

SUPREME COURT OF NIGERIA
26TH MARCH, 1993. SC. 217/1988
CORAM:- **M. L. UWAIS, A. G. KARIBI-WHYTE,**
M. E. OGUNDARE, E. O. OGWUEGBU,
S. U. MOHAMMED, JJSC

1. ALHAJI MOHAMMED LAYINKA
2. Alhaji Ore Akanbi
3. Alhaji Ibrahim Babatunde Gegele
4. Usuman Abiogun APPELLANTS
5. Alhaji Ismaila
6. Jimoh Tailor
7. Alhaji Adu Aremu
 AND
ALHAJI BABA AGBA GEGELE RE-
SPONDENT
(For himself and on behalf of Galadima Family of Gegele)

*APPEALS - concurrent findings of two lower courts -
Supreme Court would not interfere - save in
exceptional circumstances.*

*LOCUS STANDI- member of a family - whether
principal member or not - has locus to institute
action in respect of wrong doing to his family
land.*

*LAND LAW - sale of family land by family head -
without consent of other family members -
null and void.*

REMEDIES - whether court can grant relief not sought.

FACTS

The Plaintiff/Respondent sued the Defendants/Appellants in the Ilorin High Court seeking that the sale of portions of family land by the 1st - 3rd Defendants to the other Defendants be declared null and void. He also sought a declaration that the 4th - 7th Defendants were trespassers, and damages in the sum of N3,000.00 against all the Defendants jointly and severally. The Defendants filed a Joint Statement of Defence. At the trial of the action evidence was led on both sides and after addresses by learned Counsel for the parties, the trial Judge found for the Plaintiff as per his claim that the land in dispute belonged to the Galadima family. He set aside the sale by 1st - 3rd Defendants to the 4th - 7th Defendants and declared the 4th - 7th Defendants to be trespassers. In lieu of damages however, he ordered the 4th - 7th Defendants to give up possession within three months from the day of the judgment.

The Defendants appealed against the judgment of the High Court to the Court of Appeal Kaduna Division which dismissed the appeal and affirmed the order of the trial High Court. Both the High Court and Court of Appeal found that the land in dispute was an outright gift to Plaintiff's family and not given to them as mere caretakers as contended by the Appellants. The Defendants further appealed to the Supreme Court and more particularly contended that the order of the High Court that the Defendants should give up possession (which was also upheld by the Court of Appeal) was outside the claim and relief sought by the Plaintiff.

"HELD (unanimously dismissing the appeal, but setting aside the order that the Appellants give up possession)

1. Where there are concurrent findings of facts of two courts below as in this case, exceptional circumstances would have to be shown before the Supreme Court would interfere with such a finding. There is no justifiable reason to disturb concurrent finding of the two lower courts that the land in dispute was a gift to founder of Plaintiff's family seeing that this fact was adequately supported by the 10 totality of the credible evidence before the trial court. (P. 61)

2. From 1st Defendant/Appellant's own showing, he alienated the land in dispute as agent to the Emir of Ilorin not as head of the Plaintiff's family. That being the case his act is patently void, and a court is entitled at the instance of a family member whether principal or not to declare the sales void. (P. 61)

3. The Respondent/Plaintiff as a member of the family has a right and a duty to protect family property and therefore, has locus to institute an action in respect of 20 any wrong doing to his family land, moreso where head of the family has taken a stand against family interest. (P. 62)

4. The 4th -7th Appellants/Defendants, not being members of the Galadima family are trespassers having entered the family land under void transactions. (P. 62)

5. The basis for making an order not sought by the Plaintiff/Respondent runs counter to laid down principles. The rule of court on which the Court of Appeal relied in affirming the trial court's order will only apply where the order made is an-

cillary to the claims allowed by the court. That not being the case here, the order for delivery of possession complained of by the Appellants is set aside. (p. 64)

5 ***PER KARIBI-WHYTE JSC*** “As benevolent and charitable as this order (possession) granted by the Court is, it is obvious, that it cannot be brought within the scope of the claims on the writ of summons and statement of claim.
 10 Plaintiff did not claim for injunction. The declaration that the sale is void, and damages do not contemplate the removal of structures on the land or of beacons. It is not easy to see how the removal of beacons and structures is
 15 consequential to the declaration that a sale was null and void. There is no doubt that the order was made outside the claims of the Plaintiff, without jurisdiction and therefore void. I therefore hereby set it aside”. (p. 71)

20 **REPRESENTATION**

Chief M. Esan, E. C. Obiagwu For the Appelants
 Aliyu Salmon, SAN, L. Jimoh For the Respondents

25 **CASES REFERRED TO**

1. Adeniji V. Ogunbiyi (1965) NMLR 395
2. Chinwendu V. Mbamali (1980) 3 - 4 SC. 31
3. Ibodo V. Enaroria (1980) 5-7 S.D. 42.
- 30 4. Kale V. Coker (1982) 12 S.C. 252
5. Lokoyi V. Olojo (1983) 2 SCNLR 127
6. Ajomu V. Ajao (1983) 2 SCNLR 156
7. Njoku V. Eme (1973) 5 S.C. 293
- 35 8. Ibrahim V. Shagari (1983) 2 SCNLR 176
9. C.P.D.L. V. Attorney-General Lagos (1976) 1 S.C. 71
10. Oyebamiji V. Akunola (1968) NMLR 221.
11. Solomon V. Mogaji (1982) 11. S.C. 1

Layinka v. Gegele (1993)	4	KLR	55
12. Ugwu V. Agbo (1977)	10S.C. 27.		
13. Sogunle V. Akerele (1967)	NMLR 58		
14. Onwuka V. Abriba City Council (1959)	ERLR 17		
15. Ekpeyong V. Nyang (1975)	2S.C. 71		5
16. Ademola & Anor V. Sodipo & Ors. (1992)	7 NWLR 251		
17. Garba V. University of Maiduguri (1986)	1 NWLR 550		10
18. Ekpendu V. Erika (1959)	4. F.S.C. 79		
19. Eholor V. Osayande (1992)	6 NWLR (pt. 249) 524		
20. Amadi V. Nwosu (1992)	5 NWLR (pt. 241) 273		15
21. Oloriode V. Oyebi (1984)	1 SCNLR 390		
22. Momoh V. Olotu (1970)	1 ALL NLR 117 123.		20
23. Ochonma V. Unosi (1965)	NMLR 321.		
24. Akapo V. Hakeem - Habeeb (1992)	7 NWLR (pt. 247) 266		25
25. Federal Commissioner of Works V. Lababedi & Ors. (1977)	11-12 SC. 15.		
26. Fashanu V. Adekoye (1974)	1 ALL NLR 35		30
27. Fatoyinbo V. Williams	1 F.S.C. 67.		
28. Aermacchi S.P.A & Ors V. A.I.C. Ltd. (1986)	2 NWLR (pt. 23) 443		
29. Attorney-General of Imo State V. A.G. River State (1983)	8 S.C. 10		35
30. Egbe lyawe V. Chief Sule (1983)	8 S.C. 54		

STATUTES & RULES

1. Kwara State High Court (Civil Procedure Rules) 1975 order 34 rule 1

5 2. Constitution of Federal Republic of Nigeria 1979, S.258 (2)

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**LEAD JUDGMENT
BY OGUNDARE JSC**

15 By a writ of Summons issued in the High Court of Kwara State holden at Ilorin the plaintiff for himself and on behalf of the Galadima family of Gegele sued the seven defendants above claiming a declaration that the sale of portions of the family land by the 1st three defendants to the other
20 four defendants be declared null and void. Pleadings were ordered, filed and exchanged. By paragraph 23 of the Statement of Claim the plaintiff claimed as hereunder:

25 "(i) the setting aside of the sale by declaring the sale illegal, null and void;

30 (ii) declaring the 4th, 5th, 6th and 7th defendants as trespassers on Galadima land along the Ilorin airport;

35 (iii) damages against all the defendants jointly and severally estimated at three thousand Naira (N3,000.00) only.

The defendants filed a joint Statement of Defence. At the trial of the action evidence was led on both sides and after addresses by learned counsel for the parties, the learned trial Judge in a reserved judgment found for the plaintiffs and set 5 aside the sales by the 1st to the 3rd defendants of portions of the family land to the 4th to 7th defendants.

He found as a fact that the land in dispute, portions of 10 which were said to have been sold by the 1st to the 3rd defendants to the 4th to 7th defendants belonged to the Galadima family. In lieu however of an award of damages against the 4th to 7th defendants for trespass, the learned trial Judge ordered 15 that they give up possession within three months of the date of the judgment. This is what he said:

"As the purchasers continue to tamper with the long 20 established legitimate title and possessory right of the Galadima family the unlawful buyers invade the Galadima family's rightful possession. The 4th to 7th defendants have, however, chosen not to defend this action and I hold that they are therefore liable to the 25 Galadima family for the trespass, (See Adeniji v Ogunbiyi (1965) NMLR 395-7), However, when the 4th to 7th defendants occupied the land which they thought they had lawfully purchased, they must have 30 thought that they had derived valid title. In the circumstances, therefore, I will award no damages against the 4th to 7th defendants on trespass but I consider it reasonable that they be given 3 months from today within 35 which to remove their beacons and any other structures of theirs on the Galadima land."

As the plaintiff did not appeal against the refusal of his claim for damages, I would make no comments on it.

The defendants being dissatisfied with the judgment above appealed to the Court of Appeal, (Kaduna Division) which latter Court after hearing arguments dismissed the said appeal and it is against that order of dismissal that the defendants have further appealed to this court. Pursuant to the rules of this Court the defendants, as appellants, filed through their counsel a written brief of argument. The plaintiff, as respondent, also filed through his counsel a respondent's brief to which the defendants filed a reply brief. Seven issues are set out in the appellant's brief as calling for determination, to wit:

1. *Whether the Respondent herein as Plaintiff in the High Court, had or showed any locus standi to sustain this action in the absence of pleading and evidence disclosing that the Respondent was a principal member of Galadima family.*

2. *Whether the learned trial Judge was right in supplying the evidence that the Respondent was a principal member of Galadima family and whether the Court of Appeal was right to uphold his judgment.*

3. *Whether the principle in Ekpendu v Erika (1959) SCNLR 186; (1959) 4 F.S.C. 79 was correctly applied to the facts of this case by the trial Judge and properly upheld by the Court of Appeal.*

4. *Whether having regard to the Claim before the High Court the Court of Appeal was right in affirming the High Court's direction that 'the question which the learned trial Judge was called upon to resolve was whether the land was given to Musa as a gift.'*

5. *If the answer to the fourth issue above is in the affirmative, whether the High Court and the Lower Court were right in placing the onus of proving the outright gift of the land to Musa as a gift upon the appellant herein.*

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6. *If the answer to the fourth issue above is in the affirmative. Whether upon a proper evaluation the totality of the evidence adduced in the case, the learned trial Judge and the Court of Appeal were right in coming to the conclusion that the gift of the land to Musa by the first Emir was an outright gift.*

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7. *Whether or not the Order of the High Court, affirmed by the Court of Appeal that the 4th to 7th Appellants should remove their beacons and other structures on the land not being an order sought by the Respondent was made without or in excess of jurisdiction."*

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The respondent's counsel, for his part, did not set out any issue but proceeded to argue the grounds of appeal As appeals are argued on issues in this Court one would have expected that learned counsel who, incidentally, is a Senior Advocate, would know this and argue the appeal on the issues formulated in the appellants' brief where he has not formulated issues in his own brief.

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The facts are briefly as follows:

The plaintiff and the 1st, 2nd and 3rd defendants are members of the Galadima family of Ilorin. Indeed, the 1st defendant is the head of the said family. The plaintiff claims that the land opposite the Airport at Ilorin belongs to the Galadima family and that part of the said land was sold to one Oredola Okeya during the life time of 1st defendant's predecessor in

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office. Proceeds of that sale was brought to the family meeting and shared among members of the family. When the 1st defendant become head of the family he and the 2nd and 3rd defendants sold portions of the said family land to 4th, 5th and 7th defendants without the consent of the other members of the family and neither did he bring the proceeds to the family for distribution. The members of the family, including the plaintiff, made several efforts to get him to account to the family but the 1st defendant refused. In consequence, members of the family excluding the 1st, 2nd and 3rd defendants, having satisfied themselves that the three defendants had sold portions of their family land to the 4th, 5th, 6th and 7th defendants without obtaining the consent of the family, thereupon authorised the plaintiff to sue on their behalf claiming to set aside the sales and to evict the 4th, 5th, 6th and 7th defendant from their land. The 1st defendant denied that the land belonged to his family. His case is that the land was entrusted by Oba Abdul Salami the 1st emir of Ilorin to Musa the founder of the Galadima family, not as donee but as caretaker, and that the land had been held ever since by the reigning Galadima as the caretaker or agent of the Emir of Ilorin.

It is 1st defendant's case also that as caretaker, a reigning Galadima can only dispose of any portion of the said land on the permission of the emir and not that of the Galadima family. He stated that he obtained the permission of the Emir of Ilorin the late Oba Gambari before the sales to the 4th to 7th defendants.

From the pleadings and the evidence, it is my view that the real issue for determination in the case was as to whether the land in dispute was granted to Musa the founder of the Galadima family by Oba Abdul Salami the 1st Emir of Ilorin as an outright gift in which case title would be in the Galadima family or as a mere caretaker in which latter case,

title would remain in the Emir Evidence was led by the parties on this principal issue and at the end of the day the learned trial Judge found in favour of the plaintiff. The Court of Appeal after a review of the facts came to the same conclusion. Thus there are concurring findings of the two courts below 5 that Oba Abdul Salami gave the land in dispute to Musa as a gift. It has been held in a number of cases that in such a case, exceptional circumstances would have to be shown before this Court would interfere with such a finding:- see: Chinwendu v. 10 Mbamali (1980) 3-4 S.C. 31; Ibodo v. Enarofia (1980) 5-7 SC 42, Kale v Coker (1982) 12S.C 252, 272; Lokoyi v.Olojo (1983) 2 SCNLR 127; Ojomu v Ajao (1983) 2 SCNLR 156, 168.

At the hearing of this appeal, after listening to argu- 15 ments of learned counsel for the defendants we did not consider it necessary to call on counsel for the plaintiff to reply. I have considered the arguments in favour of the issues formul- 20 ated in the appellant's brief. The main issue for determination in this appeal, in my respectful view is whether this Court ought to interfere with the concurrent finding of courts below that Musa was given the land in dispute by Oba Abdul Salami. With profound respect to learned counsel, I can find no justi- 25 fiable reason to disturb this finding of fact which is adequately supported by the totality of the credible evidence before the trial court:- See: Njoku v. Eme (1973) 5 S.C 293, 306; Ibrahim v Shagari (1983) 2 SCNLR 176. From defendant's own show- 30 ing, it is obvious he did not alienate the portions of the said land to 4th-7th defendants as head of family. Rather he did so in a completely different capacity of agent to the Emir of Ilorin. That being the case his act is patently void See: C.P.D.L. v . 35 Attorney-General Lagos (1976) 1 S.C. 71; Oyebanji v Okunola (1968) NMLR 221; Solomon v Mogaji (1982) 11 S.C. 1 and a court is entitled, at the instance of any member of the family,

whether principal or not, to declare the sales void. All arguments therefore on whether the plaintiff is, or is not, a principal member of the Galadima family are of no consequence. He, as a member of the family, has a right and a duty to protect family property and therefore, has locus to institute an action in respect of any wrongdoing to his family land. Moreso, as in this case, where plaintiff is representing the family, the head of family having taken a stand against family interest - Ugwu v. Agbo (1977) 10 S.C. 27,40; Sogunle v. Akerele (1967) NMLR

The 1st defendant by his own showing had made it clear that he did not seek the consent of members, let alone principal members, of the Galadima family before selling portions of the family land to 4th-7th defendants. In such a situation, and having regard to his further showing that he acted not as head of family in disposing of family property but as agent of the Emir of Ilorin, the sales made by him are null and void.

The 4th to 7th defendants are not members of the Galadima family. As they have entered the family land under void transactions, they are trespassers - Onwuka v Abiriba City Council (1959) ERNLR 17; Solomon v Mogaji (supra) at p.72. The learned trial Judge rather than award damages against them ordered that they should remove their beacons and other structures on the land. This order was affirmed by the Court of Appeal and has come under attack in Ground 6 of the Grounds of Appeal in this Court. This ground is the basis of issue 7. The complaint of the defendants is that the order was not sought for by the plaintiff and the trial court not being a charity should not have made such an order. It has been held in a number of cases (see for example, Ekpenyong v Nyong

(1975) 2 S.C. 71; Ademola & Anor v Sodipo & Ors (1992) 7 NWLR (Pt. 253) 251 that a court would be acting beyond its jurisdiction to grant reliefs not asked for by the claimant. In affirming the order of the trial court, the Court of Appeal, per Akpata J.C.A., (as he then was), observed:

"In ground 3, learned counsel contended that the learned trial Judge erred in law when he ordered the 4th to 7th appellants to remove their beacons and any other structures of theirs on the said land within three months. Generally, a court may not grant a relief not requested by the plaintiff. This legal principle does not embrace consequential orders made to sustain the relief claimed. I hold the view that the learned trial Judge made the consequential order in the interest of justice which he was entitled to do. In the case of Garba v University of Maiduguri (1986) 1 NWLR (Pt. 18) 550 Obaseki J.S.C., agreed that the High Court has power to grant consequential orders not specifically prayed for. Also by Order 34 Rule 1 of the Kwara State High Court (Civil Procedure Rules) 1975, the High Court may in all cases and matters make any order which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.

In my view, prudence dictates that in a case of this nature where a plaintiff prays that the sale of a parcel of land belonging to his family be set aside for want of authority by the vendor and the court accedes to his prayers, the court may in its discretion in the interest of justice order that structures erected on the land be removed even though such an order was not specifically asked for. This is so as such structures may derogate from the plaintiff's family ownership of the land."

With respect to the learned Justices of the Court of Appeal, it would appear that their reasoning in affirming the order of the learned trial Judge runs counter to laid down principles. It is to be observed that the plaintiff did not even claim
5 for an injunction. The case originated in a High Court where actions are tried on pleadings. The rule of Court, that is, Order 34 rule 1 of the Kwara State High Court (Civil Procedure Rules) 1975 on which the Court of Appeal anchored its affirmation
10 of the order of the learned trial Judge will only apply where the order made is ancillary to the claims allowed by the court. That is not the case here. I have no hesitation whatsoever in setting aside the order complained of.

15 Having said this, it is to be hoped that the 4th to 7th defendants would not consider this conclusion any comfort to them. As trespassers on the Galadima family land they continue to be liable in damages for trespass for any period they
20 continue to remain in occupation of the land or any part thereof. I hope they will not be foolish enough to remain a day longer on the land without the permission of members of the Galadima family.

25 In conclusion this appeal fails on the main issue and it is therefore, dismissed. The order of the Court of Appeal reaffirming the order of the learned trial Judge that the 4th to
30 the 7th defendants do remove their structures and beacons on the land is, however, hereby set aside. I award to the plaintiff/respondent the costs of this appeal which I assess at N1,000.00 only.

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UWAIS JSC

I have had the advantage of reading in draft the judgment read by my learned brother Ogundare, J.S.C. I entirely agree with the reasoning and conclusion therein. Accordingly, I too will set aside the order made by the lower courts that the 4th to 7th appellants should remove their beacons and other structures on the land in dispute. As trespassers, the 4th to 7th defendant have no legal right of access to the land in dispute and less so to the beacon and the structures on the land.

The appeal is hereby dismissed with N1,000.00 costs to the respondent.

KARIBI-WHYTE JSC

Plaintiff claiming as a member of the family, brought this action in the Ilorin High Court, for himself and on behalf of the Galadima Family of Gegele, claiming from the defendant a declaration that the sale of portions of the family land by the 1st three defendants to the other four defendant was null and void. He therefore sought to set aside the sale, and to declare the 4th, 5th, 6th and 7th defendants trespassers on the said family land. He also claimed against all the defendants jointly and severally, damages at N3,000 (three thousand naira only).

The trial of the claim was on pleadings which were filed and exchanged by the parties. The defendants filed a joint statement of defence. After evidence of the parties and their witnesses, the learned trial Judge gave judgment for the plaintiffs. He set aside the sale by the 1st to the 3rd defendant to 4th to 7th defendant of portion of the family land. He came to his decision after considering the traditional evidence of the land. He found as a fact that the portions of land in dispute,

said to have been sold to the 4th to 7th defendant by the 1st to 3rd defendants belonged to the Galadima family. The learned trial Judge did not award damages against the 4th to 7th appellants, but made an order that they give up possession within three months of the date of the judgment.

The defendants appealed to the Court below which also dismissed their appeal. This is a further appeal to this Court. Seven issues for determination were formulated from the six grounds of appeal filed. Appellants sought leave to raise the issues as arising from the grounds of want of locus standi raised for the first time in this Court.

The following issues were formulated by learned counsel to the appellant:

ISSUES FOR DETERMINATION IN THE APPEAL

(1) *Whether the Respondent herein as Plaintiff in the High Court, had or showed any locus standi to sustain this action in the absence of pleading and evidence disclosing that the Respondent was a principal member of Galadima family.*

(2) *Whether the learned trial Judge was right in supplying the evidence that the Respondent was a principal member of Galadima family and whether the Court of Appeal was right to uphold his judgment.*

(3) *Whether the principle in Ekpendu v Erika (1959) SCNLR 186 (1959) 4 F.S.C. 79 was correctly applied to the facts of this case by the trial Judge and properly upheld by the Court of Appeal.*

(4) *Whether having regard to the claim before the High Court the Court of Appeal was right in affirming the High Court's direction that 'the question which the learned trial Judge was called upon to resolve was whether the land was given to Musa as a gift.'*

(5) If the answer to the fourth issue above is in the affirmative, whether the High Court and the Lower Court were right in placing the onus of proving the outright gift of the land to Musa as a gift upon the appellant herein.

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(6) If the answer to the fourth issue above in the affirmative. Whether upon a proper evaluation of the totality of the evidence adduced in the case, the learned trial Judge and the Court of Appeal were right in coming to the conclusion that gift of the land to Musa by the first Emir was an outright gift.

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(7) Whether or not the Order of the High Court, as affirmed by the Court of Appeal that the 4th to 7th Appellants should remove their beacons and other structures on the land not being an order sought by the Respondent was made without or in excess of jurisdiction."

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Respondent did not formulate any issues. He is deemed to have adopted the above issues.

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Notwithstanding the issues as proliferated, the real issue for determination, and which is the central core of the contention of the parties is whether the land subject matter of dispute is Galadima family land, or the Emir's land in respect of which successive Galadima merely act as caretaker. If the former, title is in the Galadima family, and alienation can only be with the consent of the family. If the latter, title will remain in the Emir.

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The evidence of the plaintiff and witnesses is that the land belonged to the Galadima family, having been granted out as gift to Musa, the founder of the Galadima family by Oba Abdul Salami., the 1st Emir of Ilorin. Thus the land in question was granted without conditions. The case of the de-

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pendants (specifically 1st-3rd) is that the land belonged to the Emir. It was entrusted to the Galadima as a caretaker for the Emir. It was not a gift to the Galadima. It was the case of the defence that a reigning Galadima can only dispose of any
5 portion of the said land, with the consent of the Emir, not that of the Galadima family.

As I have already stated the learned trial Judge found for the plaintiff on the traditional evidence. After a review of
10 the facts the Court below came to the same conclusion. There are therefore concurring findings of facts in the two courts below that the land in dispute was granted as a gift to Musa, the 1st Galadima and founder of the Galadima family by Oba Abdul Salami, the first Emir of Ilorin. In such a circumstance,
15 appellant must show exceptional circumstances why such findings should be disturbed - See *Eholor v. Osayande* (1992) 6 NWLR (Pt.249)524: *Amadi v Nwosu* (1992) 5 NWLR (Pt.241) 273. No such exceptional circumstances have been shown
20 why the findings should be set aside. I am bound to accept them.

Learned counsel for the respondent was not called upon for his reply, after we have heard submissions from
25 appellant's counsel.

I deem it pertinent to deal with the issue of locus standi introduced by learned counsel to the appellant. The contention was that respondent having not shown that he is a principal member of the family, had no locus standi to institute the
30 action even if in a representative capacity.

I think the proposition that the validity of sale of land on behalf of the family can only be by the head of the family and the principal members, or voidable by the principal members alone, see *Ekpendu v Erika* (1959) SCNLR 186 cannot be extended to the challenge of actions against the interest of the family, See *Sogunle v Akerele* (1967) NMLR 58. The cases

of Oloriode v Oyebe (1984) 1 SCNLR 390 and Momoh v Olotu (1970) 1 All NLR 117 are cases where the plaintiff has been shown not to have direct interest in the subject matter of the action. This is not such a case. Every member of the family, has an interest in family property and is under a duty to protect such property. There is therefore a locus standi to institute an action in respect of wrong done to such a property. There is no doubt his right is affected by the action of the defendants in respect of the family land, the head of family having taken an adverse stand against the family, - See Sogunle v Akerele (1967) NMLR 58. 5 10

It is well settled that where the head of the family conveys land without the consent of the principal members of the Family, such transaction is voidable and can be avoided by action by any member of the family - See Ekpendu v. Erika (supra); Sogunle v. Akerele (supra). In the instant case the 1st defendant made it clear that he did not seek the consent of members of the family. This attitude was based on the erroneous supposition that the land was the Emir's and not Galadima family land. In his view he was in respect of the land acting as agent of the Emir, and not as head of Galadima family. In this capacity the sale of Galadima family land made by him cannot be otherwise than void. Even if he had regarded the land as family land and sold it without the consent of principal members of the family, plaintiff had locus standi to bring an action to avoid the sale - See Ekpendu v. Erika (supra), Sogunle v. Akerele (supra) plaintiff therefore has locus standi to bring this action. 15 20 25 30

The 4th to 7th defendants are admittedly not members of the Galadima family. Since the contracts with the 1st defendant are void, having not been put in possession by any 35

person capable of vesting possession they are trespassers -
See Onwuka v. Abiriba City Council (1959) ERLR 17, Solomon
v. Mogaji (1982) 11 S.C.1.

5 The 7th issue for determination is that the learned trial
Judge granted a relief not sought by the plaintiff. The relief so
criticised is the order that the 4th to 7th defendants should
remove their beacons and other structures on the land within
10 three months of the date of judgment. It was submitted that
the court should not have made the order which was without
jurisdiction - See Ekpenyong v. Nyong (1975) 2 S.C. 71
Ademola & anor v. Sodipo & Ors, (1992) 7 NWLR (Pt.253)
251.

15 The Court of Appeal after recognising the general prin-
ciple that the learned trial Judge had no jurisdiction to grant a
relief not claimed affirmed the Order. The reasoning for af-
firming the order was expressed thus:-

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*"This legal principle does not embrace consequential
orders made to sustain the relief claimed. I hold the view that
the learned trial Judge made the consequential order in the
25 interest of justice which he was entitled to do"*

X

X

X

30 After referring to the enabling provision of Order 34
rule 1 of the Kwara State High Court (Civil Procedure Rules)
1975, the Court of Appeal concluded, as follows:-

35 *"In my view, prudent (sic prudence) dictates that in a
case of this nature where a plaintiff prays that the sale
of a parcel of land belonging to his family be set aside
for want of authority by the vendor and the court ac-
ceded to his prayers, the court may in its discretion in*

the interest of justice order that structures erected on the land be removed even though such an order was not specifically asked for. This is so as such structures may derogate from the plaintiff's family ownership of the land"

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As benevolent and charitable as this order granted by the Court is, it is obvious, that it cannot be brought within the scope of the claims on the writ of summons and statement of claim. Plaintiff did not claim for injunction. The declaration that the sale is void, and damages do not contemplate the removal of structures on the land or of beacons. It is not easy to see how the removal of beacons and structures is consequential to the declaration that a sale was null and void. There is no doubt that the order was made outside the claims of the plaintiff, without jurisdiction and therefore void. I therefore hereby set it aside:- See *Ochonma v Unosi* (1965) NMLR 321 at p 322 *Akapo v Hakeem-Habeeb* (1992) 6 NWLR (Pt.247) 266.

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For the reasons I have given above, and the fuller reasons in the judgment of my learned brother Ogundare J.S.C. with which I entirely agree, the appeal fails, on the main issue and is hereby dismissed.

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The order of the Court of Appeal affirming the order of the learned trial Judge that 4th to 7th defendants do remove their structures and beacons on the land is hereby set aside.

Respondent shall have the costs of this appeal assessed at N1,000.00.

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OGWUEGBU JSC

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I have a preview of the judgment just delivered by my learned brother, Ogundare J.S.C. and I agree entirely with his reasoning and conclusions.

The facts of the case have been well set down by my learned brother and no useful purpose would be served in repeating them. It is enough to state that the learned trial Judge in a reserved judgment found for the plaintiffs (the Galadima family of Gegele in Kwara State) and set aside the sales by the 1st, 2nd and 3rd defendants of portions of the family land to the 4th, 5th, 6th and 7th defendants.

The learned trial Judge found that the land in dispute formed part of the Galadima family land granted to the said family as an outright gift to one Musa the founder of the Galadima family by the first Emir of Ilorin.

The Court of Appeal affirmed the decision of the High Court including the order that the 4th to 7th defendants do remove the beacons on the land within three Months.

One of the crucial issues for determination in this appeal is whether the land in dispute belongs to the Emir of Ilorin and the successive Galadimas were his caretakers who must obtain his consent before they can deal with the land or is it an outright gift to the Galadima family?

I am unable to find any reason to disturb the concurrent findings of fact by the courts below to the effect that the disputed land is an unconditional gift to the Galadima family. The attitude of appellate courts in appeals on findings of fact is one of caution and of reluctance except where there is obvious error. See *Federal Commissioner of Works v. Lahabedi & Ors.* (1977) 11-12 S.C. 15 at 24, *Fashanu v. Adekoya* (1974) 1 ALL N.L.R 35 and *Fatoyinbo & Ors v. Williams* (1956) SCNLR 274; 1 F.S.C. 67.

The sale of the land the subject matter of the proceedings is void ab initio. The 1st, 2nd and 3rd defendants were not acting for the Galadima family but as caretakers to the Emir whose predecessor had divested himself of any interest

in the land. The 1st defendant joining in the sale did not bring the transaction within the principle of *Ekpendu v. Erika* (1959) SCNLR 186; (1959) 4 F.S.C. 79 because the appellants did not purport to sell Galadima family land.

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A member of a family can take steps to protect family property or his interest in it even if he has not the authority of the family to bring the action. See *Sogunle & Ors v Akerele & ors* (1967) N.M.L.R. 58. In my view, the plaintiff has sufficient standing to institute the action.

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Since the 4th to 7th defendants bought nothing, there was no basis why they were not found liable in trespass.

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As the plaintiffs did not ask that the defendants remove their beacons, "court of law should confine itself to adjudication upon questions raised by the parties before it to the exclusion of other questions which they do not advance. See *Aermacchi S.P.A. & Ors v A.I.C. Ltd* (1986) 2 NWLR. (Pt.23) 443 at 449. This order by the courts below is unjustified and was made without jurisdiction. It is accordingly set aside.

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In the main, the appeal fails and it is hereby dismissed with one thousand naira (N1,000.00) costs against the appellants. Appeal dismissed.

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UWAIS JSC (PRONOUNCEMENT)

In accordance with the provisions of section 258 subsection (2) of the Constitution of the Federal Republic of Nigeria 1979 and the decisions of this Court in *Attorney-General of Imo State v. Attorney-General of Rivers State*, (1983) 8 S.C 10 and *Egbe Iyawe v. Chief Sule*, (1983) 8 S.C 54, I pro-

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nounce that my late learned brother Mohammed, J.S.C. who
heard this appeal with us and took part in the conference there-
after unfortunately died in a motor accident on Tuesday, 9th
February 1993. He was of the opinion expressed in the lead
5 judgment and it was his view that the appeal should be dis-
missed with N1,000.00 costs to the respondent.

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