

SUPREME COURT OF NIGERIA
27TH MAY, 1994. SC. 78/1992.
CORAM:- S. M. A. BELGORE, A. B. WALL, I. L. KUTIGI
U. MOHAMMED, A. I. IGU, J. JSC

MARCUS NWOKE & OTHERS DEFENDANTS/
APPELLANTS

(for themselves and as representatives
of the Umu-Ezeme Family of Umu-Ekpu
village, Amala, Ngor-Okpala.)

AND

AHIWE OKERE & OTHERS PLAINTIFFS/
RESPONDENTS

(for themselves and as representatives
of the Umu-Emereonye Family of
Amapu village, Amala, Ngor-Okpala)

APPEALS - *Finding of facts - Not to be easily disturbed by appellate court
- Propriety of questioning the trial court's findings -for being perverse or not
supportable by evidence.*

LAND LAW- *Survey plan - Declaration of title - whether plaintiffs' survey
plan showed a well defined land mass - To which a declaration could be
attached.*

LAND LAW - *Title - Plaintiffs' claim for declaration of title, trespass and
injunction - Dismissed by trial court - When the two appellate courts will
intervene in granting plaintiffs' claims.*

PLEADINGS - *Features on survey plan - Tendered by the plaintiffs - Where
not put in issue on the pleadings - Whether question of proving the features
will arise.*

PRACTICE & PROCEDURE - *Wrongful dismissal of plaintiffs' case by trial
court - On ground of inconclusive evidence of boundary - Whether Court of
Appeal rightly held that plaintiffs proved their title.*

FACTS

The Plaintiffs/Respondents claimed against the Defendants/Appel-
lants declaration of title to the land in dispute, N400.00 general damages and

perpetual injunction. The Respondents said that the land delineated in their survey plan Exhibit A was founded by their first ancestor. The Respondents exchanged the land for another land with one other family who were disturbed by the Appellants claiming that the land belonged to them. The said exchange was thereby aborted. Appellants caused the Respondents to swear to an oath (ala Obibi juju) that the land belonged to them under a customary arbitration. Respondents swore and survived the oath for one year and the land became theirs according to Igbo custom. A document evidencing the arbitration was admitted in evidence as an Exhibit. In spite of all these, Appellants broke into the land in 1976, started farming thereon hence this action.

The Appellants called the land in dispute a different name. Their survey plan, Exhibit B shows the land in two parts. They conceded the smaller portion to Respondents and claimed the larger portion through their ancestor who deforested it. Appellants said that the Respondents when offered the oath refused to swear and the land became confirmed as theirs according to custom. The trial Judge dismissed the Respondents' claim. Respondents' Appeal to the Court of Appeal Port-Harcourt Division was upheld and all the reliefs sought by them before the trial court were granted. Being dissatisfied, the Defendants/Appellants have now appealed to the Supreme Court to determine whether the trial court's findings were right and whether the Court of Appeal was not wrong in reviewing those findings on identity of the land and boundaries, customary arbitration and the issue of title.

HELD (unanimously dismissing the appeal)

1. As the features on the plan Exhibit A tendered by the Plaintiffs/Respondents were never put in issue on the pleadings, the question of proving the features did not arise. (P. 34 L 31)
2. The Court of Appeal was right when it held that the Respondents' plan (Exhibit A) showed a well defined land mass to which a declaration could be attached (P. 35 L 6)
3. The trial court having wrongly dismissed Respondents' claims on the ground that "the evidence of boundary is inconclusive", the Court of Appeal was quite in order for holding that the Respondents proved their title to the land in dispute. (P. 35 L 12)
4. Counsel for the Appellants was wrong in saying that the Court of Appeal should not have disturbed the finding of fact by the trial court that the Re-

spondents took no “juju” oath when that finding as could be seen from the records cannot be reasonably justified nor supported by credible evidence given in the case. (P. 37 L 4)

5. Admittedly, Court of Appeal should not easily disturb the finding of facts of a trial judge who had the singular opportunity of listening to the witnesses and watching their demeanour. However, such finding of facts or inferences drawn from them may be questioned in certain circumstances as in this case, when the finding is perverse or cannot be supported by evidence. (P. 37 L 9)

NOTABLE POINTS OF INTEREST

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1. Claim for Declaration of title- Need to accurately show the area of land

It is settled law that it is the duty of a plaintiff who comes to court to seek for a decree of declaration of title to land to show the court clearly and accurately the area of land to which his or her claim relates and usually (though not always), a plan is necessary for the purpose. Such a plan must also show clearly the dimensions of the land, the boundaries and other salient features thereof. (P 34 L 2)

2. Whether organisers of the Oath are arbitrators

“So one can safely say that the PTA were never arbitrators in the real sense of the word. They were merely witnesses to the oath taking ceremony as well as the survival ceremony. The arbitrator in my view as the “Ala Obibi” juju which they believed had the power of life and death. My own belief is that nobody died because it was not yet time for anyone to have died. Enough of that. However the respondents have by this suit in my view positively established their ownership of the land in dispute independently of the previous “Ala Obibi juju oath-taking.” (P. 37 L 37)

3. Disadvantages of the “juju” method of settling a Case

The “juju” method as cheap and quick as it might appear to have been had its own disadvantages. For example you cannot put a “juju” in the witness box for any purpose. Its activities, methods and procedures would appear to belong to the realm of the unknown even though the effects may be real in the end. The worst of it all is that a “juju” “judgment” or “decision” is not subject to an appeal like the one we are all witnessing now in this suit.” (P. 38 L 9)

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4. Identification of land-features on the land are of great help

The boundaries of the land sometimes with names indicating the boundary neighbours, the features on the land - shrines, graves, ruins, streams or rivers, hills, special trees and so forth are always of great help in identifying the land. Whereas respondents’ plan, Exhibit A clearly shows the necessary features of the land in dispute, the appellants have not fared as much in their plan to the extent that they were not even able to satisfactorily show they were boundary neighbours of the respondents. (P. 38 L 37 & P. 39 L 3)

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5. Need for trial court to give reasons for not believing a witness

It cannot be over-emphasized that a trial court ought to give reasons for believing or not believing a witness. It is certainly not enough for a trial judge simply to say “I believe or “I do not believe” a witness. He ought to state the reasons for believing or not believing each particular witness. (P. 41 L 16)

6. Implications of the customary juju oath

“I am also in agreement with the finding of the court below that the appellants having been led to taking the customary juju oath provided by the 3rd defendant at great risk to their lives and in the belief that the customary method would settle the dispute, the respondents are estopped by conduct from denying that the appellants were thereby adjudged owners of the land, the latter having survived the oath for over a year.” (P. 42 L 26)

REPRESENTATION:

C.S.I. Iwuji and E.E. Iwuji for the Appellants.
E.T. Nsofor and J.O. Nsofor (Miss) for the Respondents.

CASES REFERRED TO

- Okorie & Ors. v. Philip Udom & Ors. (1990) 5 F.S.C. 162
Omeregie & Ors. v. Nwanye (1985) 2 NWLR (Pt. 5) 41
Ezeudu v. Obiagwu (1986) 2 NWLR (Pt. 21) 208
Okechukwu v. Okafor (1961) All NLR 85
Elias v. Omobare (1982) 5 S.C. 25
Arabe v. Asanlu (1980) 5-7 S.C. 78
Etim v. Oyo (1978) 6-7 S.C. 91
Udofia v. Afia 6 WACA 216
Akinloye & Anor. v. Eyiola & Ors (1956) 1 FSC 87

Akintola v. Fatoyinbo Oluwo & Ors (1962) All NLR 244	
Ojiako v. Ofueze (1962) 1 All NLR 58	
Onwuka v. Ediala(1989) 1 NWLR (Pt. 96) 182	
Salami v. Oke (1987) 4 NWLR (Pt. 63) 1 S.C.	
Agbonifo v. Aiwereoba (1988) 1 NWLR (Pt. 70) 325	
Olusanmi v. Oshasona (1992) 6 NWLR (Pt.245) 22 at 36	5
Awote v. Owodunni No. 2 (1987) 2 NWLR (Pt. 57) 366 at 371	
Ezeokeke v. Ugo & Ors (1962) 1 All NWLR (Pt. 3) 482	
Makanjuola v. Bolangun (1989) 3 NWLR (Pt. 108) 192	
Atanda v. Ajani (1989) 3 NWLR (Pt. 111) 511	
Oladehin v. Continental Textile Mills Ltd. (1978) 2 SC. 23 at 32	10
Colonial Securities Trust Co. Ltd. v. Massey (1986) 1 Q.B.D. 38	
Ntiaro v. Akpan 3 NLR 10	
Mbanta & Ors. v. Anigbo & Anor. (1972) 2 ECSLR 309 at 311	
Igwegu v. Ezeugo (1992) 6 NWLR (Pt. 249) 561 at 585	
Okpiri v. Jonah (1961) All NLR 102 at 104 -105	15
Lawal v. Dawodu (1972) 8-9 SC. 83 at 114 -115	
Woluchem v. Gudi (1981) 5 SC. 291 at 295 - 296 and 326 - 329	

LEAD JUDGMENT BY KUTIGI JSC 20

The plaintiffs’ claims against the defendants as contained in para. 25 of the Amended Statement of Claim (which supersedes the writ), are as follows-

“1. Declaration of title to all that piece or parcel of land in dispute 25 known as and called “Okpuhu-Ukwu”.

2. N400.00 being general damages for trespass into the said Okpuhu-Ukwu land.

3. Perpetual injunction restraining the defendants their agents or servants from further trespass thereto.” 30

After the filing and exchange of pleadings by the parties the case proceeded to trial. At the trial the 3rd plaintiff and four other witnesses testified for the plaintiffs while the 5th defendant along with three other witnesses testified in support of defendants’ case.

Briefly stated the plaintiffs’ case is that the land in dispute known as 35 Okpuhu-Ukwu and delineated in their survey plan, Exhibit A, was founded by their first ancestor called Odudu. Odudu had two children named Emereonye and Nkitaogu respectively who begot their own children. The plaintiffs said they are claiming through Emereonye family. All the male issues of Nkitaogu

had died and consequently all his property was inherited by the Emereonye family. The land in dispute was also pledged at one time to one Elele. The pledge was redeemed for an equivalent sum of N80.00 by plaintiffs' family in 1974. In 1975 the plaintiffs exchanged the land for another land called Oboro following an arrangement between them and Umukube family of Umuokwa
5 village in Amala. When members of the latter family went on the land they were challenged by the defendants. The plaintiffs intervened saying that they gave the land to the Umukube family. The dispute between the plaintiffs and the defendants was then referred to the Parents Teachers Association (P.T.A. for short), a body consisting of the elders of the community. The body went
10 into the dispute and the plaintiffs had to swear to "Ala Obidi juju" supplied by the defendants that the land was theirs.

The plaintiffs survived the oath for one year and the land became theirs according to the Igbo custom. A document evidencing the arbitration by the P.T.A was tendered and admitted in evidence as Exhibit C. It was in 1976
15 when the defendant broke into the land in dispute and started farming thereon that the plaintiffs instituted this action.

The defendants on the other hand said the land in dispute is called Okpu Uku-Amankwu. Their survey plan, Exhibit B. shows the land in dispute in two parts -one portion larger than the other. The larger portion they said
20 belong to them while the smaller portion was conceded to the plaintiffs. They claim the larger portion through their ancestors Ezeme, who deforested it. They also claim to have pledged and redeemed the land in dispute in 1971 and tendered 'Exhibit D' as evidence thereof. They also confirmed the intervention by the Amala Parent Teachers Association in a dispute between them and
25 the plaintiffs in 1975. However, they said when the "Ala Obidi juju" oath was offered to the plaintiffs they refused to swear and according to custom the land was confirmed as theirs (defendants).

After hearing, the learned trial Judge in a reserved judgment dismissed plaintiffs' claims. Dissatisfied with the judgment they appealed to the
30 Court of Appeal, Port Harcourt Division. Four issues were set down for determination as follows-

"Issue One

Did the appellants prove the identity and precise boundaries of the land in dispute in this case?

35 *Issue Two*

Which land was pledged and redeemed? Who pledged and redeemed the said land?

Issue 3

Was there a native arbitration over the land in dispute in this case? If there was, who won in the said arbitration? Does the said arbitration operate, as an estoppel per rem judicatam in this case?

Issue Four

Which of the two competing stories of the parties is the more probable?

If the plaintiffs were, were they not entitled to the judgment of the court below in terms of the reliefs claimed by them?"

The Court of Appeal in a reserved judgment carefully considered each of the above issues and found all in favour of the plaintiffs. It declared- 10

"As all the grounds of appeal canvassed succeed, this appeal too succeeds and it is hereby allowed. The judgment of the court below together with its order for costs is set aside. In its place, I order that judgment be entered in appellants' favour for;

1. A declaration that the plaintiffs are entitled to a customary right of occupancy to all that piece or parcel of land known as 'Okpuhukwu' situate and being at Amala shown and delineated on Survey plan No. UND/ 9/77 (Exhibit A in these proceedings) and therein edged 'pink' . 15

2. N200 being general damages for trespass committed on the said land by the defendants. 20

3. An injunction restraining the defendants, their agents or servants from committing further trespass on the said land.

The appellants are entitled to their costs of this appeal and of the costs in the court below which I assess at N650 and N450 respectively inclusive of out of pocket expenses." 25

Aggrieved by the decision of the Court of Appeal, the defendants have now appealed to this court. They will hereinafter be referred to as "the appellants" while the plaintiffs will be referred to as "the respondents".

In accordance with the Rules of Court, parties filed and exchanged briefs which were adopted at the hearing of the appeal. In the appellants' brief 30 three issues are submitted for determination. They are-

(i) Whether the trial court was right in finding for the appellants on the issue of the identity and boundaries of the land in dispute which it held the respondents did not prove and whether the Court of Appeal was right in reviewing that finding in favour of the respondents, merely because the respondents' plan (Exhibit A) shows a well defined land mass to which a declaration could be attached. 35

(ii) Whether the trial court was right in finding as a fact that the respondents did not swear to any juju on the issue of customary arbitration

on the land in dispute and whether the Court of Appeal was not wrong in reviewing that decision on the ground that the court did not evaluate the evidence of the parties.

(iii) Whether the trial court was right in deciding in favour of the appellants on the ground that the respondents did not prove title to the entire
5 land in dispute, and whether the Court of Appeal was not wrong in reviewing that decision.

Issues (i) & (iii) which are interdependent will be taken together while issue (ii) will be treated separately.

Issues (i) & (iii)

10 Mr Iwuji learned counsel for the appellant has in his brief argued that respondents' evidence on boundary being inconclusive as found by the learned trial judge, the conclusion is that the identity of the land in dispute was not established. The trial court was therefore right when it dismissed respondents claims. It was argued that no declaration can be granted based
15 on the respondents' survey plan (Exhibit A) which failed to show the existence of any boundary between their land and appellants' land. It also omitted to show all essential features as depicted in the appellants, survey plan (Exhibit B). He said there was nothing on Exhibit A to show that the respondents were in exclusive possession and use of the entire land in dispute. The Court
20 of Appeal was therefore wrong to have reversed the findings of the trial court in favour of the respondents. He cited *Okorie & Ors v. Philip Udom & Ors* (1960) 5 FSC. 162; (1960) SCNLR 362 in support.

Mr Nsofor for the respondents on the other hand submitted that a careful look at the two plans, Exhibit A & B, filed by the parties respectively
25 reveal that the identity of the land in dispute is very clear and certain. He said the main difference between the two plans is that while the respondents' Exhibit A show the land in dispute as one continuous piece of land, the appellants' Exhibit B, shows the land as consisting of two unequal piece of land and conceding the small piece thereof to the respondents. He said the respon-
30 dents gave evidence which was in accord with their plan and submitted that in any case where features shown on a plan are not made issues on the pleadings, mere tendering of the plan is sufficient and the features need not be proved. He referred to cases of *Omeregic & Ors v. Idugiemnwanaye* (1985) 2 NWLR (p.5) 41. *Ezeudu v. Obiagwu* (1986) 2 NWLR (Pt.21) 208 *Okechukwu v.*
35 *Okafor* (1961) All NLR 85; (1961) 2 SCNLR 369.

It was further submitted that since the appellants did not counter-claim, the land in dispute must be as shown in the respondent's plan and that the said plan and evidence led thereon show identifiable land mass to which a

declaration and injunction could be attached. The Court of Appeal was therefore right to have granted the declaration and injunction in favour of the respondents.

In coming to the conclusion that respondents evidence on boundary was inconclusive, the learned trial Judge on p.134 of the record said-

“On the evidence of witnesses so far reviewed, I am convinced that there is a boundary between plaintiffs and defendants on the land in dispute. The plaintiffs tendered their survey plan of the land in dispute (Exhibit A). I have examined it. It is silent on these details. Then there is the conflicting evidence of Donatus Nwafor (P.W.3) who, in answer to cross-examination stated, inter alia as follows-

“Our land near the land in dispute was inherited by my father from his father. It was not given to us by anybody. I do not know if this our land was got from the plaintiffs as they indicated on their

Exhibit A. My father did not tell me that this our land was got from plaintiffsI don't know if defendants have land having common boundary with the land in dispute. There is no road from Umuekpu to the land in dispute. I know the land in dispute very well. The defendants have no land having common boundary with the land in dispute anywhere.”

To me the evidence on boundary is inconclusive and does not meet the degree of certainty required in these matters.”

The Court of Appeal on the other hand per Ogundare J .C.A.(as he then was) found on page 213 of the record thus

“A close look at the land said to be in dispute in both plans will show on almost identical land on both plans. Indeed respondents' case is that both of them own different portions of land as against appellants' claim that they own the whole land. After a careful consideration of the evidence as a whole together with the plans tendered, I am not prepared to say as the learned trial Judge, with respect to him, erroneously held that appellants' evidence on boundary is inconclusive and does not meet the degree of certainty required in these matters'. On the contrary, the appellants, in my respectful view, proved with certainty the identity of the land to which they claimed and in respect of which they sought a declaration. It is for the respondents who assert title to a part of the land in dispute to prove the identity of the particular portion they laid claim to - see Oyude v. Ogbedegbe (1984) 1 SC. 360. This is more so in this case where they conceded part of the land to belong to the appellants. With profound respect to the learned trial Judge, he laboured under a misconception that the appellants were claiming a part of the land in dispute. Certainly that was not their case but the

case of the respondents.”

It is settled law that it is the duty of a plaintiff who comes to court to seek for a decree of declaration of title to land to show the court clearly and accurately the area of land to which his or her claim relates and usually (though
5 not always) a plan is necessary for the purpose. Such a plan must also show clearly the dimensions of the land the boundaries and other salient features thereof. *Elias v. Omo-bare* (1982) 5 SC 25, *Arabe v. Asanlu* (1980) 5-7 SC. 78, *Etim v. Oyo* (1978) 6-7 SC. 91 *Udofia v. Afia* 6 WACA 216).

The respondents had pleaded in para.4 of their Amended Statement
10 of Claim that-

“4. The land subject matter of this action hereinafter called the land in dispute, is a part of or a portion of a larger piece or parcel of land situate in Amalaand is known and called “Okpuku-Ukwu”.

The precise boundaries of the land in dispute are clearly delineated in the Survey Plan No. UND/9/77 filed along with this statement of claim. The Okpuku-Ukwu land of which a portion is now in dispute is verged green whilst the portion thereof now in dispute is verged pink. At the trial the plaintiffs shall found on the boundaries of the land in dispute as delineated in the said plan No. UND/9/77.”
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The plan mentioned therein is Exhibit B in the proceedings. In their Amended Statement of Defence the appellant pleaded in para.3 thus-

*“3. The defendants deny para.4 of the Amended Statement of Claim. The land in dispute is in two portions: namely, the small portion verged blue
25 in the defendants’ plan and the large portion verged yellow in the defendants’ Amended plan. The small portion verged blue aforesaid is part of the plaintiffs land which had common boundary on the east with the defendants’ land verged green in the defendants’ Amended plan. The large area verged yellow in the defendants’ Amended plan is part of defendants land verged
30 green in their said plan.”*

The plan referred to above is also Exhibit B in the proceedings. So clearly as submitted by learned counsel for the respondents, the features on the plan Exhibit A were never put in issue on the pleadings and so the question of proving them did not arise. And as rightly stated by the Court of
35 Appeal it was never the respondents’ case that the appellants were entitled to any portion of the land in dispute, but rather it was the appellants who conceded part of the land in dispute to the respondents. The respondents did not therefore have to prove the feature of any boundary between them and the appellants on the land in dispute. I found myself in complete agreement with

the Court of Appeal that the evidence of the witnesses for the respondents is generally in line with their plan, Exhibit A, and even the testimony of P.W.3 which the learned trial Judge regarded as conflicting, was clearly to the effect that the land in dispute belonged to the respondents and that the appellants had no land having a common boundary with the land in dispute. 5

I am therefore clearly of the view that the Court of Appeal was right when it held that the respondents' Plan (Exhibit A) showed a well defined land mass to which a declaration could be attached. In fact both the two plans (Exhibits A & B) as earlier observed, are almost identical, apart from the concession made to the respondents by the appellants in their plan Exhibit B. In other words the parties themselves know the identity of the land in dispute. Also having demonstrated above how the trial court wrongly dismissed respondents' claims on the ground that "the evidence of boundary is inconclusive", the Court of Appeal was quite in order for holding that the respondents proved their title to the land in dispute. Both issues (i) and (iii) are therefore resolved against the appellants. 10 15

Issue (ii)

This is the issue of whether or not the respondents did swear and took oath by "Ala-Obibi" juju in the course of arbitration. It would be recalled that a dispute arose between the respondents and the appellants in 1975 when the respondents tried to exchange the land in dispute or part of it, for another land called Obora, following an arrangement between them and the Umukube family of Umuokwa village in Amala. The exchange arrangement was aborted and the dispute between the respondents and appellants was then referred to the Parents Teachers Association (PTA.) of Amala a body consisting of elders and councillors of the community. The body went into the dispute. The respondents said the PTA. asked them (respondents) to swear on a "juju" supplied by the appellants. The respondents took the oath and survived it for one year after which the land was adjudged to belong to them according to Igbo custom. A document evidencing the arbitration by the P.T.A. was tendered in evidence as Exhibit C. The appellants on the other hand said that when the PTA. offered the "juju" oath to the appellants, they refused to take the oath and the matter was abandoned and they held onto the land. So what was in dispute at the trial was clearly the result if any of the "arbitration" by the Amala P.T.A. 20 25 30 35

The learned trial Judge on the question of arbitration said on page 136 of the record thus-

"On the question of arbitration and the taking of oath on some juju, I do not believe the plaintiffs took any oath. It is my finding that of the two

competing stories regarding the ownership of the land as given by the plaintiffs and their witnesses on the one side and the defendants and their witnesses on the other, the defendants' story is the more probable and I prefer it."

Reversing the above finding, the Court of Appeal (per Ogundare, J.CA.)
5 after going through relevant pleadings and evidence thereon observed on pages 235-236 of the record that-

"While the witnesses for the appellants were emphatic as to the conclusion of the native arbitration, the same cannot be said of the witnesses for the respondents. According to the Amended Statement of Defence,
10 *the arbitration was inconclusiveThe evidence of the 5th respondent was along this line. He however admitted that the head of his family at the time, Egbulike Nwoke (3rd defendant but now deceased) brought out the "Ala-Obibi " juju on the land for the appellants to swear. D.W.2's version of the arbitration was that following the refusal of the appellants to take the*
15 *juju oath, the PTA adjudged the land to the respondents. This witness claimed to have presided over the arbitration proceedings. He was not sure if the respondents produced the "Ala-Obibi" juju. Although the respondents in paragraph 27 of their Amended Statement of Defence pleaded, inter alia that-*

20 *"The records of the PTA. on this matter is pleaded and will be founded upon at the trial."*

Yet no such records were produced. This pleading however is an admission that records of the arbitration were made. The appellants produced Exhibit C as the records. Other than saying that Exhibit C was a forgery, no
25 attempt was made by the respondents to prove - this serious allegation. Had the learned trial judge properly evaluated the evidence before him and had he adverted his mind to all the salient points, he would not have rejected, as he did, the evidence for the appellants which evidence was supported by evidence for the respondents on almost all the essentials of the oath taking
30 except the actual oath-taking by the appellants. In admitting Exhibit C in evidence the learned trial Judge remarked:

"The weight to be attached to it is another matter."

But throughout his judgment he gave no indication as to the weight he ascribed to Exhibit C. Indeed he said nothing about the document, impor-
35 *tant as it was to the case before him. On the totality of the evidence before the learned trial Judge had he exercised his discretion judiciously, he would have found that the appellants' version of the oath taking was the more probable and would have concluded that issue in their favour."*

I think the Court of Appeal was right. I have also read the Amended Statement of Claim and the Amended Statement of Defence and evidence led in support thereof.

Counsel for the appellants was in my view wrong when he said the Court of Appeal should not have disturbed the finding of fact by the trial court that the respondents took no “juju” oath when that finding as could be seen above cannot be reasonably justified nor supported by credible evidence in the case. 5

Admittedly a Court of Appeal should not easily disturb the finding of facts of a trial Judge who had the singular opportunity of listening to the witnesses and watching their demeanour. It is settled law, however that such finding of facts or inferences drawn from them may be questioned in certain circumstances and certainly this is one of such circumstances when the finding is perverse or cannot be supported by evidence. (See for example Akinloye & Anor v. Eyiola & Ors (1968) NMLR 92. Akinola v. Fatoyinbo Oluwo & Ors (1962) AllNLR 244); (1962) SCNLR 352. 10 15

This issue (ii) is therefore resolved against the appellants.

There was no appeal against the finding by the Court of Appeal that—*‘The decision of the Amala PTA Arbitration Panel would, in my respectful view constitute estoppel per rem judicatam, the subject matter, the parties and the cause of action being the same in the arbitration as well as in the High Court action.’* 20

My comments will therefore be very brief. There is no doubt that the respondents took the “juju oath” which was witnessed by members of the Amala P.T.A. That was on 6th September 1975 (See Exhibit C). The P.T.A. did not award the land in dispute to any of the parties on that day or on any other day. On that day the “decision” or “judgment” was “reserved” for one year to 6th September 1976, The “juju” was to decide. If members of the respondents’ family who took the oath were still alive on the adjourned date (6/9/76), the land belonged to the respondents. If on the other hand they died before that date, then the land belonged to the appellants. No investigation or inquiries were necessary. And none was made. The P.T.A. did not claim to possess the power of life and death. Only the juju had that power. As it turned out the respondents did not die. It was not their time to die! They were still all alive on the “judgment” day. The P.T.A. again witnessed their survival on the day as set out in Exhibit C. 25 30 35

So one can safely say that the P.T.A. were never arbitrators in the real sense of the word. They were merely witnesses to the oath taking ceremony as well as the survival ceremony. The arbitrator in my view was the “Ala Obibi” juju

which they believed had the power of life and death. My own belief is that nobody died because it was not yet time for anyone to have died. Enough of that.

However the respondents have by this suit in my view positively established their ownership of the land in dispute independently of the previous” Ala Obibi” juju oath-taking. Both sides in the contested suit called as their witnesses natural and real human beings to say what they knew about the land. All the witnesses were available for cross-examination and re-examination on their testimonies. This was as it should have been under the law. The “juju” method as cheap and quick as it might appear to have been had its own disadvantages. For example you cannot put a “juju” in the witness box for any purpose. Its activities, methods and procedure would appear to belong to the realm of the unknown even though the effects may be real in the end. The worst of it all is that a “juju” “judgment” or “decision” is not subject to an appeal like the one we are all witnessing now in this suit. So that unless and until the “juju” descends to the level on which we can all understand its workings, it would be difficult to enforce its “decision” in a law court. We have come a long way from the oracle! At any rate it was held in *Ojiako v. Ogueze* (1962) 1 All NLR 58; (1962) 1 SCNLR 112 that where a plaintiff had already received a declaration of title in a native court, the High Court could exercise its discretion to grant a new declaration where the second suit was made with reference to a plan. So it is in this case where the “juju” declaration had no plan of the land attached to it.

All the issues having been resolved against the appellant, this appeal fails. It is accordingly dismissed. The judgment of the Court of Appeal is hereby confirmed. The respondents are awarded costs assessed at one thousand Naira (N1,000.00) only.

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BELGORE JSC

In all land cases, the party claiming right to any portion or parcel of land must clearly identify the land. It is not enough to call it one name and rest there. The other party could well give another name to the same land or part of it or merged with it to form bigger land. These are common day occurrence in most land claims between communities in many parts of this country. The boundaries of the land sometimes with names indicating the boundary neighbours, the features on the land-shrines, graves, ruins, streams or rivers,

hills, special trees and so forth - are always of great help in identifying the land. In this case, the defendants, now appellants never claimed the entire land, only a portion thereof, conceding the rest to the respondents. Whereas respondents' plan, Exhibit A clearly shows the necessary features of the land in dispute, the appellants have not fared as much in their plan to the extent that they were not even able to satisfactorily show there were boundary neighbours of the respondents. The respondents, I agree with Court of Appeal, clearly proved their case and the trial Court was in error placing on them evidential burden not required of them by law. The Court of Appeal had only one option in cases of this nature, that is to interfere with the findings of fact of the trial court which never tallied with the evidence and thus made in error. Akinloye & Anor. v. Eyiola & Ors. (1968) NMLR 92; Akinola v. Oluwo & Ors. (1962) 1 All NLR 244. The appellants never satisfied the evidential burden on them after the plaintiffs/respondents had clearly proved their case and their plan is very explanatory. Salami v. Oke (1987) 4 NWLR (Pt. 63) 1 SC; Onwuka v. Ediala (1989) 1 NWLR (Pt. 96) 182. See also Elias v. Oyo (1978) 67 SC. 91.

I therefore find no merit in this appeal, and having had the opportunity of a preview of the judgment of my learned brother, Kutigi, J.S.C. with which I am in full agreement. I also dismiss it and affirm the decision of the Court of Appeal. I make the same consequential order as to costs.

WALI JSC

I have read before now the lead judgment of my learned brother Kutigi, J.S.C. I entirely agree with his reasoning and conclusions on all the issues raised and canvassed in this appeal as a result of which he dismissed the appeal.

For those same reasons ably stated and which I adopt as mine, I also hereby dismiss the appeal.

The judgment of the Court of Appeal reversing that of the trial court is hereby affirmed with N1000.00 costs against the appellants to the respondents.

MOHAMMED JSC

I have the privilege to have read in advance, the lead judgment of my learned brother, Kutigi J.S.C. I entirely agree with his reasoning and conclu-

sions on all the issues raised in this appeal.

It is for those same reasons contained in the said lead judgment, which I adopt as mine that I too, will dismiss this appeal. Accordingly, I hereby
5 dismiss the appeal with N1,000.00 costs to the respondents.

IGUHJSC

I have had the privilege of reading in draft the lead judgment just
10 delivered by my learned brother, Kutigi, J.S.C. I agree with his conclusion dismissing the appeal and it is accordingly dismissed by me.

On the issues of the identity of the land in dispute, there is no doubt that the onus lies on the plaintiff who seeks a declaration of title to land and an injunction to establish with certainty and precision the area of land to which
15 their claim relates. See *Agbonifo v. Aiwereoba* (1988) 1 NWLR (Pt.70) 325, *Onwuka v. Ediala* (1989) 1 NWLR (Pt.96) 182, *Olusanmi v. Oshasona* (1992) 6 NWLR (Pt.245) 22 at 36. *Awote v. Owodunni* (No.2) (1987) 2 NWLR (Pt.57) 366 at 371, *Ezeokeke v. Uga & Ors.* (1962) 1 NLR (Pt.3) 482; (1962) SCNLR 199 and *Makanjuola v. Balogun* (1989) 3 NWLR (Pt. 108) 192. A careful study of the two
20 plans, Exhibits A and B tendered by the plaintiffs and defendants who are the appellants and respondents herein respectively reveals that the identity of the land in dispute is clear and certain. The only two areas of difference in the two plans are that the parties call the land in dispute by different names and while the plaintiffs showed the land as one contiguous piece of land, the
25 defendants indicated the same as consisting of two unequal pieces of land. The said defendants conceded ownership of the smaller piece to the plaintiffs while they the defendants, claimed to be the owners of the larger piece of the land in dispute. The essential features on the plaintiffs' plan, Exhibit A, were never specifically put in issue on the pleadings by the defendants and it
30 seems to me that the identity and precise boundaries of the land claimed by the respondents were fully established before the trial court. I am therefore in agreement with the court below that the respondents' plan A which showed a well defined land mass with precise features to which the respondents' claims may be attached cannot be faulted.

35 On the issue of arbitration in respect of the land in dispute as pleaded by both parties, the respondents claim that they swore on the juju provided by the appellants and survived the oath-taking and that the land in dispute was accordingly adjudged to belong to them by the arbitrators. The appel-

lants, on the other hand, maintained that the arbitration was inconclusive because the respondents refused to take the prescribed customary oath as directed by the Parents Teachers Association who were the arbitrators.

The respondents tendered Exhibit C which they claimed is the arbitration proceedings. It is significant that the said Exhibit C fully supported the respondents' oral testimony on the arbitration in issue. It is equally significant that although the appellants specifically pleaded records of the arbitration proceedings which they averred they would found upon at the trial the same were never tendered and no reason was advanced by them as to why these vital documents were not produced.

The learned trial Judge on this all important issue of arbitration as relied on by both parties purported to resolve the same in just one sentence as follows:-

"On the question of arbitration and the taking of oath on some juju. I do not believe the plaintiffs took any oath"

It cannot be over-emphasised that a trial court ought to give reasons for believing or not believing a witness. It is certainly not enough for a trial Judge simply to "say I believe" or "I do not believe" a witness. He ought to state the reasons for believing or not believing each particular witness. See Atanda v. Ajani (1989) 3 NWLR (Pt. 111) 511 and Oladehin v. Continental Textile Mills Ltd. (1978) 2 SC. 23 at 32. In the instant case, the learned trial court made no attempt to advance any reason whatsoever for disbelieving the plaintiffs' evidence to the effect that they took the customary oath as prescribed by the arbitrators and there lies one of the flaws in its judgment.

The Court of Appeal. in dealing with this issue under consideration had this to say-

".....Although the respondents in paragraph 27 of their amended statement of defence pleaded, inter alia that-

"The records of the P.T.A. on this matter is pleaded and will be founded upon at the trial" yet no such records were provided. This pleading however is an admission that records of the arbitration were made. The appellants produced Exhibit C as the records. Other than saying that Exhibit C was a forgery. no attempt was made by the respondents to prove this serious allegation. Had the learned trial Judge properly evaluated the evidence before him and had adverted his mind to all the salient points he would not have rejected, as he did, the evidence for the appellants which evidence was supported by evidence for the respondents on almost all the essentials of the

oath taking except the actual oath-taking by the appellants. In admitting Exhibit C in evidence the learned trial judge remarked:

“The weight to be attached to it is another matter.”

5 *But throughout his judgment he gave no indication as to the weight he ascribed to Exhibit C. Indeed he said nothing about the document, important as it was to the case before him.*

10 *On the totality of the evidence before the learned trial Judge had he exercised his discretion judiciously, he would have found that the appellants’ version of the oath taking was the more probable and would have concluded that issue in their favour.”*

I have considered the above observation of the Court of Appeal on the issue of Exhibit C and I agree entirely with them. Although it is settled that an appellate court will not ordinarily interfere with the findings of fact made by a trial court which are supported by credible evidence. it will not hesitate to do so where an appellant satisfactorily established that such findings are clearly wrong or perverse or where the trial court failed to make a proper use of the opportunity of seeing and hearing the witnesses at the trial or where it has drawn wrong conclusions from established facts before the court or where the findings were arrived at as a result of a wrong approach to the evidence or violation of some principles of law or procedure. See Colonial Securities Trust Co, v. Massey (1896) 1 QBD 38. Ntiro v. Akpan (1910) 3 NLR 10. Mbanta and Ors. v. Anigbo and Ors (1972) 2 ECSLR 306 at 311, Igwego v. Ezeugo (1992) 6 NWLR (Pt 249) 561 at 585. Okpiri v. Jonah (1961) All NLR 102 at 104-105; (1961) 1 SCNLR 174; Lawal v. Dawodu (1972) 8-9 SC. 83 at 114-115 and Woluchem v. Gudi (1981) 5 SC. 291 at 295-296 and 326-329. I am also in agreement with the finding of the court below that the appellants having been led to taking the customary juju oath provided by the 3rd defendant at great risk to their lives and in the belief that the customary method would settle the dispute, the respondents are estopped by conduct from denying that the appellants were thereby adjudged owners of the land, the latter having survived the oath for over a year.

It is for the foregoing reasons and the fuller reasons given in the lead judgment of my learned. Kutigi, J.S.C., that I agree that the appeal lacks sub-