

**SUPREME COURT OF NIGERIA**  
7TH JULY, 1994. SC. 7/1992.  
**CORAM:- M. L. UWAIS, E. O. OGWUEGBU, S. U.**  
**ONU, Y. O. ADIO, A. I. IGUH, JJSC**

**WILLIAM EVBUOMWAN & 3 OTHER** ..... APPELLANTS

(For themselves and on behalf of  
the Oko Village Community,  
Ogba Farm Road, Benin City)

AND

**JONATHAN ELEMA & 2 OTHERS** ..... RESPONDENTS

(Administrators of the Estate  
of Late Chief Felix Owen Elema)

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**ADMINISTRATION OF ESTATE** - *Loss of title - Whether executed deed of conveyance that sought to make one of the administrators a trustee - Divested the respondents of their title to the estate.*

**ADMINISTRATION OF ESTATE** - *Locus Standi - Where the administrators authorised one of them to hold the estate on their behalf- Whether their right of action is lost thereby.*

**CONTRACTS** - *Written agreement between parties - Is binding on them - Impropriety of seeking to import extraneous terms.*

**CONVEYANCING** - *Recital - When a provision thereof - Is held to have clarified the parties intention.*

**DOCUMENTS** - *Terms not contained in a document - Whether to be imported therein.*

**EVIDENCE** - *Findings of trial court - Based on the evidence before it - Whether - As was found by Court of Appeal.*

**LAND LAW**- *Identity of land - Unfulfilled undertaking in pleading to file a survey plan - Where issues are not joined on the identity - Need for sufficient and or documentary evidence on the issue.*

**LAND LAW** - *Identity of land - Filing of a litigation survey plan together with the statement of claim - Where Defendants failed to take advantage of their option to file a survey plan - Reasonable inference to be made.*

**LAND LAW**- *Application for allocation of land - Made to the Oba under Bin customary law - Where there was no prescribed form - Whether an ordinary application was enough.*

**LAND LAW** - *Allocation under Bini custom - Routing application through community representatives - When such an unnecessary extra caution - Is held to establish respondents' case the more.*

**LAND LAW** - *Reversion of title - Circumstances under which title will revert to the grantor.*

**LAND LAW** - *Trespass - Where land was in the possession of the respondents - Whether they can claim damages for appellant's unjustifiable intrusion.*

**LAND LAW**- *Trespass - Exclusive possession - Grounds the right of action for damages against any other person - Save true owner or person with better title.*

### **FACTS**

The Respondents were the administrators of their late father's estate, in Benin City. The Appellants entered the land acquired by the Respondents' father from the Oba under Bini customary law, and started demarcating the land with a view to allocating plots to members of their community. The Respondents filed an action against the Appellants claiming declaration, perpetual injunction and damages for trespass. The Appellants claimed ownership of the land and sought to establish that it was not granted to the Respondents' late father and that the Oba was misled in granting the land. Appellants further submitted that the Respondents had no locus standi to file the action because a conveyance was executed in favour of one of them authorising him to hold the property on behalf of the Respondents as administrators of the Estate.

The trial court found in favour of the Respondents. Appellants' appeal to the Court of Appeal was dismissed as that court upheld the finding that Respondents established the identity of the land in dispute. Being dissatisfied the Appellants have further appealed to the Supreme Court to determine inter alia, whether the Respondents had the locus to sue and whether they

clearly established the area of the land in dispute. Appellants were granted leave to argue new points in their brief

**HELD (unanimously dismissing the appeal)**

***1. Whether the administrators of the estate are divested of their title***

A careful reading of the provision of Exhibit “D” showed that there was nothing in it divesting the respondents (administrators of the deceased’s property or estate) of their title to, right or interest in the estate. The respondents, as administrators of the estate of the deceased and the 3rd respondent as secretary of the administrators did not agree that the title, right or interest of the administrators should be transferred to or vested in the 3rd respondent (P.332 L.31)

***2. Recital - Clarification of intention***

It is quite clear from the provision of paragraph 4 of the recital in Exhibit “D” that what the administrators of the deceased’s estate (the respondents) and the 3rd respondent intended, by executing Exhibit “D” in favour of the 3rd respondent, was that the third respondent should hold the deceased’s estate or property on behalf of the respondents, as personal representatives or as administrators of the deceased’s estates. (P.332 L.37)

***3. Term not contained in the agreement - Administrators’ right of action***

If parties enter into an agreement they are bound by its terms. One cannot legally or properly read into the agreement the terms on which the parties have not agreed. What was not in Exhibit “D” could not be imported into it. For that reason, the respondents were competent to bring this action (P.333L.12)

***4. Need for sufficient evidence on identity of the land in dispute***

The filing of a survey plan pursuant to an undertaking in the pleading alone is not conclusive on the question of there being sufficient evidence before the court in relation to the identity or extent of the land in dispute. Also, if the parties did not join issue on the identity or extent of the land in dispute, a superfluous undertaking in the pleading to file a survey plan which undertaking was eventually not fulfilled could not warrant the dismissal of the plaintiff’s claim on that ground alone. So, what is important and very crucial is the availability before the court of sufficient evidence, whether oral and/or documentary, concerning the identify and extent of the land in dispute. (P. 334 L.8)

**5. *Failure to file survey plan - Reasonable inference***

The respondents filed their Statement of Claim and a litigation survey plan, Exhibit “B”. It is not known or clear what description, identity or particulars of the area of the land in dispute, which the appellants wanted and did not or could not get. Above all, the order of the learned trial Judge gave the appellants the option of filing their own survey plan, if they so desired. They did not take advantage of the option given to them and the reasonable inference is that they were satisfied with the description given by the respondents in relation to the identity and extent of the land in dispute. (P.334 L.20)

**6. *No prescribed form for allocation of land application under Bini custom***

There was the question whether the application which the deceased submitted for the allocation of land to him was irregular in that it was an ordinary application. The finding of the learned trial Judge was that the application was proper and in order. The court below affirmed the finding and it is agreed with. There was no prescribed form on which such an application should be made. An ordinary application was therefore, enough. (P.335 L.8)

**7. *Extra caution of routing application through community representatives***

While one might take the view that it was superfluous and unnecessary to route the application through the elders and/or representatives of the community, the aforesaid procedure followed by the deceased did not invalidate the application. Indeed, the extra caution taken by the deceased by going through the elders or representatives of the community knocked the bottom out of the contention of the appellants that the community was not consulted before the land was granted to the deceased. (P.335 L.20)

**8. *Reversion of title to the grantor***

The land would revert only if the grantee uses the land for purposes other than for which it was granted if such use was without the consent of the grantor. There was no clear evidence that the deceased was using the land for a purpose other than the one for which it was granted and if it was so used there was no evidence that it was without the consent of the grantor. (P.336 L.2)

**9. *Damages for trespass***

If, as has been found, the land in dispute was in possession of the respondents it was trespass for which the respondents could claim damages when the appellants went to the land in dispute and started to demarcate and allot it to members of the community because trespass consists of an unjustified

intrusion or interference upon land in possession of another. (P. 336 L.14)

### **10. Trespass - Right of action**

Once it can be shown, as it was in this case, that a person is in exclusive possession of land, he can bring an action for damages for trespass against any other person, other than the true owner or a person with better title, in respect of any interference with his possession. (P.336 L.20)

### **11. Findings of trial court based on evidence**

Having regard to the evidence before the learned trial Judge, which he accepted and on the basis of which he made the relevant findings, that were upheld by the court below, it can reasonably and justifiably be said that the conclusion of the learned trial Judge that the deceased had acquired a valid title under Bini customary law to the land in dispute which the court below said was justified can be sustained. (P.339 L. 13)

## **NOTABLE POINTS OF INTEREST**

### **ADIO.JSC**

#### **1. No conflict in evidence**

"I have myself read the evidence given by the witnesses and I am of the firm view that the court below was justified in upholding the finding of the learned trial Judge that there was no conflict in the evidence. (P.334 L.35)

#### **2. Whether judgment was tied to any survey plan**

It was also argued that the judgment of the learned trial Judge which the court below affirmed was not tied to any survey plan. It is sufficient, in this connection, to state that the declaration granted was in relation to the parcel of land in the litigation plan, Exhibit "B". The contention of the appellants in relation to the foregoing aspects of this matter was untenable and could not be supported. (P.334 L37)

#### **3. No convincing evidence on a point**

The 1st appellant denied that he signed Exhibit "A" and it was, for that reason, argued that the Oba of Benin was misled in approving the grant of the land, which included the land in dispute, to the deceased. The appellants led no convincing evidence on the point and the court below held that the learned

trial Judge was in order in holding that it was immaterial that the 1st appellant disowned his signature. In any case, the head of the village community signed Exhibit “A”. (P.335 L.28)

**4. When an original trespasser can maintain an action in trespass**

5 In an action for damages for trespass, a defendant may not set up a jus tertii. He may set up a title in himself, or that he acted on the authority of the real owner. See Amakor’s case, Supra. So, even if the land in dispute had reverted to the grantor that would not have helped the appellants’ position because an original trespasser, as against everyone but the true owner can, if he is in  
10 exclusive possession of the land in dispute, maintain an action in trespass against a later trespasser whose possession would clearly be adverse to that of the original trespasser. (P.336 L.27)

**5. Availability of uncontradicted evidence.**

15 *“In my view, in any case, there was evidence, which was uncontradicted, that there was no Ward Allotment Committee Constituted for the area at the material time. It was, for that reason that the Oba of Benin directed that Ward A Allotment Committee should take necessary action and that some elders in the community should join the Ward A Allotment Committee in  
20 dealing with the matter.”* (P.337 L.4)

**OGWUEBUJSC**

**6. Plaintiffs’ competence to institute the action**

25 *“Properly construed and in the light of the recitals and the habendum reproduced above, it is quite clear that by Exhibit “D” the parcel of land was conveyed to the 3rd respondent as the secretary or agent of the Administrators of the estate and not in his personal or private capacity. It is also my view that with or without a reconveyance, the plaintiffs were competent to  
30 institute the action both as administrators and beneficiaries of the estate. Exhibit “D” did not in any way divest them of their interest in the land in dispute”.* (P.341 L.22)

**7. Whether identity of land is proved**

35 *“I am not in any doubt that the plaintiffs proved the identity and the area of land in dispute. They did this by filing Exhibit “B” which showed the specific area claimed and the portion trespassed upon by the defendants. A copy of Exhibit “B” was served on the defendants along with the statement of claim.”* (P.342 L.31)

**ONUJSC**

***8. Insistence on technicality***

While therefore conceding that a litigation plan - Exhibit B was served on them, the appellants still would want to suggest that they want another plan. 5 This is to say the least, an insistence on technicality which this court discourages in place of substantial justice which ought to triumph. (P.348 L.30)

***9. Title to land under Bini customary law***

Under Bini Customary law, where as in the case in hand, there are competing 10 claims of title to land, the question to be asked is who has made a good title and not who first obtained the Oba's approval. See ARASE v. ARASE (1981) 5 S.C. 33. Under the same Customary Law, a native or native communities are not the legal owners of land and lands cannot be "owned" until and unless there is a grant from Oba of Benin.(P.350 L.18) 15

**IGUHJSC**

***10. Substantial justice preferred to technical justice***

The second issue appears to me to revolve almost entirely on technical justice, unsupported by and as against substantial justice. It seems to me necessary 20 once again to reiterate the fact that our courts have deliberately shifted away from the narrow technical approach to justice which characterised some earlier decisions of courts and, instead, now pursue the course of substantial justice." (P.354 L.32) 25

***11. When failure to tender pleaded document may not matter***

My view is that it would not matter whether or not the respondents pleaded a second plan and failed to tender it so long as they were able to establish their case without the plan pleaded but not tendered." (P.355 L 8) 30

***12. When concurrent findings will not be disturbed***

It is clear that this is a case where concurrent findings of the trial court and the court below should not be interfered with as they are fully supported by evidence and there is no substantial error on the face of the proceedings to show that they are perverse or patently erroneous or that miscarriage of justice 35 will result if they are allowed to stand. (P.358 L.6)

**REPRESENTATION:**

Professor A.B. Kasumu SAN, with Miss M.A. Keshinro holding the brief of

Dr. M. Odje SAN for the Appellants.

T.J.O. Okpoko Esq. SAN, with Miss J.O. Unurhovo for the Respondents

**CASES REFERRED TO:**

- 5 Adesanya v. President of the Federal Republic of Nigeria (1981) 5 S.C. 1  
Thomas v. Olufosoye (1986) 1 N.W.L.R. (Pt. 18) 669  
Ugo v. Obiekwe (1959) 1 N.W.L.R. (Pt. 99) 566; (1989) 2 S.C.N.J. 95  
Abdullahi Baba v. Nigerian civil Aviation Training Centre, Zaria & Anor (1991)  
5 N.W.L.R. (Pt. 192) 388
- 10 Elias v. Bare (1982) 5 S.C. 25  
Ajao v. Ikolaba (1972) 1 All N.L.R. (Pt. 2) 46  
Ogunbiyi v. Adewumi (1988) 5 N.W.L.R. (Pt. 93) 215 at p. 221  
Amakor v. Obiefuna (1974) 3 S.C. 67  
Ayinde v. Salawu (1989) 3 N.W.L.R. (Pt. 109) 297
- 15 Okeaya v. Aguebor (1970) 1 All N.L.R. 1 at pp. 9 & 10  
Awoyebe v. Ogbtide (1988) 1 N.W.L.R. (Pt. 73) 695  
Agbonifo v. Aiwereoba (1988) 1 N.W.L.R. (Pt. 70) 325  
Finnih v. Imade (1992) 1 N.W.L.R. (Pt. 219) 511  
Elias v. Bara (1982) 5 S.C. 25
- 20 Imana v. Robinson (1979) 3-4 S.C. 1 at page 9- 4  
Odunukwe v. Administrator-General of the East Central State  
(1978) 1 S.C. 25 at 31  
Longton v. Waite (1868) L.R. EQ. 165  
Abusomwan v. Mercantile Bank (1987) NWLR (Part 60) 196 at 209
- 25 Saidu v. The State (1982) 2 SC. 41  
Ahaji Elias v. Chief Timothy Omobare (1982) 5 S.C. 25.  
Stitch v. A.G. of the Federation (1986) 5 NWLR (Part 46) 1007  
Nneji v. Chukwu (1988) 3 NWLR (Part 81) 784 at 202  
Awote v. Owodunmi (No. 2) (1987) 2 NLWR (Part 59) 366
- 30 Kwazo v. Adjel 10 WACA 274  
Balogun v. Makajuola (1989) 3 NLWR (Part 128) 92  
Bello v. Eweka (1981) 1 S.C. 101  
Inneh v. Aguebor (1970) 1 All NLR 1 at pages 8 - 10  
Gold v. Osaseren (1970) 1 All NLR 132
- 35 Ogiamen v. Ogiamen (1967) NMLR 246  
Aikhonbare v. Omoregie (1976) 12 SC. 11 at 28  
Aigbe v. Edokpolo (1977) 2 SC. 1  
Awoyebe v. Ogbeide (1988) 1 NWLR (Part 73) 695  
Agbonifo v. Atapeoba (1988) 1 NWLR (Part 70) 325 and



Finnih v. Imade (1992) 1 NWLR (Part 219) 511	
Chikwendu v. Mbamali (1980) 3/4 S.C. 31 at 53	
Ibodo v. Enarofia (1980) 5/7 SC. 42	
Otubu v. Guobadia (1984) 10 SC. 130	
Lamai v. Orbih (1980) 5/7 SC 28	
Ezewani v. Onwordi (1986) 4 NWLR (Part 33) 27	5
M.C. v. N.E.P.A (1992) 6 N.W.L.R. (Part 246) 132 at 142	
Khawan v. Elias (1960) 5 F.S.C. 224	
Okonjo v. Dr. Odje (1985) 10 S.C. 267	
Falobi v. Falobi (1976) 6 N.M.L.R. 169	
Bello v. A.G. Oyo State (1986) 6 N.W.L.R. (Part 45) 828	10
Chikwendu v. Mbamali (1980) 3 - 4 S.C. 31 at 75	
Lamai v. Orbih (1980) 5 - 7 S.C. 28	
Ibodo v. Enarofia (1980) 5 S.C. 42	
Woluchem v. Gudi (1981) 5 S.C. 291 at 326	
Kola v. Coker (1982) 12 S.C. 232	15
Lokoyi v. Olojo (1983) 2 S.C.N.L.R. 127 at 131	
Igwego v. Ezeugo (1992) 6 N.W.L.R. (Part 249) 561 at 585	

#### **STATUTE REFERRED TO**

Boundary Dispute (Determination) Edict No. 6 of 1977 S. 2(1) (c)	20
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#### **LEAD JUDGMENT BY ADIO JSC**

The respondents' claim in an action filed by them against the appellants in the Benin Judicial Division of the High Court of the defunct Bendel State of Nigeria was as follows:- 25

*"1. A declaration that the demarcation of building plots made by the defendants on the parcel of land subject of customary grant by the Oba of Benin, Akenzua II, dated 26th November, 1963 in favour of Chief Felix Owen Elema measuring 5,000 feet by 556 feet by 4780 feet by 3130 feet and by 3000 feet within Oko village area, the said land delineated in survey plan No. OM1670 in conveyance registered as No.22 at page 22 in volume 253 of the lands Registry embracing the said land in dispute in physical possession of the plaintiffs within Benin Judicial Division is ultra vires, illegal, unconstitutional, null and void. The said land will be particularly delineated in a survey plan to be filed in this action. 30 35*

2. *An order of perpetual injunction restraining the defendants, their servants and/or agents from further entering upon any part of the said parcel of land.*

5 3. *N100,000.00 (One Hundred Thousand Naira) being general damages against the defendants for acts of trespass already committed in the said parcel of land."*

Pleadings were duly filed and exchanged. The evidence led was that the respondents were the administrators and the beneficiaries of the estate of  
10 one Chief Felix Owen Elema who was their late father. Chief Elema was a traditional Chief. He acquired in his lifetime some parcels of land in accordance with Benin customary law, including the land in dispute, which was in Oko village area. He was in possession of the land in dispute up to the time that he died on the 14th February 1986. The respondents were granted letters  
15 of administration of his estate. What prompted the respondents to bring this action against the appellants was that sometime the appellants began to demarcate the land in dispute into plots with a view to allocating the plots of land to members of their community.

According to them, the land in dispute was their (appellants') community land and that it was not granted to the late Chief Elema in accordance  
20 with the Bini customary law. They also took the view that the Oba of Benin was misled in granting the land in dispute to the late chief.

The learned trial Judge after evaluating the totality of the evidence before him and due consideration of the submissions of the learned counsel  
25 to the parties, entered judgment for the respondents. It was the view of the learned trial Judge that the identity and extent of the land in dispute were established. He held that the late chief acquired a valid title to the land in dispute under the Bini customary law and that he was in possession of it at all material times. He also found that the respondents had power to institute the  
30 action. Dissatisfied with the judgment, the appellants appealed to the Court of Appeal. The court below dismissed the appellants' appeal. It affirmed the finding of the learned trial Judge that the late chief acquired a valid title to the land in dispute under the Bini customary law and that the respondents were competent to institute this action against the appellants. It also affirmed the  
35 finding of the learned trial Judge that the identity and the extent of the land in dispute were established. Dissatisfied with the judgment, the appellants had lodged a further appeal to this court.

The appellants and the respondents. in accordance with the rules of

this court, duly filed and exchanged briefs. The appellants identified three issues for determination, based on their grounds of appeal in their brief. In addition, they indicated in their brief their intention to apply for leave to introduce new points not hitherto taken. The new points were argued in their brief. The respondents did not formulate any issues in their brief, for determination. They adopted the issues identified for determination in the appellants' brief which were as follows:-

- “(1) Whether the respondents were competent to sue in this case or, in other words, whether they possessed locus standi or standing to sue. 10
- (2) Whether the respondents established clearly the area and extent of the land put in dispute by them.
- (3) If the answer to issue 2 above is in the affirmative, whether the Court of Appeal was right in upholding the decision of the trial court to the effect that the late Chief Felix Owen Elema had valid title at all material 15 times to the land in dispute according to Bini customary law.”

Musdapher, J.CA. who read the lead judgment of the court below, after making reference to the finding of the learned trial Judge on the question raised under the first issue, said inter alia as follows:- 20

“In my view, the capacity of the respondents to sue as the administrators of the estate of their father of which they were the beneficiaries was beyond any doubt. Even if by Exhibit D, the estate was conveyed to him as the secretary of the trustees and the beneficiaries and not to him personally or beneficially..... Exhibit D did not clearly or in any manner divest 25 the respondents from their control or ownership of the land in dispute. It merely for the ease of administrative purposes allowed the third respondent to deal with the land for and on behalf of all the respondents ..... In any event, there was contained in Exhibit C, a deed, reconveying the land in dispute to the respondents.” 30

The appellants pointed out that the respondents brought the action in their capacity as the administrators of the estate of the deceased who was their father. It was submitted that the deed, Exhibit “D”, which the respondents executed in favour of the 3rd respondent completely divested the respondents of their title as administrators of the deceased's estate. According 35 to the submission made on behalf of the appellants, Exhibit “D” was the instrument transferring the respondents' representative title to the estate to the 3rd respondent in fee simple. With reference to Exhibit “C”, which the learned Justice of the court of Appeal described as a deed of reconveyance

which the 3rd respondent executed in favour of the respondents, it was pointed

out, rightly in my view, that the deed of reconveyance in question was not at any time tendered as an exhibit. I have examined the record of proceedings and the exhibit in question and I have found that what was tendered, admitted  
5 and marked as Exhibit “C” was a survey plan attached to the deed of reconveyance. The deed of reconveyance itself was not tendered and admitted as an exhibit. Finally, it was submitted on behalf of the appellants, that on the facts and the circumstances of this case, the respondents after divesting themselves of their title to the deceased’s estate, had no legal title to the  
10 aforesaid estate which included the land in dispute so as to enable them to institute the present action. The appellants cited *Adesanya v. President of the Federal Republic of Nigeria* (1981) 5 S.C. 112; *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669; and *Ugo v. Obiekwe* (1989) 1 NWLR (Pt.99) 566; (1989) 2 SCNJ 95.

15 The contention of the respondents was that they did not, by executing Exhibit “D” in favour of their secretary, 3rd respondent, divest themselves of their right or interest, in the estate of the deceased which included the land in dispute. Exhibit “D” was executed in favour of the 3rd respondent as the secretary of the administrators of the deceased’s estate that he was. It was  
20 further submitted that there was nothing in Exhibit “D” which made the 3rd respondent a limited owner of the deceased’s property. Rather, Exhibit “D” made the 3rd respondent a trustee of the property for the administrators. Finally, it was submitted that the basis for holding that the respondents did not divest themselves of their interest or title to the deceased’s property as a  
25 result of their executing Exhibit “D” in favour of the 3rd respondent, was the construction of Exhibit “D” itself. For that reason, with or without the reference made to Exhibit “C”, there was nothing in Exhibit “D” warranting the divesting of the interest or title of the respondents.

There is substance in the submissions made for the respondents. Apart from  
30 the fact that the 3rd respondent himself testified that he never had the impression that, by executing Exhibit “D” in his favour, the respondents divested themselves of their interest or title to the deceased’s property, a careful reading of the provision of Exhibit “D” showed that there was nothing in it divesting the respondents (administrators of the deceased’s property or estate) of  
35 their title to, right or interest in the estate. The respondents, as administrators of the estate of the deceased and the 3rd respondent as secretary of the administrators did not agree that the title, right or interest of the administrators should be transferred to or vested in the 3rd respondent. It is quite clear from the provision of paragraph 4 of the recital in Exhibit “D” that what the

administrators of the deceased's estate (the respondents) and the 3rd respon

dent intended, by executing Exhibit "D" in favour of the 3rd respondent, was that the third respondent should hold the deceased's estate or property on behalf of the respondents, as personal representatives or as administrators of the deceased's estate. Paragraph 4 of the recital in Exhibit "D" is as follows:- 5

*"(4) The Personal Representatives have agreed to convey the said property to Friday Elema who is Secretary of the Estate to hold same on behalf of the Personal Representatives."*

The pertinent question is: whether on the basis of or relying on Exhibit "D" the 3rd respondent could purport to transfer the right, interest or title to the deceased's estate to any body other than the respondents on behalf of whom he was holding the property or whether he could validly refuse to transfer the estate back to them if they requested him to do so. If parties enter into an agreement they are bound by its terms. One cannot legally or properly read into the agreement the terms on which the parties have not agreed. See Abdullahi Baba v. Nigerian Civil Aviation, Zaria & Anor. (1991) 5 NWLR (Pt. 192) 388. What was not in Exhibit "D" could not be imported into it. For that reason, the respondents were competent to bring this action. 10 15

The next question is whether the respondents clearly established the identity and extent of the land in dispute. The finding of the learned trial Judge, which the court below affirmed, was that the respondents established the identity and extent of the land in dispute. It was argued for the appellants, in this connection, that the identity of the land in dispute was a matter on which the parties joined issue yet the respondents did not file an accurate survey plan of the land in dispute notwithstanding their averment and undertaking vide paragraph 26(a) of their Statement of Claim. It was, therefore, contended that the failure of the respondents to keep to their undertaking was a matter of serious import with respect to practice and procedure as well as administration of justice generally because the respondents' failure was not only evidence of bad faith but was indeed real embarrassment and prejudice to the conduct of a proper defence to the action. Elias v. Omo-bare, (1982) 5 S.C. 25 was cited in support. For the respondent, it was argued that all that the appellants did, in their pleading, was a denial generally of the relevant averment in the respondents' statement of claim and that was not enough. In my view, if the appellants did not agree with the description or particulars of the identity of the land in dispute given in the statement of claim, nothing prevented them from giving, in their own pleading, the description or particulars of the land in dispute considered by them to be accurate. In dealing with this 20 25 30 35

- aspect of the matter, the respondents pointed out that they, inter alia, filed Exhibits “C” and “D” which showed the identity and extent of the parcels of land granted to the deceased by the Oba of Benin. Further, they filed a litigation plan, Exhibit “B”, in which they showed the portion(s) thereof on which the appellants trespassed. It was, therefore, contended that the oral evidence  
5 of their surveyor in relation to Exhibit “B” together with the relevant documents tendered by them were enough to satisfy the necessary requirement in relation to proof of the identity and extent of the land in dispute. I think that the appellants were placing an undue importance on the filing of a survey plan pursuant to an alleged undertaking, in the pleading, to file one. The filing of a  
10 survey plan pursuant to an undertaking in the pleading alone is not conclusive on the question of there being sufficient evidence before the court in relation to the identity or extent of the land in dispute. Also, if the parties did not join issue on the identity or extent of the land in dispute, a superfluous undertaking in the pleading to file a survey plan which undertaking was even-  
15 tually not fulfilled could not warrant the dismissal of the plaintiff’s claim on that ground alone. So, what is important and very crucial is the availability before the court of sufficient evidence, whether oral and/or documentary, concerning the identity and extent of the land in dispute. In any case, the respondents filed a motion asking for an extension of the time within which  
20 they were to file their Statement of Claim and survey plan. The application was granted. Pursuant to the order of the court granting the application, the respondents filed their Statement of Claim and a litigation survey plan, Exhibit “B”. It is not known or clear what description, identity or particulars of the area of the land in dispute, which the appellants wanted and did not or could  
25 not get. Above all, the order of the learned trial Judge gave the appellants the option of filing their own survey plan, if they so desired. They did not take advantage of the option given to them, and the reasonable inference is that they were satisfied with the description given by the respondents in relation to the identity and extent of the land in dispute.
- 30 With reference to the oral evidence of the P.W.1, P.W.3 and the 3rd respondent on the location or identity of the land in dispute which the appellant contended was conflicting, the court below gave consideration to the evidence of the P.W.1, P.W.3 and the 3rd respondent and came to the conclusion that the learned trial Judge was right in holding that there was no conflict.
- 35 It, therefore, affirmed the findings of the learned trial Judge on the point. I have myself read the evidence given by the witnesses and I am of the firm view that the court below was justified in upholding the finding of the learned trial Judge that there was no conflict in the evidence. It was also argued that the judgment of the learned trial Judge which the court below affirmed was not

tied to any survey plan. It is sufficient, in this connection, to state that the

declaration granted was in relation to the parcel of land in the litigation plan, Exhibit "B". The contention of the appellants in relation to the foregoing aspects of this matter was untenable and could not be supported. It is now necessary for me to consider some questions, other than the crucial question 5 whether the deceased acquired valid title to the land in dispute under Bini customary law. The learned trial Judge and/or the court below dealt with the questions. The findings of the learned trial Judge on those of them dealt with by the learned trial judge were affirmed by the court below. There was the question whether the application which the deceased submitted for the allo- 10 cation of land to him was irregular in that it was an ordinary application. The findings of the learned trial Judge was that the application was proper and in order. The court below affirmed the finding and I agree with it. There was no prescribed form on which such an application should be made. An ordinary application was, therefore, enough. 15

It was also contended for the appellants that it was irregular for the deceased to submit his application for allocation of land to him, through the elders or representatives of the community, to the Ward Allotment Committee that placed the application before His Highness, the Oba of Benin with its recommendation. The finding of the learned trial Judge, affirmed by the court 20 below on the point and with which I agree, was that while one might take the view that it was superfluous and unnecessary to route the application through the elders and/or representatives of the community, the aforesaid procedure followed by the deceased did not invalidate the application. Indeed, the extra 25 caution taken by the deceased by going through the elders or representatives of the community knocked the bottom out of the contention of the appellants that the community was not consulted before the land was granted to the deceased.

The 1st appellant denied that he signed Exhibit "A1" and it was for that reason, argued that the Oba of Benin was misled in approving the grant of the 30 land, which included the land in dispute, to the deceased. The appellants led no convincing evidence on the point and the court below held that the learned trial Judge was in order in holding that it was immaterial that the 1st appellant disowned his signature. In any case, the head of the village community signed 35 Exhibit "A".

It was alleged that the deceased was granted land for industrial purpose and since he failed to use it for the purpose for which it was granted, the land had long reverted. *Ajao v. Ikolaha* (1972) 1All NLR (Pt. 2) 46 was cited. It was also alleged that substantial portions of the land had been alienated to

third parties for purposes other than industrial ones. The person or authority to whom the land reverted was not named and names of the third parties to whom the deceased had alienated substantial portions of the land for purposes other than industrial ones were not given. The land would revert only if the grantee uses the land for purposes other than for which it was granted if  
 5 such use was without the consent of the grantor. There was no clear evidence that the deceased was using the land for a purpose other than the one for which it was granted and if it was so used there was no evidence that it was without the consent of the grantor.

Further, the allegation was that the respondents were in possession  
 10 of the land, which included the land in dispute and that the appellants were demarcating the land in dispute into plots and allocating the plots to people in the community. The respondents, therefore, claimed damages for trespass and injunction. If the land reverted, at all, because of something that the deceased allegedly did, it would revert to the grantor, the Oba of Benin, and  
 15 not to the appellants or to their community. If, as has been found, the land in dispute was in possession of the respondents it was trespass for which the respondents could claim damages when the appellants went to the land in dispute and started to demarcate and allot it to members of the community because trespass consists of an unjustifiable intrusion or interference upon  
 20 land in possession of another. See *Ogunhiyi v. Adewumi*. (1988) 5 NWLR (Pt. 93) 215 at p. 221. Once it can be shown, as it was in this case, that a person is in exclusive possession of land, he can bring an action for damages for trespass against any other person, other than the true owner or a person with better title, in respect of any interference with his possession. *Amakor v.*  
 25 *Ohiefuna* (1974) 3 S.C. 67. Assuming that the appellant was right in their contention that the land had reverted, that would not have been a good defence to the claim for damages for trespass as the reversion would not have been to the appellants but to the grantor, the Oba of Benin, a third party. In an action for damages for trespass, a defendant may not set up a *jus tertii*. He may set up  
 30 a title in himself, or that he acted on the authority of the real owner. See *Amakor's* case, *supra*. So, even if the land in dispute had reverted to the grantor that would not have helped the appellants' position because an original trespasser, as against everyone but the true owner can, if he is in exclusive possession of the land in dispute, maintain an action in trespass against a  
 35 later trespasser whose possession would clearly be adverse to that of the original trespasser. See *Ayinde v. Salawu*, (1989) 3 NWLR (Pt.109) 297.

There was also the contention that as the respondents pleaded Edict No.6 of 1977, the Boundary Dispute (Determination) Edict, 1977, they must be deemed to have conceded that the land in dispute was not within the jurisdic-



tion of Ward “A” Allotment Committee. The submission for the respondents

was that the Edict was irrelevant to their case. The question was whether the land, including the land in dispute, was within the jurisdiction of the Ward “A” Allotment Committee and the question was resolved in favour of the respondents. In my view, in any case, there was evidence, which was uncontradicted that there was no Ward Allotment Committee constituted for the area at the material time. It was, for that reason, that the Oba of Benin directed that Ward A Allotment Committee should take necessary action and that some elders in the community should join the Ward A Allotment Committee in dealing with the matter.

Next is the question raised under the third issue which was whether if the answer to the second issue was in the affirmative, the Court of Appeal was right in upholding the decision of the trial court to the effect that the late Chief Felix Owen Elema had valid title at all material times to the land in dispute according to the Bini customary law. There was evidence before the learned trial Judge that the deceased submitted an application Exhibits ‘A’ & ‘AI’ to the Ward “A” Allotment Committee for the allocation to him of the land which included the land in dispute; that pursuant to the application some members of the committee inspected the land to which the application related to ascertain the dimension of the land and to find out if it was free from dispute; that the Committee was satisfied about the exact location of the land and that it was dispute free; that the committee endorsed the application accordingly and recommended the application to the Oba of Benin for approval; and that the Oba of Benin approved the application and granted the land to the deceased. The recommendation and the approval of the Oba are all reflected on the application. The learned trial Judge accepted the evidence and held that the deceased acquired a valid title to the land, which included the land in dispute, under the Bini customary law. The court below having been satisfied about the various steps, mentioned above, taken by the deceased and the appropriate authorities in relation to the acquisition of valid title to the land, which included the land in dispute, in accordance with Bini law, stated, *inter alia*, as follows:-

*“I am in total agreement with the learned counsel for the respondents, that on the pleadings and the evidence adduced, the learned trial Judge was justified in holding that Chief Elema had acquired a valid title under the Bini customary law of the land in dispute around Oko Village area. The evidence is overwhelming and it was abundant, that Chief Elema immediately went into possession and caused the land to be surveyed. The learned trial Judge believed the evidence of the grant of the land in dispute*

*to Chief Elema and that he was before his death in actual possession.”*

The question of what are the principles governing the acquisition of valid title to land in accordance with Bini customary law has been considered and determined by this court in many cases. See *Okeaya v. Aguehor*, (1970) 1 All NLR 1 at pp. 9 & 10; *Awoyeghe v. Ogheide*, (1988) 1NWLR (Pt. 73) 695; *Aghomfo v. Aiwereoha*, (1988) 1NWLR (Pt. 70) 325; and *Finnih v. Imade*, (1992) 1 NWLR (Pt 219) 511. In *Okeaya’s* case, *supra*, the principles of customary law were said to be as follows:-

10           “(a) *all lands in Benin Division are vested in the Oba of Benin who is thus trustee or legal owner thereof on behalf of the people of Benin who are beneficiaries in respect thereof;*

*(b) in respect of Benin City itself; the Oba of Benin had by 1961 appointed Ward Allotment Committees in respect of 12 wards into which the City had been divided shortly before this for the purpose of plot allocation;*

*(c) whereas any grantee of land in Benin City before 1961 might not be able to produce the approval in respect thereof reduced by the Oba of Benin into writing, such a grantee after this period must be able to produce*  
20 *such evidence;*

*(d) One of the several functions of a Ward Plot Allotment Committee is to recommend plot applications to the Oba of Benin for approval;*

*(e) an Applicant for land in Benin City as from 1961 has to direct his application in writing to the Ward Plot Allotment Committee of his choice;*  
25

*(f) the Ward Plot Allotment Committee upon receipt of the application would delegate some of their members to carry out an inspection of the land acquired within the area of their ward and they in turn would report back to the committee on their inspection “the purpose of the inspection”*  
30 *being “to ascertain the plot to be granted with certainty and also to ascertain if it is free from dispute or has not been previously granted to someone;”*

*(g) upon being satisfied about the exact locations, the dimensions and the fact that the desired plot is ‘dispute free’, the Ward Plot Allotment*  
35 *Committee would endorse the application with the above facts and forward it to the Oba of Benin as recommended;*

*(h) the Oba of Benin would, as a rule, accord his approval in writing to a recommended application and an applicant whose application is approved by the Oba of Benin becomes the beneficial owner of the land as*

approved for him;

(i) *an approval once given remains valid until set aside by the Oba of Benin when evidence is subsequently produced of a prior approval for the same land, the second approval being bona fide and in ignorance of the existence of an earlier one;*

(j) *it is contrary to Benin custom to set aside an approval made in error upon an ex parte application by one of the affected parties. In other words, to set aside an approval made in error, the two parties affected by the conflicting grants must be present before the Oba at the same time and his decision must be communicated to them after an open hearing at the Oba's palace. Such decision must also be communicated to the Ward Allotment Committee from which the two conflicting recommendations had emanated."*

Having regard to the evidence before the learned trial Judge, which he accepted and on the basis of which he made the relevant findings, that were upheld by the court below, it can reasonably and justifiably be said that the conclusion of the learned trial Judge that the deceased had acquired a valid title under Bini customary law to the land in dispute which the court below said was justified can be sustained. The aforesaid findings included the findings: that the deceased forwarded his application for allocation of land to the Ward Allotment Committee; that the Ward Allotment Committee through some of its members inspected the land to ascertain its location and dimension and to determine whether it was not subject of any dispute; that the committee, in view of the favourable report on the aforesaid matters, after endorsing the application accordingly, recommended it to the Oba of Benin for approval; and that the Oba of Benin approved the application of the deceased. The court below was, therefore, right in upholding the decision of the learned trial Judge to the effect that the deceased (Chief Felix Owen Elema) had valid title at all material times to the land in dispute according to Bini customary law.

The appeal does not succeed. The judgment of the court below is affirmed and the appeal is dismissed with N1,000.00 costs to the respondents.

#### UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Adio, J.S.C. I agree with the judgment. I too will, therefore, dismiss the appeal and it is hereby dismissed with N1,000.00 costs to the Respondents.

**OGWUEGBUJSC**

The facts of the case have been fully set out in the lead judgment of my learned brother Adio, J.S.C. I need only summarise them here.

5                      In the High Court of Justice of the former Bendel State of Nigeria, in the Benin Judicial Division holden at Benin City, the plaintiffs as the Administrators of the Estate of Chief Felix Owen Elema brought an action against the defendants for themselves and as representing members of Oko Community in Benin City.

10                      They claimed a declaration that the demarcation of building plots or allocation of building plots made of the defendants on the parcel of land subject of customary grant by the Oba of Benin in 1963 in favour of Chief Felix Owen Elema within Oko village which is in possession of the plaintiffs is ultra vires, illegal and null and void; an order of perpetual injunction against the  
15 defendants and N100,000.00 general damages for trespass.

The learned trial Judge granted the three reliefs claimed by the plaintiffs. In the third relief, N1,000.00 was awarded as general damages. The defendants who were not satisfied with the judgment, appealed to the Court of Appeal, Benin Division. The court below dismissed their appeal hence a further appeal to this court.

20 From the grounds of appeal filed, the following issues for determination were formulated by the defendants/appellants:

25                      “(i) *Whether the respondents were competent to sue in this case, or in other words, whether they possessed the locus standi or standing to sue.*

                         (ii) *Whether the respondents established clearly the area and extent of the land put in dispute by them.*

30                      (iii) *Whether, if the answer to issue (ii) was in the affirmative, the Court of appeal was right in upholding the decision of the trial court to the effect of that late Chief Felix Owen Elema had valid title at all material times to the land in dispute according to Bini Customary Law:”*

It was intended on behalf of the appellants that the Amended Writ of Summons averred that the plaintiffs brought the action in their capacity as Administrators of the estate of late Chief Felix Owen Elema and on the evidence and on the facts, the respondents by a conveyance in fee simple (Exhibit “D”) dated 10/4/74 completely divested themselves of their title as Administrators in favour of the 3rd respondent.

Therefore, they were not competent to sue after divesting themselves of the property hence their unsuccessful attempt to recover the estate

back to themselves by means of a document which was not tendered in evidence. The appellants relied heavily on Exhibit “D” - the conveyance to the 3rd respondent for their contention that the plaintiffs had no locus to institute the action. The recitals and the habendum in Exhibit “D” Show clearly the capacity in which the land was conveyed to the 3rd respondent and the estate or interest granted to him by the conveyance.

The relevant portions of Exhibit “D” are as follows:

*“1. This indenture is made the.....Between Jonathan Elema, Sunday Elema and Friday Elema the Administrators of the Estate of (hereinafter called “the Personal Representatives”) of the one part and Friday Elema of..... (hereinafter called “the Secretary”) of the other part.*

*2. The Personal Representatives have agreed to convey the said property to Friday Elema who is the Secretary of the Estate to hold the same on behalf of the Personal Representatives.*

*3. Now this Deed Witnesseth that in pursuance of the said agreement the Personal Representatives as Administrators of the estate hereby convey unto the Secretary All that parcel of land..... To Hold the same unto the Secretary in fee simple.”*  
(The Italics are mine for emphasis only).

Properly construed and in the light of the recitals and the habendum reproduced above, it is quite clear that by Exhibit “D” the parcel of land was conveyed to the 3rd respondent as the Secretary or agent of the Administrators of the estate and not in his personal or private capacity. It is also my view that with or without a reconveyance, the plaintiffs were competent to institute the action both as administrators and beneficiaries of the estate. Exhibit “D” did not in any way divest them of their interest in the land in dispute.

As to the identity and extent of the land in dispute, the learned counsel for the appellants submitted in his brief that the plaintiffs in paragraph 26(a) of their Statement of Claim undertook to file a survey plan delineating the land in dispute and they failed to file accurate survey plan showing the exact area and extent of the land in dispute or its features. He cited the case of Olakunle Elias v. Omo-Bare (1982) 5 S.C. 25 and submitted that the failure by the plaintiffs to file the said plan embarrassed the defendants and prejudiced the conduct of a proper defence to the action.

It was further submitted that the plaintiffs and their witnesses con

tradicted one another in their evidence as to the area and extent of the land in dispute and that their evidence did not tally with the survey plan Exhibit “B”.

For the plaintiffs, it was submitted that by the pleadings, the defendants did not put in issue the area and extent of the land in dispute; that the plaintiffs did file a litigation plan - Exhibit “B” Which was pleaded in paragraph 13 of their Statement of Claim and that the defendants admitted at page 7 of their brief of argument that survey plan No. OSA/1394B282 of 17/4/82 pleaded in paragraph 13 of the Statement of Claim was admitted in evidence as Exhibit “B”.

The plaintiffs pleaded two survey plans in their Statement of claim. In paragraph 13, they pleaded Exhibit “B” where the area trespassed upon was shown verged blue. In paragraph 26(a), the plaintiffs averred that “the said land will be particularly delineated in a survey plan to be filed in this action”.

In the same paragraph 26(a), the plaintiffs also pleaded that the land granted to late Chief Felix Owen Elema by the Oba of Benin is delineated in Survey Plan No. OM1690 dated 26/7/65 in conveyance registered as No. 22 at page 22 in Volume 253 of the Lands Registry, Benin City. They tendered this survey plan as Exhibit “C”.

In addition, before filing Exhibit “B”, the plaintiffs sought and obtained the order of the trial Judge on 25/6/82 to file their statement of claim and survey plan and they were deemed properly filed.

Both the High Court and the Court of Appeal found that the plaintiffs filed survey plans to show the area for which Chief Elema was granted absolute title by the Oba of Benin. The learned trial Judge found as a fact that Chief Elema in addition to taking possession of the parcels of land granted to him, got them surveyed also. He also found that the statement of claim and the evidence referred to the portion of land verged blue in Exhibit “B”.

The court below held that the learned trial Judge was justified in holding that the plaintiffs sufficiently identified and established the identity of the land for which they claimed a declaration and that there were no contradictions whatsoever in the evidence of P.W.1, P.W.3 and the 3rd plaintiff.

I am not in any doubt that the plaintiffs proved the identity and the area of land in dispute. They did this by filing Exhibit “B” which showed the specific area claimed and the portion trespassed upon by the defendants. A copy of Exhibit “B” was served on the defendants along with the statement of claim. The purpose of serving them with the survey plan was to let them know the land claimed against them.

The defendants cannot in the face of the findings of the courts be

low claim that they were embarrassed in any way or handicapped in the preparation of their defence. There were before the court of trial both the property and litigation survey plans - Exhibits "B", ' and "C". One would therefore want to know what Exhibit "B" was if not a survey plan of the land in dispute. 5

The third issue is whether the court below was right in upholding the decision of the trial court to the effect that late Chief Felix Owen Elema had valid title at all material times to the land in dispute according to Bini Customary Law.

The learned counsel for the appellants referred to paragraph 18 of the plaintiffs/respondents Statement of Claim where they placed reliance on the provisions of the Boundary Dispute (Determination) Edict No.6 of 1977. He stated that this edict invalidated erroneous allotments made by specified Plot Allocation Committees and that the Allocation Committee for Ward A was not one of them. He therefore submitted that the allotment processed through Ward A Allotment Committee leading to the Oba's approval of title in favour of Chief Elema was erroneous; that Section 2(1) (c) of the said Edict could not save the case and that Chief Elema did not acquire title to the land. He cited the case of *Awoyeghe & or. v. Ogheide* (1988) INWLR (Pt.73) 695; (1988) 3 SCNJ (Pt.1) 90 at III where Edict No.6 of 1977 was judicially interpreted. It was further contended that Chief Elema's approved application for plot was not in compliance with Bini Customary Law. 10 15 20

It is obvious that the learned trial Judge did not base his judgment on Edict No.6 of 1977. He said:

*"there is a clear evidence from Richard Eriyo (P.W.1) and Chief Osuma of Benin (P.W.3) on the territorial jurisdiction of Ward A which was constituted by the Oba to cover area including Oko village land, for purposes of allocating land in the area ..... Among the signatories to that document was Osayande Evbuomwan, who was then the Ohonoko and head of the village. ....These facts coupled with the evidence of Eriyo and the Osuma of Benin show clearly that Oko village community was properly represented on the Committee that recommended the application of late Felix Owen Elema to the Oba of Benin for approval."* 25 30

The Court of Appeal agreed with the learned trial judge where the court said: 35

*"In the instant case, Chief Elema wanted large parcels of land in the Oko village area. At the relevant time, there was no Plot Allotment Committee established for the village area. He went to the village community and they inspected the land and found it to be "trouble free". The*

*application was then forwarded to the Ward A Plot Allotment Committee, which Committee for the purposes of the application co-opted members of the village community.”*

Whether the plaintiffs pleaded Edict No.6 of 1977 or not was irrelevant to their case having regard to the above findings. The said averment in my view was superfluous. The late Chief Elema channelled his application through the Ward Allotment Committee which delegated some of its members to inspect the land. They did so and found that it was “trouble free”. This exercise included the location and dimensions of the land involved. The Committee recommended favourably to the Oba of Benin who finally gave his approval. The processes followed by the late Chief Elema was strictly in accordance with Bini Customary Law. He therefore acquired a valid title to the land. See *Okeaya v. Aguehor* (1970) All NLR 1 (Reprint) and *Lt. Co! Finnih v./made* (1992) INWLR (Pt. 219) 511.

For the above reasons I am in agreement with my learned brother Adio, J.S.C. that this appeal should be dismissed. I accordingly dismiss it with N1,000.00 costs in favour of the plaintiffs.

#### ONU JSC

I have had the privilege to read before now the judgment of my learned brother Adio, J.S.C. just delivered. I agree with his reasoning and conclusions.

I wish to make a few comments, if only to highlight some points. The appellants were defendants to an action brought by the respondents as plaintiffs in the High Court of the defunct Bendel State, holden in Benin, wherein the latter claimed for a declaration of a specified parcel or plot of land in Benin, an order of perpetual injunction and N100,000.00 damages for trespass already committed in the said parcel of land and won. The appellants’ appeal to the Court of Appeal sitting in Benin also ended in respondents’ favour. Not still satisfied with the decision of the court below, the appellants have further appealed to this court where three issues were submitted at appellants’ instance (the respondents adopted appellants’ issues 1 and 3 but reframed issue 2 which in content overlapped appellants’) as follows:-

“1. *Whether the respondents were competent to sue in this case or in other words, whether they possessed locus standi or standing to sue.*

2. *Whether respondents established clearly the area and extent of the land put in dispute by them.* 3. *If the answer to issue 2 above is in the affirmative, whether the Court of Appeal was right in upholding the decision of the trial court to the effect that the late Chief Felix Owen Elema had valid*



*title at all material times to the land in dispute according to Benin Customary Law."*

It is the appellants' contention, firstly on issue 1, that the location of the land was not proved. On the totality of the evidence led through P.W.1, P.W.3 and the 3rd respondent, there was really no conflict. 5

This is because while in paragraph 26 of the Amended Statement of Claim, the land in dispute was described as being 'within Oke Village area' the testimony of P.W.1, Richard Ariye, lent support as follows:-

*"The area asked for Felix Elema was a large area so we all had to go there and see it. I know the land in dispute. It lies between Evbo Elema and Oke Village."* 10

The evidence of P.W.3 Chief Eguavon, was not in any way discordant but under cross-examination he admitted thus:

*"I cannot say that the land in dispute is between Evbo-Elema and Oke"*

G However, put under pressure he ventured the following answer: 15

*"I know P.W.1 I agree that the land in dispute is not along Oke Road but lies between Evbo-Elema and Oke Villages inside"*

From the evidence of these witness one could say with certainty the exact location of the land in dispute but 3rd plaintiff capped it all when he said the following in line with their joint (plaintiff) pleading thus: 20

*"I know Chief Felix Owen Elema". He is late, a traditional Chief, 20th Elema of Iyakogba. In his life time he acquired parcels of land. The one in dispute is one of them. This is situate in Award Within Oke village area." Benin. I know the land."*

On issue 1, the appellants' contention that the respondents had no standing to institute the action giving rise to this appeal because, based on Exhibit D - a deed by which the respondents as Administrators of their late father, Chief Felix Owen Elema, had allegedly divested themselves of their title to the land in dispute and raised in the court below, could not be sustained by them (appellants) and was rejected off hand by that court. The duty that lay on the appellants who asserted to show to whom the land reverted if as alleged by them neither 3rd respondent as secretary of the beneficiaries of the trustees of late Chief Elema's estate, nor the two other respondents (2nd and 3rd) together, was not discharged by them. See *Imana v. Robinson* (1979) 3-4 S.C.1 at page 9; *Odunukiwe v. Administrator- General of the East Central State* (1978) I.S.c. 25 at 31. 25 30 35

With regard to Exhibit 'C' which Musdapher, J.C.A. in his lead judgment in the court below described as a deed of reconveyance and executed by the 3rd respondent in favour of the respondents, it is pointed out, rightly in

my view, that the deed of reconveyance in question was not at any time

tendered as an exhibit. Having carefully examined the record of proceedings and the exhibit in question, I find that what was indeed tendered, admitted and marked Exhibit ‘C’ was a survey plan attached to the deed of reconveyance.

5 The deed of reconveyance itself was not tendered and admitted as an exhibit.

However, it must be borne in mind that with or without Exhibit ‘C’ the decision of the court below on Exhibit D did not divest the respondents of their rights over the land in dispute. What is more, Exhibit ‘C’ was tendered by the Registrar of Deeds as a certified true copy and the appellants did not  
10 object to its being so received in the trial court. What recital 4 of Exhibit D and the Habendum state is, manifestly clear to arouse any doubt. They state:-

“4 .....*The personal representatives have agreed to convey the said property to Friday Elema who is secretary to the Estate to hold the same on behalf of the personal Representatives.*” “*HABENDUM To hold the same*  
15 *unto the secretary.*”

It is therefore clear from Exhibit D that the 3rd respondent held the land in his capacity as secretary to the, administrators who were the plaintiffs in the case. The respondents as owners and principals on whose behalf the 3rd respondent held the land, were perfectly entitled to sue since he was  
20 acting or holding the property only as agent of the administrators. See Longton v. Waite (1868) L.R. EQ 165 cited with approval in Ahusomwan v Mercantile Bank (1987) 3 N.W.L.R. (Pt.60) 196 at 209; Thomas v. Oh!foso (1986) 1 N.W.L.R. (Pt.18) 669 and Ugo v. Obiekwe (1989) 1 N.W.L.R. (Pt.99) 566.

25 Moreover, the evidence of 3rd respondent did not for a moment, suggest that the respondents acting in concert, divested themselves of the said land. Said he in evidence on the point:

“*In 1974 there was a transaction between the administrators and me and was documented by S.O. Uwaifo as he then was. It relates to this land.*  
30 *The whole land was conveyed to me as secretary for purposes of registration and effective administration. It was registered as No.1 5 page 15 in volume 229 of Land Registry at Benin, Tendered. No objection.*”

One may indeed ask, on whom has the hind divested if not the respondents as administrators of the deceased Chief Felix Owen Elema’s estate?

35 The matter in contention regarding Exhibit ‘C’ was laid to rest, at least for the point in time of the learned trial Judge’s delivery of his judgment, or clarified beyond doubt when he said:

“*That being the position it would be uncalled for to argue the question of locus standi to say that the document with which the 2nd plaintiff re-*

*assigned the estate to the administrators was not tendered. In fact, the document is in court and it is the conveyance that embodied plan No. OM 1690 that was marked Exhibit 'C'.*

*Commenting on the ground of appeal challenging the above conclusion, the Court of Appeal said of Exhibit 'C':*

*"In any event, there was contained in Exhibit 'C', a deed reconveying the land in dispute to the respondents. This ground of appeal lacks merit. It is also rejected by me."*

The cases of Ekpenyong v. Essiet (1975) 3 S.C. 107 and Saidu v. State (1982) 4 S.C. 41 cited by the appellants in their brief for the proposition that where a trial court draws a wrong inference or states that evidence was adduced which never was, it is erroneous and amounts to wrong assumption that would be fatal to a case is, in my respectful view, of no avail in the instant case.

Issue 1 is accordingly answered in the affirmative. Issue 2 asks whether the respondents established clearly the area and extent of the land put in dispute by them. My answer to the two-pronged argument on this issue, to wit: that the respondents failed to show clearly the area and extent of land to which their claim related and that the respondents failed to file an accurate plan of the land notwithstanding their averment and undertaking vide paragraph 26(a) of their Statement of Claim is, in my view, that both are misconceived. Nor are the cases cited by them to buttress their contention apposite.

Now, in paragraph 13 of the statement of claim, the respondents pleaded Survey Plan NO.OSA/1394/B282 delineated and verged blue denoting the area trespassed upon by the appellants. Apart from the several denials of that paragraph F the appellants merely pleaded in paragraph 12 in the Statement of Defence thus:

*"The defendants state and will establish and contend at the trial that if Ward 'A' ever recommended for and allocated land to the late Chief Felix Owen Elema in Oko Village Area, the subsequent approval of the Oba of Benin did not and could not relate to the land in dispute. The defendants will establish at the trial that the area of land in Survey Plan NO.OSA/1394/B2~2 dated 17/4/82 pleaded in paragraph 13 of the Statement of Claim is not and cannot be the same in all respects with the land referred to in paragraphs 4, 5, 6 and 7 of the Statement of Claim and the land referred to in the approvals and the registered conveyance pleaded in paragraph II (a),*

(b) (c) and (d) of the statement of claim.”

By this general pleading by the appellants, they had not put in issue the area and extent of the land in dispute. However, the appellants contended that by their paragraph 26(a) of the statement of claim the respondents undertook to render a survey plan but that they filed no plan showing the exact area and extent of the land in dispute or features thereon in *Alhaji Olakunle Elias v. Chief Timothy Omo-hare* (1982) 5 S.C. 25.

That the respondents did indeed file a survey plan and thus fulfilled their undertaking and that the case of *Elias v. Omo- Bare* (supra) is inapposite and inapplicable may first be gleaned from page 7 of the appellants’ Brief wherein they assert:

*“They also pleaded Survey Plan NO.OSA/1394/B282 dated 17/4/82 which was filed and tendered as Exhibit B in this case.”*

It is therefore strange that the appellants having made the above concession should turn round to contend that no litigation plan was filed.

Secondly, the respondents tendered Exhibits C and D in support of the approvals granted by the Oba.

Thirdly, they called P.W.4, the surveyor who produced and tendered litigation plan - Exhibit B. Besides, 3rd respondent testified that P.W.4 surveyed the land in dispute for them and identified Exhibit B. When subjected to cross-examination by the appellants he said:

*“Before the surveyor commenced work, we gave him a copy of our existing plan. It is plan No.OM1690 dated 26th July, 1965.....I showed the surveyor at the time he was going to carry out the litigation survey Exhibit B. The features I have indicated are on the plan -Exhibit B-”*

Following 3rd respondent hot on the heels P.WA testified inter alia that:

*“The area in dispute is marked blue. The plaintiffs showed me the area.”*

By their evidence and that of P.W.4 as well as Exhibit B, the respondents fully, in my view, discharged the onus that lay on them. The appellants who were served with Exhibit B cannot be heard to complain in this court of embarrassment in not preparing a proper defence. This is the moreso when they raised no such points as this in two courts below. While therefore conceding that a litigation plan - Exhibit B was served on them, the appellants still would want to suggest that they want another plan. This is to say the least, an insistence on technicality which this court discourages in place of substantial justice which ought to triumph. See *Chinyere Stitch v. A.-G. of the Federation* (1986) 5 NWLR (Pt.46) 1007 and *Nneji v. Chukwu* (1988) 3 N.W.L.R. (Pt.81) 184 at 202.

Further, that the respondents did not commit a breach of their undertaking to file a plan can be seen in their application to amend their claim which was

granted accordingly, thus radically altering the entire nature of the respon

dents' declaration they sought. For instance, paragraph 26(a) of the Statement of Claim talks of a litigation plan which the respondents later tendered as Exhibit 'B' vide paragraph 13 of the Statement of Claim.

On the attack on the evidence of the respondents over alleged con- 5  
tradictory evidence, I take the firm view that there was no such contradictions.  
The trial court that had the advantage of seeing and hearing as well as observ-  
ing the demeanour of P.W.1, P.W.2 and P.W.3, had the primary responsibility  
of evaluating their evidence. The respondents' pleading in paragraph 26(a) of  
the statement of claim was denied by the appellants in their paragraph 17 of 10  
the Statement of Defence and later brought out clearly that the land over  
which declaration was being sought by the respondents, is in respect of land  
in Oko Village Area which is delineated in Plan No. OM 1690 attached to  
Exhibits DandC. The evidence of P.W.1, P.W.3 and 3rd respondent earlier referred  
to elsewhere in this judgment concretised their evidence that the land in dis- 15  
pute is situate in Ward 'A' within Oko village area, Benin. On the evidence in  
that regard, the trial court held:

*"I accept the fact that land of the plaintiffs comprises three parcels which  
are now contained in the composite plan Exhibits E1 and B. The portion now  
in dispute and touching on Oko village area is marked blue on Exhibit 'B' 20*  
The court below considered the appellants' contention to the contrary and in  
rejecting it said:

*".....the learned trial Judge had found sufficient proof as to the iden-  
tity of the land in dispute. I have also examined the evidence of P.W.1, P.W.3  
and the third respondent and related the same to the pleadings and, in my 25*  
*view, there are no contradictions whatever"*

The contention that the identity of the land was not established is untenable. The court below in affirming the decision of the trial court on this vital issue had this to say:

*"The fact that both the appellants and the respondents claimed 30*  
*compensation from the Federal Government on the portion 22 land in dis-*  
*pute upon which the Federal Prisons was built, clearly show to me that there*  
*was no dispute whatever as to the identity of the land in dispute. See Exhib-*  
*its F, G I and G2. In sum I am of the view that the learned trial Judge was 35*  
*justified in holding that the respondents had sufficiently identified and es-*  
*tablished the identity of the land for which they claimed declaration of title*  
*and consequently, it is dismissed by me."*

See Awote v. Owodunni (No.2) (1987) 2 N.W.L.R. (Pt.57) 367; Kwadzo v. Adjei (1944) 10 WACA 274; Balogun v. Makanjuola (1989) 3 NWLR (Pt.108) 192.,

Having answered Issues I & 2 positively the answer to Issue 3 must perforce be in the affirmative too.

The contention that late Chief Elema had no valid title to the land in dispute in the light of all the points considered in the two preceeding issues is also unjustified and untenable. The law called the Boundary Dispute (Determination) Edict No.6 of 1977 ingeniously introduced by the learned Senior Advocate for the appellants is not strictly applicable to the instant case as its judgment was not founded on it. The case, as indeed was prosecuted was founded on Bini Customary Land Tenure Law vide paragraphs 9, 23 and 24 of the respondents' statement of claim. In paragraph 2 of the Statement of Defence, the appellants admitted that much when they pleaded:

*"The defendants admit paragraphs 9, 16, 20, 23 and 24 of the statement of claim."*

The respondents' root of title was pleaded in paragraphs 4 and 6 of their statement of claim. Curiously, however, the appellants denied same on page 2 of their Brief having before then also denied same in their paragraphs 9, 10, 11, 12, 15 and 16 of the Statement of Defence. All this showed inconsistency on the part of the appellants.

Under Bini Customary law, where as in the case in hand, there are competing claims of title to land, the question to be asked is who has made a good title and not who first obtained the Oba's approval. See *Arase v. Arase* (1981) 5 S.C. 33. Under the same Customary Law, a native or native communities are not legal owners of land and lands cannot be "owned" until and unless there is a grant from Oba of Benin. See *Bello v. Eweka* (1981) 1 S.C. 101. In the instant case, the appellants whose alleged grant came later in time to respondents', are members of the Oko village area, some of whose members were party to the decision in ensuring that late Chief Felix Owen Elema was allocated the piece of land before the late Chief sent his application to the Oba of Benin, and cannot be heard to resile therefrom. From the preponderance of evidence adduced by the respondents before the trial court and which the court below affirmed, I hold that the fundamental principles governing acquisition of land under Bini Native Law and Custom were fully satisfied by the respondents. Such principles were enunciated in the older cases of *Okeaya v. Aguehor* (1970) 1 All NLR 1 at pages 8-10; *Atiti Gold v. Ososeren* (1970) 1 All NLR 125; *Ogiomien v. Ogiomien* (1967) NMLR 245; the fairly recent ones of *Aikhonhore v. Omoregie* (1976) 12 S.C.11 at 28 and *Aigbe v. Edokpolo* (1977) 2 S.C. 1 and finally the more recent ones of *Bello v. Eweko* (1981) 1 S.C. 101; *Arase v. Arase* (supra) *Awoyegbe v. Ogheide* (1988) 1 N.W.L.R. (Pt.73) 695; *Agbonifo v. Aiwereoho* (1988) 1 N.W.L.R. (Pt.70) 325 and *Finnih Imade* (1992) 1

N.W.L.R. (Pt.219) 511.

On whether Oko village area falls within Ward 'A' Plot Allotment Committee via Ward 36A in Benin and whether the Oba of Benin was misled into approving the allotment of land to late Chief Felix Owen Elema, that this cannot be true is to be gleaned from the evidence of P.W.1 and P.W.3 and Exhibits A-A3, the latter which confirm how late Elema's application went to the committee through elders of Oko village and who themselves were represented on the committee. The trial Judge's findings of fact regarding this are explicit on the matter and the appellants' evidence to the contrary was punctured for the sheer reason that in 1963 Ward 36 could not have been in existence as they sought to show. The court below specifically came to the view that the appellants were unable to show that the Oba of Benin was misled. This is the more so because the Boundary Dispute (Determination) Edict, 1977 replacing an earlier Edict of similar purport of 1974 that established new wards like 36A, in section 2(1) provides:

*"2.(1) In respect of the boundary dispute between Wards 36A/37B and Wards 1711 and A1 all at or near Benin City in Oredo Local Government area (in what was formerly Benin West Division), it is hereby declared as follows:*

*(h) Wards 3711 and 36A have no common boundary with Ward 1711*

*(i) The moat shall be boundary between Ward A1 and 36A"*

(italics mine)

As there was abundant evidence before the learned trial Judge that late Chief Elema submitted an application (Exhibits A and A1) to Ward "A" Allotment Committee for the allocation of land which included the land in dispute; that pursuant to the application some members of the Committee of Ward 'A' inspected the land to ascertain the dimension of the land to see if it was free of encumbrances; that the committee so satisfied itself and thereupon recommended the application to the Oba of Benin, the later who approved the application of the late Chief Elema, the decision arrived at by the learned trial Judge and affirmed by the court below, is in my view, unimpeachable.

I see no reason to disturb these two concurrent findings of facts arrived at after a most painstaking, thorough and comprehensive consideration. I will therefore decline to interfere or reopen same as indeed this court considered the need for or otherwise in a long line of decided cases, some of which are: Mogo Chinwendu & Ors. v. Mhanegho Mhamali (1980) 3/4 S.C. 31 at 53; Ibodo & Ors I'. Enarojla & Ors. (1980) 5/7 S.C. 42 Ogiesoha Otuhu v. B.A.A. Guobadia (1984) 10 S.C. 130; Lamai v. Orbih (1980) 5/7 S.C. 28; and Ezewani v. Onwordi (1986) 4 N.W.L.R. (Pt.33) 27. My answer to issue 2 is therefore in the

affirmative. For these and the fuller reasons given by my learned brother, Adio J.S.C. with which I agree, I dismiss this appeal. I make the same consequential orders inclusive of those as to costs as in the lead judgment.

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**IGUHJSC**

I have had the advantage of reading, in draft, the lead judgment of my learned brother, Adio, J.S.C. just delivered and I agree with him that this appeal lacks substance and ought to be dismissed. The appeal arose from the decision of the Court of Appeal, Benin Division which affirmed the judgment  
 10 of the Benin High Court delivered on the 19th December, 1985 in Suit No. B/70/81 in favour of the plaintiffs. By this judgment the plaintiffs were granted as against the defendants as follows-

(1) Declaration that the land verged blue in litigation plan Exhibit was in the possession of the plaintiffs who had inherited it from their late father as  
 15 the administrators of his estate and that the demarcation of building plots and allocation of building rights by the defendants on the land are null and void and of no consequence;

(2) Injunction restraining the defendants, their servants and/or agents from further entering upon any part of the said parcel of land to demarcate  
 20 building plots or allocate same to themselves or to any other person;

(3) N 1000.00 damages for trespass against the defendants jointly and severally.

The defendants being dissatisfied with this judgment appealed to the Court of Appeal, Benin Division, which on the 11th July, 1989 unani-  
 25 mously affirmed the decision of the High Court. The defendants, hereinafter called the appellants, have now appealed to this court.

The facts of this case are fully set out in the said judgment of my learned brother Adio J.S.C. and no useful purpose will be served by my repeat-  
 ing them all over again.

30      The appellants in their brief of argument identified three issues for the determination of this court. These are-

“(i) *Whether the respondents were competent to sue in this case or, in other words, whether they possessed locus standi or standing to sue.*

(ii) *Whether the respondents established clearly the area and ex-  
 35 tent of the land put in dispute by them.*

(iii) *Whether, if the answer to issue II was in the affirmative, the Court of Appeal was right in upholding the decision of the trial court to the effect that late Chief Felix Owen Elema had valid title at all material times to*



*the land in dispute according to Bini Customary Law.”*

It would appear from the brief of the plaintiffs, hereinafter called the respondents, that they agree with the issues formulated by the appellants as calling for the determination of this court. I will briefly examine these issues. 5

On the issue of whether the respondents were competent to institute this action, it is the appellants contention that the respondents having divested themselves of all interest in the land in dispute by granting the same to the 3rd respondent per Exhibit D cannot now have locus standi to institute 10 this action. Exhibit D is an instrument transferring the respondents’ title to the land in dispute to the 3rd respondent.

Paragraph 4 of Exhibit D clearly shows that the alleged conveyance was made to the 3rd respondent not to himself personally or beneficially but was to hold the same on behalf of the personal representatives of the estate of 15 the late Chief Elema who are the plaintiffs/respondents in this appeal. The trial court so found and this was affirmed by the court below per the lead judgment of Musdapher, JCA. as follows:-

*“In my view, the capacity of the respondents to sue as the administrators of the estate of their father of which they were the beneficiaries was 20 beyond any doubt. Even if by Exhibit D, the estate was conveyed to the 3rd respondent, it was conveyed to him as the secretary of the trustees and the beneficiaries and not to him personally or beneficially. The recital 4 of Exhibit D and the Habendum read thus:-*

*“4. The personal representatives have agreed to convey the said 25 property to Friday Elema who is the secretary of the estate to hold the same on behalf of the personal representatives.” Habendum” To hold the same unto the secretary.”*

Exhibit D did not clearly or in any manner divest the respondents from their control or ownership of the land in dispute. It merely for the case of 30 administrative purposes allowed the third respondent, as the secretary to deal with the land for and on behalf of all the respondents. The third respondent testified to this effect, he said in part of his testimony:-

*“The whole land was conveyed to me as secretary for purposes of registration and effective administration.”*

In any event, there was contained in Exhibit C, a deed reconveying the land in dispute to the respondents. This ground of appeal lacks merit, it is also rejected by me.”

5 The true construction of Exhibit D shows clearly that the respondents did not intend to and did not in fact divest themselves of the property in issue. It is plain to me that by executing Exhibit D in favour of the 3rd respondent, he was to hold the deceased’s estate on behalf of the respondents who  
10 remain the personal representatives or administrators of the estate of the deceased. I therefore find myself unable to accept that by Exhibit D, the plaintiffs/respondents who are the Administrators of the estate of the late Chief Elema divested themselves of any interest in the land in dispute. With or  
15 without the reconveyance, Exhibit C, the plaintiffs had locus standi and were perfectly entitled to maintain this action. I should also add that in the face of the concurrent findings of the trial court and the court below on this point, the answer to the first issue must be in the affirmative.

The second issue appears to me to revolve almost entirely on technical justice, unsupported by and as against substantial justice. It seems to me  
20 necessary once again to reiterate the fact that our courts have deliberately shifted away from the narrow technical approach to justice which characterised some earlier decisions of courts and, instead, now pursue the course of substantial justice. See Consortium M.C. v. N.E.P.A. (1992) 6 NWLR. (Pt.246) 132 at 142, Fari Khawam v. Foud Micheal Elias (1960) 5 F.S.C. 224; (1960) SCNLR  
25 516 Okonjo v. Dr Odje (1985) 10 S.C. 267. Falobi v. Falobi (1976) 1 NMLR. 169 and Bello v. A.-G. Oyo state (1986) 5 NWLR. (Pt.45) 828. The area of land claimed by the respondents is clearly shown in their litigation plan Exhibit B which was filed in court, served on the appellants and tendered without any objection at the hearing of the case. The appellants’ quarrel is that the respon-  
30 dents also pleaded a second plan which they failed to tender.  
My view is that it would not matter whether or not the respondents pleaded a

second plan and failed to tender it so long as they were able to establish their

case without the plan pleaded but not tendered. On this issue, the learned trial C Judge observed as follows:-

*"I accept the fact that the land of the plaintiffs comprises three parcels which are now contained in the composite plans Exhibits 'C' and 'B'. The portion now in dispute and touching on Oko village area is marked blue on Exhibit 'B'"*

The court below affirmed these findings of the trial court when it observed thus:-

*"Thus, the learned trial Judge had found sufficient proof as to the identity of the land in dispute. I have also examined the evidence of P.W.1, P.W.3 and the third respondent and related the same of the pleadings and, in my view, there are no contradictions whatever. The fact that both the appellants and the respondents claimed compensation from the Federal Government on the portions of the land in dispute upon which the Federal prisons was built, clearly show to me that there was no dispute whatever as to the identity of the land in dispute. See Exhibits F, G1 and G2. In sum I am of the view, that the learned trial Judge was justified in holding that the respondents had sufficiently identified and established the identity of the land for which they claimed declaration of title and consequently, I hold that ground of appeal No. 12 is not made out, it is dismissed by me."*

In the circumstances, I agree with the submission of learned respondents' counsel that the contention that the identity of the land in dispute was not established is totally misconceived and untenable. Indeed Exhibit B which is the litigation plan of the land in dispute was duly pleaded and tendered in evidence. It clearly shows the acts of trespass complained of by the respondents. The declaration granted was in relation to the parcel of land as delineated in the said plan Exhibit B. In the circumstance it does not seem to me that it can be seriously argued that the area and extent of the land in dispute was not established in the case. In my view the answer to the second issue must be in the affirmative.

On the third final issue, it is satisfactorily established that the land in dispute was granted to the late Chief Elema by the appropriate vendors before

it went on to the Oba of Benin who approved the grant in accordance with Bini

Customary law. In this regard, the trial court held thus:-

“It must be recognised at this stage that the fact that the 1st defendant disowns his signature on Exhibit’ A I’ is of no avail. The document is  
 5 extent (sic) and must be deemed to have been properly executed and presumed valid. Among the signatories to that document was Osayande Evbuomwan who was then the Ohenoko and head of the village. The 1st  
 10 defendant has now replaced him as the Ohenoko. These facts coupled with the evidence of Eriyo and the Osuma of Benin show clearly that Oko village community was properly represented on the committee that recommended  
 the application of late Felix Owen Elema to the Oba of Benin for approval. I accept the fact that the land of the plaintiffs comprises three parcels which  
 are now contained in the composite plans Exhibits ‘C’ and ‘B’. The portion  
 now in dispute and touching on Oko village area is marked blue on Exhibit  
 15 ‘B’..... That the plaintiffs have a good customary title to the land by virtue of Exhibit A1 is not debatable.....”

Again the court below affirmed the above findings when it observed as follows:-

In the instant case, Chief Elema wanted large parcels of land in the Oko village area. At the relevant time, there was no plot allotment committee established for the village area. He went to the village community and  
 20 they inspected the land and found it to be “trouble free,” the application was then forwarded to the Ward A Plot Allotment Committee, which committee for the purposes of the application coopted members of the village community. After the necessary further inspection by the committee, recommen-  
 25 dation was forwarded to the Oba of Benin who approved the grant. Exhibit “A1” is the application of Chief Elema, it is short and I reproduce it hereunder.

Chief Felix B. Elema,  
 Mile 2, Ogba Farm Rd,  
 30 Benin City.  
 5/10/63.  
 Thro: The Ohenoko and Elders of  
 Oko village.

*Thro: Plot Allotment Committee,  
Ward 'A' Benin City.*

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*To: His Highness  
Akenzua II. C.M.G  
Oba of Benin.*

*Ghara Omo,*

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**APPLICATION FOR OUTRIGHT GRANT OF LAND**

*I humbly beg to apply for an outright and absolute grant of piece of  
land within Oko village area measuring 5000' x 556' x 4786' x 3130' x 3000'  
with beacon Nos. 557-715-309-257-665 for industrial purposes.*

*I shall be most grateful for early approval.*

15

*I have the honour to be sir,*

*Your Obedient Servant,  
(SGD) F.O. Elema.*

20

*The Ward A plot Allotment Committee recommended the grant after  
the representatives of the appellants have consented as follows:"*

*We, the Ohenoko and Elders of Oko village hereby consent and  
recommend the approval of the above piece and parcel of land to the appli-  
cant."*

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*Whereupon the Oba of Benin made the grant. The appellants did  
not deny that the Oba of Benin made the grant of the land in dispute to Chief  
Elema their complaint here was that instead of Chief Elema going directly to  
the appropriate Ward Allotment Committee, he went first to the elders of the  
village and second to the Ward concerned. I see nothing wrong with the  
procedure adopted. The cardinal issue was whether the Oba of Benin had  
granted the land in dispute to Chief Elema. If the Oba has granted the land  
and that the appellants were not claiming grant to them, by the Oba of  
Benin, Chief Elema had acquired a valid customary title to the land in*

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In this connection, it has to be noted that by paragraphs 15 and 16 of the amended Statement of Defence, the appellants admitted that the Oba did approve the allotment to late Chief Elema but contended that the said Oba was misled. Before the trial court, the appellants did not attempt to lead any evidence on this aspect of their defence that the Oba was misled in giving the necessary approval as alleged. It is my view that the appellants having failed to establish that the Oba was misled in giving his approval to the late Chief Elema's grant, both the trial court and the court below were right to resolve the issue against them. Accordingly I have no difficulty in resolving issue number three in the affirmative.

I conclude by saying that the finding of the trial court as confirmed by the court below to the effect that the respondents' late father acquired valid title to the land in dispute is fully supported by credible evidence. No reason has been suggested to warrant our interference with this finding of either the trial court or the court below. It is clear that this is a case where concurrent findings of the trial court and the court below should not be interfered with as they are fully supported by evidence and there is no substantial error on the face of the proceedings to show that they are perverse or patently erroneous or that a miscarriage of justice will result if they are allowed to stand. See *Chinwendu v. Mhamali* (1980) 3-4 S.C. 31 at 75 *Lamai v. Orbih* (1980) 5-7 S.C. 28, *Ibodo v. Enarofia* (1980) 5-7 S.C. 42, *Woluchem v. Gudi* (1981) 5 S.C. 291 at 326, *Kale v. Coker* (1982) 12 S.C. 252, *Lokoyi v. Olojo* (1983) 2 SCNLR 127 at 131 and *Igwegu v. Ezeugo* (1992) 6 NWLR (Pt.249) 561 at 585.

It is for these and the more elaborate reasons contained in lead judgment of my learned brother Adio, J .S.C that I too hereby dismiss this appeal. I abide by the consequential orders including those as to costs therein made.

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