

SUPREME COURT

JUDICIAL BENCH

COMMON LAW DIVISION

File No .156/COM/CIV/2018
Appeal No 140/CIV/2011
of 17th December 2008

Judgment No.06/COM
of 02/03/ 2023
BETWEEN

SENDZE Veronica

AND

ABANDA David ESANG

COURT DECISION:

The Court:

- 1) The appeal succeeds;
- 2) Quashes and annuls judgment No. BCA/7/2007 delivered on the 13th of November 2008 by the Court of Appeal of the North West; . Examining and determining the appeal against the Judgment of the High Court of Mezam to the Court of Appeal of the North West, further decides;
- 3) The deed of conveyance dated 24th of April 2001, executed between KEKA Alphonse NDIKUM and ABANDA David ESANG is hereby cancelled or set aside;
- 4) The sale of a built on estate by Akuma Nchotu Alamsie to the Respondent (Abanda Esang) on the 21st of September 2004 is hereby cancelled and consequently:
 - . Land Certificate No.5660/Mezam, issued to the purchaser (Abanda David), shall be transferred back to the name of the original owner pursuant to section 24(1) of Decree No. 76/165 of 27th April 1976 to establish conditions for obtaining Land Certificates, amended and supplemented by Decree No. 2005/4/81 of 16th December 2005.
 - . The deed of conveyance date 21st September 2004 executed between Akuma Nchotu Alamsie and Abanda David Esang concerning the sale of the built on estate cancelled is hereby set aside or annulled;
 - .occupying the built on estate purchased by Abanda Esang David from Akuma Nchotu Alamsie shall be evicted from the said estate.
- 5) The Respondent shall bear the costs of these proceedings.
 - Appellant to bear the cost of proceedings.
 - Orders the Registrar-in-Chief of the Judicial Bench of the Supreme Court to notify a copy of this judgment to the Procureur General at the Court of Appeal of the North West Region and to the Registrar in Chief of the said Court for inscription or mention in their respective records;

Delivered by their Lordships:

WANKI Richard TSENIKONTSA.....PRESIDENT,
 BEA Abednego KALLA..... JUDGE;
 Pauline Christine NGO MANDENG epse NGUIDJOL.....JUDGE;
 In the presence of;
 MBUA Alexander ASSANGA.....Advocate General;
 KOMÉ Judith.....REGISTRAR.

- IN THE NAME OF THE PEOPLE OF CAMEROON

In the year two thousand and twenty-three, and on the 02nd day of March;

The Common Law Division of the Judicial Bench of the Supreme Court sitting in its Ordinary session open to the public, delivered the following judgment:

IN THE MATTER

BETWEEN

SENDZE Veronica. Appellant, represented by Mr Luke KIDZ SENDZE, an advocate in BAMENDA;

ON THE ONE HAND

AND

ABANDA David ESANG Respondent, represented by AKUM TANYI & Co. LAW FIRM in BAMENDA;

ON THE OTHER HAND.

THE COURT

Mindful of sections 35 of Law No 2006/016 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court;

THE COURT

Mindful of sections 35 and 53 (2) of Law No 2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court;

Mindful of the memorandum of submissions filed on 03th November 2012 by **BARMI - NJOH** Chambers;

Mindful of the memorandum of submissions in reply filed on 30th November 2012 by Barrister **AKUM TANYI** Counsel of the respondent;

Considering the report of the Rapporteur, **Justice WANKI Richard TENIKONTSA**, President of the Common Law Division of the Supreme Court;

Considering that, Mr. **MBUA Alexander ASSANGA** Advocate General at the Supreme Court, representing the Legal Department, addressed the Court;

Considering that the instant judgment is being delivered in a public hearing after having deliberated on the matter in accordance with the law;

Hearing and determining the appeal, filed on the 11th December 2008, at the Registry of the Court of Appeal of the North West Region, Barrister Luke KIDZE ENDZE, acting for and on behalf of SENDZE Veronica , appealed to the Supreme Court against judgment N^o. BCA/7/2007, delivered on the merits in respect of the parties, on 13th November 2008 by the afore-mentioned Court, sitting in a civil matter between his client and ABANDA David ESANG;

By judgment No 5174/EP, of 14th November 2019, delivered by the Panel of Joint Divisions of the Judicial Bench of Supreme Court;

FACTS OF THE MATTER

The appellant's husband (WANYU Patrick) a police officer died on the 10/05/1992.

On the 27/07/1993 letters of administration were granted by the High Court of Bui Division to the appellant's brother in-law YUFENYUY Sylvester to administer the estate of the Appellant's husband. Armed with said letters of

administration, YUFENYUY Sylvester surreptitiously sold the most valuable asset of the estate namely a five/bed room house near pa FONCHA'S residence and a boys quarter to one Pa Alphonse KEKA NDIKUM for the sum of 4million francs.

The appellant's husband bought the land from Pa AKUMA NCHOTU Alamsie for the sum of 1.260.000 francs on the 29/11/1989 and the procedure was not engaged for a Land Certificate to be issued to him out of the main Land Certificate of AKUM NCHOTU Alamsie covering his larger parcel of Land (1ha 15a 90ca) as the purchaser was sick and died in 1992.

As A.K NDIKUM realized that he could not use the property purchased because the appellant notified him that the house he bought belongs to the estate of WANYU Patrick and not to YUFENYUY Sylvester. A.K Adikum then sold it to the Respondent ABANDA David ESANG for the sum of 2.500.000 francs CFA.

The Appellant filed an objection at the Registry of Landed Property for Mezam against the issue of a Land Certificate to ABANDA David ESANG the respondent in the instant

matter and then proceeded to institute a suit by way of originating summons against YUFENYUY Sylvester, A.K NDIKUM and ABANDA David ESANG. The Plaintiff also prayed the Court evict the 02nd and 03rd Defendants from the land and issue an injunction order restraining them from further entering the land.

Before the hearing of the matter got under way, the respondent filed a further, further Counter affidavit in which it was stated that, "a Land Certificate has already been issued to the 03rd Defendant (ABANDA David ESANG) over the conveyed parcel of Land" and attached Land Certificate No. 5660/Mezam of 01/11/20004 to the said further, further counter affidavit.

Embarrassed by the said Land Certificate annexed to the further, Further counter-affidavit, the Appellant and her Counsel thoroughly investigated the circumstances under which the Land Certificate was issued and filed a 16 paragraph further, further affidavit x-raying the fraudulent manner in which the Land Certificate was obtained notably the fact that the Respondent repurchased for 800.000 francs from Pa AKUMA NCHOTU Alamsie, the

same parcel of Land he bought from A.K NDIKUM for 2.500.000 Francs. TEBO and Co. Law Firm drew up the 01st deed of conveyance dated 24/04/2001 between KEKA Alphonse NDIKUM and ESANG David ABANDA, also drew up the 02nd conveyance dated 21/09/2004 between AKUMA NCHOTU Alamsie and ESANG David ABANDA over the same parcel of land while the matter was pending before the High Court of Mezam. The 02nd deed, of conveyance was exhibited to the 16 paragraph further, further affidavit of the Appellant.

Armed with the 02nd deed of conveyance, the Respondent presented it to Registrar of Lands and a Land Certificate was issued to him while concealing from the High Court the fact that he repurchased the land which was the subject matter of litigation. He also concealed these facts from the Appellant.

The High Court of Mezam in its judgment dated 03/10/2005, decided inter alia: that: "the plaintiffs further, further affidavit remains unchallenged particularly by the 03rd defendant and the defendants are therefore presumed to have admitted all the averments in the said further, further affidavit and that, "the fact

that the 03rd defendant (ABANDA David ESANG) had to engage in the frauds and forgeries highlighted in the further, further affidavit, to purchase again from AKUMA NCHOTU Alamsie the Land which he bought from the 02nd defendant, puts to question the sales from the 01st to the 02nd defendant and from the latter to the 03rd Defendant and that Land Certificate No. 5660/Mezam was obtained by fraud and the 03rd defendant was not a bona fide purchaser for value."

The Court further made the following orders.

1. That the 02nd and 03rd defendants (Alphonse KEKA NDIKUM and ABANDA David ESANG) are hereby ordered to quit from the Landed property comprising a 5 bed room/house and a parlour belonging to the estate of WANYU Patrick.
2. A perpetual injunction order is hereby issued restraining the 01st, 02nd and 03rd defendants, their agents servants and assigns from re-entering the said property.

3. Costs of these proceedings are fixed at 300.000 francs against all the defendants jointly and severally.

Aggrieved by the judgment of the High Court of Mezam, only the 03rd defendant (ABANDA David ESANG) appealed to the Court of Appeal of the North West. In the course of the exchange of submissions before the court of Appeal, Barrister LUKE SENDZE of Counsel for the Respondent prayed the said Court to use its power under section 22 of the Federal Supreme Court Ordinance 1960, and make any appropriate orders and referred the said Court to Article 24(1) and (2) of Decree No. 76/165 of 27/04/1976 on the conditions for obtaining Land Certificate which empowers an ordinary Court to cancel a sale fraudulently executed. After hearing the matter, the Court of Appeal of the North West held inter alia as follows:

1. That it is of no importance whatsoever that the further, further affidavit particularly paragraph 8 was not challenged by the 03rd appellant as paragraphs

2. 8(a) to (j) of the further, further affidavit of the respondent is hearsay since the respondent deposed to those facts seeking to establish the truth of what is contained in paragraph 8. Hearsay is inadmissible evidence.
3. That the trial Court had no jurisdiction over the question of ownership of registered land. It had jurisdiction only over the sale of the land.
4. That there was no deceit bad faith or fraud in the transaction of the Appellant (ABANDA David ESANG) with Pa AKUMA and that the latter was a bonafide purchaser for value.
5. That the judgment and orders of the trial Court are set aside.
6. That there is no order for costs.

Dissatisfied with the judgment of the Court, the Appellant through Counsel appealed to the Supreme Court. Counsel for the appellant raised eight grounds

The learned counsel for the Appellant filed a memorandum of submissions in support of the appeal on 03rd October 2012;

The learned counsel for the Respondent also filed a written reply of the respondent 30th November 2012;

Before proceeding to examine the grounds of appeal raised and argued above, it may perhaps be expedient to point out that Counsel for the Respondent filed a reply to the submissions of the appellant, out of time, that is, on the 30th of November 2012 whereas he was served on the 2nd of October 2012 to do so and consequently the Respondent's right to defend the instant appeal are forfeited pursuant to section 56(2) of Law No. 2006/016 of 29 December to lay down the organization and functioning of the Supreme Court.

I will proceed to examine the said grounds of appeal.

Ground 4: The Court of appeal of the North West completely misinterpreted the Legal Concept of bona fide purchaser for value.

The submissions in support of this ground of appeal are reproduced at pages 14,15,16 and the 17 of this report.

This ground of appeal reproaches the Court of Appeal of the North West for misinterpreting or breaching the legal concept of bona fide purchaser for value. The concept of bonafide purchaser for value is a general principle of law and its violation is one of the grounds upon which an appeal to the Supreme Court may be based as per the provisions of section 35(1)(h) of Law No.2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court.

I have given the most anxious attention to the submissions in support of this ground of appeal and it is very clear that the legal concept or principle of bona fide purchaser for value is succinctly defined, explained and the legal requirements for the defence of bona fide purchaser for value to be successfully pleaded have been outlined therein. Concerning the misinterpretation or violation of the concept or principle of bona fide purchaser for value which

is an equitable defence, Counsel for the Appellant demonstrated how the Court of Appeal of the North West narrowly interpreted the said concept or principle in connection with the facts of this matter as follows:

"We find no deceit, bad faith or fraud in his transactions with Pa Akuma... He neither tricked Pa Akuma into signing the deed of conveyance... And at least nothing of the sort has been proved... Since there was no fraud and deceit in the transaction of the 3rd appellant with Pa Akuma, we hold that he was a bonafide purchaser for value."

Counsel for the appellant also pointed out that instead of the Court of Appeal of the North West addressing its mind to the requirements for the principle or concept of bona fide purchaser for value to be applicable in order to determine whether Abanda David Asang was a bona fide purchaser for value, the said Court precipitately held that he was a bona fide purchaser for value.

Counsel for the Appellant further demonstrated in the submissions in support of

the appeal how the Court of Appeal misinterpreted the dishonesty and fraud of the Respondent by holding that "we find no deceit, bad faith or fraud in the transactions of Abanda David with Pa Akuma."

Finally Counsel for the Appellant proceeded to show in the submissions in support of the appeal how the concept or principle of bona fide purchaser for value was misapplied by pointing out that the said Court of Appeal was not supposed to apply or invoke this principle in favour of the Respondent because from the affidavit evidence adduced in the High Court and during the hearing of the matter, the Respondent concealed the fact he

brought land from Pa Akuma Nchotu Alamsie and never raised the issue that he was a bona fide purchaser of the said land.

I have painstakingly examined the submissions in support of the instant appeal and totally agree that the concept or principle of bona fide purchaser for value was misinterpreted or misapplied to the facts of the suit before the Court of Appeal of the North West as borne out by the following.

1. Firstly, the equitable defence of bona fide purchaser for value was narrowly interpreted to mean a person who purchases property without deceit or fraud in the transaction. It would appear that according to the said court, a bona fide purchaser for value is synonymous with no deceit or fraud by a person who purchases property. Yet a person may be considered not to be a bona fide purchaser for value, although he cannot be said to have perpetrated a fraudulent or deceitful transaction concerning the purchase of property. This because one of the requirements that must be proved for the plea of bona fide purchaser for value to be upheld is:

"The purchaser of property must have done so without notice or knowledge of any prior claims, legal or equitable interests by third parties concerning the property purchased."

It is sufficient that the purchaser did not have knowledge of or was not notified of any pre-existing claims, legal or equitable rights or interests against the property by a third party. Once any potential purchaser is aware of any disputes or claims concerning the property he wants to buy because third parties are asserting rights (legal or equitable) against the property, he cannot be held by any reasonable Court to be a bona fide purchaser for value without notice, Yet he has perpetrated no fraudulent or deceitful act. In the instant case the Respondent (Abanda David Asang) knew that Pa Akuma Nchotu Alamsie previously sold the landed property he purchases to Wanyu Patrick the husband of the Appellant. He also knew that the Appellant's husband built a five bedroom house on the land after purchasing it. The Respondent had actual knowledge of the pre-existing claims or interests of the appellant against the property from the originating summons, the facts deposed by the Appellants Counsel in the affidavits before the High Court of Mezam in supported of the said originating summons (see pages 5,6,7,68,69,70,71,72 and 73 of the record of proceedings and exhibits

"E3 and "E1" annexed to the further, further affidavit of the instant Respondent before the same Court (see pages 50, 51 and 52 of the record of proceedings.)

If the said Court of Appeal addressed its mind to the requirement whether the Respondent had knowledge of any pre-existing claims, rights (equitable or legal) and interests against the land he purchased Pa Akuma Nchotu Alamsie, or to the definition of a bona fide purchaser for value (an innocent purchaser of property who purchases for value without notice of any other party's claim against the property), it would certainly have held that the Respondent (Abanda David Esang) is not a bona fide purchaser for value.

Secondly, even if the only criteria to which the said Court addressed its mind to, namely no fraud, bad faith or deceit by the Respondent in the transaction of purchasing land from Pa Akuma Nchotu Alamsie is examined, it will be very glaring that the decision of the Court of Appeal that the Respondent is a bona fide purchaser for value is a contradiction to the decision of the same Court that the said transaction smacks of criminality. No reasonable

tribunal would in one breath hold that:

"Since there was no fraud and deceit in the transactions of the 3rd appellant (Abanda David) with Pa Akuma, we hold that he was a bona fide purchaser for value," and in another breath, in the same judgment it holds as follows in connection with the said transaction:

"The culprit in this matter is Pa Akuma Nchotu who willfully sold the same piece of Land to the deceased and the 3rd appellant. He could be charged with double dealing contrary to section 8(4) (1) of Ordinance No. 74-1 of 6/7/74 on land tenure."

The Court of appeal thus found as a fact that the transaction between Pa Akuma and the Respondent (Abanda David) is criminal in complexion and tainted with fraud. When a person sells one and the same parcel of land to two or more person, there is no doubt that the 2nd transaction is tainted with fraud.

In the instant case the transaction between Pa Akuma Nchotu and Abanda David was the 2nd sale of the same parcel of land by Pa Akuma Nchotu who had previously sold it to

Wanyu Patrick the appellant's husband. The evidence in the record of proceedings succinctly proves beyond any shadow of doubt that the Respondent had been informed that Pa Akuma Nchotu Alamsie previously sold the property he was buying to the Appellants husband who constructed a 5 bedroom house and another smaller building for servants on it.

It is significant to point out the role of the Respondent (Abanda David) in the fraud or crime of selling the same parcel of land to two or more persons. Pa Akuma Nchotu Alamsie never advertised the land for sale after Wanyu Patrick the 1st buyer and his wife occupied and exploited it for 14 $\frac{1}{2}$ years. It was the Respondent (Abanda David) who caused or instigated the 85 year old stag illiterate (Pa Akuma) to purportedly effect the 2nd sale of the same parcel of land to him for the of 800.000 francs CFA, in order to fraudulently own the five bed room house constructed on it. That is why Barrister L.K Sendze in his submissions in "The 3rd Respondent knew that the land had previously been sold by Pa Akuma Nchotu Alamse to the appellants husband, yet he fraudulently caused or induced Pa Akuma N.A to sell the same

support of this ground of appeal forcefully argued thus:

land to him. It was the 3rd Respondent who fished out Pa Akuma and offered to buy this very land again and this when the dispute over the very land with the Appellant was pending in Court. This was the Criminal offence of accessory to the sale on one and the same parcel of land to 2 persons contrary to section 97(1) (a) as read with section 8(4) (1) of Law No 74/1 of 06/07/1974."

The above submissions of Counsel for the Appellant are corroborated by the following confession in the submissions of Abanda David before the Court of Appeal:

"After he (Abanda David) discovered that the land was registered in the names of Pa Akuma Nchotu Alamsie he contacted him to execute a conveyance deed for a further consideration of 800.000 francs."

In the light of the above I totally agree with the submissions of the appellant that the Respondent (Abanda David) was an accessory to offence of selling one and the same parcel of land to two or more persons and that he was part

and parcel of the fraud perpetrated when the same parcel of land was sold to him for the 2nd time by Pa Akuma Nchotu, whereas the 1st deed of conveyance between him and Mr A.K. Ndikum had not been set aside.

The Court of Appeal of the North West thus misdirected itself when it held firstly that there was no fraud in the transaction between the Respondent and Pa Akuma Nchotu, and secondly that the Respondent (Abanda David) was a bona fide purchaser for value.

Thirdly, the unchallenged further, further affidavit of the Appellants before the High Court of mezam and the copious Exhibits attached to it highlighting the fraudulent machinations of the Respondent (Abanda David) concerning the purchase for the 2nd time of a parcel of land with full knowledge that it had been previously sold to the appellant's husband was wrongly held by the Court of Appeal of the North West to be hearsay and this must have partly contributed to their misapplication, misinterpretation and misdirection of the concept or principle of bona fide purchaser for value to the facts of the instant case. It is a well established principle that uncontroverted,

uncontradicted affidavit evidence is deemed admitted. The uncontradicted and uncontroverted further, further affidavit of the Appellant before the High Court of Mezam is proof of the Respondent's dishonesty.

Fourthly the Court of Appeal misapplied, misinterpreted or misdirected itself on the concept or principle of bona fide purchaser for value firstly, by applying it in favour of the Respondent (Abanda David), when it was not raised or pleaded by him before the High Court of Mezam in connection with the purchase of land for the 2nd time from Pa Akuma Nchotu.

Secondly the onus was on the appellant (Abanda David) to prove his good faith in the said transaction. The Court of Appeal shifted the burden of proof to the Respondent (Sendze Veronica) by holding that, "no fraud, deceit, bad faith or tricks of the appellant had been proved", instead of holding that Abanda David Esang had failed to prove that he acted in good faith in the transaction.

Thirdly, the Abanda David did not adduce any evidence before the High Court of Mezam to establish the equitable defence of bona fide

purchaser for value. He rather

concealed the fact that he re-purchased the land which by the appellants husband purchased 14 $\frac{1}{2}$ years ago.

Finally, the judges Court of Appeal misdirected themselves that there was no fraud or bad faith in the transaction between Pa Akuma Nchotu and Abanda David, whereas both parties fraudulently executed a deed of conveyance dated 21/09/2004 concerning the sale of landed property by the former to the appellants husband in which they consciously stated that "the urban built on estate measuring 4.38 acres is free from all emcumbrances."

This was fraud or dishonesty of the highest level as both parties to the sordid transaction knew that:

- a) Wanyu Patrick (the appellants husband) previously bought the Land, for valuable consideration from Pa Akuma Nchotu;
- b) A five bedroom house had been constructed on the said land by the Appellants' husband;

- c) The Appellant (Sendze Veronica) filed Suit No.HCB/5/2001-2002 on the 19/10/2001 before the High Court of Mezam against the Respondent in which she stated all the pre-existing claims or interest of the estate of Wanyu Patrick (deceased) concerning the said property.
- d) The said suit (originating summons) was duly served on the Respondent who acknowledged receipt on the 22/11/2001 in a memorandum of appearance filed at the registry of the High Court of Mezam on the 26/11/2001 (see page 16 of the record of proceedings). In response to the said suit Counsel for the Respondent filed a counter-affidavit on the 30/06/2002 and a further counter affidavit on the 30/11/2004 on behalf of the said Respondent.

The subject matter of Suit No. HCB/5/2001-2002, concerned the emcumbrances on the Land purchased by the Respondent from Alphonse Keka Ndikum, that is the interests of the appellant, the estate Wanyu Partick

(deceased) on the land, and the cancellation of deeds of conveyance concerning the illegal purchase of the said land by the Respondent on two occasions from two different persons, and concealing from the Court the material fact that he purchased, the same parcel of land for a second time while the matter was pending in Court.

The above facts and the conduct of the Respondent in connection with the 2nd transaction of the purchase of the same parcel of land from Pa Akuma Nchotu smacks of fraud and falsehood.

It is our considered opinion that such a blatant misdirection, misapplication and misinterpretation of the concept or principle of bona fide purchaser for value by the Court of Appeal of the North West occasioned a miscarriage of Justice.

Ground 4 of the instant appeal is thus founded and the judgment of the Court of Appeal of the North West is liable to be quashed. We consider it otiose to examine the other grounds of appeal raised by Counsel for the Appellant.

Section 67(2) of Law No.2006/016 of 29 December 2006 to lay down the Organisation and functioning of the Supreme Court provides that, "*Where the Bench quashes and annuls the judgment appealed against, referred to it shall examine and determine the matter on the merits. The matter shall be deemed fit for hearing on the merits if the facts, established all sovereignty and appreciated by the trial judge, make it possible to apply the basic rule of Law.*"

The instant suit is fit to be heard and determined on the merits taking cognizance of the fact that the matter was heard and determined on the merits by High Court of Mezam and by the Court of Appeal of the North West.

The appeal of Abanda David Esang is admissible.

ON THE MERITS OF THE APPEAL TO THE COURT OF APPEAL

The grounds upon which the appeal to the Court of Appeal of the North West is based are as follows:

- i) The judgment of the trial Court is altogether unwarranted, unreasonable cannot be supported having regard to the weight of the evidence adduced at the trial.
- ii) The Learned trial Judge erred in Law in not holding the 3rd appellant a bonafide purchaser for value.
- iii) The Learned trial judge erred in law in disregarding a conveyance deed drawn up on behalf of the 3rd appellant, notwithstanding the fact that it complied with the provisions of SS.8(1) of Ordinance No.74/1 of 6th July 1974.
- iv) The Learned trial judge erred in law in disregarding the fact that 3rd appellant has already obtained a land certificate in respect of the Land in issue.
- v) The Learned trial judge erred in Law in ordering an eviction of the 3rd Appellant while referring the issue of nullification of the land certificate to the titular Ministry.
- vi) The Learned trial judge erred in Law in assuming jurisdiction to decide on ownership of registered Land.

The above grounds of appeal will be examined seriatim. Ground 1 was abandoned as the Appellants filed no submissions in support of the said ground. The other five grounds of appeal in respect of which submissions were filed are however inadmissible as all the said grounds, namely grounds II, III, IV, V and VI in which issues of law are raised, violate the provisions of Order VII Rule 2(2) of the Federal Supreme Court Rules of 1961 which requires that "if the grounds of appeal allege misdirection or error in law, the or particulars and the nature of misdirection or error shall be clearly stated."

The appellant neither particularized the nature of the errors of Law nor set out the particulars of error in grounds II, III, IV, V and VI.

Besides Orders VII Rule 3 also requires the appellant to set out his grounds of appeal under distinct heads without any argument or narrative.

Rules 4 of the same Order prohibits appellants from raising grounds which are vague or general in terms or which disclose no reasonable ground

of appeal, except the general ground that the judgment is against the weight of evidence and any ground of appeal which is not permitted may be struck out by the Court of its own motion or on application by the Respondent.

Ground 3 violates Order VII Rule 3 because it contains an argument in support of the issue raised in the said ground.

Ground 4 is general interms. It raised the issue that a fact was disregarded by the Court, yet it is not the omnibus ground as enjoined by Rule 4.

This ground of appeal is a bundle of contradiction as in one breath it is alleged in the said ground that the Court erred in Law and in another breath it alleges that the same Court disregard a fact. This ground violates Rule 4.

Ground 1: We have already indicated above that this ground was abandoned by the Appellant.

Ground 2: The Learned trial Judge erred in law in not holding the 3rd Appellant a bonafide purchaser for value.

This ground of appeal lacks merit for the following reasons:

- The trial judge found as a fact that the purchase of the land by the 3rd defendant (Abanda David Esang) from Pa Akuma Nchotu Alamsie was a fraudulent transaction and the purchaser is not a bonafide purchaser for value.

The trial judge was not supposed to raise suo moto the legal issue of bonafide purchaser for value concerning the purchase for the second time by Abanda David Esang of the same land because it is an equitable defence which must be raised by a party in the course of the hearing and adduce evidence to prove it. In the instant case, the 3rd defendant did not raise the said defence, let alone adducing evidence to substantiate it.

- We find that the transaction was tainted by fraud.

Ground 3: The Learned trial judge erred in law by disregarding a conveyance deed despite the fact that it complied with the provisions of SS.8(1) of Ordinance No.74/1 of 6th July 1974.

This ground of appeal also lacks merit for the following reasons:

- In their submissions in support of the appeal, Counsel for the Appellant (Abanda David Esang) failed to show how the said deed of conveyance was disregarded by the trial judge;
- The trial judge held that the said conveyance deed was tainted with fraud as follows:

" For the 3rd defendant to turn around to purport to buy the same land from Akuma Nchotu Alamsie who had himself sold the same land to late Wanyu Patrick, the late husband of the Plaintiff is nothing short of fraud on the part of the 3rd defendant."

We agree with the trial judge that the transaction evidenced by the deed of conveyance is a manifestation of fraud since the 3rd defendant was fully aware that the plaintiff's husband bought the parcel of land from Pa Akuma N. Alamsie, and proceeded to induce the latter to sell the same parcel of land to him with a house already constructed on the land by the previous buyer. The 3rd defendant was thus an accessory to the commission of the offence of selling one and the same parcel of

land to two and more persons. A major characteristic of this offence is fraud.

- A deed of conveyance which complies with the provision of section 8(1) and (2) of Ordinance No.74/1 of 06/07/1974 to establish rules governing land tenure must be cancelled if there is evidence that it was executed by fraud.

Ground 4: The Learned trial Magistrate erred in law by disregarding the fact that the 3rd appellant has already obtained a land certificate in respect of the land.

The Learned trial Magistrate did not disregard the said land certificate as he simply advised the plaintiff to apply to the Minister incharge of lands for it to be withdrawn since it was obtained by fraud. Unfortunately the trial judge lost sight of the fact that the High Court is competent to cancel or set side the fraudulent deed of conveyance and that the cancellation of a deed of sale or conveyance transformed into a land certificate, has the same effect as the withdrawal of a land certificate as in both cases the land certificate issued to the purchaser or the applicant, shall

be transferred back to the initial or original owner.

Secondly Counsel for the 3rd defendant did not show how the trial judge disregarded the said land certificate obtained, deed of conveyance, what ever that means.

- Ground 5: The Learned trial judge erred in law, in ordering an eviction of the 3rd Appellant, while referring the issue of nullification of the land certificate to the titular Minister.

This ground of appeal has merit since the trial Court did not cancel the fraudulent deed of conveyance executed between Alamsie Nchotu Akuma and the Appellant and instead advised the Plaintiff to request the Minister-in-charge of lands to withdraw the land certificate.

The Minister-in-charge of Lands is not competent to withdraw a land certificate issued on the basis of a fraudulent deed of sale or conveyance. The ordinary courts have jurisdiction to cancel the fraudulent deed and the land certificate will be transferred back to the name of the original owner pursuant to section 24(1) of Decree No.2005/481 of 16

December 2005. The trial judge thus committed three errors at law, that is by:

- Failing to cancel or set aside the deed of conveyance;
- Advising a Litigant to apply to an authority who is not competent to withdraw land certificate on the basis of a fraudulent deed of conveyance, to do so;

Ordering the eviction of the appellant from land covered by a land certificate registered in his names. The eviction order would have been proper if the deed of conveyance which was transformed into a land certificate was set aside as the land certificate would have been transferred back to the original owner as per the provisions of the law cited above. We are of the considered opinion that the fraudulent deed of conveyance in question should be cancelled in the interest of justice.

Ground 6: The Learned trial judge erred in law in assuming jurisdiction to decide on ownership of registered land.

This ground of appeal is completely misconceived. A court is said to assume jurisdiction to hear a suit if it does not have jurisdiction to do so. In the instant case the High Court of Mezam did not assume jurisdiction to hear the suit. It heard and determined the suit because it had jurisdiction to do so. The High Court of Mezam did not decide on the ownership of registered land because that was not one of the issues submitted to the court for determination. Counsel for the appellant has failed to mention or reproduce the part of the judgment of the trial Court which decided on ownership of registered Land because it does not exist.

It may however be pertinent to make it abundantly clear that Ordinary civil Courts have jurisdiction to hear and determine suits relating to the ownership of registered Land. Section 5(new)(3)(b) of Law No.19 of 26 November 1983 provides:

" The jurisdiction of the Courts referred to in article 16 hereunder in the settlement of landed property cases shall be defined as follows:

b) All other Landed property cases shall fall within the jurisdiction of the Courts excepting cases relating to inter communal boundary disputes."

If may perhaps be relevant to point out that Sub section 3(a) clothes the Land Consultative Board with jurisdiction to hear objections relating to registration of lands and any claims or dispute of a right to property on unregistered lands.

Ground 6 lacks merit.

In the light of the foregoing, the appeal is partially founded as ground 5 of the instant appeal which relates to the issue of eviction is the only ground of appeal which succeeds. All the other grounds of appeal lack merit. Several other issues were submitted to the Court for determination namely:

- The nullification of deeds of sale or conveyance; and
- That the Court of Appeal should use its powers under s 22 of the Supreme Court Ordinance and make any appropriate orders in the matter to settle the issue in the case once and for all.

Section 22 of the Supreme Court Ordinance empowers the Courts of Appeal hearing appeals in civil cases, to make from time to time any order necessary for determining the real question in controversy in the appeal and may amend any defect or error in the record of appeal. We are of the opinion that Order VII Rule 26 of the Federal Supreme Court Rules 1961 is more appropriate to be invoked for the determination of the issues in controversy between the parties to the instant suit. Order VII Rule 26 of the said Federal Supreme Court Rules provides:

“The Court shall have power to give any judgment or make any orders that ought to have been made, and to make such further other order as to costs. These powers may be exercised by the Court, notwithstanding that the appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any the Respondents or parties, although such Respondent or parties may not have appealed from or complained of the decisions.”

Invoking the provision of law cited above, and for detailed reasons set out in

this report, the following orders should be made;

- An order setting aside the eviction order of the High
- Court of Mezam since ground 5 succeeds ;
- Another cancelling the deeds of conveyance dated 24th April 2001, executed between Keka Alphone Ndikum and Abanda David Esang in governing land tenure violation of section 8(2) of Ordinance No.74/1 of 6/7/1974 to establish rules drawn up and notarized by Tebo Chambers as it was not executed in good faith.
- An order cancelling the deed of conveyance dated 21 September 2004 executed between Akuma Nchotu Alamsie and Abanda David Esang also drawn up and notarized by Tebo Chambers;
- Land Certificate No.5660/Mezam vol. 28 folio 194, dated 01/11/2004 should be transferred back to the name of the original owner pursuant to section 24(1) of Decree No.76/165 of 27/04/1976 to establish the condition for obtaining land certificates, amended and supplemented by Decree No.2005/481 of 16/12/2005.

- The appellant should bear the costs of these proceedings.

UPON THESE GROUNDS

1) The appeal succeeds;

2) Quashes and annuls judgment No. BCA/7/2007 delivered on the 13th of November 2008 by the Court of Appeal of the North West;

- Examining and determining the appeal against the Judgment of the High Court of Mezam to the Court of Appeal of the North West, further decides;

3) The deed of conveyance dated 24th of April 2001, executed between KEKA Alphonse NDIKUM and ABANDA David ESANG is hereby cancelled or set aside;

4) The sale of a built on estate by Akuma Nchotu Alamsie to the Respondent (Abanda Esang) on the 21st of September 2004 is hereby cancelled and consequently:

- Land Certificate No.5660/Mezam, issued to the purchaser (Abanda David), shall be owner pursuant to section 24(1) of Decree No. 76/165 of 27th April 1976 to establish conditions for obtaining Land Certificates, transferred back to the name of the original

amended and supplemented by Decree No. 2005/4/81 of 16th December 2005.

- The deed of conveyance date 21st September 2004 executed between Akuma Nchotu Alamsie and Abanda David Esang concerning the sale of the built on estate cancelled is hereby set aside or annulled;
- The Respondent occupying the built on estate purchased by Abanda Esang David from Akuma Nchotu Alamsie shall be evicted from the said estate.

5) The Respondent shall bear the costs of these proceedings.

Orders that at the instance of the Registrar-in-chief of the Supreme Court, this Judgement shall be notified to the Procureur General at the Court of Appeal of the North West, the Registrar-in-Chief of the said Court and to the parties or their counsel for their respective records.

So has it been judged and pronounced by the Common Law Division of the Judicial Bench of Supreme Court in its ordinary session held on the Second day of March two thousand and twenty-three composed of their Lordships;

WANKI Richard TENKONTSA.....PRESIDENT.
BEA Abednego KALLA.....JUDGE,
Pauline Christine NGO MANDENG epse NGUIDJOL
.....JUDGE;

In the presence of MBUA Alexander
ASSANGA, Advocate General at the Supreme
Court, representing the Legal Department;

And with the assistance of Mrs. KOME
Judith Registrar;

In witness whereof, the judgment
has been signed by the President, the
Judges, and the Registrar;

Inappropriate words cancelled- none;
THE PRESIDENT, THE JUDGES, THE REGISTRAR.