariwoola JSC, while Eko JSC read the lead judgment took a cursory look at the development of constitutional law from the 1963 Constitution. The court unraveled and rightly so that evidence was not on the Exclusive Legislative List under the 1963 Constitutional arrangement but was on the concurrent list, thereby giving both the National and State legislative Houses the power to make laws relating to matters pertaining evidence. However, the apex court held that under the 1979 Constitution, evidence was brought into the Exclusive Legislative List as item 23 and has remained so ever since. It is currently Item 23 of the Exclusive Legislative List in part 1 of the Second Schedule to the extant Constitution. The court further held that Section 4(3) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration), states in clear and unambiguous terms that the power of the National Assembly to make laws for peace, order and good governance of the federation with respect to any matter provided for in the exclusive legislative list shall, save as otherwise provided in this Constitution, be

to the exclusion of the Houses of Assembly of States. Hence, any law enacted by the House of Assembly of a State which is inconsistent with any law validly made by the National Assembly, the law made by National Assembly shall prevail, and that other law shall to the extent of its inconsistency be rendered a nullity.²²

The court in interpreting the above sections of the constitution held that the intent of the current Constitution²³ is that State Houses of Assembly are precluded and prohibited from enacting laws on evidence law and/or admissibility of evidence in proceedings before the courts in Nigeria. Upon painstaking and dispassionate perusal of section 20 of the Law, Cap. 74 of Rivers State, the court in her wisdom concluded that the Rivers State House of Assembly had purportedly enacted a piece of legislation on evidence, which is clearly an act of legislative trespass into the exclusive legislative terrain of the National Assembly prescribed under the Constitution.

The court held that, Exhibit L is a piece of evidence pleadable and admissible in evidence by virtue of the provisions of the Evidence Act read together with Item 23 of the Exclusive Legislative List and sections 4(3) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), as such cannot be rendered unpleadable and inadmissible in

²² Sections 1(3), and 4(5) Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

²³ Section 4(3) and (5) of CFRN, 1999 (As Amended)

evidence in any proceedings before any court of law by any law enacted by the State House of Assembly, as the Rivers State House of Assembly had purportedly done.

The Supreme Court maintained that admissibility of exhibit L is governed by Evidence Act and not the Rivers State Land Instruments (Preparation and Registration) Law, Cap 74. Further to the foregoing, the Supreme Court held that a piece of evidence pleadable and admissible in evidence by virtue 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 arrangement. The court thus affirmed the decision of the learned trial judge, Hon. Justice Mary Peter-Odili, J (as she then was) that exhibit L was properly pleaded and cannot be said to be inadmissible. Eko JSC who read the lead judgment boldly held that,

Even if section 20 of the Rivers State Law, Cap. 74 was 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.²⁴ (Underlined for emphasis)

²⁴ *Benjamin v Kalio* (ibid)

From the foregoing decision of the Supreme Court in *Benjamin v Kalio*, an unregistered registrable instrument is not only admissible to prove some form of transactions in land but also admissible to prove interest in land, albeit equitable interest. This decision thus upturned the long age principle that unregistered registrable instrument is only admissible to evidence purchase receipt and that some form of transaction transpired between the parties.

2.2 **Abdullahi v Adetutu**

The fact of this case is that the 1st to 3rd appellants instituted an action at the High Court of Lagos State, Ikeja against the respondent. The 1st to 3rd appellants claim was for declaration to statutory right of occupancy in respect of a parcel of land situate at Onipetesi, Idimango, Agege, Lagos State. They also sought for damages for trespass and perpetual injunction restraining the respondent from further acts of trespass. The respondent filed a counter-claim against the appellants. While the action was pending, the respondent instituted another action against the 4th and 5th appellants. By the action, the respondent claimed against the 4th and 5th appellants for a declaration to statutory right of occupancy in respect of the same parcel of land. She also sought for damages for trespass and perpetual injunction against them from further acts of trespass on the parcel of land. The two suits were consolidated. At the trial, the appellants tendered exhibit D8, an unregistered deed of conveyance of the land, in proof of title. The respondent's case, on the other hand, was that the same vendor, Bisiriyu Adetokunbo, sold 4.908 acres

of land to her and issued her with exhibit P6, a deed of conveyance dated 28th September 1971 and registered as 55/55/1369 at the Lagos State Lands Registry. Amongst other things, the court found that exhibit D8, which the appellants tendered as proof of title, was inadmissible as same was not registered being a registrable instrument. The trial court found in favour of the respondent against the 4th and 5th appellants and the 1st to 3rd appellants as per her counter-claim. The appellants were dissatisfied and appealed to the Court of Appeal, which allowed the appeal in part. Still dissatisfied, the appellants appealed to the Supreme Court, which court unanimously dismissed the appeal.

The decision of the Supreme Court was delivered on 12 April, 2019. The court in dismissing the appeal considered the admissibility of unregistered registrable instrument (Exhibit D8) by virtue of Section 15 of the Instruments Registration Law of Lagos State and did not waste time to cite with approval the decisions in *Akintola v Solano*,²⁵ *Registered Trustees of Muslim Mission Hospital Committee v Adeagbo*,²⁶ *Oredola Okeya Trading Co v Attorney General, Kwara State*,²⁷ *Co-operative Bank Ltd v Lawal*,²⁸ *Etajata v. Ologbo*,²⁹ to the effect that the admissibility or otherwise of an unregistered registrable instrument depends on the purpose for which it is being sought to be admitted.

²⁵ (1986) 2 NWLR (Pt. 24) 589,

²⁶ [1992] 2 NWLR (pt. 226) 690

²⁷ [1992] 7 NWLR (pt. 254) 412

²⁸ [2007] 1 NWLR (pt. 1015) 287

²⁹ [2007] 16 NWLR (pt. 1061) 554

In the wisdom of the apex court, an unregistered registrable instrument, sought to be tendered for the purpose of proving or establishing title to land or interest in land, is inadmissible under Section 15 of the Land Instruments Registration Law of Rivers State. Such a document, derided as an "amorphous document,"³⁰ is not receivable in evidence for the purpose of establishing any right, title or interest in land since it did not comply with the explicit position of Section 15, Land Instruments Registration Law of Rivers State.

The court firmly averred two conditions that makes unregistered registrable instrument admissible in evidence. The conditions are:

- i. If it is tendered to show that there was a transaction between the vendor and the purchaser, it will be admissible as a purchase receipt.
- ii. It will also be admissible if it is meant to establish a fact which one or both parties have pleaded.

Under these two conditions, such a document does not qualify as an instrument as defined in the Land Instruments Registration Law.³¹ In this wise therefore, when a Court is determining whether or not to admit or reject an unregistered registrable instrument, the court has to consider the purpose

³⁰ *Umoffia v Ndem* [1973] 12 SC (Reprint) 58

³¹ *Okafor v Soyemi* [2001] 2 NWLR (pt. 698) 465; *Agboola v United Bank for Africa Plc* [2011] 11 NWLR (pt.1258) 375; *Abu v Kuyabana* [2002] 4 NWLR (pt. 758) 599, *Akingbade v Elemosho* (1964)1 All NLR 154

for which the said document is sought to be tendered in evidence.

The court came to the conclusion that the said Exhibit D8 was a registrable instrument by virtue of the provision of Section 15 of the Land Instruments Registration Law of Lagos State, and that from the pleadings and oral evidence, it is not in doubt that the said exhibit D8 was pleaded and sought to be tendered in evidence for the purpose of proving or establishing title to the land or interest in the land in dispute. It affirmed that the lower Courts were therefore right in their positions that it was inadmissible by virtue of its non-registration to prove interest in land.

3. Appraisal of *Benjamin v Kalio* and *Abdullahi v Adetutu*

Having made adequate attempt to expose the decisions in both cases, one may be tempted to conclude that *Abdullahi v Adetutu* upturned the decision in *Benjamin v Kalio*, thus reigniting the long age principle in our jurisprudence that an unregistered registrable instrument is not admissible to prove interest in land other than showing some form of transaction as well as prove as purchase receipt. This will undoubtedly be in line with the principle of *stare decisis*, which is to the lucid effect that courts must follow the decision of the Supreme Court which is later in time. In *Oji & Anor v Ndukwe & Ors*³² the Court of Appeal reechoed this long age principle of *stare decisis* in the following words:

³² (2019) LPELR-48226 (CA)

The Supreme Court has made it abundantly clear that in line with the principle of stare decisis and strict recognition of its supremacy as it were, this court must follow its decision that is later in time in the event any of its conflicting decisions, are placed before this court in respect of any matter in contention before it (i.e Court of Appeal). See in this regard the case of *Osakwe v Federal College of Education (Technical) Asaba* (2010) 5 SCM 185. Therein, the Supreme Court forcefully put this position on ground and further made it clear that the prerogative of 'election' is that of the superior court that has given the conflicting decisions or perceived conflicting decision.³³(Underline for emphasis)

Nonetheless, it is pertinent to observe that lower courts are not always bound to follow latest decision where there are conflicting judgments of a higher court. Lower courts are only bound to follow such latest decisions where the judgment is on all fours with the subject matter before it for consideration. The foregoing view is amplified in *Adegoke Motors v Adesanya*³⁴ 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

³³ pp 46-47 paras B-A

³⁴ (1990) LCN/2418(EC)

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. (Underlined and bold for emphasis)

Consequent from the above dictum of the court, it is the view of the writers that lower courts are not always bound to follow decisions of higher courts especially where the cases are not on all fours. It is also our firm view that the sub-issue in *Benjamin* represent the main issue with respect to admissibility of unregistered instrument.

It is the opinion of the writers that the Supreme Court decision in the earlier case of *Benjamin v Kalio* represent the correct position of the law. It is pertinent to observe that the court in *Benjamin v Kalio* was purposefully and consciously empanelled to look at her previous decisions on admissibility of unregistered registrable instrument to wit: Rivers State Land Instruments (Preparation and Registration) Law (which is similar to Land Instruments Laws of the various states of the Federation including Lagos State), the Evidence Act 2011 and the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration).

The Supreme Court recognized the foregoing fact when the court resonated in the following words,

A sub-issue arose from Issue 1. It is whether exhibit L is a registrable land instrument allegedly not registered in accordance with the provisions of the *Rivers State Land Instruments (Preparation and Registration) Law, Cap. 74, 1999* was admissible in evidence. The sub-issue is perhaps the only basis for the convocation of this full court to hear and determine this appeal. (Underlined for emphasis).

The same cannot be said of *Abdullahi v Adetutu* as the court was empanelled with 5 Justices and did not consider the position of Land Registration Law in the face of the Evidence Act 2011 and the current Constitutional arrangement, as well as largely based its judgment on the authenticity and credibility of the deed. More so, none of the parties drew the attention of the Supreme Court to its decision in *Benjamin v Kalio*.

It is pertinent to posit that the Supreme Court in *Benjamin v Kalio* was not ignorant of her previous decisions on admissibility of unregistered registrable instrument. In fact, the court made reference to many of its previous decisions on the foregoing subject matter and described the earlier decisions that unregistered registrable instrument is only admissible to prove transaction and payment of money as 'fiction',³⁵ hence swiftly delved into the Evidence Act 2011

³⁵ *Benjamin v Kalio* (Supra)

and the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration) to reach its decision in *Benjamin v Kalio*. It is imperative to advert our mind to argument by some commentators that the Evidence Act allows other laws to govern admissibility of evidence, as it gives leeway to other legislations such as the Rivers State Land Instruments (Preparation and Registration) Law to be admissible. The Act provides that:

Nothing in this Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria.³⁶

The foregoing provision of the Evidence Act in our view is being misconstrued. This provision does not in any way make what the evidence act makes admissible to be inadmissible, rather the said provision of the Evidence Act only allow or permit for admissibility of evidence made admissible by other laws. The Evidence Act does not and will not allow other laws to make inadmissible what the Evidence Act makes admissible. In other words, where the Act makes a document admissible, no law can validly make that document inadmissible since the Act deals specifically with matters of evidence.

In *FRN v Mamu*³⁷ there was a complaint by the appellant on the relationship and effect of some provisions of the

³⁶ S 3, Evidence Act, 2011.

³⁷ (2020) 15 NWLR (Pt 1747) 303

Administration of Criminal Justice Act, (ACJA) 2015 and the Evidence Act, 2011 on the admissibility of confessional statement. The appellant argued that the said confessional statement of the accused was not taken in the presence of his legal practitioner as required under ACJA, as such the said confessional statement is not admissible. The court per Nimpur JCA quickly dismissed this argument in the following words:

It is trite that the handling of evidence in any adjudication is primarily covered by the Evidence Act, any other legislation which makes provision for issues touching on evidence must take its subsidiary position to the Evidence Act. The ACJA is principally a procedural law and cannot therefore over ride (sic) the Evidence Act.³⁸

It is argued here (with particular reference to the fact that matters of evidence is expressly contained under the exclusive legislative list), that it amounts to legislative somersault and indeed rascality for State Houses of Assembly to make laws on matters of evidence or admissibility of documents, especially where such documents are made admissible under the Evidence Act. This foregoing argument is further sustainable and correctly so because no State House of Assembly has got the legislative competence to dabble into matters of evidence. Evidence is clearly within the exclusive

³⁸ *FRN v Mamu (Supra)* at 354 paras B-D

preserve and purview of the National Assembly as provided under Item 23, Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration).

Assuming, but not conceding that the State Houses of Assembly have the legislative competence(that is, if matters of evidence were on the concurrent legislative list) to make laws on matters of evidence, it cannot make laws that will make inadmissible what the Act of National Assembly, in this wise the Evidence Act 2011 made admissible in view of the inconsistency rule. A law is said to be inconsistent where it is lacking in agreement or not compatible with another.³⁹ Inconsistency rule thus arises where a state law is directly in conflict or inconsistent with an Act of the National Assembly and such law must bow to the Act of the National Assembly as lucidly provided in the Constitution, thus:

If any law enacted by the House of Assembly of a State is inconsistent with any law validly 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.⁴⁰

The Supreme Court in *AG Ogun State v AG Federation*⁴¹ explicates this principle further as follows:

³⁹ Bryan A Garner, *Black's Law Dictionary*, 9th edition, 834.

⁴⁰ Section 4(5) CFRN, 1999 (As Amended)

⁴¹ (1982) NCLR 166 at 204

where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the state is inconsistent with the legislation of the Federal Government, it is indeed void and of no effect for inconsistency.

Similarly, in *AG Ogun v Aberuagba*⁴² the court per Bello JSC emphasized that it is not within the legislative competence of a State to make any State Tax Law under the concurrent legislative list which is inconsistent with any law validly made by the Federation, such law is a nullity to the extent of its inconsistency.

It is believed that the Supreme Court will have an opportunity to consider its decisions in *Benjamin v Kalio* and *Abdullahi v Adetutu* on admissibility of unregistered registrable instrument, as this in the thinking of the writer, will put to final rest the controversy on admissibility of unregistered registrable instrument. However, as at today, the writer firmly believe that the decision of the Supreme Court in *Benjamin v Kalio* represents the correct position of the law on admissibility of unregistered registrable instrument.

Conclusion

The authors herein have made ample attempt to examine the decisions of the Supreme Court in *Abdullahi v Adetutu* and

⁴² (1985) 1 NWLR (Pt. 3) 395

Benjamin v Kalio, in doing so, it was observed that the decision of the Supreme Court in *Abdullahi v Adetutu* unanimously rendered inadmissible a piece of evidence which is otherwise admissible under the Evidence Act 2011, where it fails to fulfill the conditions stipulated by the provisions of Land Instruments Registration Law of Lagos State (which is at parity with Land Instruments Registration Laws of various State). A glimpse of section 3 of the Evidence Act 2011 appears to support the foregoing. Albeit, evidence is a matter on the exclusive legislative list and no state legislative house have got the legislative competence to dabble into matters of evidence let alone provide for what is admissible or not. The writers thus opine and emphatically so, that *Benjamin v Kalio* is the true and correct position of the law on admissibility of unregistered registrable instrument. It is the contention of the writers that in view of the current constitutional arrangement, the decision in *Abdullahi v Adetutu* do not represent the correct position of the law. It is the belief of the authors that the Supreme Court will have no difficulty in validating its decision in *Benjamin v Kalio* should the court have another opportunity to look at both cases.