

CONTEMPORARY JUDICIAL ATTITUDES OF THE NIGERIAN COURTS TOWARD CONTRACTS TAINTED WITH ILLEGALITY*

Abstract

What is illegality? When is a transaction or contract be said to be tainted with illegality? What is the contemporary judicial attitude of the courts towards illegal contract. How far has this attitudes met the ends of justices. This article attempts to answer these questions. The controversy generated by transactions tainted with illegality was not a belligerent one until the decision of the Supreme Court in the landmark case of *Savannah Bank v. Ajilo*¹. The case appeared to be an eye opener into the reality illegal transactions. The controversies generated by the decision aroused a flurry of divergent opinions and interpretation by learned authors and the judiciary itself, as to the meaning of the term “illegal”. Matters in this regards were no helped by the meaning given to related or associated terms like ‘void transactions’ and ‘voidable transactions’ by learned authors. To put this discourse in its proper perspective it is apposite at this point to clearly delineated the meaning and applicability of these terms as we proceed to attempt to answer the opening posers.

Void and Voidable Contracts

A void contract or transaction is one which has no force of law *ab initio* and therefore unenforceable. In the eye of the law it amounts to nothing. It is as if no action was taken at all. It is of “no legal effect; a nullity; for example an agreement for an immoral consideration”. It is an act or state of things which the law disregards or does not recognize as capable of giving rise to rights. Thus a contract made *ultra vires* is void but not illegal.² Where a contract is void at common law, it so because the courts have over a long period of time declared it void. In most cases, they are contracts which though do not violate any basic feeling of morality but runs counter to certain social and economic attitudes.³ It has long been established by the courts that a contract which purports to the right of one or both of the parties to submit questions of law to the court is contrary to public policy and it is *protanto* void. In *Baker v. Jones*⁴ for example an association to promote the sport of weightlifting in the United kingdom was formed and powers for its administration and control was vest in a central council. It was provided in its rules that the central council was vest with the sole responsibility of interpreting its rules and that its decisions should in all cases and circumstances be final. It was held that to give the council the sole right of interpretation was void and that the court has jurisdiction to consider whether the interpretation adopted in a given case was correct in law. Some transactions are prohibited by statute such prohibitions may be expressed or implied.

* **Dr. AKATUGBA A. Michael** is a Lecturer at the Faculty of Law Delta State University, Oleh Campus, Oleh Delta State, Nigeria

¹ (1989) 1 NWLR (pt. 92) pg. 305

² Osborn P.C. A Concise Law Dictionary 5th Ed. Pg. 151

³ Cheshire and Fifat (13th Ed.) pg.

⁴ (1954) 2 All E.R. 553

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A contract or agreement may contain a void clause but that however, does not necessarily make the entire contract or agreement void. Under section 3(d) of the Hire Purchase act 1965⁵ certain provisions were declared void if inserted in a hire purchase agreement for example any provision whereby an person acting on behalf an owner or seller in connection with the formation or conclusion of a hire purchase or credit sale agreement is treated or deem to be the agent or the hirer or buyer is void.⁶ Is a void contract or clause necessarily illegal this question shall be address in the later part of the discourse.

A voidable contract or agreement is one which is enforceable until or unless is avoided. In *Philips v. Brooks Limited*⁷. A man by the name of North entered into the plaintiff's jeweler shop and asked to see some pearls and a ring. He selected pearls and a ring amounting to £3,000. He wrote a cheque for £3,000 "You see who I am, I am Sir George Bollough", and he gave an address in St. James square. The plaintiff knew that there was such a person as Sir George Bollough and having checked the address in a directory, asked the man if he would like to take the items with him. The man said he would like to take the ring with him because it is his wife's birthday the following day. The cheque was subsequently dishonoured. In the meantime North had pledged the ring with the defendants pawn brokers who acted without notice. The plaintiff sued the defendants for the return of the ring (or its value) and damages for it's detention. The court held that the plaintiff intended to contract, and did indeed contract with the person in the shop, however, the fact that the plaintiff was induced to sell the ring by fraud made the sale voidable but not void.

When is a Contract or Transaction said to be Illegal?

As stated earlier there has been controversies and divergent views and interpretations ascribed to the term 'illegal' by the various authors and the court itself. It is germane at this juncture to examine these views of this learned authors and court itself as what amounts to an illegality. This is because the term 'illegal' when used in relation to contracts is very wide, vague and imprecise one, thus it embraces illegal contracts strictly so called and void contracts.⁸ It includes contracts rendered illegal or void by either statute or at common law. According to Sagay due to this lack of clarity in the definition of illegal contracts it has become virtually impossible to carry out the classification of the subject.⁹

According to the editors of Anson,¹⁰ where a contract or agreement is invalidated expressly by statutory provisions or by the rules of the common law such a contract or agreement is illegal. And where the law refuses or declines to assist in anyway a person who founds his cause of action upon such an agreement or contract or where the law states that such agreement will not have legal effect.¹¹ In such circumstances the transaction would be said to be void. In other

⁵ Cap H-4 Law of the Federation of Nigeria 2004

⁶ See the Supreme Court decision *Amusa & Anor v. Benthworth Finance Co. Ltd.* (1959) NSCC Vol. 4

⁷ (1919) 2 KB 243

⁸ Sagay I.E., *Nigerian Law of contract*, 2nd Ed. (Ibadan Spectrum Books Limited, 2009) pg. 159

⁹ *Ibid*

¹⁰ *Principles of English Law of contract* (22nd Ed. Eng. A.G. Guest) pg. 198

¹¹ *Ibid*

words if the law says a transaction is not to have legal effect, it is in effect invalidating it. There appears to be no clear distinction between illegality and the voidity of a transaction as defined above. This is admittedly the conclusion of Anson where it was remarked thus;

...in as much as the distinction between these two types of transactions is not always clear and even the judges seem sometime to treat the two terms as interchangeable, it is proposed here merely to classify those agreements which may be subsumed under either of the two heads.

Consequently, Anson discuss both transaction as one and the book treated the subject as contracts which are illegal or void by statute and those which are illegal or void at common law.

Treitel¹² distinguishes illegal contracts or transactions into two broad categories, contracts involving the commission of a legal wrong and contracts contrary to public policy. Upon investigation into the two classifications, the first encapsulates all contracts that are illegal either by statute or at common law. And the second category only embraces contract which are regarded as void at common law. This classification in many respects is similar to that advance in Cheshire and Fifoot.

According to the learned authors,¹³ ‘a contract that is expressly or impliedly prohibited by statute is illegal and in this context statute include the orders, rules and regulations that the ministers of the crown and other officials are so frequently authorized by parliament to make’. Clearly all such contracts made contrary or in disregards of statutory enactments or regulations are void. If the contract made by the parties is expressly forbidden by the statute its illegality is undoubted.¹⁴ The authors argued that where it is alleged that the prohibition is implied, the court is presented with a problem, the solution of which depends upon the construction of the statute.¹⁵ And primarily the task of the court is to ascertain whether the aim of the legislature is to forbid the contract. And in doing this a variety of tests is usually employed for instance if the objective of the statute is to raise revenue for the state, for example by requiring a seller of goods to take out a license to deal or transact in such goods or requiring the payment of stamp duty,¹⁶ the contract that he may make is not in itself prohibited. On the other hand, even if one of the objects is the protection of the public or in furtherance of certain aspects of public policy, a contract that fails to comply with the statute may be impliedly prohibited. The author cautioned that no one test is decisive, for every case the objective of the legislature must be considered in the light of the relevant facts and circumstances. A pertinent question that needs to be asked is whether the statute contemplates that the prohibited acts will be done in the performance of a contract.

¹² Treitel

¹³ Cheshire and Fifoot op. cit. pg. 362

¹⁴ Ibid.

¹⁵ Ibid pg. 363

¹⁶ Stamp Duties act S. Cap S. Laws of the federation of Nigeria 2004

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Most statutes these days are directed principally to the protection of the public or to the fulfillment of one objectives of public policy. This particularly true in the present day where state intervention in individual activities is more pronounced than before and where revenue statutes and monetary policy regulations are used a public and financial policy instruments.

The approach of the courts to the problem of implied prohibition could be illustrated by contrasting two cases, *Cape v. Roland*¹⁷ in which a statute provided that any person who acted as a broker in the London without first obtaining a license should forfeit and pay to the City of London the sum of £25 for such offence. The plaintiff, who was unlicensed, sued the defendant for work that he had done in selling and buying stock. The court held, per Parke, J. thus;

*The legislature had in view, one object, the benefit and security of the public in those transactions which are negotiated by brokers. The clause, therefore, which imposes a penalty must be taken ... to imply a prohibition of all unadmitted persons to act as brokers and consequently to prohibit, by necessary inference, all contracts, which such persons make for compensation to themselves for so acting.*¹⁸

In *Archbold (Freightage) Ltd v. Spranlett Ltd*¹⁹ the English Road and Rail Traffic Act was considered. The Act provided that no person should utilize any vehicle for the carriage of goods unless he possesses a grade 'A' or 'C' licence. The former entitles the holder to carry goods for others for reward and the latter entitles him to carry his own goods, but not for others.

The defendant, who held a 'C' license agreed to carry some crates of whisky 200 hundred crates in all belonging to a third party from Leads to London. The plaintiff was not aware that the defendant held no 'A' license. The whisky were stolen en route and the plaintiff claimed damages for their loss. On the question, whether the contract for carriage was prohibited either expressly or impliedly by the Act.

The legal procedure advance to solving this question is that, if it is alleged that the contract or transaction has been impliedly prohibited. Then it is clearly important for the court to look at the policy of the relevant statute and to consider if the policy is served by holding that the particular contract has been impliedly prohibited. On the other hand, if it is alleged that the contract has been impliedly expressly prohibited there is in principle no room for such consideration since the legislature is entitled to prohibit any contracts even when it makes no sense to do.²⁰ So, however it is not expected that the legislature will make stupid decisions.

¹⁷ (1836) 2 M & W 149

¹⁸ Ibid particularly at pg. 159

¹⁹ (1961) 1 QB 374

²⁰ The Parliament has so wide powers to make statutory interference with the ordinary and so complex is the process of legislative drafting that it is certain from time to time to prohibit certain contracts where the result of doing appears extremely odd

The Court of Appeal held²¹ that the instant case did not fall within the ambit of the legislation and that there was no implied prohibition. Pollock in his work, classified illegal contracts into three categories, where the contract its contrary to (i) Positive law (ii) morals and good manners and (iii) Policy. According to Pollock this classification is approximate. It was pointed out by Treitel, that Pollock's classification in respect of moral and good manner will overlap with the public policy classification and what is moral and good manner is difficult to define.

One own Sagay²² adopted the definition of as defined by the Concise Law Diction-ary, 'as unlawful; an act which the law forbids, as to commit murder, or to obstruct a highway...'. He went further to treat illegal contracts those contracts prohibited by statute or at common law, the making of which will be in most cases attract some form of sanction other than mere voidness.²³

Thus such sanctions may take the form of punishment either imprisonment, fine or deprivation of some rights or forfeiture of property. The courts has also in their own way proffered various definition & explanation of the terms of illegality or voidity. *Akambi J.C.A. in Thirwell v. Oyewumi*²⁴ explained the distinction of both concepts. He stated thus;

... the law recognizes and draws a distinction between a contract void by statute and an illegal contract in which the parties purported to do what the law prohibited. Certainty the law will not lend its aid to the perpetrators of any illegality and will therefore not permit the enforcement of a contract on illegality save in certain exceptional circumstances on the contrary, a contract declared void by statute may not be an illegal contract unless in relation thereto, there is also a penalty imposed by law. This penalty it is said makes it illegal.

It is submitted with respect, that where a statute not only prohibit an act or a transaction but goes further to prescribe or impose a penalty for its commission, such an act or transaction is undeniably illegal, null and void and unenforceable. According to Sagay, the litmus test of illegality is prohibition and sanction.

This position is in agreement with the earlier decision of the Nigerian Supreme Court in *Solanke v. Abed*²⁵ where it was held that whether a transaction is null and void or null, void and illegal depends on whether or not there is a penalty imposed for making it. It was further held that where a statute not only declares a contract or transaction void but goes ahead to impose a penalty for making it such a transaction is not only void but it is also illegal. However

²¹ Ibid at pg. 386 The court held per Pearce L.J, that "the object of the Road and Rail traffic act, 1933 was not in connection with interference with the owner of goods or his facilities for transportation but to contrary those whose provide transport with a view of promoting efficiency. Transportation of goods not illegal but the various licence holders were prohibited from encroaching on one another's territory, the intention of the Act being to provide an orderly and comprehensive service.

²² Sagay I.E. op. cit. pg. 361

²³ Ibid

²⁴ (1990) 4 NWLR (pt. 144) 384 at 400

²⁵ (1962) NNLR 92

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where the statute declares the transaction or contract as null and void but does not impose a penalty for making it then as a general rule, such a transaction void and not illegal.

It is in view of the above that a writer²⁶ said the holding of Salami J.C.A. in *First Bank v. Pan Bisbilder*²⁷ was given *per in curiam* where the learned judge held thus.

...where a statute merely prohibits a certain class of contract by stipulating a penalty for the prohibition without expressly providing whether or not the contract is void it does not following ipso facto that the contract is void or illegal.

Stating the facts of this case will clearly be illustrative of the point being be and will well serve our purpose in the aspect of this discourse. The Central Bank of Nigeria guaranteed a loan of N116,500.00 granted by the appellant bank to the respondent company, as part of the Federal Governments programme of agricultural development under the Agricultural Credit Guarantee Scheme Fund Act.²⁸ The loan was granted for the purpose for setting up a poultry, but instead of applying the loan for this purpose as stipulated in the guarantee between the appellant bank and the CBN, the respondent and appellant agreed between themselves to direct N30, 000:00 from the loan for the payment of an outstanding indebtedness owed by the respondent to the appellant. This is inspite of section 13 of the Agricultural credit Guarantee Scheme Fund Act which provides as follows:

- 13(1) No loan granted pursuant to this decree shall be applied to any purpose other than that for which the loan was granted.
- (2) Any person who applies any loan granted pursuant to this Decree in contravention of sub-section 1 of this section shall be guilty of an offence and shall be liable on conviction to a fine of an amount of the loan in respect of which the offence was committed or to an imprisonment for not less than five years.
- (3) Where an offence under the section is committed by a body corporate is proved to have been committed with the consent or connivance of or attributed to the neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person acting in such capacity, he will as well as the body corporate shall be deemed guilty of the offence and may be proceeded against and punished according.²⁹

It is clear from the above that the act of diverting money from the guarantee loan is expressly prohibited by the statute. A contract that is expressly or impliedly prohibited by statute as is in the instant case is tainted with illegality³⁰ and it therefore void. The decision of the Court of Appeal is clearly in error it is clearly given in oversight of the Supreme Court decision *Shodipe v. Lemminkainen*³¹.

²⁶ Op cit, Sagay at 362

²⁷ (1990) 2 NWLR (pt. 136) pg. 647 at 656

²⁸ Decree No 20 of 1977

²⁹ Section 3(3) of Decree No. 20 1977

³⁰ See the following cases *A.N. Onynike III v. G.F. Okeke* suit No. SC 430/74 delivered 5th May 1976, *Rabiu Busani v. Olabisi Williams* (1973) ECLSR 518, *Anna Chukwudifo v. Oguta Shawe* suit No. LD/834/20 delivered on 4th October, 1971

³¹ (1986) 1 NWLR (pt. 15) 220, See the Contrary views of the Supreme court of Nigeria

It also follows from the above that void contracts are contracts which are not expressly prohibited and attracts no penalties or sanctions. Certain statute declare some contracts void expressly, however in other cases, this may arise by legal implication. For example section 3 of the Hire Purchase Act 1965,³² renders the following provisions in a Hire Purchase agreement void.

- (1) Whereby the owner of Goods let on hire purchase or a person letting on his behalf, is authorized to enter upon the premise for the purpose of taking possession of the goods or relieved from liability for any such entry.
- (2) Whereby the right of the hirer under the hire purchase agreement to determine the agreement is excluded or restricted.
- (3) Whereby a hirer, after the determination of the hire purchase agreement is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under the Act
- (4) Whereby any person acting on behalf of the owner or seller in connection with the formation or conclusion of a hire purchase or credit sale is treated or deemed to be the agent of the hirer or buyer, *inter alia*.

Under the Sale of Good Act 1893,³³ where the price of goods is to be fixed by valuation of a third party and such third party could not make the valuation the agreement is void. Whether a contract is prohibited under statute, at common law or void at common law is a matter of construction and it for the court to decide. The question that needs to be answered is what is the attitude of the court towards transactions tainted with illegality?

Attitude of the Court Towards Transactions Tainted with Illegality. Where a statute bans or prohibits expressly the making of any type of contract, any such contract subsequently formed is illegal, void and unenforceable. In *Sodipe v. Lemminkanen*,³⁴ the Supreme Court, per Karibi-Whyte J.S.C. stated the attitude of the court graphically when he stated thus;

A contract that is expressly or impliedly prohibited by statute is illegal. Where the contract made by the parties is expressly forbidden by statute, its illegality is undoubted.

This is the position of the law and it is even more so where the enactment criminalizes the prohibited act. Where the contract is illegal as formed, that is, completely absolutely prohibited by statute or at common law, such a contract is said to be “*ex facie*” illegal. Neither party can derive any right or interest from it. It is dead on execution void *ab initio*. One of the parties may well have genuine intention and it is the other party that has a dubious or guilty intention. Good or genuine intention in the context of an absolutely prohibited contract is irrelevant. Where however, the contract is legal as formed, but was performed in an illegal manner, the question of guilty intention and innocence will become relevant, consequently the innocent party can

³² Cap H – 4 Laws of the Federation of Nigeria 2004

³³ Section 9(1) Sales of Good Act 1893

³⁴ (1986) 1 NWLR (pt. 15) 220, (1986) 1 NSCC 79.

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exercise his right under such contract. This apart, it is quite difficult to imagine a situation in which a party to an illegal contract as formed successfully claim innocence or absence of an intention to enter into the contract that is “intrinsicly and inevitably illegal”³⁵. Such a contract arouses the maxim, *ex turpi causa oritur non actio*, meaning that an action does not arise from a base cause. Put another way the courts will not enforce any claim that is based on an illegal contract.

That being so, even the courts will permit a defendant who is resisting the performance of an obligation under an illegal contract to raise the plea of illegality, even though he is the one that is responsible for the initial illegality or subsequent illegality of the transaction.³⁶ The most lucid and authoritative principle of law on this issue is perhaps the dictum of Lord Mansfield in *Homan v. Johnson*;³⁷

The objection that the contract is immoral or illegal as between plaintiff and defendant sound at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed, but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between and the plaintiff, by accident, of I may say so, the principle of public policy is this; ex dolo malo non oritur actio. No court will lend its aid to a man who found his cause of action upon an immoral or an illegal act. If for the plaintiff own stating or otherwise, the cause of action appear to arise exturpi causa, or the transgression of the positive law of this country, then the court says he has no right to be assisted. It is upon that ground that the court goes; not for the sake of the defendant, but because they will not lend their aid to such plaintiff. So if the plaintiff and defendant were to change side; and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it, for where both are equally in fault potior est conditio defendentis.

Therefore, any contract that in *ex facie* illegal is totally flawed and even where such illegality is not pleaded the court is duty bound to raise it *suo motu* and refuse to enforce the agreement.³⁸ This principle has held away in a long line of cases spanning cover two hundred years, or more. Indeed the principle and propounded in Mansfield exposition enjoyed and still enjoys universal application even outside the Common Law system, in Somalia³⁹, Ethiopia⁴⁰ to mention but a few.

The same principle invariable influence many Nigerian cases including *Savannah Bank Limited v. Ajilo* (Supra). It is true to say that the principle still hold away in Nigeria court

³⁵ Cheshire and Fifoot (10th Ed. By Furmstom) pg. 329

³⁶ See *Savannah, Bank Ltd v. Ahilo* (Supra)

³⁷ (1775) 1 Cowp 341 at 343

³⁸ *Sodipo v. Lemmin Kainem* (Supra) see also *Rivway lines Ltd v. Rhein Mas Linde* see, where it was held per Sulu Germbari, J.C.A that where a contract appears *ex facie* illegal, the court would invoke the known maxim 8 *ex turpi Causa non Oritur action*.

³⁹ *Teke Gebre Sellassie v. Sebhatu Woldermariam* (1965) ALR Comm 593

⁴⁰ *Abdillahi Yama Mohammed v. Farah Hussein Yama* (1964) ALR Comm 123

however, there is now a slight shift by both the Supreme Court and Court of Appeal in the application of the principle in support of equities in deserving cases, it is will be correct to submit that if Savannah Bank Limited v. Ajilo (Supra) were to be decided today the decision would be slightly different especially when it involves the interpretation of the Land Use Act 1978.⁴¹

Contemporary attitudes of Nigerian Court towards contracts tainted with illegality.

Section 22 of the Land Use Act, provides that the holder of a statutory right of occupancy granted by a governor of a State cannot alienate his right of occupancy or part thereof without the governor's consent first had and obtained. Failure to obtain the appropriate consent where it is required may result to revocation of the right of occupancy. The governor may also where the land is alienated without the consent of the appropriate authority. Failure to obtain consent also renders the transaction unlawful and illegal. The Act also makes it an offence punishable with fine or imprisonment.

Section 26 of the Act in the same vein provides that "Any transaction(s) or any instrument which purport to confer on or vest in any person any interest or right over land other than in accordance to the provisions of this Act shall be null and void. Guided by this section the Supreme Court in Savannah Bank of Nigeria v. Ajilo (Supra) held that all transactions under which an interest in land is been alienated or transferred required approval for their validity. Whereas, it is the duty of the holder of the right to procure such consent. One issue that stands clear from Ajilo's case and which decision drew the ire of many is, whether the grantor of a right of occupancy whose duty is to obtain consent to alienate should be allowed to invalidate the transaction he entered into by raising the plea of illegality for lack of governor consent to alienate.

Alternatively, can the equitable principle that a man should not be allowed to benefit from his own wrong be invoked while dealing with the provisions requiring consent in the Land Use Act and indeed any other law? The issue came up in Ajilo's case at the trial stage but was not argued at the appeal level both at Court of Appeal and the Supreme Court; it was rightly observed at the Supreme Court, when, Belgore J.S.C (as the then was) state thus;

*The feature of this appeal is that the issue based on the grounds of appeal has been confined within narrow limits of the interpretation of section 34 and Section 22 of the Act. This is unfortunate as the court must confine its decision to the argument of the parties. To do otherwise will amount to raising issues, suo motu for the parties. Otherwise, all the equities were not canvassed.*⁴²

Contemporary decisions of the Court of Appeal as well as the Supreme Court are now in support of equities rather than interpretation of Land Use Act provisions which may lead to manifest injustice as it was in Ajilo's case.⁴³In Adedeji v. National Bank of Nigeria,⁴⁴ where

⁴¹ See Sections 28(2)(d), 21, 22, 23, 34(5)(6)(7) & 36(2)(4) & (6) of the Act

⁴² See Savannah Bank Ltd v. Ajilo (Supra) at 354 per Belgore J.S.C

⁴³ Adewale T., The Nigerian Land Law (Ibadan, Ababa Press Ltd, 2011) Pg 224

⁴⁴ (1989) 1 NWLR, 212

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the Court of Appeal declined a mortgagor who sought to rely on the provision of the Land Use Act to invalidate a mortgage in respect of which the governor consent was not obtained by him. The Court distinguished it from Savannah Bank Limited v. Ajilo (Supra) by asserting that the issue was not canvassed in the latter case. Akpata, J.S.C reading the lead judgment of the Court pointed out as follows,

“...apart from the principle of law involved in this case, it is morally despicable for a person who had benefited from an agreement to turn around to say that the agreement is null and void...”

The other justices of the Supreme Court unanimously agreed with this decision. In Attorney-General of the Federation & Ors. V. Sode⁴⁵ the plea of *ex turpi Causanon oritur actio* was once again raised in a similar circumstance but the Supreme Court rejected it. The Shift in judicial attitudes of Nigerian court which are more than before poised in doing substantial justice rather than bow to the alters of technicalities was again displayed by the Supreme Court in Belonwo Ugochukwu v. Cooperative & Commerce Bank Nigeria Limited⁴⁶. The Appellant sometime in 1978 obtained credit facilities from the respondent bank. The appellant refused, failed and or neglected to pay either the loans or interest. The years later the bank sought to exercise its right under the mortgage deed to sell the mortgaged property. The appellant shamelessly filed a suit seeking declaratory reliefs and challenging the validity of the deed of mortgage, on the grounds of non-compliance with the Land Use Act relying on the Supreme Court decision in Savannah Bank Ltd v. Ajilo (Supra). The Supreme Court without much ado dismissed the appeal. The Court held inter alia, that;

It is the holder of a right of occupancy, evidenced by a certificate of occupancy, is the one to seek the consent of the governor to alienate, transfer or mortgage... it is not from him one must hear that the consent obtained was void... The appellant being the holder of the right of occupancy over the house, i.e. No. 239, Cameroun Road, Aba was to seek consent and it is unconscionable for him to turn around about and maintain that the governors consent he obtained was flawed having received valuable consideration.

Similar decisions have been given by the Supreme Court in Awojugbagbe Light Industries Ltd v. PN Chinukwe & Ors⁴⁷, Alhaji Ayotunde Seriki v. Sefiu Olukorade⁴⁸ where it was held that no person involved in any immoral or illegal act or transaction should be allowed to come to court to seek redress. No polluted hands should touch the pure foundation of justice. In Nigeria Industrial Development Bank Ltd v. Olalomi Industries Ltd⁴⁹ the court observed at follows:

...it is my view that it will be in the interest of justice to do so rather than allow the mortgagor to eat his Cake and still have it back. The court should resist at all cost the attempt at using it as an engine of fraud or cheating or dishonesty.⁵⁰

⁴⁵ (1990) 1 NWLR, 500.

⁴⁶ (1996)6 NWLR (Pt 456 per Belgore JSC at 540.

⁴⁷ (1995) 4 NWLR (Pt 390) 379

⁴⁸ (1999) 3 NWLR (Pt 595) 469 at 480 – 481

⁴⁹ (2002) 5 NWLR (Pt 761) 532

⁵⁰ Ibid at 548

The above decisions are sound decisions which conform with equity and good conscience, according to the principle of law expressed in the Latin maxim “*nollus commodum capare potest de injuria sua propria*” that no one should be allowed to benefit from his own wrong.

Conclusion

The above decisions have shown a legal impetus for activism and transformation in judicial attitudes of the Nigerian courts in the application of the maxim *ex turpi causa non oritur actio*. Showing that equity inclines itself to conscience, reason and good faith. They portray a legal system committed to a just and equitable regulation of the mutual rights and duties of man in a civilized society⁵¹. Such that does not envisage sharp practices or undue advantage of others neither does it encourage it.

It is submitted in conclusion that the court should continue in this humane and equitable strides in the interpretation of statutes. The court should avert its mind to doing substantial justices rather than be carried away by the floods of technicalities. And should always depart from giving interpretation which would result to injustice. The streams of justice must be allowed to run pure. Judges must learn not to follow precedents slavishly and mechanically, they must deploy wit and wisdom at all times. We conclude this discourse with the eloquence of Kayode Eso JSC (as he then was) he said thus,

It would be tragic to reduce judges to a sterile role and make an automation of them. I believe it is the function of judges to keep the law alive, in motion and to make it progressive, without being inhibited by technicalities, to find every conceivable but acceptable way of avoiding narrowness that would spell injustice. Short of a judge being a legislator, a judge to my mind must possess aggressive stance in interpreting the law.

It follows these that judges in the interpretation of statutes and application of judicial precedents must not reduce themselves to robots they much look for every conceivable and acceptable ways to do justice within the ambit of the law. Where the parties are *pari delicto*, that is equally guilty in entering the agreement or contract the court should apply the *ex turpi Causa non oritur actio* principle but where it is clear that only one party has guilty intention, the one with dubious intention should not be allow to raise illegality as a defence. The court in accordance with the doctrine of equity apply the principle of *mollus commodum capare potest de injurial sua propria* meaning no one should be allowed to benefit from his own wrong.

⁵¹ Adewale T. op.cit