

SUPREME COURT OF NIGERIA

11TH JULY, 1995. SC. 133/1989

**CORAM:- S.M.A. BELGORE, U. MOHAMMED, S.U. ONU,
Y.O. ADIO, A.I. IGUH, JJSC.**

CHUKWUDOZIE ANYABUNSI APPELLANT
AND
EMMANUEL UGWUNZE
(For himself and on behalf of
Umungali Family of Isu Village, Oba) RESPONDENT

ACTIONS - *Trespass - Right of action in trespass to land - Is Maintainable by respondent - Who establishes possession and title - To land in dispute.*

ARBITRATION - *Customary Law - Decision of arbitrators - Voluntarily chosen by Parties - Is final and binds them.*

EVIDENCE - *Admissibility - Exhibits rightly admitted - No need to speculate on propriety of their being admitted.*

EVIDENCE - *Admissibility - Unregistered instrument - Admission thereof in evidence - When proper.*

JUDGMENTS - *Decision of lower courts - Based on evidence tendered - Whether finding for the respondent - In view of the overwhelming evidence - Is a correct approach.*

LAND LAW - *Possession - Acts constituting Possession - Ownership and worshipping of shrine - Located within disputed land - Deemed act of possession.*

LAND LAW - *Possession - Right to possession - Is in respondent family who is in defacto et de jure possession.*

LAND LAW - *Trespass - Acts constituting trespass to land - Whether appellant is liable.*

FACTS

The respondent herein, as plaintiff instituted the action leading to this appeal in the High Court of the Anambra state of Nigeria, in representative capacity against the appellant who was the defendant therein claiming:-

1. N200.00 as general damages for trespass to land and
2. Perpetual injunction restraining the respondent from committing further acts of trespass on the plaintiff's said land.

The matter went to trial at which, both parties called witnesses who testified on their behalf. At the close of hearing, the trial judge found for the respondent. Dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal Enugu Division, which court, dismissed the appeal and affirmed the decision of the trial court. Against that decision of the Court of Appeal, the appellant has further appealed to the Supreme Court raising three issues for determination. The apex court however adopted the four issues formulated by the respondent in his brief as sufficient for the determination of the appeal.

ISSUES FOR DETERMINATION

“(i) Whether the Plaintiffs/Respondents are in possession of the land in dispute or have a right to possession thereof as to maintain an action in trespass against the Defendant/Appellant.

(ii) Whether there is a proof of trespass against the Defendant/Appellant.

(iii) Whether Exhibits “C” and “D” are admissible in evidence, and whether, assuming that Exhibits “C” and “D” are not admissible (which points are not conceded), there are not other sufficient accepted evidence to support the judgment, after exhibits “C” and “D” are excluded.

(iv) Whether the learned trial judge and the Court of Appeal made a correct approach to the evidence tendered by both sides to the case.”

HELD (Unanimously dismissing the appeal per lead judgment of **IGUH JSC**)
Acts constituting possession

1. In the present case, the respondent's family “Okwuani” juju shrine, on the facts found established by the learned trial Judge and affirmed by the court below is located right within the land in dispute allocated to Umeobieli by his family for farming purposes. This juju shrine had always been served by the entire respondent's family as a community. In these circumstances, it cannot be seriously argued that the respondent's family is not in possession of the land in dispute. (p. 1382 C)

Right to possession

2. It is in evidence, and this was accepted by both courts below, that the de facto possession of the land in dispute by Umeobieli is at the instance of the respondent's family to which he belonged. There is further evidence which was again accepted by the two courts below that the said respondent's family

established, retained and had communally worshipped their “Okwuani” juju shrine right within the said land in dispute since time beyond human memory. In the circumstances, I cannot but fully endorse the findings of the trial court as affirmed by the court below that the respondent’s family is in de facto et de jure possession of the land in dispute and that the said family also has a right to possession thereof. (p. 1383 E)

3. Right of action in trespass

The trial court, applying, quite rightly, in my view, the provisions of section 45 of the Evidence Act, to the effect that acts of possession and enjoyment of land may be evidence of ownership, not only of the particular piece of land with reference to which the acts are done, but also of other land so situated or connected therewith, by locality or similarity, that what is true as to one piece of land is likely to be true of the other, together with other relevant evidence before the court, found for the respondent on the issue of title to the said land verged green in Exhibit A. It ought to be observed that this finding was affirmed by the court below. The respondent, therefore, having established both possession and title for the land in dispute can maintain an action in trespass against the appellant. (p. 1384 F)

4. Trespass - Acts constituting trespass

It is trite law that every unlawful or unauthorized entry on land in possession of another person is an act of trespass for which an action in damages lies. The respondent in his viva voce evidence before the trial court testified that when the appellant was advised by the Isu Akanato elders to resume payment of his tribute as from 1977, he replied by invading the land in dispute and damaging the respondent’s crops thereon. The respondent was not seriously challenged on this piece of evidence which was accepted by the trial court. The appellant’s reaction was that he was in possession of the land in dispute and that it was the respondent’s family that trespassed thereupon. The learned trial Judge rejected this plea of the appellant. The above decision of the trial court was affirmed by the court below and I can find no reason to fault the same. In the circumstance, the second issue must also be resolved in favour of the respondent. (p. 1385 B)

5. Unregistered instrument - When admissible

Exhibit C is a document tendered by the respondent in proof of his grant of the land verged yellow in exhibit A to the Church. It is clearly not a registrable instrument but the law is well settled that an unregistered is not admissible to prove title but it is certainly admissible to prove payment of money and coupled

with possession may give right to an equitable interest enforceable by specific performance. Exhibit C was therefore properly admitted in evidence, not as a title deed, but as a receipt in respect of the land. (p. 1386 A)

6. Parties are bound by decision of their arbitrators

It cannot be over emphasized that where two parties to a dispute, as in the present case, voluntarily submit their matter in controversy to an arbitration according to customary law and agreed, whether expressly or by implication, that the decision of the arbitrators would be accepted as final and binding, then once the arbitrators reach a decision, it will no longer be open to either party to subsequently back out of such a decision. A party rejecting such a decision must prove that it was wrong in principle. (p. 1387 A)

7. Evidence rightly admitted

Exhibits C and D having been held to be rightly admitted in evidence before the trial court as affirmed by the Court of Appeal, it becomes unnecessary to speculate on the position if they were to have been wrongfully admitted. Issue number three must accordingly be resolved in favour of the respondent. (p. 1387C)

8. Decision of lower courts

The fourth and last issue poses the question whether the learned trial Judge and the Court of Appeal made a correct approach to the evidence tendered by the parties to the case. In my view, there can be no doubt that they did. By Exhibit D, the Isu Akanato elders in a customary law proceeding continued ownership of the land on which the appellant lived on the respondent and a grant thereof by the said respondent's family to the appellant subject to the payment of tribute. I think both the trial court and the Court of Appeal were fully entitled in the face of the above overwhelming evidence to find for the respondent as claimed. (p. 1387 D)

NOTABLE POINTS OF INTEREST

IGUHJSC

1. Allotment of family land for farming purposes - Effect

It is beyond dispute that the respondent's family made allotments of portions of "Ana Okpuno Umungali" land to some of its members for farming purposes. However, allotments of portions of family land to its members, not by way of permanent or out and out grants, but for farming purposes, may confer no more than mere permission on the beneficiaries to make use of such portions of family land as prescribed. Such allotments, unless a contrary inten-

tion is established, may not amount to the family divesting itself of possession of the land involved. Although a family land may be allotted to or farmed by a particular member of a family, such allotment or user of the land by the member of the family concerned is no conclusive evidence of exclusive possession of the land by the beneficiary. This is because the family members in occupation of the various portions of the family land, in the absence of contrary evidence, remain agents through whom the family is in effective legal possession thereof. (p. 1381 H)

2. Occupation and possession distinguished

I think the point must be made that it appears there is always the tendency to confuse the term “occupation” with “possession”. Whereas the term “occupation”, in relation to land entails mere physical control of the land in the time being, “possession” of land, although it may some times connote occupation of such land, is not necessarily always synonymous with occupation of such land. A landlord who collects rents from his tenants in respect of his piece or parcel of land is clearly in de jure possession of such land even though he is not in physical occupation or de facto possession thereof, (p. 1382 E)

3. Maintenance of action in trespass

The principle is elementary that a person in possession of land can maintain an action in trespass against any one but the person who can establish a better title. A claim for trespass to land being generally rooted in exclusive possession, all a plaintiff needs prove is that he has exclusive possession or the right to such exclusive possession of the land in dispute, but once a defendant claims to be the owner of the land in dispute, as the appellant did claim in the present case, title to such a land is thereby put in issue and the plaintiff, to succeed, must establish a better title than that of the defendant. (p. 1383 G)

4. Arbitration under Customary Law - May ground estoppel

It is also settled law that customary law arbitration may amount to an estoppel. I entertain no doubt therefore, that Exhibit D was not only relevant and admissible in evidence but that the appellant cannot now back out therefrom. (p. 1387 B)

REPRESENTATION

N. J. Okoli (Mrs.) for the appellant

B. C. Igwe Esq. for the respondent

CASES REFERRED TO

Ekwere v. Iyiegbu (1972) 1 All N.L.R. (Part 2) 167 at 177	
Udeze v. Chidebe (1990) 1 S.C.N.J. 104 120 - 121 /	
Bamgbose v. Oshoko (1988) 2 N.W.L.R. (Part 78) 509	
Onyekaonwuv. Ekwubiri (1966) All N.L.R. 33 at 35	
Kponuglo v. Kodadja (1934 - 35) 2 W.A.C.A. 24 at 29	B
Amakor v. Obiefuna (1974) All N.L.R. 109	
Okechukwu v. Okafor (1961) All N.L.R. 715	
Ogunbambi v. Abowab 13 W.A.C.A 222	
Ezera v. Ndukwe (1961) All N.L.R. 564	
Ojibah v. Ojibah (1991) 22 N.S.C.C. (Part 2) 130	C
Kobina v. Akese 1 W.A.C.A. 1 at 2	
Larbi v. Kwasi 13 W.A.C.A. 81	
Omorie v. Idungiemwanye (1985) 2 NWLR 41	
Amizu v. Nzeribe (1989) 4 NWLR (Part 118) 755 at 768	
Larbi v. Kwasi 13 WACA 81	D
Foli v. Akese (1930) 1 WACA 1	

STATUTES & RULES REFERRED TO

Arbitration Act Cap 13, Laws of the Federation of Nigeria 1958, s 2	
Arbitration and Conciliation Act, cap 19, Laws of the Federation of Nigeria 1990, s. 1(1)	E
Evidence Act Cap 62 L.F.N. 1958, s 45 (now s. 46)	
Evidence Act, Cap 112 L.F.N. 1990, s. 20(1)	
Illiterates Protection Law, cap 64, Laws of Eastern Nigeria 1963	F

LEAD JUDGMENT BY IGUH JSC

In the High Court of the former Anambra State of Nigeria, the plaintiff, who is now the respondent, for himself and on behalf of members of the Umungali family of Isu Village, Oba instituted an action against the appellant, who therein was the defendant, claiming, as subsequently amended, as follows -

1. N200.00 being general damages for trespass on the plaintiff's piece or parcel of land known as Ana Okpuno Umungali situate at Isu Village, Oba in the Idemili Local Government Area of Anambra State and
 2. Perpetual injunction restraining the defendant, his servants, agents and/or privies from any further acts of trespass upon the plaintiff's said land.
- Pleadings were ordered in the suit and were duly settled, filed and exchanged.

At the subsequent trial, both parties testified on their own behalf and called witnesses.

The respondent's case is that the land in dispute shown verged pink in Plan No. MEC/206/77, Exhibit A, is situate right in the heart of their larger area of land farmed and occupied by his family from time beyond human memory and shown verged green in the said plan, Exhibit A. The entire portion of land verged green in Exhibit A is the property of the Umungali family of Isu Village, Oba on whose behalf he was prosecuting the suit. The said portion of land verged green in Exhibit A roughly corresponds with the land claimed by the appellant and verged blue in the appellant's Plan No. MEC/2903/78 tendered in evidence at the hearing as Exhibit B. The appellant claimed ownership and possession, not only of the area verged pink on Exhibit A and B upon which he was said to have trespassed, but also of the entire portion verged blue in his Plan Exhibit B. Consequently, the *campus bellum* in the suit naturally became expanded from trespass to the said portion of land verged pink in both plans to include the issue of title to the entire land was verged green and blue in the plans Exhibits A and B respectively.

It is the respondent's case that the land in dispute was only a portion of their "*Ana Okpuno Umungali*" land which was first acquired as a virgin land by his great grand ancestor, Ngali, the father of Umeobieli who is the great grand father of the respondent. Within this land in dispute is the "*Okwuani*" juju shrine which is owned, retained and worshipped by the respondent's family members. A portion of this Okpuno Umungali land verged purple in Exhibit A was allotted to the appellant in 1960 by the respondent's family on payment of tribute. This portion of land on which the appellant lives is not in dispute in this case. A yet another portion of the respondent's land on which St. Paul's Anglican School and Parsonage stand was granted to the Isu Community by the respondent's family. This is the area verged yellow in both plans, Exhibits A and B. This grant is evidenced by Exhibit C.

The respondent further claimed that when in 1976, his family discovered that the appellant had not paid his tribute for five years, they demanded payment in writing from him. The appellant responded by claiming for the first time the said land on which he lived as his personal property. A dispute consequently arose between both parties which was looked into by the Isu Akanato elders under customary law. The elders advised the appellant to resume payment of his tribute to the respondent's family. The proceedings of this customary arbitration is Exhibit D. It was as a result of the decision in this customary arbitration that the appellant trespassed upon the land in dispute and destroyed the respondent's farm crops thereon hence this action.

The appellant, who is from Umuolianu family, a family totally different from the respondent's family, claimed the land in dispute as his personal property. He denied that he obtained any land from the plaintiffs family on payment of tribute. He also claimed that his brother and himself granted to Oba people, the land upon which St. Paul's School stands. He did not however remember when they made this grant to Oba people. He admitted that he reported the respondent's family to the Isu Akanato elders in 1976 and that both parties submitted to their customary arbitration in respect of the area of land verged purple in Exhibit A on which he lives. According to him, the elders decided that the respondent should provide a juju on the said land for his removal under customary law to establish his ownership thereof. When however, the respondent's family failed to provide the juju, the land on which he lives was adjudged to be his bonafide property. He denied that the Umungali family was ever in possession of the land in dispute. PW1, PW2, PW3 and PW6, admittedly, belong to the same family as the appellant testified in support of the respondent's case. They testified that the piece or parcel of land verged purple in Exhibit A and green in Exhibit B on which the appellant lives was granted to him by the respondent's family as a customary tenant on payment of tribute. They also confirmed that it was the respondent's Umungali family and not the appellant or his family, to which they all belonged, that granted St. Paul's premises for the erection of a school. B C D E

At the conclusion of hearing, the learned trial Judge, Awogu, J. as he then was, after a meticulous review of the evidence found for the respondent and decreed as follows:-

"The Plaintiff has clearly proved his case and is entitled to judgment. The Defendant made no effort to weaken the amount claimed as damages for trespass and so I award the Plaintiff the N200.00 damages claimed for the Defendant's trespass on Ani Okpuno Umungali in dispute. The Plaintiff is also entitled to the injunction which he seeks. The Defendant, his servants and agents are hereby restrained from further trespass into the land in dispute shown in Pink on Plan No. MEC/206/77 filed by the plaintiff and marked Exhibit A. The cost of the action is assessed at N100.00 in favour of the Plaintiff." F G

This was on the 29th January, 1981.

Being dissatisfied with this decision of the trial court, the appellant lodged an appeal against the same to the Court of Appeal, Enugu Division which in a unanimous judgment dismissed the appeal and affirmed the decision of the trial court on the 29th June, 1987. Aggrieved by this decision of the Court of Appeal, the appellant has further appealed to this court. H

Altogether six grounds of appeal were filed by the appellant. These grounds of appeal, without their particulars, are as follows:-

1. The learned Justices of Appeal erred in law by affirming the judgment of the trial judge that the respondent on record could maintain an action in trespass over the land in dispute in these proceedings.

B 2. Learned Justices of the Court of Appeal erred in law by affirming the award of damages for trespass and injunction against a tenant in possession when the tenancy was neither terminated nor forfeited.

3. The Courts below erred in law by admitting and acting on inadmissible evidence when there was no sufficient evidence to support the judgment after excluding the inadmissible evidence.

C 4. The Courts below erred in law by holding that the decision of the “customary arbitration” or terms of settlement produced by a conciliation body, as contained in Exhibit D was binding on the Appellant and that the Respondent had thereby established a superior title over the land in dispute.

D 5. The Courts below erred in law by invoking Section 45 of the Evidence Act as operating in favour of the Plaintiff/Respondent and thereby came to the wrong conclusion that the Respondent is entitled to the land in dispute.

6. The decision of the Court below is against the weight of evidence.

E The parties, pursuant to the rules of this court, filed and exchanged their written briefs of argument. The three issues identified on behalf of the appellant which this court is called upon to determine are as follows:-

“(i) *Whether the Plaintiffs/Respondents having divested themselves of possession by the grant to Umeobieli and his descendants, could maintain an action in trespass over the land in dispute?*

F (ii) *Whether the Respondents have proved any acts of trespass against the Appellant?*

G (iii) *Whether the Courts below considered the validity and took a correct view as to the evidential value of the document/conveyance Exh. C and the record of proceedings of Isu-Akanato elders, Exh. D on which the Respondents heavily relied for their case?”*

The respondent, on the other hand, submitted four issues in his brief of argument as arising in this appeal for determination. These are -

H “(i) *Whether the Plaintiffs/Respondents are in possession of the land in dispute or have a right to possession thereof as to maintain an action in trespass against the Defendant/Appellant.*

(ii) *Whether there is a proof of trespass against the Defendant/Appellant.*

(iii) *Whether Exhibits “C” and “D” are admissible in evidence, and whether, assuming that Exhibits ‘C’ and ‘D’ are not admissible (which points are not conceded), there are not other sufficient accepted evidence to*

support the judgment, after exhibits “C” and “D” are excluded.

(iv) Whether the learned trial judge and the Court of Appeal made a correct approach to the evidence tendered by both sides to the case.”

I have closely examined the two sets of issues set out in the respective briefs of the parties and it is clear to me that the three issues identified in the appellant’s brief are adequately covered by the issues raised in the respondent’s brief which are sufficiently comprehensive for the determination of this appeal. I shall therefore adopt, in this judgment, the set of questions formulated in the respondent’s brief for my consideration of this appeal. B

The appellant’s argument in respect of the first issue is that the respondent’s family having divested themselves of possession of the land in dispute by a customary grant thereof made to Umeobieli could not maintain an action in trespass in respect of the same land. Citing the decision in Joseph Ekwere & Ors. v. Nakmakosi Iyiegbu & Ors (1972) 1 All N.L.R. (Part 2) 167 at 177, learned appellant’s counsel submitted, and quite rightly, that only one who is in possession may maintain an action in trespass. C

For the respondent, it was argued that the alleged grant to Umeobieli was not borne out by the pleadings. Learned respondent’s counsel contended that from the respondent’s great grand father, Umeobieli right down to the respondent himself, all of whom are descendants and members of Umungali family, had from time immemorial exclusively occupied and farmed, as a family, the portion of Okpuno land in dispute. He argued that the Umungali family is effectively in possession of this family land in dispute through its occupation by its members with their leave and licence. Citing the case of Raphael v. Udeze & Ors v. Paul Chidebe & Ors (1990) 1 SCNJ 104, 120-121; (1990) 1 NWLR (Pt.125) 141 learned counsel submitted that a family that allots portions of its land to members of the family for farming purposes only is, itself, in possession thereof through such members who are in mere occupation of the land. He therefore submitted that the Umungali family being in possession of the land in dispute was entitled and is competent to sue in trespass against the appellant. D

From the record of proceedings, it is clear that the alleged grant of the land in dispute by the respondent’s family to Umeobieli on terms alluded to by the appellant is neither borne out by the pleadings nor by evidence before the court. E

Learned appellant’s counsel was, with respect, in error in her arguments in respect of the first issue which was based on an alleged customary grant by the Umungali family as a result of which it divested itself of possession of the land in dispute. F

It is beyond dispute that the respondent’s family made allotments of portions of “*Ana Okpuno Umungali*” land to some of its members for farming G

purposes. However, allotments of portions of family land to its members, not by way of permanent or out and out grants, but for farming purposes may confer no more than mere permission on the beneficiaries to make use of such portions of family land as prescribed. Such allotments, unless a contrary intention is established may not amount to the family divesting itself of possession of the land involved. Although a family land may be allotted to or farmed by a particular member of a family, such allotment or use of the land by the member of the family concerned is no conclusive evidence of exclusive possession of the land by the beneficiary. This is because the family members in occupation of the various portions of the family land, in the absence of contrary evidence, remain agents through whom the family is in effective legal possession thereof. See Bamgbose v. Oshoko (1988) 2 NWLR (Pt.78) 509.

In the present case, the respondent's family "Okwuani" juju shrine, on the facts found established by the learned trial Judge and affirmed by the court below is located right within the land in dispute allocated to Umeobieli by his family for farming purposes. This juju shrine had always been served by the entire respondent's family as a community. In these circumstances, it cannot be seriously argued that the respondent's family is not in possession of the land in dispute.

In this connection, I think the point must be made that it appears there is always the tendency to confuse the term "occupation" with "possession". Whereas the term "occupation" in relation to land entails mere physical control of the land in the time being, "possession" of land, although it may some times connote occupation of such land, is not necessarily always synonymous with occupation of such land. See Raphael Udeze & Ors v. Paul Chidebe & Ors (1990) 1 SCNJ 104 at P. 120-121; (1990) 1 NWLR (Pt.125) 141 Per Nnaemeka Agu, J.S.C. A landlord who collects rents from his tenants in respect of his piece or parcel of land is clearly in de jure possession of such land even though he is not in physical occupation or de facto possession thereof.

In the case on hand, the finding of the trial court as affirmed by the court below is that the entire "Ani Okpuno Umungali" land including the actual piece or parcel thereof in dispute does not belong to the appellant or his family but to the respondent's Umungali family of Isu Oba. Said the learned trial Judge -

"What is more, PW1, PW2 and PW6, all members of the defendant's family, have testified that the Ani Okpuno Umungali in dispute does not belong to their family nor to the defendant's father but belongs to the family of the plaintiff. The only explanation for this evidence against interest is that these witnesses are enemies of the family. The nature of the enmity was not

shown, except perhaps that they chose to speak the truth in respect of the land in dispute. I assume that by “enemies”, the defence perhaps meant that they were saboteurs! Be that as it may, they were most helpful and most truthful witnesses for the plaintiff. I believe their evidence. PW1 is a man well over 70. He said that the defendant once lived with him before going to beg the plaintiff’s family for a piece of land on which to build a house. The plaintiff’s family granted the request subject to payment of tribute. When the defendant began to lay false claim not only to the portion on which he built but also to the land in dispute he told him that their family did not own any land in that area.

As I watched the demeanour of the defendant in the witness box, I formed the impression that he suffered from youthful exuberance.

No doubt, the fact that the plaintiff appears to be in the same age bracket with him and sued in a personal capacity when the action was instituted, made him see the claim of the plaintiff in the context of a challenge by a member of his age-grade. In accepting the challenge, the inhibitions of his family and elders mattered little to him. He does not even know whether the land in dispute belongs to him alone, or to him and his elder brother, Ndefo Agbakoba (DW3) claims to be a co-owner of the land, but the defendant denied this. His defence is baseless and I reject it. The plaintiff has clearly proved his case and is entitled to judgment,”

It is in evidence and this was accepted by both courts below that the de facto possession of the land in dispute by Umeobieli is at the instance of the respondents’ family to which he belonged. There is further evidence which was again accepted by the two courts below that the said respondent’s family established, retained and had communally worshipped their “Okwuani” juju shrine right within the said land in dispute since time beyond human memory. In the circumstances, I cannot but fully endorse the findings of the trial court as affirmed by the court below that the respondent’s family is in de facto et de jure possession of the land in dispute and that the said family also has a right to possession thereof.

The principle is elementary that a person in possession of land can maintain an action in trespass against anyone but the persons who can establish a better title. See Lawrence Onyeakaonwu & Ors v. Ekwubiri & Ors (1966) All NLR 32 at 35. A claim for trespass to land being generally rooted in exclusive possession, all a plaintiff needs prove is that he has exclusive possession or the right to such exclusive possession of the land in dispute, but once a defendant claims to be the owner of the land in dispute, as the appellant did claim in the present case, title to such a land is thereby put in issue and the plaintiff, to succeed, must establish a better title than that of the defendant.

See Kponuglo & Ors v. Kodaja (1934 - 35) 2 W.A.C.A. 24 at 29 and Pius Amakor v. Benedict Obiefulla (1974) All NLR 119; (1974) 3 SC 67.

In the present case, both parties in their pleadings and viva voce evidence before the trial court claimed ownership of the land verged green in Exhibit A and blue in Exhibit B. They both claimed to have granted the portion verged yellow in Exhibits A and B for the erection of St. Paul's School and Parsonage. Both parties also claimed original ownership of the area verged purple in Exhibit A. It is the respondent's case that the said area verged purple in Exhibit A upon which the appellant built his residential house was granted by the respondent's family to the said appellant under customary tenure on payment of annual tribute. As above indicated, the learned trial Judge after a close evaluation of the evidence accepted the testimony of the respondent on these issues. He said inter alia as follows:-

"Each side made a plan of the land in dispute, which was tendered by their common surveyor as Exhibits A and B. The identity of the land in dispute appears to be agreed upon by the parties. There is a portion of land contiguous to the land in dispute upon which St. Paul's School, Oba stands. The plaintiff claims to have made the grant to the Oba people, and tendered Exh. C as the Agreement in respect of the grant.

Although Exhibit C can hardly be described as a Deed of Conveyance there is the additional evidence of PW1, PW3 and PW5 who say that it was the plaintiff's family that made the grant in respect of St. Paul's. PW1 and PW2 are from defendant's family. The defendant claimed to have done so, but called no credible evidence in support. He did not even remember the year in which he made the grant. Section 45 of the Evidence Law operates in favour of the plaintiff in so far as this grant is concerned and would appear to lend support to his claim to the land in dispute."

The trial court, applying, quite rightly, in my view, the provisions of section 45 of the Evidence Act, to the effect that acts of possession and enjoyment of land may be evidence of ownership, not only of the particular piece of land with reference to which the acts are done, but also of other land so situated or connected therewith, by locality or similarity, that what is true as to one piece of land is likely to be true of the other, together with other relevant evidence before the court, found for the respondent on the issue of title to the said land verged green in Exhibit A. See Nathan Okechukwu & Ors v. Frederick Okafor & Ors (1961) All NLR 715; (1961) 2 SCNLR 369. It ought to be observed that this finding was affirmed by the court below. The respondent, therefore, having established both possession and title for the land in dispute can maintain an action in trespass against the appellant.

For all the reasons given above, I entertain no difficulty whatever in arriving at the conclusion that the first issue for determination in this appeal must be resolved in favour of the respondent.

The second issue poses the question whether there is proof of trespass against the appellant in the action. It is his contention that trespass was not established by the respondent against him.

B

In this regard, it is trite law that every unlawful or unauthorised entry on land in possession of another person is an act of trespass for which an action in damages lies. The respondent by paragraphs 13 and 14 of his amended Statement of Claim pleaded as follows:-

"13. Consequent upon the said false claim laid by the defendant in respect of the area verged purple in plaintiff's plan, a dispute arose and the matter was looked into by Isu Akanato elders whereupon it was decided that the defendant should continue paying rents to Umungali family, thereafter, about the month of November 1976, the defendant trespassed upon the plaintiff's farm land now in dispute verged pink in plaintiff's Plan and destroyed his cassava and coco-yam farm thereon. The findings of the said Isu Akanato elders which was reduced into writing will be founded upon at the trial.

14. The defendant will continue in his provocative act of trespass unless he is stopped by an order of court."

The respondent in his viva voce evidence before the trial court testified that when the appellant was advised by the Isu Akanato elders to resume payment of his tribute as from 1977, he replied by invading the land in dispute and damaging the respondent's crops thereon. The respondent was not seriously challenged on this piece of evidence which was accepted by the trial court. The appellant's reaction was that he was in possession of the land in dispute and that it was the respondent's family that trespassed thereupon. The learned trial Judge rejected this plea of the appellant. On the issue of trespass, he observed:-

"The plaintiff has clearly proved his case and is entitled to judgment. The defendant made no effort to weaken the amount claimed as damages for trespass and so I award the plaintiff the N200.00 damages claimed for the defendant's trespass on Ani Okpuno Umungali in dispute. The plaintiff is also entitled to the injunction which he seeks." (Italics supplied for emphasis)

The above decision of the trial court was affirmed by the court below and I can find no reason to fault the same. In the circumstance, the second issue must also be resolved in favour of the respondent.

The third issue questions whether Exhibits C and D are admissible in

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evidence and, if not, whether there are other accepted evidence in support of the judgment of the two courts below.

Exhibit C is a document tendered by the respondent in proof of his grant of the land verged yellow in exhibit A to the Church. It is clearly not a registrable instrument but the law is well settled that an unregistered instrument is not admissible to prove title but is certainly admissible to prove payment of money and coupled with possession may give right to an equitable interest enforceable by specific performance. See *Isaac Ogunhambi v. Abowah* 13 WACA 222. Exhibit C was therefore properly admitted in evidence, not as a title deed, but as a receipt in respect of the land.

It was also submitted that the document was inadmissible in evidence as it was allegedly executed by illiterates but did not contain a jurat. The short answer there is that the Illiterates Protection Law, Cap. 64, Laws of Eastern Nigeria 1963, applicable to Anambra State, as its title implies, is a law to protect and not to penalise illiterates and the fact that the provisions of that law were not carried out could not mean that the document was for that reason alone void, of no effect and inadmissible. That law made no such provision and I find myself unable to accept the appellant's submission on the issue as well founded. See *Iro Ezera v. Inyima Ndukwe* (1961) 1 All NLR 564.

Exhibit D, on the other hand, is a record of the decision of the Isu Akanato elders in the matter of their arbitration on the issue of title to the land verged purple on Exhibit A on which the appellant lives. The appellant, has contended that it is inadmissible in evidence as it was not an arbitration award in that there was never an arbitration agreement between the appellant and the respondent.

The first point that must be made is that Exhibit D, on the findings of both courts below, which I fully endorse, does not come within the provisions of Arbitration Act, Cap. 13, Laws of the Federation of Nigeria, 1958 or the Arbitration and Conciliation Act, Cap. 19, Laws of the Federation of Nigeria, 1990. Exhibit D is merely a record of the decision of Isu Akanato elders of Oba under customary law. Both parties are ad idem on this point and, not only pleaded, but relied on the decision of this body. Indeed the appellant by paragraph 10 of his Statement of Defence and his viva voce evidence before the court admitted that he was responsible for referring the dispute in issue to the said Isu Akanato elders. It is also in evidence that both parties consented to this customary arbitration, submitted themselves to this body and, together with their witnesses testified before the elders. The trial court found it established, and this was affirmed by the court below, that this customary arbitration ended in favour of the respondent's family. This finding is that the land was adjudged to belong to the respondent and the appellant was asked

to resume payment of his tributes to the said respondent.

It cannot be over emphasized that where two parties to a dispute, as in the present case, voluntarily submit their matter in controversy to an arbitration according to customary law and agreed whether expressly or by implication, that the decision of the arbitrators would be accepted as final and binding, then once the arbitrators reach a decision, it will no longer be open to either party to subsequently back out of such a decision. A party rejecting such a decision must prove that it was wrong in principle. See *Michael Ojibah v. Ubako Ojibah* (1991) 22 N.S.C.C. (Pt.2) 130; (1991) 5 NWLR (Pt.191) 296 and *Omanhene Kobina v. Akese* 1 W.A.C.A. 1 at 2. It is also settled law that customary law arbitration may amount to an estoppel. See *Joseph Larbi v. Opanim Kwasi* 13 W.A.C.A. 76 and *Godfrey Akpacha v. Obie-Kejie & Others* (1972) 2 S. C. 41. I entertain no doubt therefore, that Exhibit D was not only relevant and admissible in evidence but that the appellant cannot now back out therefrom. Exhibits C and D having been held to be rightly admitted in evidence before the trial court as affirmed by the Court of Appeal, it becomes unnecessary to speculate on the position if they were to have been wrongfully admitted. Issue number three must accordingly be resolved in favour of the respondent.

The fourth and last issue poses the question whether the learned trial Judge and the Court of Appeal made a correct approach to the evidence tendered by the parties to the case. In my view, there can be no doubt that they did. On their findings, here was the land in dispute verged pink in Exhibit A. It is situate right in the heart of the “*Ana Okpuno Umungali*” land of the respondent’s family and is in the possession of the said family. The area verged purple on Exhibit A was given by the respondent’s family to the appellant for residential purpose on payment of tribute. The area verged yellow in Exhibit A was granted by the respondent’s family to Isu Village for the establishment of St. Paul’s School and Parsonage. Right within the land in dispute is the respondent’s family “*Okwuani*” juju shrine which was established and is worshipped by its members “from time immemorial. By Exhibit D, the Isu Akanato elders in a customary law proceeding confirmed ownership of the land on which the appellant lived on the respondent and a grant thereof by the said respondent’s family to the appellant subject to the payment of tribute. I think both the trial court and the Court of Appeal were fully entitled in the face of the above overwhelming evidence to find for the respondent as claimed.

On the whole, I find no substance in this appeal which I accordingly dismiss. The decision of the trial court as affirmed by the Court of Appeal is hereby further affirmed. There will be costs to the respondent against the

BELGORE JSC

B This appeal is based almost directly on issues of fact couched as
error in law. The two lower courts rightly and painstakingly considered all the
facts that I find nothing perverse in their findings. I find no reason to interfere
with concurrent decision of the two lower courts. I agree with my learned
brother, Iguh. J.S.C. in his analysis of the issues and conclusions on them in
C also dismissing this appeal with N1,000.00 costs to respondents.

MOHAMMED JSC

D I entirely agree with the opinion of my learned brother, Iguh, J.S.C., in
the judgment just read. This appeal is from concurrent findings of fact from
two lower courts, and it is abundantly clear that there was overwhelming
evidence against the appellants before the trial High Court. Consequently, I
too, hereby dismiss the appeal and affirm the judgment of the Court of Appeal.
I also award N1,000.00 in favour of the respondent.

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ONU JSC

F For the reasons for judgment given by my learned brother Iguh,
J.S.C., a preview of which I was privileged to have before now, I, too have no
hesitation in dismissing this appeal.

G A word or two of mine will be put in if only in expatiation of the case
as reflected in the judgment of my learned brother which constitutes yet an-
other clear example of concurrent findings of facts of the decisions of the two
courts below with which this court has stated times without number, it will be
chary to interfere with unless palpably shown to be perverse, unsound or
conclusively wrong. See Mogo Chinwendu & Ors v. Nwanegbo Mbamali &
Ors, (1980) 3-4 S.C. 31; Ukpe Ibodo & Ors. v. Iguasi Enarofia & Ors. (1980) 5-7-
S.C. 42 at 50, 55-57; Balogun v. Labiran (1988) 3 NWLR (Pt.80) 66 at 79; Okunola
v. Oduola (1987) 4 NWLR (pt.64) 141 and Emaphil Ltd. V. Odili (1987) 4 NWLR
H (Pt.67) 915 at 931, to mention but a few. Nothing has been shown to me to
warrant my interfering with the decisions of the two lower courts. All three
issues set out in the appellant's brief formulated for our determination, I in-
tend to consider in one single wrap together herein as follows:

In the first place, two witnesses from the appellants family viz DW1

and DW2, testified against him to the effect, among others, that it was the respondent's family that made the grant in respect of the land on which stands St. Paul's School and parsonage as against the appellant's own story that he allocated the same piece of land to St. Paul's School - an assertion which he (appellant) failed to establish at the trial. The testimonies of the appellant's own kith and kin therefore constituted admissions against their own interest. See section 20(1) of the Evidence Act, Cap. 112, Laws of the Federation 1990. As each side to this case made a plan of the land in dispute, tendered by their common Surveyor as Exhibits "A" and "B" and its identity clearly seemed to be agreed by them or was not in doubt, the expression of belief by the trial court of the respondent's own version that their family, Umungali, were the grantors of the land on which St. Paul's School and Parsonage stands, that finding is in my respectful view, unimpeachable. Furthermore, as the land on which that School stands is contiguous to the land in dispute, then the presumption of section 45 (now section 46) of the Evidence Act comes into play, to wit that -

"45. Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece of land is likely to be true of the other piece of land." See *Idundun v. Okumagba* (1976) 9-10 S.C. 227 and *Okechukwu v. Okafor* (1961) All NLR 685; (1961) 2 SCNLR 369.

Exhibits A and B have left no one in doubt as to the clear delimitation of the land in dispute. See *Elias v. Omo-Bare* (1982) 5 S.C. 25.

The respondents apart from showing that they were in possession proved through adducing traditional evidence their root of title. Thus when P.W.5, Nwabufo Ugwunze, testified to the effect that -

"In the past, lands which were virgin forests were acquired by the first to clear it and put a shrine there. This was how we acquired Umungali land" and the trial Judge considered the totality of the case including the pleadings of the parties, the issues arising therefrom as well as the evidence abundantly led and established, it is little wonder that the Judge adopted the right approach and made unimpeachable findings which the court below had no difficulty in upholding. See *Rowland Omoregie & Ors. v. Oviauwonyi Idungiemyanyie & Ors.* (1985) 2 NWLR (Pt. 5) 41. Having failed to establish title to the land in dispute, the appellant became a trespasser the moment he left the area verged purple in Exh. A which was granted to him by the respondents on to that in dispute. See *Oniah v. Onyia* (1989) 1 NWLR (Pt.99) 514 at 529.

With regard to the Akanato Elders' Customary arbitration epitomised in Exhibit D, this piece of documentary evidence represented the record of the decision of those elders. It does not, in my view, come within the provisions of the Arbitration Act, Cap. 13 Laws of the Federation, 1958 nor the Arbitration B and Conciliation Act, Cap. 19 Laws of the Federation, 1990. Looked at from whatever angle, the arbitration award depicted in Exhibit D was pleaded by both parties, who however gave different accounts of it. Both parties, however, agreed that Isu Akanato Elders had a Secretary who recorded what appears on it in the form it was tendered through DW2 and received in evidence. C The appellant having been shown on it to be bound by it - See *Ojibah v. Ojibah* (1991) 6 S.C.N.J. 156 at 169; (1991) 5 NWLR (Pt.191) 296 - he cannot now in the Supreme Court be allowed to resile therefrom. A jurat is, in my view, not a pre-requisite since the Illiterates Protection Law, Cap. 64 Laws of Eastern Nigeria, 1963 (applicable in Anambra State) is meant to protect and not to penalise the D illiterate from possible fraud. See *Amizu v. Nzeribe* (1989) 4 NWLR (Pt.118) 755 at 768. The distinction sought to be made in the cases of *Larbi v. Kwasi & Ors.* 13 WACA 81 and *Kohina Foli v. Akese* (1930) 1 WACA 1 where no customary arbitration was pleaded vis-a-vis the situation in the instant case, is not just there, since in the instant case, there was proper pleading of customary arbitration. Be that as it may, the case of *Ezulumeri Ohiaeri & Ors. v. Adinnu Akaheze & Ors.* (1992) 2 NWLR (Pt.221) 1 at 24 upon which reliance is placed in support of the proposition that one of the conditions precedent for a binding customary arbitration is that the decision or award was accepted by both parties at the time it was made and the decision of *Raphael Agu v. Christian F Ikewibe* (1991) 3 NWLR (Pt.180) 385 at page 407 in which *Karibi Whyte, J.S.C.* defines customary arbitration as

"arbitration in a dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chiefs or elders of their community, and the agreement to be bound by such decision G or freedom to resile where unfavourable." are, in my opinion, applicable to the instant case where what operated was a voluntary agreement to be bound by the decision as hereinbefore shown but not the other way round. The provisions of section 1(1) of the Arbitration and Conciliation Act Cap. 19 which re-enacted section 2 of the Arbitration Act Cap. 13, Laws of Nigeria, H 1958 stipulate that -

"Every arbitration agreement shall be in writing contained in a document signed by both parties" is strictly irrelevant here.

Thus, the trial court as well as the court below having both held that the award favoured the respondent, the appellant cannot now, in my view, be

seen to push his argument as to requirements of customary arbitration to the limits of absurdity and irrelevance.

With regard to the issue of admissibility of Exhibit C, it is enough to say that it could only evidence the payment for the acquisition and possession of Umungali land as a receipt in law it is admissible as evidence of payment under customary law and not as an instrument or conveyance in the English form. See *Obijuru v. Ozims* (1965) 2 NWLR (Pt.6).167; *Okoye v. Dumez (Nigeria) Ltd.* (1965) 1 NWLR (Pt. 4) 783; *Lydia Erinosh v. Tunji Owokoniran* (1965) NMLR 479; *Ogunbambi v. Abowaba* 13 WACA (1950) 222 and *Adesanya v. Otuewu & Ors.* (1993) 1 S.C.N.J, 77 at 95: (1993) 1 NWLR (Pt. 270) 414. Its receipt in evidence is unimpeachable. All three issues are hereby resolved against the appellant. For the reasons I have given and the fuller ones contained in the judgment of my learned brother Iguh, J.S.C. I too, accordingly dismiss this appeal and endorse the consequential orders as contained therein.

ADIO JSC

I have had the opportunity of a preview of the judgment just read by my learned brother. Iguh, J.S.C.,and I agree that the appeal has no substance, It fails and I too dismiss it. I abide by the order for costs. Appeal dismissed.