

*Stare Decisis and Legal certainty in Nigerian Jurisprudence: Lessons from Abdullahi v Adetutu  
and Benjamin v kalio.*

BY

Jessica Chika Okonkwo

LAW2002918

FACULTY OF LAW  
UNIVERSITY OF BENIN  
BENIN CITY

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A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,  
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THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B HONS) OF THE  
UNIVERSITY OF BENIN, BENIN CITY.

NOVEMBER, 2025

## DECLARATION

I hereby declare that this project work, '*Stare Decisis and Legal certainty in Nigerian Jurisprudence: Lessons from Abdullahi v Adetutu and Benjamin v kalio*' is the product of my own research efforts; undertaken under the supervision of Dr Mrs. F.O Osuji and has not been presented elsewhere for the award of a degree or certificate. All sources have been duly distinguished and appropriated acknowledged.

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Jessica Chika Okonkwo  
LAW2002918

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Date

**CERTIFICATION**

This is to certify that this research project was carried out by '**Jessica Chika Okonkwo**' with matriculation number **LAW2002918** of the Faculty of the Law, University of Benin, Benin City Edo State, in partial fulfillment of part of the requirement for the award of a Bachelor of Laws(LL.B) degree. To the best of my knowledge, this work is adequate in scope and quality and it has been done under my supervision.

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**DR (Mrs.) F.O Osuji**  
**Project Supervisor**

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**Date**

---

**Dr (MRS.) F.O Osuji**  
**Project Coordinator**

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**Date**

---

**Prof. Bright Bazuaye**  
**Dean Faculty of Law**

---

**Date**

## **DEDICATION**

This research work is dedicated to God Almighty in heaven for his kind protection, love, Grace and mercy during my study in University of Benin. This research work is also dedicated to my lovely parents: Mr. and Mrs. Okonkwo for their great support and abundant care.

## ACKNOWLEDGEMENT

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## LIST OF ACRONYMS/ABBREVIATIONS

CFRN - Constitution of the Federal Republic of Nigeria.

LIRL - Land Instrument Registration Law.

## ABSTRACT

This project examines the potency of the doctrine of *stare decisis* and the binding force of precedent in Nigeria's legal system. It uses the twin Supreme Court decisions in *Benjamin v Kalio* and *Abdullahi v Adetutu* as focal case studies. The doctrine of *stare decisis* mandates that lower courts follow decisions of superior courts, and that courts generally adhere to their own past rulings, fostering consistency, predictability, and fairness in adjudication. Nigeria has a very complex legal system and slow litigation process which is mixed up with the issue of judicial interpretation of statutes. It has become very important for our laws to be certain and also for uniformity in interpretation of statutes to avoid miscarriage of justice. Having a complex legal system also requires well mapped out rules and principles mostly in areas involving land and conveyance which must be strictly adhered to when similar situations occur in order to ensure certainty. There is need to fill up the gap created by Land Use Act and the various Land Instrument Registration Law of various states. The LIRL of various States have been subject to numerous interpretations in a plethora of cases involving land dispute and ownership of land. We need to dive into the mischief rule to fully understand the purpose of the statute. The main objective of this study is to dive into the substantive aspect of the law, the judicial interpretation of the statutes and the need for similar cases to follow similar rulings except they are explicitly distinguished from each other. Data will be generated from law reports and similar cases and will be subjected to rigorous analysis to fully get the true objective and purpose of the law as regards to ownership of land and conveyance to instill uniformity in interpretation. The analysis will reveal the gap in the law as regards judicial interpretation in land disputes and also proffer solutions and remedies to salvage the never ending saga involving land disputes. This study will bring to light abnormalities in judicial interpretation of similar statutes and break down the importance of distinguishing or pronouncing that a previous decision was reached *per incuriam* before laying down a new principle.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Introduction

The principle of *stare decisis*, also known as judicial precedent, means “let the decision stand” or “stand by things decided.” It is simply the law found in judicial decisions.<sup>1</sup> It is a common law doctrine which compels courts to follow previous judicial decisions when the same matter, issue or question arises in subsequent proceedings.<sup>2</sup> *Salmond* opines that for *stare decisis* to be established two conditions must be satisfied. Firstly there must be a settled judicial hierarchy for well cut binding authority and secondly there should be a reliable report of cases.<sup>3</sup> The major advantage of judicial precedent is its predictability of judicial decisions that is, it ensures previous decisions are adhered to in subsequent cases when similar fact or question of law arises. The major disadvantage of judicial precedent is its rigidity. Judicial precedent is very important as judicial decisions enjoy law quality, a binding effect, and ensure certainty in our law.

The importance of judicial precedent cannot be overemphasized and this led to the controversy between these two cases, *Adetutu v Abdullahi*<sup>4</sup> and *Benjamin v kalio*<sup>5</sup>. The conflict emanating from both cases is a clear proof that judicial precedent is important and any form of deviation from established principles or precedent can amount to uncertainty in our laws. The conflict between the case study stems from law governing land matters in Nigeria. Section 4(6) CFRN

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<sup>1</sup> *Mbaka v Mbaka & 5 others* (2022) 17 NWLR 531 534 SC.

<sup>2</sup> *Ibid.*

<sup>3</sup> RWM Dias, *Jurisprudence* (4<sup>th</sup> edn, Butterworth & Co Publishers Ltd 1966) 162.

<sup>4</sup> (2018) 15 NWLR 39 SC.

<sup>5</sup> (2020) 3 NWLR 339 SC.

1999 confers power on State Houses of Assembly to make laws. Section 315(1) CFRN allows the National Assembly and State Houses of Assembly to modify any existing law for the purpose of bringing it into conformity with the provisions of the constitution. Section 315(5) recognizes the Land Use Act as an existing law which the constitution cannot invalidate. The Land Instrument Registration Act 1924 an existing law was modified by various States giving rise to the various LIRL of various States. The Land Use Act is the major statute governing the conveyance of land in Nigeria.<sup>6</sup> Section 1 of the Land Use Act 1978 vests power in State governors to hold the land in trust for the people. Section 46 Land Use Act allows various states to stipulate guidelines for registration of land instrument. The laws created by various states are called the Land Instrument Registration Law (LIRL)<sup>7</sup> and it affects the registration and non-registration of land instruments in those states. The Land Use Act aims to harmonize land ownership and usage across the country, but the implementation of this principle is largely handled at the state level.

Section 15 of the Lagos State Land Registration Law 2015 stipulates that an instrument (document) affecting land cannot be pleaded or given as evidence in any court to prove title or interest in land if it has not been registered. This means an unregistered instrument, even if valid, is inadmissible in court to establish ownership or rights related to the land. Notwithstanding this, an unregistered land instrument is still admissible to prove receipt of purchase price or prove that a transaction took place.<sup>8</sup> This case study involving the effect of registration of land instrument is very important as the Land Use Act which is the general law gives power to various states to

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<sup>6</sup> *Ojugele v Olasoji* (1982) 1 All NLR (Pt 1) 43 SC.

<sup>7</sup> Land Registration Law of Lagos 2015; Edo State Lands Administration and GIS Law 2018.

<sup>8</sup> *Zaccala v Edosa* (2018) 6 NWLR (Pt 1616) 528 SC.

determine the procedures for registration of land instrument.<sup>9</sup> Flowing from this, the outcome will be different as different states lay down varying procedures for registration of land instrument. These varying procedures are the foundational obstacles preventing certainty in our laws as regards the area of registration of Land instrument.

## 1.2 Background to the Study

The principle of *stare decisis* which means let the decision stand or stand by things decided is gotten from the full Latin word *stare decisis et non quieta movare*, it is a legal principle that directs courts to adhere to previous judgments or judgments of higher courts when the same facts or issue arise in subsequent cases<sup>10</sup>. This case study, *Abdullahi's case* and *Benjamin's case* show the importance of *stare decisis* and also emphasize the conflict that occurs when precedents are not strictly adhered to. The decision in Benjamin's case was not considered neither was it followed in *Abdullahi's case* and this led to a huge gap and uncertainty in the law governing land instrument. In the general rule a land instrument must be registered before it can prove title or ownership of land<sup>11</sup>. In Benjamin's case the court usurped the general principle and ruled that an unregistered land instrument can prove ownership of land. In *Abdullahi's case* the court ruled based on the general principle restating the old position of the law. The controversy between both cases emanated from the fact that *Abdullahi's case* did not consider Benjamin's case when it made its ruling. Also *Abdullahi's case* neither affirmed nor rejected the decision in *Benjamin's case* and this is the bone of contention leading to conflict and uncertainties. The doctrine of *stare decisis* is also called judicial precedent and it is binding when it involves decisions from a higher

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<sup>9</sup> Land Use Act 1978 section 46.

<sup>10</sup> *Mbaka v Mbaka & 5 others* (2022) 17 NWLR 531 534 SC.

<sup>11</sup> *Elegbede v Babalola* (1969) 1 NMLR 311 SC.

Court to a lower Court for example the Supreme Court to Court of Appeal or Supreme Court to High Court, in such situations the decisions of the Higher court when similar facts or questions of law arises will be binding on lower courts. It is persuasive when it involves courts of co-ordinate jurisdiction for example State High Court to another State High Court. It is also persuasive when it involves decisions from foreign courts. The difference between binding and persuasive precedent is its level of effect. A binding precedent is compulsory and lower courts cannot depart from previous decisions except previous cases are distinguished from the new one. While persuasive decisions are not compulsory and courts have discretion to follow or not to follow such previous decisions. The concept of *stare decisis* originated in England after the Norman conquest of 1066 AD which led to the establishment of common law courts (kings bench, Court of common pleas, Court of exchequer) and common judges using past decisions as precedents for future rulings, helping to unify regional legal traditions.<sup>12</sup> The United States adopted this principle when it gained independence, inheriting a common law tradition built on precedents. The case study focuses on the registration of land instrument and the effect of non-registration in proving title to land. Historically the registration of land instruments in Nigeria has evolved from colonial-era ordinances to modern systems. Initially, the Land Registration Act of 1924 governed the process, focusing on recording documents affecting land ownership. Later the Registration of Titles Act, introduced in Lagos in 1935 shifted the emphasis to registering land titles themselves, rather than just instruments. The introduction of the Land Use Act 1978 unified the customary laws governing land use in Nigeria and it also empowered states to make their own laws governing registration of land instrument for example Lagos State Land

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<sup>12</sup> Abiola Sanni (ed), *Introduction To Nigerian Legal Method* ,(2<sup>nd</sup> ed, Obafemi Awolowo University Press Limited 2006) 70.

Registration Law 2015, Edo State Land Administration and GIS Law 2018 also other states have their various Land Instrument Registration Law (LIRL).

### 1.3 Statement of Problem

This can be traced to various states having different laws governing the registration of land instrument. The various laws make the effect of registration differ from State to State. Notwithstanding this, there are similarities in the various LIRL as only registered land instrument are admissible in court to prove title. The problem boils down to interpretation of these statutes (judicial discretion) and application to individual cases and this is the bone of contention of this case study. It is important to note that failure to follow previous decisions lead to uncertainties and chaos in our law especially in the area of registration of land instrument which is the focus of this study.

### Research Questions

1. What is the principle of *stare decisis* and how does it operate within the Nigerian legal system?
2. How did the Supreme Court interpret and apply the doctrine of *stare decisis* in *Adetutu v Abdullahi and Benjamin v kalio*?
3. To what extent do these cases illustrate the potency (strength and reliability) of *stare decisis* in ensuring consistency in judicial decisions?
4. Are there circumstances under which Nigerian courts may depart from *stare decisis*, and how were such principles reflected in the two case studies?
5. What reforms or judicial attitudes are necessary to strengthen the certainty and consistency of laws through adherence to precedent?

## 1.4 Aim and Objectives

The aim of this research is to examine the decisions in *Adetutu v Abdullahi* and *Benjamin v Kalio* to evaluate how judicial precedents contribute to legal certainty, consistency, and predictability in the administration of justice.

The objectives include:

1. To define and analyze the doctrine of *stare decisis* and its historical development in common law and Nigerian jurisprudence.
2. To critically examine the facts, issues, and judicial reasoning in *Adetutu v Abdullahi* and *Benjamin v Kalio* as they relate to the application of *stare decisis*.
3. To assess the potency (effectiveness and reliability) of the doctrine of precedent in promoting uniformity and stability in land related matters in Nigeria.
4. To investigate circumstances under which Nigerian courts may depart from established precedents and the implications of such departures.
5. To make recommendations on how to strengthen the role of *stare decisis* in enhancing the predictability and integrity of the Nigerian legal system.

## 1.5 Scope of the Study and Limitations

This study focuses on the principle of *stare decisis* and how it operates within the Nigerian legal system. It focuses on historical development of the doctrine of judicial precedent in common law and Nigerian legal system. It will be limited to an in depth examination of the two Supreme Court cases *Adetutu v Abdullahi* and *Benjamin v Kalio*. Both cases relate to the laws governing

registration of land instrument. The case study (*Abdullahi's* case and *Benjamin's* case) is used to evaluate the strength and relevance of judicial precedent and show how it was applied to both cases.

### 1.6 Significance of the Study

This study is very important because in order to perpetuate a system of justice, fairness and citizen's trust in the legal system of Nigeria there must be certainty and stability in judicial process. This research is significant because it:

- 1) Examines the role of *stare decisis* in ensuring legal stability and how it shapes judicial reasoning in Nigeria.
- 2) Provides an in depth analysis of landmark cases (*Adetutu v Abdullahi* and *Benjamin v Kalio*) to illustrate how the principle has been applied or modified in practice.
- 3) Contributes to academic discourse by highlighting the strengths and weaknesses of Nigeria's reliance on precedent as a source of law.
- 4) Guides legal practitioners, judges and even law students in understanding when and how to uphold or depart from precedents while maintaining legal certainty.
- 5) Assists policymakers and law reform advocates in identifying areas where judicial consistency can be improved to strengthen the rule of law.

### 1.7 Research Methodology

The approach used for this legal research is doctrinal in nature. Doctrinal research involves the analysis of legal rules, statutes, case law, and scholarly opinions to understand and evaluate the operation of *stare decisis* in Nigeria. It is qualitative in nature, as it focuses on interpretation, evaluation, and critical discussion of legal principles rather than numerical data. The case study method is employed using *Adetutu v Abdullahi* and *Benjamin v Kalio* as focal points to illustrate the practical application of the doctrine. The sources of data include both primary and secondary legal sources. The primary sources include judicial decisions (law reports of the two case studies and related cases) and Nigerian Constitution and statutory provisions relating to judicial hierarchy and precedent. The secondary sources include textbooks, articles and online legal databases on the subject matter. The data will be collected from the library (University of Benin Law library) and internet sources. The data collected for the two cases will be subjected to comparative analysis to examine how *stare decisis* was interpreted and its effect on legal certainty. The methodology is limited to doctrinal analysis of Nigerian case law and academic materials. Empirical methods such as interviews or surveys are not used as the research focuses on judicial reasoning rather than public perception.

## CHAPTER TWO

## CONCEPTUAL FRAMEWORK

### 2.1 Introduction

This chapter reviews existing literature on the doctrine of *stare decisis*, judicial precedent and the need for certainty in our laws. It examines the principle of *stare decisis* (definition, types, *ratio decidendi v obiter dicta*). It examined the historical evolution of the doctrine in common law and its adoption in Nigeria. Previous scholarly works analyzing consistency and departures in Nigerian jurisprudence.

#### 2.2.1 *Stare Decisis*

The principle of *stare decisis* which means let the decision stand or stand by things decided is gotten from the full Latin word *stare decisis et non quieta movare*, it is a legal principle that directs courts to adhere to previous judgments or judgments of higher courts when the same facts or issue arise in subsequent cases<sup>13</sup>. The doctrine of *stare decisis* is also called judicial precedent and it is binding when it involves decisions from a higher Court to a lower court. There are two types of judicial precedent binding precedent and persuasive precedent.

#### 2.2.2 Binding Precedent

The doctrine of binding precedent is based on the premise that the function of judges is not to create law but to find law in conformity with existing legal rules.<sup>14</sup> The judge has a legal obligation to use previous decided cases not only for guidance, but is bound to apply the principles of law found in such case. This coercive character of the doctrine of precedent is a

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<sup>13</sup> *Mbaka v Mbaka & 5 others* (2022) 17 NWLR 531 534 SC.

<sup>14</sup> R B Antoine, *Commonwealth Caribbean Law and Legal Systems*, ( 2<sup>ND</sup> ed, Routledge-Cavendish publishers 2008)2.

feature peculiar to the English legal tradition. One of the first judicial pronouncements on the doctrine of binding precedent and *stare decisis* can be found in the case of *London Tramcars Co Ltd v London County Council*<sup>15</sup> where Lord *Halsbury* stated that ‘a decision of this House once given upon a point of law is conclusive upon the House afterwards, and it is impossible to raise that question again as if it was *res integra* and could be re-argued. Binding precedent is a prior court decision that a court must follow because it was made by a higher court in a case with very similar facts. A binding judicial precedent is a past court decision that lower courts in the same jurisdiction must follow when dealing with similar cases, it is a principle rooted in the doctrine of *stare decisis*. These precedents ensure consistency and predictability in the law by obliging judges to apply the *ratio decidendi* or the legal reasoning from decisions of superior courts. While providing certainty the requirement to follow precedents can be rigid though judges can avoid binding precedents by distinguishing a case on its facts or point of law.

Before a precedent can be binding two things are required. Firstly there must be a hierarchy of court and secondly the material facts and legal issues in both cases must be similar.<sup>16</sup> The major advantage of a binding precedent is that it ensures certainty while the downside is its strict rigidity.

### 2.2.3 Persuasive Precedent

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<sup>15</sup> (1898) AC 375 HL.

<sup>16</sup> Business Bliss Consultants FZE, 'The Doctrine of Binding Precedent', (Lawteacher.net, August 2025), <https://www.lawteacher.net/free-law-essays/constitutional-law/the-doctrine-of-binding-precedent-constitutional-law-essay.php?vref=1> , accessed August 29 2025.

Persuasive precedents are those legal principles contained in judgments which merely offer guidance. The judge will refer to these precedents, but they are not binding. *Obiter dicta* decisions for example may form the basis of persuasive precedents.<sup>17</sup> Persuasive precedents may also originate from courts lower in the hierarchy and the decisions of courts in other jurisdictions. A persuasive judicial precedent is a previous court decision that a judge is not obligated to follow but may choose to apply in a current case, especially when there's a lack of binding authority or similar case law within their jurisdiction. Persuasive precedents include: decisions from a court of co-ordinate jurisdiction (high court to high court decision), foreign court judgments, *obiter dicta* and legal articles or journals. Judges may be persuaded by these precedents to guide their decision making, particularly in new areas of law, when seeking to strengthen a rule, where there is lack of binding authority and also when they're seeking alternatives especially when they are not bound by a precedent.

#### 2.2.4 *Ratio Decidendi v Obiter Dicta*

*Ratio decidendi* is the essential legal reasoning for a court's decision and it sets a binding precedent that lower courts must follow while *obiter dicta* are non-binding, incidental comments made in passing that can be persuasive but do not create mandatory legal rules. *The ratio decidendi* directly forms the rule of law upon which a case is founded, whereas *obiter dicta* are supplementary remarks that may offer insight but are not crucial to the court's outcome.<sup>18</sup> It is not the entire corpus of a decided case that constitutes a precedent for the determination of

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<sup>17</sup> Antoine (n13) 3.

<sup>18</sup>Braham-Paul Chima, '*Obiter Dictum v Ratio Decedendi*', (judicialpoetry.com, August 2025), <https://www.judicialpoetry.com/sc/obiter-dictum-vs-ratio-decidendi/>, accessed August 29 2025.

subsequent cases, what constitutes a precedent for later decisions is the *ratio decidendi* which means the reason for the decision.<sup>19</sup>

*Goodhart* summarized the rule for determining the *ratio decidendi* of a case and according to him the principle is found by taking account of the facts treated as material by the judge and the judge's decision is based on those material facts<sup>20</sup>. *Obiter Dicta* are statements of law made by the way in judgement which are not relevant to the issue before the court<sup>21</sup>. *Black law Dictionary* (9<sup>th</sup> edition) defines *Obiter dictum* as 'words of an opinion entirely unnecessary for the decision of the case'. It is a remark made or statement made by a judge when delivering his decision that is not directly involved in the determination of a case.

#### 2.2.5 *Per Incuriam*

A Court can only depart from its previous decisions in two situations: Firstly when such decision was made *per incuriam*, *incuriam* means carelessness but decisions reached *per incuriam* are described as in fact decisions reached through ignorance *per ignorantium*.<sup>22</sup> The expression 'through ignorance' is however not preferred because Judges are presumed to know the law. Secondly a Court can depart from a previous decision when the present case is distinguished from the previous case in terms of material facts. When the court distinguishes the previous case from the present one it is not bound to follow the previous decision.<sup>23</sup>

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<sup>19</sup> Abiola Sanni (ed), *Introduction To Nigerian Legal Methods*, (2<sup>nd</sup> ed, Obafemi Awolowo University Press Limited 2006)180.

<sup>20</sup> Arthur L Goodhart, 'Essays in Jurisprudence and the Common Law' (1931) Cambridge University Law Journal 234.

<sup>21</sup> Sanni (n18)185.

<sup>22</sup> Sanni (n18) 184.

<sup>23</sup> *Ibid* 186.

### 2.3 Historical Development of Judicial Precedent

Historically the doctrine of judicial precedent originated in England during the medieval period after the Norman Conquest of 1066 AD which gave rise to the establishment of common law.<sup>24</sup>

The laws in England were mostly customary varying from one region to another, after the conquest, the royal courts were established (Kings Bench, Common Pleas, Court of Exchequer).<sup>25</sup>

Judges of the royal courts met yearly to discuss cases decided in their various regions after this they began traveling across the country applying the same principles in similar cases. This helped unify the law. By the 13th century written reports of cases (Year Books) were being compiled allowing judges to look back at earlier decisions. In the *Case of Prohibitions* (1607), where Sir Edward Coke emphasized that judges not the King make law by applying precedents.<sup>26</sup>

### 2.4 Judicial Precedent in Nigeria

Judicial precedent was adopted in Nigeria by virtue of received English laws<sup>27</sup> (Common Law, Doctrine of Equity and Statute of General Application enforced in England before Jan 1st 1900) as a common law principle, originating from the British common law system, courts are bound by previous decisions (precedents) from higher courts in similar cases. The hierarchy of Nigerian courts ensures that decisions from the Supreme Court and Court of Appeal are binding on lower courts establishing *stare decisis* and providing consistency in the application of law.

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<sup>24</sup> *Ibid* 70.

<sup>25</sup> Osaretin Aigbovo , *Introduction To Nigerian Legal System* (3rd ed,Sylva Publisher Limited 2018) 34.

<sup>26</sup> (1607) 77 ER 1342 KB.

<sup>27</sup> Aigbovo (n24) 42.

## CHAPTER THREE

### LEGAL AND INSTITUTIONAL FRAMEWORK

#### 3.1 Introduction

This chapter will examine the vehicle of reception and how judicial precedent was received in Nigeria. The legal rules governing binding precedent starting from the provisions of the 1999 Constitution and how it provides for the proper hierarchy of courts will be examined. It will look at the Evidence Act and how it provides for admissibility of evidence. The laws governing Registration of Land Instrument will be examined as well the principles governing judicial precedent and the Rules of court as regards precedents.

#### 3.2 Vehicles of Reception<sup>28</sup>

Judicial precedent is a common law principle and it was received in Nigeria by virtue of the interpretation Act.<sup>29</sup> The Common law, Doctrines of Equity and Statute of General Application were received in Nigeria by virtue of the following provisions:

##### 1) Federal Vehicle

Section 45(1) of the Interpretation Act of 1958 which is now section 32(1) of the Interpretation Act of 1990 allows common law, doctrines of Equity and Statute of General Application to apply in Nigeria courts. Section 32(2) provides that their application is subject to Nigerian jurisdiction or when there is a Nigerian federal law or court decision available. This was seen in the case of

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<sup>28</sup> Osaretin Aigbovo , *Introduction To Nigerian Legal System* (3rd ed,Sylva Publisher Limited 2018) 34.

<sup>29</sup> Interpretation Act of 1958 section 32.

*Labinjoh v Abake*<sup>30</sup> where the application of the Infant Relief Act was rejected because there was already a local legislation that covered that area. Section 32(3) allows for the alteration of the imperial laws in order to make it applicable to the Nigerian situation. For example where England is used it would be replaced with Nigeria, when the British currency is used it would be replaced with the Nigerian currency and so on.

## 2) The Former Eastern Region

Section 27 High court law of 1955 provides that "Subject to the provisions of this section the common law of England, the doctrines of Equity and the statutes of General Application that were in force in England before January 1st 1900 shall be in so far as they relate to any matter to which the legislature of the region is for the time being competent to make laws, be in force within the jurisdiction of the court."<sup>31</sup>

## 3. The Former Northern Region

Section 28 High court law of 1955 of former Northern Nigeria provides that, "subject to the provisions of any written law a) the common law b) the doctrines of Equity c) the statute of general application which were in force in England before January 1st 1900 shall be in force within the jurisdiction of the court."<sup>32</sup>

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<sup>30</sup>(1924) 5 NLR 33 WACA.

<sup>31</sup> Aigbovo (n27) 43.

<sup>32</sup> Aigbovo (n27) 44.

#### 4) The Former Western Region

Section 3 Laws of England Application Law Cap 85 Laws of Bendel State of Nigeria 1976<sup>33</sup> provides that "From and after the commencement of this law and subject to the provisions of any written law, the common law and doctrines of equity observed by her Majesty High court of justice in England shall be in force throughout the state." It is important to note that Statute of General Application (SOGA) does not apply directly to states that emanated from former Western region only common law and doctrines of equity directly applies. States emanating from the former Western region only took part of the laws that were reasonable and they thought important and enacted them specifically into their own law.<sup>34</sup> The West African Court of Appeal stated in *Young v Abina*<sup>35</sup> that it was not necessary for the statute to be in force in all of the United Kingdom, but it only had to be in force in England. This was reaffirmed by the federal Supreme Court in *Lawal v Younan*.<sup>36</sup>

#### 3.3 Hierarchy of Courts

The principle of *stare decisis* which also means judicial precedent emphasizes that lower courts must follow the decisions of higher court when similar facts and issues arise in subsequent cases. For this to happen there must be a proper documented law report system and hierarchy of courts. There are three arms of the government the executive, legislature and judiciary. While the legislative arm is responsible for making law the judiciary is responsible for interpreting the Constitution. Section 6 1999 CFRN provides for the judiciary and vests in them the power to

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<sup>33</sup> *Ibid.*

<sup>34</sup> Aigbovo (n 27) 47.

<sup>35</sup> (1940) 6 WACA 180 WACA.

<sup>36</sup> (1961) ALL NLR 257 SC.

interpret the law. In order for judicial precedent to be effective the 1999 CFRN provides for the hierarchy of courts in Nigeria as follows:

- a) The Supreme Court
- b) The Court of Appeal
- c) The Federal High Court
- d) The High Court of the Federal Capital Territory, Abuja
- e) The High Court of a State
- f) The Sharia Court of Appeal of the Federal Capital Territory, Abuja
- g) A Sharia Court of Appeal of a State
- h) The Customary Court of Appeal of the Federal Capital Territory, Abuja
- i) A Customary Court of Appeal of a State
- j) Such other Courts as may be authorized by law to exercise on matters with respect to which the National Assembly may make laws
- k) Such other Courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.<sup>37</sup>

By section 287(1) of the 1999 Constitution, all authorities and persons in Nigeria are bound to enforce decisions of the Supreme Court. The Supreme Court is generally bound by its own previous decisions, except the decision was reached *per incuriam* (in error)<sup>38</sup>. If it would lead to injustice, or when circumstances have changed and the law requires modification then the court can depart from its previous decisions.

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<sup>37</sup> The Constitution of the Federal Republic of Nigeria 1999 section 6(5).

<sup>38</sup> Abiola Sanni (ed), *Introduction To Nigerian Legal Methods*, (2<sup>nd</sup> ed, Obafemi Awolowo University Press Limited 2006) 184.

### 3.4.1 The Evidence Act and Admissibility of Evidence

The hierarchy of courts provided by the 1999 CFRN allows for the easy flow of authority from the Supreme Court down to the High Court and other courts like the Magistrate Court and District Court which were established by Virtue of Section 6(5)(J) and (k) of the 1999 CFRN. It is the responsibility of the court to interpret and apply the relevant law to individual cases. The Court while applying the law considers relevancy and admissibility of evidence. Admissibility of evidence is governed by the Evidence Act.<sup>39</sup> In Nigeria only the following evidence is admissible:

i) Evidence of facts in issue.

ii) Other facts relevant to the facts in issue provided these are not excluded by the courts as being remote or by any force of law.<sup>40</sup>

In *Elias v Disu*, the court emphasized the importance of relevancy and admissibility and before a piece of evidence can become admissible firstly it must be relevant. The court also stated that how the evidence was acquired is not important.<sup>41</sup>

### 3.4.2 Primary and Secondary Evidence

Documentary evidence can be primary and secondary. Primary Evidence is usually the original document while secondary evidence is the certified true copy of the original. In Nigeria, the Land Instruments Registration Law of various states provides that a registrable land instrument must be registered to become admissible in evidence.<sup>42</sup> The Evidence Act 2011 sets out the rules on when a land instrument can be admitted in court. The contents of a document may be proved

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<sup>39</sup> Evidence Act 2011.

<sup>40</sup> Lawrence Atsegbua, *Law of Evidence*, (3rd Edition, Four Pillars Publishers 2023) 25.

<sup>41</sup> (1962) 1 ALL NLR 214 SC.

<sup>42</sup> Land Registration Law of Lagos State Section 15.

either by primary or by secondary evidence.<sup>43</sup> The original document (land instrument) must be produced in court for inspection<sup>44</sup> unless in exceptional cases provided for like loss, destruction, or custody issues<sup>45</sup>

When the original is in the custody of a public officer (for example the Land Registry) a certified true copy (CTC) may be tendered instead of the original.<sup>46</sup> A certified true copy is a photocopy of an original public document stamped and certified by the appropriate authority. Registered land instruments kept at the Land Registry are considered public documents.<sup>47</sup> To prove them, you need a certified copy issued by the registrar. An unregistered land instrument affecting land that is registrable by law is generally inadmissible in evidence except to prove a contract in equity or as evidence of possession or that a transaction took place<sup>48</sup>. Courts have repeatedly held that an unregistered registrable instrument cannot be admitted to prove title, but may be used to prove payment of purchase price or show equitable interest. In *Ojugbele v Olasoji* , the court held that an unregistered registrable instrument is inadmissible to prove title but admissible to prove payment or possession<sup>49</sup> Also in *Adeniran v Alao* , it was stated that only a certified true

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<sup>43</sup> Evidence Act 2011 Section 85.

<sup>44</sup> Section 86 Evidence Act 2011.

<sup>45</sup> Evidence Act 2011 Section 89.

<sup>46</sup> Evidence Act 2011 Section 104.

<sup>47</sup> Evidence Act 2011 Section 102.

<sup>48</sup> *Daniel v Damen* (2024) NWLR (Pt 1947)485 CA.

<sup>49</sup> (1982) 4 NSCC 31 SC.

copy of a registered land instrument is admissible, uncertified photocopies are not.<sup>50</sup> *Adenle v Oyegbade* held that registration is mandatory for admissibility to prove legal title.<sup>51</sup>

### 3.5.1 Registration of Land Instrument

All the lands in Nigeria are vested in the Governor of each state, who holds them in trust and manages them for the benefit of all Nigerians.<sup>52</sup> This provision transferred ownership from previous holders (individuals, families, or communities) to the state governor, who is responsible for land allocation in urban areas, while local governments manage non-urban lands.<sup>53</sup> Each state established their own LIRL by virtue of the power conferred on them by section 46 of the Land Use Act and validated by the 1999 CFRN section 315(5). An Instrument is a document affecting land whereby a party (grantor) confers, transfers, limits, charges, or extinguishes a right, title, or interest in land to another party (grantee). It includes specific examples like a certificate of purchase and a power of attorney but excludes a will.<sup>54</sup> Section 2 of the Lagos State Land Registration Law 2015 mandates that all documents conferring interest or title to land within Lagos State must be registered with the Registrar of Titles according to the law's provisions, typically within 60 days of obtaining the Governor's consent. This registration is crucial for validating land transactions, protecting property owners' interests, and preventing fraudulent activities. The registration of land instrument is very important for proving title and interest in land. It ensures that parties have safe custody of the document when the original or duplicate

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<sup>50</sup> (2001) 18 NWLR (Pt 745) 361 SC.

<sup>51</sup> (1967) NMLR 136 SC.

<sup>52</sup> Land Use Act 1978 Section 1.

<sup>53</sup> Land Use Act 1978 Section 2.

<sup>54</sup> Land Registration Act 1924 Section 2.

copy is missing as recourses can be made to the registered copy in the land Registry. In *Nnubia v Attorney General Rivers State*, The plaintiff lost the case because he could not provide a copy of the deed of lease he relied on. It was lost during the civil war and the court held that it could not speculate on the contents or parties of a document that was not before it.<sup>55</sup> Also when a land instrument is recorded in a language other than English it is wise to translate to English and register both copies, this was reiterated in *Isitor v Fakarode*.<sup>56</sup> An unregistered instrument cannot prove title in land but it can show that a transaction took place or that money was paid.<sup>57</sup>

Over the years document/ instrument subject to registration in order to prove title differ from judgement to judgement based on the interpretation of what kind of instrument should constitute a registrable instrument. In *Ajao v Adigun* a community shared its land among its members and evidenced this in an instrument. When dispute arose the trial judge held the instrument was not admissible in evidence because it was not registered. The Supreme Court reversed this decision by stating that the instrument here does not pretend to confer or transfer any rights in favour or anybody that all it does is to spell out the existing rights each family already had to prevent future disputes hence the instrument here did not fall under the instrument required to be registered.<sup>58</sup> In *Udolisa v Nwanosike* , it was stated that a document which purports to transfer an interest in land but which remains unsigned by contracting parties is not an instrument that needs to be registered before it can be admissible.<sup>59</sup> In *Muonweokwu v Egbunike* it was held that a document that partitioned properties among three brothers conferring Individual rights on each of

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<sup>55</sup> (1999) 3 NWLR (Pt 593) 82 SC.

<sup>56</sup> (2008) 1 NWLR (Pt 1069) 602 CA.

<sup>57</sup> *Elegbede v Babalola* (1969) 1 NMLR 311 SC.

<sup>58</sup> (1993) 1 NSCC 321 SC.

<sup>59</sup> (1973) 3 ECSLR 653 SC.

them was a document that required registration for it to be admissible.<sup>60</sup> In view of the above it can be deduced that a document subject to registration to prove title differs from judgement to judgment depending on the learned judges understanding of what a registrable land instrument should be. These varying interpretations, coupled with the different Land Instrument Registration Law of Various States increases the issue of uncertainty as to what documents are subject to registration before they can be admissible. Land Instruments must be registered before they can be admissible to prove title<sup>61</sup> but in interpretation of relevant sections for example (Section 2 and Section 15) of Land Instrument Registration Act 1925 and LRL of Lagos State respectively certain documents are sidelined as being subject to registration to prove title while some are not.<sup>62</sup> The consent of the governor is also needed to register an instrument. Any document registered without the governor's consent will not be admissible to prove title and such documents are treated like an unregistered document.<sup>63</sup> There are exceptions to the general rule of registration of land instrument before it can prove title and they include Statutory exception (estate contract), where a party has admitted the opponents title, A purchaser's claim for specific performance against a vendor, A document that is preceded by oral transfer and document evidencing Native Law transfer.

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<sup>60</sup> (1962) 1 ALL NLR 46 SC.

<sup>61</sup> *Zaccala v Edosa* (2018) 6 NWLR (Pt 1616) 528 SC.

<sup>62</sup> *Ajao v Adigun* (1993) 1 NSCC 321 SC.

<sup>63</sup> Emeka Chianu, *Law of Sale Of Land*, (1<sup>st</sup> ed, Lawlords Publications 2009) 240.

### 3.5.2 The Land Instrument Registration Law of Lagos and Rivers State

The Land Registration Law, 2015 (also referred to as LRL 2015) is the current comprehensive legislation governing land instrument registration in Lagos State. It repealed earlier laws including the Land Instruments Registration Law (LIRL 2003), Registered Land Law, Registration of Titles Law, and the Electronic Document Management Systems Law while preserving the validity of titles already registered under those older laws. This law aims to harmonize all aspects of land registration covering title / instrument registration. Before a document can be registered it must be stamped.<sup>64</sup> The deeds of assignment must be accompanied by a survey plan approved by the State Surveyor General before registration.<sup>65</sup>

Section 30 LRL specifies that no document may be tendered in court as proof of title unless it is duly registered.<sup>66</sup> Special attestation requirements apply if the grantor is an illiterate, the registration requires witnesses such as a Magistrate, Notary Public, or Commissioner for Oaths<sup>67</sup>

In Rivers State, the law specifically governing the registration of land instruments is the Land Instruments (Preparation and Registration) Law, Cap 74, under the Laws of Rivers State of Nigeria 1999. The governor of each state hold the land in trust for the citizens in the state hence the Governor's consent is also needed before an instrument can be registered.<sup>68</sup> Nigeria has a Federal Land Registration Act of 1924, many states including Rivers have adopted and re-

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<sup>64</sup> Stamp Duties Act 1990.

<sup>65</sup> Land Registration Law of Lagos State 2015 Section 101.

<sup>66</sup> Land Registration Law of Lagos State 2015.

<sup>67</sup> *Ibid* Section 76(3).

<sup>68</sup> Land Use Act 1978 Section 22.

enacted versions of this law as part of their local legal framework. After endorsement and payment, the stamped deed is presented at the Land Registry for registration. The Land Bureau issues a registered title and the perfected deed is returned to the applicant.

## CHAPTER FOUR

### EXAMINATION OF THE POTENCY OF THE PRINCIPLE OF *STARE DECISIS* IN NIGERIA

#### USING *BENJAMIN v KALIO* AND *ABDULLAHI v ADETUTU*

##### 4.1 Introduction

This chapter applies the principle of *stare decisis* to the two case studies. It will give detailed case briefs of *Adetutu v Abdullahi* and *Benjamin v. Kalio* (facts, issues, decisions, and significance). It compares the rulings and identifies the conflict in judicial reasoning regarding admissibility of unregistered land instruments. It also examines the implications of inconsistent application of precedent on legal certainty, judicial predictability, and public confidence in the Nigerian judiciary. It will consider situations where the court can depart from previous decisions to prevent injustice. It will also examine the advantages and disadvantages of precedents.

##### 4.2.1 Case Brief of *Benjamin v Kalio*<sup>69</sup>

Mr. Benjamin and another (plaintiff ) instituted an action on behalf of the Gobo family against Kalio and another (defendants) representing the G.B Kalio's estate. The plaintiffs (Benjamin and another) claimed ownership of Awoka land situated in Abuloma town in Port Harcourt Rivers State. They traced their right to possession to one Chief Otopo. They claimed that since the days of Chief Otopo before his demise they had exclusive right to the land. The defendants (Kalio family) didn't refute the trace of title to Chief Otopo instead they counter claimed that the land was sold to them by Gobo family (the plaintiff) in 1979 and brought a deed of conveyance to

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<sup>69</sup> (2018) 15 NWLR 39 SC.

prove ownership. The deed of conveyance brought by the defendant to prove ownership was an unregistered registrable instrument.

The major issue that arose from this case was whether or not an unregistered registrable land instrument can prove title to land. In *Orianzi v AG Rivers State*<sup>70</sup> the court defined a registrable instrument as a document affecting land, whereby one party (the grantor) confers, transfers, limits, charges or extinguishes in favour of another party (the grantee) any right of title to or interest in land and includes a certificate of purchase and a power of attorney under which any instrument may be executed but does not include a will. Once a document purports to transfer and or confer interest in land or howsoever described, it becomes an instrument that must be registered. Where the document does not confer title to land, it need not be registered. The general rule is that an unregistered land instrument cannot prove title to land. Section 20 Land Instrument (Preparation and Registration)<sup>71</sup> Law provides, “No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same has been registered.” *Olusoga v Adetola*<sup>72</sup> the court held that a document conveying interest in land is a registrable instrument and where it has not been registered it can neither be pleaded nor admitted in evidence. But when the document is tendered to show that a transaction took place or that money was paid then it is admissible. *Zaccala v Edosa*<sup>73</sup> similarly the court held that an unregistered land Instrument was inadmissible to prove title to land. In *Daniel v Damen*<sup>74</sup>, the court held that an unregistered registrable instrument cannot be admissible in proof of title. However, it can be

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<sup>70</sup> (2017) 6 NWLR (Pt 1561) 224 SC.

<sup>71</sup> Laws of Rivers State 1999 Cap 74.

<sup>72</sup> (2018) 12 NWLR (Pt 1624) 483 CA.

<sup>73</sup> (2018) 6 NWLR (Pt 1616) 528 SC.

<sup>74</sup> (2024) 10 NWLR (Pt 1947) 485 CA.

used in proof of payment of the purchase price or transaction between the vendor and the purchaser. *In Alafia v Gbode Ventures Nig Ltd*<sup>75</sup> the court stated that a registrable instrument which has not been registered is admissible in proof of such equitable interest and proof of payment of purchase money or rent. Production of a registered document does not automatically prove that the land sought to be conveyed therein belongs to the party who tendered it.<sup>76</sup> Once a registrable instrument is duly registered in accordance with the relevant registration law, the effect of such registration is that the party registering same acquires a good title until a superior title is produced.<sup>77</sup>

In determining this case the court had to consider section 37 Land Instrument (Preparation and Registration) law<sup>78</sup> and it provides "Instruments that require registration for the purpose of admissibility under LIRL include leases above three (3) years, mortgages, charge on land and documents evidencing sale of land and Section 20 Land Instrument (Preparation and Registration) Law<sup>79</sup> and it provides, "No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same has been registered."<sup>80</sup> In resolving the issue of admissibility of unregistered land instrument, the Court considered the effect of section 20 of the Land Instruments (Preparation and Registration) Law which invalidated the admissibility of any unregistered land instrument together with Item 23 of the Exclusive Legislative List and the provisions of sections 4(3) and (5) of the 1999 Constitution as amended which gives power to the

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<sup>75</sup> (2016) 7 NWLR (Pt 1510) 116 SC.

<sup>76</sup> *Adamu v Nigerian Airforce* (2022) 5 NWLR (Pt 1822) 159 SC.

<sup>77</sup> *Orlu v Onyeka* (2018) 3 NWLR (Pt 1607) 467 SC.

<sup>78</sup> Laws of Rivers State 1999 Cap 74.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Enejo v Sanusi* (2025) 11 NWLR 218 SC.

National Assembly to make laws on some certain areas in the exclusive legislative list to the exclusion of State Houses of Assembly and when state laws are inconsistent with federal laws they are void to the extent of its inconsistency. In this regard, the Court pointed out that the State Houses of Assembly are precluded and prohibited from enacting any laws on evidence law and or admissibility of evidence in the proceedings before the law courts in the Federal Republic. Hence the Court considered the enactment of section 20 of the LIRL by the Rivers State House of Assembly, as a clear act of legislative trespass into the exclusive legislative terrain of the National Assembly.<sup>81</sup> The Court emphasized that an unregistered registrable land instrument is admissible in evidence not to only prove payment and receipt of the purchase price, but also to prove the equitable interest of the purchaser in the subject land. <sup>82</sup> The court held that the unregistered land instrument of the defendants was admissible in evidence to prove that the land was sold to them by the plaintiff's family.

#### 4.2.2 Impact of the Decision in *Benjamin v Kalio*

The decision in this instant case has a massive impact on the law governing admissibility of land instrument. The court didn't invalidate the whole LIRL of Rivers State but it only Invalidated Section 20 of the Land Instrument (Preparation and Registration) Law of Rivers State <sup>83</sup> which provides for admissibility of evidence. The court stated that the law governing admissibility of evidence is the Evidence Act hence any other law concerning admissibility of evidence was void if inconsistent with the Evidence Act. The second impact is that the court departed from the age

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<sup>81</sup> *Benjamin v Kalio* (2018) 15 NWLR 39 SC.

<sup>82</sup> *Okoye v Dumez Nig Ltd* (1985) 1 NWLR (Pt 4) 783 SC ; *Obijuru v Ozims* (1985) 2 NWLR (Pt 6) 167 SC.

<sup>83</sup> Land Instrument (Preparation and Registration) Laws of Rivers State 1999 Cap 74.

old traditions on admissibility of Evidence which only allowed registered registrable land instrument admissible as proof of title to land. The third and final impact is that the Evidence Act is the supreme Legislation regarding admissibility of Evidence in Nigeria and it should be consulted first to determine the issues of admissibility not other laws. This is because the Evidence Act is an Act enacted by the National Assembly to govern evidence and admissibility in Nigeria, it is also a federal law that applies to all parts of Nigeria but the LIRL is a subordinate law enacted by the State Houses of Assembly and it has a restriction in its applicability.

#### 4.3.1 Case Brief of *Abdullahi v Adetutu*<sup>84</sup>

Mr Abdullahi (appellant) brought an action against Adetutu (respondent / defendant) claiming title to a land situated at Onitpesi Agege Lagos State. Adetutu counter claimed asserting title to the same land. Both parties acquired their title from Bisiriyu Adetokunbo. Abdullahi's deed of conveyance was first in time to Adetutu so he claimed ownership to the land based on priority. Abdullahi's land instrument was not registered while Adetutu deed of conveyance was registered in line with the LRL of Lagos State.<sup>85</sup> Also coupled with registration Adetutu was put in possession of the land in which she established a poultry farm.

The issue the court had to consider was whether or not an unregistered registrable land instrument can prove ownership of land. The general rule is that an unregistered land instrument is not admissible to prove title to land but it can prove that a transaction took place. By virtue of Section 15 of the Land Registration Law<sup>86</sup>, a land instrument not registered is not admissible to

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<sup>84</sup> (2020) 3 NWLR 339 SC.

<sup>85</sup> Land Registration Law of Lagos State 2015 Section 15.

<sup>86</sup> Land Registration Law of Lagos State 2015.

prove title. In *Onesi v Keri*<sup>87</sup> the court held that by virtue of section 15 LRL of Lagos State, no instrument shall be pleaded or given in evidence in any court as affecting any interest in land unless same has been registered. *Atanda v Commissioner of Land and Housing Kwara State*<sup>88</sup> the court stated that by virtue of Section 15 of the Land Instrument Registration Law of Kwara State, an unregistered document affecting land must not be pleaded and it is not admissible. In *Mohammed v Farmers Supply Co Ltd*<sup>89</sup> it was stated that a registrable instrument which has not been registered is admissible to prove such equitable interest and to prove payment of purchase money. In *Orianzi v AG Rivers State*<sup>90</sup> the court stated that once a document purports to transfer or confer interest in land or howsoever described, it becomes an instrument that must be registered. Where the document does not confer title to land it need not be registered. *Ojiayan v Ani Dev Ent*,<sup>91</sup> it was stated that a registrable instrument which has not been registered is admissible to prove equitable interest and to prove payment of purchase money or rent. Where such a registrable instrument is tendered to show receipt of purchase of land, it is eminently admissible for that purpose.

In determining the issue of whether an unregistered registrable instrument was admissible to prove title the court held that the admissibility of a land instrument was dependent on the purpose for which it is sought to be admitted. An unregistered land instrument is not admissible to prove title to land but it can prove that a transaction took place or a purchase price was paid.

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<sup>87</sup> (2024) 14 NWLR (Pt 1957) 1 CA.

<sup>88</sup> (2018) 1 NWLR (Pt 1599) SC.

<sup>89</sup> (2022) 5 NWLR (Pt 1822) 19 SC.

<sup>90</sup> (2017) 6 NWLR (Pt 1561) 224 SC.

<sup>91</sup> (2024) 4 NWLR (Pt 1929) 381 CA.

*Enejo v Sanusi*<sup>92</sup> and *Taan v Scoa*,<sup>93</sup> the court held in both cases that an unregistered land instrument cannot prove title to land but it can prove a transaction took place. The Court in *Abdullahi v Adetutu* further stated that an unregistered land instrument is admissible on two conditions. Firstly if it is tendered to show that a transaction took place between the vendor and purchaser it will be admissible as a purchase receipt<sup>94</sup> and secondly it will be admissible if it is meant to establish a fact which one or both parties have pleaded.<sup>95</sup> The court ended up ruling in favour of Adetutu who had a registered instrument and expunged the admissibility of Abdullahi's unregistered instrument in proving title. It is important to note that once a registrable instrument is duly registered in accordance with the relevant registration law, the effect of such registration is that the party registering same acquires a good title until a superior title is produced.<sup>96</sup>

#### 4.3.2 The Impact of the Decision in *Abdullahi v Adetutu*

Firstly after the decision in *Abdullahi v Adetutu* the old principle of the law regarding registration of land instrument was restated. The court went back to its old principle which required the registration of a land instrument to prove title to land.<sup>97</sup> Secondly the decision led to controversy as to which decision of the Supreme Court is to be followed. *Benjamin v Kalio* which preceded

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<sup>92</sup> (2025) 11 NWLR 218 SC.

<sup>93</sup> (2025) 6 NWLR (Pt 1985)1 SC.

<sup>94</sup> *Daniel v Damen* (2024) 10 NWLR (Pt 1947) 485 CA.

<sup>95</sup> Obinuchi Chimezule, 'Admissibility Of Unregistered Registrable Instrument To Prove Ownership In Life' (2024) ESUT Public Law Journal 322.

<sup>96</sup> *Orlu v Onyeka* (2018) 3 NWLR (Pt 1607) 467 SC.

<sup>97</sup> *Atanda v Commissioner of Land and Housing Kwara State* (2018) 1 NWLR (Pt 1599) 32 SC.

*Abdullahi's case* decided that an unregistered land instrument was admissible to prove title. While *Abdullahi's case* stated that it was not admissible to prove title.

#### 4.4.1 The Interplay of the Doctrine of *Stare Decisis* in both Cases

In what is becoming a problem for judicial administration in this country and a challenge to the settled principle of judicial precedent the Supreme Court restated the old position of the law in *Abdullahi v Adetutu*<sup>98</sup> without consideration of its decision in *Benjamin v Kalio*<sup>99</sup>. We have to consider whether the decision in *Abdullahi v Adetutu* undermined the principle of *stare decisis* by departing from the decision in *Benjamin v Kalio* which represented the recent case on the subject matter of registration of land instrument and also determine which of both cases represent the right law on admissibility of unregistered land instrument.

The principle of *stare decisis* is also known as judicial precedent and it means let the decision stand or stand by things decided. It is simply law found in judicial decisions. It is a common law doctrine which compels courts to follow previous judicial decisions when the same matter, issue or question arises in subsequent proceedings.<sup>100</sup> Generally a court can only depart from previous decisions when the first decision was reached *per incuriam*<sup>101</sup> or when the both cases are distinguished on the basis of material facts.<sup>102</sup> Also when there are conflicting decisions the later

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<sup>98</sup> (2020) 3 NWLR 339 SC.

<sup>99</sup> (2018) 15 NWLR 39 SC.

<sup>100</sup> *Mbaka v Mbaka & 5 others* (2022) 17 NWLR 531 534 SC.

<sup>101</sup> *Morelle Ltd v Wakeling* (1955) 2 QB 379 CA.

<sup>102</sup> OsaretinAigbovo , *Introduction To Nigerian Legal System* (3rd ed,Sylva Publisher Limited 2018) 83.

in time should be followed. In *Orji v Ndukwe* the court of Appeal emphasized the principle of *stare decisis* by saying:

The supreme Court has made it abundantly clear that in line with the principles of *stare decisis* and strict recognition of its supremacy as it were this court must follow the decision that is later in time in the event any of its conflicting decisions are placed before this court.<sup>103</sup>

*Abdullahi's case* ruled that an unregistered registrable land instrument tendered to prove title and not merely tendered to prove that a transaction took place or tendered as receipt of payment for land is inadmissible in evidence and concluded that the document in issue was inadmissible.<sup>104</sup>

The court concluded thus:

What is more, the said Exhibit D8 was a registrable instrument by virtue of the provision of Section 15 of the Instruments Registration Law of Lagos State, as amended. However, by the non-registration thereof, Exhibit D8 has been rendered rather inadmissible... (Italics supplied for emphasis) From their pleadings and oral evidence, it is not in doubt that the said exhibit, (that is, 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. The lower Courts were, therefore, right in their positions that it was inadmissible by virtue of its non-registration, being a registrable instrument<sup>105</sup>

The decision in *Abdullahi's case* departed from *Benjamin's case* which represented the latest decision on the subject of admissibility of unregistered land instrument. *Benjamin's case* stated that such unregistered registrable instrument was admissible to prove title. Before the court in *Abdullahi v Adetutu* can depart from *Benjamin's case* it must state that the decision in *Benjamin's case* was reached *per incuriam* or distinguish both cases on the basis of material

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<sup>103</sup> (2019) LPELR 48226 CA.

<sup>104</sup> *Abdullahi v Adetutu* (2020) 3 NWLR 339 SC.

<sup>105</sup> Per Nweze JSC *Abdullahi v Adetutu* (2020) 3 NWLR 339 SC.

facts. The failure of the court in *Abdullahi's case* to either affirm or invalidate the principle in *Benjamin's case* before departing from its decision undermines the potency of the principle of *stare decisis* in a general sense. It is important to note that the decision in *Benjamin's case* was not brought up by the court for determination in *Abdullahi's case* and it is safe to assume that the court would have either affirmed the decision or invalidated it before its departure. The court reached its decision in *Abdullahi's case* by relying on previous decisions for example *Zaccala v Edosa*<sup>106</sup>, flowing from this the court didn't rule in isolation but it relied on older principles. To this end the principle of *stare decisis* is still very much potent in a narrow sense. Its potency in a narrow and general sense means that once you look at both cases the departure of the court in *Abdullahi's case* based on general established principles undermines the principle of *stare decisis* because the court has to invalidate or distinguish both cases but if u look closely the court didn't rule without referencing previous precedent hence upholding the potency of judicial precedent.

#### 4.4.2 Reconciliation of the Principle of *Stare Decisis* in both Cases

As earlier stated the principle of *stare decisis* which means let the decision stand makes it compulsory for the Supreme Court to be bound by its own decision and also lower courts are bound by the decision of higher courts. The issue of which court's decision is to be followed was resolved by the Supreme Court in *Tann v Scoa*<sup>107</sup> Firstly the court stated, 'No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered.' Secondly Abiru, J.S.C. answered the question of which law to follow by holding as follows:

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<sup>106</sup> (2018) 6 NWLR (Pt 1616) 528 SC.

<sup>107</sup> (2025) 6 NWLR (Pt 1985) 1 SC.

Counsel referred to the decision of this court in *Benjamin v Kalio*, wherein he said the court nullified the effect of section 15 of the Lands Instruments Preparation and Registration Law and held that its provisions could not render inadmissible a document which is admissible under the Evidence Act. Counsel conveniently forgot to mention that this court has since abandoned this decision and has subsequently restored the position of the law to as it were in the case of *Abdullahi v Adetutu*.

The Supreme Court further held that its decision in *Benjamin v Kalio* did not jurisprudentially constitute good law. The leading judgment given by Ogbuinya J.S.C, also confirmed that *Abdullahi v Adetutu* is the correct law on the issue. The most recent case *Enejo v Sanusi* the court held that an unregistered registrable land instrument can only prove that a transaction took place between both parties and it can't be tendered to prove ownership of land. The case confirmed that while an unregistered registrable document is inadmissible to prove legal title, it is admissible to prove a transaction between parties and the part-payment of the purchase price.<sup>108</sup> *Sanusi's case* also affirmed the principle in *Abdullahi's case* making it the right law for other courts to follow thereby bringing certainty and Uniformity to the principles governing admissibility of land instrument. *Sanusi's case* was decided in 2025 and it represents the most current Supreme Court decision on the issue on admissibility of land instrument.

#### 4.5 Circumstances Under Which the Court Can Depart From Previous Decisions

The Court can only depart from its past decisions when the past decision was reached *per incuriam*. In *Ogunsola v Nikon*<sup>109</sup> the court stated that:

For the purpose of attaining uniformity, consistency and certainty those rules when they are not plainly unreasonable

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<sup>108</sup> (2025) 11 NWLR 218 SC.

<sup>109</sup> (1998) 11 NWLR (Pt 575) 683 CA.

and inconvenient must be applied to all cases which arise and courts are not at liberty to abandon them.

*Per incuriam* means a Court decision that was made in ignorance of a binding precedent or relevant statute. When a judgement is made *per incuriam* lower courts are not bound by that decision. A court can rely on *per incuriam* doctrine to justify its departure from an earlier decision. The Court of Appeal in *Morelle Ltd v Wakeling* stated that as a general rule:

'The only cases in which decisions should be held to have been given *per incuriam* are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned and so in such cases some part of the decision or some step in reasoning on which it is based is found on that account to be demonstrably wrong.'<sup>110</sup>

Also a court can depart from its earlier decision when it distinguishes both cases on the basis of material fact. A court is bound to follow decisions of a higher court in any subsequent case but the court will not be bound by previous decisions if the material facts of the cases are different from each other. In such a case the lower court can distinguish the previous case after finding that the material facts of the two cases are different.<sup>111</sup>

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<sup>110</sup> (1955) 2 QB 379 CA.

<sup>111</sup> Osaretin Aigbovo , Introduction To Nigerian Legal System (3rd ed,Sylva Publisher Limited 2018) 83.

## 4.6.1 Advantages of Precedent

### 1. Consistency, Predictability and Uniformity

The primary advantage of precedent is the role it plays in promoting consistency, predictability and uniformity of the law. By adhering to previous decisions, courts ensure that similar cases are treated alike, which helps individuals and businesses to understand their legal rights and obligations. This consistency makes the legal system more reliable and helps to maintain public confidence in the judiciary. In *Young v Bristol Aeroplane Co*, the court held that the court of Appeal is bound by its own previous decisions and it cannot depart except the decision conflicts with a decision made by the house of lords (Supreme court) or when the decision was made *per incuriam*.<sup>112</sup>

### 2. Efficiency

Precedent contributes to the efficiency of the legal system. When courts follow established principles and rules from previous cases, they save time and resources that would otherwise be spent on re-litigating settled issues. Judges can rely on established legal doctrines to resolve disputes more quickly, which can reduce court backlogs and expedite the delivery of justice.

### 3. Development of Law

The doctrine of precedent allows the law to develop gradually. As courts interpret and apply legal principles to new and varied factual situations, the law evolves and adapts over time. This

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<sup>112</sup> (1944) KB 718 CA.

evolutionary process helps to ensure that the law remains relevant and responsive to changing social, economic, and technological conditions.

#### 4. Flexibility

While precedent promotes stability, it also allows for a degree of flexibility. Higher courts have the authority to overturn or modify existing precedents if they are deemed outdated, unjust, or no longer applicable. This ability to adapt ensures that the law can evolve in response to new developments and societal changes. *R v R* the court abolished the common law principle which exempted a married man from accusations of raping his wife. To meet the demands of justice the court were flexible and ruled that a married man can be convicted of rape and implied consent that usually comes with marriage cannot suffice in present times.. In this instant case the husband and wife were separated. The husband broke into her home and attempted to have forceful sexual intercourse with her.<sup>113</sup>

#### 5. Detailed Reasoning

Judicial decisions that establish precedent typically include detailed reasoning and analysis. This provides valuable guidance for lower courts and future litigants, enhancing the transparency and accountability of the judiciary. The detailed reasoning also contributes to the body of legal literature, aiding in the education and training of legal professionals.

#### 4.6.2 Disadvantages of Precedent

##### 1. Rigidity

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<sup>113</sup> (1991) 1 AC 599 HL.

One of the main criticisms of precedent is its potential for rigidity. Strict adherence to

Past decisions can sometimes lead to unjust or inappropriate outcomes, especially if the earlier decision is outdated or was wrongly decided. This rigidity can prevent the legal system from adapting quickly to new circumstances or correcting past mistakes.

## 2. Complexity

The body of case law can become highly complex and voluminous over time. Lawyers and judges must sift through numerous precedents to find relevant cases, which can be time consuming and challenging. This complexity can lead to confusion and inconsistency in the application of the law, particularly if precedents are conflicting or ambiguous. *Balfour v Balfour*<sup>114</sup> the court held that an agreement between a husband and wife to provide a monthly allowance was not a legally enforceable contract because the couple did not intend to create legal relations. The case established the presumption that domestic arrangements between spouses are based on mutual trust and affection, not legal obligations. Mr. Balfour promised his wife (£30) per month while she stayed in England for medical reasons, but he stopped payment after their relationship soured, the Court of Appeal ruled his promise was a domestic arrangement not a binding contract. But in *Meritt v Meritt* the court ruled differently by distinguishing this case from previous cases. The court held that the contract between the husband and wife was valid because they signed a contract and also because there was a condition which she fulfilled (payment of the house mortgage).<sup>115</sup>

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<sup>114</sup> (1919) 2 KB 571 CA.

<sup>115</sup> 1970 1WLR 1211 CA.

### 3. Inaccessibility

The reliance on detailed judicial opinions means that legal principles and rules are often embedded in lengthy and complex judgments. This can make the law less accessible to non-lawyers, who may struggle to understand their legal rights and obligations without professional assistance. The inaccessibility of legal precedents can undermine the principle of the rule of law, which relies on laws being clear and understandable to all.

### 4. Conservatism

Precedent can sometimes encourage a conservative approach to legal decision-making. Judges may be reluctant to depart from established decisions, even when a change is warranted. This conservatism can hinder legal innovation and the development of new legal principles that better reflect contemporary values and societal needs.

### 5. Overturning Precedents

While higher courts have the power to overturn or modify precedents, doing so can create uncertainty and instability in the law. Frequent changes to established precedents can undermine the predictability and reliability that the doctrine of precedent is meant to provide. This can lead to confusion and a lack of confidence in the legal system. *Balfour v Balfour*<sup>116</sup> and *Meritt v Meritt*<sup>117</sup> is a good example of confusion emanating from the courts overturning decisions. Also the issue of uncertainty was highlighted by *Lord Reid* in *Jones v Secretary of State for Social Services*:

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<sup>116</sup> (1919) 2 KB 571 CA.

<sup>117</sup> (1970) 1WLR 1211 CA.

It is notorious that where an existing decision is disapproved but cannot be overruled courts tend to distinguish it on inadequate grounds. I do not think that they act wrongly in so doing, they are adopting the less bad of the only alternatives open to them. But this is bound to lead to uncertainty.<sup>118</sup>

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<sup>118</sup> (1972) AC 944 HL.

## CHAPTER FIVE

### FINDINGS RECOMMENDATIONS AND CONCLUSION

#### 5.1 Introduction

This chapter seeks to summarize the entire research. The purpose of this chapter is to evaluate the findings as regarding the potency of the principle of *stare decisis* and also recommend ideas that can help to strengthen the efficacy of the principle of *stare decisis*. This chapter gives a summary of the twin supreme Court decision *Benjamin v Kalio* and *Abdullahi v Adetutu* and also analyses how the conflict between both case were resolved to further strengthen the principle of binding precedent.

#### 5.2 Findings

To properly determine the potency of the principle of *stare decisis* we had to consider whether the departure of the court in *Abdullahi v Adetutu*<sup>119</sup> from the decision in *Benjamin v Kalio*<sup>120</sup> undermined the principle of *stare decisis*. We also had to consider which one of the conflicting decisions constituted the right law. The principle of *stare decisis* is also known as judicial precedent and it means let the decision stand or stand by things decided. It is simply law found in judicial decisions. It is a common law doctrine which compels courts to follow previous judicial decisions when the same matter, issue or question arises in subsequent proceedings.<sup>121</sup> The doctrine of judicial precedent is a doctrine that seeks to promote uniformity and certainty in the

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<sup>119</sup> (2020) 3 NWLR 339 SC.

<sup>120</sup> (2018) 15 NWLR 39 SC.

<sup>121</sup> *Mbaka v Mbaka & 5 others* (2022) 17 NWLR 531 534 SC.

Nigerian Legal system. The doctrine of judicial precedent makes it compulsory for judges of lower courts to follow the decision of higher courts when similar issues or facts arise. They are not allowed to depart from such decisions except the initial decision was made *per incuriam* or when the subsequent case is distinguished from the older case. The first case *Benjamin v Kalio* departed from older decisions of the Supreme Court on admissibility of unregistered land instrument, the Supreme Court held in this instant case that an unregistered registrable land instrument was admissible to prove title to land. The older principles governing registration of land instrument which is backed up in a plethora of cases<sup>122</sup> made it compulsory to register a land instrument before tendering it to prove ownership of land. In Benjamin's case the court departed from the age long principles on admissibility of unregistered land instrument and made a ruling which allowed an unregistered registrable land instrument admissible to prove ownership of land. The court further stated that the major legislation governing admissibility is the Evidence Act <sup>123</sup> and since it's silent as to registration and admissibility of land instrument then an unregistered land instrument can be tendered to prove ownership of land. This reasoning can be faulted on so many grounds. Firstly the Land Use Act which is a federal Act <sup>124</sup> empowers each state Governors to become trustees of land on behalf of the people and also empowers each state to make their own law governing registration of land instrument. Flowing from this each State laws on registration of land instrument is valid. Secondly the primary law governing registration of land instrument is the LIRL of various states for example<sup>125</sup> hence any matter concerning registration of land instrument is properly provided for in Various LIRL. Thirdly the LIRL of

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<sup>122</sup> *Okoye v Dumez Nig Ltd* (1985) 1 NWLR (Pt 4) 783 SC ; *Obijuru v Ozims* (1985) 2 NWLR (Pt 6) 167 SC.

<sup>123</sup> Evidence Act 2011.

<sup>124</sup> Land Use Act 1978 Section 1.

<sup>125</sup> Land Registration Law of Lagos 2015; Edo State Lands Administration and GIS Law 2018.

various States should be read together with the Evidence Act to properly determine admissibility of Land Instrument not the Evidence Act only.

In *Abdullahi v Adetutu* the court also had to consider admissibility of an unregistered registrable land instrument. The court held that an unregistered registrable land instrument was not admissible to prove ownership of land. *Abdullahi's case* which was decided by the Supreme Court in 2020 departed from *Benjamin's Case* which was decided in 2018 and which represented the most recent law on the subject matter. Two things occurred when the court decided *Abdullahi's case*. Firstly the court did not consider *Benjamin's case* while it was making its decisions. No party brought up *Benjamin's case* for consideration. Secondly the court in *Abdullahi's case* relied on previous decisions (judicial precedent) on admissibility of land instrument. These previous cases emphasized that a registrable Land instrument must be registered before it can prove title to land or ownership.<sup>126</sup> After *Abdullahi's case* was decided a lot of controversy arose as to the potency of the principle of *stare decisis* and also as to the principles governing admissibility of land instrument. *Abdullahi's case* departing from the decision in *Benjamin's case* undermines the principle of *stare decisis* in the general sense because a court is only allowed to depart when the previous decision was reached *per incuriam* or when both cases are distinguished based on material facts<sup>127</sup>. In the narrow sense the court didn't undermine the principle of judicial precedent in *Abdullahi's case* because the court relied on previous decisions<sup>128</sup> and also *Benjamin's case* was not brought up for determination by the court. If it was then the court would have affirmed or invalidated the decision in *Benjamin's case*. The

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<sup>126</sup> *Zaccala v Edosa* (2018) 6 NWLR (Pt 1616) 528 SC.

<sup>127</sup> *Morelle Ltd v Wakeling* (1955) 2 QB 379 CA.

<sup>128</sup> *Zaccala v Edosa* (2018) 6 NWLR (Pt 1616) 528 SC.

problem the court faced in *Abdullahi's* case emanated from the lack of a proper up to date law report system.

To resolve the issue of which case constituted the right law the court in *Taan v Scoa*<sup>129</sup> ruled that the decision in *Benjamin v Kalio* was unconstitutional and that *Abdullahi v Adetutu* constituted the right law on admissibility of unregistered land instrument. Also *Enejo v Sanusi*<sup>130</sup> reiterated the general principle which allowed a registrable unregistered land instrument admissible only to prove a transaction occurred or payment of purchase price and invalidates its admissibility in proving ownership. The court reasoned that an unregistered registrable land instrument was admissible depending on the purpose for which it is sought to be admitted<sup>131</sup>. These two instant cases strengthened the principle of *stare decisis* restating the old principle of law which rendered an unregistered land instrument inadmissible to prove title to land.<sup>132</sup> The principle of *stare decisis* is a very potent doctrine and its application depends on context. A previous case will only apply when the facts are similar and when the decision was not made *per incuriam*.<sup>133</sup> Flowing from the above the principle of *stare decisis* remains an effective principle within Nigerian Legal system and beyond.

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<sup>129</sup> 2025) 6 NWLR (Pt 1985) 1 SC.

<sup>130</sup>(2025) 11 NWLR 218 SC.

<sup>131</sup> *Abdullahi v Adetutu* 2020) 3 NWLR 339 SC.

<sup>132</sup> *Atanda v Commissioner of Land and Housing Kwara State* (2018) 1 NWLR (Pt 1599) 32 SC.

<sup>133</sup> *Ogunsola v Nikon* (1998) 11 NWLR (Pt 575) 683 CA.

### 5.3 Recommendations

1. Lower Courts should strictly adhere to the principles of *stare decisis*: Lower Courts should strictly adhere to the principles of *stare decisis* and binding precedent. This reinforces judicial hierarchy and prevents inconsistency in legal interpretation particularly on settled areas of law.
2. Judicial Discretion should be exercised cautiously: While courts should be flexible when justice so demands, departures from precedent must be exercised sparingly, transparently and cautiously. Clear reasoning should always accompany such departures to avoid unpredictability or perceived arbitrariness. The court should only depart from a previous decision when it was reached *per incuriam* or the material facts of both cases are different.
3. Legal Education for Judges: Judicial officers should receive ongoing training in the principles and limits of *stare decisis*, ensuring that discretion is exercised with a sound understanding of precedent and comparative jurisprudence.
4. Improved Law Reporting System: The accessibility of up-to-date and accurate law reports is essential for maintaining the potency of *stare decisis*. Efforts should be made to enhance Nigeria's legal reporting systems so that judges and practitioners can easily identify binding precedents.

### 5.4 Conclusion

The principle of *stare decisis* is a doctrine that promotes binding precedent and makes it compulsory for a lower court to be bound by the decision of a higher court.<sup>134</sup> The principle extends to a court being bound by its own decision. There are two types of precedent namely

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<sup>134</sup> *Mbaka v Mbaka & 5 others* (2022) 17 NWLR 531 534 SC.

binding precedent and persuasive precedent. A court can only depart from its previous decisions when the previous case was made *per incuriam*<sup>135</sup> or when the material facts are different from the previous case (Distinguishing the cases). The case of *Benjamin v Kalio*<sup>136</sup> and *Abdullahi v Adetututu*<sup>137</sup> showcase how conflicting court decisions can lead to controversy and uncertainties in the law. *Benjamin's case* was decided in 2018 and *Abdullahi's case* was decided in 2019. The court in *Abdullahi's case* departed from *Benjamin's case* but certain factors influenced the decision in *Abdullahi's case*. Firstly Benjamin's case was not brought up for consideration when *Abdullahi's case* was decided. Secondly the court relied on previous decisions to reach its decision. The analysis of both cases demonstrates that the doctrine of *stare decisis* is still very potent. The court in *Abdullahi's case* is at liberty to depart from its decision under certain conditions. Benjamin's case was not considered before the court made its decision and if it was considered the court would have ruled differently by either affirming *Benjamin's case* or pronouncing it was reached *per incuriam*. The problem has been resolved by the new case of *Taan v Scoa*<sup>138</sup> and *Enejo v Sanusi*<sup>139</sup> which upheld the decision in *Abdullahi's case* and restated

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<sup>135</sup> *Morelle Ltd v Wakeling* (1955) 2 QB 379 CA.

<sup>136</sup> (2018) 15 NWLR 39 SC

<sup>137</sup> (2020) 3 NWLR 339 SC

<sup>138</sup> (2025) 6 NWLR (Pt 1985) 1 SC.

<sup>139</sup> (2025) 11 NWLR 218 SC.

the old principles on admissibility of land instrument. The current law is that an unregistered registrable land instrument is only admissible depending on the purpose for which it is sought to be admitted. This new ruling strengthens the principle of *stare decisis* and promotes certainty in our laws. It is important to note that the principle of *stare decisis* in Nigeria is dual in nature. It is strong in its binding authority and yet adaptable to the demands of justice (When the decision was made *per incuriam* or when the material facts are different). This balance between certainty and flexibility sustains the credibility of the judiciary and enhances public confidence in the administration of justice. Certainty in our laws is very important and strict adherence to previous cases and departure in prescribed situations can ensure stability and predictability in Nigerian legal system particularly in the area governing admissibility of land instruments.

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