**CASE REVIEW: *TAAN V. SCOA NIG. PLC*. AND THE ADMISSIBILITY OF UNREGISTERED REGISTRABLE LAND INSTRUMENTS IN EVIDENCE**

1. **PREAMBLE**

What is the value of an unregistered registrable land instrument in evidence? This question has baffled advocates and legal scholars for several years, with the vast majority of legal minds affiliated to any of two camps: those who are of the view that such instruments are strictly inadmissible and of no relevance in legal proceedings, and the other polar side who opine that state Laws, such as the Lands Instruments Registration Law have no bearing on the admissibility or otherwise of documents that have not been so declared by the *Evidence Act 2011 (now 2023)*. The bewilderment of legal practitioners and scholars on the implications of tendering an unregistered registrable land instrument in evidence might have been precipitated by the Supreme Court of Nigeria’s seemingly contradictory decisions in two respective cases, *Benjamin v. Kalio* (2018) 5 NWLR (Pt. 1641) 38 and *Abdullahi v. Adetutu* (2020) 3 NWLR (Pt. 1711) 338, especially considering the fact in *Adullahi*’s case, the apex court did not make any reference to its decision in the earlier case. What seemed to be a bone of contention in legal scholarship and basis for divergent views in legal argumentation by practitioners has finally been laid to rest by the Supreme Court in the more recent case of *Taan v. SCOA Nig. Plc.* (2025) 6 NWLR (Pt. 1985) 1.

1. **FACTS**

The case of *TAAN v. SCOA Nig. Plc*. bordered on a claim of joint ownership of the property situate at No. 157 Apapa-Oshodi Expressway, Iyana Isolo, Lagos state made by the appellant/plaintiff against the 1st respondent/defendant. The 2nd respondent/defendant had obtained a 99-year lease agreement in respect of the property from the original owners in January 1981, and on the 1st of January, 1982, he executed a 25-year sublease in favour of the 1st respondent which expired on the 31st of December, 2006. Subsequently, the 2nd respondent executed a trust deed and deed of assignment over the property in favour of the third respondent as its bonafide owner. Though the appellant merely served as an intermediary between the 2nd respondent and the other respondents in these two transactions, he would later claim a joint ownership of the property by virtue of a deed of agreement dated 25th May, 1983, which the 2nd respondent purportedly executed in his favour. The 2nd respondent denied having executed the said document, and upon awareness of this action by the appellant/plaintiff joined as a necessary party to the action, as did the 3rd respondent.

1. **PRECEDENTS**

Before delving into the Supreme Court’s judgment in *Taan v. SCOA Nig. Plc*., it is important we examine some of the judicial precedents that have for the last few decades shaped the law on the admissibility/inadmissibility of unregistered registrable land instruments in evidence before this legal issue came up once more for determination by the apex court in the 2025 case. The notable judicial precedents on this issue are:

* *Okoye v. Dumez* (1985) 1 NWLR(Pt. 4) 783*:*

In one of the locus classicus on property law, the Supreme Court would be called upon to determine the issue, whether a Land Instrument which is not registered as required by the Land Instruments Registration Law is not admissible in evidence either as an instrument affecting land or for any other purpose. In its response, the court, per Bello J.S.C. (Presiding) held, ***“A registrable instrument which has not been registered is admissible to prove such equitable interest and to prove payment of purchase money or rent.”***

* *Benjamin v. Kalio (supra)*

In this 2018 case, the Supreme Court was called upon to examine the admissibility in evidence of a deed of conveyance relied upon by the respondents in the trial court to prove their interest in the land, giving consideration to *Section 20 of the Lands Instruments (Preparation and Registration) Law of Rivers State* which provided that, ***“No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered.”*** The Supreme Court was of the view that the said provision constituted legislative trespass by the Rivers State House of Assembly into a matter of exclusive legislative competence by the National Assembly as only the latter is empowered by the 1999 constitution to legislate on evidence, and thus declared it void.

Meanwhile, the Supreme Court went ahead to expand the rule laid down in *Okoye v. Dumez* on the extent of the admissibility of an unregistered land instrument, holding as follows:

***“A registrable land instrument not registered in accordance with the law, like the Land Instruments (Preparation and Registration) Law, Cap. 74, Laws of Rivers State, 1999 is rendered inadmissible in evidence, and if erroneously admitted in evidence shall be liable to be expunged therefrom. A registrable instrument which is not registered cannot be pleaded. An action may precede registration but pleadings cannot precede registration of the instrument. An unregistered instrument is not admissible to prove title. However, such unregistered instrument is admissible to prove payment of money and coupled with possession, it may give right to an equitable interest enforceable by specific performance. In other words, 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.*”**

Perhaps it is from the foregoing excerpt that confusion on the true state of the law on the admissibility of an unregistered registrable land instrument stemmed. While the apex court audaciously voided *Section 20* of the *Land Instruments (Preparation and Registration) Law of Rivers State*, it would go ahead to rehash its provisions in its holdings, only to later turn around and declare that an unregistered land instrument can be tendered and admitted in evidence but only to prove payment and receipt of purchase price and that where there is evidence of possession by the purchaser, the court would uphold the equitable interest of such purchaser. What this suggests is that the holding of the court that ***“A registrable land instrument not registered in accordance with the law, is rendered inadmissible in evidence …”*** would apply only where it is pleaded or tendered in evidence to prove title to land.

* *Abdullahi v. Adetutu (supra)*

In *Abdullahi’s* case, the flames of the confusion created by the not-well-articulated decision of the apex court in ***Benjamin v. Kalio*** was fanned by the court when it decided on an issue on the admissibility or otherwise of an unregistered land instrument without referring to its earlier decision in *Benjamin v. Kalio*. Some commentators have argued that the holdings in these two cases are contradictory, and its silence on *Benjamin v. Kalio* made it difficult to state whether it had overruled its ruling in the prior case. Meanwhile, our thorough examination of these two cases only show that the apex court was restating the same rule as laid down in *Okoye v. Dumez (supra)* and expanded in *Benjamin v. Kalio (supra)* however, with a different application given the peculiarities of the case. In *Abdullahi*’s case, the court considered the exhibit sought to be tendered as inadmissible because it was purported to be tendered as ‘a land instrument’ to prove title to land rather than as evidence of a transaction between the parties.

1. **KEY HIGHLIGHTS FROM THE SUPREME COURT JUDGMENT IN TAAN V. SCOA NIG. PLC.**

Our review of the relevant cases on this subject matter show that contrary to the view of some commentators, the Supreme Court’s ruling in *Taan v. SCOA Nig. Plc*. (supra) did not depart from the rule laid down in *Benjamin v. Kalio;* it only clarified the same principle. Meanwhile, one clear upside of the decision in *Taan v. SCOA Nig. Plc*., aside the fact that it is the most recent, is that in this case, the Supreme Court expatiated on the various dimensions and implications of the principle. We have identified 6 key highlights from the decision. Whilst some relate to the legal issue on the admissibility or otherwise of unregistered registrable land instruments, there are some other contiguous issues that worth reckoning for a better understanding of the court’s *ratio decidendi*.

1. The document of interest in the case, exhibit C, the deed of agreement through which the appellant/plaintiff claims joint ownership of the property is a ‘land instrument’ properly so called by Section 2 of the Land Instruments Registration Law of Lagos State *as ‘the appellant averred that the second respondent used the deed of agreement to convey the reversionary interest in the disputed property to him and her jointly.’* Thus, it was held that the appellant pleaded the deed of agreement as an instrument affecting land (see page 43, para F).
2. Re-echoing its earlier decision in *Abdullahi v. Adetutu*, per Nweze, the court affirmed the status of an unregistered registrable instrument tendered with the intent to prove title or interest in land as follows:

*An unregistered registrable instrument, sought to be tendered for the purpose of proving or establishing title to land or interest in land, would be inadmissible under section 15 of the Land Instruments Registration Law…*

The apex court, (per Abba-Aji Presiding) held that since exhibit C was tendered to prove joint title to the disputed land, it was bound to suffer the same fate (page 44, D-F).

1. Whilst an unregistered registrable instrument would be inadmissible to prove title to land, it can be tendered and admitted in evidence to show proof of transaction and payment of purchase money or rent in favour of a purchaser of land or a lessee in possession of the land. Referring to its earlier decision in *Okoye v. Dumez* (supra), the Supreme Court held that the proof of such transaction or payment can create an equitable interest in favour of such purchaser/lessee and such interest can only be defeated by a purchaser of the land for value without notice of the prior equity (see page 41, para F-page 42, para A).
2. If a court, trial or appellate, has by oversight or inadvertence admitted in the course of proceedings a piece of evidence which it later discovers, at the time of judgment, to be inadmissible in law, it is entitled, in the interest of justice, to reverse its earlier decision admitting that evidence and reject it wholly (see page 45, para H-page 46, para A). See also *National & Properties Co. Ltd. v. Thompson Organisation Ltd*. (1969) 1 All NLR 138; and *Abubakar v. Chuks* (2007) 18 NWLR (Pt.1066) 386.
3. The appellant’s contention that the 2nd respondent signed the deed of agreement is example of an affirmative assertion, whilst the 2nd respondent’s disclaimer/renunciation of the execution of the agreement exemplifies *‘non est factum’*. As such, *“****the burden to prove the 2nd respondent’s due execution of the deed of agreement, albeit on the balance of probabilities or preponderance of evidence, as declared by the provision of section 134 of the Evidence Act 2011, resided on the appellant who asserted the positive****”* (see page 49, para. G).
4. The grants of prayer (iii) – that is, the nullification of the deed of agreement, the exhibit C – and prayer (v) – the setting aside of the same agreement – are not contradictory. As the court explained, ***“a null decision or proceeding, in the view of the law, bestows no enforceable right on its beneficiary party, who is armed with it, nor does it impose any obligations on its victim party… the abiding duty of a court, vis-a-vis a null act, is to set it aside ex debito justitiae in that it does not exist in law.”*** Thus, the nullification of the deed agreement and the setting aside of the same agreement are complementary judicial pronouncements announcing its demise in the appeal (see page 54, para A-B). See also *Oyeyemi v. Owoeye* (2017) 12 NWLR (Pt. 1580) 364.
5. **NEW OUTLOOK**

Prior to the Supreme Court’s decision in *Taan v. SCOA*, it would seem to some legal practitioners and scholars that the position of the law on the admissibility of unregistered registrable land instruments was unclear. However, the confusion that was seemingly created on this legal issue by the polarized views of the apex court in the cases of *Benjamin v. Kalio* and *Abdullahi v. Adetutu* stemmed from a lack of proper understanding of the depth and breadth of the principle as enunciated by the court. The pronouncement made by the apex court voiding provisions of state-made laws on land registration that pertain to evidence further complicated the matter. One would be right to ask, if our courts reject a registrable land instrument that was not registered as inadmissible in evidence to prove title, what written law do they rely upon to reach such rulings, if not the Land Instrument Registration laws of respective states, as seen in the cases reviewed above. However, what is clear from our review of *Taan v. SCOA* and *Benjamin v. Kalio* is that the apex court’s reason for voiding *Section 20* of t*he Land Instruments (Preparation and Registration) Law of Rivers State* in the latter case was due to the legislation’s preposterousness in jettisoning, for whatever purpose in pleadings or evidence, any land instrument that has not been registered. No doubt, it was necessary to invalidate such a legislative provision, otherwise, it would have paralyzed for life any action where an unregistered registrable instrument would be pleaded and tendered in evidence, irrespective the nature of the case and the purpose for which the document is sought to be tendered in evidence.

From *Taan v. SCOA*, it is evident that two questions guide the hearts and minds of the noble Lords of the Supreme Court whenever called upon to determine the admissibility of any unregistered registrable land instrument. The first, was it pleaded and tendered in evidence as ‘a land instrument’ or as some other document? And the second, was it intended to prove title to the disputed land or for other purposes? The answers to these questions predicated the decisions of the court in all the precedents leading up to *Taan v. SCOA*, and the divergence in decisions, particularly in *Benjamin v. Kalio* and *Abdullahi v. Adetutu* was due to the answers of the court to these two questions in the respective cases. Thus, the decision in *Taan v. SCOA* is not a redefinition or departure from the extant legal rule but an illumination of the underlying principle guiding the court in its rulings on this issue.

By

**Adeyemi I. Aleshinloye, Esq.**