

SUPREME COURT OF NIGERIA
27TH JANUARY, 1995. SC. 134/1991
CORAM:- S.M.A. BELGORE, M.E. OGUNDARE,
E.O. OGWUEGBU, S.U. ONU, Y.O. ADIO, JJSC.

ADEPEJU ODUNSI APPELLANT

AND

MR. AZEEZ BAMGBALA & 3 OT RESPONDENTS

APPEALS - Admissibility of exhibits - Made an issue before the Court of Appeal - Failure to consider that issue - Whether miscarriage of justice was occasioned.

EVIDENCE - Admission by defendant - That a particular party was her predecessor in title - The onus is on defendant to prove her contrary allegation.

EVIDENCE - Pleadings - Averments therein - Where not proved by evidence - Of defendant who failed to testify - Whether the averments must be discounted.

EVIDENCE - Unchallenged evidence of the plaintiffs - By appellant who had opportunity to do so - When trial judge will have no difficulty - In finding for the plaintiffs.

LAND LAW - Title - To larger portion of which the parcel in dispute forms part of - Allegation of absolute sale to plaintiffs' father - Whether proved by them.

LANDLORD & TENANT - Forfeiture - Customary tenancy - Appellant that breached her obligations - Whether liable to forfeiture.

ORDERS - Perpetual injunction - Granted by the trial court - Whether rightly set aside by the Court of Appeal - After affirming trial court's order of forfeiture.

PLEADINGS - *Fact of payment of rent pleaded - Exhibits that were tendered - Towards proving payment of annual rents - Are not material facts which must be pleaded.*

FACTS

The plaintiffs/respondents before the High Court, claimed from the defendant/appellant declaration of statutory right of occupancy, forfeiture and injunction in respect of the land in dispute situate at Agege, Lagos State. Plaintiffs claimed that the appellant's father was their customary tenant who paid annual rents until he died in 1975. The appellant stopped paying rent after the death of her father. The plaintiffs issued exhibits "D" to "D4" being rent receipts, to the appellant's father in the name of Royal Brothers Ltd. The appellant claimed the land as belonging to her father from whom she derived her title by inheritance. She denied that her father was a tenant of the plaintiffs. Apart from filing her statement of defence, no oral evidence was presented by the appellant.

The trial court found for the plaintiffs and granted all the reliefs sought. The appellant's appeal to the Court of Appeal was dismissed save that it set aside the order of perpetual injunction made by the trial court. Being dissatisfied, appellant has further appealed to the Supreme Court to determine inter alia, whether the Court of Appeal's judgment should be set aside since it failed to consider appellant's ground of appeal that Exhibits D1 - D4 were not validly admitted.

HELD (Unanimously dismissing the appeal per lead judgment of **OGWUEGBU JSC**)

Fact of payment of rent pleaded

1. The receipts (Exhibits "D" to "D4") which are the subordinate facts are the means of proving or the evidence sustaining the payment of annual rents. They are not material facts which must be pleaded. The averments that annual rents were paid and that receipts were issued put the appellant on his guard and told him the case he was going to meet at the trial. The appellant cannot be heard to say that Exhibits "D" to "D4" established facts different from those pleaded or that they were not pleaded (p. 295 A).

Admission by defendant

2. Having admitted that Odunsi who traded under the name "Royal Broth

ers” was her predecessor in title and was in possession of the building shown in the survey plan Exhibit “B1” as Royal Brothers Produce Store,” the onus was on the appellant to show when the land and building on Exhibit “B1” ceased to be that of Odunsi who carried on business as “Royal Brothers” and became that of “Royal Brothers Ltd”. The appellant offered no evidence to discharge this onus. (p. 295 G)

Title - Whether proved

3. Assuming that Exhibits “D” - “D4” were wrongly admitted which was not the case, the respondents proved their title to the larger portion of land of which the parcel in dispute is part by absolute sale of the same to their father Amodu Gbamgbala by Agbeye family in 1915.(p. 296 A)

Admissibility of exhibits

4. The court below did not expressly consider the admissibility of Exhibits “D” to “D” by the learned trial judge, this did not lead to any miscarriage of justice. There was no violation of any principle of law or practice or such a departure from the rules which permeate all judicial procedure by the courts below(p. 296 C).

Whether averments must be discountenanced

5. The learned appellant’s counsel admitted in the course of his oral submission before us that the defendants of which the appellant is the 1st defendant adduced no evidence at the court of trial. Averments in pleadings unless where admitted by the opposite party must be established or proved by evidence, failing which, they must be discountenanced as unsubstantial. They cannot be construed as evidence. (p. 296 F)

Unchallenged evidence of the plaintiffs

6. In this case, the evidence of the respondents stood unchallenged by the appellant who had the opportunity to do so. The learned trial judge after due consideration of the evidence before him which was that of the plaintiffs, the addresses of counsel and the authorities cited had no difficulty in coming to the conclusion that the respondents’ case was proved and he found for them as per their amended claim. (p. 296 G)

Forfeiture - Customary tenancy

7. The courts below also came to the right conclusion when they held that the appellant was liable to forfeiture since she failed to fulfill her obligations

under the customary tenancy, denied the landlord's title and let out portions of the land granted to her late father to third parties without the landlord's consent or approval.(p. 297 C)

Injunction - whether rightly set aside

B 8. The court below was therefore in error to have refused the order of perpetual injunction granted by the learned trial judge after affirming the order of forfeiture also made by the court of trial. The said order made by the learned trial judge is hereby restored.(p. 297 F)

C NOTABLE POINTS OF INTEREST

OGWUEGBU JSC

1. What pleading must be made up of

The general principle is that every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence but not the evidence by which those facts are to be proved. It should also be as concise as the nature of the case admits.(p. 294 G)

E 2. *Proof of claim by other admissible evidence*

The decisions arrived at by the courts below could have been otherwise. It would have been the same with or without Exhibits "D" - "D4" having regard to the state of the pleadings and the evidence led. The respondents had by other admissible evidence proved their claim. It is not every error that will result in the judgment of a court below being disturbed. Such an error or slip must strike at the root of the decision appealed against. (p.296D)

3. Seeking relief from forfeiture by customary tenant

G Unless a customary tenant who has committed a breach of his Customary tenancy claims relief from forfeiture and invokes the equitable jurisdiction of the court to grant the relief, the order of forfeiture and recovery of possession cannot be denied the customary landlord - the respondents in this case. The appellant has persisted and remained unrepentant in her conduct. The customary tenant can seek the relief from forfeiture by means of a counter-claim. Where she failed to do so, she cannot do so for the first time on appeal. (p. 297 D)

ONU JSC***4. Whether oral evidence was given to vary documents***

Thus, it was an erroneous submission by the learned S.A.N. that oral evidence was given or received to vary the contents of written documents. The law is that oral evidence of the existence of a legal relationship and not the terms on which it is established or is carried on, may be received. (p. 302 F)

5. Onus on defendant to prove better title to that of original owner

It is trite law that where the plaintiff traces his root of title to one whose title to ownership has been established, the onus then shifts to the defendant to show that his own possession is of such a nature as to oust that of the original owner. In the instant case, the Respondents having traced their title directly to an established owner, the Agbedeyi Family of Orile-Agege, the onus shifted on the Appellant to prove the contrary which he failed to do. (p. 304 E)

6. Liability to forfeiture in some case of misconduct

It is not in all known cases of misconduct or misbehaviour that cumulated acts result in a guilty party becoming liable to forfeiture. The best known of such a situation is where the overlord fails to take the necessary steps to enforce his rights. (p. 309 B)

ADIO JSC***7. Documents in support of pleaded facts need not be pleaded***

There was substance in the submission, made for the respondents, that only material facts should be pleaded in pleadings and that as the plaintiffs pleaded the payment of annual rents by the father of the defendant and led evidence to that effect, Exhibits "D1" to "D4" were admissible. The legal position is that documents in support of facts pleaded need not be pleaded and they can be tendered in support of facts pleaded (p. 309 G).

REPRESENTATION

Chief Funso Akinoyosoye SAN, with A.A. Odunsi for the appellant.
Milton Ohwovoriole SAN, with H.O. Fasusi for the Respondents.

CASES REFERRED TO

Okpiri v. Jonah (1961) 1 SCNLR 174
Datunbu v. Adene (1987) 4 NWLR (pt 65) 314

- Ajide v. Kelani (1985) 3 NWLR (pt 12) 248
 N.W. Salt Co. Ltd. v. Electrolytic Alkali Co Ltd. (1913) 3 KB 425
 Devi v. Rey (1946) AC 508
 Akinfosile v. Ijose (1960) 5 FSC 192
 Nwabuoku v. Otteh (1961) 1 ALL NLR 487
 B Balogun v. U.B.A. Ltd (1992) 6 NWLR (pt 247) 336
 Dakubo v. Bob-Manuel (1967) All NLR (Reprint) 122
 Agu v. Ikewibe (1991) 3 NWLR (pt. 180) 335
 A-G Anambra State v. Onuselogu Enter. Ltd. (1987 4 NWLR (pt.66) 547.
 C Nwadike v. Ibekwe (1987) 4 NWLR (pt 67) 718
 Thomas v. Holder 12 WACA 78
 Omoregbe v. Lawani (1980) 3 - 4 SC 108
 Oniah v. Onyah (1989) 1 NWLR 514
 Erinle v. Adelaja (1969) 1 NMLR 132
 D Are v. Ipaye (1990) 2 NWLR (pt. 132) 298
 Idundun v. Okumagba (1976) 9 -10 SC 227
 Monier Construction Co. v. Azubike (1990) 3 NWLR (pt.136) 74

STATUTES & RULES REFERRED TO

- E Evidence Act Cap. 112 1990 SS. 132 (3), 227(1)
 High Court of Lagos State (Civil procedure) Rules 0.16 r.4

LEAD JUDGMENT BY OGWUEGBU JSC

F ‘The respondents who are plaintiffs in the High Court claimed from the appellant herein and one J .O. Fashuwope, declaration of statutory right of occupancy, forfeiture and injunction in respect of a parcel of land at Tabon-Tabon, Agege, Lagos State covered by the judgment in Suit No. IK/141/65 together with Survey Plan No. AL.63/1962 which was decided in their favour.

G After pleadings were filed and exchanged by the parties, the case proceeded to trial and at the conclusion, the learned trial Judge, Martins. J. entered judgment for the plaintiffs and granted all the reliefs sought. The defendants not being satisfied with the decision, appealed to the Court of Appeal. The court below dismissed the appeal of both defendants save in
 H respect of the order of perpetual injunction made against them by the learned trial Judge.

The appellant who is the first defendant in the High Court has further appealed to this court. Both parties filed and exchanged briefs of argument. Six issues for determination were formulated by the appellant:

“(i) Whether the judgment of the Court of Appeal was not wrong in law and must it not be set aside when that court in its lead judgment did not consider at all the grounds of appeal whether Exhibits D1-D4 were validly admitted before using the document to establish the case of the plaintiffs/respondents against the appellant;

(ii) Whether it is proper to use extrinsic evidence to alter or add to the terms of a transaction which has been reduced into writing contrary to section 131(1) of the Evidence Act?

(iii) Whether the plaintiffs/respondents have sufficiently proved a grant of customary tenancy in their favour against the defendants/appellants?

(iv) If the plaintiffs did not prove grant of customary tenancy, could a purported admission in the statement of defence and upon which no evidence was led, constitute sufficient credible evidence to rectify the case of the plaintiffs.

(v) Did the judgment produced in evidence reflect a proper application of the principles that should guide the court when considering onus of proof in actions for declaration of title to land?

(vi) Whether it was right in law for the Court of Appeal in its lead judgment to go outside the issues pleaded by the parties in coming to its decision?

Only one issue for determination was identified by the respondents namely:

“Whether on the pleadings and in the circumstances of this case, Exhibits D-D4 were not admissible documents and if they are not, whether in expunging them, there remains sufficient evidence on record to sustain the claim of the plaintiffs.”

The above question does not however cover all the issues raised in the grounds of appeal.

The plaintiffs who are respondents in this court instituted the action for themselves and as representing Bamgbala family of Tabon- Tabon in Agege, Lagos State. They claimed that the father of the appellant was their customary tenant on the land in dispute. He as a tenant owned a company known as “*Royal Brothers Produce Store*” which was shown on the plaintiffs’ survey plan No. AL.63/1962. The father of the appellant paid annual rents for the land to the plaintiffs until he died in 1975. The appellants stopped paying rents after the death of her father. The only receipts for payment of rents covered the periods 15/10/65 to 30/9/67 and they were issued to “*Royal Brother Ltd.*” See Exhibits “D” to “D4”.

The appellant claimed the land as belonging to her father from whom she derived her title by inheritance. She denied that her father was a

tenant of the plaintiffs.

For a fuller understanding of the issues canvassed in this appeal, it will be necessary to set out some relevant paragraphs of the pleadings of both parties. They are paragraphs 3 -11, 15 and 16 of the amended statement of claim and paragraphs 1, 2, 3, 4, 5 and 6 of the statement of defence.

Amended Statement of Claim

"3. The plaintiffs state that their family owns the large parcel of land measuring about 6.962 acres situate, lying and being at Tabon Tabon, Agege, within the jurisdiction of this Honourable Court, which land is described in the Plan mentioned above.

4. The land the subject matter of this action which is described above was formerly a portion of the large tract of farm land owned by the Agbedeyi Family.

5. That under and by virtue of a receipt of purchase dated the 26th day of May, 1915, one Agbedeyi (now deceased) as Baale of Orile Agege and the then head of the said Agbedeyi Family with the knowledge, consent and approval of his family made an absolute sale of the portion of land now in dispute to one Amodu Gbamgbala (also now deceased) and put him in effective possession thereof.

6. That since the purchase until his death intestate in Lagos on or about the 17th day of April, 1937, the within named Amodu Gbamgbala (or Bamgbala) occupied the said land and exercised thereon all rights of absolute ownership, undisturbed and uninterrupted.

7. The plaintiffs are the children and grand children of the within named Amodu Bamgbala (now deceased).

8. Immediately after the death of their father intestate as afore mentioned, the plaintiffs, by rights of inheritance under native law and custom entered on the said land and have since been exercising all the diverse acts of ownership without disturbance from anyone.

9. The plaintiffs in exercise of their right of ownership have let portions of the said land to customary tenants, including the father of the first defendant who died in 1975.

10. That before the death of the father of the 1st defendant he never failed to pay his annual rent to the plaintiffs' family and that this fact is within the knowledge of the 1st defendant, receipts showing such payments and letter of demand written by the said deceased Odunsi to the 2nd defendant are hereby pleaded.

11. That since the death of his father in 1975 the defendants have failed, refused and/or neglected to pay rent to the plaintiffs' family despite

repeated demands.

15. *The plaintiffs state that in 1965, their family instituted action against Salami Agbedeyi in Suit No. IK/141/65 and obtained judgment against him for (N40.00) as general damages for trespass committed on their land and an order of injunction restraining the defendants their servants and/or agents from committing further acts of trespass on the said B land.*

16. *The plaintiffs further state that the area of land in this dispute is part of the larger area covered in the above suit of 1965 and will at the trial lead evidence by producing relevant documents and calling witnesses to prove the contention."*

Statement of Defence:

1. The defendants are not in a position to deny or admit paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 13, 15, 16 and 21 of the statement of claim and put the plaintiffs to the strictest proof thereof.

2. The defendants deny paragraphs 9, 10, 14, 17, 18, 19 and 20 of the statement of claim and put the plaintiffs to the strictest proof thereof.

3. The defendants will contend that they derive their title from the late Chief Adeola Odunsi who was then trading under the name Royal Brothers and who has been in possession of the building shown on the plan attached to Suit. No. IK/141/65 as "Royal Brother" Produce Store for upwards of 30 years. (italics added)

4. The defendants will contend that the plaintiffs are estopped from denying defendants ownership and possession having acknowledge (sic) same in plan No. AL.63/1962 of 20:8:62 filed in suit No. IK/141/65 and pleaded in paragraph 2 of the statement of claim.

5. The defendants will further contend that the judgment obtained in IK/141/64 does not cover the defendants land in that defendants were not made parties to the said proceedings even though the plaintiffs knew of the existence of the defendants as shown on the Plan No. AL.63/1962.

6. The defendants admit that they have not paid any rent to the plaintiffs as alleged in paragraph 11 of the statement of claim as none was due to the plaintiffs."

The plaintiffs testified and tendered Exhibits "A" and "A1" - the purchase receipts, Exhibits "B" and "B1" - the certified true copies of the judgment in Suit No, IK/141/65 and survey plan No. AL63/1962 attached to the judgment, Exhibit "C" - the certified true copy of the Enrolment of Judgment in Suit No. IK/141/65 and Exhibits "D1" to "D4" - receipts for rents issued to "Royal Brothers Ltd" by the plaintiffs/respondents' predecessors in title.

At the close of the plaintiffs' case the defendants adduced no evidence at the trial in support of the averments contained in their joint statement of defence. They rested their case on the evidence adduced by the plaintiffs.

B The learned counsel for the appellant contended that Exhibits "*D1*" to "*D4*" were never pleaded by either of the parties and were wrongfully admitted in evidence; that the appellant raised the issue in the court below and without determining whether the documents were properly admitted or not, the court below relied on them and came to the conclusion that the respondents are the owners of the land.

C It was his further submission that the court below shut its eyes to the obvious legal implications surrounding Exhibits "*D1*" to "*D4*" and that this occasioned a miscarriage of justice. He said that in a situation such as this where both the trial court and the Court of Appeal admitted inadmissible evidence which affected the decision one way or the other, the proper order is one of retrial. The court was referred to the cases of Okpiri v. Jonah (1961) 1 SCNLR 174, Atolaghe v. Shorun (1985) 1 NWLR (Pt. 2) 360 Okonji v. Njokanma (1991) 7 NWLR (Pt. 202) 131 and Dantubu v. Adene (1987) 4 NWLR (Pt. 65) 314. We were urged to set aside the judgment on this ground.

E Mr. Ohwovoriole S.A.N. for the respondents argued in his brief that Exhibits "*D*" to "*D4*" were not pleaded by the plaintiffs because only material facts should be pleaded. He drew the attention of the court to paragraph 10 of the amended statement of claim where the plaintiffs pleaded the payment of annual rents by the father of the defendant/appellant, gave evidence to that effect and tendered Exhibits "*D*" to "*D4*". He referred the court to the case of Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248 at 261 and Order 16 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules, 1972. He urged the court to dismiss the appeal.

G The general principle is that every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence but not the evidence by which, those facts are to be proved. It should also be as concise as the nature of the case admits. See *N.W. Salt Co. Ltd v. Electrolytic Alkali Co. Ltd.* (1913) 3 K.B. 425 and *Philips v. Philips* (1875) 4 Q.B.O 133.

H The plaintiffs in paragraphs 9 and 10 of their amended statement of claim averred that the land in dispute was let to the father of the appellant who died in 1975 as a customary tenant who never failed to pay his annual rents to the plaintiffs' family; that this fact is within the knowledge

of the appellant and “*that receipts showing such payments by the late father of the appellant are hereby pleaded.*”

The receipts (Exhibits “D” to “D4”) which are the subordinate facts are the means of proving or the evidence sustaining the payment of annual rents. They are not material facts which must be pleaded. The averments that annual rents were paid and that receipts were issued put the appellant on his guard and told him the case he was going to meet at the trial. The appellant cannot be heard to say that Exhibits “D” to “D4” established facts different from those pleaded or that they were not pleaded in view of the reasons given above.

Another line of attack on Exhibits “D” to “D4” is that they were issued to “Royal Brothers Ltd” and not to Chief Adeola Odunsi, the alleged customary tenant and that the former is a legal entity distinct from Chief Adeola Odunsi. If one goes back to paragraph 3 of the statement of defence, the appellant averred that he derived his title from the late Chief Adeola Odunsi who was trading under the name of “*Royal Brothers*” and who had been in possession of the building shown on the survey plan attached to Suit No. IK/141/65 as “*Royal Brothers Produce Store.*”

In the survey plan Exhibit “B1” attached to the judgment in Suit No. IK/141/65, the plaintiffs in that case who are also plaintiffs in the present proceedings showed a building which is within the larger area of land in litigation in that case as “*Royal Brothers Produce Store.*” paragraph 3 of the statement of defence also confirmed paragraph 16 of the amended statement of claim.

Exhibits “D” - “D4” were issued on the letter-heads of “*Royal Brothers Ltd*” and not to Chief Adeola Odunsi. Even if the respondents led no evidence to link Odunsi with “*Royal Brothers Produce Store*”, “*Royal Brothers*” or “*Royal Brothers Ltd*”, the fact remained that by paragraph 3 of the statement of defence, the appellant supplied the link between Odunsi and the “*Royal Brothers*” and the respondents pleaded and adduced evidence which the court believed that Odunsi was their tenant.

Having admitted that Odunsi who traded under the name “*Royal Brothers*” was her predecessor in title and was in possession of the building shown in the survey plan Exhibit “B1” as “*Royal Brothers Produce Store*”, the onus was on the appellant to show when the land and building on Exhibit “B1” ceased to be that of Odunsi who carried on business as “*Royal Brothers*” and became that of “*Royal Brothers Ltd*”. The appellant offered no evidence to discharge this onus. See *Ajide v. Kelani* supra at 263.

Assuming that Exhibits “D” - “D4” were wrongly admitted which was not the case, the respondents proved their title to the larger portion of land of which the parcel in dispute is part by absolute sale of the same to their father Amodu Gbambala by Agbeye family in 1915. The said Amodu Gbambala was put in effective possession thereof. From the time of the purchase until his death in 1937, he exercised absolute undisturbed and uninterrupted over the parcel of land. The respondents are his children who succeeded him under native law and custom and entered on the land exercising acts of ownership without disturbance from anyone. In addition, respondents proved the acts of the appellant which are inconsistent with their title as the over lords.

The court below did not expressly consider the admissibility of Exhibits “D” to “D4” by the learned trial Judge, this did not lead to any miscarriage of Justice. There was no violation of any principle of law or practice or such a departure from the rules which permeate all judicial procedure by the courts below. See *Devi v. Roy* (1946) A.C. 508 at 521.

The decisions arrived at by the courts below could not have been otherwise. It would have been the same with or without Exhibits “D” - “D4” having regard to the state of the pleadings and the evidence led. The respondents had by other admissible evidence proved their claim. See *Oguma v. I.B. W.A.* (1988) 1 NWLR (Pt. 73) 658 at 682. It is not every error that will result in the judgment of a court below being disturbed. Such an error or slip must strike at the root of the decision appealed against.

The learned appellant’s counsel admitted in the course of his oral submission before us that the defendants of which the appellant is the 1st defendant adduced no evidence at the court of trial. Averments in pleadings unless where admitted by the opposite party must be established or proved by evidence, failing which, they must be discountenanced as unsubstantial. They cannot be construed as evidence. See *Akinfosile v. Ijose* (1960) SCNLR 447; (1960) 5 F.S.C. 192. *Anyah v. ANN. Ltd.* (1992) 6 NWLR (Pt. 247) 319 at 331 and *Obmiami Brick and Stone (Nig.) Ltd. V. A.C.B. Ltd.* (1992) 3 NWLR (Pt. 229) 260 at 293.

In this case, the evidence of the respondents stood unchallenged by the appellant who had the opportunity to do so. The learned trial Judge after due consideration of the evidence before him which was that of the plaintiffs, the addresses of counsel and the authorities cited had no difficulty in coming to the conclusion that the respondents’ case was proved and he found for them as per their amended claim. See *Nwahuoku v. Otth*

(1961) 2 SCNLR 232 (1961) 1 All NLR 487 at 490. Balogun v. U.B.A. Ltd. (1992) 6 NWLR (Pt. 247) 336 at 354 and Omoreghe v. Lawani (1980) 3-4 S.C. 108 at 117.

The Court of Appeal in confirming the claim for a declaration of statutory right of occupancy came to the right conclusion when it said:

“The entire argument of the appellants as to the nature of the tenancy is beside the point in the face of the finding that their father was a tenant of the plaintiffs. The plaintiffs say he was a customary tenant, to the land and contend that their father was not a tenant, (sic) Having failed to prove their own title to the land, and their father found to be a tenant, then he must be a tenant according to customary law since this is the case of the plaintiffs which the defendants did not destroy.”

The courts below also came to the right conclusion when they held that the appellant was liable to forfeiture since she failed to fulfill her obligations under the customary tenancy, denied the landlord's title and let out portions of the land granted to her late father to third parties without the land lord's consent or approval.

Unless a customary tenant who has committed a breach of his customary tenancy claims relief from forfeiture and invokes the equitable jurisdiction of the court to grant the relief, the order of forfeiture and recovery of possession cannot be denied the customary landlord - the respondents in this case. The appellant has persisted and remained unrepentant in her conduct. The customary tenant can seek the relief from forfeiture by means of a counter-claim. Where she failed to do so, she cannot do so for the first time on appeal. See Onisiwo v. Fagbenro (1954) 21 NLR 3. Dokubo & or. v. Boh-Manuel & ors. (1967) All NLR (Reprint) 122 and Erinle v. Adelaja & 7 ors. (1969) 1 NMLR 132 at 136. The court below was therefore in error to have refused the order of perpetual injunction granted by the learned trial Judge after affirming the order of forfeiture also made by the court of trial. The said order made by the learned trial Judge is hereby restored.

In conclusion, with or without Exhibits “D” - “D4”, the case of the respondents was proved. The appeal is unmeritorious and I hereby dismiss it with N1,000.00 cost to the respondents.

BELGORE JSC

I had the opportunity of reading in advance the judgment of my learned brother Ogwuegbu, J.S.C. with which I am fully in agreement. I have nothing more to add to the judgment which I adopt as mine. I too

dismiss the appeal with the same order for costs made in the said judgment of my learned brother Ogwuegbu, J.S.C.

OGUNDARE JSC

B I have had the advantage of a preview of the judgment of my learned brother Ogwuegbu J.S.C. just delivered. I agree entirely with him. I have nothing more to add. I too dismiss the appeal and abide by the order for costs made in the judgment of my brother Ogwuegbu, J.S.C.

C

ONU JSC

This is an appeal against the judgment of the Court of Appeal, Lagos, which affirmed the judgment of Martins, J. sitting at Ikeja Division of the High Court of Lagos State. The plaintiffs, herein respondents, had in D the trial court sued the defendants/appellants claiming against them the following reliefs:-

“(i) A declaration that the plaintiffs are entitled to a statutory right of occupancy to the piece or parcel of land measuring about 6,962 acres, situate, lying at Tabon-Tabon, Agege, covered by judgment No. IK/141/65 E together with the Survey Plan No. AL/163/1962 within the jurisdiction of this Honourable Court, which land is more particularly described and edged Red in Plan No.AL.63/62 of 20/8/62.

(ii) A declaration that the defendants have incurred forfeiture under Native Law and Custom of the land which they occupy as plaintiffs’ F tenants at Tabon-Tabon, Agege, as shown on Survey Plan No. AL.63/62 of 20/8/62.

(iii) An injunction restraining the defendants, their servants and/or agents from committing acts or further acts of trespass on the said land which was the subject matter of Suit No.IK/141/65 decided in favour of the G plaintiffs.”

Pleadings were ordered, filed and exchanged by the parties. The respondents later amended their statement of Claim with leave of Court.

The facts of the case are briefly that the appellants’ late father was a tenant of the respondents’ family in respect of a parcel of land H situate at Tabon -Tabon, Agege of Lagos State which forms a portion of a larger tract of land belonging to the respondents’ family. The land was purchased from one Salami Agbedeyi in 1915 from which time the late father of the respondents was put in effective occupation.

The case went to trial where the main thrust of the respondents’

evidence was that the defendants' predecessor had always been their tenant and that upon his death, the appellants not only refused paying the rents their predecessor used to pay, but that they went ahead to deny the respondents' overlordship of the land in dispute thus, rendering themselves liable to forfeiture. B

The appellants did not call any evidence in support of the averments contained in their statement of defence but simply rested their case on the evidence of the respondents. In fact, after the appellants' statement of defence was filed, the respondents filed a Reply in which they joined issues with the appellants regarding paragraphs 4, 5, 6, 7 and 8 of the statement of defence. C

In his judgment, the learned trial Judge held the view that in the absence of any evidence forthcoming from the appellants, the averments in their statement of defence were deemed abandoned. He therefore proceeded to grant to the respondents all the reliefs claimed in their writ in their entirety. D

Being dissatisfied with this decision the appellants appealed to the Court of Appeal which affirmed the decision of the trial Court save in respect of its order for perpetual injunction which it held was not proven at the trial since the land to which the injunction was tied was unascertainable as between the respondents on the one hand, and the 1st appellant and his sub-tenant (the 2nd defendant), on the other hand whose interest thereto derived from the 1st appellant. E

The court below in dismissing the appeal held, inter alia, that although Exhibits D1 -D4 (receipts for rents paid) tendered at the instance of the respondents at the trial revealed the actual tenant to be a company known as "*Royal Brothers Limited*" but belonging to the deceased appellant's father (one late Chief Adeola Odunsi) these constituted sufficient admission for the respondents' to rely on in the proof of their case. F

The 1st appellant (hereinafter referred to as appellant) still aggrieved by this decision of the court below has further appealed to this court premised on 5 grounds in his notice of appeal dated 22nd August, 1989. G

Briefs of argument were filed and exchanged by the parties in accordance with the rules of court. The appellant submitted six issues for our determination. They are: H

(i) Whether judgment of the Court of Appeal was not wrong in law and must it not be set aside when the Court in its lead judgment did not consider at all the grounds of appeal whether Exhibits D1 to D4 were validly admitted before using the documents to establish the case of the plain

tiffs/respondents against the appellant.

(ii) Whether it is proper to use extrinsic evidence to alter or add to the terms of a transaction which has been reduced into writing contrary to section 131(1) of the Evidence Act?

B (iii) Whether the plaintiffs/respondents have sufficiently proved a grant of customary tenancy in their favour against the defendant/appellant.

(iv) If the plaintiffs did not prove grant of customary tenancy, could a purported admission in the statement of defence and upon which no evidence was led constitute sufficient credible evidence to rectify the case of

C the plaintiffs

(v) Did the judgment produced in evidence reflect a proper application of the principles that should guide the Court when considering onus of proof in actions for declaration of title to land?

(vi) Whether it was right in law for the Court of Appeal in its lead D judgment to go outside the issues pleaded by the parties in coming to its decision?"

I am of the view that there should in fact be at least one or at most two issues in line with the first two opening sentences at page 1 of appellant's brief under Introduction - for our determination. For instance, in the two E opening sentences referred to above, the appellant asserts

"The issue the appellant is raising in this appeal is centered on whether the Court of Appeal is entitled as it did not shut its eyes to the obvious legal implications of the admission in evidence of

Exhibits D1-D4, which were documents never pleaded before the F trial Court.

Furthermore, there were issues raised at the Court of Appeal which the learned Justices of the Court of Appeal failed to consider."

From the opposing camp, the respondents formulated a lone issue which is similar to what the appellant has submitted ought to be succinctly the issue G for determination. The respondents issue reads:

"Whether on the pleadings and in the circumstances of this case, Exhibits D-D4 were not admissible documents and if they are not, whether in expunging them, there remains sufficient evidence on record to sustain the claim of the plaintiffs."

H As I am of the view that the respondents' lone issue is enough to dispose of the appeal herein and it will be unnecessary and unwise to argue a proliferation of issues where one or a few would do, See *Agu v. Ikewibe* (1991) 3 NWLR (Pt. 180) 385 at page 401; *Adelaja v. Fanoiki* (1990) 2 NWLR (Pt. 131) 137 and *Ugo v. Obiekwe* (1989) 1 NWLR (Pt. 99) 566, I

will commence my consideration of it as follows:-

At the hearing of this appeal on 31st October, 1994, learned Senior Advocate for the appellant, Mr. Funso Akinyosoye, and learned counsel for the respondent, Chief Milton Ohwovoriole, S.A.N. each adopted his client's brief of argument and orally expatiated thereon.

There are two limbs to this lone issue raised in this appeal, to wit: B

1. The problem of the proper admissibility of Exhibits D-D4 (Rents receipts) and
2. Availability of other sufficient evidence to sustain the claim of the respondents.

With regard to limb 1 of this issue, it is the appellant's contention C in his brief that the question as to their admissibility was in issue in both the trial court and in the court below. With utmost due respect I disagree entirely with the appellant while I agree in toto with the respondents in their submissions. The law is that only material facts must be pleaded by the parties but not evidence. See A.G Anambra State v. Onuselogu Enterprises Ltd. (1987)4 NWLR (Pt. 66) 547. See also Order 16 Rule4 (now Order 17 Rule 4 of 1987 Rules) of the High Court (Civil Procedure) Rules of Lagos State (in pari materia with Order 17 Rule 4 of the High Court of Lagos State (Uniform Civil Procedure) Rules, 1987 which provides as follows:-

"Every pleading shall contain, and contain only a statement in a summary form of the material facts on which the party pleading for his claim or defence, as the case may be, but not the evidence by which they are to be proved and shall, when necessary, be divided into sub-rules numbered consecutively,....." E

In the instant case, the respondents pleaded in paragraphs 10 and F 11 of their amended statement of claim thus:

"10. That before the death of the father of 1st defendant he never failed to pay his annual rent to the plaintiffs' family and that this fact is within the knowledge of the 1st defendant, receipts showing such payments and letter of demand written by the said deceased Odunsi to the 2nd defendant are hereby pleaded." G

11. That since the death of her father in 1975 the defendants have failed, refused and/or neglected to pay rent to the plaintiffs' family despite repeated demands."

(Italics is mine).

H

The appellant would seem clearly to have joined issues with the respondents when in his joint statement of defence with the 2nd defendant he pleaded in paragraphs 3, 4 and 6 as follows:

"3. The defendant (sic) will contend that they derive their title from the late Chief Adeola Odunsi who was then trading under the name of Royal Brothers and who has been in possession of the building shown on the plan attached to Suit No. IK/141/65 as "Royal Brothers Produce Store" for upwards of 30 years.

B 4. The defendant (sic) will contend that the plaintiffs are estopped from denying defendants ownership and possession having acknowledged same in Plan No.AL.63/1962 of 20/8/62 filed in Suit No. IK/141/65 and pleaded in paragraph 2 of the statement of claim.

X X X X X X X X X

C 6. The defendant (sic) admit that they have not paid any rent to the plaintiffs as alleged in paragraph 11 of the Statement of Claim as none was due to the plaintiffs."

(Italics is mine)

From the foregoing italicized words on which issues were indeed fully joined D by the parties, the admission of Exhibits D1 to D4 became not only relevant but a foregone conclusion. The law is that an admission relied on as evidence to prove a material fact need not be pleaded. See *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248 at pages 261-262; *Okparaeké v. Efihuonu* (1941) 7 WACA 53 at 55 and *Owosho v. Dada* (1984) 7 S.C. 149 at 163- E 164. In oral submission, learned Senior Counsel for the appellant after referring us to the case of *Oyediran v. Alebiosu* (1991) 6 NWLR (Pt. 249) 550, particularly ratio 5, argued that the documents not pleaded but were tendered and received in evidence were Exhibits D1-D4 denoting payment on receipts for rent. When asked if it was pleaded at all that rents were F paid, he merely in an answer, replied that the receipts were at large. Thus, it was an erroneous submission by the learned S.A.N. that oral evidence was given or received to vary the contents of written documents. The law is that oral evidence of the existence of a legal relationship and not the terms on which it is established or is carried on, may be received. See section G 131(3) (now section 132(3) of the Evidence Act. Cap. 112 Laws of the Federation of Nigeria, 1990 which states:

"Oral evidence of the existence of a legal relationship is not excluded by the fact that it has been created by a document, when the fact to be proved is the existence of the relationship itself, and not the terms on which it was established or carried on."

H

Clearly therefore, from all I have demonstrated above, Exhibits D1 to D4 are admissible in evidence and were accordingly so admitted by the trial court vide paragraph 10 of the Statement of Claim and paragraph 3 the

Statement of defence set out above. The Court below was therefore perfectly right and justified when it held thus:

"It was when Exhibits 01 to 04 were tendered that the tenant who paid the rents was known to be "Royal Brothers Limited." In fact, it was the defence that stated in paragraph 3 that they derive their title from late Chief Odunsi who was then trading under the name of "Royal Brothers....."

It is therefore difficult to understand the argument of the appellant that "*Royal Brothers Limited*" being a limited liability company was not Chief Odunsi....."

Clearly, Chief Odunsi was the alter ego of Royal Brothers Limited C and was so established in evidence following the pleadings. There being no admission of inadmissible evidence as contended by the appellant, and the argument canvassed being entirely misconceived. The judgment of the court below affirming that of the trial court remains unimpeachable. The reliance placed on the cases of Okpiri v. Jonah (1961) 1 SCNLR 174; Atolaghe v. D Shornn (1985) 1 NWLR (Pt. 2) 360; Okonji Njokanma (1991) 7 NWLR (Pt. 202) 131, and Dantubu v. Adene (1987) 4 NWLR (Pt. 65) 314 by learned Senior Advocate, in my respectful view, is of no avail.

Both judgments constitute concurrent findings of the two courts below and I will be loath to disturb same unless there is established or E shown (which is denied) a miscarriage of justice or violation of some principles of substantive law or procedure or a substantial error apparent on the face of the record of proceedings or that such findings are perverse or not supported by evidence or were arrived at as a result of a wrong approach to the evidence or special circumstance is shown to warrant interference with F such findings of fact. See Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718; Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561 and Enang v. Adu (1981) 11-12 S.C. 25 at 42.

With regard to limb 2, having regard to all I have said in respect of Limb 1 above. I deem it unnecessary to delve into any further consideration of the points raised therein. Suffice it to add that the question whether the wrongful reception of a piece of evidence should affect the decision of a trial Judge depends on the circumstances of the case. Where it is possible to exclude the wrongfully admitted evidence and yet have enough material to sustain the decision, the wrongful reception of such evidence would not H affect that decision. See section 226 of the Evidence Act (now section 227) (1) of the Evidence Act Cap. 112, Laws of the Federation of Nigeria which states thus:

“227(1) The wrongful admission of evidence shall not of itself be a ground for the reversal of any decision in any case where it shall appear to the court on appeal that the evidence so admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted.”

B Were Exhibits D1 to D4 to constitute inadmissible evidence, it was the duty of the respondents or their counsel to have raised an objection to their admissibility. See *Abolade Agboola v. Jagun Olukade* (1976) 2 S.C. 83 or that where such evidence was inadvertently admitted in evidence (which is not conceded) there was abundance of other evidence to sustain the claim of the respondents. Such other pieces of evidence are

- (a) Proof of title and discharge of burden by respondents.
- (b) Grant of Customary tenancy to the appellants' predecessor in title Pa Odunsi.
- (c) Effect of tenant's (Appellant's act) inconsistent with the over lords' (Respondents') title.

D PROOF OF TITLE AND DISCHARGE OF BURDEN BY RESPONDENTS

By their paragraph 3 of the Statement of defence set out above the appellants traced their root of title to the respondents. The respondents on the other hand, following strictly their pleadings, gave evidence and tendered Exhibits A, A1, Band B1 to establish their title to the land in dispute. It is trite law that where the plaintiff traces his root of title to one whose title to ownership has been established, the onus then shifts to the defendant to show that his own possession is of such a nature as to oust that of the original owner. See *Thomas v. Holder* (1946) 12 WACA 78; *Sanyaolu v. Coker* (1983) 1 SCNLR 168; (1983) 3 S.C. 72 and *Dosunmu v. Joto* (1987) 4 NWLR (Pt. 65) 297. In the instant case, the respondents having traced their title directly to an established owner, the Agbedeyi Family of Orile-Agege, the onus shifted on the appellant to prove the contrary which the failed to do. As pleadings do not constitute evidence, the appellant in the case in hand having failed to give evidence in support of his pleadings. See *Olanrewaju v. Amos Bamigboye & ors.* (1987) 3 NWLR (Pt. 60) 353 at 359, 362 or in challenge of the evidence of the respondents, is deemed to have accepted the fact adduced by the respondents not withstanding his general traverse. See *Federal Capital Development Authority v. Naibi* (1990) 3 NWLR (Pt. 138) 270 at 281; *Hutchful v. Biney* (1971) 1 All NLR 268 and *Imana v. Robinson* (1979) 3-4 S.C. 1 at 9-10.

The law is also settled that where evidence is led by a party to any

proceedings as in the instant case and it is not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceedings to accept the unchallenged evidence before it. See *Omogbe v. Lawani* (1980) 34 S.C. 108 at 112; *Faseun v. Pharco (Nig.) Ltd.* (1965) 2 All NLR. 216 at 220, *Nwabuoku v. Otti* (1961) 2 SCNLR 232; (1961) 2 All NLR. 487 and *Emaphil Ltd v. Odili* (1987) 4 NWLR (Pt. B 67) 915, 939. Based on the uncontradicted evidence before the trial court, the court below on appeal was right in granting title to the respondents vide *Nwabuoku v. Otti* (supra). Besides, since appellant called no evidence but rested his case on the respondents', he is deemed to have abandoned his statement of defence because pleadings do not constitute evidence - See *IBWA Ltd. v. Oguma Associates Co. (Nig.)* (1988) 3 SCNJ (Pt. 1) 3.

GRANT OF CUSTOMARY TENANCY TO THE APPELLANT'S PREDECESSOR

It is pertinent here to recall how the respondents, after tracing their root of title to the land in dispute averred in paragraph 9 of the Amended Statement of Claim that in exercise of their rights of ownership they have let portions of the land in dispute to customary tenants including 1st defendant/appellant's father who had died. He averred in the said paragraph 9 thus:

"The plaintiffs in exercise of their right of ownership have let portions of the said land to customary tenants, including the father of the first defendant who died in 1975."

Evidence was given by the respondents in support of the above pleading and being uncontroverted, is taken as accepted by the appellant.

EFFECT OF TENANT'S ACTS WHICH ARE INCONSISTENT WITH OVERLORD'S TITLE

The question therefore is whether as adjudged customary tenant the appellant can still enjoy his tenancy. Put the other way, having challenged the overlordship of the respondents by denying their title, is he still entitled to remain as their tenant for his unremitting misbehaviour? The misbehaviour alluded to is best exemplified in paragraphs 2, 4, 5 and 7 of the Statement of defence wherein the appellant pleaded:-

"2. The defendants deny paragraphs 9, 10 14, 17, 18, 19 and 20 of the Statement of claim and put the plaintiffs to the strict proof thereof."

4. The defendant (sic) will contend that the plaintiffs are estopped from denying defendants ownership and possession having acknowledged same in Plan No. AL.63/1962 of 20-8-62 filed in suit No. IK/

141/65 and pleaded in paragraph 2 of the Statement of claim.

5. *The defendant (sic) will further contend that the judgment obtained in IK/141/65 does not cover the defendants land in that defendants were not made parties to the said proceedings even though the plaintiffs know of the existence (sic) of the defendant as shown on Plan No. AL.63/B 1962.*

7. *The defendant (sic) will contend that the plaintiffs are estopped from further litigating on the same subject which had been ruled upon in suit No. ID/37m/84 in favour of the defendants."*

From the foregoing, it is glaring that the appellant is guilty of misconduct of misbehaviour for an open challenge to the respondents' title, and who by force of law are his overlords, by setting up a rival title in himself. In the case of *Louis Oniah & ors. v. Chief Obi J.I.G. Onyia* (1989) 1 NWLR (Pt. 99) 514 whose circumstances are similar to the one in hand, it was held that the real basis of the misconduct or misbehaviour which renders the tenancy liable to forfeiture is the challenge to the title of the overlord. This may be by alienation of part of the land under claim of ownership, refusal of the overlord's title by setting up a rival title in the customary tenant himself. It is further held in that case that despite the established misconduct of the customary tenants, forfeiture is not automatic as the overlord must take the necessary steps to enforce his right of forfeiture for the misconduct in the courts vide *Coker. Jinadu* (1958) L.L.R. 77 and *Lawani v. Tadeyo* (1944) 10 WACA 37. In the instant case, not only has the appellant refused to pay rents contrary to what his father did, but has by his pleadings on which he led no evidence in proof thereof challenged the overlordship of the respondents. He in addition sought no relief against forfeiture for his misconduct and misbehaviour. In effect, since the respondents asked for forfeiture in their writ and statement of claim and the appellants did not seek relief against forfeiture, that relief will enure to the respondents.

In *Dokubo v. Bob-Manuel* (1967) 1 All NLR 113, a case in which a sub-house deliberately in, preach of native law and custom refused to seek the consent of a main house before building on land over which the main house had overlordship, it was held by this Court at pages 121 (Per Coker, J.S.C) inter alia:

"*There was positive evidence before the Judge, which he accepted, that under Kalabari native law and custom, land allotted to a sub house under such tenure could not be built on or let out to strangers without the consent of the main House and that a breach of this rule is an act of misconduct, which will involve a forfeiture of the interests of the sub-house*

concerned. Even if that were enough, the plaintiffs also relied on the fact that the defendants denied that they were members of and answerable to Bob-Manuel House and this denial has been persisted in both at the trial and at the hearing of this appeal. We have already given our reasons for rejecting it, and a denial of the title of the true over-lords is a ground for forfeiture in every system of jurisprudence known to us."

See also Lasisi Erinle v. Salami Adelaja & 7 ors. (1969) 1 NMLR 132, another case whose facts are not too dissimilar to the one at hand. There, the plaintiff/appellant in the High Court sought recovery of possession of a piece of land against the defendants. There was evidence that the 1st defendant notwithstanding a series of judgments wherein plaintiff/appellant C was confirmed as owner of the land, persisted in disputing the title of the plaintiff, his landlord.

The High Court held that although the 1st defendant denied the plaintiff's title to the land in his Statement of defence, his failure to lead evidence to dispute plaintiff's title amounted to a change of attitude; it D therefore declined to order forfeiture. On appeal, this Court in allowing it said at page 136 of the Report. Inter alia, thus:

"The contention before us of learned counsel for the defendants is that the mere claim on the statement of defence by the 1st defendant that he was the owner of the land was not sufficient to entail the consequences E of forfeiture. Whether or not the act of a tenant amounts to misbehaviour is a matter of fact, as distinct from the question whether or not such misbehaviour entails forfeiture, which is a matter of law....."

..... Then,

and after all this catalogue of defeats, and in this case and indeed on the 5th December, 1960, he filed a statement of defence which again denies the title of the plaintiff and asserts his own title to the same land. The consistent conduct of the 1st defendant, exhibited over a period extending G from 1935 to 1960 manifested a determination to claim and maintain the land as his own, to ignore the several orders and judgments of the courts indicating the contrary, to ignore the consequences of his inadvertence to any such judgments or orders and to maintain his own desire despite legal orders. We are in no doubt that the claim on his statement of defence which he would not even bother to support or disclaim at the trial is but H another manifestation of his settled desire. The learned trial Judge was clearly in error to take the view that he had disclaimed his statement of defence; he did not. He must take the consequences of his behaviour. As

far as the 1st defendant is concerned. there is no doubt that the plaintiff should have succeeded in this action as against him. It follows that the 2nd contention on behalf of the appellant is well founded and for this reason the appeal must be allowed....."

It is not in all known cases of misconduct or misbehaviour that B cumulated acts result in a guilty party becoming liable to forfeiture. See Are v. Ipaye (1990) 2 NWLR (Pt. 132) 298. The best known of such a situation is where the overlord fails to take the necessary steps to enforce his rights. The clearest case where forfeiture became automatic and peremptory is that illustrated in Bello Isiba & ors. v. J.T. Hanson (1968) NMLR 76 at C page 78 following what Verity, Acting P. in the West African Court of Appeal said in the case of Alhaji B.A Suleman & anor v. Hannibal Johnson (1951) 13 WACA 213 at page 215:

"It is clear that when the original owners have granted rights of occupation to another the possession of the other is not adverse possession D and the owner's acquiescence therein is part and parcel of the grant and cannot affect the owner's reversionary rights. It is only, therefore, when it comes to the owner's knowledge that the tenant has alienated or is attempting to alienate the land that the question of acquiescence can arise. The owner is not in possession and had indeed no right to possession and is E not concerned, therefore with the acts of the tenant unless and until he becomes aware that those acts are inconsistent with and, therefore, a denial of the overlord's right."

Although it is not in all cases that a customary tenant incurs forfeiture, in the instant case where the appellant had committed one of the severest F breaches of customary tenancy - denial of the landlord's title - the learned trial Judge and following him the justices of the court below, were justified to have ordered forfeiture of the customary tenancy, moreso that there had been no prayers for reliefs against forfeiture emanating from appellant.

The result of all I have said is that the second limb of the lone G issue is resolved against the appellant.

Naturally flowing from the resolution of the issue against the appellant is the fact that the court below is therefore in error to have refused the order of perpetual injunction granted by the learned trial Judge after affirming the order of forfeiture also made by the trial court.

H It is for the reasons I have given above and the fuller ones contained in the lead judgment of my learned brother Ogwuegbu, J.S.C. with which I am in entire agreement, that I to dismiss this appeal. I also make the same consequential orders as contained therein inclusive of those as to costs.

ADIO JSC

I have had the benefit of reading, in advance, the judgment just delivered by my learned brother, Ogwuegbu, JSC., and I agree that the appeal has no merit. I too accordingly dismiss it with N1,000.00 costs to the respondents.

The main issue in the appeal relates to the alleged wrongful admission of Exhibits “D1” to “D4” and the alleged wrong use made of them. The conclusion of my learned brother, in the lead judgment, with which I agree, was that with or without Exhibits “D1” to “D4”, the case of the respondents was proved. The legal implication of the aforesaid conclusion is that even if the admission of the said exhibits by the learned trial Judge was wrong, the court below could not properly have reversed the judgment of the learned trial Judge on that ground alone. The wrongful admission of inadmissible evidence is not per se a ground for the reversal of any decision if it appears to the court of appeal that the evidence so admitted cannot reasonably be held to have affected the decision, and that the decision would have been the same had such evidence not been admitted. Section 226(1) of the Evidence Act; and see also *Idundun v. Okumngba* (1976) 9-10 S.C. 227. In short, the contention of the appellant that the admission of the aforesaid documents occasioned a miscarriage of justice could not be sustained.

The complaint of the appellant was that Exhibits “D1” to “D4” were not pleaded by either of the parties and should, therefore, not have been admitted or used for the purpose of deciding any issue in the case. The issue of the alleged inadmissibility of the said documents was raised in the court below and it was alleged that without resolving that issue the court below relied on them in coming to the conclusion that the respondents were the owners of the land in dispute. For that reason, the appellant urged this court to order a retrial. There was substance in the submission, made for the respondents, that only material facts should be pleaded in pleadings and that as the plaintiffs pleaded the payment of annual rents by the father of the defendant and led evidence to that effect, Exhibits “D1” to “D4” were admissible. The legal position is that documents in support of facts pleaded need not be pleaded and they can be tendered in support of facts pleaded. See *Monier Construction Co. v. Azubuike* (1990) 3 NWLR (Pt. 136) 74.

It is for the foregoing reasons and for the detailed reasons given in the lead judgment of my learned brother, Ogwuegbu, J.S.C., with which I agree, that I too dismiss this appeal and abide by the consequential orders, including the order for costs.