

SUPREME COURT OF NIGERIA
29TH APRIL, 1994 SC 158/1990
CORAM:- S. M. A. BELGORE, A. B. WALI,
I. L. KUTIGI, U. MOHAMMED, A. I. IGUH, JJSC.

OBA GORIOLA OSENI APPELLANTS
(ONIBA OF IBA) & 14 OTHERS
(For themselves and on
behalf of the people of Iba)

AND

YAKUBU DAWODU (BALE OF RESPONDENTS
ELOGBO-ELEGBA) & 2 OTHERS
(For themselves and on behalf of
the Ilogbo-Elegba Community)

APPEALS - Error of Court of Appeal - In holding that objection to admissibility of document ought to be pleaded - Where the error occasioned no miscarriage of justice - Whether judgment will be interfered with.

CONSTITUTIONAL LAW - Fair hearing S.3 3(1) of the constitution - Allegation that Court of Appeal denied fair hearing to appellants - Held to be unfounded.

EVIDENCE - Admissibility of documents - A document that is inadmissible in law - Where no objection was raised against admitting it - Whether the document will be admissible.

EVIDENCE - Admissibility of documents - Appeals - If a document is wrongfully received in evidence - Without counsel's objection at the lower court - Whether appellate court has inherent jurisdiction to exclude the document.

LAND LAW - Trespass - Existence of previous consent judgment - Subsequent entrance by Defendants on plaintiffs' land - Concurrent lower courts' finding of trespass - Whether to be upheld.

LEGISLATION - Survey Plans - Inadmissibility of a plan not countersigned by the surveyor general save good cause is shown - S.3 of the Survey Law of

52 **OSENI V. DAWODU (1994) 7 KLR 51; (1994) 4 NWLR**
Lagos. - Whether there is good cause for admitting non counter-signed plan tied to a previous court proceeding.

LEGISLATION - Counter-signing of survey plans - By the surveyor general under Lagos State Laws - In order to be admissible - Whether abrogated by State Edict or Federal Decree prior to the Edict.

LEGISLATION - Survey plans - Admissibility - State Legislation that surveyor general must counter sign plans for them to be admissible - plans made after the abrogation of the legislation - whether admissible.

PLEADINGS - Objection to the admissibility of a document - Whether the objection must be pleaded - In order to be sustained.

PLEADINGS - Improper traverse - Admission - Insufficient plea that defendant is not in a position to admit or deny allegation - Whether tantamount to an admission.

PLEADINGS - Admission - Averments in the statement of claim - Where admitted in the statement of defence - Whether further proof of the averment will be needed.

PRACTICE & PROCEDURE - Res judicata - Land dispute - Previous consent Judgment with attached survey plan - Whether rightly held by lower courts - To constitute res judicata.

FACTS

In 1961, the Plaintiffs/Respondents met with the Defendants/Appellants and agreed on boundaries inter se. By 1972, the Appellants trespass caused the Respondents to sue which said action brought about a consent judgment in 1977, whereby the land was divided into two parts, based on a survey plan (Exh. D) attached to the consent judgment. The two parties kept to their respective boundaries until 1980 when appellants' people crossed their boundary and broke down the houses of some members of the Respondents' community. Relying on the consent judgment, the Respondents claimed N5,000.00 damages for trespass and perpetual injunction against the Appellants before the Lagos High Court. In resisting the Respondents' claims, the appellants admitting that Exhibit D forms the basis for the compromise in the consent judgment sought to avoid its binding effect, and counter-claimed for other reliefs against the Respondents.

The trial court entered judgment for the Respondents granting

N500.00 damages for trespass and perpetual injunction. Appellants' appeal to the Court of Appeal was dismissed Appellants have further appealed to the Supreme Court to determine inter alia, whether objection to the admissibility of a document ought to be pleaded and whether the Respondents proved their claims to trespass. Appellants' submitted that certain survey plans admitted as Exhibits were not admissible since they were not counter-signed by the Surveyor-General of Lagos State.

HELD (unanimously dismissing the appeal)

1. An objection to the admissibility of a document is hardly raised by way of pleadings, and the Court of Appeal was wrong in law to rule that objection to the admissibility of a document must, to succeed, be pleaded (P.61 L 13)
2. Neither a trial court nor the parties have the power to admit without objection, a document that is in no circumstances admissible in law. Indeed if a document is wrongfully received in evidence an appellate court has an inherent jurisdiction to exclude it although counsel at the lower court did not object to its going in. The Court of Appeal therefore, erred in law when it upheld the admissibility of Exhibits A to E on the ground that no objection had been raised against them before the trial court. (P. 61 L 27)
3. As far back as in 1974, the provision for the Surveyor-General to counter-sign plans before they shall be admitted in evidence (s.3(1)(6) of the Survey Law of Lagos State 1973) had been dispensed with throughout the Federation by Decree No. 34 of 1994, and not by Lagos State Survey Edict No. 8 of 1984. This is so as the superiority of a Decree or an Act of the National Assembly over an Edict or a State legislation is beyond dispute (P 64 L 7)
4. As the plans (Exhibits A, B, C and H) were variously made in 1982 and 1983 well after the provisions as to the counter-signature of Surveyor-General on plans had been abrogated in 1974, they are admissible in law as held by the trial court and rightly upheld by the Court of Appeal on grounds that were partially erroneous on grounds of law. (P. 65 L 21)
5. The judgment of Court in suit No. LD/631/72 together with the survey plan (Exh. D) still operates and was rightly pleaded by the Respondents and upheld by the two courts below as constituting res judicata against the Appellants. (P.66L1 & R74L11)

6. Exhibit D (Survey plan) used in a previous court proceeding, the judgment in that suit having been tied thereto and the document being a certified true copy of an official public record, there is good cause for its admissibility without the counter-signature of the Surveyor-General. The said Exhibit D. having satisfied the provisions of S. 108(iii) of the Evidence Law is admissible
5 under S. 111 of the same Law (P. 67 L 2)

7. Although the Court of Appeal was in error by holding that an objection to the admissibility of a document ought to be pleaded before such an objection may lawfully be sustained by the trial court, this error occasioned no miscarriage of justice in its final judgment and cannot be the basis for interfering with the otherwise faultless decision of that court (P. 67 L 15)
10

8. The Court of Appeal afforded the parties the fullest opportunity in the exercise of their respective rights to full hearing. It is erroneous and a misconception of what transpired before the court below for the Appellants to suggest that their constitutional right to fair hearing was denied contrary to S.33(1) of the Constitution (P. 68 L 27)
15

9. The rule of pleadings is that there must be a proper traverse in order to raise an issue of fact. A defendant's plea that he is not in a position to admit or deny a particular allegation and/or that he will at the trial put plaintiff to the strictest proof is not sufficient. Paragraph 1 of the Respondents' amended statement of claim was therefore, not successfully traversed and on the authorities must be deemed as admitted. (P. 70 L 1)
20

10. From the pleadings, the Respondent's averments to the effect that their action was in a representative capacity, that they are owners of the land in dispute coupled with some other averments, being issues of facts which Appellants admitted in their Statement of Defence needed no further proof by the Respondents The Appellants are therefore estopped by their admissions from denying the Respondents locus standi in the case or the capacity in which the said Respondents prosecuted the action. (P. 70 LI 2)
25
30

11. On the issue of trespass, the holding by the trial Court that the Appellants trespassed on the Respondent's land which was sustained by the Court of Appeal, being fully supported by abundant evidence cannot be disagreed with (P. 74 L 26)
35

NOTABLE POINTS OF INTEREST

IGUHJSC

1. *Whether every error will result in the appeal being allowed*

It is not every mistake or error in a Judgment that will result in the appeal being allowed. It is only when the error is substantial and has occasioned a miscarriage of Justice that the appellate court is bound to interfere. (P. 62 L5)

2. *Admissibility of survey plans not countersigned by Surveyor General*

"The expression used in these enactments is that such uncounter-signed plans are not admissible in any court of law "save for good cause shown to the court." This seems to connote that such a survey plan is not by the mere fact of the defect therein as a result of the lack of the required counter-signature rendered totally inadmissible. In my view, and this is justified by the authorities, such an uncounter-signed plan is admissible in evidence in any court of law if good cause is shown to the court for doing so." (P.66 L 13)

3. *Facts admitted in pleadings need not be proved*

The first point that must be made is that it is trite law that parties are bound by their pleadings. A fact which is admitted by the defendant in his pleadings needs not be proved any more by the plaintiff but should in law be regarded as established at the trial. (P. 69 L 27)

4. *Representative Capacity - can be deduced from the manner a case was fought*

"There is finally the incontrovertible fact that the case for the respondents was fully made out both from their pleadings and evidence before the trial court in a representative capacity. Once the pleadings and evidence establish conclusively a representative capacity and that a case has been fought throughout in that capacity, the trial court will be entitled to enter judgment for or against the party in that capacity, even if amendment to reflect that capacity had not been applied for or obtained." (P. 71 L 13)

BELGOREJSC

5. *Essence of pleadings - Admissibility of a document*

The essence of pleadings is no longer strange as it has been with us for long, leadings are to contain facts, and facts only, upon which a party relies for his case. Once the facts are pleaded, the evidence must be led to prove those of them not admitted and then to apply the law. It is not the practice to plead evidence by which a fact will be proved or to plead the law to support that

fact. Admissibility of a document is a matter of law, and once the document is pleaded its admissibility is not required in pleading.” (P. 75 L 24)

REPRESENTATION:

M. A. Apampa Esq. with Tunji Orisalade Esq. for the Appellants.

5 M. A. Bashua Esq. for the Respondents

CASES REFERRED TO

Idowu Alase & Ors.v. Sanya Olori Ilu & Ors. (1965)
 Salau Jagun Okulade v. Abolade Agboola Alade (1976) 1 All N.L.R. (Pt. 1) 67
 10 Mallam Yaya v. Mogoga 12 W.A.C.A. 132 at 33
 Onajobi v. Olanipekun (1985) 4 S.C. (Pt. 2) 158 At 163
 Oje v. Babalola (1991) 6 N. W.L.R (Pt. 185) 267 At 282
 Azuetonma Ike v. Ugboaja (1993) 6 N. W.L.R. (Pt. 7) 282
 Anyanwu v. Mbara (1992) 5 N. W.L.R. (Pt. 242) 386 At 400 -
 15 Olubode v. Salami (1985) 2 N. W.L.R. (Pt. 7) 282
 Ukejianya v. Uchendu 13 W.A.C.A 45 At 46
 Lionel & Co. Limited v. Deutsche Bank (1919) A.C. 304
 Attorney-General of Ogun State v. Attorney-General of the Federation & Ors.
 (1982) 1-2 S.C. 13 At 40 - 41
 20 Attorney-General of Ontario v. Attorney-General of the Dominion of Canada
 (1984) AC 189
 Tenant v. Union Bank of Canada (1984) A.C. 31 At 47
 Grand Trunk Railway of Canada v. Attorney-General of Canada (1907) A,C, 65
 At 68
 25 Alamba v. Marizu & Ors. (1972) 2 E.C.S.L.R. (Pt. 2) 442
 Ojiako v. Ogueze (1962) All N.L.R. 58
 Kola James v. Chief S.O. Lanlehin (1985) 7 S.C. 404 At 436 and 444
 National Investment & Property Co. Ltd. v. Thompson Organisation Ltd. (1969)
 1 All N.L.R. 138 At 142
 30 Oredoyin v. Arowolo (1989) 4 N. W.L.R. (Pt. 14) 172
 Chief Okparaeke v. Obidike Egbuonu (1941) 7 W.A.C.A. 53 At 55
 Lewis & Peat (N.R.L.) Ltd. v. A.E. Akhimien (1976) 7 S.C. 157
 Nwadike v. Ibekwe (1987) 4 N. W.L.R. (Pt. 67) 718 At 741
 Lawal Owasho v. Dada (1984) 7 S.C. 149 At 183
 35 Taiwo Ayeni v. William Sowemimo (1982) 5 S.C. 60
 Dokubo v. Bob Manuel (1967) 1 All N.L.R. 113 At 121
 Mba Nta & Ors. v. Ede Nweke Anigbo & Anor. (1972) 5 S.C. 156 At 174-175
 Shelle v. Chief Asajon (1957) 2 F.S.C. 68

Mba Orié & Anor. v. Okpan Uba & Anor. (1976) 9-10 S.C. 123 At 133

Onwunalu Ndidi & Anor. v. Osademe (1971) 1 All N.L.R. 14 At 16

England v. Palmer 14 W. A.C. A. 659 At 661

Olugbenro v. Ajagunbade III (1990) 3 N.W.L.R. (Pt. 136) 37

Adebajo v. Brown (1990) 3 N. W.L.R. (Pt. 141) 661

Alhaji Are v. Raji Ipaye (1986) 3 N.W.L.R. (Pt. 29) 416

5

STATUTES REFERRED TO

Survey Law, Cap. 132 Laws of Lagos State 1973 s. 3

Survey Edict No. 8 of Lagos State, 1984

Survey (Amendment) Decree No. 34 of 1974 ss. 1, 2

Survey Act Cap. 194 Laws of the Federation 1958 s. 23 (1)

Evidence Law ss. 108(iii), 111

Constitution of the Federal Republic of Nigeria 1979 s. 33(1)

10

15

LEAD JUDGMENT BY IGUH, JSC

In the High Court of Lagos State presided over by Olusola Thomas, J., the respondents who were the plaintiffs, for themselves and on behalf of the Ilogbo Elegba Community instituted an action against the appellants who therein were the defendants, for themselves and on behalf of the people of Iba claiming as follows:-

“(i) *The sum of N5000.00 jointly and severally against the defendants as special and general damages for trespass committed by the defendants to the plaintiffs’ land in their possession situate, lying and being at Ilogbo-Elegba in the Bada Division of Lagos State of Nigeria and*

(ii) Perpetual injunction restraining the defendants, their agents, privies, servants and so on from repeating or continuing or committing further acts of trespass to the plaintiffs’ land in their possession.”

Pleadings were ordered in the suit and were duly filed and exchanged with the same amended and further amended by various court orders.

The appellants in their amended Statement of Defence counter-claimed against the respondents for the following reliefs:-

“(i) *An order setting aside the compromise settlement dated the 20th April, 1977 entered into between the 1st plaintiff in Suit No. LD/631/72 and the defendants therein (including the 3rd and 15th defendants in this suit No. LD/1496/81) on the ground pleaded hereinbefore;*

(ii) The sum of N25,000.00 being special and general damages

35

occasioned by acts of trespass on portions of defendants' land by the plaintiffs, their servants, agents and/or privies on diverse dates from 1977 to date;

(iii) An order of perpetual injunction restraining the plaintiffs, their servants, agents and/or privies from such further acts of trespass on the defendants' land as per the plan filed herein."

5 The respondents in turn filed their reply which, with the leave of court, was subsequently amended in answer to the appellants' amended Statement of Defence and counter-claim. The case accordingly proceeded to trial and the parties testified on their behalf and called witnesses.

10 It appears desirable at this stage to set out briefly the background facts to the dispute between the parties. In doing this, I propose to adopt the facts as accurately summarised in the lead judgment of Babalakin, J.C.A., as he then was, with which Ademola and Awogu, JJ.C.A., agreed. These are in the following terms, namely:

"The facts that led to this appeal are as follows:

15 *In 1961, four neighbouring families met and agreed on boundaries inter se. Ifako stream was agreed between the plaintiffs who are now the respondents in this appeal and the defendants who are now the appellants in this appeal, to be the boundary between their lands. By 1972, the appellants trespassed on the respondents' land and the respondents sued in suit*
20 *LD/631/72 and in a consent judgment on 20/4/77, the land was divided into two parts using plan number SOL/36/73 as basis.*

The two parties kept to their respective boundaries until in 1980 when the appellants' people crossed their boundary and went and broke down houses of some members of the respondents' community. Relying on the
25 *consent judgment which the respondents maintained is binding on both parties, they took action for N5,000.00k damages for trespass and for injunction against the appellants for further trespass to the land in their possession i.e., the land in dispute in the present action.*

In resisting the respondents' claims, the appellants though, admitting in their defence that plan No. SOL/36/73 forms the basis of the compromise between the parties in suit No. 631/72 of 20/4/77 maintained that the first defendant, the incumbent Oniba of Iba had neither notice or knowledge that his father, one Raimi Edun was going into any compromise. The appellants further sought to avoid the binding effect of the consent judgment in the
35 *suit No. LD/631/72 on the following grounds:-*

(a) That only three of the six defendants in suit LD/631/72 are the defendants in the present action and therefore parties in the suit and the present suit are not the same.

(b) That one Sule Yakubu who was sued in the previous action as representing Iba community is now sued on behalf of himself and Ajagbadi family. They further contended that assuming that the consent judgment was binding on them then it was the respondents who trespassed on their own land. They contended that the area said to be in dispute in plan. No. SOL/36/ 73 was misleading with manifest errors and they counter-claimed for the following reliefs:-

(i) An order setting aside the compromise judgment dated 20/4/77 in suit No. LD/631/72.

(ii) N25,000.00k being special and general damages for trespass committed by the respondents on appellants' land.

(iii) An order for perpetual injunction against the respondents.

The appellants in fact filed a new plan which they alleged shows the correct boundary between the parties."

At the conclusion of hearing, the learned trial Judge, after a careful review of the evidence, entered judgment for the respondents for N500.00 damages for trespass and perpetual injunction, against the appellants. The appellants' counter-claims were dismissed in their entirety.

Being dissatisfied with the said judgment, the appellants lodged an appeal to the Court of Appeal, Lagos Division, which in a unanimous decision dismissed the appeal. Aggrieved by this decision of the Court of Appeal, the appellants have further appealed to this court on a three ground notice of appeal.

The parties acting pursuant to the rules of Court exchanged their briefs of argument. The four issues identified on behalf of the appellants which we are called upon to determine are-

"(1) Whether objection to the admissibility of a document ought to be pleaded?

(2) Whether their Lordships of the Court of Appeal were right in law in refusing the appellants leave to argue the Grounds of Appeal contained in the Schedule to the Motion on Notice at Pages 472-473 of Volume 2 of the Record?

(3) Whether the plaintiffs' claims ought not to have been struck out for plaintiffs' failure to prove their locus standi?

(4) Whether the plaintiffs/respondents did prove their claims to trespass and to damages thereof, on the preponderance of evidence?"

The respondents, on the other hand, in their brief submitted four issues as arising in this appeal for determination, namely:-

"3.1 FIRST ISSUE

(a) Whether the plans tendered as Exhibits A, B, C, D, E & H are admissible or in-admissible on the basis of the Survey Law of Lagos, Cap 132 or on Survey (Amendment) Decree 34 of 1974.

(b) Whether it is necessary to plead such fundamental facts in respect of which law applied to survey plans in Lagos State so as to make it an issue or not.

3.2 SECOND ISSUE

(a) Did the Court of Appeal exercise its discretion judicially and judiciously in refusing the application of the appellants to substitute new grounds of appeal.

(b) Supplementary Brief, were the appellants given a fair hearing under Section 33(1) of the Constitution of Federal Republic of Nigeria 1979.

3.3 THIRD ISSUE

Whether the plaintiffs' claims ought not to have been struck out for plaintiffs' failure to prove their locus standi.

3.4 FOURTH ISSUE

Have the appellants shown special circumstances to warrant the Supreme Court to re-evaluate the concurrent finding of facts of the two lower Courts."

I have closely examined these questions set out by learned counsel in their respective briefs. It seems to me that the questions raised in the brief of argument of learned appellants' counsel are more consistent with the issues raised in the grounds of appeal. I will therefore adopt the appellants' issues for my consideration of this appeal.

The first issue relates to grounds 1 of the appellants' grounds of appeal and concerns the admissibility of Exhibit A to E - Survey Plans which were tendered and admitted without objection before the trial court. The main argument of learned counsel for the appellants on this issue is that the court below erred in law when it held that these plans were rightly admitted in evidence before the trial court even though the said plans were not countersigned by the Surveyor-General of Lagos State. Learned counsel attacked this decision of the Court of Appeal which it arrived at on grounds inter alia that counsel's objection to their admissibility was not pleaded and secondly, that at all events, the plans were admitted in evidence without objection. These attacks were particularly directed at that portion of the judgment of the Court of Appeal wherein it stated as follows:-

"The 4th and last issue in this appeal is the admissibility of Exhibits 'A' to 'E' - plans tendered and admitted in this case without objection.

Learned counsel for the appellants contended that they were inadmissible because they were not counter-signed as required by Section 3 of the Survey Law of Lagos State and were tendered on 21/6/83.

The learned counsel for the respondents contended that Section 3 of the Survey Law of Lagos State had been repealed by Section 1 of Decree No. 34 of 1974 and therefore the plans are admissible.

The learned trial Judge upheld the submission of counsel for the respondents in the lower court.

First, it must be noted that this fundamental issue was not raised on the pleading of the appellants as it should. The plans were also admitted without objection. The matter was raised at the address stage.”

It seems to me right to state that an objection to the admissibility of a document, as contended by learned appellants’ counsel, is hardly raised by way of pleadings. The reason is obvious. This is because it is not usual for the other side, except perhaps in the case of a public document to know prior to the tendering thereof, the exact nature, condition or contents of the private document sought to be tendered by his adversary to enable him decide before pleadings are settled whatever objections as to admissibility that he ought to raise. I must, with profound respect, disagree with the view of the Court of Appeal to the effect that failure on the part of the appellants to plead their objections as to the admissibility of the plans Exhibits A to E in their pleading was a cogent or substantial ground to sustain the admissibility in evidence of the said survey plans. I accept the submission of learned counsel for the appellants that the Court of Appeal was wrong in law to rule that objection to the admissibility of a document must, to succeed, be pleaded.

On the issue that the admissibility of the said survey plans before the trial court was justified on the ground that they were admitted in evidence without objection, it must firstly be observed that neither a trial court nor the parties have the power to admit without objection, a document that is in no way or circumstances admissible in law. See *Idowu Alase and others v. Sanya Olori Ilu and others* (1965) N.M.L.R. 66 at 77 and *Salau Jagun Okulade v. Abolade Agboola Alade* (1976) 1 All N.L.R. (Pt.1) 67. Indeed if a document is wrongfully received in evidence before the trial court, an appellate court has an inherent jurisdiction to exclude it although counsel at the lower court did not object to its going in. See *Mallam Yaya v. Mogoga* (1947) 12 W.A.C.A. 132 at 33 and *Alase v. Ilu* (1965) NMLR 66 at 77. It is therefore clear that the court below, with respect, erred in law when in effect, it upheld the admissibility of Exhibits A to E on the ground that no objection had been raised against them

when they were first tendered before the trial court.

Whether or not the above mentioned two misdirections or errors in law on the issue of the admissibility of Exhibits A to E, on the part of the Court of Appeal are substantial and have occasioned any miscarriage of justice in its final decision is, no doubt, an issue of grave importance. This is because, it is not every mistake or error in a judgment that will result in the appeal being allowed. It is only when the error is substantial and has occasioned a miscarriage of justice that the appellate court is bound to interfere. See *Onajobi v. Olanipekun* (1985) 4 S.C. 156 at 163, *Oje v. Babalola* (1991) 4 N.W.L.R. (Pt.185) 267 at 282, *kuetonma Ike v. Ugboaja* (1993) 6 N.W.L.R. (Pt.301) 539 at 556, *Olubode v. Salami* (1985) 2 N.W.L.R. (Pt.7) 282 and *Anyanwu v. Mbara* (1992) 5 N.W.L.R. (Pt.242) 386 at 400. What an appellate court has to decide is whether the ultimate decision of the court below is right and not whether its reasons for the decision are and a misdirection or error that has not occasioned any injustice is immaterial and may not occasion the reversal or interference with an otherwise correct decision. See *Ukejianya v. Uchendu* (1950) 13 W.A.C.A. 45 at 46 and *Lionel and Co. Limited v. Deutsche Bank* (1919) A.C. 304. I will now consider whether the admissibility of the plans in issue by the trial court as affirmed by the Court of Appeal is legally justifiable or otherwise constitutes a substantial misdirection or error that occasioned a miscarriage of justice in the decisions of both courts below. I will deal with Exhibits A, B, C and H first.

Exhibits A, B, C and H are survey plans of the land in dispute made on various dates in 1982 and 1983. The main argument of learned counsel for the appellants in his brief in relation to these exhibits is that since the said plans were not counter-signed by the Surveyor-General of Lagos State pursuant to the provisions of Section 3 of the Survey Law, Cap. 132, Laws of Lagos State 1973, they were in law inadmissible in evidence.

Section 3 of the Survey Law of Lagos State, 1973 provides that no survey plan should be admitted in evidence in any court unless it bears the counter-signature of the State Surveyor-General. The case for the appellants is that it is only by the Survey Edict No.8 of Lagos State, 1984 that the provisions of Section 3 of the said Survey Law of Lagos State was abolished or repealed. Consequently, learned counsel argued, the requirement for the counter-signature of the Surveyor-General of Lagos State on all survey plans, made in Lagos State up to 1984 applied to Exhibits A to E and H. He drew the attention of the court to the decisions in the case of *Idowu Alase & others v. Sanya Olori Ilu & others* (1965) N.M.L.R. 66 at 71 and *Salau Okulade v. Abolade*

Alade (1976) 1 All N.L.R. (Pt.1) 67 at 73 in support of his contention.

For the respondents, it was submitted that the plans Exhibits A to E and H are admissible in law and were rightly admitted in evidence by the trial court and upheld by the court below. Learned respondents' counsel drew the attention of the court to the Survey (Amendment) Decree No. 34 of 1974 which expressly repealed that provision of the law which made it obligatory that survey Plans, to be admissible in evidence, shall be counter-signed by a Surveyor-General. He stressed that the Survey (Amendment) Decree No. 34 of 1974 being a Federal Decree and therein expressly declared as having effect throughout the Federation, covered the whole field of that particular subject matter.

Section 3(1)(b) of the Survey Law Cap. 132, Laws of Lagos State, 1973 provided that no map, plan or diagram of land, if prepared after the 20th day of October, 1973 shall, save for good cause shown to the court, be admitted in evidence in any court, unless the map -

- (i)
- (ii) has been examined by the Survey Department and bears the counter-signature of the Surveyor-General

It is true that Section 1(b) of the Survey Edict No.8 of Lagos State, 1984 dispensed with the counter-signature of the Surveyor-General in Plans as a condition precedent to their admissibility in evidence in any court of law. It is, also true that Section 31 of the Survey Edict, 1984 repealed the Survey Law, Cap. 132, Laws of Lagos State 1973. But it is equally correct that well before the said repeal of the Survey Law, Cap. 132, Laws of Lagos State 1973, there was the Survey (Amendment) Decree No. 34 of 1974 which in no mistaken terms had abrogated and dispensed with the counter-signature of the Surveyor-General in Plans as a condition for their admissibility in evidence in all courts of law throughout the Federation.

Sections 1 and 2 of the said Decree No. 34 of 1974 provides as follows-

*"1 (1) The requirement that no map, plan or diagram of land-
(a) shall be accepted for registration with any registrable instrument which is required by any written law to contain any map, plan or diagram; and*

*(b) shall be admitted in evidence in any court.
unless the map, plan or diagram has been examined by any Survey Department of any Government in Nigeria and bears the counter-signature of the Director of Surveyor-General or any other officer of any such Department, is hereby abolished.*

(2) Accordingly, the provisions of the enactments specified in the

Schedule to this Decree and in so far as those provisions are in force anywhere in Nigeria are hereby, consequentially, repealed to the extent specified in their Schedule, and all other enactments to the like effect are similarly repealed.

2. *This Decree may be cited as the Survey (Amendment) Decree 1974 and shall have effect throughout the Federation.*”

There can be no doubt, therefore, that as far back as in 1974, the provision for the Surveyor-General to counter-sign survey plans before they shall be admitted in evidence had been dispensed with throughout the Federation. I must, with respect, therefore disagree with the submission of learned appellants’ counsel that it was by the Lagos State Survey Edict No.8 of 1984 that the provisions of Section 3(1)(b) of the Survey Law of Lagos State 1973 were first abrogated. In my view, Decree No. 34 of 1974 which pursuant to its express terms has effect throughout the Federation covered the field of the subject matter in issue, that is to say, the issue of the position of the law throughout the Federation in so far as the counter-signature of a Surveyor-General on a plan is concerned as a precondition to its admissibility in a court of law. This point must be made as the superiority of a Decree or an Act of the National Assembly over an Edict or a State legislation is beyond dispute.

This matter was considered in the case of Attorney-General of Ogun State v. Attorney-General of the Federation and others (1982) 1-2 S.C. 13 at 40 - 41, (1982) 3 NCLR 166 where Fatayi-Williams C.J.N., in the judgment of this court in circumstances not entirely dis-similar with the issue now under consideration explained as follows:-

“...I would only wish to add that, where identical legislations on the same subject matter are validly passed by virtue of their constitutional powers to make laws by the National Assembly and a State House of Assembly, it would be more appropriate to invalidate the identical law passed by the State House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter. To say that law is “inconsistent” in such a situation would not, in my view, sufficiently portray clarity or precision of language.”

I am in respectful agreement with the above observations of the learned Chief Justice and must in all humility endorse them. See too Attorney-General of Ontario v. Attorney-General of the Dominion of Canada (1894) A.C. 189, Tennant v. Union Bank of Canada (1894) A.C. 31 at 47 and Grand Trunk Railways of Canada v. Attorney-General of Canada (1907) A.C. 65 at 68. It is evident that Decree No.34 of 1974 laid down the law applicable to survey

plans in the matter of their admissibility in evidence before the courts throughout the Federation without the counter-signature of the Surveyor-General. In my view, it did cover the field of that particular subject matter throughout the Federation and I so hold. I will now consider the two cases referred to by learned counsel for the appellants on this point. 5

I have had the privilege of reading the reports of these two decisions but must, with respect to learned counsel, observe that I am unable to agree that they are relevant or applicable to his contention. In the case of *Idowu Alase and others v. Sanya Olori Ilu*. (supra) an uncounter-signed survey plan was admitted in evidence without objection contrary to Section 23(1) of the Survey Act, Cap. 194, Laws of the Federation 1958, which was in pari materia with section 3(1) of the Survey Law of Lagos State 1973. On appeal, it was held by this court that the plan was inadmissible in evidence and should be dis- 10
countenanced. It ought to be noted that that case was decided in 1965 well before the Survey (Amendment) Decree 1974 was promulgated. Similarly, the second case of *Salau Okulade v. Abolade Alade*, supra, although decided in 1976 referred to a survey plan made before 1974. It was consequently and quite rightly, caught by the provisions of Section 23(1) of the Survey Act, Cap. 194. Laws of the Federation 1958 which were in pari material with the provi- 15
sions of Section 3 of the Survey Law of Lagos State, 1973. 20

In the present case, the plans Exhibits A, B, C and H were variously made in 1982 and 1983, well after the provision as to the counter-signature of Surveyor-General on plans had been abrogated in 1974. I am therefore in agreement with learned counsel for the respondents that the plans are admis- 25
sible in law and that their admissibility in evidence by the trial court was rightly upheld by the Court of Appeal although on grounds which, if I may say with respect, were partially erroneous on grounds of law. I will now turn to the plan Exhibit D, of which Exhibit E is merely an unverged copy.

Exhibit D is a Certified True Copy of survey plan number SOL/36/73 dated the 23rd August, 1973. It was pleaded by the respondents as plaintiffs in paragraph 3 of their amended statement of claim in this suit as an official 30
record of the Lagos High Court which was the basis and formed part of the consent judgment of *Dosunmu, I*, in suit No. LD/63 1/72 between the respondents' people of *Ilogbo Elegba* community and the appellants' people of *Iba*. The appellants, as defendants admitted the respondents' aforesaid averments 35
in paragraph 7 of their amended statement of defence and counter-claim.

The position of the plan, Exhibit D, as was rightly observed in the judgment of the Court of Appeal, is quite a different issue from those of

Exhibits A, B, C and H. The judgment of court in suit No. LD/63 1/73 together with the said plan still operates and was rightly pleaded by the respondents and upheld by the two courts below as constituting resjudicata against the appellants. Exhibit D was made on the 23rd August, 1973 before the promulgation of Decree No. 34 of 1974 which dispensed with the counter-signature of the Surveyor-General in survey plans. The initial impression one gets judging from the date Exhibit D was made is that it is caught by the provisions which required the counter-signature of the Surveyor-General before a plan may be admissible in evidence. But a close study of the various enactments which prescribed the counter-signature of a Surveyor-General on plans as a precondition for their admissibility in law does indicate however that failure, to comply with this provision does not ipso facto render the plan totally invalid for all purposes. The expression used in these enactments is that such uncounter-signed plans are not admissible in any court of law "save for good cause shown to the Court." This seems to connote that such a survey plan is not by the mere fact of the defect therein as a result of the lack of the required counter-signature rendered totally inadmissible. In my view, and this is justified by the authorities, such an uncounter-signed plan is admissible in evidence in any court of law if good cause is shown to the court for doing so. See *Alamba v. Marizu and others* (1972) 2 E.C.S.L.R. (Pt. 2) 442, *Ojiako v. Ogueze* (1962) 1 All N.L.R. 58 and *Kola James v. Chief S. O. Lanlehin* (1985) 7 S.C. 404 at 436 and 444. (1985) 2 NWLR (Pt.6) 262. Indeed in the *Kola James* case, this court per Karibi- Whyte, J.S.C. put the matter as follows:-

- 25 "Accordingly there is judicial authority for the propositions, namely.
- (i) *That a plan not counter-signed as prescribed may "for good cause shown to the court" be admitted in evidence in court, thereby rendering it not inadmissible.*
- (ii) *That a requirement of counter-signature etc., is a matter of evidence.*
- (iii) *That the plan, though not in compliance with section 3(1)(b)*
- 30 *is not inadmissible and is also not void by reason of the want of the prescribed signatures".*

I am in complete agreement with the above observations of Karibi-Whyte, J.S.C. and must with respect fully endorse them.

35 In the case on hand, Exhibit D is part and parcel of the consent judgment of the Lagos High Court in suit No. LD/63 1/72 between the parties hereto. The judgment of Court in that suit was tied to the said Exhibit D. Secondly, Exhibit D is a duly Certified True Copy of the original plan which was tied to the said consent judgment of court. The certification was duly executed by the Registrar of the Lagos High Court. The appellants in their

pleadings admitted this plan. The consent judgment with Exhibit D is a subsisting judgment and still operates as *res judicata* against the appellants. It is my view that Exhibit D having been used in a previous court proceeding, the judgment in that suit having been tied thereto and the document being a Certified True Copy of an official public record, these must qualify as good cause for its admissibility without the counter-signature of the Surveyor-General and I so hold. I therefore agree with the submission of learned counsel for the respondents that Exhibit D having satisfied the provisions of section 108(iii) of the Evidence Law is admissible in law under section 111 of the same Evidence Law. Besides, and more importantly, there exists good cause as prescribed by law why its admissibility is justifiable. 10

In view of all my observations above, issue one must be resolved in the negative. It must however be emphasised that the affected survey plans are clearly admissible and were properly admitted in evidence by the trial court. Although the Court of Appeal was in error by holding that an objection to the admissibility of a document ought to be pleaded before such an objection may lawfully be sustained by the trial court, this error occasioned no miscarriage of justice in its final judgment. Accordingly it cannot be the basis for the interference of the otherwise faultless decision of that court. 15

The main complaint of the appellants on the second issue is that the Court of Appeal was in error to have denied them their constitutional right to fair hearing by refusing them leave belatedly to argue the two new grounds of appeal they had sought the leave of that court to argue. They contended that it was only in the final judgment of the court below in the substantive appeal that the said leave was refused. They argued that this procedure denied them the opportunity to test the court's decision on the point on appeal. The appellants in their brief of argument on this issue concluded as follows:- 20 25

"Your Lordships are urged in the interest of justice to permit a consideration of all relevant issues- relevant to the Grounds of Appeal in the Notice of Appeal herein - to enable your Lordships determine the real questions in controversy between the parties on the Record, as no new evidence is being led on, or added thereto." 30

The respondents in their own brief contended that the facts of the matter as presented by the appellants were twisted to suit their purpose. They asserted that the appellants were at no time denied their right to a fair hearing. They explained that it was with the consent of all concerned that the application for leave to amend the notice of appeal, the respondents' preliminary objection in opposition thereto and the main appeal inclusive of the proposed two new grounds of appeal sought to be argued were fully argued by learned 35

counsel and considered by the Court of Appeal.

It is evident from a close study of the record of proceedings that when this appeal come up for hearing before the court below, Mr. Sofunde, S.A.N., learned counsel for the appellants brought an application for leave to amend his notice of appeal by substituting two new grounds of appeal for six
5 of the original grounds.

In a reaction to this application, Mr. Bashua, learned counsel for the respondents, filed a notice of preliminary objection against this application based on four grounds. The Court of Appeal, “in order to save time and energy”, as explained in the lead judgment of Babalakin, J.C.A., as he then
10 was, directed that both the preliminary objection and the substantive appeal be argued together so that the appeal would be fully considered on its merit if the preliminary objection failed.

This cause of action was agreed to by both counsel. Thereafter the preliminary objection together with the appellants’ grounds of appeal including
15 the proposed two new grounds of appeal were fully argued by both counsel.

The Court of Appeal in its judgment upheld the respondents’ preliminary objection to the application for leave to amend the appellants’ grounds of appeal. However the court further decided *ex abundancia cautela* to receive full arguments from both counsel in respect of the entire issues that were
20 raised in the appeal in case its decision on the preliminary objection was wrong and to consider all the said issues including those that arose from the proposed two new grounds of appeal in its judgment. This decision was accepted by both learned counsel who thereupon fully argued the appeal. In other words, although the court upheld the respondents’ aforesaid preliminary
25 nary objection, it none-the-less proceeded *ex abundancia cautela* to consider and did fully consider the substantive appeal on its merit as if the respondents’ preliminary objections were dismissed. In the circumstance and with respect to learned appellants’ counsel, it seems to me erroneous and a misconception to suggest that the Court of Appeal denied the appellants their constitutional right to fair hearing contrary to section 33(1) of the Constitution of the
30 Federal Republic of Nigeria, 1979. On the contrary, the court below afforded the parties the fullest opportunity in the exercise of their respective rights to full hearing. This being the case, issue number two seems to me completely misconceived as it does not relate to the true facts of what transpired before
35 the court below. Accordingly this issue must be and is hereby resolved against the appellants.

The third issue poses the question whether the respondents’ claims before the trial court ought not to have been struck out for their failure to establish their *locus standi* in the action. The complaint of the appellants is

that the capacity in which the respondents prosecuted their action before the trial court was not clear.

I must observe straight away that a close study of the record of proceedings in this case does not appear to bear out learned counsel's submission on this point. The respondents in paragraphs 1, 3, 4 and 5 of their amended Statement of Claim averred as follows:-

"1. The first plaintiff is the Bale of Ilogbo Elegba and he sues for himself and on behalf of Ilogbo Elegba Community.

3. Plaintiffs aver that the Ilogbo Elegba Community is made up of several family units as follows; Oju Eira Family, Maki Family, Meninga Family and Osho Agayi Family and their tenants.

4. The first plaintiff is the owner of the land at Ilogbo Elegba in Ojo Lagos State of Nigerian shown in the plan No. SOL/36/73 of 23rd August, 1973, which is the basis of Consent Judgment between Ilogbo Elegba Community and People of Iba.

5. The 1st to 3rd defendants are the representatives of the People of Iba."

The appellants by paragraph 7 of their amended Statement of Defence and Counter-Claim replied thus:-

"7. The defendants admit paragraphs 3, 4, 5, 15 and 16 of the Statement of Claim."

There is also paragraph 2 of the appellants' amended Statement of Defence and counter-claim in which they pleaded as follows:-

"2. The defendants are not in a position to admit or deny paragraphs 1 and 9 of the Statement of Claim and put the plaintiffs to the strictest proof thereof."

The first point that must be made is that it is trite law that parties are bound by their pleadings. See *National Investment and Property Co. Ltd. v. Thompson Organisation Ltd.* (1969) 1 All N.L.R. 136 at 142; (1969) 1 NMLR 99 and *Oredoyin v. Arowolo* (1989) 4 N.W.L.R. (Pt. 114) 172. A fact which is admitted by the defendant in his pleadings needs not be proved any more by the plaintiff but should in law be regarded as established at the trial. See *Chief Okparaeké v. Obidike Egbuonu* (1941) 7 W.A.C.A. 53 at 55. From the pleadings above set out, it is clear that the capacity under which the respondents prosecuted the action is therein expressly pleaded. Paragraphs 3, 4 and 5 of the respondents' amended Statement of Claim were equally expressly admitted by the appellants. With regard to paragraph 1 of the respondents' amended Statement of Claim, the appellants in reply pleaded that they were not in a position to admit or deny the same.

The rule of pleadings is that in order to raise an issue of fact, there must be a proper traverse. If a defendant refuses to admit a particular allegation in a Statement of Claim, he must state so expressly and specifically and he does
5 not do this satisfactorily by pleading that he is not in a position to admit or deny a particular allegation or/and that he will at the trial put the plaintiff to the strictest proof thereof. Paragraph 1 of the respondents' amended Statement of Claim was therefore not effectively or successfully traversed and on the state of the authorities must be deemed as admitted. See *Lewis and Peat (N.I.R.) Ltd. v. A. E. Akhimien* (1976) 7 S.C. 157, *Nwadike v. Ibekwe* (1987) 4 N.W.L.R. (Pt.67)
10 718 at 741 and *Lawal Owosho v. Dada* (1984) 7 S.C. 149 at 183.

From the pleadings therefore, it is clear that the respondents' averments to the effect that the first respondent is the Bale of Ilogbo Elegba Community and had sued for himself and on behalf of the said Ilogbo Elegba
15 Community, that the respondents are the owners of the land in dispute shown in plan No. SOL/36/73, Exhibit D which plan was the basis of the consent judgment between the respondents' community of Ilogbo Elegba and the appellants' people of Iba and that the first respondent is the custodian and has absolute control and supervisory powers over the land of Ilogbo Elegba
20 Community are all admitted facts from the pleadings on the part of the appellants. So too the respondents' averments that the said Ilogbo Elegba Community consists of several units and families to wit, Osho Agaji family, Oju Eira family, Maki family, Meninga family or community etc, and that the appellants are the representatives of the people of Iba are also issues of facts which the
25 appellants admitted in their Statement of Defence and needed no further proof by the respondents. Accordingly the appellants are estopped by their admissions from denying the respondents locus standi in the case or the capacity in which the said respondents prosecuted the action.

The second point that must be made on this issue of locus standi is
30 that the respondents both in their amended writ of summons and their Statement of Claim, as amended, expressly indicated that this action was being prosecuted for themselves and on behalf of the Ilogbo Elegba Community. The appellants were also expressly sued by the respondents for themselves and on behalf of the people of Iba.

35 The respondents did not stop there. They further sought and obtained the leave of court upon a motion on notice to amend their writ of summons and Statement of Claim to prosecute their action in a representative capacity for themselves and on behalf of the Ilogbo Elegba Community. The learned trial Judge in granting this application in a considered ruling observed

as follows:-

“The title of this suit by the proposed amendment to the writ of summons clearly shows that the dispute, subject matter of this action, is a straight fight between the plaintiffs represented by the Bale of Ilogbo Elegba Community and the defendants represented by the Oniba of Iba and 14 others for themselves and on behalf of the people of Iba.

..... I shall grant the order for leave to amend the writ and the Statement of Claim as proposed in Exhibits A and B attached to the further and better affidavits of 19/6/84. It is ordered accordingly. Further more, I am satisfied that it is expedient in the circumstances to grant leave for the plaintiffs to sue in a representative capacity as proposed in the amended writ and I also order accordingly.”

There is finally the incontrovertible fact that the case for the respondents was fully made out both from their pleadings and evidence before the trial court in a representative capacity. Once the pleadings and evidence establish conclusively a representative capacity and that a case has been fought throughout in that capacity, the trial court will be entitled to enter judgment for or against the party in that capacity, even if amendment to reflect that capacity had not been applied for or obtained. See *Taiwo Ayeni v. William Sowemimo* (1982) 5 S.C. 60, *Dokubo v. Bob Manuel* (1967) 1 All N.L.R. 113 at 121, *Mba Nta and others v. Ede Nweke Anigbo and Another* (1972) 5 S.C. 156 at 174 - 175, (1972) 1 All NLR (Pt. 2) 74, *Shelle v. Chief Asajon* (1957) 2 F.S.C. 65 (1957) SCNLR 286 and *Mba Orie & Another v. Okpan Uba and Another* (1976) 9 - 10 S.C. 123 at 133. It would of course be otherwise if the case is not made out in a representative capacity. See *Onwunalu Ndidi and Another v. Osademe* (1971) 1 All N.L.R. 14 at 16.

In the instant case, the pleadings and evidence conclusively establish that the respondents not only sued but prosecuted this action against the appellants in a representative capacity. Additionally they also applied for and obtained the leave of the court so to sue in a representative capacity. Further, there is ample evidence on record which the trial court accepted that the respondents, that is to say, the people of Ilogbo Elegba Community, were at all material times the owners in possession of the land in dispute. It is of course, a well established principle of law that trespass to land is only maintainable at the instance of one in possession of such land. See *England v. Palmer* 14 W.A.C.A. 659 at 661, *Olugbemiro v. Ajagunbade III* (1990) 3 N.W.L.R. (Pt.136) 37, *Adebanjo v. Brown* (1990) 3 N.W.L.R. (Pt.141) 661 and *Alhaji Are v. Raji Ipaye* (1986) 3 N.W.L.R. (Pt.29) 416. In these circumstances, it seems to me

clear that the submission of learned counsel for the appellants to the effect that there is a failure on the part of the respondents to prove their locus standi must be dismissed as misconceived and ill-founded. Accordingly issue number three must be resolved against the appellants.

There is finally the fourth issue by which the appellants question whether the respondents did prove their claim to trespass and to damages thereof. In this, connection, it is their submission that the common boundary between the parties said to be the Ifako stream is no where indicated on any of the survey plans before the court. The appellants then contended that this is fatal to the respondents' claims for trespass and injunction.

The first point that must be stressed here is that the appellants' claim that the boundary between the parties is the Ifako stream is an obvious misconception which is neither borne out by the evidence before the court nor from the facts accepted by the learned trial Judge. In this regard, the learned trial Judge found as follows:-

"The plaintiffs' pleaded case is that in 1961 the plaintiffs' legal representatives and the defendants' legal representatives, Oba Gbadamosi, the then Oniba of Iba and four neighbouring families of communities met to agree as to the boundaries of their respective adjoining lands. Ifako Stream was agreed as the boundary between the plaintiffs' and the defendants' land. However, in 1972, the defendants trespassed on the plaintiffs' land and the latter took action thereon in Suit No. LD/631/72. Yakubu Dawodu, Bale of Ilogbo Elegba v. Raimi Edun and others for themselves and Iba people. The case did not go to trial. On the 20th April, 1977 a consent judgment was entered in the said case wherein by the terms of settlement the land in dispute was divided into two parts using plan No. SOL/36/73 as basis. The two parties kept to their boundary until 1980 when the defendants' people up-rooted pillars and broke down houses of certain members of the plaintiffs' community. The plaintiffs maintained that the judgment in Suit LD/631/72 was binding on themselves and the defendants and that they would rely on it. These facts would appear to form the root cause of the plaintiffs' grievances for which they based their claims, namely: damages for trespass and injunction for further trespass of land in their possession".

The Court of Appeal in its judgment reiterated with approval the above findings of the trial court when it stated as follows:-

"The facts that led to this appeal are as follows:

In 1961, four neighbouring families met and agreed on boundaries Inter se. Ifako stream was agreed between the plaintiffs who are now the respondents in this appeal and the defendants who are now the appellants

in this appeal, to be the boundary between their lands. By 1972, the appellants trespassed on the respondents' land and the respondents sued in suit LD/631/72 and in a consent judgment on 20/4/77, the land was divided into two parts using plan number SOL/36/73 as basis.

The two parties kept to their respective boundaries until in 1980 when the appellants' people crossed their boundary and went and broke down houses of some members of the respondents' community. Relying on the consent judgment which the respondents maintained is binding on both parties, they took action for N5,000.00 damages for trespass and for injunction against the appellants for further trespass on the land in their possession i.e., the land in dispute in the present action."

It is therefore clear that although Ifako Stream was originally agreed, to be between the parties as their common land boundary, a court action subsequently arose therefrom in suit No. LD/631/72 which terminated in a consent judgment. By the said consent judgment, Exhibit F, the land in dispute was partitioned into two portions between the parties as delineated on plan No.SOL/36/73, Exhibit D. The respondents of Ilogbo Elegba were by that judgment adjudged to be the owners in possession of the portion verged "A" and demarcated with cement pillars numbers BL. 1419, BL. 1444, BL. 1443, BL. 1442 and BL. 1424 on Exhibit D whilst the appellants were granted the ownership of the second portion of the said land marked 'B' on the same plan and demarcated with cement pillars numbers BL. 1424, BL.1425,BL.1426,BL. 1428,BL. 1427,BL. 1430, BL. 1440,BL. 1441 and BL. 1442. The said area of land marked 'A' is more correctly and particularly delineated in the said plan, Exhibit D and is therein verged brown whilst the area marked B is verged purple in the said plan.

It is desirable at this juncture to observe that the parties hereto prepared in this case separate composite plans of the land in dispute on which the land comprised on the original Plan No. SOL/36/73 was clearly shown. These composite plans are Exhibits D or E and Exhibit H respectively. There is also the respondents' additional composite plan, Exhibit C which is the main survey plan made by them for the purpose of this present suit. It is to Exhibit C that the judgment of the trial court is tied.

The area of land verged red in Exhibit C corresponds with the boundaries of the entire land shown in the Plan Exhibit D. The area of land verged red in Exhibit D is the piece or parcel of land in dispute in suit No. LD/631/72 and it is shown in Exhibit C verged blue. Exhibit C clearly shows the boundary line

or the division of the said land verged blue into two portions pursuant to the judgment, Exhibit F. By the said judgment in suit No. LD/631/72, the area therein verged brown and marked A was adjudged to be the property of the respondents whilst the remaining portion of the land verged blue in the said Exhibit C therein verged purple and marked B was adjudged to belong to the
5 appellants. Both portions of land are more particularly delineated with the cement pillars as aforementioned.

I have gone some length in dealing with these survey plans together with the boundary between the parties as found by the lower courts to make it clear that no question of Ifako stream either featured or was directly relevant
10 on the issue of the common boundary between the parties as adjudged by the court. The trial court gave a close consideration to these plans and to the evidence before it held, and quite rightly in my view, that the consent judgment until it is set aside remains binding on the parties. Accordingly, it upheld the plea of estoppel per rem judicatam raised by the respondents by virtue of
15 the said previous judgment in Suit No. LD/631/72. The Court of Appeal affirmed this view of the trial court and I must with respect, state that I am totally in agreement with both courts on this issue.

The main complaint of the respondents is that the appellants crossed the boundary between both communities as adjudged in Exhibit E and invaded the said respondents' land in their possession marked A in their plan
20 Exhibit C and therein verged brown. At the risk of repetition, it must be emphasised that the respondents' said piece of land is fully and completely demarcated with cement pillars numbers BL. 1419, BL. 1444, BL. 1443, BL. 1442 and BL. 1424. There is therefore no question of the certainty of the land in
25 dispute being in issue.

On the issue of trespass, the averments in the respondents' pleading together with their evidence before the court did not complain of any trespass to individual property but trespass to land in the collective possession of the respondents' community marked A in Exhibit C. Dealing with this issue, the
30 trial court held as follows:-

*"I accept that the portion marked 'A' and verged brown in Exhibit 'C' is the same area of land described in paragraph (B) of consent order in the consent judgment based on Exhibit 'D' or 'E'. The defendants had not denied they trespassed on this portion of land as they gave evidence themselves that their customary tenants, Ilemba Hausa people occupy it. The
35 plaintiffs have led evidence that show that the buildings of their members were demolished. I hold as a fact that the defendants trespassed on the portion marked 'A' and edged brown in Exhibit 'C' and that the plaintiffs are entitled to damages. I shall also grant perpetual injunction to restrain the*

defendants from further trespass on the said portion. Trespassers are jointly and severally liable to the persons in actual or constructive possession. There is no evidence as to how the plaintiffs arrived at N5,000 claimed as special and general damages. The plaintiffs must have suffered damages, even if minimal. I award N500.00 as damages. 5

Considering the same issue, the Court of Appeal per Babalakin, J.C.A., as he then was, observed as follows:-

“The nature of trespass complained of is clear - the appellant left their own side of the boundary and crossed to the respondents’ side. This is held to be trespass by the learned trial Judge and I agree with him.” 10

I must, with respect, state that I have no reason to disagree with the above views of both the trial court and the court below as they are fully supported by abundant evidence.

For the reasons set out above, I have come to the irresistible conclusion that this appeal is without merit. Consequently it is hereby dismissed. The judgments of both the trial court and the Court of Appeal are hereby affirmed. There will be costs to the respondents against the appellants which I assess and fix at N1,000.00. 15

20

BELGORE JSC

The essence of pleadings is no longer strange as it has been with us for long. Pleadings are to contain facts, and facts only, upon which a party relies for his case. Once the facts are pleaded, the evidence must be led to prove those of them not admitted and then to apply the law. It is not the practice to plead evidence by which a fact will be proved or to plead the law to support that fact. 25

Admissibility of a document is a matter of law, and once the document is pleaded its admissibility is not required in pleading. In the present case, the survey plans are admissible by virtue of Survey (Amendment) Act 1974 (No. 34 of 1974) in S.3 thereof, and that law adequately covers the field. I find no merit in this appeal and for the reasons advanced in the lead judgment of my learned brother, Iguh, J.S.C., which entirely agree with and adopt as mine, I also dismiss the appeal. I make the same order as to costs. 30 35

WALI JSC

I have been privileged to read in advance a copy of the lead judgment
 5 of my learned brother Iguh, J.S.C and I entirely agree with the reasons given
 therein for dismissing the appeal. My learned brother has thoroughly dealt
 with all the issues raised and canvassed in this appeal.

I shall also for those reasons stated by my learned brother Iguh,
 J.S.C in the lead judgment, hereby dismiss this appeal. The concurrent find-
 10 ings of fact by the two courts below are hereby affirmed. The respondents are
 awarded N1,000.00 costs in this appeal against the appellants.

KUTIGI JSC

15 I read before now the judgment just delivered by my learned brother
 Iguh, J.S.C., and I agree with his reasoning and conclusion. I would therefore
 for the reasons stated therein dismiss the appeal with costs of N1,000.00 in
 favour of the respondents.

20

MOHAMMED JSC

The opinion of my learned brother, Iguh, J.S.C., has covered all the
 salient issues raised in this appeal. It is for the reasons given in that judgment,
 which I have had the privilege of reading in draft, that I agree that this appeal
 25 is without any merit. I have nothing more which I could usefully add over the
 well considered judgment of my Lord, Iguh, J.S.C.

Accordingly, the appeal is dismissed, I also affirm the judgments of
 both the trial High Court and the Court of Appeal. I abide by the order made in
 the lead judgment on costs.

30

35